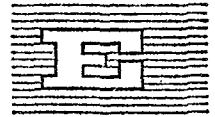


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COMMISSION ON HUMAN RIGHTS

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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM
OF DETENTION OR IMPRISONMENT, IN PARTICULAR:
QUESTION OF MISSING AND DISAPPEARED PERSONS

Report of the Working Group on Enforced or
Involuntary Disappearances

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
Introduction	1 - 9	1
<u>Chapter</u>		
I. Activities of the Working Group on Enforced or Involuntary Disappearances	10 - 18	3
II. International concern with the question of enforced or involuntary disappearances	19 - 28	6
III. Survey and Analysis of information received and dealt with by the Working Group	29 - 157	10
A. General considerations	29 - 32	10
B. Information concerning Argentina and communications with the Government of that country	33 - 52	11
C. Information concerning Bolivia and communications with the Government of that country	53 - 57	32
D. Information concerning Brazil and communications with the Government of that country	58 - 61	33
E. Information concerning Chile and communications with the Government of that country	62 - 64	34
F. Information concerning Cyprus	65 - 66	35
G. Information concerning El Salvador and communications with the Government of that country	67 - 87	37
H. Information concerning Ethiopia and communications with the Government of that country	88 - 90	43
I. Information concerning Guatemala and communications with the Government of that country	91 - 102	44
J. Information concerning the Revolutionary People's Republic of Guinea and communications with the Government of that country	103 - 105	47

CONTENTS (continued)

	<u>Paragraphs</u>	<u>Page</u>
K. Information concerning Honduras and communications with the Government of that country	106 - 109	47
L. Information concerning Indonesia and communications with the Government of that country	110 - 113	48
M. Information concerning Iran and communications with the Government of that country	114 - 117	49
N. Information concerning Lesotho and communications with the Government of that country	118 - 119	50
O. Information concerning Mexico and communications with the Government of that country	120 - 121	51
P. Information concerning Nicaragua and communications with the Government of that country	122 - 130	51
Q. Information concerning the Philippines and communications with the Government of that country	131 - 137	56
R. Information concerning Sri Lanka and communications with the Government of that country	138 - 139	58
S. Information concerning Uganda and communications with the Government of that country	140 - 141	59
T. Information concerning Uruguay and communications with the Government of that country	142 - 147	59
U. Information concerning Zaire and communications with the Government of that country	148 - 151	60
V. Disappearances involving the security forces of more than one country	152 - 157	61

CONTENTS (continued)

<u>Chapter</u>	<u>Paragraphs</u>	<u>Page</u>
IV. Information concerning enforced or involuntary disappearances in South Africa and Namibia and communications with the Government of South Africa	158 - 163	63
V. Specific human rights denied by enforced or involuntary disappearances: the special provisions of the rights of children and mothers..	164 - 172	65
VI. Concluding observations and recommendations	173 - 185	70
VII. Adoption of the report	186	74

ANNEXES

I. Commission on Human Rights resolution 20 (XXXVI).		
II. Commission on Human Rights resolution 10 (XXXVII).		
III. Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 15 (XXXIV).		
IV. Excerpts from the statements made to the Working Group by the representatives of the Grandmothers of the Plaza de Mayo (Argentina).		
V. Excerpts from the statement concerning missing children made to the Working Group by the representative of the Centre for Legal and Social Studies (Argentina).		
VI. Excerpts from the statement made to the Working Group by the representatives of the Relatives of Persons Missing and Detained for Political Reasons (Argentina).		
VII. Excerpts from statements made to the Working Group by the Permanent Representative of Argentina to the United Nations Office at Geneva.		
VIII. Views adopted by the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights relating to communication R.12/52 and communication R.13/56.		
IX. Excerpts from statements made to the Working Group by the representatives of associations or organizations directly concerned with reports of enforced or involuntary disappearances in El Salvador.		
X. Reports of the Special Commission to Investigate Political Prisoners and the Disappeared in El Salvador.		

ANNEXES (continued)

- XI. Excerpts from the statement made to the Working Group by the Permanent Representative of El Salvador to the United Nations Office at Geneva.
- XII. Excerpts from the statement made to the Working Group by the representative of the Committee for Justice and Peace (Guatemala).
- XIII. Comments by the Government of Guatemala on the Proceedings of the United Nations Commission on Human Rights at its thirty-fifth, thirty-sixth and thirty-seventh sessions.
- XIV. Communication of 4 December 1981 from the Foreign Minister of Nicaragua.
- XV. Letter dated 23 March 1981 from the Deputy Permanent Representative of the Philippines to the United Nations Office at Geneva.
- XVI. Excerpts from the statement made to the Working Group by the Representative of Uruguay to the Commission on Human Rights.

INTRODUCTION

1. Readers of this report will find two main topics. First, disappearances have continued in 1981 as they did in 1980. There is increasing concern this winter about the persistence of disappearances, and special focus has been placed on missing children. The Working Group has tried to respond to these events in an effective and expeditious manner. Second, work has also proceeded in searching for an explanation of the older cases which occurred before the Group was first set up.

2. In those countries where disappearances are currently occurring, the scale varies considerably; in some cases internal unrest of different degrees of severity is reported. The Group has succeeded in opening a dialogue with some of the Governments concerned, but others have made no effective response to the Group's approaches. Reports of disappearances have now been received from countries not referred to in last year's report (E/CN.4/1435 and Add.1).

3. As for the older cases, the Group has continued the collection, scrutiny and transmission to Governments of the reports referred to last year. The presentation of full and accurate details continues. There is, again, a number of reports of disappearances in countries not mentioned last year. These too are being pursued. The amount of information available constantly increases, and the Group is adding to its understanding of the historical background to these events. This report, however, seeks to concentrate on the main body of material and evidence newly made available, without rehearsing last year's summary.

4. The debate in the Commission on last year's report provided the Working Group with its starting point. Every endeavour has been made to take into account the valuable comments made at that time and in the discussions in the Economic and Social Council. The terms of the relevant resolutions adopted by the Council and the Commission have been carefully examined. On procedural matters, the Group considered its methods of work so as to ensure that they are in accord with the mandate and with procedures previously applied within the United Nations structure. The reports received by the Group have been checked for conformity with United Nations standards in the matter; subject to any request for confidentiality by the author, the information has been transmitted to Governments; except that the volume of reports relating to disappearances in two countries is so great that this process is still continuing and is not yet complete.

5. The Group has always emphasized that its genesis in the Commission and its work ever since are solely motivated by a humanitarian spirit. This seems to be increasingly (if slowly) accepted. There can be no doubt that the families of the disappeared are anxiously hoping that the Group will be able to obtain information for them on that which they have been unable themselves to discover; the fate or present whereabouts of the disappeared. There is no indication that the passage of time is reducing their concern, that they are reconciled to the unsolved mystery, or that they will allow the problem just to go away. Unquestionably, their right to know can be neither denied nor ignored.

6. It is, therefore, necessary to stress again what it is that the Group is asking Governments to do. It is not inquiring into the politics or the activities of the disappeared; this would be especially absurd where babies or small children are concerned. It is simply asking Governments, so far as they can, to explain if a

missing person is detained, where the place of detention is, or, if he is not detained, what happened to him after his arrest. If, as a result, an excess or abuse of authority is uncovered, as in at least one country has already been disclosed, the national legal system is likely to contain adequate power to deal with any offender, and should be allowed to do so.

7. It is in respect of requests for information on recent disappearances that the Group can claim some results in collaboration with others interested in these cases. The emergency procedure, explained last year, has again been used where reliable reports of disappearances have been received. Governments have responded with news about the detention, or sometimes the release, of the person concerned. There is some indication that this procedure has saved lives; it is to be hoped that it may also have had a deterrent effect in preventing a disappearance from happening at all. This is action in support of the most fundamental human right of all - the right to life.

8. As occurred last year, an addendum will be published for the Commission containing news of the Group's activities continuing into 1982.

9. Finally, we would say that harmony has continued to govern the Group's meetings, and that the dedication of the Director of the Division of Human Rights and of the Secretariat has been unabated; they are owed the most sincere appreciation.

I. ACTIVITIES OF THE WORKING GROUP ON ENFORCED
OR INVOLUNTARY DISAPPEARANCES

10. The Commission on Human Rights, in its resolution 20 (XXXVI) of 29 February 1980 (see annex I to the present report), decided to establish for a period of one year a Working Group consisting of five of its members, to serve as experts in their individual capacities, to examine questions relevant to enforced or involuntary disappearances of persons. As requested by that resolution, the Working Group presented a report to the Commission on Human Rights at its thirty-seventh session which is contained in documents E/CN.4/1435 and addendum 1. By its resolution 10 (XXXVII) of 26 February 1981 (see annex II to the present report) the Commission on Human Rights decided to extend for one year the term of the mandate of the Working Group on Enforced or Involuntary Disappearances as laid down in Commission resolution 20 (XXXVI). In its resolution 10 (XXXVII) the Commission requested the Working Group to submit to it at its thirty-eighth session a report on its work together with its conclusions and recommendations. At the Commission's 1642nd meeting, on 13 March 1981, the Chairman announced the composition of the Working Group as follows:

Viscount Colville of Culross, QC (United Kingdom), Mr. Jones K. D. Foli (Ghana), Mr. Agha Hilaly (Pakistan), Mr. Ivan Tosevski (Yugoslavia), Mr. Luis A. Varela Quiros (Costa Rica).

11. The Economic and Social Council, in its decision 1981/139 adopted on 3 May 1981, approved the decision of the Commission on Human Rights to extend for one year the term of the Working Group's mandate.

12. During 1981 the Working Group held three sessions: its fourth session, from 11 to 15 May 1981, at United Nations Headquarters, New York; its fifth session, from 14 to 18 September 1981, at the United Nations Office at Geneva; and its sixth session, during which the present report was adopted, from 30 November to 7 December 1981, also at the United Nations Office at Geneva. During its fourth session the Working Group elected Viscount Colville its Chairman/Rapporteur. At each session the Working Group reviewed the information before it concerning enforced or involuntary disappearances, took appropriate decisions in that regard, and addressed requests for further information to Governments, humanitarian organizations, relatives of reported missing persons and other reliable sources. During its fifth session the Working Group established contact with the Special Envoy on the situation of human rights in Bolivia appointed pursuant to Commission on Human Rights resolution 34 (XXXVII), and it took steps to communicate with the Special Rapporteur on the situation of human rights in Chile appointed pursuant to Commission on Human Rights resolution 11 (XXXV) and the Special Representative on the situation on Human Rights in El Salvador appointed pursuant to Commission on Human Rights resolution 33 (XXXVII).

13. In approaching the responsibilities placed upon it by the extension of the term of its mandate the Working Group decided to state clearly again that in its activities it is motivated by the purely humanitarian objective of helping to clarify the whereabouts of persons reported to be missing. At its fourth session the Group expressed its earnest hope to be able, in carrying out its mandate, to inform the Commission on Human Rights that, through the co-operation of Governments, reports of enforced or involuntary disappearances had been clarified following the receipt of substantive information.

14. The Working Group, after reviewing at each session the information on enforced or involuntary disappearances which it had before it, decided, in appropriate cases, to bring reports concerning enforced or involuntary disappearances to the attention of the Government concerned together with a request for any information on those reports which the Government might wish to send. In so doing, the Group decided that it was in order to transmit complete copies of the original reports received by it, wherever possible and subject to such requests for confidentiality as had been received. Since the extension of the term of its mandate the Group has also made expeditious approaches to the Governments of eight countries regarding urgent reports of the disappearance of some 55 persons. Clarifications from governmental and non-governmental sources have been received with regard to 19 of those persons; 18 were reported to be free or in prison, and one was reported to have been found dead. Details on these reports are contained in chapter III below.

15. As it stated in its report to the Commission on Human Rights at its thirty-seventh session (E/CN.4/1435, para.31), the Working Group is of the opinion that one of the best means by which it might deal with allegations of enforced or involuntary disappearances, and gain an understanding of the circumstances surrounding such allegations, would be for it, through visits by one or two of its members, to establish direct contact with those immediately concerned in such matters. During 1981 the Group continued its contacts with Governments with a view to exploring the possibilities for such visits. The Group has received the agreement of the Government of Mexico for a visit to that country and the visit is scheduled to take place in January 1982. The report on that visit will be reflected in an addendum to the present report.

16. The Group continued to meet with representatives of Governments. During its fifth session it met with representatives of the Governments of Argentina, El Salvador and Mexico, and during its sixth session it met with representatives of the Governments of Argentina and Uruguay. Extracts from the statements made by the representatives of Argentina, El Salvador and Uruguay during their meetings with the Group are reproduced in annexes VII, XI and XVI to the present report.

17. In accordance with its mandate the Group received and, where appropriate, sought, information from non-governmental organizations in consultative status with the Economic and Social Council, from organizations or associations directly concerned with enforced or involuntary disappearances and from relatives of persons reported missing. During its fifth session the Group met with representatives of organizations and associations directly concerned with enforced or involuntary disappearances. Excerpts from statements made to the Group by representatives of those organizations and associations are reproduced in annexes IV, V, VI, IX, XII to the present report. The Working Group received expressions of concern about the protection of persons who provide information about disappeared persons and informed Governments of its concern that no source which had transmitted information to the Group would be subjected to coercion, sanctions, punishment or judicial proceedings for that reason. The Group stated that this was a matter to which it attached importance.

18. The Working Group has continued to receive and study information on the consideration given to reports of enforced or involuntary disappearances by various international organizations (see E/CN.4/1435, paras. 37-39). It has considered the recent reports of the Committee on Freedom of Association of the International Labour Organisation and, as appropriate, the information contained in those documents is reflected in the present report. The Working Group has received confidential lists of cases dealt with by the UNESCO Committee on Conventions and Recommendations. It is the Group's hope that the ILO and UNESCO Committees will continue to contribute to the clarification of reports of disappearances of persons falling within their special competence. The Working Group has also reviewed the recent reports of the Inter-American Commission on Human Rights; the information contained therein is reflected, as appropriate, in the present report. The Group has considered various reports of the International Committee of the Red Cross - which reflect, *inter alia*, the activities of that organization in connection with reports of disappearances - and the resolution on disappearances adopted by the XXIV International Conference of the Red Cross (Manila, 7-14 November, 1981); the information from the Red Cross and the terms of the above-mentioned resolution are reflected in the present report, as appropriate. The Working Group greatly appreciates the information it has received on disappearances from the above-mentioned organizations. As it stated in its report to the Commission on Human Rights at its thirty-seventh session, the magnitude and complexity of the problem of enforced or involuntary disappearance is such that the Group cannot pretend at present to deal adequately with each of the numerous reports it has received, neither has it any desire to supplant existing procedures (E/CN.4/1435, para. 39). It has always sought to act in a manner which harmonizes with these activities.

II. INTERNATIONAL CONCERN WITH ENFORCED OR INVOLUNTARY DISAPPEARANCES

19. The Working Group in its report to the Commission on Human Rights at its thirty-seventh session surveyed the concern about enforced or involuntary disappearances expressed by international organizations at the universal and regional levels, and by non-governmental organizations and individuals (E/CN.4/1435, paras. 13-25). Since that report, resolutions on this question have been adopted by the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and by the XXIV International Conference of the Red Cross. The resolution of the Commission on Human Rights adopted on 26 February 1981 was dealt with in chapter I.

20. The Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirty-fourth session adopted, on 10 September 1981, resolution 15 (XXXIV) in which it noted with concern that enforced or involuntary disappearances are still occurring in varying degrees in many countries. The Sub-Commission, in that resolution, took note with appreciation of the work of the Working Group on Enforced or Involuntary Disappearances reflected in its first report and of the spirit of co-operation displayed by certain countries. It expressed, in addition, its hope that Governments would respond adequately and promptly to requests of the Working Group for information and that, in a humanitarian spirit, Member States would enable members of the Working Group to visit the countries concerned in pursuance of its mandate. The Sub-Commission noted that in certain situations the active efforts of the Working Group may have made it possible, particularly through the use of urgent measures to elucidate the fate of persons reported missing and to prevent or reduce the occurrence of new cases. The Sub-Commission, also in that resolution, reiterated the right of families to know the fate of their relatives, strongly appealed for the reappearance of all detainees currently held in secret detention and expressed its conviction to the Commission on Human Rights that, "in view of the persistence of violations resulting from the many cases of disappearance of persons which are still occurring in the world, the extension of the mandate of the Working Group on Enforced or Involuntary Disappearances is indispensable." Finally, the Sub-Commission made a series of specific recommendations to the Commission on Human Rights relating to the requests made by the Commission to the Sub-Commission in Commission resolution 10 (XXXIV). For the text of Sub-Commission resolution 15 (XXXIV) see annex III to the present report.

21. The XXIV International Conference of the Red Cross, which took place at Manila from 7 to 14 November 1981 with the participation of 121 national Red Cross and Red Crescent Societies, 83 Governments, the International Committee of the Red Cross and the League of Red Cross Societies, adopted a resolution on enforced or involuntary disappearances. That resolution stated the alarm of the Conference at the phenomenon of disappearances perpetrated with the connivance or consent of Governments and its deep emotion at the suffering caused to the missing persons and their families. The Conference underlined the right of families to be informed of the place in which their relatives are being held, and of their health and well-being,

and welcomed the efforts of the ICRC and the Commission's Working Group to investigate the phenomenon of disappearances. The Conference condemned all acts leading to disappearances and urged "governments to endeavour to prevent forced or involuntary disappearances and to undertake and complete thorough inquiries into every case of disappearances occurring in their territory" and urged "governments to co-operate with humanitarian organizations, and with the relevant bodies of the United Nations and of inter-governmental organizations, in particular those which investigate forced or involuntary disappearances, with a view to putting an end to that phenomenon".

22. The Inter-American Commission on Human Rights in its annual report (1980-1981) to the General Assembly of the Organization of American States¹, dealt with the question of disappearances after detention. It referred to the cruel and inhuman nature of this practice and its effects on the victim, including the danger to his physical integrity and life itself, and also the negative effects on the relatives, including children, of the missing detainee. With regard to the present situation, the Inter-American Commission reported an apparent diminution of the practice, but pointed out that the problem of disappearance after detention has not been overcome and will not be completely solved until a full report has been made clarifying the whereabouts and state of the person whose disappearance has been reported. However, the Inter-American Commission insisted that the structures permitting disappearances still persist "as can be shown by detentions carried out by elements of the security forces with the acquiescence or consent of the government followed by a period in which the authorities, especially the police, deny detention, including, as in some cases that have been brought to the attention of the Commission, in the responses that the authorities give to the judges responsible for deciding writs of habeas corpus." The Inter-American Commission cited examples for 1981 and stated,

"This conduct deserves special attention from the member states, since avoiding with impunity the application of the legal norms concerning detention may mean the transformation of these abusive tactics of subordinate individuals into a generalised practice. Likewise, this lack of an immediate acknowledgement of detention may lead to the disappearance of a person or to the practice of other abuses which endanger the life or physical integrity of the person detained."

The Inter-American Commission recommended to the General Assembly of the Organization of American States to urge States where there have been disappearances after detention to undertake the necessary efforts to determine the whereabouts of the victims and to ask member States to establish central registers of all detained persons, to permit arrests only by duly authorized and identified persons and to ensure that detainees are held only in places designed for that purpose.

23. A number of conferences on enforced or involuntary disappearances sponsored by private organizations have taken place during 1981 and the Group notes in particular the first and second Latin American Congress of Relatives of Missing Persons. The

1/ OEA/ser.L/V/II.54, doc. 9, rev. 1, of 16 October 1981.

First Congress took place at San Jose, Costa Rica, from 20-25 January 1981 and was sponsored by the Neunological Committee for Human Rights, Costa Rica, and the Latin American Foundation for Human Rights and Social Development (Fundalatin), Venezuela. The second Congress took place at Caracas, Venezuela, from 24-28 November 1981 and was sponsored by the Fundalatin. One member of the Working Group, Ambassador Luis Varela Quiros, attended, on invitation, the second Congress and reported to the Working Group, at its sixth session, on the intensive work of that Congress which had led to the establishment of the Latin American Federation of Associations of Relatives of Missing Detainees.

24. Individuals and organizations from many parts of the world have written to the Working Group to express concern at the enforced or involuntary disappearance of persons and to express support for action aimed at putting an end to such disappearances and ascertaining the whereabouts or fate of the missing persons. It is not possible to give a detailed account of all the appeals and expressions of concern made to the Group but it should be noted that they have been increasing. The question of enforced or involuntary disappearances has also been studied at seminars and widely discussed in the media.

25. In addition to general statements on enforced or involuntary disappearances by international organizations, the Working Group has received information on the consideration given by three international organizations - the ILO, the Organization of American States and the International Committee of the Red Cross - to reports of disappearances in specific countries.

26. The Committee on Freedom of Association of the International Labour Organisation, in a report adopted on 28 May 1981, dealt with the reported enforced or involuntary disappearance of trade unionists in Argentina. As one of its conclusions, the Committee stated that no new element had arisen in the matter of the disappearance of trade unionists or former trade unionists; the Committee keenly regretted that it has not yet been possible to explain the circumstances of these disappearances even though there are witnesses to many of them (GB.216/10/22, para. 50). That same ILO Committee, in a report dated 13 November 1981, dealt, among other things, with reports that trade unionists and persons connected with the trade union movement had been arrested and disappeared in El Salvador. The Committee expressed its deep concern at the serious nature of the allegations, most of which referred to the death, assassination, arrest or disappearance of trade unionists and trade union leaders, which have continued to occur even after 15 October 1979, the date on which the former Government was deposed. The Committee further deplored the fact that in spite of the time which has elapsed, the Government in its observations has still not replied to all the allegations, or has done so only incompletely in some of the cases. Concerning, *inter alia*, trade unionists who have disappeared, the Committee requested information on their present situation (GB.218/10/14, paras. 430-436). With regard to Guatemala, the ILO Committee on Freedom of Association, in a report adopted on 15 November 1981, expressed its deep concern at the seriousness of the allegations regarding the disappearance of persons connected with the trade union movement and it particularly emphasized the need for the Government to adopt effective measures of investigation to establish the whereabouts and conditions of persons who had disappeared. The Committee in its report describes the urgent appeals made by the Director General of the ILO and the Committee itself and the

contacts entered into with Government officials aimed at obtaining the Government's observations on the complaints. The Committee expresses its keen regret that despite those urgent appeals, the Government had not sent its observations (CB. 218/10/16).

27. The Inter-American Commission on Human Rights in its annual report (1980-1981) to the General Assembly of the Organization of American States reiterated the recommendation made in previous reports to the Argentine and Chilean Governments concerning missing persons in so far as during that period there had been no information clarifying the numerous denunciations earlier presented to that Commission.^{2/} In its report on the situation of human rights in Bolivia, the Inter-American Commission expressed its special concern over information that, in the days following the military coup, cases of detention followed by disappearance were recorded. The Commission described circumstances which led to the presumption of Government responsibility in the disappearances but, on the other hand, stated that it had been informed that the disappearance of enemies of the regime was not an explicit policy of the highest authorities of the country.^{3/} The Inter-American Commission in its report on the situation of human rights in Guatemala stated that the problem of disappearances in Guatemala was one of the most serious problems, given the form these disappearances have taken and the extraordinary number of victims. The Commission in its report gives a detailed description of the information it received on disappearances in Guatemala, of its repeated attempts to obtain information from the Government of Guatemala and of the failure of the Government to supply the requested information.^{4/} The question of missing persons in Nicaragua in the report of the Inter-American Commission on the situation of human rights in that country is dealt with below in chapter III.

28. The International Committee of the Red Cross, in its annual report for 1980, stated that in 1980 it had received reports of 85 new cases of missing persons in Argentina and that during that same period it had continued to inquire with the Government about 2,500 persons reported to it as missing. The Committee stated that, as in 1979 no information of value was forthcoming. The International Committee of the Red Cross has also dealt with disappearances in El Salvador; that information is reflected below in chapter III.

2/ OEA/Ser. L/V/II.54, doc. 9, rev. 1, chap. V, 16 October 1981.

3/ OEA/Ser. L/V/II.54, doc. 11, 13 October 1981.

4/ OEA/Ser. L/V/II.54, doc. 12, 13 October 1981.

III. SURVEY AND ANALYSIS OF INFORMATION RECEIVED AND DEALT WITH BY THE WORKING GROUP

A. General Considerations

29. The Working Group, at the time of the extension of the term of its mandate, had before it a large quantity of information on enforced or involuntary disappearances, the analysis of which it had been unable to complete during the first period of its mandate. Since then a continuous flow of further reports on enforced or involuntary disappearances has been received by the Working Group from a wide variety of sources, including governments, inter-governmental organizations, non-governmental organizations in consultative status with the Economic and Social Council, private organizations and relatives of missing persons. Some governments have transmitted reports to the Working Group or called the Group's attention to specific cases of enforced or involuntary disappearances. In addition to reports from relatives of missing persons, the Group has received information, orally or in writing, from persons who report witnessing the arrest or abduction of a missing person, persons who state that they were detained with missing persons, and persons who recount that they were members of, or collaborated with, security or other police forces involved in disappearances, and describe what they have seen and done.

30. The Working Group has attempted to deal with all the reports of disappearances on which specific information was available. Those reports of an urgent nature which required immediate action were transmitted to the government concerned, even though on occasion they did not contain all the factual elements desirable, in the hope that rapid action would quickly clarify the reports. In many cases the details initially lacking in the urgent report to the Group were subsequently supplied in follow-up correspondence. With regard to those reports not falling within the immediate action category, the Group reviewed carefully the information provided. It had in mind its objective of helping to clarify reports of disappearances, and it selected for transmission to the Government concerned those cases where the reports contained material of a factual nature on which an investigation could be based. This would afford the opportunity for the most efficient use of the investigating resources available in the country concerned. It was hoped that in those situations success with the better documented cases would open up avenues of investigation for the rather less well documented reports. Where, however, the Group found lacking the degree of factual detail which would be essential before any official investigation could reasonably begin, it requested the Secretariat to contact the authors of those reports to obtain any additional information which might be available.

31. The present report shows that the Working Group examined information on the disappearance of some 2,100 people and transmitted to governments reports on the disappearance of some 1,950 individuals. In spite of this, there is still a very substantial amount of information which the Group has not yet been able to analyse. The backlog in preparing the reports for study and examination by the Group results, in certain measure, from the fact that the Secretariat has not been enabled to maintain fully the continuity of its work as requested by the Commission on Human Rights and the Economic and Social Council.

32. The present report contains information on reported enforced or involuntary disappearances in a number of countries which are listed below. The information varies as to the periods covered, the number of cases reported and the meaning of each situation. This and the progress made in the clarification of reports can be studied in each specific section. The countries referred to in chapter III of

this report are: Argentina, Bolivia, Brazil, Chile, Cyprus, El Salvador, Ethiopia, Guatemala, Guinea (Revolutionary People's Republic of), Honduras, Indonesia, Iran, Lesotho, Mexico, Nicaragua, Philippines, Sri Lanka, Uganda, Uruguay and Zaire. Information on South Africa and Namibia is contained in chapter IV. The Working Group wishes to point out that disappearances may have occurred in countries other than those listed above but that, for a number of reasons, such reports, if they exist, have not reached the Group. Further, the number of cases reported to the United Nations could well be fewer, perhaps very much fewer, than the true number of cases of disappearance in a given country. With regard to the reasons why information does not reach the United Nations, it may be pointed out that the existence of the Working Group may be unknown in certain countries. Further, the Group noted statements that some relatives of missing persons fear the consequences of filing reports. The Group was also informed of obstacles placed in the way of lawyers and others dealing with cases of persons reported missing, of threats made against them and against the relatives of missing persons, and even the arrest or disappearance of those involved in the search for missing persons.

B. Information concerning Argentina and communications with the Government of that country

33. The Working Group informed the Commission on Human Rights, at its thirty-seventh session, of the information that it had received during 1980 concerning enforced or involuntary disappearances in Argentina (E/CN.4/1435, paras. 47-48). Since the extension of the term of its mandate the Working Group has continued to receive a considerable amount of information in that regard coming principally from relatives, private human rights organizations and non-governmental organizations in consultative status with the Economic and Social Council. The Working Group also has begun to receive numerous letters from relatives asking for any news about members of their family whose cases they had previously sent to the Group.

34. The Working Group continues to receive a large number of expressions of concern relating to enforced or involuntary disappearances in Argentina, and their common theme is that information should be given on the whereabouts or fate of the missing persons to their relatives. Hundreds of letters have been received from individuals. Organizations in Argentina have written, among them an association of mothers and relatives of missing persons in La Plata who stated that in spite of their own efforts they have not received answers about their relatives. That association made a humanitarian appeal to the Working Group saying, "As far as we are concerned, no 'cloak of oblivion' can ever, ever make up for our grief and anguish".

35. The Working Group has also been informed that these appeals have been made directly to the authorities in Argentina by individuals and groups representing a wide and varied cross-section of Argentine society, including seven Argentine human rights organizations; 1/ the Argentine Catholic Church, 2/ representatives of the legal profession 3/ and a large number of individuals, some prominent in Argentine national life. 4/

1/ Permanent Assembly for Human Rights (Asamblea Permanente por los Derechos Humanos); Ecumenical Movement for Human Rights (Movimiento Ecumenico por los Derechos Humanos); Argentine League for Human Rights (Liga Argentina por los Derechos del Hombre); Relatives of Persons Missing and Detained for Political Reasons (Familiares de Desaparecidos y Detenidos por Razones Politicos); Mothers of the Plaza de Mayo (Madres de Plaza de Mayo); Centre for Legal and Social Studies (Centro de Estudios Legales y Sociales); Service for Peace and Justice (Servicio de Paz y Justicia).

2/ Expressions of concern in May 1980 and November 1981.

3/ Federation of Bar Associations of Argentina, Bar Association of Buenos Aires, Argentine Federation of Lawyers.

4/ Petition published on 14 April 1981.

Information on Judicial Recourses

36. Information on the operation of legal remedies in Argentina with regard to reports of enforced or involuntary disappearances was contained in the Working Group's report to the Commission on Human Rights at its thirty-seventh session (E/CN.4/1435, paras. 63-65). According to that information petitions of habeas corpus have proved ineffective in determining the whereabouts or obtaining the release of missing persons. The Group has been informed of a collective application for amparo presented to the Argentine Supreme Court in June 1981 by some 940 relatives of missing persons. The Court was told that the individual habeas corpus petitions had failed for lack of the relevant information which the Government possessed and the Court was asked to take the necessary measures to see that the Government's information was placed at the disposal of the Courts. The Working Group has also received a copy of a petition to an Argentine Court in which relatives ask that, inter alia, diplomatic channels be used to collect the testimony of persons outside Argentina who state that they were detained in clandestine detention centres with family members of the petitioners who are missing.

Reports of enforced or involuntary disappearances in 1981

37. The Working Group has received information from a number of sources that in the period January to September 1981, eight persons disappeared. Seven of them eventually reappeared and the body of the eighth has been found. A non-governmental organization in consultative status with the Economic and Social Council reported that on 12 March 1981 two men were arrested by security and police forces at their respective homes in a suburb of Buenos Aires; it is reported that credentials were shown and that the persons effecting the arrests acted in a public manner. The Chairman of the Working Group, by a letter dated 18 March 1981, transmitted these reports to the Government of Argentina and, by a letter dated 11 June 1981 the Government informed the Working Group that the persons referred to were free. The Group was subsequently informed, by a non-governmental source, that the persons who had reappeared reported that after three days' detention they had been left on the street; one of them reported having been held in a local police station. The remaining six were reportedly arrested in March, April, July (2 arrests) and September (two arrests) of 1981; one person was missing for three weeks, the others for between three days and one week.^{5/} Two were released on the street and three others were brought before the courts. One person, who reportedly had been arrested in front of witnesses by persons showing credentials, was later found dead. No reports of such occurrences since September have been received. The Working Group notes in that regard the statement by the Government of Argentina that measures have been taken which allow searches for persons reported missing to be carried out rapidly (see Annex VII).

Information on enforced or involuntary disappearances of children

38. The Working Group in its report to the Commission on Human Rights at its thirty-seventh session reflected the expressions of concern and the reports it had received relating to the enforced or involuntary disappearance of children. Mention was made in particular of resolution 23 of the World Conference of the United Nations Decade for Women (Copenhagen, 14-30 July 1980)^{6/} in which the Conference expressed

^{5/} Reference to one of these cases is made by the Inter-American Commission on Human Rights in its annual (1980-1981) report to the OAS General Assembly. (OEA/Ser.L/V/II.54, doc. 9, Rev. 1 of 16 October 1981).

^{6/} See Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace (United Nations publication, Sales No. E.80.IV.3), chap. I, p. 85.

its grave concern regarding, inter alia, the disappearance of children (E/CN.4/1435, paras. 170-172). The Working Group has continued to receive from many parts of the world numerous appeals regarding enforced or involuntary disappearance of children, including a letter dated 9 October 1981 from Adolfo Perez Esquivel, Nobel Peace Prize winner in 1980.

39. Since the extension of the term of its mandate the Working Group has received much specific information on enforced or involuntary disappearances of children in Argentina. Individual relatives as well as organizations have presented information. A non-governmental organization in consultative status with the Economic and Social Council presented a report to the Working Group in September 1981 which contained information on eight cases of children - from a few days to a few years old - who were reportedly arrested at the same time as their parents and have disappeared; on 13 cases of young persons, from 14 to 18 years of age, who were reportedly arrested and have disappeared; and on 33 cases of women who are said to have been in various stages of pregnancy when they were arrested. That report also dealt with one case in which a child and his mother were reportedly arrested together and although the mother reappeared the child is still missing; it also dealt with another case in which a child born to a mother who had been reported missing, was handed to the grandparents, but the mother is still missing.

40. An association of grandmothers of missing children in Argentina transmitted to the Group in September 1981 a file containing documents on missing children and on the various steps taken by them as well as the difficulties they have encountered in their efforts to find those children. Extracts from the statement made by the representatives of the grandmothers when presenting this file are found in Annex IV. The file presented by the grandmothers originally contained information on 77 reportedly missing children; information on two further cases was added later. Of these 79 reports, 20 refer to children reportedly arrested at the same time as their parents (most were very young although two cases referred to youths of 15 and 16 years old) and 57 to women who were reported to have been at various stages of pregnancy when they disappeared. In two of the 20 cases of children arrested with their parents, the grandmothers reported that the children have been found. The file also contained copies of two petitions to the Supreme Court of Argentina, a letter to the President of that Court, decisions of the Supreme Court rejecting the petitions, letters to the President of Argentina and the Military Junta and copies of replies from the Ministry of Social Welfare indicating negative results in the search for the missing children. The Working Group has received information from relatives in an additional five cases of children reported missing in Argentina. This brings to 84 the number of cases concerning children which have been notified to the Working Group.

41. Five missing children concerning whom the Group received information have now been found, and the Group believes that the successful outcome of the searches for these children provides hope for other cases and might indicate paths to be followed in cases still outstanding. The Working Group informed the Commission in its 1981 report about the finding of two children. One child was 16 months old and the other one year old when they were reportedly arrested with their parents in Buenos Aires in September 1976. Three months later they were found on a street in Valparaiso, Chile, and later placed with a family for adoption. In 1979, their real identities were discovered and through the United Nations High Commissioner for Refugees the grandparents were placed in contact with the children. An arrangement has been worked out whereby the children may visit their grandparents periodically while continuing to live with their foster parents and it has been agreed that the situation should be reviewed should the natural parents reappear. In another case, a five-month old boy and a four-year old girl reportedly disappeared when their parents were arrested in October 1977 in Buenos Aires. The two children were

located in adoption proceedings in March 1980. At present the children remain with their new family and the grandmother is in touch with them. It was reported that the four-year-old knew part of her name and that an effective search for the children's relatives had not been carried out (see Annexes IV and V). Finally, the Group received a report that a woman two months pregnant was arrested in May 1977 in Argentina and that seven months later she visited her mother, in the company of what are described as members of the police and security forces, and handed her a baby saying that it had been born during her detention. The Group's files contain a declaration by two persons who say that they are former detainees and that they were detained together with the mother, that she gave birth in a military hospital to a girl and that the baby had been given to the grandmother.

42. The Working Group has received information on the laws and practices in Argentina concerning adoption and the registration of births. The association of grandmothers has requested, as a step towards ascertaining the whereabouts of the missing children, that the real origin of children adopted in Argentina during the last five years and those whose birth was registered outside the legal period in Argentina during the same period be investigated. A lawyer representing a private organization in Argentina, in a statement made to the Working Group indicated that under the Constitution of Argentina lists of adoptions and birth registrations could be mandatorily reviewed, if necessary, on valid grounds. For extracts from the statement made by the lawyer see Annex V.

43. The Working Group, by letters dated 27 May, 14 August, 4 September, 21 October and 11 November 1981, transmitted to the Government of Argentina copies of documents from the Group's files relating to 63 cases of reportedly enforced or involuntary disappearances of children. Eleven of the cases related to children who had been born prior to their disappearance (one of these cases concerned the authorities of both Argentina and Uruguay) and 52 to children who were reported to have been born, or who should have been born, in custody since the mother was said to have been pregnant at the time of her arrest. In particular, it is reported that in 15 of the 52 cases, the family received information concerning the birth of the child from former detainees, members of the armed forces or anonymous sources. In some cases the information is quite detailed, giving the exact place and date of birth and, on occasion, the name given by the mother to the child. The files of the Group contain written statements about the actual birth of four of these children given by persons who state that they were detained with the mother. During its sixth session the Working Group heard evidence from a person who reported witnessing the birth of one of these children in a clandestine detention centre in Argentina; the place and date of birth were given as well as the name of the Doctor in attendance. The Group decided to bring this information to the attention of the Government. Several other statements have been received concerning the detention of the mother without necessarily mentioning the birth. Summaries of the reports of missing children transmitted to the Government are available with the Secretariat for consultation by members of the Commission. The information provided by the Government of Argentine in this matter is reflected in paragraph 51 below and in Annex VII; it is also on file with the Secretariat and available for consultation by members of the Commission.

Statements made by representatives of associations or organizations concerned with reports of enforced or involuntary disappearances

44. During its fifth session, the Group heard statements by representatives of associations or organizations directly concerned with reports of enforced or involuntary disappearances in Argentina. The most pertinent parts of these statements are reproduced in Annexes IV, V and VI.

Information transmitted to the Government of Argentina

Reports from relatives of disappeared persons

45. Since the extension of the term of its mandate, the Working Group has considered over 900 reports, almost all of them from relatives of the person reported to have disappeared in Argentina. Some 500 reports had been reviewed initially in 1980 and were re-examined during the present term of the Group's mandate. These reports were considered with a view to transmitting to the Government those which contained elements of a factual nature on which an investigation could be based, thereby affording an opportunity for the most efficient use of the investigating resources available. It was hoped that clarification of the best-documented cases might lead to clarification of less detailed cases. The first type of report selected for transmission was that containing clear statements as to the date, time and place of arrest of the missing person and the authorities reportedly responsible. In many of these reports the authors identify witnesses or state that witnesses observed the arrest; other reports contain such detailed information that it is reasonable to conclude that the arrest was witnessed. In other types of reports, few or no details are provided on the actual arrest of the missing person, but there are other elements on which an investigation could be based, such as searches for the missing person carried out in close connection with the disappearance or information that the missing person was seen in a detention centre.

46. The Working Group transmitted to the Government of Argentina reports, with copies of the supporting documents, concerning the disappearance of 738 persons, i.e., the 63 children referred to in paragraph 40 above and a further 675 persons, mostly adults. The documentary material filled more than 13 large files. The Group informed the authors of the reports that they had been transmitted to the Government of Argentina and that they would be informed of any information received from the Government. With regard to some 170 reports considered by the Group but not transmitted to the Government, the Working Group requested the Secretariat to obtain additional information which might increase the chances of a successful investigation.

47. Of the above-mentioned 675 cases, nine reportedly occurred in 1975, 300 in 1976, 257 in 1977, 87 in 1978, 21 in 1979 and three in 1980. In 587 cases, both the date and location of the disappearance are given; 421 persons were arrested at home or at the home of a friend or relative, 44 at their place of work and 122 at other specifically identified locations. Arrests were also reportedly made within police premises and military units. The arrests were reportedly carried out by uniformed persons in 82 cases, and in 27 cases the persons making the arrest are said to have identified themselves or to have been identified by third parties as belonging to public forces; credentials were reportedly shown in 27 cases. In 146 other cases the author merely stated that the persons making the arrest belonged to one or more

police or security force; 7/ occasionally the names of persons participating in the arrest are given. In 25 arrests the use of official police or military vehicles was reported and in 407 cases it was specifically stated that the arrests were witnessed although, as mentioned above, most of the descriptions of arrests are so detailed as to imply that a witness was the first-hand source of the information. In addition, with regard to 272 cases, the Working Group has in its files, or the author of the report states having received, information that the person was detained in a clandestine detention centre. In some cases the author reports having been arrested with the missing person and then released. Other elements of information such as the occupation of a neighbourhood or a house by the persons making the arrest (90 cases) as well as the failure of the normal police to intervene to stop the arrest (seven cases) were reported. In almost all cases the filing of habeas corpus petitions was reported. Copies of the summaries of the cases transmitted to the Government are on file with the Secretariat and available for consultation by members of the Commission.

Reports on clandestine detention centres

48. The Working Group in transmitting to the Government of Argentina the reports from relatives on disappearances also transmitted copies of statements by individuals who reported having been held in clandestine detention centres in Argentina. These statements referred to certain of those missing persons whose cases had been referred to the Government, and the Group hoped that the details contained in those statements would assist the investigation. Thirty-six separate statements, representing the testimony of 39 individuals - two statements were made jointly - and referring to some 19 places of detention, were sent to the Government. Reference was made principally to the following four places of detention: Escuela Mecanica de la Armada (ESMA), Buenos Aires, (mentioned in eight statements), "Empresa Vesubio", Buenos Aires, (mentioned in eight statements); "El Jardin/Automotores Orletti", Buenos Aires, reportedly run jointly by Argentine and Uruguayan security forces, 8/ (mentioned in six statements), La Perla, Cordoba, (mentioned in five statements). Other places

7/ The forces most often reported as responsible for the arrest are the police, federal police, security forces, the army, the navy, "comando antisubversivo", military, combined forces (fuerzas conjuntas), State intelligence service, legal forces (fuerzas legales), military police, or the Federal Police Co-ordination Bureau (Coordinacion Federal).

8/ In regard to this detention centre the Working Group notes the views of the Human Rights Committee in its communication R.12/52 regarding Uruguay. That communication concerned a person allegedly arrested and held in a secret detention place in Argentina and then transferred to Uruguay. In support of this, statements by eight former detainees concerning a detention place in Argentina were presented to the Committee; three of these persons also submitted statements to the Working Group on "El Jardin". The Human Rights Committee, in its views on this communication, found a lack of evidence of an adequate investigation and concluded that the persons' human rights had been violated in Argentina and Uruguay (see Annex VIII).

were reported but by only one or two persons; they were located in Buenos Aires (some five places); La Plata, (two places); Quilmes, (two places); Tucuman and Bahia Blanca, (one place each). At least seven of the persons making these statements referred to the detention of pregnant women and births in a general manner and in addition gave specific information concerning individual births. Details were provided on the treatment of pregnant women, including the medical assistance given and the persons including doctors responsible for the births and those who were responsible for the children after their birth.

49. The Working Group, in its report to the Commission on Human Rights at its thirty-seventh session, described the sources of these statements of clandestine detention centres, their characteristics and location, the personnel responsible for their operation and the eventual fate of the detainees (E/CN.4/1435, paras. 56-62). That description has been substantiated by further reports received by the Group in 1981. The list of persons held in these centres, as reported by former detainees and made available to the members of the Commission at its thirty-seventh session has been updated; it now contains more than 1,400 entries and is available for consultation by members of the Commission together with summaries of the statements on which the list is based.

50. In view of the Working Group's concern for the protection of persons who submit information on enforced or involuntary disappearances to the Working Group, the Chairman, on 2 March 1981, addressed a letter to the Permanent Representative of Argentina to the United Nations Office at Geneva in which the Government was informed that a non-governmental organization in consultative status with the Economic and Social Council had reported to the Group that a person who was the president of two human rights organizations in Argentina, had been arrested along with persons connected with those organizations. The Chairman expressed the wish to receive any information in that regard the Government might wish to send. By a letter dated 3 March 1981, the Permanent Representative of Argentina to the United Nations Office at Geneva requested, in order to be able to inform his Government of the Group's requests, information about the testimonies given by the arrested persons. The Working Group subsequently learned that the persons concerned had been released.

Information transmitted by the Government of Argentina

51. By letters dated 8 September and 27 November 1981 the Government of Argentina transmitted information on enforced or involuntary disappearances to the Working Group. With regard to that information the letters read as follows:

Letter of 8 September 1981

"...

When the report of the Working Group was discussed at the thirty-seventh session of the Commission on Human Rights, the Argentine delegation had occasion to make a full statement regarding the procedures for dealing with the communications submitted to the Commission and the substantive issues relating to Argentina referred to in the report.

This statement was so full and well documented that it is not necessary in this note to stress once again the fundamental features of the tasks entrusted to the Working Group and the working methods and procedures which would permit the fullest co-operation on the part of Governments.

In any case, it should be borne in mind that the Commission, in extending for one year, by resolution 10 (XXXVII), the term of the Working Group's mandate under your distinguished chairmanship, shared the views expressed in the discussion on the Group's report by noting in the preamble 'the need to observe United Nations standards and practice regarding the receipt of communications, their transmittal to the Governments concerned and their evaluation ...' (see on this point the Argentine note of 26 March 1981).

My Government also considers as extremely important the statement which you made at the 1606th meeting of the Commission in which you confirmed these criteria. All this has facilitated the reciprocal relations maintained by my Government with the Working Group, inter alia, through the exchange of notes which has taken place in recent months and through the informal contacts which an Argentine representative maintained with you during the Working Group's session in New York from 11 to 15 May 1981, the decisions of which were communicated to us by a note dated 27 May.

It is in this spirit of mutual understanding and co-operation that the Argentine Government has approached the matter of dealing with the communications received on situations relating to the phenomenon of missing persons, about which a number of general and particular comments are made in the present note.

The communications mentioned refer to:

- (a) The alleged disappearance of eight children and 38 pregnant women;
- (b) The alleged disappearance of 160 persons, including some of the women mentioned above;
- (c) A statement by persons who claim to be submitting evidence relating to the existence of secret places of detention.

Subsequent to the initiation of inquiries by the Argentine Government concerning the above-mentioned communications, the Working Group has sent us a second set of communications relating to a further 200 cases of persons reported missing, in respect of whom the authorities of my country have recently been able to start a search for records and information. They will be the subject of a future reply from my Government.

With regard to the matters to which reference has been made, the following observations and remarks are called for.

(1) Reports on disappearances, including the so-called 'testimony'

Once again, my Government, in response to the humanitarian objective pursued by the Working Group, desires to reiterate the spirit of full collaboration in which its activities have been undertaken. This collaboration is the natural consequence of our frank intention to co-operate, within the limits of our possibilities, in throwing light on a phenomenon which events all over the world show increasingly to be the usual outcome of the widespread violence which in recent years has indiscriminately plagued nations and even whole regions of the world.

Only peoples which have had to experience situations of this kind can understand the complexity of a phenomenon which it is impossible to pigeon-hole in over-simplified patterns which seek to assign responsibility in accordance with political tenets to the effect that any consequence of terrorist violence must be attributed to the State concerned. This reversal of the truth, maintained in the face of all rational analysis, begins by justifying violence, portraying it as a legitimate reaction to society's alleged action or inaction on issues of various kinds, so that once chaos is let loose, the violence can be attributed to that society, which is under attack from the most diverse forms of terrorism.

When the consequences of violence affect the life, liberty or property of individuals, responsibility is almost never attributed to the real perpetrators of the phenomenon: it is customarily imputed, either generically and in a self-seeking fashion, to Government involvement, action or inaction. This fallacious method of attributing alleged responsibilities is clearly apparent in connection with the so-called 'disappeared persons', a category which covers individuals who have lost contact with those seeking them, with no possibility of determining the reasons for this situation, and individuals who are reported to be 'detained' in secret places and are seen only by 'witnesses' who are invariably free to bring their elaborate accusations.

In cases of apparently inexplicable disappearances, there are always, from the complainants' viewpoint, allegedly valid reasons for making accusations of official participation, either in the shape of some alleged failure to intervene in unknown events, or by inferring from facts prior or subsequent to the disappearance the most diverse and indeed unlikely connections with an alleged activity or lack of activity on the part of the Government.

In the other cases, which certainly do not include the enormous diversity of confused situations in which any partisan analysis always finds the thread which leads to an alleged Government activity (since that is what it is intended to demonstrate from the outset) - in these cases carefully selected and compiled from the thousands which are said to be known, it is the practice to work on the basis of what appears to be a clear assumption of involvement of the Government authorities.

There are basically two ways of dealing with this type of situation: the first, correct but difficult, is to examine thoroughly the causes of the phenomenon of the disappearances and the patterns of behaviour and values involved, to determine the historical events together with their general and particular consequences, and from all this to draw conclusions aimed at avoiding the repetition of either individual cases of violence or widespread violence which is becoming endemic in many communities, thereby endeavouring to eradicate it permanently. The other more devious, but in appearance more simple, method is to carry out a superficial examination of the problem, listen to explanations designed to attribute the phenomenon to society and not to alienated and disruptive groups, and to reach the conclusion already presented by the interested parties themselves. By this method, it is easy to oblige with a concordant answer: it is society, as represented by those sectors which were the target of attack in the first place, which is responsible.

If one proceeds in this fashion, covering up or ignoring the true causes of violence and discrediting the society which has succeeded in eradicating it, the same phenomenon may easily recur in the future. It will then suffice to seize the opportunity to attribute it to the handiest scapegoats in order to achieve the objectives pursued by the true culprits, the perpetrators of widespread terrorism.

What is described as 'testimony' is illustrative of the methods employed by terrorism. Alleged witnesses, who always present themselves as peaceful militants of popular democratic movements, are invariably abducted for inexplicable reasons, tortured for the entertainment of their captors and isolated from their companions in misfortune. The almost standard tale then goes on to say that, by collaborating with their warders - in order to gain the warders' confidence and the liberty which will enable them to 'testify', they are given access to all the secrets, including the most jealously guarded ones; they know the identity, activities, customs and previous history of their warders (who are invariably members of, or associated with, armed forces, police forces, etc.) and the whereabouts and characteristics of 'clandestine detention centres', not only of those to which they assert they were originally taken, but of many others which they maintain they know about through the most diverse chains of circumstances.

Later, having learned everything necessary about this evil and jealously guarded set-up so that they can provide detailed accounts, these self-styled 'witnesses' say that they were set free, which enables them to provide and maintain a description of what has allegedly happened.

The concocted stories backing up accounts such as those forwarded by the Working Group to the Argentine Government are in fact false, but not completely false, for if they were the lie would be palpable. They mention physical places which do exist, generally public buildings or actual houses or places and individuals who also exist; without such references their story would be incredible. But what is not true is the substance, which makes up the allegation.

In all the so-called 'testimonies', a marked similarity is observable. A substantially identical description of the way in which the authors were arrested is followed by an account of the conditions of the alleged 'detention', the abductors' modus operandi, their motives, etc., and the statement always ends with a list of so-called 'disappeared persons' who are alleged to be held in those places.

This is the way stereotyped and unverifiable accounts are manufactured, because the aim is that the authorities should demonstrate that what is described did not happen or prove that there were no secret detainees at the places and times mentioned, matters which are inherently impossible to prove. It is not sufficient that many of these places have been visited even by members of international bodies as a result of such accusations and that they have observed nothing unusual, nor is the categorical denial by all the competent bodies of any avail; it will always be maintained that these places were used as secret centres and that the 'missing persons' were detained there.

Since this sensation-seeking approach, based on the affirmation of the unprovable, requires practical substance, recourse is had to the lists of missing persons compiled by organizations of all kinds: cases are taken which are said to have occurred at a time and in an area which coincide with those to which the account ascribes the alleged 'centre', and then the presence of such persons in that place is 'reported'. At the same time, care is taken to add others referred to only by first names or nicknames both in order to avoid appearance of perfection, which would be implausible, and at the same time to encourage those who may be concerned about any individual who might answer to those names in the hope that the person mentioned in the false account is the one in whom they are interested.

In this way and through various manufactured testimonies of this nature, an extensive network of names covering most of the alleged cases of 'disappeared persons' has been successfully woven together, and thus proof of what is falsely maintained by 'witnesses' is very easily attained: the persons sought were arrested and held secretly in captivity by authorities acting clandestinely.

The actual conditions which Argentina experienced in a period that is now past and was marked by violence are much more complex than what the so-called 'witnesses' claim to prove. The true answer is to be sought in the origins of the violence which jeopardized the survival of a State, in order that a repetition of the cause of the phenomenon of disappearances may be avoided in that State and other States, and not in the sterile analysis of unverifiable assertions which are intended only to maintain a fabricated picture in order to explain this painful phenomenon in accordance with the tastes and convenience of interested parties.

The distorted picture of events relating to the past is, in any case, being increasingly obliterated by the clear, effective and indisputable truth. The elimination of violence and the monopolization of the use of force by the State have ensured that disappearances can no longer be spoken of as a current phenomenon in my country.

In the course of the past year, and in spite of the attempts of circles interested in demonstrating by example and disseminating through a sensation-mongering and indulgent press the existence of cases of alleged disappearances which have been duly cleared up, no incidents of this sort have occurred. That is the conclusive proof of what the Argentine Government has asserted: without violence, liberated from the chaos generated by terrorism, society is also freed of the phenomenon of the so-called 'disappearances'.

It remains therefore, with regard to the Working Group's request referred to in the present communication, to repeat that in the cases comprised in the documentation transmitted, the search for the persons concerned and the due investigation of the facts have been entrusted to the competent legal organs. Naturally, the time which has elapsed, the lack of details in most of the accounts and the critical conditions which the country was experiencing at the period in which the events described are said to have occurred are factors which, generally speaking, militate against the possibility of reaching firm conclusions, in spite of the efforts made by the Argentine authorities to clarify these matters.

In some of the cases transmitted dates are mentioned, statements are made or references are given which were not communicated at the appropriate time to the competent legal authorities. This obliges us to draw the conclusion, and to suggest to the Working Group, that unfortunately in many of the cases relating to the so-called 'missing persons' there are individuals who are more interested in perpetuating a vague search than in categorically settling the matter. Thus, writs of habeas corpus are constantly applied for, announcements are published in the press, complaints are made to international bodies, but useful facts which might serve to throw light on the cases or at least their probable causes are not provided. In this respect, the authorities cannot usually repair the omission on the part of those who say that they are interested in obtaining an answer.

(2) The problem of minors

The Working Group on Enforced or Involuntary Disappearances has sent the Government of Argentina a number of communications reporting the presumed disappearances of minors.

Without prejudice to the information and conclusions derived from a detailed examination of the cases notified, it is felt that the Working Group should first be given some information on certain aspects of the legal provisions concerning minors in force in the Argentine Republic, and a brief description of the events experienced in this country as the result of the terrorist activity which shocked and affected every member of the population alike.

The two questions should serve as a framework for a better understanding of the information and conclusions set forth in the present note in response to the requests for reports and investigations concerning the particular cases notified to us by the Working Group.

The political organization of the State of Argentina comprises a federal system. It is this fact which has given rise to legal sources for the system of protecting minors, both at the national level and in every province, and to national and provincial institutions which cover all aspects of an appropriate régime for minors. There is thus a large number of institutions dealing specifically with minors and of legal provisions covering possible situations, such as the legal custody of minors in care and the appointment of guardians as a preliminary step before eventual adoption.

The system involves the national and provincial judicial authorities who are responsible, in their respective spheres of jurisdiction, for ensuring the correct application of the existing law to cases concerning minors.

This preliminary account or outline shows the basic concern in the Argentine Republic about events and circumstances which may affect minors and the existence of a broad system of juridical protection which, although of long standing, is dynamic and constantly being developed, always with the aim of guaranteeing more effectively the rights of minors.

The policies of the Argentine Government on this question are designed to promote and consolidate the stability of the family unit and to strengthen the authority of parents in the upbringing and control of their children. The State also promotes preventive action within families and communities with a view to avoiding or minimizing deficiencies affecting minors, deficiencies which are dealt with through a variety of programmes comprising different systems for looking after minors, either in the social sector (wet-nurses to take entire charge of children in foster care up to the age of three years, small homes for children over three years of age, foster-families, etc.) or in institutions or homes for the total care of minors who are in a state of material or moral abandonment or who have been voluntarily handed over by their parents, guardians or foster-parents.

With regard to legislation concerning minors and the associated regulations concerning legitimacy, illegitimacy, names, parental authority and adoption, attention should be drawn to a number of points which are considered relevant to the subject of this report.

(a) Children born in wedlock are legitimate. They are registered with the name of their father and their mother's name may be added. Either spouse may register a child as the legitimate offspring of both.

(b) Children born out of wedlock do not bear the name of their parents unless they have been expressly recognized. Neither the mother nor the father is obliged to recognize the child, and consequently it may happen that the child does not bear the name of either parent.

(c) As a general principle, parental authority lies with the parents -- the father in the first place and the mother in the second. In cases where parental authority is taken over from the parents by the State, it is exercised by the national or juvenile court judges, who provide for custody of the child in accordance with the regulations in force.

(d) The system of adoption embodied in Act No.19,134, is intended to solve the problem of abandoned minors and, at the same time, satisfy the parental calling of the adopters.

Respect for the human person and the full enjoyment of human rights has been and continues to be current practice in the Argentine Republic and human life from its very beginnings is protected by positive law, to the point where my country has not followed the legislative trends towards the legalization of abortion. Thus the Government of Argentina pays particular attention to reported cases of alleged violations of human rights affecting minors or unborn children, even when they concern events which are said to have taken place in times of extremely serious disruption, such as those experienced in the Republic, or in abnormal circumstances when it is frequently impossible to ascertain completely the accuracy of the facts reported.

In this connection, it must be borne in mind that, in substance, the reports which give rise to claims concerning the alleged disappearance of minors are no different from those submitted about adults, the only new element being the inclusion of the minor in the report. Moreover, the reason for not knowing the whereabouts of minors is generally linked directly with situations concerning their parents or other adults responsible for them.

We are therefore compelled to make a careful distinction between claims that the authorities have detained persons who are accompanied by minors, and reports of alleged abductions by unidentified persons or by persons who claimed to have authority to arrest, although they are not in fact public officials.

In the former case, where the parents are detained, the minors are always handed over to the competent authorities for custody and, where appropriate, to be delivered to relatives. Thus, in the case of reports that minors were with their parents or other adults when the latter were arrested, the investigation should start with a request to the competent bodies for information on:

- (i) Whether a record exists of proceedings at the place and on the date indicated;
- (ii) If so, whether the proceedings involved the detention of any person and, in that case, the identity of the person; and
- (iii) Whether any minors were found in that place and at that time, and what measures were taken for their care and protection.

If the inquiry to the competent bodies shows that there have been no proceedings, no persons detained and no minors involved, and that there have been no legal proceedings before the competent courts for investigation of such situations, the existence of official proceedings concerning the persons who are sought must be rejected; the facts could, however, point to a crime or deliberate act having been committed.

If the facts are the result of a crime, this is investigated with due regard to the information provided by the persons concerned or by the victims, and to the other additional factors which emerge in the course of the investigation.

On the other hand, when the facts are the result of voluntary action on the part of the minor's parents, such arrangements as the parents may make for their children do not fall to be investigated inasmuch as the authority to do so derives from the family relationship. If in the latter case the parents have decided for some reason to avoid the other members of their family group, and even to leave the country, we must accept that this is a private decision in respect of which it is not appropriate to take any action whatsoever. The imposition of any element of restriction would be tantamount to infringing the freedom of movement of parents and children and limiting the rights of the parents over their children.

In the Argentine Republic the freedom of movement of the inhabitants is not restricted in any way, free passage throughout Argentine territory being guaranteed irrespective of whether it is the father or the mother who accompanies the minors.

This unrestricted right of movement means in practice that an adult who is neither the natural parent nor expressly so authorized can travel with those minors of whom he has actual care or custody. On leaving the country, the only restriction is that the minors shall be accompanied by the natural parent who exercises parental authority or, in his or her absence, by some person of full age duly authorized by the former.

The circumstances described above in themselves disclose the problems involved in determining the whereabouts of a minor. In addition, there are the difficulties caused by the endless number of institutions that exist, the amount of cases of every kind dealt with in them, and the possible admission of minors with a false identity or whose identity is unknown. At the national level, within the context of the Subsecretariat for the Child and the Family alone, there are 25 specialized bodies, to which must be added, in view of the age of the minors covered by the data with which we are concerned, wet-nurses, small children's homes and foster-families. At the provincial level, there has been a significant increase in the number of institutions and this adds to the number of places where searches should be carried out. As regards the number of those in care, we need only report that minors in need of care who are actually receiving help within welfare establishments fluctuate around an annual figure of about 18,000 for the whole country. Out of this total, over 20 per cent is accounted for by the systems of wet-nurses, foster-families, small homes, day nurseries and adoption homes.

The possible false identity of minors is perhaps the factor that militates most strongly against any attempt to establish their whereabouts, whether to confirm that they have been admitted to an institute or to ascertain whether they are recorded in some emigration office as having left the country. In point of fact, if the minors entered any institute under a false name, and if they left the country in similar circumstances, any inquiries will be futile.

In this connection, it should be borne in mind that in the recent past, during the struggle against terrorism, the members of the gangs used to travel inside and outside the country (and even today they continue to do so abroad) using forged documentation. Naturally, if they were accompanied by minors in their movements, the latter must have had forged documentation that accorded with that of the adults.

Lastly, in all ages and in all countries, many children are abandoned or found to be in need of care without any indication as to their identity. They are admitted to institutions and systems in the state in which they are found, that is, as unidentified persons. In most cases, this state of affairs permanently obscures their family origins, especially when, owing to their tender years, they are not able to provide any information that makes it possible to determine where they came from.

In summary, it should be noted that the Working Group's request must be analysed in the light of the circumstances and possibilities that reflect the actual situation in our country. Argentina has over 28 million inhabitants; its welfare establishments for minors handle on average more than 18,000 cases in need of care annually. These institutes make up a complex and diversified system at the national level and within each of the 22 provinces, a system which, in the case of the care delivered under the wet-nurse system, extends to a countless number of individuals.

In these circumstances, elucidating certain cases of minors reported missing in an age characterized by the most serious violence ever recorded in the history of the country is extremely difficult. None the less, in all the cases submitted, the search for information will continue with a view to clarifying the situations described. In this connection, a distinction must be drawn in the communication which I am answering between the case of a small number of children who are said to have disappeared with their parents and of those who are said to have been born while their mothers were supposedly in captivity.

In regard to the latter, I would point out that, in the light of the data and information provided, the necessary inquiries were made of the competent bodies, as a result of which it was ascertained that the children in question are not registered under the names supplied.

Unquestionably, there is a twofold difficulty here which arises, on the one hand, out of uncertainty as to the actual pregnancy and to the birth itself and, on the other, out of the whereabouts of the mother who is said to be missing, a difficulty which, in the final analysis is the basic problem in clarifying the alleged fact.

With regard to the first group, that is, the eight minors who are said to have disappeared with their parents, although the fact of their birth has been ascertained in the majority of cases, it has not proved possible to determine their whereabouts, despite the steps taken by the authorities and those said to have been taken by several of the petitioners.

If the content of all the communications referring to minors is analysed in the light of the information compiled on them, it will be noted that, in the case of one minor born in Argentine territory, the facts from which the situation affecting him allegedly derived did not occur in Argentina. In another case, it has not been possible to prove that the minor was present at the site of the clash. In a further case, the first report did not refer to the presence of a minor who is now being sought, which creates a logical doubt as to whether he was in fact present. Another case refers to a minor of whose birth there are no official records.

In one case, the disappearance of the parents of the minor was not reported and, while it has not been possible to determine their whereabouts, it is reasonable to assume that he is with them. Also, there is reference, in other cases, to a place of birth of the minor where the putative mother has never been; in another case, the complainant is not resident in the place she refers to in the communication (the people there could not confirm it either), nor does she give any information about the place where she says the acts were committed; in another case, a residence, at which another family was living at the date of the events alleged, is referred to as the place where the minor and his parents were supposed to have been abducted; in yet another case, a pregnant girl is reported as having been abducted, whereas her mother never mentioned any such pregnancy to the competent authorities and eventually took steps to report that the minor in question had run away from home owing to a problem with her father; other examples could also be cited.

As regards the 160 cases of adults, preliminary information has been compiled on 75 of them.

In the submissions made, there are certain salient features such as the fact that the abduction is attributed to soldiers or else to persons who, dressed in civilian clothing, are said to identify themselves to the family and any third persons present at the place in question as policemen or members of security forces. The accounts almost invariably refer to the brandishing of weapons and to the violence used in such activities. When the family was not present at the events reported, reference is made to the fact that it has knowledge of the facts through witnesses or the facts are said to have occurred in the street without witnesses. After the occurrence of the alleged abduction, the majority indicate that they never had any contact with the persons sought or else that contact continued by letter or telephone until this came to an end.

The vagueness of the account furnished in the majority of cases and the fact that the events almost invariably occurred a long time ago militate against a successful outcome to the present inquiries. It also makes it very difficult to ascertain the facts if these were reported in a different way initially, when the competent authorities were notified of them. This did not help at the time and in some cases prevented a prompt solution.

Nor should the following possible causes of disappearances be overlooked, although the reports do not appear to take them into account:

(a) Death of the persons sought in an armed clash with the forces of law and order, the circumstances being such that it was impossible to determine the identity of those killed;

(b) Death in a clash and removal of the body by other members of the terrorist gang, the body subsequently being hidden or destroyed;

(c) Wounding in a clash and removal of the wounded person by members of the terrorist gang, followed by his death and hiding or destruction of the body;

(d) Death of the person sought as a result of punishment inflicted by the terrorist gangs, the body being hidden or destroyed, or death of the person sought from natural causes while he was living 'clandestinely', the competent authorities not having been notified of this, of course;

(e) Hiding of the person sought within the country or voluntary exile using legal or forged documentation.

What it has been possible to determine with certainty on the basis of the information gathered is that the persons named were neither arrested nor detained in custody on the occasion or as a consequence of the facts reported. It must also be reiterated that, in the Argentine Republic, there have never been any secret or clandestine places, for which the authorities have responsibility, for the imprisonment of persons. However, in the struggle against terrorism, the forces of law and order have discovered innumerable secret cells, called 'people's prisons' by the terrorist gangs; these cells, in addition to housing businessmen, civil servants and soldiers, many of whom were killed there, were frequently used to punish and kill members of the gangs themselves under harsh rules for punishing treason and desertion by their members.

Lastly, as has already been pointed out, serious incidents caused by terrorist activity reduced the country to a state of generalized chaos which seriously affected the operational efficiency of its institutions, especially those concerned with security and prevented them from taking as prompt and rapid action as necessary, thus prejudicing the successful outcome of their inquiries. Now that the institutional position has returned to normal, we may affirm with justified satisfaction that any irregular situations which may, in isolated cases, affect the security of persons are promptly rectified or resolved shortly after the facts have become known"

Letter of 27 November 1981

"... Before analysing the content of the communications concerned, I should like to reiterate the importance which my Government attaches to the humanitarian work assigned to the Working Group by the Commission on Human Rights and to express my appreciation of the spirit of mutual co-operation and understanding established under your chairmanship, which will undoubtedly contribute to the search for a practical solution to the problem of the disappearance of persons in all parts of the world in which it occurs.

During the last three months, the Argentine Government has continued to analyse and study the communications received from the Working Group which, within the framework of the applicable provisions, refer to the phenomenon of disappeared persons as far as my country is concerned.

Thus, in accordance with the mandate conferred by Commission on Human Rights resolution 10 (XXXVII), we have so far received from the Working Group communications relating to:

- (i) The reported disappearance of nine children and of 49 women who are all said to have been pregnant at the time of their alleged disappearance;
- (ii) The alleged disappearance of 704 persons, a figure which includes some of the women referred to in the preceding paragraph.

When, by my note of 8 September 1981, I gave a partial reply in respect of 160 cases received up to July 1981, our reply related only to 75 persons concerning whom we had, by that time, been able to gather information, much of it of a preliminary nature. That reply also referred in greater detail to the communications relating to minors and pregnant women, cases to which we assigned top priority.

In the reply of 8 September, we were not, however, able to deal with the cases of a further 200 persons concerning whose communications my Government had at that time just begun to seek information. The communications received subsequently bring the present total of alleged disappearances to 704, the vast majority of which are said to have occurred between 1975 and 1978.

All these communications are currently being analysed and investigated very thoroughly. On this occasion, I am able to transmit to you general and specific comments on 312 cases; this together with the 75 previous cases, means that our reply reflects information on 387 persons out of the aforementioned total of 704. My comments also cover the minors and pregnant women, who altogether account for 53 cases. Since, however, some of these cases have

been submitted to us simultaneously under the two categories, it is inappropriate to add them, since this would give a misleading idea of the number of cases under consideration.

In approaching the problem of the communications dealing with the cases mentioned above, I should like first to state that our initial analysis of the documentation received reveals serious deficiencies and causes us doubts regarding the original source and the form of presentation. However, given the spirit of co-operation which guides my Government in its dealings with the Working Group under your chairmanship, I shall refrain for now from referring to such defects of form, which can in no event be ascribed to the members of the Group. I nevertheless believe it necessary to make this remark because of the difficulties which such defects create for a considered and serious analysis of each case. I do not regard these shortcomings as invalidating the general conclusions and information which the Argentine Government has been providing and will continue to provide on the matter.

Similarly, and again with a view to furthering co-operation and a better understanding of the problem, I would note that, in general, the submissions seem to be directed not towards clarifying the facts alleged but to spinning the matter out; on many occasions, the complainants or self-styled interested parties, instead of bringing specific legal actions before the competent Argentine courts, apply to those who have no practical possibility of investigating the facts alleged, adducing information to substantiate assertions. They thus avoid having to document the facts before the competent judicial authority, which alone is empowered to rule on the veracity or otherwise of what is alleged and to take the corresponding action.

Having said this, I consider it my duty towards you and the Working Group to state that, owing to the large number of communications received in recent months, we have been unable to reach even preliminary conclusions on many of them. If we were to make only a hasty analysis of these communications and of the information that can be gathered from the domestic legal authorities, doubt would be cast on the reliability of our information, and this would work against the humanitarian aims which inspire the work of the Group and the parallel action of my Government.

I have referred on many occasions, before the Commission on Human Rights and the Working Group, to the difficult historical situation which my country experienced from the mid-1960s until almost the end of the 1970s. Widespread violence imposed by a terrorism without precedent in other parts of the world shook the whole of Argentine society. I am not going to repeat at length the details or consequences of that extremely serious aggression. I know that both you and the members of the Working Group are fully aware of the distressing times which my country lived through.

I should merely like to re-emphasize the close connection between the abnormal situation experienced and the phenomenon of reported disappearances. The two things cannot be dissociated in any attempts to understand the problem which concerns us and its consequences.

However, if further proof were needed of how and why the phenomenon of disappearances is connected with the chaotic situation engendered by terrorist activity, it would be sufficient to note the development which we have witnessed in the recent past, namely the elimination of violence and the recovery by the State of its exclusive law-enforcement powers, which have immediately resulted in the total eradication of the phenomenon of so-called disappearances. In recent years interested parties, using all the resources at their disposal and availing themselves of the mass media, have endeavoured to present cases of disappearances, but this has been a futile effort. My Government, co-operating fully in the measures decided upon by the Group for urgent cases, has been able to clear up all those cases and to demonstrate the false and fanciful nature of the accounts given. In this way, as far as my country is concerned, the Group has been able to discharge effectively and rapidly its responsibilities in regard to the preservation of human life and protection of the person.

Turning now to the cases which are the subject of the reports transmitted, it is appropriate to emphasize certain features which in general make it difficult to arrive at valid conclusions despite the efforts which have been made and are being made by the Argentine authorities. These features include: a lack of precision in most of the cases reported; the long period of time which has elapsed since the alleged act is said to have occurred; the lack of information by the legal authorities; substantial differences between the accounts of the facts given in the communications and the way in which the facts were presented when domestic remedies were exercised.

With regard to the communications as a whole, I must repeat certain points which I made to you in my note of 8 September 1981, since an examination of the most recent cases reveals features which were generally identified and described previously. I refer to the presentation and authorship of the complaints made, to the variety of places and situations in which the facts reported are said to have occurred and to the mention of alleged witnesses who are not referred to by name or are said to be unwilling to make statements except, that is, when they seek to do so from abroad on instructions from groups to which they belong. In many cases, the presumption of disappearance is inferred from the fact that the person concerned has gone into hiding and ceases to telephone or write to his relatives or those close to him or suspends personal contact with them.

In the case of many of the allegations studied, a check on domestic judicial records shows that an application for habeas corpus has been made to the courts and it has been found that the person concerned was not and is not under detention. Many complaints refer to cases which are still being investigated by the Argentine courts with a view to determining whether the offence of unlawful deprivation of liberty has been committed. However, it has been possible to establish that, in many instances the complaints submitted to the Argentine authorities differ from the account of the facts given in the communications. In other cases, it has not been possible to find the slightest indication that the facts have been brought to the knowledge of the competent Argentine authorities at any time.

In this connection, it should be pointed out, as has already been mentioned, that many of the complaints are in the hands of the judiciary, which is responsible for ensuring legal certainty and the due process of law

provided for in my country's Constitution and that, pending a final decision in particular case, it operates in accordance with rules common to legal proceedings in most countries.

With regard to the submissions relating to alleged disappearances of minors, efforts to determine the whereabouts of those concerned are continuing. It should be noted that, in one of the cases, it was established that the minor was registered at birth with an identity which was not his real one, because the mother was interned with papers that belong to someone else. This illustrates the difficulties of determining what has actually happened when the events occur which tend to conceal the truth.

In connection with the communications regarding pregnant women who are alleged to have disappeared, as I stated earlier, inquiries have run up against two obstacles: firstly, the uncertainty regarding the pregnancy and, secondly, the difficulty of tracing the mother who is said to have disappeared. In the majority of the cases studied, it has been found that, in proceedings brought before the domestic courts, the Argentine authorities were not informed of the pregnancy but that it was introduced in the complaint submitted to the Group. Where other allegations are concerned, there is no record of any request for the whereabouts either of the woman or of the alleged child to be established. Many more examples could be given.

To repeat what I have stated on previous occasions, my Government will have to continue the relevant inquiries into the various reports submitted so as to try and clarify the cases described and thus protect the humanitarian interests involved.

Before concluding, I should like to express my appreciation of the work done by the Group in pursuit of the lofty aims which prompted its establishment. The Group's work has enabled Governments to exercise more effective control over the so-called phenomenon of enforced or involuntary disappearances and it has been reflected, as far as my country is concerned, in the prompt clarification of all recently reported cases of disappearance.

The foregoing leads us to believe that, in order to enhance and ensure genuine enjoyment of human rights, in addition to taking account of present facts and problems, we must look resolutely to the future with a view to preventing and averting negative events, having regard to their magnitude in the context of the violations of human rights which have occurred and continue to occur in the world"

52. The Working Group at its fifth and sixth sessions met with a delegation sent by the Government of Argentina. During one of these meetings, the representative of the Government of Argentina informed the Working Group that his Government would provide the relatives and persons interested with the information it has regarding missing persons. Extracts from the statements made by the representative of the Government of Argentina during those meetings are reproduced in annex VII.

C. Information concerning Bolivia and communications with the Government of that country

53. The Working Group in its report to the Commission on Human Rights at its thirty-seventh session provided information on the reported enforced or involuntary disappearance of a church leader in Bolivia. The Group learned, after having contacted the Government of Bolivia on the matter, that the person concerned had been freed and expelled from the country (E/CN.4/1435, para. 164). Since the extension of the term of its mandate the Working Group has received information on enforced or involuntary disappearances in Bolivia, principally from private organizations and non-governmental organizations in consultative status with the Economic and Social Council; one of the latter organizations informed the Group that certain of the reports submitted had been elaborated with the help of relatives of the missing persons concerned.

54. Based on the information received from the above-mentioned sources, the Working Group transmitted reports of the disappearance of 32 persons to the Government of Bolivia along with the Working Group's request to receive any information the Government might wish to submit in that regard. These reports were transmitted by letters dated 1 June and 19 October 1981 and, in accordance with the established procedure regarding urgent reports requiring immediate action received between sessions, information on four of the missing persons was transmitted to the Government by cables dated 29 June and 25 August 1981. The 32 persons reportedly disappeared between July 1980 and August 1981; five of them were reportedly arrested in July 1980, 18 between August and December 1980 and six between January and August 1981. In two cases no dates were given for the disappearance. The persons reportedly arrested, with one exception, were all males and with the exception of one Italian they all held Bolivian nationality. According to the reports, the professional and vocational activities of the persons arrested covered a wide range, including those of student, mechanic, former deputy of Parliament, worker and university lecturer; some of the missing persons were trade union leaders. The Group has been informed by non-governmental sources of the release of three of the four persons whose disappearance had been reported by cable to the Government of Bolivia.

55. A majority of the arrests (12) were reportedly made in La Paz but arrests were also carried out in other cities or towns such as Oruro, Santa Cruz, Sucre, Potosi, Catavi and Caracoles. In one case it was reported that the arrest had taken place in the domicile of the disappeared person while in the others the arrest was reportedly carried out either in the street or in other unspecified places in a named town or city. Security forces were reported to have carried out the arrest in three cases and in three others the arrest was reported to have been carried out by a joint operation of the security forces and the army, in particular by section II of the army and of the para-military corps of the Ministry of the Interior. On one occasion the arrest reportedly took place in the presence of identifiable witnesses and in two cases the missing persons were reported to have been seen alive in specified detention centres controlled by the Government.

56. As mentioned above (paragraph 12) the Working Group established contact with the Special Envoy on the situation of human rights in Bolivia appointed pursuant to Commission resolution 34 (XXXVII). As a result of that contact and the desire to ensure clarity in communications between the United Nations and the Government of Bolivia, the Working Group, in keeping with its purely humanitarian aims and in view of the scheduled visit of the Special Envoy to Bolivia, decided to inform the Special Envoy of the information sent by the Working Group to the Government and to request him to inform the Group of any information he might obtain clarifying the fate of missing persons. By a letter of 16 November 1981 the

Special Envoy informed the Group that during his visit to Bolivia the Minister of the Interior had provided him with information on three reportedly missing persons; two of those cases had been brought to the Government's attention by the Working Group. The Government stated that all three were free, indicated where they were living and their occupations. By a letter dated 25 May 1981, the Government of Bolivia transmitted information on two persons who had left Bolivia with the assistance of an international organization; one of these persons had been reported missing to the International Labour Organisation. The Working Group appreciates the co-operation of the Special Envoy and the information provided by the Government of Bolivia. Copies of the summaries of the cases transmitted to the Government and the information provided by the Government are on file with the Secretariat and available for consultation by members of the Commission.

57. By a letter dated 11 November 1981, the Working Group reminded the Government of its wish to be able to consider any information from the Government at its sixth session and stated that the Working Group would be happy to meet with a representative of the Government during that session should the Government so wish. As of the date of the adoption of this report no further information has been received from the Government.

D. Information concerning Brazil and communications with the Government of that country

58. The Working Group's report to the Commission on Human Rights at its thirty-seventh session stated that the Working Group had received expressions of concern regarding enforced or involuntary disappearances reported to have occurred in Brazil. The Group's report to the Commission also contained information on the exchanges of correspondence between the Group and the Government of Brazil in that regard, and the Government's statement that it would furnish all information which might be required to elucidate eventual allegations (E/CN.4/1435, para. 165). At its fourth session the Working Group had before it 19 reports from relatives concerning disappearances; the Group decided to request further information from the relatives with regard to 12 of the reports and to transmit to the Government of Brazil copies of the reports received regarding seven cases. The years in which the seven disappearances reportedly occurred were, one each in 1970, 1971, 1972, 1973 and three in 1974. Three of the persons reported missing were students, one a teacher, one a computer programmer, one a public employee and one a member of the navy. In some of the cases the relative reports having received information on the missing person's detention through released detainees or through unofficial confirmations of detention. The Group, in the letter dated 29 May 1981, transmitting these reports to the Government, stated as follows:

"Although some of these reports relate to events which would have taken place some time ago, the serious human problems faced by relatives of the persons involved prompted the Group, in accordance with the humanitarian approach which has always activated it, to hope that some light might still be shed on those events for the benefit of the relatives. The Working Group would appreciate receiving any information on these matters which your Government might wish to transmit."

Summaries of the reports transmitted to the Government are on file with the Secretariat and available for consultation by members of the Commission.

59. By a letter dated 14 September 1981, the Permanent Representative of Brazil to the United Nations Office at Geneva informed the Working Group that the Brazilian Government had undertaken an investigation with the aim of locating seven persons mentioned in the Working Group's letter; that investigation had been focused on the competent organs of the Ministry of Justice, including the Department of Federal Police and the Superior Military Court. The letter stated that although the investigations had not so far enabled the Government to determine the whereabouts of any of the persons, the Government was forwarding, to the Group the information which had been collected. That information related to three of the persons reported missing who had been tried in their absence by military courts for various infringements of laws relating to national security. The Government stated that no criminal records had been found with regard to the four other reportedly missing persons.

60. By a letter dated 24 September 1981, the Working Group, thanking the Government of Brazil for its co-operation, stated that it would appreciate receiving further information which might help it to ascertain the whereabouts of the persons concerned. In the absence of a reply, a further letter, dated 10 November 1981, stated that the Working Group would like to consider at its sixth session any further information the Government might wish to send and that the Group would be happy to meet with a representative of the Government during that session should the Government so wish.

61. On 3 December 1981 the Working Group received a letter from the Permanent Representative of Brazil to the United Nations Office at Geneva in which the Working Group was informed that no new information had become available concerning the seven disappeared persons in whom the Working Group had shown interest. With regard to one case of a missing person the Permanent Representative informed the Group that a judge of first instance, in an October 1981 decision, had established civil responsibility for the disappearance and recognized the relative's right to compensation. An appeal had been lodged in the case and the decision was thus not definitive. The full text of the information provided by the Government of Brazil is on file with the Secretariat and available for consultation by members of the Commission.

E. Information concerning Chile and communications with the Government of that country

62. The Working Group in its report to the Commission on Human Rights at its thirty-seventh session dealt with its relations with the Government of Chile and with the contact and understanding it had established with the Special Rapporteur on the situation of human rights in Chile appointed pursuant to resolution 11 (XXXV) of the Commission on Human Rights (E/CN.4/1435, paras. 40-42). Pursuant to that understanding, and in relation to the problem of enforced or involuntary disappearances in Chile, the Working Group wishes to refer to the report of the Special Rapporteur to the General Assembly at its thirty-sixth session (A/36/594). The Working Group notes in particular the statement by the Special Rapporteur that inquiries undertaken by some of the investigating magistrates in Chile have led to the identification of

some bodies found in various places but that it has not been possible to ascertain the fate of more than 600 persons arrested by officials and later declared to be missing.

63. At the Working Group's fifth session, it had before it information from relatives and information and expressions of concern from non-governmental organizations over the disappearance of two Chilean nationals who were reportedly arrested on the Chile-Argentine border on 19 February 1981. It was reported that at the time of their arrest they were preparing to enter Chile with false documentation; a writ of amparo presented on their behalf in Chile was rejected (see El Mercurio, 8 September 1981). After contacting the Special Rapporteur on the situation of human rights in Chile regarding these two cases, the Working Group, by a letter of 6 November 1981, transmitted to the Government of Chile copies of the reports received from relatives together with the Group's request to receive any information the Government might wish to send on the matter. The Working Group, in its letter of 6 November 1981, stated that in approaching the Government of Chile in that matter, the Group wished to emphasize its purely humanitarian motivations and its simple desire to determine the whereabouts of reportedly missing persons in order to respond to the appeals of their relatives. The Working Group in that letter also stated that it was not concerned with the lawful detention, in accordance with international human rights standards, of persons accused of criminal offences but that it only wished to verify allegations that persons have been subjected to enforced or involuntary disappearances which was the concern of the General Assembly in its resolution 33/173. A summary of the report transmitted to the Government of Chile is on file with the Secretariat and available for consultation by members of the Commission.

64. By a letter dated 29 November 1981, the Working Group reminded the Government of Chile of the Group's wish to be able to consider at its sixth session any information the Government of Chile might wish to send. The Working Group regrets to state that as of the date of the adoption of this report no response whatsoever has been received from the Government of Chile which appears to be maintaining the position adopted by it last year when it informed the Group that Chile "would be in no position to co-operate with general United Nations procedures as long as that situation of discriminatory and ad casum treatment continued" (referring to the Special Rapporteur on the situation of human rights in Chile, E/CN.4/1435, para. 41).

F. Information concerning Cyprus

65. In its report to the Commission on Human Rights at its thirty-seventh session the Working Group dealt with information concerning enforced or involuntary disappearances in Cyprus (E/CN.4/1435, paras. 79-83). During its fourth session the Working Group was informed that on 29 April 1981 the Special Representative of the Secretary-General in Cyprus had made the following statement:

"On behalf of the Secretary-General, I am very pleased to announce that agreement has been reached by the two sides on the terms of reference for the establishment of a Committee on Missing Persons in Cyprus.

The Secretary-General has asked me to thank both sides for their important co-operation which has made this agreement possible. In particular, I wish to thank the representatives of the two sides who, over the past few months, were engaged in intensive efforts to bring about the setting up of this Committee. The Secretary-General also wishes to thank the International Committee of the Red Cross for its co-operation in facilitating this significant achievement.

On the basis of this agreement it is possible now to proceed to the establishment of the Committee.

This development represents a very important step forward in the solution of a long-standing issue of great concern to the two sides.

Furthermore, we hope the efforts of the Committee on Missing Persons will strengthen the spirit of co-operation and the joint endeavour undertaken in the framework of the intercommunal talks."

66. During its sixth session the Working Group was informed of the following extract from the Report on the Question of Cyprus presented by the Secretary-General to the General Assembly at its thirty-sixth session (A/36/702):

"With regard to the question of missing persons, I have followed with concern the difficulties, mostly of a procedural nature, that have prevented the Committee on Missing Persons from embarking on the concrete task for which it was established. The intensive consultations and informal exchanges of views undertaken by my representatives for the past weeks appear to have improved the prospects of having the Committee resolve the outstanding procedural issues that have blocked its progress. I hope that the Committee will now convene for this purpose, and devote itself to the solution of this painful humanitarian issue in a spirit of good faith and mutual confidence."

The Working Group associates itself with this aspiration.

G. Information concerning El Salvador and communications with the Government of that country

67. The Working Group in its report to the Commission on Human Rights at its thirty-seventh session described the information it had received during the first period of its mandate concerning enforced or involuntary disappearances in El Salvador (E/CN.4/1435, paras. 84-101 and E/CN.4/1435/Add.1, para. 6). During the period since the extension of the term of its mandate, the Working Group has received a considerable amount of additional information regarding reported enforced or involuntary disappearances in El Salvador. This information was submitted by relatives of the reportedly missing persons, by human rights organizations in El Salvador, one of which is connected with the Roman Catholic Church, by private human rights organizations outside the country and by non-governmental organizations in consultative status with the Economic and Social Council. The Working Group also considered the report to the General Assembly of the Special Representative of the Commission on Human Rights on the situation of human rights in El Salvador (A/36/608), a report by the ILO Committee on Freedom of Association, and reports of the International Committee of the Red Cross. It is quite clear that these reports have a substantial bearing upon matters within the terms of reference of the Working Group and should be studied in conjunction with the present report.

68. A human rights organization in El Salvador connected with the Roman Catholic Church transmitted to the Working Group a detailed review of enforced or involuntary disappearances in El Salvador covering the period 1966 to 31 July 1981. That organization reports that, based on declarations made to it containing, generally, the name, personal identification, family relations, details of the circumstances of the arrest and subsequent disappearances, it has established lists containing 214 reports of disappearances for the period 1966 to 15 October 1979, the date on which the present Government of El Salvador came to power, and 812 reports of disappearances for the period October 1979 to July 1981. According to 927 reports analysed for the period 1966 to May 1981, 27 per cent of the missing persons were reportedly farmers (campesinos), 27 per cent students, and 20 per cent workers. In those 927 cases, 20 per cent of the arrests were reportedly made by agents dressed in civilian clothes, 18 per cent by members of the National Guard, 15 per cent by the army, 12 per cent by the National Police or the Treasury Police and 26 per cent by a combination of various forces to which, in certain cases, the organization ORDEN (Organizacion Democratica Nacionalista) was joined. That report states that with some exceptions, the organizations involved are subject to the armed forces. Details on some 20 cases were given as examples, and an annex to the report contains a list of the names and, as available, age, profession, residence, date and place of arrest and the forces responsible for the disappearances which occurred during the period 1966 to May 1981.

69. At the last session of the Working Group for 1980 a private human rights organization in El Salvador transmitted copies of 180 reports made by relatives or other individuals concerning enforced or involuntary disappearances in El Salvador which had occurred principally in 1980. During 1981 that same organization transmitted to the Working Group copies of reports from relatives or other individuals concerning some 270 additional cases of enforced or involuntary disappearances covering the period January 1980 to May 1981. Further, that organization sent, by letter or cable, information provided by relatives or other individuals, but not copies of their reports, regarding some 19 other cases reported to have occurred in the period April to September 1981. By a letter of 16 September 1981 that organization expressed its concern that the majority of cases transmitted at that time (218) related to disappeared minors under 21 years of age; a considerable number concerned young persons between the ages of 12 and 17 years. That letter also stated that many women were among those who had disappeared.

70. By a letter dated 13 October 1981 the Permanent Representative of El Salvador to the United Nations Office at Geneva called the Working Group's attention to the information contained in the July/August 1981 issue of the International Review of the Red Cross to the effect that since June 1980 the Red Cross office in El Salvador has opened files on some 1,900 persons reported as missing and that the Red Cross was able to give some 530 answers to these reports. The Permanent Representative also called the Group's attention to the full facilities given by the authorities to the Red Cross in El Salvador to visit without notice all places of detention, permanent or temporary, civilian or military. The other information supplied by the Government and the publication referred to is on file with the secretariat and available for consultation by members of the Commission.

Reports on whereabouts or fate of missing persons

71. In its report to the Commission on Human Rights at its thirty-seventh session the Group reviewed information it had received on places where disappeared persons were held, and on the fate of missing persons (E/CN.4/1435, paras. 91-93). The Group referred to the identification of places where missing persons had been held by police and military authorities set out in a report of a specially-appointed Government committee and to the finding of bodies of persons reported missing; the bodies bore marks indicating the person had been detained prior to death. The Working Group also reported on the finding in El Salvador of numerous bodies, often mutilated beyond recognition which precluded their identification as persons reported missing. During 1981 the Working Group received reports that specific missing persons were being held in identified military or police bases; the Group also received reports from persons who state they had been held at such places, ill treated and then released. It has also been informed by a number of sources of the continued discovery of numerous bodies mutilated beyond recognition (see the report of the Special Representative of the Commission on Human Rights (A/36/608, paras. 55-72). The Working Group on 18 September 1981 received from a private human rights organization in El Salvador a report on the discovery of decapitated bodies in El Salvador. That organization referred, in particular, to the discovery, between 20 August and 2 September 1981, principally in the area of La Libertad, of 94 decapitated bodies. The Working Group is continuing its inquiries into these reports which, if verified, may enable an explanation to be found for some of the disappearances.

Habeas corpus and other legal remedies

72. The importance of amparo, habeas corpus, or other similar legal remedies for protecting against unlawful arrest and detention and the clarification of the whereabouts and fate of missing persons was emphasized by the General Assembly in its resolution 34/178 of 17 December 1979. According to information presented to the Working Group, the constitution of El Salvador establishes the "recurso de exhibicion personal", or habeas corpus, as the constitutional means of protecting liberty and security of persons. The above-mentioned human rights organization connected with the Salvadorian Catholic Church, provided the Working Group with information concerning habeas corpus petitions presented by it to the El Salvador courts; it reported presenting approximately 2,000 such petitions and that between January and May 1981, it had filed 250 habeas corpus petitions. That organization reported that the majority of the petitions produced no effective result but not with the response that the person concerned was not in detention in any security agency or military base. It also provided examples of recent cases in which testimony was presented to the courts concerning the place where the missing persons were being held but in which the courts refused to act effectively to obtain their release. There is a criminal procedure

which is available under Salvadorian law in connection with disappearances, but the Group has been informed that this has equally failed to produce any answers. In addition, according to examples provided by the above-mentioned organization, the office of the Attorney General failed to take steps, as required by law, to investigate the illegal detention of missing persons even when specific evidence, including that of witnesses, was presented showing that the person concerned had been arrested and continued to be held in detention by the authorities. That organization concluded that "habeas corpus has not proved to be an effective instrument for initiating investigations to determine the whereabouts of the victims in cases of enforced disappearance". (see annex IX B for further information). The Working Group notes the conclusions in this same sense reached by the Special Representative of the Commission on Human Rights in his report to the General Assembly (A/36/608, paras. 53 and 115).

Special Commission to Investigate Political Prisoners and the Disappeared

73. The Working Group in its report to the Commission on Human Rights at its thirty-seventh session dealt with the "Special Commission to Investigate Political Prisoners and the Disappeared" which was established by the Government of El Salvador by Decree No. 9 of 6 November 1979 for the purpose of carrying out on-the-spot investigations to determine the fate of the persons registered in the country as having disappeared since 1972. The Working Group has been informed that this three-member Commission, which adopted two reports, the first dated 23 November 1979 and the second dated 3 January 1980, was established in response to a recommendation of the Inter-American Commission on Human Rights that reports of disappearances be investigated and that the persons responsible be tried and punished. This recommendation was made in the report of the Inter-American Commission after a visit to El Salvador which took place in January 1978. 9/

74. The Special Commission's first report, a copy of which has been received only recently, contained a list of persons who were detained by public forces in El Salvador and who subsequently disappeared; the Commission stated they were not the only detainees to have disappeared. That first report also contained a number of specific recommendations to the effect that those persons the Special Committee had identified as responsible be prosecuted, that secret places of detention be prohibited, and that the relatives of the disappeared detainees be indemnified. The Special Commission's final report, reflected in the Group's report to the Commission on Human Rights at its thirty-seventh session (E/CN.4/1435, paras. 91-92), also contained a list of persons who had disappeared following arrest by public forces as well as information on bodies which had been discovered in cemeteries and other burial places and identified as those of missing persons.

75. The Special Commission repeated in its final report its recommendation that the persons responsible be prosecuted. By a letter dated 30 June 1980 the Working Group requested from the Government of El Salvador information on the application of the recommendations of the Special Commission. To date no information on this point has been received from the Government. The human rights organization connected with the Roman Catholic Church in El Salvador referred to above, has informed the Working Group that the recommended prosecutions were not undertaken. Because of the importance of measures taken at the national level to determine the whereabouts of persons reported missing the Working Group attaches, in annex X, the text of the two reports of the Special Commission.

9/ (OEA/Ser.L/V/II.46, 17 November 1978, recommendation No. 5)

Statements made by representatives of associations or organizations concerned with reports of enforced or involuntary disappearance

76. During its fifth and sixth sessions the Working Group heard statements by representatives of organizations directly concerned with reports of enforced or involuntary disappearance in El Salvador, the most pertinent parts of these statements are reproduced in annex IX.

Information transmitted to the Government of El Salvador

77. The Working Group reported to the Commission on Human Rights at its thirty-seventh session that it had transmitted to the Government of El Salvador information on 111 specific cases of reported enforced or involuntary disappearances which occurred in 1980 and 1981; information on nine of those cases was transmitted in accordance with the procedures for urgent action on reports received between sessions of the Working Group (E/CN.4/1435, paras. 94-97 and E/CN.4/1435/Add.1, para. 6). The Government of El Salvador provided information with regard to two of those urgent reports, indicating that the persons concerned were being held for trial (E/CN.4/1435, para. 95). Since the extension of the term of its mandate, and by letters dated 29 May 1981 and 5 October 1981, the Working Group transmitted to the Government of El Salvador copies of reports on 139 and 44 cases of enforced or involuntary disappearances. Information on an additional eight cases was transmitted to the Government by various cables in accordance with the procedure of urgent action on reports received between sessions of the Working Group. With regard to one of these additional cases, the person concerned, a Catholic priest, reappeared some days after his reported disappearance stating that he had voluntarily left the place where he had been staying and that he had written a letter explaining his intentions but that it had not been delivered. In total, the Working Group has transmitted to the Government of El Salvador information on 302 cases of reported enforced or involuntary disappearances, of which three have been explained.

78. Of the 299 reports of enforced or involuntary disappearances transmitted to the Government in 1980 and 1981 by the Working Group and which remain unresolved, three concerned the first few months of 1979, 288 concerned 1980 and eight 1981. The vast majority of the reports were made by close relatives, and a few by other individuals. Almost all were transmitted to the Working Group by human rights organizations in El Salvador. The reports which were the object of urgent action were transmitted to the Working Group by human rights organizations in El Salvador and/or non-governmental organizations in consultative status with the Economic and Social Council. In the reports transmitted to the Government the identity of the missing person is given through his name (at least family and first names) and, with a few exceptions, the person's age, nationality and profession are also given. Often the person's home address is provided. The Working Group notes that 15 per cent of the missing persons were women and that about 45 per cent were 19 years old or younger. Most of the missing persons were students; farmers (campesinos), and workers were the next most numerous occupations of the missing persons. Some businessmen as well as trade unionists were also reported to have disappeared.

79. With a few exceptions, the reports transmitted to the Government described in some detail the circumstances of the arrest of the missing persons. The date and the exact location of arrest are given in 251 cases; 57 persons were arrested at home,

5 at their place of work and 128 at clearly specified public places, such as a public market, a bus station or a border crossing. In 80 per cent of the cases statements were made concerning the forces responsible for the arrest; in nearly 40 per cent of the cases the arrests were reported to have been made by the army, in 20 per cent of the cases by the National Guard, and in some 13 per cent of the cases by a combination of public forces. Other responsible forces were the National Police, Treasury Police (Policia de Hacienda), Security Forces, the Air Force and the Navy. In a few cases the organizations ORDEN and UGB 10/ and the Frente Revolucionario de Liberacion were named as responsible. In 25 per cent of the cases the forces making the arrest were specifically stated to have worn uniforms, and in 41 cases official vehicles were reportedly used. In 22 cases specific statements were made that there were witnesses to the arrest; in all but a few cases the arrest is described in such detail as to lead to the conclusion that there were eyewitnesses on whose statements the report is based. The descriptions provided of the arrests, except in a few cases, do not indicate any violent confrontation. Finally, in 26 cases, the author indicates having himself shared detention with the missing person in some official centre of custody or having received such information from other detainees.

80. In accordance with established procedure, the Chairman of the Working Group transmitted to the Government of El Salvador the eight above-mentioned urgent reports of enforced or involuntary disappearances which occurred in the period March to August 1981. As was also mentioned above, the case covered by one urgent report was resolved. With regard to the remaining seven reports, three related to women, and one to a boy 15 years old. The occupations of the persons concerned were student (two); teacher or professor (one); housewife (one); writer (one); and worker (one). The National Guard, National Police, Army and Treasury Police were reportedly involved, separately or together, in five of the cases, and in four of those five cases uniforms were said to have been worn by the persons making the arrest. In two cases the identity of those reportedly responsible was not given; in one case it was reported that the National Police at first acknowledged having made the arrest. Summaries of the reports transmitted to the Government are on file with the Secretariat and available for consultation by members of the Commission.

81. A private human rights organization in El Salvador communicated to the Working Group in October 1981 its concern about possible reprisals against relatives who had transmitted information on disappearances to the Working Group. That organization informed the Group of reprisals against persons in El Salvador who had taken steps with regard to national remedies, or been connected with international organizations or groups concerned with alleged violations of human rights. Since it is the Group's practice to transmit to the Government copies of original reports, the Chairman, in a letter dated 5 October 1981 repeated to the Government the Group's expectation, first expressed in a letter dated 29 May 1981, that no source which transmitted information to the Group would be subjected to coercion, sanctions, punishment or judicial proceedings for that reason. The Chairman emphasized that this is a matter to which the Group attaches importance.

10/ ORDEN (Organizacion Democratica Nacionalista) and UGB (Union Guerra Blanca) are paramilitary right wing organizations which are said to be responsible for acts of violence against persons who do not agree with their ideas.

Information and views transmitted by the Government

82. In two letters, both dated 2 September 1981, the Minister for Foreign Affairs of El Salvador referred to two cables sent to the Government by the Chairman of the Working Group concerning the arrest and disappearance of a youth and a professor. The Ministry's letters stated that the cases reported to the Group "have been a matter of concern to this Ministry, which has requested the Ministry of Defence and Public Safety and the Commission of the President of the Revolutionary Government Junta for the Protection of Civil and Social Rights to co-operate by conducting any investigations they may deem necessary, the results of which will be communicated to the Group in due course".

83. The Permanent Mission of El Salvador to the United Nations Office at Geneva, in a letter dated 20 November 1981, referred to a number of communications transmitting reports to the Government. The relevant part of that letter reads as follows:

"I should also like to inform you that the Ministry of Foreign Affairs of El Salvador has requested the appropriate national organizations to carry out investigations of the points made in the notes in question and that these investigations relate primarily to the cases to which the Commission grants special status or treatment.

With regard to the foregoing, I would like to make it clear that the Government of El Salvador is more than concerned about the general situation with regard to the disappearance of minors. Consequently, it has made considerable efforts to promote and improve the legal, economic and social status to promote and improve the legal, economic and social status of minors with a view to protecting their rights and not, as alleged, violating them. I should also point out that my Government cannot agree to be held responsible for the cases of persons who have provided information concerning cases of disappearances.

With regard to the foregoing, I should like to inform you that further details will, in due course, be provided concerning the cases under investigation ..."

84. In view of the statement about responsibility for persons providing information concerning cases of disappearances the Chairman wrote to the Government seeking clarification.

85. The Permanent Representative, in his letter of 20 November 1981, also referred to the request for information from the International Committee of the Red Cross and expressed the wish to discuss the matter with the Working Group. The full text of this letter is available with the Secretariat for consultation by members of the Commission.

86. During its sixth session, on 4 December 1981, the Working Group received a letter from the chargé d'affaires of the Permanent Mission of El Salvador to the United Nations Office at Geneva. The pertinent parts of that letter read as follows:

"Firstly, the Government of El Salvador wishes to express once again its goodwill and desire to co-operate with the Working Group on Enforced or Involuntary Disappearances.

As stated at the preceding session, the wish of my Government, communicated to the Working Group in note MP-NU-196-81, of 20 November 1981, was that the Ambassador and Permanent Representative should attend the current session. Unfortunately, the Permanent Representative of El Salvador is absent from Geneva and is in fact attending the debate on human rights in El Salvador at the United Nations General Assembly.

Moreover, it was the understanding of the Permanent Mission of El Salvador that the current session of the Working Group would be longer, whereas, in fact, the length of the session has been reduced and coincides with the time during which the Permanent Representative will be absent.

For the above reasons, we deeply regret that, on this occasion, we are unable to attend the Working Group's session."

87. During the Working Group's fifth session it met with a representative of the Government of El Salvador. The relevant parts of his statement are reproduced in annex XI.

H. Information concerning Ethiopia and communications with the Government of that country

88. The Working Group, in its report to the Commission on Human Rights at its thirty-seventh session, stated that it had received from a non-governmental organization in consultative status with the Economic and Social Council reports that 16 persons disappeared in Ethiopia in July 1979 (E/CA.4/1435, paras. 102-103). The Group in its report also noted the transmission of that information to the Government of Ethiopia and reproduced the Government's views in that regard (E/CH.4/1435, paras. 104-106). The position of the Government was stated again during the thirty-sixth session of the Commission on Human Rights to the effect that the information which had been presented to the Working Group by one non-governmental organization was false and politically motivated (E/CN.4/SR.1606, para. 28).

89. At its fifth session the Working Group had before it reports from relatives concerning the disappearance of two of the 16 persons reported missing by the non-governmental organizations. The first report dealt with the arrest of a church leader and his wife on 28 July 1979 at 1900 hours in the streets of Addis Ababa; his wife was later reported to have been released and their car was reported to have been found in front of a police station. The second report stated that a former Government official had been held from 1974 in a prison in the provisional military headquarters (formerly the Menelik Palace) but that in July 1979 the family was told it was no longer necessary to bring him food and clothes. Since that time this person has been missing. The Working Group at its fifth session decided to transmit the two reports from the relatives (letter dated 1 October 1981) to the Government of Ethiopia together with the request to receive any information the Government might wish to send in that regard. By a letter dated 10 November 1981 the Working Group reminded the Government of Ethiopia of its wish to be able to consider, at its sixth session, any information the Government might wish to send and said that the Group would be happy to meet with a representative of the Government during that session should the Government so wish.

90. The Permanent Mission of Ethiopia to the United Nations Office at Geneva, in a note verbale dated 4 December 1981, referred, inter alia, to the Working Group's letter of October 1981 and emphasized that the raison d'être of the Ethiopian revolution was the establishment of equality, justice and freedom for all, and that allegations such as those contained in the reports before the Working Group were not true and should be treated with the contempt they deserve. That note verbal expressed the hope that the Group in preparing its report to the Commission on Human Rights would take into account

the fact that the main aim of the Ethiopian revolution is to protect the basic rights of the Ethiopian people as a whole and to abolish special treatment to privileged groups. With regard to the two reports of disappearances, the note verbale stated that the first person is believed to have joined the so-called Oromo Liberation Movement and that the second person falls into the category of those individuals under detention because of crimes committed, whose cases are being considered by the recently established Central Investigation Organ as expeditiously as possible; their human rights are fully respected. Summaries of the reports transmitted to the Government of Ethiopia and the Government's response are on file with the Secretariat and available for consultation by members of the Commission.

I. Information concerning Guatemala and communications with the Government of that country

91. The Working Group in its report to the Commission on Human Rights at its thirty-seventh session reviewed the information it had received regarding enforced or involuntary disappearances in Guatemala and the information it had transmitted to the Government of that country. The Working Group reported to the Commission that it had received no response from that Government to its requests for information (E/CN.4/1435, paras. 107-116). Since the extension of the term of its mandate the Working Group has received considerable information from a human rights organization in Guatemala and non-governmental organizations in consultative status with the Economic and Social Council. The Group has also received reports adopted by the International Labour Organisation and the Inter-American Commission on Human Rights.

92. The Working Group received from a non-governmental organization in consultative status a list, covering the period July 1978 to October 1981 containing the names of 615 missing persons together with the dates and, with a few exceptions, the places of their arrest; generally, the missing person's occupation was also given. In 106 of those cases, which reportedly occurred in 1980, more detailed information concerning, in particular, the circumstances of the arrest and the authorities reportedly responsible was provided. An organization in Guatemala connected with the Christian Churches transmitted to the Working Group information on 275 disappearances which reportedly occurred in Guatemala between 1 January and 20 July 1981. That information included the names (family and given) of the missing person, and, where available, his age and profession, together with the date and circumstances of the disappearance and the authorities responsible. In presenting this information to the Working Group the representative of the above-mentioned church-related organization stated that it was not an exhaustive list of disappearances for the period covered because during the past year there had been an enormous increase in control over the communications media and control by the police forces and it was thus difficult to get information on disappearances out of the country. The Group was informed that the connection between the disappearances and the Government was strongly indicated by the fact that the armed men making the arrests used vehicles with official licence plates or no plates at all, that the police forces (traffic or military) never intervened when the arrests were made in their presence and that the heavily-armed men moved freely and openly about the city without hindrance from any of the police forces.

93. The information on the profession of the missing persons, where available, indicates that for the period 1978-July 1981, the largest group of persons who disappeared were farmers (campesinos). Other professions or occupations represented among the disappeared persons were trade unionists, students and teachers. Concerning disappearances in 1981, few statements were made about the specific force responsible; generally reference is made to "armed men", as mentioned above. For 1980, however, statements were made specifically linking the army, the treasury police (Guardia de Hacienda), the national police or various paramilitary groups to the disappearances.

94. Since the extension of the term of its mandate, the Working Group has received urgent reports of the enforced or involuntary disappearance of 18 persons in Guatemala in the period April-November 1981; these were transmitted to the Government of that country in accordance with the Group's established practice. The professions of the missing persons were reported to be: trade unionist (three), university professor (two), priest (three) and nun (two). Three other persons were reported to be connected with church organizations in Guatemala. One medical doctor and one journalist are also reported to have disappeared. With regard to 10 of the 18 cases, information was given on the circumstances of the arrest; three of the missing persons, including a two-and-a-half-year-old child, were reportedly arrested at their homes by security forces who, after searching the house, took them to police headquarters. Another person was reportedly arrested at a shopping centre and forced into a car with Government licence plates. In another case, witnesses identified members of the security forces as responsible for the arrest, and in a further case uniformed army personnel were reportedly involved.

95. The Group has learned that six of the 18 persons referred to above have reappeared. In one instance, a priest, Father Luis Eduardo Pellecer, had been reported by witnesses to have been taken from his car on 9 June 1981, subjected to violence and dragged, unconscious, into another car by five members of the judicial police near the centre of Guatemala City. His car was left with the motor running and was later taken away by the police. It was reported that on the following day one of the homes in which the priest had been staying was raided by intelligence agents and that one person was killed and another arrested. In another case, Emeterio Toe Medrano, a campesino trade unionist, who was also a youth leader connected with the indigenous peoples of Guatemala was reported by witnesses (one of whom was his son) to have been forcibly abducted by five soldiers in plain clothes, using a car without licence plates, on 5 July 1981. In both of these cases, the Government of Guatemala has transmitted to the Working Group information that the persons concerned have appeared separately at press conferences organized under Government auspices. During those press conferences the persons concerned stated that they had been dissatisfied with their activities which, they had come to feel, had the effect of contributing to the violence in Guatemala, and that they had contacted the security forces and had been abducted voluntarily. With regard to a report that a priest, two nuns and a seminarist had been detained by the army and disappeared on 19 November 1981, the Working Group has been informed that Church authorities subsequently determined their whereabouts and that they are no longer in detention.

96. The Working Group has received from a non-governmental organization in consultative status a report from a person (his identity is confidential) who states that he was arrested at his house in Guatemala in February 1980 by armed soldiers in civilian clothes who took him to a military base. He reports being detained there for 11 days, during which period he was tortured. He then escaped. He further states that he saw three persons executed and the bodies of six others and that one person from his home town who had disappeared more than one year earlier was held there. A second report from that organization comes from a person who states that he was a member of the army in Guatemala. It describes the arrests of persons, their detention in an army base, their ill-treatment and the eventual disposal of their bodies.

97. One of the more detailed reports received by the Working Group on disappearances in Guatemala states that the victims come from all sectors of Guatemalan society but mostly from among the leaders of opposition groups and people's organizations of workers, peasants, teachers, student leaders and members of religious orders or their lay assistants. According to the report, the victims were not arrested legally, on the authority of a judicial warrant or order, but were virtually "kidnapped" in their homes, at their places of work, at meetings and assemblies or in the streets. These arrests were carried out by armed groups operating in daylight, with complete impunity, travelling in motor vehicles like those normally used by the police forces or easily identifiable as belonging to the security bodies. The report concludes that security agents or paramilitary organizations were mainly responsible for the arrests. According

to this report; the victims usually disappeared without trace, although sometimes, exceptionally, they were taken for very short periods to the barracks of the armed forces or to police stations for interrogation; afterwards their bodies, often mutilated, were found. Finally the report deals with the failure of the Guatemalan judicial system to ensure effective protection against arbitrary arrest.

Statement made by a representative of an association concerned with reports of enforced or involuntary disappearances

98. Extracts from a statement made to the Working Group during its fifth session by a representative of an association directly concerned with enforced or involuntary disappearances in Guatemala are reproduced in annex XII.

Information transmitted to the Government of Guatemala

99. The Working Group in its report to the Commission on Human Rights at its thirty-seventh session informed the Commission that it had transmitted to the Government of Guatemala, on separate occasions information on 46 cases of disappearance reported to have occurred in 1979-1980 and on 47 cases of disappearance reported to have occurred in 1980 (E/CN.4/1435, paras. 111-114).

100. Since the extension of the term of its mandate, the Working Group has transmitted to the Government of Guatemala information on 615 cases of disappearance reported to have occurred during the period 1979-1980 (letter dated 29 May 1981) and on 235 cases of disappearance reported to have occurred during the first seven months of 1981 (letter dated 1 October 1981). Pursuant to the established practice of informing the Government of urgent reports of disappearances which require immediate action the Group transmitted to the Government information on the 18 cases described in paragraphs 94-95 above. All these reports were accompanied by the Group's request to receive any information the Government might wish to send in that regard.

101. Prior to the Working Group's fifth and sixth sessions the Chairman informed the Government of Guatemala of the Group's willingness to meet with a representative of the Government should the Government so wish. Agreement had been reached on a meeting between the Permanent Representative of Guatemala to the United Nations Office at Geneva and the Group, to take place during the fifth session, but unfortunately it did not take place. However, at the Group's sixth session the Permanent Mission of Guatemala to the United Nations Office at Geneva made available to the Working Group a video-cassette recording of a press conference in Guatemala City at which a Jesuit priest, Father Luis Eduardo Pellecer, whose reported disappearance on 9 June 1981 in Guatemala is described above in paragraph 95, explained his position. The Working Group viewed this recording and it has officially invited Father Pellecer to meet with it to provide information on matters within the Group's mandate. The Group also invited the trade unionist whose reappearance after his reported disappearance on 5 July 1981 is described above in paragraph 95, to meet with it. The Group requested the assistance of the Government of Guatemala in facilitating these meetings.

Information and views transmitted by the Government

102. On 31 August 1981, the Government transmitted to the Group information on the intervention, in the violence in Guatemala, of international extremist organizations and foreign subversive criminals. On 21 September 1981, the Permanent Representative of Guatemala transmitted comments on the proceedings in the Commission on Human Rights in relation to Guatemala (reproduced in annex XIII). By letters dated 20 October, 4 November and 16 November 1981, the Permanent Representative of Guatemala to the United Nations Office at Geneva submitted press clippings reflecting interviews given by the above-mentioned priest and trade union leader. The information transmitted to the Government of Guatemala by the Working Group, and the information transmitted by the Government of Guatemala, is on file with the Secretariat and available for consultation by members of the Commission.

J. Information concerning the Revolutionary People's Republic of Guinea and communications with the Government of that country

103. At its fourth session the Working Group had before it a list of persons who had reportedly disappeared in the Revolutionary People's Republic of Guinea, mainly in 1971, submitted by a non-governmental organization in consultative status with the Economic and Social Council. That organization stated that the list had been compiled from reliable sources. At its fourth session the Group decided to inform the Government of the Revolutionary People's Republic of Guinea that it had received information and expressions of concern regarding reported enforced or involuntary disappearances in that country. It also decided to raise the question of establishing direct contacts in the matter (letter of 29 May 1981).

104. At the Working Group's fifth session it had before it reports from relatives concerning the enforced or involuntary disappearance of eight persons in the Revolutionary People's Republic of Guinea. The Working Group decided to transmit copies of those reports to the Government of that country together with a request that the Government send any information it might wish in that regard (letter of 1 October 1981). According to the information provided by the relatives, six of the eight persons in question disappeared in 1971 - two in January, one in June, two in July and one in August - one in November 1970 and one in February 1972. According to the reports, three were arrested at their home, one was summoned to a military barracks, two were arrested at other locations and one disappeared from prison where he had been serving a five-year sentence. Witnesses to the arrest were reported in many of the cases and it was stated that in the case of three persons who disappeared after they had been arrested, the arrests were reported in the press. In one case, a former detainee reported having been held in official custody with one of the missing persons. The professions of the missing persons are: diplomat (two); judge (two); civil servant (one); army officer (one); and, bank official (one). Summaries of the reports transmitted to the Government of the Revolutionary People's Republic of Guinea are on file with the Secretariat and available for consultation by members of the Commission.

105. By a letter dated 10 November 1981, the Working Group informed the Government of the Revolutionary People's Republic of Guinea of its wish to be able to consider at its sixth session any information the Government might wish to send and that the Working Group would be happy to meet with a representative of that Government during that session should the Government so wish. As of date of the present report no response has been received from the Government.

K. Information concerning Honduras and communications with the Government of that country

106. The Working Group at its fourth and fifth sessions had before it information concerning reported enforced or involuntary disappearances in Honduras, and between sessions the Group received reports on enforced or involuntary disappearances of an urgent nature requiring immediate action; these latter were dealt with in accordance with the established procedure. As a result of decisions taken at its fourth and fifth sessions, and in accordance with its urgent procedure, the Working Group, by letters dated 15 May, 1 and 7 October and 17 November 1981 and by cables dated 6 and 26 August 1981, transmitted to the Government of Honduras information on 38 cases of enforced or involuntary disappearances which reportedly occurred in 1981. 11/

11/ The Group notes the report of the disappearance for 10 days in September 1981 of two persons in Honduras contained in the annual report (1980-1981) of the Inter-American Commission on Human Rights (CEA/Ser.L/V/II,54 doc. 9, rev. 1, of 16 October 1981).

107. The reports transmitted to the Government of Honduras were submitted to the Working Group principally by two private human rights organizations and a non-governmental organization in consultative status with the Economic and Social Council. Three reports were submitted by the wife of one of three persons who had been arrested together. The reports concerned disappearances during the period April to November 1981. Fourteen of the disappeared persons were reportedly arrested on 22 April 1981 and 15 during the period 5 to 10 August 1981. Twenty-two men, eight women and eight children (five boys and three girls), were reported to have disappeared; the children's ages ranged from two to 11 years. Twenty-six of the persons who disappeared were Salvadorian nationals - it was reported that they were refugees - nine were reportedly citizens of Honduras, one was of Guatemalan nationality and one was from Ecuador.

108. In 17 of the cases security forces in uniform and civilian clothes were reported to have carried out the arrest; in 16 cases the Honduran armed forces were reported as responsible for the arrests and in three cases arrests were reportedly carried out by agents of the National Directorate of Investigations. A written statement has been received from a person who reports having witnessed the arrest of at least five of the persons who disappeared on 22 April 1981. In two other cases specific reference is made to witnesses to the arrest; in one instance there were reportedly some 40 witnesses. Little information was provided about the professions of the persons reported missing, but two trade unionists, one student, a former secretary of a church-related human rights organization in El Salvador, a former Honduran university official and a member of the socialist party of Honduras are among those reported missing. The Group received information from one organization, not confirmed through official sources, that five of the persons arrested on 22 April 1981 - one adult and four children - had been handed over to authorities of El Salvador by a Honduran immigration inspector and a woman police officer whose names were given. Concern has been expressed to the Working Group about the handing over of the nationals of El Salvador to the authorities of their country. A report was received in November 1981 of an incursion by the army of El Salvador into a refugee camp in Honduras during which one person was reportedly captured and taken back to El Salvador. Summaries of the reports transmitted to the Government of Honduras are on file with the Secretariat and available for consultation by members of the Commission.

109. By a cable dated 12 August 1981 the Minister for Foreign Affairs of Honduras informed the Chairman of the Working Group that the Government was carrying out an exhaustive investigation into the report of the disappearance of two persons which had been transmitted to the Government by the Group in a cable dated 6 August 1981. By a letter dated 10 November 1981 the Working Group informed the Government of Honduras of its wish to be able to consider, at its sixth session, any information the Government might wish to send and said that the Group would be happy to meet with a representative of that Government during that session. As at the date of the adoption of the present report no results of the investigation have been received from the Government of Honduras.

L. Information concerning Indonesia and communications with the Government of that country

110. The Working Group in its report to the Commission on Human Rights at its thirty-seventh session informed the Commission that it had received information from a non-governmental organization in consultative status with the Economic and Social Council concerning 22 cases of enforced or involuntary disappearances which reportedly occurred in East Timor between 1977 and 1979 (E/CN.4/1435, paras. 117-118). The

Working Group reported to the Commission that it had transmitted the information to the Government of Indonesia. The Group's report to the Commission also contained the information and views of the Government of Indonesia on the matter (E/CN.4/1435, paras. 119-121).

111. At its fourth session the Working Group had before it further details, from the same non-governmental organization, on the 22 cases which the Group had referred to the Government in 1980 as well as a report of a new disappearance which had occurred in June 1980. At that session, the Working Group decided to transmit the further details on the 22 cases and information on the newly reported case to the Government of Indonesia together with the Group's request to receive any information the Government might wish to submit on the matter (letter dated 29 May 1981).

112. According to the further details on the 22 cases, one occurred in 1977, two in 1978 and almost all the others between February and June 1979. Twelve disappearances resulted directly or indirectly from the surrender of the persons concerned to military authorities, two had reportedly been captured and four arrested. One person reportedly disappeared from prison and one person was reportedly seen on television as a prisoner prior to his disappearance. Most were reportedly connected with the Frente Revolucionaria de Timor Leste Independente (FRETELIN). With regard to the disappearance which reportedly occurred in June 1980, the Working Group learned from a non-governmental source, subsequent to the transmission of the report to the Government, that the person in question was being held in a prison in Dili. No official confirmation of this has been received. Summaries of the reports transmitted to the Government of Indonesia are on file with the Secretariat and available for consultation by members of the Commission.

113. By a letter dated 10 November 1981, the Working Group informed the Government of Indonesia of its wish to be able to consider at its sixth session any information the Government might wish to send and that the Group would be happy to meet with a representative of the Government during that session should the Government so wish. As of the date of the adoption of this report no response has been received from the Government of Indonesia.

M. Information concerning Iran and communications with the Government of that country

114. The Working Group at its fourth session had before it information on 14 enforced or involuntary disappearances which reportedly occurred in Iran. These reports had been submitted to the Group by a non-governmental organization in consultation status with the Economic and Social Council. At that session, the Working Group decided to inform the Government of Iran that it had received information and expressions of concern regarding reported enforced or involuntary disappearances in that country. It also decided to raise the question of establishing direct contact with the Government of Iran in the matter (letter dated 29 May 1981) and to transmit to the Government the information received regarding the 14 cases together with a request that the Government send to the Working Group any information it might wish to make available (letter of 1 June 1981).

115. According to the information submitted to the Working Group, 11 of the 14 persons concerned were arrested at a private home in Teheran between 1600 and 1800 hours on 21 August 1980 by a group of armed men who reportedly showed a written arrest order for those persons. It was further reported that Government officials had confirmed the arrest of those persons. Of the three remaining persons, one, a retired professor, was reportedly arrested on 11 November 1979 in Teheran; the second reportedly disappeared on 23 May 1979; it was stated that an arrest warrant had been issued for him on 12 May 1979. As regards the third person, he was reportedly arrested on 13 January 1980 on his way to work.

116. At its fifth session, the Working Group had before it reports from relatives concerning the disappearance of two schoolgirls, one on 30 May 1981 and one on 17 June 1981. It was stated that they had been taken from their schools by Government authorities. By a letter dated 10 October 1981 these two reports were brought to the attention of the Government of Iran together with the Working Group's request to receive any pertinent information that the Government might wish to send. Summaries of the reports transmitted to the Government of Iran are on file with the Secretariat and available for consultation by members of the Commission.

117. The Working Group, in a letter dated 10 November 1981, informed the Government of Iran of its wish to be able to consider at its sixth session any information the Government might wish to send regarding the reports of disappearances transmitted to it. It also said that it would appreciate meeting with a representative of the Government of Iran during that session, should the Government so wish. As of the date of the adoption of the present report no response has been received from the Government of Iran.

N. Information concerning Lesotho and communications with the Government of that country

118. Pursuant to the established procedure of the Working Group concerning immediate action in cases of urgent reports of enforced or involuntary disappearances received between sessions, the Chairman of the Working Group dispatched a cable dated 11 September 1981 to the Minister for Foreign Affairs of Lesotho transmitting information on two reported disappearances in that country received from a religious organization in Canada. According to that information a leader of the Evangelical Church, Lesotho, disappeared on 4 September 1981 when his house in Maseru, Lesotho, was attacked by unknown assailants using firearms; he has been missing ever since. It was reported that that person's grandson had been killed during the attack. The second case concerned the editor of a Christian newspaper in Lesotho who was also a leader in the Evangelical Church; he reportedly disappeared on 7 September 1981, together with a friend and his car after they had gone to a police station. The police reported they had no knowledge of the whereabouts of the newspaper editor. The religious organization in Canada reported that the Lesotho High Commissioner in Canada had confirmed the disappearances. It was subsequently learned that the body of the editor of the newspaper had been found. The Chairman, in his cable of 11 September 1981, stated that the Working Group would appreciate receiving any information the Government of Lesotho might wish to send in connection with those reports. A summary of the reports is on file with the Secretariat and available for consultation by members of the Commission.

119. The Working Group, at its fifth session, considered the above information and decided to renew its request to the Government of Lesotho for any information it might wish to send on these matters (letter of 24 September 1981). By a letter dated 10 November 1981, the Working Group informed the Government of Lesotho of its wish to be able to consider, at its sixth session, any information the Government might wish to send concerning the reports transmitted to it. As of the date of adoption of the present report no response has been received from the Government of Lesotho.

O. Information concerning Mexico and communications with the Government of that country

120. The Working Group in its report to the Commission on Human Rights at its thirty-seventh session informed the Commission of the favourable response of the Government of Mexico to the Group's inquiries concerning a visit to Mexico by one or two of its members (E/CN.4/1435, paras. 125, 129). During the Working Group's fifth session the representative of the Government of Mexico repeated his Government's invitation to the Working Group to visit Mexico, and in the period following that session discussions took place concerning the most appropriate date for such a visit. As a result of these exchanges it was mutually agreed that the visit should take place from 11 to 13 January 1982.

121. The results of the visit and information on the question of enforced or involuntary disappearances in Mexico will be given in an addendum to the present report.

P. Information concerning Nicaragua and communications with the Government of that country

122. The report of the Working Group to the Commission on Human Rights at its thirty-seventh session contained information on enforced or involuntary disappearances reported to have occurred in Nicaragua (E/CN.4/1435, paras. 131-136). As stated in that report, the Group, in October 1980, transmitted files to the Government of Nicaragua relating to some 70 cases reported to have occurred between June 1979 and August 1980, in particular eight which reportedly occurred in June 1979, 25 in July 1979, 17 in August 1979, five in September 1979, five in October 1979, one in January 1980, one in April 1980, one in June 1980 and two in August 1980. A general description of the characteristics of these cases was also contained in the Group's report to the Commission at its thirty-seventh session which indicated that 34 of those cases related to members of the former National Guard, that most of the victims reportedly disappeared from prisons and that others were reportedly arrested by public forces in their homes or places of work. The Working Group also noted in its report to the Commission that on 19 July 1979 the present Government came to power in Nicaragua replacing that of General Somoza.

123. The Group's report to the Commission also contained information submitted by the Government of Nicaragua in relation to the reports transmitted to it by the Group. The Government, inter alia, dealt with the difficult circumstances of the change of Government of 19 July 1979, the lack of police force and judicial institutions, and the time it took for the new Government to extend its effective control to all parts of the country. The Government also referred to the outbursts of popular revenge which had occurred in the country and which the Government was not able to control. The Government did not provide information on the specific reports which had been sent by the Group on 29 October 1980; rather, it informed the Working Group of its "moral and human conviction that it is both legally and materially impossible to get to the bottom of investigations and establish responsibility concerning government control or disciplinary self-control". (E/CN.4/1435, paras. 137-143 and E/CN.4/1435/Add.1, para. 3). The Working Group, in a letter dated 13 March 1981, informed the Government of Nicaragua of its concern relating to the statement regarding the impossibility of further investigation into cases of enforced or involuntary disappearance.

124. During the Working Group's fourth session it had before it additional information reported on enforced or involuntary disappearances in Nicaragua. This information consisted of reports by relatives transmitted by a private human rights organization in Nicaragua. At that session the Working Group decided to transmit to the Government of Nicaragua copies of the reports received relating to five disappearances reported to have occurred in 1980: two in January, and one each in February, June and August 1980. This was done by a letter dated 29 May 1981. Summaries of the reports transmitted to the Government of Nicaragua are on file with the Secretariat and available for consultation by members of the Commission.

125. By a letter dated 5 September 1981 the Ministry for Foreign Affairs of Nicaragua transmitted to the Working Group the Government's views regarding reports of enforced or involuntary disappearances in Nicaragua. In that communication the Group was provided with information regarding the five reports of disappearances sent on 29 May 1981; one of the five was being held for trial and two had been arrested and released following a full investigation. With regard to the two remaining reports, the Group was informed that no record was found of the persons concerned having been arrested and that the Ministry of the Interior would try to shed light on the matter. It may be noted with regard to these two cases that the reports received by the Group and sent to the Government contained no information on the exact arrest of the persons concerned but did indicate that they had been seen in official places of detention. The Group provided the Government with copies of habeas corpus petitions filed in each case.

126. In addition to the above-described information on specific cases, the Government of Nicaragua, in the letter of 5 September 1981, made comments and provided general information in regard to reports of enforced or involuntary disappearances in Nicaragua and the work of the Working Group. The following are relevant extracts from that letter:

"In spite of its frequently expressed desire to co-operate with the Working Group, if necessary by sending a human rights expert to provide information in person, the Government of Nicaragua is finding it increasingly difficult to understand why accusations by the Permanent Commission for Human Rights are continuing to be accepted when many international bodies have absolutely refused to entertain the question of 'disappeared persons' and the relevant allegations made by the Nicaraguan Permanent Commission for Human Rights. They have done so because, in their view, the cases in question lack credibility and cannot be attributed to the Government of National Reconstruction, which came into being on 19 July 1979 after a bloody war of liberation that put an end to one of the most sinister and most criminal dynasties in the history of mankind.

As stated by the National Commissioner for Human Rights and Humanitarian Matters of Nicaragua on 12 December 1980 at the hearing accorded to him by the Working Group under the chairmanship of Viscount Colville of Culross, the Government of Nicaragua invited the Inter-American Commission on Human Rights (IACHR) on three occasions to make on-the-spot investigations in Nicaragua in order to determine the truth or falsity of the charges made concerning 'enforced disappearances' since the beginning of the mandate of the current

Government of National Reconstruction. As is apparent from the enclosed documents, in its initial report to the Government of Nicaragua, IACHR compiled lists comprising more than 800 cases. After the submission of the document of the Government of Nicaragua entitled 'Observations and comments of the Government of Nicaragua on the report IACHR', the Inter-American Commission, the highest body safeguarding human rights in the regional system, deleted all the lists which it had included originally and acknowledged that they were completely lacking in credibility.

It is the understanding of the Government of Nicaragua that, in accordance with international practice and customs, all remedies at the regional level must first be exhausted and that many bodies in the United Nations system take no account of, or regard as inadmissible, accusations made within the regional system in order to avoid problems of competence of jurisdiction or out of respect for the decisions of such eminent regional bodies as IACHR (see article 5 of the Optional Protocol to the International Covenant on Civil and Political Rights)."

The letter refers to the five cases transmitted on 29 May 1981 and provides the above-described information on them. The letter then continues:

"...

"(d) Subject to a more detailed statement on the accusations submitted by the Permanent Commission for Human Rights which will be transmitted to us by the Working Group, the Nicaraguan Government wishes to reaffirm to the Chairman of the Group its desire to continue to co-operate and states that no charge has ever been made by an international body concerning reprisals against persons making accusations. The Government of Nicaragua nevertheless wishes expressly to point out that after visiting Nicaragua at the invitation of the Junta Government, IACHR also received many accusations which were submitted by the Permanent Commission for Human Rights and were included in its initial report. However, following the clarifications given and the evidence presented by the Government of Nicaragua, as well as the evidence collected by IACHR itself, the latter totally rejected the lists which had been submitted to it and its final report published this month contains not the slightest reference to cases of missing persons because it has recognized that the information furnished by the Permanent Commission of Human Rights lacked credibility. This report will be brought to the attention of the General Assembly of the Organization of American States to be held in December in Saint Lucia and we shall send a copy to the Working Group.

The Government of Nicaragua would like in its turn to obtain from the Working Group fuller information on these alleged disappearances which have made it necessary for the National Government to carry out investigations of cases such as that of Guadalupe Arce Cruz, who is not even described in the accusation as having been detained but as 'having gone on an errand and

not having returned home'. Similarly, there is the case of Tomas Suarez Martinez who, according to his own father, was arrested in June 1979 at the height of the Somoza era and was then seen on 2 January 1980 in two different places - the Free Zone and Police Headquarters.

The Government of Nicaragua wishes to express its concern about the fact that accusations of this type are being entertained. They would be unacceptable to any Government since they do not meet the minimum requirements for particulars concerning the missing detainee and, in the final analysis, harm the image of a Government which is struggling to establish a regime in which human rights are fully ensured (...)."

"The Government of Nicaragua cherishes the firm hope that the Working Group on Enforced or Involuntary Disappearances will, under the Chairmanship of Viscount Colville of Culross, take careful account of not only the decision of IACHR, but also that of the first Latin American Congress of Relatives of Missing Persons, decisions which totally absolve the Government of Nicaragua from any connection with the allegations relating to this atrocious criminal activity.

The Council of State of Nicaragua is studying a draft decision supporting the draft convention declaring 'enforced disappearances' to be a crime against humanity. In addition, the Government of Nicaragua has in various forums called for an extension of the mandate of the Group chaired by Viscount Colville of Culross so as to enable it effectively to carry out its task, thus confirming the Government's intention of continuing to co-operate with the Group.

Consequently, the Government of Nicaragua reiterates its firm hope that the Group will reject the allegations submitted, thereby reaffirming the right of the Nicaraguan Government to preserve its image of faithful attachment to the full enjoyment of human rights and fundamental freedoms."

Enclosed with that letter of 5 September were copies of the initial report of the Inter-American Commission on Human Rights with regard to Nicaragua, the Government's observations on that report and a copy of the chapter of the final report of the Inter-American Commission dealing with the right to life. The information transmitted by the Government is on file with the Secretariat and available for consultation by members of the Commission.

127. The report on the situation of Human Rights in the Republic of Nicaragua approved on 30 June 1981 by the Inter-American Commission on Human Rights (document OEA/SER.L/V/II.81.53, doc. 25) in its chapter II on the right to life contains no specific treatment as such of enforced or involuntary disappearances. However, that chapter deals with reports of illegal executions which allegedly occurred in Nicaragua soon after the change of Government of 19 July 1979 and under that subject the report deals explicitly with nine reports which had been transmitted as reports of enforced or involuntary disappearances by the Working Group to the Government of Nicaragua on 29 October 1980. A number of other cases which had been received by the Working Group were also dealt with in the part of the

Inter-American Commission's report on executions. The Inter-American Commission in its report stated that it considered that there had not been nor was there a policy, by the new regime of violation of the right to life of its political enemies. The Inter-American Commission pointed to the abolition of the death penalty in that regard, and stated that most of the events described had occurred in July 1979, a few days after the change in Government. The Working Group notes the Inter-American Commission's statement that, although the Government of Nicaragua had the clear purpose of respecting the right to life, during the weeks immediately following the change in regimes and when the Government did not yet exercise effective control over public forces, illegal acts violating the right to life took place which were not investigated and the persons responsible were not punished.

128. By a letter dated 13 November 1981 the Government of Nicaragua was informed of the date of the Working Group's sixth session and of the Working Group's wish to be able to consider on that occasion any information the Government might wish to send with respect to those cases on which information had not been received.

129. Through a communication of 4 December 1981 the Government of Nicaragua referring to the Working Group's letter of 13 November 1981 called attention to previous responses from the Government and stated that "Most of these allegations concern occurrences for which it has been established that my Government can accept no responsibility. If these are excluded, there remain only a few cases, some of which have already been the subject of detailed replies. In the remaining cases, of which there are only two, investigations have as yet yielded no result. Nevertheless, we shall continue our enquiries". Reasons were given for the difficulties encountered in the investigations. The Government stated that no problem of disappearances existed in Nicaragua and referred again to the conclusion of the Inter-American Commission on Human Rights that there was no question of enforced or involuntary disappearances in Nicaragua. The full text of this communication is reproduced in annex XIV.

130. The concern of the Working Group for the protection of persons who provide information about enforced or involuntary disappearances was mentioned above, in paragraph 17. In this regard, the Working Group was informed on 20 and 21 February 1981 by a non-governmental organization in consultative status with the Economic and Social Council and by a private human rights organization in Nicaragua that a person who had provided information on enforced or involuntary disappearance to the Working Group during a meeting in September 1980 had been arrested in Nicaragua on 19 February 1981. The Chairman of the Working Group by a letter dated 23 February 1981 contacted the Government of Nicaragua with regard to that report and requested any information the Government might wish to submit in the matter. By a cable dated 4 March 1981 the Ministry for Foreign Affairs informed the Working Group that the person concerned had appeared before the appropriate court and had been acquitted. The Chairman of the Working Group expressed his thanks to the Government of Nicaragua for the information and for the Government's co-operation in the matter.

Q. Information concerning the Philippines and communications with the Government of that country

131. The Working Group in its report to the Commission on Human Rights at its thirty-seventh session informed the Commission of the reports it had received concerning enforced or involuntary disappearances in the Philippines (E/CN.4.1435, paragraphs 145-147). Reports received from one organization dealt with some 231 reported cases of disappearance for the period 1975 through April 1980.^{12/} Information on the circumstances of the disappearances was given in most cases and in some cases statements were made concerning the public force responsible and places of reported detentions. In July and September 1980 the Working Group transmitted to the Government of the Philippines information on some 200 reported cases of enforced or involuntary disappearances.

132. At the Working Group's third session it had before it detailed information on five cases of reported disappearances submitted by a private organization which the Group decided to transmit to the Government together with a request to receive any information which the Government might wish to send (letter of 29 December 1980). One of the cases concerning which information was transmitted reportedly took place in 1978, one in 1979 and three in 1980 (April and August). In three cases witnesses to the arrest were reported, and in three cases the names of those responsible for the arrest were given. In one case the person reportedly disappeared from prison. The Working Group welcomed the statement by the representative of the Philippines to the Commission on Human Rights at its thirty-seventh session informing the Commission of the end to martial law in the Philippines and stating that the Government of the Philippines was perfectly willing to co-operate with the Group, to which it would send detailed information concerning the cases brought to its attention (E/CN.4/SR.1606, paragraph 14).

133. By a note verbale dated 9 March 1981, the Permanent Mission of the Philippines to the United Nations Office at Geneva transmitted information in relation to the above-mentioned letters of July and September 1980 concerning the above-mentioned reports of disappearances. The information transmitted by the Government of the Philippines read as follows:

"Of the UN Working Group's list of 204 'missing persons', 29 persons are found in the Ministry of Defence's own list of such cases, which evidently does not show any government involvement whatsoever on the reported disappearances.

Six of those in the UN list are accounted for, having been reportedly slain in Kabankalan, Negros Occidental, for political reasons, sometime in March 1980. Military personnel and local officials of Kabankalan found to be involved in the case are now under government custody and trial by the civil courts.

Eighteen other persons in the UN list are not identified by name and the Philippine Government would like to seek more particulars on these persons along with 152 other named individuals who are presently being subject to records check by the Ministry.

^{12/} Eleven cases were reported for 1975, 50 for 1976, 36 for 1977, 40 for 1978, 75 for 1979 and 19 for January-April 1980.

Many of those reported missing are apparently from Southern Philippines and the Government believes that they may have been victims of crossfire in encounters between government troops and rebels at the height of the rebellion the early seventies. Others may have fled to Sabah, Malaysia, along with some 100,000 Filipinos now living thereat, in the wake of the conflict.

It has always been a known strategy of the underground movement to report new recruits as 'missing persons' in order to mislead the authorities. A case in point was the reported 'disappearance' of Jessica Sales, Christina Catalla, Rizalina Ilagan, Modesto Sison and Adriano Villaber -- all of whom were reported missing abroad. Later, a document found in the possession of Jose Maria Sison, former Chairman of the Communist Party of the Philippines, states that the five persons were killed in an encounter with government troops sometime in 1977. The document was written in Sison's handwriting.

The Government has also had to deal with militant and irresponsible clergy who do not hesitate to harshly criticize the Government. A celebrated case was the alleged kidnapping of Father Raymundo Abadicio by 'military elements'. Bishop Julio Avier Labayen was responsible for extensive publication, through leaflets and print media, of the 'disappearance' of Father Abadicio. Upon investigation, the priest was discovered to have absconded to Frankfurt, Germany on 19 April 1979 in the company of a woman lay worker, with the full knowledge of his superiors. Bishop Labayen refused to correct himself publicly after the case was clarified.

Though we share a deep concern for missing persons in the Philippines, we believe that these persistent reports then to be misleading and may be again part of the overall propaganda effort of the underground to discredit the Government."

134. In a letter dated 23 March 1981 the Deputy Permanent Representative of the Philippines to the United Nations Office at Geneva transmitted to the Group detailed information on the safeguards for detainees in the Philippines, law and procedure under martial law and after the lifting of martial law, and on the current state of human rights in that country. The text of that letter is annexed to the present report (annex XV).

135. At its fourth session the Working Group studied with care the above-described information received from the Government of the Philippines and decided to express its appreciation for the co-operation of the Government and for its expression, in the letter of 9 March 1981, of its deep concern for missing persons. The Group also decided to inform the Government that it would appreciate receiving any further information the Government might wish to send on some specific points raised by the letter of 9 March 1981. The Group requested, in order to have as much up-to-date information as possible, the names of the six persons reported to have died and the names of the 29 persons found on the Ministry of Defence's own list. The Group agreed with the statement made in the letter of 9 March 1981 that the fact that a name appeared on the Ministry's list did not in itself show any Government involvement. The Group also asked to receive any information obtained as a result of the Government's checking of its own records in the 152 cases and requested clarification of reports that one person who had reportedly died had been seen in the company of military intelligence operatives after the date of the reported death. Also at its fourth session the Working Group decided to transmit to the Government of the Philippines information received on two specific cases of disappearances reported to have occurred in June 1980 and in April 1981 (letters of 16 July 1981 and 15 May 1981 respectively).

136. The Working Group at its fifth session had before it reports from relatives concerning the disappearance of four persons and decided to transmit them to the Government of the Philippines together with a request for any information the Government might wish to send (letter dated 21 September 1981). Three of the persons reportedly disappeared at the same time, in July 1981, from a military detention centre in Bataan where they had been held after having been arrested. The fourth person also reportedly disappeared from official detention in June 1981. Subsequent to the transmission of these reports to the Government, a non-governmental organization informed the Working Group that the fourth person had been returned to the detention centre from which he had been reported to have disappeared. Summaries of the reports transmitted to the Government of the Philippines and copies of the Government's replies are on file with the secretariat and available for consultation by members of the Commission.

137. At its fifth session, the Group authorized its Chairman to contact the representative of the Philippines Government in order to emphasize the wish of the Group to receive, as a matter of urgency, details about the cases referred to in paragraph 135 above. This was done. The Working Group through a letter dated 10 November 1981, informed the Government of the Philippines of the Group's wish to be able to consider at its sixth session any information the Government might wish to send. It also stated that it would be happy to meet with a representative of the Philippine Government should the Government so wish. As of the date of adoption of this report the information requested has still not been received.

R. Information concerning Sri Lanka and communications with
the Government of that country

138. The Working Group at its fourth session had before it information from a non-governmental organization in consultative status with the Economic and Social Council concerning the establishment in Sri Lanka, in the second half of 1979, of a Parliamentary Select Committee under the Chairmanship of the Sri Lankan Minister of Trade Lalith Athulathumudali, for the purpose of investigating certain events which had occurred in July 1979 in the northern part of Sri Lanka. Among the events to be investigated was the reported disappearance of three persons.

139. The Working Group, in a letter dated 29 May 1981, informed the Government of Sri Lanka of the Group's establishment and its mandate, and stated that it would appreciate receiving any information the Government might wish to send on the Select Committee, including the Committee's report when available. By a letter dated 13 November 1981, the Government of Sri Lanka was informed of the sixth session of the Working Group and of the Group's wish to consider at that session any information the Government might wish to transmit. By a letter dated 26 November 1981, the Government of Sri Lanka informed the Working Group that the Parliamentary Select Committee had not been able to conclude its sittings. The Government stated that the Committee had held about 30 sittings and was expected to conclude its work in the next few months. The Government said a copy of the Committee's report would be provided to the Group.

S. Information concerning Uganda and communications with the Government of that country

140. The Working Group at its fourth session had before it a report transmitted by a non-governmental organization in consultative status with the Economic and Social Council to the effect that an official of a Ugandan political party had been arrested at his home in Kampala in March 1981 by members of the Uganda National Liberation Army. The organization reported that the person concerned had last been seen in military custody and that he had been taken to a military police barracks in Kampala. It was reported that the Ugandan authorities denied that the person concerned was under detention and that he was still missing.

141. By a letter dated 1 June 1981, the Working Group transmitted that information to the Government of Uganda together with a request for any information the Government might wish to send regarding that report. By letters dated 24 September and 10 November 1981, the Working Group repeated its wish to receive any information the Government might wish to send. By the letter of 10 November 1981, the Government was informed that the Working Group would be happy to meet with a representative of the Government of Uganda during the Group's sixth session should the Government so wish. A summary of the report transmitted to the Government of Uganda is on file with the secretariat and available for consultation by members of the Commission. As of the date of adoption of this report no response has been received from the Government of Uganda.

T. Information concerning Uruguay and communications with the Government of that country

142. The Working Group's report to the Commission on Human Rights at its thirty-seventh session contained information on reports of enforced or involuntary disappearances in Uruguay, including an analysis of the source and contents of the reports, responsible authorities and places where the missing persons were reported to be held. During 1980 the Group transmitted to the Government reports on 15 disappearances covering the period 1974 to 1980. Nine of the cases were reported to have occurred in Uruguayan territory and five in Argentina with the alleged participation of the Uruguayan security forces. One case related to a Uruguayan citizen who was reported to have been arrested in Paraguay and sent to Uruguay. During 1980 the Government provided information on 16 reported cases of disappearance; one of the persons who had reportedly disappeared in 1980 was being held for trial (E/CN.4/1435, paragraphs 150-163 and E/CN.4/1435/Add.1, paragraph 5).

143. Since the extension of the term of its mandate the Working Group has transmitted to the Government, in accordance with its urgent procedures, one report from a relative concerning a man alleged to have disappeared from a Uruguayan prison. The Government responded by indicating that in accordance with a decision of an investigating magistrate the person had been removed from prison and that he had subsequently been returned. The Working Group also transmitted to the Government two statements from witnesses with regard to the disappearance of the person reportedly taken from the Venezuelan Embassy in Montevideo; one statement was by a person who reported having witnessed the arrest and provided information on the persons responsible and the other was by a person who reported having been detained with the missing person in a clandestine detention centre and provided the names of some of the persons in charge.

144. The Working Group also transmitted to the Government, by a letter dated 17 November 1981, excerpts from comments made to the Group regarding the information provided earlier by the Government and contained in the Group's last report to the Commission. Those comments were submitted by an association of relatives of missing Uruguayans which also drew the Working Group's attention to documents containing the views of the Human Rights Committee with regard to two communications both of which alleged that persons were arrested and held in detention outside Uruguay by Uruguayan security agents. For the text of these views see annex VIII.

145. Also by the letter dated 17 November 1981, the Working Group transmitted to the Government of Uruguay a report received from a grandparent that, according to witnesses, on 18 May 1978 a 23-month-old girl was taken away together with her mother and father by a group of armed men from a specified location in Montevideo, Uruguay, and that the parents and child have been missing ever since.

146. By a letter dated 19 November 1981 the Working Group informed the Government of Uruguay that it would appreciate being able to meet during its sixth session with a representative of the Government of Uruguay and to consider at that session any information the Government might wish to send.

147. In the course of its sixth session the Working Group met with the representative of the Government of Uruguay. During that meeting the Uruguayan representative asked the Working Group to give the problem of enforced or involuntary disappearances in the Republic of Uruguay its correct dimension. The Government of Uruguay had followed the country's traditional and historical policy of bringing all suspected criminals before the courts where they had been judged and either found guilty or acquitted. He pointed out that the death penalty had been abolished in Uruguay and had not been reintroduced even during the period of instability. He also stated that of more than 100 cases of missing Uruguayan citizens reported to be missing, all, with the exception of 8 or 10, had taken place in neighbouring countries. The Government of Uruguay had made many efforts to obtain information concerning those cases from the Governments of the countries concerned. With regard to the 8 or 10 cases reported to have occurred on the territory of Uruguay, the Government was still making every effort to determine the persons' whereabouts or fate. With regard to the reports of arrests by Uruguayan agents outside the country, a full explanation had been provided to the Commission on Human Rights; those cases did not refer to missing persons. The representative of Uruguay also pointed out that his Government had received, just a few weeks before the meeting, the Group's request for information, dated 17 November 1981, and had not had the time to investigate or prepare its answer; a written response would be provided to the Working Group when the information became available. Extracts from the statement to the Working Group by the representative of Uruguay are reproduced in annex XVI.

U. Information concerning Zaire and communications with
the Government of that country

148. The Working Group at its fourth session had before it information on enforced or involuntary disappearances in the Republic of Zaire. By a letter dated 29 May 1981, the Working Group informed the Government of Zaire that it had received communications and expressions of concern relating to enforced or involuntary disappearances reported to have occurred in Zaire. Furthermore, as a result of a decision taken at its fourth session, the Working Group transmitted to the Government of Zaire, by letter dated 1 June 1981, information concerning nine cases of enforced or involuntary disappearances reported to have occurred in 1975, 1977, 1978 and 1979.

149. The reports transmitted to the Government of Zaire were submitted to the Working Group by a non-governmental organization in consultative status with the Economic and Social Council. They concerned disappearances alleged to have occurred between September 1975 and February 1979: five of the disappeared persons were reportedly arrested in September 1975, one in July 1977, two in November 1978 and one in February 1979. The persons reported to have been arrested were all male and all held Zairean nationality. The professions of two of the persons reported missing are given, one is said to be a librarian and the other a businessman who was formerly a university lecturer.

150. The arrests were reportedly made in Kinshasa, in Kikwit (region of Baudundu) and in other unspecified places in the regions of Bas-Zaire or in the southern regions of Kivu. Soldiers are reported to have carried out the arrest in three cases. In one case it is reported that the disappeared person was arrested together with another member of his family who, after his release, reported having shared the same cell with the disappeared person for five months of his period of detention. In most cases the persons reported to have been arrested are said to have been taken to named official detention centres, such as Kikwit prison, the military headquarters of Kalemie (in the north of Shaba), the military prison of N'Dolo in Kinshasa or another prison in Kinshasa. In all cases the present whereabouts or fate of those persons are reported to be unknown. The information transmitted to the Government of Zaire is on file with the secretariat and available for consultation by members of the Commission.

151. During its fifth session the Working Group reviewed the information on enforced or involuntary disappearances in Zaire it had transmitted to the Government of that country by its letter dated 1 June 1981. By letters dated 24 September 1981 and 13 November 1981 the Working Group renewed its request to the Government of Zaire for any information it might wish to send concerning those cases. As of the date of adoption of the present report no response has been received from the Government of Zaire.

V. Reports of enforced or involuntary disappearance
concerning more than one country

152. The Working Group has received numerous reports of the enforced or involuntary disappearance of persons who are not nationals of the country in whose territory they disappear. In many cases, the involvement of the security forces of the person's country of nationality has been alleged. In a great number of cases the collaboration, or at least the acquiescence, of the authorities of the country in which the disappearance occurred has also been reported. However, in other cases, no indication to this effect is given and, indeed, there are reports of disappearances resulting from abductions allegedly carried out by one country's Governmental forces in the territory of another country against the will of the Government of the latter country and in violation of its territorial sovereignty.

153. In its report to the Commission on Human Rights at its thirty-seventh session the Working Group dealt with certain reports of enforced or involuntary disappearances in which the collaboration of the security forces of more than one country had been alleged (E/CN.4/1435, paragraphs 173-174). The Group referred in particular to a number of reports relating to Uruguayan citizens living in Argentina who had reportedly been arrested or abducted by members of the Argentine security forces, acting alone or together with members of the Uruguayan security forces, and then put at the disposal of the Uruguayan authorities. The Group also referred to the cases of one Uruguayan citizen who disappeared in Paraguay,

five Argentine citizens who were reportedly arrested in Peru and who then disappeared, and two children who disappeared after having been reportedly arrested in Argentina together with their parents (Uruguayan nationals) and later reappeared abandoned in Chile. In all those cases it was alleged that the security forces of the country in which the disappearance took place collaborated with the forces of the missing persons' country of origin.

154. Relevant to the above situations are the views adopted by the Human Rights Committee on 29 July 1981, in connection with two cases submitted to it under the Optional Protocol to the International Covenant on Civil and Political Rights. One of those cases related to a Uruguayan citizen who was reportedly abducted in Argentina by members of the Uruguayan security forces aided by Argentine paramilitary groups and who appeared four months later in Uruguay, in official custody, after having been held in clandestine detention centres in Argentina and Uruguay (see also above paragraph 48). The other case related to a Uruguayan citizen who was reportedly arrested in Brazil together with her two children and another person, by Uruguayan agents with the collaboration of two Brazilian police officials; all these persons were forcibly taken to Uruguay and remained missing for some days, until the detention of the two adults was acknowledged by the authorities and the two children were handed over to relatives. The Brazilian agents involved were reported to have been arrested and placed on trial in Brazil. In both of the above cases the Committee concluded that the allegations made by the concerned parties had not been adequately refuted by the Uruguayan Government, or had not been refuted at all, and found that violations of several provisions of the Covenant had taken place outside Uruguayan territory (see annex VIII).

155. The Working Group has in the present report (paragraphs 106-108) included information relating to the disappearance of 26 Salvadorian citizens in Honduras; they were reportedly arrested by members of the security forces of Honduras. With respect to at least five of those persons, precise information has been received to the effect that they were handed over to the Salvadorian authorities. Furthermore, it has also been reported that one Salvadorian refugee living in a camp in Honduras was forcibly taken back to El Salvador during a raid carried out into that camp by members of the Salvadorian army in late 1981.

156. The Working Group has also received information (chapter IV below) relating to a number of persons who were taken prisoner by South African armed forces during several raids made into the territory of Angola and who have subsequently disappeared.

157. These allegations that security forces operate outside their own countries in such a way as to cause the disappearance of persons warrant the close attention of the international community, as do the allegations regarding the co-operation of different security forces in such cases of disappearance. Further, such extra-territorial operations of security forces could well undermine the basic protection due to refugees and lead to violation of the generally accepted principle of non-refoulement set forth in article 33 of the Convention relating to the Status of Refugees adopted on 28 July 1951. Further, such activities by security forces may place in danger a person's enjoyment of his rights under article 14 of the Universal Declaration of Human Rights, which reads "Everyone has the right to seek and to enjoy in other countries asylum from persecution".

IV. INFORMATION CONCERNING ENFORCED OR INVOLUNTARY DISAPPEARANCES
IN SOUTH AFRICA AND NAMIBIA AND COMMUNICATIONS WITH THE
GOVERNMENT OF SOUTH AFRICA

South Africa

158. In its report to the Commission on Human Rights at its thirty-seventh session the Working Group dealt in detail with the legislation of South Africa in matters of arrest and detention. Provisions of various inter-connected legal measures were quoted including the Internal Security Act 1950, the Criminal Procedure Act 1955, the Terrorism Act of 1967, and the Police Amendment Act of 1980. The Working Group concluded that, if the information it had collected was accurate, the South African State "has equipped itself with a body of legislation which can ensure that, quite lawfully, a person may disappear without the relatives being able to obtain any information about him." (E/CN.4/1455, paras. 175 to 178 and 185). No indication has been received by the Group that its statement of the law was inaccurate.

159. By a letter dated 29 December 1980 the above-described legislative provisions and the interpretation placed upon them by the Working Group were transmitted to the Government of South Africa together with the Group's request to receive any information or views which the Government might wish to send. By letters dated 14 August 1981, 24 September 1981 and 10 November 1981 the Group's request for information of views was repeated.

160. Also in its report to the Commission the Working Group referred to three specific instances of reported enforced or involuntary disappearances in South Africa in 1976, 1977 and 1978 (E/CN.4/1455, para. 178). A non-governmental organization in consultative status with the Economic and Social Council provided details obtained from relatives on these cases; the three men had been arrested by South African authorities, held under the legislation referred to above and then their families had been told they had been released, but they had never been seen again. By the above-mentioned letter of 29 December 1980 details on these cases were transmitted to the Government of South Africa together with the Group's request to receive any information of views which the Government might wish to send. By letters dated 14 August 1981, 24 September 1981 and 10 November 1981, the Group's request for information or views was repeated. To date no response from the Government of South Africa has been received regarding the Group's various communications.

Namibia

161. The Working Group in its report to the Commission on Human Rights at its thirty-seventh session reviewed information then available on enforced or involuntary disappearances in Namibia (E/CN.4/1455, paras. 179-182). The Working Group referred to the adjournment of a hearing in the Windhoek Supreme Court with respect to an application by the wives of three men who alleged that their husbands were being detained by South African forces; the hearing was adjourned when the Government stated that the police or defence forces had not detained the men. The Working Group, by the above-mentioned letter of 29 December 1981, transmitted to the Government of South Africa details of these cases, which had been collected from relatives by a non-governmental organization in consultative status with the Economic Council. The Group requested any information the Government might wish to send in the matter. All three disappearances reportedly took place in 1979, two in May and one in June.

In one case, the exact details of the missing person's arrest were not given but it was reported that the sister of the missing person had been detained when making inquiries about him. In another case the relative reported receiving information that the person concerned had been detained by Government forces at a specified border post. In the third case the wife reported witnessing the arrest of her husband by six South African policemen who forced entry into their home, searched it and left with the person, who disappeared. In that case the wife reported receiving official confirmation that the husband was held at a specified Government camp; that information was later denied. By letters dated 14 August 1981, 24 September 1981 and 10 November 1981, the Group's request to the Government of South Africa for information and views was repeated. To date no response has been received from the Government of South Africa.

162. In its report to the Commission on Human Rights at its thirty-seventh session the Working Group also dealt with reports that South African authorities had detained persons in neighbouring countries, transported them to Namibia and, by refusing to acknowledge the detentions, made those persons in effect disappear. The Working Group provided information on the detention by South African authorities at a camp in Southern Namibia, near Hardap Dam, of about 120 persons detained by South African forces at Kassinga, in Southern Angola, during a raid in May 1978 (E/CN.4/1455, para. 162). The information contained in the Group's report was confirmed in a paper, released by the Centre Against Apartheid on 24 September 1981, which had been prepared for the Special Committee Against Apartheid by Lord Gifford, a United Kingdom barrister. According to Lord Gifford's report, at least 118 Namibian detainees are held at the Hardap Dam camp and it is possible that further persons captured at Kassinga may be held at prisons or detention centres elsewhere in Namibia. Lord Gifford states that "the Kassinga detainees have been held incommunicado without charge for more than three years, without access to legal representation and, it is believed, in harsh conditions. They are reportedly held under the 'South-West Africa Administrator General's Proclamation Act AGO,' which allows for detention without charge for up to 30 days only."

163. The Working Group notes with concern the information in the report of Lord Gifford according to which since the Kassinga operation in May 1978 such abductions have become a regular practice, touching not only refugees from South Africa and Namibia in neighbouring countries but also nationals of other States. Lord Gifford provides examples from 1980 and 1981 of persons detained in Angola, Mozambique and Swaziland by South African agents. When the confirmed detention in South Africa of an individual arrested outside South Africa is not acknowledged - something which the South African law appears to permit - then these cases are of specific relevance to the mandate of the Working Group. The Working Group has decided to seek further information on these reported disappearances. Summaries of the reports and copies of other information sent to the Government of South Africa are on file with the Secretariat and available for consultation by members of the Commission.

V. SPECIFIC HUMAN RIGHTS DENIED BY ENFORCED OR INVOLUNTARY
DISAPPEARANCES: THE SPECIAL PROVISIONS OF THE RIGHTS
OF CHILDREN AND MOTHERS

164. The Working Group in its report submitted to the Commission on Human Rights at its thirty-seventh session included a chapter setting out those specific human rights which are most seriously infringed by any enforced or voluntary disappearance (E/CN.4/1455, chapter V). So important is this aspect of the question that it has been decided to reproduce, in extenso, in paragraphs 155-168 below, the contents of paragraphs 134-137 of document E/CN.4/1455.

165. The information reflected in the present report shows that in instances of enforced or involuntary disappearance a wide range of human rights of the victim himself and of his family may be denied or infringed. These include civil and political rights as well as economic, social and cultural rights. With regard to the person who is subjected to enforced or involuntary disappearance, the following may be identified as the principal human rights which he is denied.

(a) The right to liberty and security of person. 1/ This is the principal human right denied by the very fact of enforced or involuntary disappearance. Connected rights, such as the right to freedom from arbitrary arrest, 2/ the right to a fair trial in criminal matters 3/ and the right to recognition as a person before the law, are all involved; 4/

(b) Right to humane conditions of detention and freedom from torture, cruel or degrading treatment or punishment. 5/ Some of the information before the Group deals with the conditions of detention, including ill-treatment, suffered by the missing or disappeared persons;

1/ See Universal Declaration of Human Rights, article 5; International Covenant on Civil and Political Rights, article 9; American Declaration of the Rights and Duties of Man, article I; American Convention on Human Rights, article 7; and European Convention on Human Rights, article 5.

2/ See Universal Declaration of Human Rights, article 9; International Covenant on Civil and Political Rights, article 9; American Declaration of the Rights and Duties of Man, article XXV; American Convention on Human Rights, article 7; and European Convention on Human Rights, article 5.

3/ See Universal Declaration of Human Rights, articles 10 and 11; International Covenant on Civil and Political Rights, article 14; American Declaration of the Rights and Duties of Man, articles XVIII and XVI; American Convention on Human Rights, article 8; and European Convention on Human Rights, article 6.

4/ See Universal Declaration of Human Rights, article 6; International Covenant on Civil and Political Rights, article 10; American Declaration of the Rights and Duties of Man, article XVII; American Convention on Human Rights, article 5.

5/ See Universal Declaration of Human Rights, article 9; International Covenant on Civil and Political Rights, articles 7 and 10; American Declaration of the Rights and Duties of Man, article XXV; American Convention on Human Rights, article 5; and European Convention on Human Rights, article 5.

(c) Right to life, 6/ portions of the information received by the group indicate that during detention the missing or disappeared person may be killed.

166. Disappearances of the sort under consideration by the Group also involve infringements of certain of the "Standard Minimum Rules for the Treatment of Prisoners" approved by the Economic and Social Council in its resolution 663 (XXIV) of 31 July 1957. 7/ Relevant to enforced or involuntary disappearances are the following rules of a general nature which, under rule 4, are applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures": rule 7, which requires that detailed records shall be kept for each prisoner; rule 37, which ensures that prisoners shall be able to communicate with their family; and rule 44, which requires the authorities to inform a prisoner's spouse or nearest relative in the case of his death, or serious illness, and affords the prisoner the right to inform at once his family of his imprisonment or his transfer to another institution. Rule 52, which applies to untried prisoners also recognizes the prisoner's right to communicate with his family and to inform his family immediately of his detention.

167. If these may be said to be the principal human rights of the missing persons who suffers enforced or involuntary disappearance, a reading of the Universal Declaration and the International Covenants on Human Rights shows that to a greater or lesser degree practically all basic human rights of such a person are infringed. Particular concern has been expressed to the Group about the right to a family life of the persons 8/ who suffer enforced or involuntary disappearance and of their relatives. In the case of pregnant women, children and refugees who suffer enforced or involuntary disappearance, their specific rights, as contained in the international human rights instruments, are infringed, for example the right of every child to measures of protection. 9/ A review of the economic, social and cultural rights guaranteed by the various international human rights instruments shows that most of them are denied to a greater or lesser extent enforced or involuntary disappearances.

168. The information before the Group shows that various human rights of the members of the family of a missing or disappeared person may also be infringed by that person's enforced absence. Their right to a family life may be seen as the principal

6/ See Universal Declaration of Human Rights, article 3; International Covenant on Civil and Political Rights, article 6; American Declaration of the Rights and Duties of Man, article I; American Convention on Human Rights, article 4; and European Convention on Human Rights, article 2.

7/ See document ESA/SDHA/1.

8/ See Universal Declaration of Human Rights, articles 12 and 16; International Covenant on Civil and Political Rights, articles 17 and 23; American Declaration of the Rights and Duties of Man, article V and VI; American Convention on Human Rights, articles 11 and 17; and European Convention on Human Rights, articles 8 and 12.

9/ See Universal Declaration of Human Rights, article 25; International Covenant on Economic, Social and Cultural Rights, article 10; International Covenant on Civil and Political Rights, article 24; American Declaration of the Rights and Duties of Man, article VII; American Convention on Human Rights, article 19.

right involved but other rights of an economic, social and cultural nature can also be directly affected; for example, the family's standard of living, health care and education may all be adversely affected by the absence of a parent. The adverse impact of the disappearance of a parent on the mental health of children has been pointed out elsewhere. 10/ Finally, the Additional Protocol I to the Geneva Convention of 12 August 1949 has recognized "the rights of families to know the fate of their relatives" and this right of relatives to be informed of the whereabouts and fate of missing or disappeared family members has been reflected in resolutions of United Nations bodies. 11/

169. This year the Working Group has been particularly concerned about reports of the disappearance of babies and children. There is no doubt that while practices resulting in enforced or involuntary disappearances can under no circumstances be justified or excused, those situations affecting or involving children are particularly grave and warrant every attention and concern from the international community. Instances of the enforced or involuntary disappearance of children may not only deny or infringe some or all of the rights referred to above but, in addition, they may entail breaches of specific principles on children's rights set forth in a number of international instruments, both of a universal and a regional character and constitute a direct attack on the family as a social institution. The following paragraphs reflect some of the most significant among those principles.

170. The right of children, pregnant women and nursing mothers to benefit from special measures of protection, care and assistance has been affirmed in numerous international instruments, among them, the Universal Declaration of Human Rights, 12/ the International Covenant on Civil and Political Rights, 13/ the International Covenant on Economic, Social and Cultural Rights, 14/ the Declaration of the Rights of the Child, the American Declaration of Rights and Duties of Man, 15/ the American Convention on Human Rights, 16/ the European Social Charter, 17/ the Geneva Convention relative to the protection of civilian persons in time of war, 18/ the two protocols to the Geneva Conventions for the protection of victims of war 19/

10/ See for example, the report of the Ad Hoc Working Group on the Situation of Human Rights in Chile to the General Assembly at its thirty-third session, A/33/531, para. 376.

11/ See for example, the most recent resolutions of the General Assembly on the situation of human rights in Chile, 34/179 and 35/188.

12/ Article 25 (2).

13/ Article 24 (1).

14/ Article 10 (2) and (5).

15/ Article VII.

16/ Article 19.

17/ Part I, No. 4 and 17.

18/ Articles 14, 17, 24, 30 (5), 30, 35, 31, 34.

19/ Protocol I, Article 3 (c) in conjunction with Article 16 and Articles 70, 73 (1) (2) and 77 (1); and Protocol II, Article 4 (3).

and the Declaration on the Protection of Women and Children in Emergency and Armed conflict adopted by the General Assembly on 18 December 1974. Since part of the information received by the Working Group relates to the disappearance of pregnant women, it should also be recalled that the American Convention on Human Rights states that the right to life shall be protected from the moment of conception, 20/ and that the application of capital punishment to pregnant women is prohibited by that Convention, 21/ as well as by the International Covenant on Civil and Political Rights 22/ and by the two Protocols to the Geneva Conventions for the protection of war victims, 23/. Some of the reports considered by the Working Group appear to reveal that violations of these principles have taken place. A number of instruments referred to above contain provisions designed to protect the right of the child to his personal identity, which includes the recognition of, and the respect for, the status derived from his blood relationships. Thus:

(a) The International Covenant on Civil and Political Rights provides that every child shall be registered immediately after birth and shall have a name, 24/ and the American Convention further states that every person has the right to the surnames of his parents, or to that of one of them. 25/ These provisions are particularly relevant to those reports which indicate that children have been born to mothers who were in captivity; and,

(b) The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, as well as the Protocols to the Geneva Conventions, contain detailed provisions aimed at ensuring the identification of children separated from their families as a result of a war. Such provisions include, *inter alia*: the obligation of Occupying Powers to take all necessary steps to facilitate the identification of children and the registration of their parentage, as well as the prohibition against such powers from changing the children's personal status; 26/ the obligation of the Parties to a conflict to establish an official Bureau to provide information on the protected persons who are in its power, a section of which is responsible for taking the necessary steps to identify children whose identity is in doubt; 27/ the obligation of the Parties to a conflict to keep detailed identity records in the case of evacuation of children; 28/ and the obligation of the Parties to a conflict to endeavour to arrange for all children under 12 to be identified by the wearing of identity discs or by some other means. 29/

20/ Article 4 (1).

21/ Article 4 (1).

22/ Article 6 (5).

23/ Article 75 (3) of Protocol I and Article 6 (4) of Protocol II. The latter instrument further makes this provision applicable to mothers of young children.

24/ Article 24 (2).

25/ Article 18.

26/ Fourth Geneva Convention, article 50.

27/ Fourth Geneva Convention, article 50 in conjunction with article 136.

28/ Protocol I, article 73 (5).

29/ Fourth Geneva Convention, article 24.

The Group is of the opinion that if the preceding provisions are binding upon States in time of war or armed conflict, the principles on which they are founded should, a fortiori, be respected in time of peace even if there exists a situation of internal unrest. These principles are particularly relevant to certain reports received by the Group to the effect that small children reported missing may have had their identities concealed or changed and may have been given in adoption or foster care to persons who would not necessarily know their origin. This was found to be the case in two of the reports submitted to the Working Group, involving four children; in these situations, the real identity of the children was later discovered.

171. The above instruments also contain provisions designed to protect the right of the child to be physically under the protection and care of his relations. Thus:

(a) The Declaration of the Rights of the Child states that, wherever possible, the child shall grow up in the care and under the responsibility of his parents, and adds that a child of tender years shall not, save in exceptional circumstances, be separated from his mother; 50/

(b) A number of provisions of the above-cited Geneva Convention and the Protocols deal with question of family unity and set forth the right of children not to be separated from their families, even in cases of internment. These instruments further contain specific provisions concerning the reunification of families dispersed as a result of armed conflicts. 51/

172. This is a formidable list of provisions, and the Working Group feels it necessary to draw attention to the principles thus internationally agreed, and their relevance to the reports on disappearances of children.

30/ Principle 6.

31/ Fourth Geneva Convention, articles 26 and 32; Protocol I, articles 74 and 75 (5); and Protocol II, article 4 (5) (b).

VI. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

173. This report demonstrates that the problem of disappearances remains one of the most serious in the field of human rights. The Group would remind its readers of its words last year: "There must be the deepest concern for the danger to life, liberty and physical security of the disappeared persons, and for the anguish and sorrows caused to their relatives." Further investigations during the year covered by this report have reinforced that opinion. The Group continues to try to ensure that families are informed of any progress.

174. What is more, the number of disappeared persons is increasing. Not all Governments appear to have paid sufficient attention to the massive condemnation directed at this practice. It seems clear to the Working Group, therefore, that the international community should not in any way reduce the intensity with which it pursues the matter.

175. The Working Group has now been active for nearly two years. Its members have been able to study much of the mass of material which has been submitted. Private individuals and organizations have been heard, describing the situation, past or present, in many countries. Some Governments have shown an increasing willingness to supply facts and give some explanations. Members of the Group have had the chance to ask questions and as a result have received a certain amount of useful and instructive information. In the case of some countries, however, this process has not even begun. It is, however, possible to make certain comments for the consideration of the international community.

176. There is every sign that the international community provides an effective forum for the exposure of cases of enforced or involuntary disappearances, and their prevention. Such cases are now receiving both recognition and world-wide publicity and are seen as a sign of trouble. They provoke a multiplicity of protests and inquiries at the international level, especially if national legal systems are not producing the required results. It is not, of course, only through the Working Group that this pressure is brought to bear; but the message is loud and clear, that this sort of disappearance, wherever it may occur, is totally unacceptable to the international community.

177. In chapters III and IV it has been seen that from the countries identified in last year's report the Group has continued to seek the co-operation of Governments with some increase in results; there is, however, much variation in the extent to which this has produced detailed answers in individual cases. In some the Government concerned, when providing information, has sought to indicate that the disappearance was not the result of its own activities, but it is nevertheless exercising its powers to try to produce as much information as possible. As far as some other countries are concerned, a very disappointing lack of response is recorded (although in one instance this may be because the information was transmitted only in recent months). Elsewhere there are promises given that investigations are being made, without, so far, any concrete answers.

178. Now that the technique has been identified and rather better understood, there has emerged a sense of urgency. The Group's experience, since its existence became known, is that criticism and complaint follow swiftly upon a reported disappearance. Fortunately the resultant publicity alone, if not international disapproval, now can occur in time to influence events, on some occasions. What is important is that people in authority in most countries are now aware of this sort of unjust and illegal practice which can be expected to cause a reaction of some significance, and to attract widespread protest.

179. Not all disappearances are the direct responsibility of Governments. There are numerous other reasons why people disappear. Difficulties also arise through lack of detail or documentation in material submitted to the Working Group. There are, however, familiar characteristics of cases of enforced or involuntary disappearances; the Group has been learning to be selective, and has attempted only to transmit those cases where there is sufficient detail and the case bears the mark of an abduction. Governments alone possess the apparatus and resources to make full investigations; the Group has attempted to give them the necessary material for that process.

180. The background of these disappearances and the reactions of the Governments concerned when requested to take suitable action differ from country to country. So do the events which gave rise to them and the time-scale involved. There have been failures in establishing a dialogue with some Governments, but elsewhere the Group detects a certain willingness to solve those cases. This has certainly been assisted by the mandate given to the Working Group to use discretion. In general terms there is a clear duty laid on the Working Group to give a public account of all the activities, but on occasions, for example where personal safety may be in danger, certain confidences can be properly respected and valuable information thereby acquired which would otherwise be inaccessible.

181. As the dialogue has progressed, some Governments have been able to provide answers, at least for recent cases where disappearances have been reported. For older cases there are signs of a willingness on the part of some Governments to embark upon genuine investigations and to keep families informed of the progress of the search, while also seeking their assistance to provide extra information. There is one priority in the minds of the families, their simple demand is for facts and answers.

182. Over the last year, Member States of the United Nations have been responding to the Secretary-General's request to inform him of the features of their constitutional, legislative and judicial systems which can be invoked by a relative or other interested person in the case of a disappearance. In most countries, of course, the question has not arisen. There does, however, seem to exist in most constitutional systems a widespread insistence on the protection of the individual from abuse or excess of power by state authorities, and on the necessity to bring any persons detained before a court of law at an early stage. Whilst this process in itself should be sufficient to inform the family of what has happened to their detained relative, some nations go so far as expressly to secure communication with the family. From the evidence it has received and from its own researches, the Group is not aware of any country, where disappearances have been reported, which does not provide for such basic rights. The evidence is overwhelming that relatives and other organizations have constantly resorted to these remedies, but in all too many cases the constitutional and legal safeguards have yielded no result. Evidence to the Group has identified prevailing defects which prevent families from exercising their basic right to trace their relatives:

- (1) When detentions occur, the judiciary is in practice or even in law unable to pursue its search for information from the military or the executive to enable it fully to uphold the constitutional guarantees of personal freedoms;
- (2) The judiciary and officers of the courts may be too afraid for their personal safety to dare to pursue in accordance with law the cases presented to them;

- (3) A variation on this situation occurs where the appointment and likewise the dismissal of judges or magistrates is so dependent upon the executive power, that their propensity to investigate the actions of the executive is profoundly diminished. In many countries there is a dual procedure; both civil and criminal judges and magistrates are involved. The civil courts deal with habeas corpus or amparo (a broader remedy for denial of constitutional rights) or the like, while the criminal courts are empowered to investigate such offences as kidnappings or the abuse or excess in the use of power by members of the executive. Fear or favour can vitiate either jurisdiction;
- (4) On a more international level, there is, in article 4 of the International Covenant on Civil and Political Rights, a special provision safeguarding certain rights even where there may occur a state of emergency or siege. Whilst many national constitutions allow the suspension of certain basic rights in such emergencies, international law protects, inter alia, the following rights as incapable of derogation:
- (i) The right to life (article 6);
 - (ii) Protection from torture or cruel, inhuman or degrading treatment (article 7);
 - (iii) Recognition of everyone as a "person" before the law (article 16) - this has particular application to children.

Even more cogent is a situation where, for example, a decree promulgated in a state of emergency or siege has the effect of derogating from individuals rights guaranteed by the Constitution, where those rights are specified as being inviolate even in the case of an emergency. All those points are highlighted for the Working Group by a particular reference. The Special Rapporteur on the situation of human rights in Chile, reporting in accordance with Commission on Human Rights resolution 9 (XXXVII), has shown in paragraphs 276-293 inclusive of his report to the General Assembly (A/36/594) the result that can be achieved by a brave and persistent judge, despite restrictions imposed upon him.

183. There are valuable examples in this report of countries which have set up special machinery to investigate cases of disappearances. The Group commends such an approach as being available for wider application.

184. The Group is in agreement with the Inter-American Commission on Human Rights ^{1/} that Governments should keep central records to account for all persons that have been detained, so that their relatives and other interested persons may promptly learn of any arrest that may have been made. The Group further agrees that arrests should be made only by competent and duly identified authorities, and that the arrested persons should be kept in premises designed for that purpose. This would do much to reinforce the recommendation of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 15 (XXXIV) that special measures be taken for the protection of persons, including relatives, giving information related to the fate of disappeared persons. These recommendations about the keeping of records are no more onerous than the suggestions in the Standard Minimum Rules referred to in chapter V; yet this practice could solve innumerable problems for relatives of detainees.

^{1/} Annual Report (1980-1981) of the Inter-American Commission on Human Rights, OEA/Ser.L/V/II.54, doc. 9, rev. 1, (16 October 1981) Chapter V.

135. Finally, the Working Group must inform the Commission that the resolution of the phenomenon and of individual cases of enforced or involuntary disappearances depends basically upon the proper implementation of existing national laws. There is no indication that Constitutions or laws need amendment, unless they fail to provide the minimal safeguards in the International Covenant on Civil and Political Rights. All that is required is that practice should equate itself to precept. To the extent that it fails to do so, it may be said that the Working Group has a role to play.

VII. ADOPTION OF THE REPORT

186. At the meeting of 7 December 1981 the present report was adopted and signed by the members of the Working Group on Enforced or Involuntary Disappearances:

(Signed): Viscount Colville of Culross
(United Kingdom)
Chairman/Rapporteur

(Signed): Jonas K.D. Foli (Ghana)

(Signed): Agha Hilaly (Pakistan)

(Signed): Ivan Tosevski (Yugoslavia)

(Signed): Luis A. Varela Quiros (Costa Rica)

ANNEX I

Commission on Human Rights resolution 20 (XXXVI)
(Adopted at the 1563rd meeting, on 20 February 1980)

Question of missing and disappeared persons

The Commission on Human Rights,

Bearing in mind General Assembly resolution 33/173 of 20 December 1978, which requested the Commission on Human Rights to consider the question of missing or disappeared persons with a view to making appropriate recommendations,

Taking into account resolution 1979/38 of 10 May 1979 of the Economic and Social Council, which requested the Commission to consider the question as a matter of priority, and resolution 5 B (XXXII) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Convinced of the need to take appropriate action, in consultation with the Governments concerned, to promote the implementation of the provisions of General Assembly resolution 33/173 and other United Nations resolutions relevant to the plight of missing and disappeared persons,

1. Decides to establish for a period of one year a working group consisting of five of its members, to serve as experts in their individual capacities, to examine questions relevant to enforced or involuntary disappearances of persons;
2. Requests the Chairman of the Commission to appoint the members of the group;
3. Decides that the working group, in carrying out its mandate, shall seek and receive information from Governments, intergovernmental organizations, humanitarian organizations and other reliable sources;
4. Requests the Secretary-General to appeal to all Governments to co-operate with and assist the working group in the performance of its tasks and to furnish all information required;
5. Further requests the Secretary-General to provide the working group with all necessary assistance, in particular staff and resources they require in order to perform their functions in an effective and expeditious manner;
6. Invites the working group, in establishing its working methods, to bear in mind the need to be able to respond effectively to information that comes before it and to carry out its work with discretion;
7. Requests the working group to submit to the Commission at its thirty-seventh session a report on its activities, together with its conclusions and recommendations;
8. Further requests the Sub-Commission on Prevention of Discrimination and Protection of Minorities to continue studying the most effective means for eliminating enforced or involuntary disappearances of persons, with a view to making general recommendations to the Commission at its thirty-seventh session;
9. Decides to consider this question again at its thirty-seventh session under a subitem entitled "Question of Missing and Disappeared Persons".

ANNEX II

Commission on Human Rights resolution 10 (XXVII)
(Adopted at the 1617th meeting, on 26 February 1981)

Question of enforced or involuntary disappearances

The Commission on Human Rights,

Bearing in mind General Assembly resolution 35/173 of 20 December 1978, which requested the Commission on Human Rights to consider the question of disappeared persons with a view to making appropriate recommendations, and all other United Nations resolutions concerning missing or disappeared persons,

Recalling its resolution 20 (XXVI), whereby it decided to establish for a period of one year a working group consisting of five of its members, to serve as experts in their individual capacities, to examine questions relevant to enforced or involuntary disappearances of persons,

Recalling resolution 35/193 in which the General Assembly welcomed that decision,

Recalling resolution 18 (XXIII) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Considering the need to observe United Nations standards and practice regarding the receipt of communications, their transmittal to the Governments concerned and their evaluation,

Taking note of the report of the Working Group,

1. Expresses its appreciation to the Working Group for the work done and to those Governments which have co-operated with it;
2. Notes that the Working Group has not always obtained from governmental authorities the full co-operation warranted by its strictly humanitarian objectives and its working methods based on discretion;
3. Decides to extend for one year the term of the Working Group's mandate, as laid down in Commission resolution 20 (XXVI);
4. Requests the Working Group to submit to the Commission, at its thirty-eighth session, a report on its work together with its conclusions and recommendations, and to bear in mind the obligation to discharge its mandate with discretion, so as inter alia to protect persons providing information or to limit the dissemination of information provided by Governments;
5. Renews its request to the Secretary-General to appeal to all Governments to co-operate in a spirit of complete confidence with the Working Group;
6. Further requests the Secretary-General to continue to provide the Working Group with all necessary assistance, in particular the staff and resources it requires to perform its functions in an effective and expeditious manner, and if necessary to make the necessary arrangements to ensure the continuity of the Secretariat's work;

7. Requests the Sub-Commission on Prevention of Discrimination and Protection of Minorities to continue studying the most effective means for eliminating enforced or involuntary disappearances of persons, with a view to making general recommendations to the Commission at its thirty-eighth session.

8. Decides to consider this question at its thirty-eighth session under a subitem of the agenda entitled "Question of missing and disappeared persons".

ANNEX III

Sub-Commission on Prevention of Discrimination and Protection of
Minorities resolution 15 (XXIV)
(Adopted at the 932nd meeting, on 10 September 1991)

Question of the human rights of persons subjected to any form
of detention or imprisonment

The Sub-Commission on Prevention of Discrimination and Protection of
Minorities,

Recalling General Assembly resolution 35/193 of 15 December 1980 concerning disappeared persons,

Bearing in mind its resolutions 5 B (XXII) and 10 (XXIII) on the question of enforced or involuntary disappearances of persons,

Taking into account resolutions 20 (XXVI) and 10 (XXVII) of the Commission on Human Rights concerning the Working Group on Enforced or Involuntary Disappearances,

Noting with concern that enforced or involuntary disappearances are still occurring, in varying degrees, in many countries,

Having taken note with appreciation of the work of the Working Group on Enforced or Involuntary Disappearances reflected in its first report and of the spirit of co-operation displayed by certain countries,

1. Expresses, in addition, its hope that Governments will respond adequately and promptly to requests of the Working Group for information and that, in a humanitarian spirit, Member States will enable members of the Working Group to visit the countries concerned in pursuance of its mandate;
2. Notes that in certain situations the active efforts of the Working Group may have made it possible, particularly through the use of urgent measures to elucidate the fate of persons reported missing and to prevent or reduce the occurrence of new cases;
3. Reiterates the right of families to know the fate of their relatives;
4. Strongly appeals for the reappearance of all detainees currently held in secret detention;
5. Expresses its conviction to the Commission on Human Rights that, in view of the persistence of violations resulting from the many cases of disappearance of persons which are still occurring in the world, the extension of the mandate of the Working Group on Enforced or Involuntary Disappearances is indispensable;
6. Recommends to the Commission on Human Rights, pursuant to the request made in its resolution 10 (XXVII), to give consideration to the following courses of action aimed at improving the prevention and elimination of enforced or involuntary disappearances of persons:

(a) To take the necessary steps so that world public opinion becomes aware of the grave nature of the contemporary phenomenon of enforced or involuntary disappearances and of United Nations actions to eliminate this practice;

(b) To consider that the occurrence of events on which information has been requested will be presumed to be confirmed if the Government referred to has not supplied the relevant information within a reasonable period of time after the request, provided always that the veracity of the denunciation is not invalidated by other evidence;

(c) To urge States in which persons have been reported to have disappeared to repeal or refrain from adopting laws which could impede inquiries concerning such disappearances;

(d) To give attention to the need for special measures for the protection of persons including relatives, giving information related to the fate of disappeared persons;

(e) To request the Working Group to prepare for the Sub-Commission at its thirty-fifth session a report containing elements of a general nature based on information available to the Working Group and on the Group's own experience in order to permit the Sub-Commission to continue to make appropriate recommendations concerning the issues referred to in paragraph 4 of its resolution 13 (XXIII);

7. Decides to consider the question of missing and disappeared persons as a matter of the highest priority at its thirty-fifth session under the agenda item on the question of the human rights of persons subjected to any form of detention or imprisonment.

ANNEX IV

Excerpts from the statement made to the Working Group
by the representatives of the Grandmothers of
the Plaza de Mayo (Argentina)

We, Abuelas de la Plaza de Mayo, come before the Working Group on Enforced or Involuntary Disappearances, which comes under the United Nations Commission on Human Rights, in order to denounce the unparalleled violation of the rights of children and of their human dignity that has been taking place in our country, the Argentine Republic, since 1976. We are submitting a file containing 73 cases of missing children and babies - I must explain that there are no longer 73; there are 77, as four other cases have just been added. But we are petitioning not only for them but also for the hundreds of children whose fate is unknown and whose grandmothers have still not contacted us, either because Argentina is so vast and the distances mean that it is extremely difficult to make the journey without enough money or because they do not know about us or because they are afraid of reprisals.

In the search for these helpless beings who are our grandchildren, we have appealed for over four years to the military authorities in our country, to judges, to civil and religious leaders, and we have looked for them in juvenile courts, orphanages, foundling homes, children's institutions, police stations and military camps. We have appeared before the Supreme Court of Justice, which declared that it was not competent to hear our applications in 1978 and 1980 for the babies to be protected.

Spurred on by the silence of the Argentine authorities and the lack of any definite response to our instinctive protest as women bereft of our grandchildren, who are the children and babies of our missing sons and daughters we come today before this international body to ask for justice and for fundamental duties of mankind to be fulfilled.

It is public knowledge that two children who disappeared in Argentina in 1976 were found three years later in Chile, where they had been adopted. In March 1980, two little sisters mentioned in our file were found, having also been adopted by a family back in 1978. These girls, Laura Malena Jotar Brito and Tatiana Ruarte Brito, had disappeared with their parents in 1977; but even though she said her name was Tatiana, since she was four years old, they were sent to children's homes, both as NN, in other words, No Name. Tatiana was sent to a children's home at Villa Ilisa, Province of Buenos Aires, and Laura Malena to the Foundling Home in La Plata. They were not handed over to their grandmothers nor were the necessary notices published to locate their relatives. They were later taken from these homes to be adopted by a Buenos Aires family; further on in the relevant file they are referred to by the surname of the adoptive family, but with their own first names. The irregular procedure followed in the case of these little girls made us think that there are other similar cases. In an effort to ascertain the facts, we applied to the presidents of the civil courts for a review of the adoption orders made from 1976 onwards, together with the entries in the register of births made outside the period fixed by law. These steps yielded no results, just like all the others each one of us took when the children were carried off on their own or with their parents to an unknown destination or when they were born while their young mothers were in prison.

Silence or evasiveness was the response in our country. So, we gradually came to place our hopes in help from the rest of the world. We met with understanding and compassion, but the children are still missing and are still growing up far away from us. Our anguish and helplessness are growing too. Treaties, agreements, declarations and covenants on human rights, may or may not be signed, but we women, doubly bereft as mothers and grandmothers, believe there are principles, there are values, that are over and above signatures and declarations. They are what entitle a human being to be called a human being. Scientific and technological advances, or culture and art, or words and intentions are not worth anything if neither men nor organizations can protect a helpless baby against hatred and greed or against some dark reasoning or abnormal urge.

As the Working Group has already pointed out, when a child or pregnant woman disappears, apart from all the fundamental human rights, other rights specifically recognized under international human rights instruments are violated. There is no need to itemise them.

Our grandchildren have been divested of all the rights inherent in human dignity. We are therefore petitioning this international body on their behalf to restore to them their rights, as befits a civilized community that is anxious to preserve the values of mankind. Each and every one of the missing children must be reunited with his lawful family. A solution to this tragedy, which affects three generations cannot be delayed, any longer. The utter helplessness of the missing children and babies makes this clear.

ANNEX V

Excerpts from the statement concerning missing children made to
the Working Group by the representative of the Centre for Legal
and Social Studies (Argentina)

...

There are two categories of adoption (in Argentine law): simple adoption and complete adoption. Complete adoption severs the blood tie, that is to say, the actual parents can never again know anything about the children they have given for adoption. The possibility of reviewing adoption cases - even though the law says they are secret - is based on two very special grounds: legal fraud, or probable fraud, in other words, the improper handing over of a minor or handing over not in conformity with the law. Article 18 of the National Constitution - which is continually violated by the Argentine Government, even though it is our legal cornerstone - establishes strictly as a constitutional guarantee due legal process for all Argentines, that is to say, the possibility of defence, which applies to families, minors and any person who has any kind of legal problem. That is guaranteed in the Constitution and the Supreme Court of Justice of the Nation, that is to say, the Argentine High Court has established, through its jurisprudence (I think that any Englishmen here will understand what I mean by jurisprudence), namely, a jurisprudential interpretation of the Constitution, that no judgement is final, no case is finally closed, if it is proven that the right of defence in the proceedings has been violated. (...) The difference between the law of simple adoption and that of complete adoption lies not so much in the reversibility of the adoption procedure as in the economic consequences of the adoption. Simple adoption has effects with regard to inheritance that are different from those which exist in the case of complete adoption, but this does not interest us here. What is involved is strictly a problem of inheritance. Furthermore, simple adoption can be revoked with the consent of the parties, the parties here being the adopted child and the adoptive father, when the adopted child comes of age. This is the fundamental difference vis-à-vis the law on complete adoption. (...)

Legal proceedings relating to minors are conducted in two different ways. On the one hand, there are private bodies that give children for adoption, in which the parents give up their rights in respect of the child through an act deposited before a notary. There are also public bodies that give children for adoption and there are juvenile courts. The juvenile courts operate differently in each province and in the federal capital. That is to say, each province has its own legislation on minors. The important point is that a child available for adoption cannot be handed over by them for adoption. That is to say, they cannot give them away for adoption. They place the child in care and subsequently a civil judge, that is to say, some other jurisdiction within the Argentine juridical system, conducts the adoption proceedings. Juvenile court judges, many of whom have acted as accomplices in this activity, have not given sufficient publicity to missing children. I know this because I myself was a juvenile court judge until 1976 in Argentina, and late in December 1975, I received a call from the federal police to the effect that Army Corps 1 had conducted an operation right in the centre of Buenos Aires, where two minors had been abandoned; the police had been told to give the children to a children's home which would give them away for adoption. The children involved were a three-month-old baby boy and a little girl aged one and a half years; of course, they did not know their names, they could not give their names, they could not say anything at all. In this

situation, I wanted to keep the children at my disposal. I handed them over in care to a family pending adoption, informing the family of the children's origin - namely that, their parents were supposedly people who had been taken by the Army, and telling them that I intended to publicize the case sufficiently, so that if the natural family came forward, we could give the children to the family. (...) In that situation we put announcements in all the newspapers and the legitimate family turned up, living in Córdoba, many miles away from Buenos Aires. And it was to these relatives, who were actually the grandparents, that we gave the children, who had already been placed in the care of another family.

I think that if one acted seriously, legally, clearly and truthfully, the horrors we have seen up to now would not occur. In fact, a juvenile court judge, almost two years ago, did the same thing. He publicized the matter and the paternal grandfather managed to recover the children.

In the [Jotar] Britos case, the children were found in the San Martín area and handed over to a juvenile court judge. The province of Buenos Aires police telephoned the judge and told him that on a street corner in the quite large town of San Martín a little girl of two or three years and a small baby girl had been found abandoned. This is not normal or natural. Children are not found abandoned on street-corners in Argentina. No one can really believe this. Generally, in cases of abandonment, when the family secretly abandons a child, they abandon him in some other way, they leave him in an institution, they leave him in a church doorway ..., the cases are well known. But when you are dealing with a child that has been cared for and well fed, when it is obvious that the child has been well cared for in his family ... It is a bit like an abandoned dog and a dog that has run away from home. One can see the difference between the two cases.

The judge concealed all this information despite the fact that the little girl said that her name was Tatiana Eduarte. Her real name was Tatiana Ruarte. In Argentina Tatiana is not a common name. If they had made it known that they had found Tatiana, the grandmothers, who were looking for her, would have found her. The girls were given to an institution for children... After she had been kept in the institution for several months, she was given to a family. The whole matter had become so distorted that not even the adoptive parents were told that she had a sister. They learned this from the older girl and went to fetch her. They did not even take account of the fact that when there are two children who are siblings, they should both be given in adoption to the same family, or at least every effort should be made to keep them from being separated. She was given away and the origin of the children was kept a secret. That is how the situation has developed in Argentina. After they had been given away and as a result of much effort on the part of the grandmothers, the juvenile court lawyer discovered that the little girls in the pictures that you have were the two girls that had been given away earlier for adoption.

We intervened and were very lucky since the juvenile court judge in the capital said that, given the origin of the children, it was not permissible, as I was saying to you, to hand them over for adoption because that violated the parents' right of defence. And so he would not recognize the adoption proceedings. He said that the natural grandmothers must be summoned, and that he knew where they lived and where they were. We intervened in the proceedings and they have now been suspended, with the agreement of the grandmothers that if one day the natural parents appear, the children should be handed over, and furthermore a schedule has been drawn up for visits to the grandmothers, in order that the children should meet them as grandmothers; in other words, although they have adoptive parents, they should also have their natural grandmothers. That is what we have achieved in the Jotar case.

I believe the adoptive family was innocent in this matter, you see. They had very bad luck in this adoption because they got involved in a very serious case. Everything from a legal point of view, that is, as far as legal interpretation goes, could have been foreseen. I have told you that the distinction between simple and complete adoption has more to do with inheritance than with anything else. I think that generally speaking the children have not been given for adoption but have been handed over and registered late (delayed registration) or directly as natural children, because everything is done with the connivance of the registry offices and the military doctors that have attended the births and by means of false birth certificates.

The Argentine Government clearly has records, and we suppose even microfilm records, covering each of the cases of missing persons and minors handed over to others. They have the information. They have it and they also have the army, navy and air force chaplains. (...) Army chaplains are members of the armed forces as well as of the Church, and the Church has much information on the subject. The chaplains are the ones who have somehow obtained information and said where some of the children are. This is not a problem of legality but, strictly speaking, one of illegality. It can be solved not through law but through political pressure. As far as the legal problem goes, after we obtain information through the Government, we have adequate constitutional and legal remedies to be able to deal with the legal situation and prosecute the guilty in the event of a criminal offence, or to return the missing children to their natural family. (...)

ANNEX VI

Excerpts from the statement made to the Working Group by the
representatives of the relatives of persons missing and
detained for political reasons (Argentina)

In the five years during which we, the relatives of people who are missing or detained for political reasons, have been struggling unceasingly to find our loved ones, the obstacles we have encountered have been both constant and variable. The most painful constant obstacle for us is in our country: it is the total absence of a reply to our requests by the de facto military Government and the repeated fallacious argument that war is to blame for the thousands of disappearances that have occurred. The latest version of this argument is given by General Leopoldo Fortunato Alipieri, a member of the Military Junta and commander-in-chief of the army, who dares to draw a comparison with what happened in France, Germany, Russia, Italy and Viet Nam, where people died and disappeared in the same way as they have done in Argentina.

This misleading argument, which is repeated over and over again, has but one purpose: to convince the Argentine people and the whole world that the missing persons disappeared in a war of which they are a natural consequence; that they will never reappear and that, therefore, the only solution is to draw a merciful curtain of oblivion over the whole affair.

Many are the hands drawing the curtain of oblivion back and forth. Our mission is to prevent it from being closed once and for all and we are joined in this task by all democratic Argentines and human rights organizations in our country and throughout the world, as well as by the OAS Inter-American Commission on Human Rights and the United Nations Working Group, which are trying, through their inquiries and reports, to shed some light on detentions and disappearances, the way in which they occurred and the people really responsible for them.

One fact which is of deep concern to us and which has, until now, been a variable obstacle, but threatens to become a constant one is that it is taken for granted that all the missing persons are dead. This is the version of the story which it suits the Government to pass off as the truth and which has been spread by people who were taken away to concentration camps and whose reports suggest that the prisoners purportedly transferred were in fact physically eliminated. In some cases they were drugged and then thrown from an aircraft into the sea (paragraph 61, page 27 of the report of the Group on Enforced or Involuntary Disappearances [E/CN.4/1435]).

Objectively speaking, the reports of people who have been released deserve to be taken into account, but subjective judgements of something as serious as the deaths of thousands of people cannot be taken into consideration, particularly since saying that these deaths have actually occurred is tantamount to following the policy which the military Government is using to make it seem that the problem of the missing persons no longer exists.

In paragraph 62 on page 27 of the report it is stated that: "The Group also received less detailed information on a number of other secret detention centres reportedly existing in Argentina." Such centres do exist and this is a fact of which we are increasingly certain; and many missing persons are alive in them. We cannot provide figures, but whoever these persons are, it is urgently necessary to get them out of this situation.

The General Assembly of the United Nations in its resolution 33/173 has already referred to the danger to the life, liberty and physical security of such persons arising from the persistent failure of these authorities to acknowledge that such persons are held in custody.

The Solidarity Commission appreciates and is grateful for the work carried out by the Working Group and by all those who are engaged in the thankless task of investigating and classifying each piece of evidence received and who are emotionally affected by the contents. It also shares the Group's view that it is important to inform public opinion of the activities being carried out by the United Nations; that is why the report has been reproduced and circulated.

However, the Commission considers that, in accordance with the statements of the Group (paragraph 3, page 6 of the report), the vast majority of the cases which confronted the Group involved persons who had been arrested, detained or abducted by personnel belonging to a body which was either established as or believed to be an organ of Government; or controlled by Government; or operating with the overt or latent complicity of Government; and the Government concerned in these cases neither accepted responsibility for the arrest, detention or abduction, nor accounted for these actions.

There is no avoiding the fact that Governments have a responsibility for what happens within their borders (paragraph 195, page 83). It is not enough to invite the Argentine military Government to furnish information or to co-operate by putting an end to disappearances or carrying out an urgent and thorough investigation of such cases as have occurred. Appropriate steps must be taken to achieve the immediate release of all persons who are being held in secret detention centres and to safeguard their lives and preserve their physical and mental health. (...)

I am speaking now as a mother who has two sons who were abducted five years ago. I ask you please to help us to find our missing persons. We know that it can be done. The two of us represent thousands of relatives who would like to be here, with you listening to them. I ask you please to do everything possible and even the impossible to enable us to find our children.

That is all I wish to say.

ANNEX VII

Excerpts from statements made to the Working Group by
the Permanent Representative of Argentina to the
United Nations Office at Geneva.

A. Statement made on 17 September 1981.

If you will permit me, and without any introduction, I shall go straight into your three questions to me. I should like to say that it is evident ... there is a difference between what we can do in 1980 - or what we could do in 1980 - and what we are doing in 1981, and what we were able to do during the period which you describe as the "difficult period". I can assure you - and I have explained this on many occasions - that it was a time of chaos in the Argentine situation. Of course, in 1980 or 1981 the country returned to normal in many respects, the State recovered the use of strength and this made it possible to organize action and an effective approach to the investigation of cases, because during the period 1974-1978 or 1979, chaos of course reigned, and at that time it was very difficult to carry out investigations because the general situation was such that the State's own administrative bodies, which had to function efficiently in order to set up investigations of cases, were occupied with or concerned about self-protection or the survival of the institutions in question. This involved the judiciary, the police, the armed forces, all the organs which handle or are capable of ensuring peace and justice in a country.

In 1981, once the monopoly of power had been recovered, we were able to organize ourselves. I believe that the action of the United Nations in respect of disappeared persons and the specific activity of this Group has meant that there was perhaps a special concern to set up information services which had not existed in the past, and which are doubly difficult in a country with a federal structure like Argentina. You know that we do not have a central government; we have an organization of federal States similar to that of the United States, and this means that the various elements of the powers of order, justice and the police are split up among these federal States. Thus, as soon as a search for a person starts, we are obliged to mobilize not a central organization which collects data, but set things in motion in each of the sections into which the country is divided politically, each of the police forces and each of the provincial or State organs, i.e., our machinery makes looking for a person complicated. The search is further complicated by a second principle of the Argentine Constitution, to which reference is made in the note although only in passing - freedom of movement throughout Argentine territory. The inhabitants of Argentina, despite our status as a federal State, can live in any part of the country and travel anywhere in the country without any sort of control, i.e. in Argentina there is no type of domestic barrier or control. This facilitates the mobility of Argentine citizens, but obviously creates problems when a person has to be looked for, to the extent that he has only to change his address and not report this change of address to the civil register for us automatically to lose contact with him. (...)

In any case, I think we should thank the Working Group and the Commission for having given us the incentive to set up internally a series of interstate and interprovincial contacts with the central authorities which now allow us to effect such searches rapidly. This has shown us phenomena to which you made some reference - the lack of reports on disappeared persons. In 1980 and 1981 we received a certain number of reports, not all through the Group, a number of reports, not all of which - and this is the strange thing - not all of which involved the real disappearance of a person. They involved various circumstances and various forms of temporary disappearance of a person which had nothing to do with his concealment or his disappearance as the result of abduction or a crime against him. This leads us to a question - a question which I think it is natural for me to ask here, in front of the Group - why do these false reports occur? Who originates the false reports? First of all, they originate in order to keep alive a phenomenon which my country did experience - a real phenomenon, that of the disappearance of persons, the aim being to keep it alive. In other words, there are people who for various reasons are politically motivated and who are interested in prolonging this phenomenon which no longer exists. Who actually makes these reports? Very seldom the relatives of these persons. Generally speaking, these reports come sometimes from inside the country and sometimes from outside the country, but there are organizations, many of them respectable, defenders of human rights, who sometimes, because they have been sensitized to a phenomenon which did happen in Argentina or occurred during a specific period, exaggerate any strange circumstance and automatically publish it or make it known to the press. In Argentina it is very simple: the announcement that a person has disappeared appears next day. An announcement of that kind which appears in the Buenos Aires newspapers and next day is reproduced here in Europe, is neither under our control nor that of the relatives of the person reported as having disappeared.

The search begins immediately without waiting for a specific report from the Group, and without waiting for an international body to make a report, and the Government automatically sets in motion the search machinery. Generally speaking, within a very few hours, the person is found, by one means or another. A case I recall which recently took longer for the identification lasted exactly 53 hours. This is a case in which the authorities had considerable difficulty in obtaining the information - it is a recent case - on a person reported abducted and their appearance in the flesh.

This shows us that in these past cases too there is no doubt that there are two types: the real cases, and cases which may have been fabricated in the past to swell lists or create a situation which does not really have the magnitude it seems to have.

When we come to specific and individual cases - and we have had many in the past - they do not in any event have the magnitude internationally ascribed to them.

There are international organizations - and I think they do it in all honest conviction and for humanitarian reasons - which speak of figures which are totally unrealistic. I have seen written reports of 20,000 or 30,000 persons, and this has no relation to what happened in Argentina during that period or to the specific situation of cases which might have occurred among those reported, sometimes in respect of a real situation, sometimes in respect of a false one.

In 1980-1981 the situation is absolutely cut and dried. There is no allegation which it has not been possible to identify or which it has not been possible to clarify. There are two or three cases of terrorists reported by their own organizations outside the country, which have lost trace of them. They tell us that these terrorists have possibly entered the country clandestinely with false documents, but have not returned to their base of origin. As you may imagine, Mr. Chairman, on such a basis we cannot initiate a serious investigation. We cannot seek someone whom we know specifically to have been outside our frontiers, when we have no real evidence of his entering the country, and when we are told he is in the country with a false passport. This does not give us the least information on which to begin an investigation.

This is why we have been so pleased with the way in which you have decided this year to deal even with old cases, i.e. to pass on to us old cases where there might be a minimum of credibility with regard to real circumstances behind a specific case of a report on a person. I think this has now also helped us to investigate in depth those old cases of the years 1974-1978, and despite the difficulties they present and despite the time at which they took place I should like to tell you that we are trying to make some progress with them.

We have often said that time will perhaps have to solve some of them, and perhaps some of them will not be solved even with time. But we are making investigations and the information you have given us has already enabled us to make certain verifications. We have intimated to you what these verifications are. For example, some of them show that the facts related today in respect of the persons in question do not coincide with the facts related on the occasion on which we were first informed of their existence. Sometimes they concern the place of the event, sometimes the identity of the persons or in what form the event took place and sometimes they concern something I want to mention because it is important for another subject to which I am going to refer: today we have received reports on a person who was allegedly pregnant, but when the report was made in 1976 and the search for that person was begun, no mention was made of the fact that the woman sought was pregnant or expecting a child. Now it emerges that when the report was made in 1976 or 1977 we were looking for a woman and today we are allegedly looking for a mother. This is the difference between the case and actual fact. (...)

There is just one area in which we Argentines understand that there are human beings who must be singled out and protected: the children. In my country nothing is more important to us than a child. Therefore, when we are told about cases or situations involving a child, this touches a very sensitive chord, not merely because of how a case is or is not related or presented but because each person who is going to take part in the search or in the action is doing so in the awareness that they are seeking a child, i.e. not only seeking a disappeared person.

For us, this is of very special importance and I would like you to understand it, because it is not a question of allotting higher priority or making greater efforts; humanly speaking, we cannot allow a child to be missing, we cannot accept any type of situation in which a child is involved in a criminal act such as a kidnapping or disappearance.

Therefore, Mr. Chairman, we have given special emphasis and special interest to the case of children not simply because there are more or less of them, but because children's cases have the privilege in the Argentine Republic of belonging to the category of the defenceless (there are other categories of defenceless beings -- this is the Year of disabled persons or of people who have difficulties in managing by themselves), but even in these circumstances we believe that children continue to be the most important.

On some occasion it was said in Argentina that the only privileged people are the children, and this is absolutely true.

We have been working very thoroughly. We have done two kinds of work, as you imagine: firstly, to locate eight children; we have eight reports on children, children with a real identity, children with known physical characteristics. These eight children are obviously an important test for us in resolving situations by putting all the State's machinery into the search for these eight children.

The information we have does not permit of any great optimism, however, although we have made some verifications. In one of the cases we think it is going to be absolutely impossible to reach a conclusion ourselves and we would ask the Group to endeavour to obtain the collaboration of a Government which is a neighbour of the Argentine Republic because the only thing about this child is that he is an Argentine by birth, but his disappearance took place in another country and we have no information or any means of making an investigation. (...) As in the case of the children and the other cases and in so far as we have information, the Government will directly contact the relatives and the persons interested in these cases and we shall give them the information. These persons will then come to the Group and say: "We have the information", or they will not do so. This depends on the person who receives the information from the Argentine Government, it will depend on what was the result of this final information, but we do not want to have to put ourselves in this matter in the place of the person who made that report responsibly.

Hence the importance of the fact that the reports come from responsible persons and basically from relatives or those close to the allegedly disappeared persons. This is a situation I believe to be very important, and I think you have understood this, and once again I should like to thank the Group for its understanding of this very difficult problem.

The third question you have put to us, Mr. Chairman, is the matter of the unidentified corpses.

Just a few days ago, this week's issue of a magazine carried an article which you may have seen, an article on the problem of disappeared persons in Argentina and as one of the key elements in the problem a photograph is published of a cemetery in the Argentine Republic showing a tomb with the letters NN and a date (the date corresponds to 1976). This appears in the magazine and your question is very relevant because we have often said, and say in this note, that one of the reasons for the disappearance of persons is the death of unidentified persons, deaths in varied circumstances, in which sometimes the State has been involved or intervened and sometimes not; but obviously we are sure that these people are dead.

Here there are two basic types of deaths: deaths in which the corpses appear on the public highway, or corpses picked up after a clash with terrorists or subversive elements. The State endeavours to identify them (in some cases it does identify them), and then, when it does not succeed in identifying them they go of course to a grave in a cemetery and are marked NN - the same as you see in the magazine photograph - the date is added and a card is made out. This is the card registering admission to the cemetery, giving in addition to the date of admission the sex of the body, approximate age and a paper signed by a doctor authorizing burial and indicating - sometimes with a post-mortem, sometimes without when there are a great many or because there are very obvious injuries - the cause of death.

This means that when a person dies of third degree burns and the body is completely carbonized, the doctor generally does not carry out a post-mortem, unless there is an obvious reason for a post-mortem, and notes "corpse carbonized" or "corpse with the head destroyed by high calibre bullets" or "corpse where cause of death was certainly the number of impacts received from bullets". This means that they do not practice the type of post-mortem which verifies from where each bullet was fired and at what distance, because there is no presumption of crime; the corpse is the product of an armed clash and in that case there is no post-mortem and the doctor simply lists the conditions or characteristics of the body when it goes to the cemetery.

We have not published the number of corpses officially, but we have given an international organization - the Inter-American Commission on Human Rights - an opportunity to visit all the country's cemeteries; they made a list of bodies and counted them. The total number of bodies which the Inter-American Commission on Human Rights gives in its report is about 1,500 - nearly 2,000 persons who died in clashes or whose bodies were picked up on the public highway following clashes or incidents in which no real information has been available but where the body has been found; these bodies were subsequently buried as NN. (...)

B. Statement made on 2 December 1981

I should like to tell you, Sir, that we have worked very hard in recent months on each case passed on to us by the Group. You have a communication which we addressed to you very recently because its intention was to provide the most up-to-date information possible in respect of the tasks you have undertaken this week. As we point out in that note, we have been able to make a thorough study and reach important conclusions, although these important conclusions are not final ones in 307 out of the 704 cases to be passed on to us by the Working Group. And this is important because it shows, on the one hand, the magnitude of the problem and, on the other, the efforts we are making to co-operate with the Group in investigating and studying each one of the cases that have been submitted to us. I also wish to point out that some of these cases are of recent date. The last 151 cases were brought to our attention less than a month ago and, as you will appreciate, it is extremely difficult for us to dispose of cases when each of them requires individual investigation.

With regard to the way in which these investigations are being conducted, I will say, Sir, that they are being conducted by administrative means and through judicial inquiry. Some of the cases which the Group passed on to us are being heard in the courts at the present time and, as our note indicates, in these cases it will be for the judges to take a decision, and all that we can do through administrative channels in such cases is to try to expedite the handling of cases without, of course, interfering in the actual administration of justice, and to keep ourselves informed of how these cases are proceeding. Administratively, we have continued to seek background information, and not only the kind we obtained at the outset, for we have conducted a series of additional investigations, with all the difficulties resulting, in many instances, from the period during which these problems occurred. This is another element which may perhaps be seen more clearly in the cases which the Group has now forwarded to us and in respect of which I am coming to the conclusion that they have been examined carefully before being transmitted to the Argentine Government. I say this because we have the impression that the cases which are now being transmitted are probably genuine cases of disappearances, and not just lists or names circulating inside and/or outside Argentina. The impression we have is that we are at this moment dealing with cases of reports of disappearances. Whether the persons in question have disappeared voluntarily or involuntarily is a matter to be

decided during the investigation of each case to find out the reason for the disappearance. However, in the first place, I believe that what is important is this preliminary conclusion. We are confronted with cases of disappearances which occurred during that difficult period experienced by my country. I refer principally to the period from 1975 to 1978.

I should like to say, Sir, as a mere matter of fact - it does not add much - that we have examined these reports the period to which they relate, and out of a total of 661 cases - I say 661 because we have excluded cases of pregnant women since many of them recur among the individual cases, so that we have taken those which do not refer to women and children, but which are general cases - out of these 661 general cases, 657, that is to say virtually all of them, occurred during the period from 1975 to 1978. A very few cases occurred at the beginning of 1979 and there were three cases in 1980 which have already been looked into by my Government and in fact explanations were given last year by my Government about the circumstances surrounding these three particular cases. These three individual cases dating from 1980 are cases which have been explained, so that to all intents and purposes, I repeat, the cases which are at present engaging the attention of the Group and which are engaging the attention of the Argentine Government are all cases which occurred between 1975 and 1978; that is the first important general conclusion we have been able to come to as the result of our examination of these cases. In the first place, I believe, these are reports of possible disappearances; in the second place, they relate to a period during which, as we have always maintained to the Group, there was a correlation between the phenomenon of disappearances and the phenomenon of violence in the Argentine Republic. Conversely, since the end of the period of violence and the restoration of peace and order in my country, no further disappearances have taken place or been reported. Those disappearances which were reported or were alleged to have occurred last year have all already been explained. Speaking of disappearances and individual cases, I should like to say that during the past year we have been confronted with a new situation totally unrelated to the phenomenon of disappearances and violence, and this is that cases of persons who have voluntarily abandoned their usual haunts are now being reported to us as those of persons who have disappeared. This is a phenomenon which occurs not only in Argentina but in many places when, at some time, a person decides to break with his past life. Such cases, which, needless to say, have subsequently been cleared up are also being submitted to us as though they were cases of disappearances. This, Mr. Chairman, is being done for one reason only, and that reason is to try to create a link between a phenomenon of the past which occurred in my country in the years I mentioned, between 1975 and 1978, and the situation currently obtaining in the Argentine Republic. There is absolutely no basis in reality for an attempt to establish such a link and the cases used to try to establish it are entirely unfounded. Even the organizations which call themselves organizations for the defence of human rights and which have submitted these cases have been compelled to recognize later on that the cases were not genuine, and here, as I have already had occasion to point out, we come up against the problem of the right of the individual to establish his own residence and to dissociate himself from his usual surroundings when he wishes to do so. Thus, in so far as there is this apparent intention of forging a link between an actual and real past, which we have acknowledged, and a totally different present, a false link is being created. This false link is the fact of the freedom of individuals to live and reside where they wish. Mr. Chairman, I believe that the Group should also take

this aspect into consideration, for we cannot continue, through our administrative investigations, to create problems of lack of privacy for the citizens of my country. On a number of occasions, citizens who have decided to break with their families - and naturally there is no reason why they should be prosecuted unless they have committed some offence - are investigated and searched for, even through the press, radio and television. In some recent cases, we have had to make announcements on television requesting people who have voluntarily decided to give up certain lifestyles to come forward. Really, Mr. Chairman, this is something which is contrary to the freedom of the citizen. However, perhaps over-zealously, we have been taking steps lately to prevent the attempt to forge this non-existent link between that difficult period, that period of undeclared war, of a very special war which my country lived through, and the present time.

ANNEX VIII

Views adopted by the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights relating to communication R.12/52 and communication R.13/56

A. Communication No. R.12/52

Submitted by: Delia Saldías de López on behalf of her husband,
Sergio Rubén López Burgos

State party concerned: Uruguay

Date of communication: 6 June 1979 (date received)

The Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights;

- meeting on 29 July 1981;
- having concluded its consideration of communication No. R.12/52, submitted to the Committee by Delia Saldías López under the Optional Protocol to the International Covenant on Civil and Political Rights;
- having taken into account all written information made available to it by the author of the communication and by the State party concerned;

adopts the following:

VIEWES UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of the communication is Delia Saldías de López, a political refugee of Uruguayan nationality residing in Austria. She submits the communication on behalf of her husband, Sergio Rubén López Burgos, a worker and trade-union leader in Uruguay.

2.1 The author states that mainly because of the alleged victim's active participation in the trade-union movement, he was subjected to various forms of harassment by the authorities from the beginning of his trade-union involvement. Thus, he was arrested in December 1974 and held without charges for four months. In May 1975, shortly after his release and while still subjected to harassment by the authorities, he moved to Argentina. In September 1975 he obtained recognition as a political refugee by the Office of the United Nations High Commissioner for Refugees.

2.2 The author claims that on 13 July 1976 her husband was kidnapped in Buenos Aires by members of the "Uruguayan security and intelligence forces" who were aided by Argentine para-military groups, and was secretly detained in Buenos Aires for about two weeks. On 26 July 1976 Mr. López Burgos, together with several other Uruguayan nationals, was illegally and clandestinely transported to Uruguay, where he was detained incommunicado by the special security forces at a secret prison for three months. During his detention of approximately four months both in Argentina and Uruguay, he was continuously subjected to physical and mental torture and other cruel, inhuman or degrading treatment.

2.3 The author asserts that her husband was subjected to torture and ill-treatment as a consequence of which he suffered a broken jawbone and perforation of the eardrums. In substantiation of her allegations the author furnishes detailed testimony submitted by six ex-detainees who were held, together with Mr. López Burgos, in some of the secret detention places in Argentina and Uruguay, and who were later released (Cecilia Gayoso Jauregui, Alicia Cadenas, Monica Soliño, Ariel Soto, Nelson Dean Bermudez, Enrique Rodriguez Larreta). Some of these witnesses describe the arrest of Mr. Lopez Burgos and other Uruguayan refugees at a bar in Buenos Aires on 13 July 1976; at this occasion his lower jaw was allegedly broken by a blow with the butt of a revolver; he and the others were then taken to a house where he was interrogated, physically beaten and tortured. Some of the witnesses could identify several Uruguayan officers: Colonel Ramirez, Mayor Gavazzo (directly in charge of the torture sessions), Mayor Manuel Cordero, Mayor Mario Martínez and Captain Jorge Silveira. The witnesses assert that Mr. López Burgos was kept hanging for hours with his arms behind him, that he was given electric shocks, thrown on the floor, covered with chains that were connected with electric current, kept naked and wet; these tortures allegedly continued for 10 days until López Burgos and several others were blindfolded and taken by truck to a military base adjacent to the Buenos Aires airport; they were then flown by an Uruguayan plane to the Base Aérea Militar No. 1, adjacent to the Uruguayan National Airport at Carrasco, near Montevideo. Interrogation continued, accompanied by beatings and electric shocks; one witness alleges that in the course of one of these interrogations the fractured jaw of Mr. López Burgos was injured further. The witnesses describe how Mr. López Burgos and 13 others were transported to a chalet on Shangrilá Beach and that all 14 were officially arrested there on 23 October 1976 and that the Press was informed that "subversives" had been surprised at the chalet while conspiring. Four of the witnesses further assert that López Burgos and several others were forced under threats to sign false statements which were subsequently used in the legal proceedings against them and to refrain from seeking any legal counsel other than Colonel Mario Rodriguez. Another witness adds that all the arrested, including Mónica Soliño and Inés Quadros, whose parents are attorneys, were forced to name "ex officio" defence attorneys.

2.4 The author further states that her husband was transferred from the secret prison and held "at the disposition of military justice", first at a military hospital where for several months he had to undergo treatment because of the physical and mental effects of the torture applied to him prior to his "official" arrest, and subsequently at Libertad prison in San José. After a delay of 14 months his trial started in April 1978. At the time of writing, Mr. López was still waiting for final judgement to be passed by the military court. The author adds in this connection that her husband was also denied the right to have legal defence counsel of his own choice. A military "ex officio" counsel was appointed by the authorities.

2.5 Mrs. Saldías de López states that the case has not been submitted to any other procedure of international investigation or settlement.

2.6 She also claims that the limited number of domestic remedies which can be invoked in Uruguay under the "prompt security measures" have been exhausted and she also refers in this connection to an unsuccessful resort to "amparo" by the mother of the victim in Argentina.

2.7 She has also furnished a copy of a letter from the Austrian Consulate in Montevideo, Uruguay, mentioning that the Austrian Government has granted a visa to Mr. López Burgos and that this information was communicated to the Uruguayan Ministry of Foreign Affairs.

2.8 She alleges that the following articles of the Covenant on Civil and Political Rights have been violated by the Uruguayan authorities in respect of her husband: articles 7, 9 and 12 (1) and article 14 (3).

3. By its decision of 7 August 1979 the Human Rights Committee:

(1) Decided that the author was justified in acting on behalf of the alleged victim;

(2) Transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication indicating that if the State party contended that domestic remedies had not been exhausted, it should give details of the effective remedies available to the alleged victim in the particular circumstances of his case.

4. The State party, in its response under rule 91 of the provisional rules of procedure, dated 14 December 1979, states "that the communication concerned is completely devoid of any grounds which would make it admissible by the Committee since, in the course of the proceedings taken against Mr. López Burgos he enjoyed all the guarantees afforded by the Uruguayan legal order". The State party refers in this connection to its previous submissions to the Committee in other cases citing the domestic remedies generally available at present in Uruguay. Furthermore the State party provides some factual evidence in the case as follows: Mr. Burgos was arrested on 23 October 1976 for his connection with subversive activities and detained under the prompt security measures; on 4 November 1976, the second military examining magistrate charged him with presumed commission of the offence of "subversive association" under section 60 (V) of the Military Penal Code; on 8 March 1979, the court of first instance sentenced him to seven years' imprisonment for the offences specified in section 60 (V) of the Military Penal Code, section 60 (I) (6) in association with 60 (XII) of the Military Penal Code and sections 7, 243 and 54 of the Ordinary Penal Code; subsequently, on 4 October 1979, the Supreme Military Court rendered final judgement, reducing his sentence to four years and six months. It is further stated that Mr. Burgos' defence counsel was Colonel Mario Rodríguez and that Mr. Burgos is being held at Military Detention Establishment No. 1. The Government of Uruguay also brings to the attention of the Committee a report on a medical examination of Mr. Burgos, stating in part as follows:

"Medical history prior to imprisonment (Antecedentes personales anteriores a su 'reclusión') : operated on for bilateral inguinal hernia at the age of 12; (2) history of unstable arterial hypertension; (3) fracture of lower left jaw.

Family medical history: (1) father a diabetic.

Medical record in prison (Antecedentes de 'reclusión') : treated by the dental surgery service of the Armed Forces Central Hospital for the fracture of the jaw with which he entered the Establishment. Discharged from the Armed Forces Central Hospital on 7 May 1977 with the fracture knitted and progressing well; subsequently examined for polyps of larynx on left vocal cord; a biopsy conducted ...".

5. In a further letter dated 4 March 1980 the author, Delia Saldías de López, refers to the Human Rights Committee's decision of 7 August 1979 and to the note of the Government of Uruguay dated 14 December 1979, and claims that the latter confirms the author's previous statement concerning the exhaustion of all possible domestic remedies.

6. In the absence of any information contrary to the author's statement that the same matter had not been submitted to another procedure of international investigation or settlement and concluding, on the basis of the information before it, that there were no unexhausted domestic remedies which could or should have been pursued, the Committee decided on 24 March 1980:

(1) That the communication was admissible in so far as it relates to events which have allegedly continued or taken place after 23 March 1976 (the date of the entry into force of the Covenant and the Optional Protocol for Uruguay);

(2) That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

(3) That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must primarily relate to the substance of the matter under consideration, and in particular the specific violations of the Covenant alleged to have occurred. The State party is requested, in this connection, to give information as to the whereabouts of López Burgos between July and October 1976 and as to the circumstances in which he suffered a broken jaw and to enclose copies of any court orders or decisions of relevance to the matter under consideration.

7.1 In its submission under article 4 (2) of the Optional Protocol, dated 20 October 1980, the State party asserts that Mr. López Burgos had legal assistance at all times and that he lodged an appeal; the result of the appeal was a sentence at second instance that reduced the penalty of seven years to four years and six months of rigorous imprisonment. The State party also rejects the allegation that López Burgos was denied the right to have defence counsel of his own choice, asserting that he was not prevented from having one.

7.2 As to the circumstances under which Mr. López Burgos' jaw was broken the State party quotes from the "relevant medical report":

"On 5 February 1977 he entered the Armed Forces Central Hospital with a fracture of the lower left jaw caused when he was engaged in athletic activities at the prison (Military Detention Establishment No. 1). He was treated by the dental surgery service of the hospital for the fracture of the jaw with which he entered the hospital. He was discharged on 7 May 1977 with the fracture knitted and progressing well".

7.3 Whereas the author claims that her husband was kidnapped by members of the Uruguayan security and intelligence forces on 13 July 1976, the State party asserts that Mr. López Burgos, was arrested on 23 October 1976 and claims that the whereabouts of Mr. López Burgos have been known since the date of his detention but no earlier information is available.

7.4 As to the right to have a defence counsel, the State party generally asserts that accused persons themselves and not the authorities choose from the list of court-appointed lawyers.

8.1 In her submission under rule 93 (3) dated 22 December 1980 the author indicates that since accused persons can only choose their lawyers from a list of military lawyers drawn up by the Uruguayan Government, her husband had no access to a civilian lawyer, unconnected with the Government, who might have provided "a genuine and impartial defence" and that he did not enjoy the proper safeguards of a fair trial.

8.2 With regard to the State party's explanations concerning the fractured jaw suffered by López Burgos, the author claims that they are contradictory. The transcription of the medical report in the State party's note of 14 December 1979 lists the fracture in the paragraph beginning "Medical history prior to 'reclusión'" and goes on to the paragraph beginning "Medical record 'de reclusión'" to state that López Burgos was "treated by the dental surgery service of the Armed Forces Central Hospital for the fracture of the jaw with which he entered the establishment". In other words, the fracture occurred prior to his imprisonment. However, the note of 20 October 1980 states that he entered the hospital with a fractured jaw caused "when he was engaged in athletic activities at the prison". She reiterates her allegation that the fracture occurred as a consequence of the tortures to which López Burgos was subjected between July and October 1976, when he was in the hands of the Uruguayan Special Security Forces.

9. The State party submitted additional comments under article 4 (2) of the Covenant in a note dated 5 May 1981, contending that there is no contradiction between the medical reports, because the State party used the term "reclusión" (translated in OCHR/C/FS/R.12/52/Add.1 as "imprisonment" and "in prison") to mean "internación en el establecimiento hospitalario" (hospitalization), and reasserts that the fracture occurred in the course of athletic activities in the prison.

10.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol. The Committee bases its views inter alia on the following undisputed facts:

10.2 Sergio Rubén López Burgos was living in Argentina as a political refugee until his disappearance on 13 July 1976; he subsequently reappeared in Montevideo, Uruguay, not later than 23 October 1976, the date of his purported arrest by Uruguayan authorities and was detained under prompt security measures. On 4 November 1976 pre-trial proceedings commenced when the second military examining magistrate charged him with the offence of "subversive association", but the actual trial began in April 1978 before a military court of first instance, which sentenced him on 8 March 1979 to seven years' imprisonment; upon appeal the court of second instance reduced the sentence to four years and six months. López Burgos was treated for a broken jaw in a military hospital from 5 February to 7 May 1977.

11.1 In formulating its views the Human Rights Committee also takes into account the following considerations:

11.2 As regards the whereabouts of López Burgos between July and October 1976 the Committee requested precise information from the State party on 24 March 1980. In its submission dated 20 October 1980 the State party claimed that it had no information. The Committee notes that the author has made precise allegations with respect to her husband's arrest and detention in Buenos Aires on 13 July 1976 by the Uruguayan security and intelligence forces and that witness testimony submitted by her indicates the involvement of several Uruguayan officers identified by name. The State party has neither refuted these allegations nor adduced any adequate evidence that they have been duly investigated.

11.3 As regards the allegations of ill-treatment and torture, the Committee notes that the author has submitted detailed testimony from six ex-detainees who were held, together with Mr. López Burgos, in some of the secret detention places in Argentina and Uruguay. The Committee notes further that the names of five

Uruguayan officers allegedly responsible for or personally involved in the ill-treatment is given. The State party should have investigated the allegations in accordance with its laws and its obligations under the Covenant and the Optional Protocol. As regards the fracture of the jaw, the Committee notes that the witness testimony submitted by the author indicates that the fracture occurred upon the arrest of Mr. López Burgos on 13 July 1976 in Buenos Aires, when he was physically beaten. The State party's explanation that the jaw was broken in the course of athletic activities in the prison seems to contradict the State party's earlier statement that the injury occurred prior to his "reclusión". The State party's submission of 14 December 1979 uses "reclusion" initially to mean imprisonment, e.g. "Establecimiento Militar de reclusión". The term reappears six lines later in the same document in connection with "Antecedentes personales anteriores a su reclusión". The Committee is inclined to believe that "reclusión" in this context means imprisonment and not hospitalization as contended by the State party in its submission of 5 May 1981. At any rate, the State party's reference to a medical report cannot be regarded as a sufficient refutation of the allegations of mistreatment and torture.

11.4 As to the nature of the judicial proceedings against López Burgos the Committee requested the State party on 24 March 1980 to furnish copies of any court orders or decisions of relevance to the matter under consideration. The Committee notes that the State party has not submitted any court orders or decisions.

11.5 The State party has also not specified in what "subversive activities" López Burgos was allegedly involved, or clarified how or when he engaged in these activities. It would have been the duty of the State party to provide specific information in this regard, if it wanted to refute the allegations of the author that López Burgos has been persecuted because of his involvement in the trade union movement. The State party has not refuted the author's allegations that Mr. López Burgos was forced to sign false testimony against himself and that this testimony was used in the trial against him. The State party has stated that Mr. López Burgos was not prevented from choosing his own legal counsel. It has not, however, refuted witness testimony indicating that López Burgos and others arrested with him, including Monica Soliño and Inés Quadros, whose parents are attorneys, were forced to agree to ex officio legal counsel.

11.6 The Committee has considered whether acts and treatment, which are prima facie not in conformity with the Covenant, could for any reasons be justified under the Covenant in the circumstances of the case. The Government of Uruguay has referred to provisions, in Uruguayan law, of prompt security measures. However, the Covenant (article 4) does not allow national measures derogating from any of its provisions except in strictly defined circumstances, and the Government has not made any submissions of fact or law in relation thereto. Moreover, some of the facts referred to above raise issues under provisions from which the Covenant does not allow any derogation under any circumstances.

11.7 The Human Rights Committee notes that if the sentence of López Burgos ran from the purported date of arrest on 23 October 1976, it was due to be completed on 23 April 1981, on which date he should consequently have been released.

11.8 The Committee notes that the Austrian Government has granted López Burgos an entry visa. In this connection and pursuant to article 12 of the Covenant, the Committee observes that López Burgos should be allowed to leave Uruguay, if he so wishes, and travel to Austria to join his wife, the author of this communication.

12.1 The Human Rights Committee further observes that although the arrest and initial detention and mistreatment of López Burgos allegedly took place on foreign territory, the Committee is not barred either by virtue of article 1 of the Optional Protocol ("... individuals subject to its jurisdiction ...") or by virtue of article 2 (1) of the Covenant ("... individuals within its territory and subject to its jurisdiction ...") from considering these allegations, together with the claim of subsequent abduction into Uruguayan territory, inasmuch as these acts were perpetrated by Uruguayan agents acting on foreign soil.

12.2 The reference in article 1 of the Optional Protocol to "individuals subject to its jurisdiction" does not affect the above conclusion because the reference in that article is not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred.

12.3 Article 2 (1) of the Covenant places an obligation upon a State party to respect and to ensure rights "to all individuals within its territory and subject to its jurisdiction", but it does not imply that the State party concerned cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State, whether with the acquiescence of the Government of that State or in opposition to it. According to article 5 (1) of the Covenant:

"1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant."

In line with this, it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory.

13. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights is of the view that the communication discloses violations of the Covenant, in particular:

of article 7 because of the treatment (including torture) suffered by López Burgos at the hands of Uruguayan military officers in the period from July to October 1976 both in Argentina and Uruguay;

of article 9 (1) because the act of abduction into Uruguayan territory constituted an arbitrary arrest and detention;

of article 9 (5) because López Burgos was not brought to trial within a reasonable time;

of article 14 (3) (d) because López Burgos was forced to accept Colonel Mario Colonel Mario Rodríguez as his legal counsel;

of article 14 (5) (g) because López Burgos was compelled to sign a statement incriminating himself;

of article 22 (1) in conjunction with article 19 (1) and (2) because López Burgos has suffered persecution for his trade union activities.

14. The Committee, accordingly, is of the view that the State party is under an obligation pursuant to article 2 (3) of the Covenant to provide effective remedies to López Burgos, including immediate release, permission to leave Uruguay and compensation for the violations which he has suffered and to take steps to ensure that similar violations do not occur in the future.

APPENDIX

Individual opinion submitted by a member of the Human Rights
Committee under rule 94 (3) of the Committee's provisional
rules of procedure

Communication No. R.12/52

Individual opinion appended to the Committee's views at the request of
Mr. Christian Tomuschat:

I concur in the views expressed by the majority. None the less, the arguments set out in paragraph 12 for affirming the applicability of the Covenant also with regard to those events which have taken place outside Uruguay need to be clarified and expanded. Indeed, the first sentence in paragraph 12.3, according to which article 2 (1) of the Covenant does not imply that a State party "cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State", is too broadly framed and might therefore give rise to misleading conclusions. In principle, the scope of application of the Covenant is not susceptible to being extended by reference to article 5, a provision designed to cover instances where formally rules under the Covenant seem to legitimize actions which substantially run counter to its purposes and general spirit. Thus, Governments may never use the limitation clauses supplementing the protected rights and freedoms to such an extent that the very substance of those rights and freedoms would be annihilated; individuals are legally barred from availing themselves of the same rights and freedoms with a view to overthrowing the régime of the rule of law which constitutes the basic philosophy of the Covenant. In the present case, however, the Covenant does not even provide the pretext for a "right" to perpetrate the criminal acts which, according to the Committee's conviction, have been perpetrated by the Uruguayan authorities.

To construe the words "within its territory" pursuant to their strict literal meaning as excluding any responsibility for conduct occurring beyond the national boundaries would, however, lead to utterly absurd results. The formula was intended to take care of objective difficulties which might impede the implementation of the Covenant in specific situations. Thus, a State party is normally unable to ensure the effective enjoyment of the rights under the Covenant to its citizens abroad, having at its disposal only the tools of diplomatic protection with their limited potential. Instances of occupation of foreign territory offer another example of situations which the drafters of the Covenant had in mind when they confined the obligation of States parties to their own territory. All these factual patterns have in common, however, that they provide plausible grounds for denying the protection of the Covenant. It may be concluded, therefore, that it was the intention of the drafters, whose sovereign decision cannot be challenged, to restrict the territorial scope of the Covenant in view of such situations where enforcing the Covenant would be likely to encounter exceptional obstacles. Never was it envisaged, however, to grant States parties unfettered discretionary power to carry out wilful and deliberate attacks against the freedom and personal integrity against their citizens living abroad. Consequently, despite the wording of article 2 (1), the events which took place outside Uruguay come within the purview of the Covenant.

B. Communication No. R.13/56

Submitted by: Lilian Celiberti de Casariego represented by Francesco Cavallaro

State party concerned: Uruguay

Date of communication: 17 July 1979 (date of initial letter)

The Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights,

- meeting on 29 July 1981;
- having concluded its consideration of communication No. R.13/56 submitted to the Committee by Francesco Cavallaro on behalf of Lilian Celiberti de Casariego under the Optional Protocol to the International Covenant on Civil and Political Rights;
- having taken into account all written information made available to it by the author of the communication and by the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated 17 July 1979 and further letters dated 5 and 20 March 1980), is Francesco Cavallaro, practising lawyer in Milan, Italy, acting on behalf of Lilian Celiberti de Casariego, who is imprisoned in Uruguay. The lawyer has submitted a duly authenticated copy of a General Power of Attorney to act on her behalf.

2.1. In his submission of 17 July 1979 the author of the communication alleges the following:

2.2. Since 1974 Lilian Celiberti de Casariego, a Uruguayan citizen by birth and of Italian nationality based on ius sanguinis, had been living in Milan, Italy, with her husband and two children. Mrs. Celiberti had been authorized to leave Uruguay in 1974. While in Uruguay she had been an active member of the Resistencia Obrero-Estudiantil and in this connection she had been arrested for "security reasons", and subsequently released, several times. In 1978 Mrs. Celiberti, her two children (three and five years of age) and Universindo Rodríguez Díaz, a Uruguayan exile living in Sweden, travelled to Porto Alegre (Brazil) purportedly to contact Uruguayan exiles living there. The author claims that, based on information gathered, inter alia, by representatives of private international organizations, the Lawyers' Association in Brazil, journalists, Brazilian parliamentarians and Italian authorities, Mrs. Celiberti was arrested on 12 November 1978 together with her two children and Universindo Rodríguez Díaz in their apartment, in Porto Alegre, by Uruguayan agents with the connivance of two Brazilian police officials (against whom relevant charges have been brought by Brazilian authorities in this connection). From 12 November probably to 19 November 1978, Mrs. Celiberti was detained in her apartment in Porto Alegre. The children were separated from their mother and were kept for several days in the office of the Brazilian political police. The mother and the children were then driven together to the Uruguayan border where they were separated again. The children were brought to Montevideo (Uruguay) where they remained for 11 days in a place together with many other children before being handed over on 25 November 1978 by a judge to their maternal grandparents. Mrs. Celiberti was forcibly abducted into Uruguayan territory and kept in detention. On

25 November 1978 the Fuerzas Conjuntas of Uruguay publicly confirmed the arrest of Mrs. Celiberti, her two children and Mr. Universindo Rodríguez Díaz, alleging that they had tried to cross the Brazilian-Uruguayan border secretly with subversive material. Until 16 March 1979, Mrs. Celiberti was held incommunicado. At that time she was detained in Military Camp No. 13, but neither her relatives nor other persons, including representatives of the Italian Consulate, were allowed to visit her. On 23 March 1979, it was decided to charge her with "subversive association", "violation of the Constitution by conspiracy and preparatory acts thereto" and with other violations of the Military Penal Code in conjunction with the ordinary Penal Code. She was ordered to be tried by a Military Court. It was further decided to keep her in "preventive custody" and to assign an ex-officio defence lawyer to her.

2.3 The author claims that the following provisions of the International Covenant on Civil and Political Rights have been violated by the Uruguayan authorities in respect of Lilian Celiberti de Casariego: articles 9, 10 and 14.

3. On 10 October 1979, the Human Rights Committee decided to transmit the communication to the State party, under rule 91 of the Provisional Rules of Procedure, requesting information and observations relevant to the question of admissibility.

4.1 By a note dated 14 December 1979 the State party objected to the admissibility of the communication on the ground that the same matter had been submitted to the Inter-American Commission on Human Rights and referred to case No. 4529, dated 15 August 1979.

4.2 In a further submission dated 5 March 1980, the author states that, as the legal representative of Lilian Celiberti de Casariego, he cannot rule out the possibility of her case having been submitted to the Inter-American Commission on Human Rights. He claims, however, that the Human Rights Committee's competence is not excluded for the following reasons: (a) the communication relating to Mrs. Celiberti was submitted to the Human Rights Committee on 17 July 1979, i.e., before the matter reached the Inter-American Commission on Human Rights; (b) if the case was submitted to the Inter-American Commission on Human Rights by a third party, this cannot prejudice the right of the legal representative of Mrs. Celiberti to choose the international body to protect her interests.

5. On 2 April 1980, the Human Rights Committee,

(a) having ascertained from the Secretariat of the Inter-American Commission on Human Rights that a case concerning Lilian Celiberti was submitted by an unrelated third party and opened on 2 August 1979 under No. 4529.

(b) concluding that it is not prevented from considering the communication submitted to it by Mrs. Celiberti's legal representative on 17 July 1979 by reason of the subsequent opening of a case by an unrelated third party under the procedure of the Inter-American Commission on Human Rights.

(c) being unable to conclude that, with regard to exhaustion of domestic remedies, on the basis of the information before it, there were any further remedies which the alleged victim should or could have pursued,

therefore decided:

(a) that the communication was admissible;

(b) that, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it.

6. The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 29 October 1980. Up to date no such submission has been received from the State party.

7. The Human Rights Committee notes that it has been informed by the Government of Uruguay in another case (R.2/9 Edgardo D. Santullo Valcada v. Uruguay) that the remedy of habeas corpus is not applicable to persons detained under the prompt security measures.

8. The Human Rights Committee, considering the present communication in the light of all information made available to it by the parties as provided in article 5 (1) of the Optional Protocol, hereby decides to base its views on the following facts as set out by the author in the absence of any comments thereupon by the States party:

9. On 12 November 1978 Lilian Celiberti de Casariego was arrested in Porto Alegre (Brazil) together with her two children and with Universindo Rodríguez Díaz. The arrest was carried out by Uruguayan agents with the connivance of two Brazilian police officials. From 12 to 19 November 1978, Mrs. Celiberti was detained in her apartment in Porto Alegre and then driven to the Uruguayan border. She was forceably abducted into Uruguayan territory and kept in detention. On 25 November 1978 the Fuerzas Conjuntas of Uruguay publicly confirmed the arrest of Mrs. Celiberti, her two children and Mr. Universindo Rodríguez Díaz, alleging that they had tried to cross the Brazilian-Uruguayan border secretly with subversive material. Until 16 March 1979, Mrs. Celiberti was held incommunicado. On 23 March 1979, she was charged with "subversive association", "violation of the Constitution by conspiracy and preparatory acts thereto", and with other violations of the Military Penal Code in conjunction with the ordinary Penal Code. She was ordered to be tried by a Military Court. She was ordered to be kept in "preventive custody" and assigned an ex-officio defence lawyer.

10.1 The Human Rights Committee observes that although the arrest and initial detention of Lilian Celiberti de Casariego allegedly took place on foreign territory, the Committee is not barred either by virtue of article 1 of the Optional Protocol ("... individuals subject to its jurisdiction ...") or by virtue of article 2 (1) of the Covenant ("... individuals within its territory and subject to its jurisdiction ...") from considering these allegations, together with the claim of subsequent abduction into Uruguayan territory, inasmuch as these acts were perpetrated by Uruguayan agents acting on foreign soil.

10.2 The reference in article 1 of the Optional Protocol to "individuals subject to its jurisdiction" does not affect the above conclusion because the reference in that article is not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred.

10.3 Article 2 (1) of the Covenant places an obligation upon a State party to respect and to ensure rights "to all individuals within its territory and subject to its

jurisdiction", but it does not imply that the State party concerned cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State, whether with the acquiescence of the Government of that State or in opposition to it. According to article 5 (1) of the Covenant:

"1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant."

In line with this, it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory.

11. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights is of the view that the facts as found by the Committee, disclose violations of the International Covenant on Civil and Political Rights, in particular:

of article 9 (1) because the act of abduction into Uruguayan territory constituted an arbitrary arrest and detention;

of article 10 (1), because Lilian Celiberti de Casariego was kept incommunicado for four months;

of article 14 (3) (b), because she had no counsel of her own choosing;

of article 14 (3) (c), because she was not tried without undue delay.

12. The Committee, accordingly, is of the view that the State party is under an obligation, pursuant to article 2 (3) of the Covenant, to provide Lilian Celiberti de Casariego with effective remedies, including her immediate release, permission to leave the country and compensation for the violations which she has suffered, and to take steps to ensure that similar violations do not occur in the future.

APPENDIX

Individual opinion submitted by a member of the Human Rights Committee
under rule 94 (3) of the Committee provisional rules of procedure

Communication No. R.13/56

Individual opinion appended to the Committee's views at the request
of Mr. Christian Tomuschat:

I concur in the views expressed by the majority. None the less, the arguments set out in paragraph 10 for affirming the applicability of the Covenant also with regard to those events which have taken place outside Uruguay need to be clarified and expanded. Indeed, the first sentence in paragraph 10.3, according to which article 2 (1) of the Covenant does not imply that a State party "cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State", is too broadly framed and might therefore give rise to misleading conclusions. In principle, the scope of application of the Covenant is not susceptible of being extended by reference to article 5, a provision designed to cover instances where formally rules under the Covenant seem to legitimize actions which substantially run counter to its purposes and general spirit. Thus, Governments may never use the limitation clauses supplementing the protected rights and freedoms to such an extent that the very substance of those rights and freedoms would be annihilated; individuals are legally barred from availing themselves of the same rights and freedoms with a view to overthrowing the regime of the rule of law which constitutes the basic philosophy of the Covenant. In the present case, however, the Covenant does not even provide the pretext for a "right" to perpetrate the criminal acts which, according to the Committee's conviction, have been perpetrated by the Uruguayan authorities.

To construe the words "within its territory" pursuant to their strict literal meaning as excluding any responsibility for conduct occurring beyond the national boundaries would, however, lead to utterly absurd results. The formula was intended to take care of objective difficulties which might impede the implementation of the Covenant in specific situations. Thus, a State party is normally unable to ensure the effective enjoyment of the rights under the Covenant to its citizens abroad, having at its disposal only the tools of diplomatic protection with their limited potential. Instances of occupation of foreign territory offer another example of situations which the drafters of the Covenant had in mind when they confined the obligation of States parties to their own territory. All these factual patterns have in common, however, that they provide plausible grounds for denying the protection of the Covenant. It may be concluded, therefore, that it was the intention of the drafters, whose sovereign decision cannot be challenged, to restrict the territorial scope of the Covenant in view of such situations where enforcing the Covenant would be likely to encounter exceptional obstacles. Never was it envisaged, however, to grant States parties unfettered discretionary power to carry out wilful and deliberate attacks against the freedom and personal integrity against their citizens living abroad. Consequently, despite the wording of article 2 (1), the events which took place outside Uruguay come within the purview of the Covenant.

ANNEX IX

Excerpts from statements made to the Working Group by representatives
of associations or organizations directly concerned with reports of
enforced or involuntary disappearances in El Salvador

A. Excerpts from the statement made by the representative of
the El Salvador Commission on Human Rights

Thank you, Mr. Chairman. I would also like to thank all members of the Group for again giving me an opportunity to describe the situation with regard to the policy of disappearances being pursued by the Government Junta of El Salvador. I shall try to be specific and draw attention to points which, in our opinion, are qualitatively more important, especially concerning the period since 1980. Basically what we should like is for you to tell us the matters on which we were not sufficiently clear in the brief statement.

First of all, in addition to what we told you here at a similar meeting last year, we wish to say that the policy of enforced or involuntary disappearances has become an institutionalized practice of the Government Junta of El Salvador. We base this statement on the fact that the policy is a permanent feature of life in our country. We would also like to add that I, in particular, have been a witness to many cases and have had my own personal experience, to which I shall refer later, and that what we have been most concerned about, especially since January last year, is the inclusion within the policy of disappearances of every one who is considered an opponent of the Junta's policy. It is qualitative factors of this kind which directly violate human rights. I am referring to the increase in the number of arrests and subsequent disappearances of minors under 21, and, in particular, of minors between 12 and 16 years of age. In recent cases, especially since January/March of this year, we have had reports by members of their families which lead us to conclude that, this year in particular, there has been an increase in the number of cases of children who have been arrested and subsequently disappeared, not to mention the increase in the number of murders of such minors, but this is not within the direct competence of this Group. In other words, if there is one single qualitative factor that characterizes the repressive atmosphere in the country, it is the violence against young people, and specifically minors, including the policy of causing the disappearance of these minors, boys and girls alike. Another of the factors which we regard as qualitatively different from those of 1979, for example, is that, on the basis of the decree on curfew and martial law issued in January of this year, attempts have been made to legalize or lend legitimacy to the policy of disappearances. Under this curfew decree, which we call martial law, the only persons who may be out during the hours while the law is in effect are members of the security forces and the army. No one who does not belong to the security forces or the army can be out in the city or leave his house because he is killed on the spot.

Strictly speaking, the curfew or martial law means that when a person is out during the hours of curfew, the security forces or the army must first stop him and ask him whether he has a safe conduct; in our country the person is indeed stopped, but by bullets. He may be arrested, but he later disappears if he is out in the streets.

Another aspect of the regime of martial law is that the security forces and the army take advantage of their legitimate "legal" immunity under this situation to enter houses during the night and take people away. I shall merely refer to one case as an example about which we have direct testimony dating from 11 August this year

from the father of the victim, a 15-year-old named Antonio Arévalo Guicas. The boy was at home in San Salvador, in the densely populated Los Arcos neighbourhood. The army came to his house during a general search of the area. The soldiers were in uniform, armed and commanded by a number of officers. They entered the house after first knocking on the door and, when the father opened the door, they asked who lived there and how many children he had. He said that he had two, a boy of 15 and a girl of 14. They immediately said that the 15-year-old boy was to come out. The child was picked up, carried out and, in front of his father, had his hands tied behind his back. They took him to the Zapote barracks in the capital, where he remained, although his parents had asked that he should not be taken away, saying that he was a child, etc. On the following day, the same soldiers came back, arrested the mother, took her to the same place, the same barracks, told her not to say that she had been there and to tell the boy's father to come to the barracks immediately. They also ransacked the house, brought the woman back, released her, took her to her house and demanded the presence of the father. In those circumstances, the father requested asylum in the Embassy of Mexico and is now in Mexico City with the other child, the 14-year-old girl, because, since she is a child, 14 years old, she is a possible victim of the soldiers who detained the boy and were responsible for his disappearance.

I refer to this case as an example because it is not the first and, unfortunately, will not be the last and it shows what happens in most cases of disappearances in El Salvador. As I said before, this is one of the qualitative aspects, namely the change which has taken place by modernizing or trying to smarten up the policy of enforced disappearances. Most of the people who were arrested and then disappeared were beaten on arrest and invariably had their hands tied behind their backs. The fact that the victims had their hands tied behind their backs may seem insignificant, but for us it is very important, because the national guard uses special rope made of nylon to tie the hands of detainees. The national police usually use iron handcuffs and most of the bodies found after the curfew have their hands tied behind their backs or are still wearing handcuffs. For us this is an indication of who is responsible for the disappearances and consequently the murders. We have many photographs of persons arrested whose corpses are found tied up in this way and we have sent them off to reach you probably next week. These photos form part of the documentation we are now submitting on 218 cases presented by family members to our offices. In such cases, the families are very afraid and it takes great courage for them to report the disappearance of their relatives and those who know how to write sign a statement in our office. We then take these documents out of the country, but it takes a long time because it is very dangerous to do so and then in Mexico, where we have an office, we fill out the cards we have been given for cases of disappearances. (...)

Secondly, we would also like to express our appreciation for your work. We attended the meeting of the Commission on Human Rights in February or March of this year, when we had an opportunity to hear some of the Group's reports, and also we have read other publications on the matter. It seems to us that you are making a substantial contribution to the cause of human rights, especially with regard to the policy of disappearances and, since, in our country, the policy is being intensified instead of being suppressed and is affecting children, we would like to ask whether you could possibly visit our country to confirm on the spot what we can tell you now. We try to look at the situation as objectively as possible, but we believe it would be much better for it to be witnessed and confirmed directly by you, and that it would be very important if you visit the country, to collect the evidence you think

relevant and then make suggestions as to how the policy of disappearances could be stopped in El Salvador. Also we consider that this policy is not peculiar to the Government Junta of El Salvador and affects many countries, especially the Latin American dictatorships. Unfortunately, there are similar situations in Guatemala and in Honduras, cases of the arrest and disappearance of Salvadorian citizens living in Guatemala or Honduras because of security problems. In May or thereabouts we transmitted some documentation on arrests made in Honduras and Guatemala by the Honduran army and the Guatemalan army and security forces, of entire Salvadorian families who were living in those countries because of the repression. They had no official status as refugees - they were only de facto refugees - but they had sought refuge in those countries and so far we know absolutely nothing about them. Various delegations of lawyers, church people, etc. went to Guatemala and Honduras to investigate the matter, but up to now there has been no reply. The only ones who were seen, because they were released, were two children of one of the couples arrested in Honduras. We mention this fact as one more reason why it is highly important for you to visit El Salvador, and if possible Guatemala and Honduras as well, to see what is going on. We often feel it is impossible for us to do anything, not only in our own country, but also in others. We know what the international situation is like and that because of power relationships it is very difficult to implement resolutions at various levels with a view to protecting human rights, but we are doing everything we can, trying to collect as much evidence as possible, and we are relying on your co-operation in continuing to defend and protect human rights as you have been doing, particularly of those persons who have been arrested and then disappeared. As time passes, at least 60 per cent of the people who disappear in El Salvador turn up, but they turn up murdered. And the numbers are increasing. So we could almost say that the policy of disappearances leads or tends to lead to murder - a much more serious violation, the violation of the right to life, as is the evidence of serious torture found on the bodies of persons who were arrested and then found murdered.

In conclusion, I would merely like to refer to a case which, as I said at the beginning, directly involves me because it happened in my house. Early this year my house in San Salvador, where I was not living for security reasons, was raided by national police officers in uniform and plain clothes. I was living in another house and at that time a Christian Democrat peasant family was living in my house and taking care of it. The security forces asked where my family and parents were and where I was and said that they were looking for us to kill us. Since we were not there and the peasants were, they tried to force them to say where we were, but they did not know because we had not told them anything and, since they said nothing because they knew nothing, really did not know, they were all arrested - the father, the mother, two daughters, one five years old and the other seven, and two brothers of the parents of the children. They were all arrested and taken to the national police building, and before they were taken away the parents were tortured in front of the two children, who remained at the national police building for nearly a month. When we found out what had happened, we took steps and even brought the case to the attention of the Christian Democratic World Union in Italy, Mariano Rumor and Fanfani, requesting them to intercede to have these people released. While they were detained, the national police never, at any time, admitted that they had gone to my house or arrested anyone, even though it was about 5 p.m. and the curfew, which then began at 7 or 8 p.m., was already in effect. All the neighbours witnessed it, they were detained by the national police and other detainees who subsequently got out also saw them. Yet the police continued to deny any involvement with the situation.

As a result of international pressure, all the family were finally released, but the children, the two little girls, were psychologically destroyed and we have not been able to talk to them because they are hidden and we did not find them. Recently I went to the village, about three weeks ago, and was unable to find the family, but other members of the family told us that the children are in a very bad way. It appears, but is not confirmed, that the woman was raped in front of the little girls in my house and that they took it very badly. I have not been able to speak to the woman and find out whether she really was raped, but I was told this by one of the members of their family. I mention this situation because it shows that those affected are not only persons who are considered to be opponents, but also those who have some connection or other with persons like me involved in reporting on the situation in El Salvador.

Whatever the reason may be, those of us who are involved in some type of action, as well as those who are not, but who have connections with those of us who are, are considered as possible opponents or possible "subversives", so that this policy has far-reaching effects not only on persons who really are opponents, but also on those who are regarded by the army security forces or the Junta as possible opponents or people with connections with possible opponents. This policy thus affects the entire population and the situation is now becoming extremely serious at the psychological level. An attempt is being made to establish a reign of terror, but of course it is obvious that the effects of psychological terror have not been achieved and that the people are continuing to fight to defend their human rights, as I recently saw in our country.

(...)

I take this as a two-part question. First, whether the persons who are reported to have disappeared could have joined the guerillas, whether they could be in areas which you say these groups took over or whether they could have died in clashes. In the first and in the second case as well, we definitely rule out that possibility. We rule it out basically because we work specifically with the unarmed civilian population, that is, people who are not members of the armed groups fighting the Junta's army. We have no statistics or data on the casualties resulting from clashes between the armed groups on either side. We do not keep such statistics or information and I should make it clear that we have been asked by several European parliamentarians whether it would be possible for us to go to these zones which are said to be liberated and make a report on the human rights situation in these places. We have taken note of the request and are trying to prepare such a report. Anyway, the people who come to the office are people who really exist - the parents, brothers and sisters, children or relatives of people who have disappeared, and in many cases they have witnessed the arrests of members of their families by the security forces, as in the case I mentioned of the 15-year-old boy who was arrested by uniformed soldiers in his house and in the case of the family arrested by uniformed national police officers in my house. I would also like to mention the case of a friend in the Victor Medrano Commission who was arrested in our San Salvador office by national police officers in plain clothes and who was held for about 20 days. The national police denied that they were holding him and he was found - thank God - by the International Red Cross. Thanks to that and to international pressure, our friend was released and we have his testimony in which he reports that he was there and describes his arrest, despite official denials by the authorities of his arrest and disappearance. In other words, his arrest was never officially ...

Furthermore, we do not consider that the persons who have died in armed clashes are the same as those who have been arrested and then disappeared, because if that were the case, granting that as a possibility, those who are found or die in these clashes, at least those we have been able to see for ourselves in the capital, simply have bullet holes in their corpses. But the corpses of the civilians, many of them living here, they were first arrested and then their bodies were found; in 99.9 per cent of these cases the bodies show signs of torture at various points, something that would not be very logical in an armed clash, where there would be no time for torture.

The people fighting in the battle areas, which are mainly in specific locations in the central, northern and southern parts of the country, are usually from those places. We do not know, nor could we say, who they are because, as I said, it is not our job to deal with cases occurring in confrontations between persons who are armed on both sides. This is not our objective, and everyone in El Salvador, including the Junta, knows that our offices are public, that anyone can come to make a report and that most of the cases we have received involve persons arrested by the security forces, either in or out of uniform or both. We also have photographs of these cases. Consequently, on the basis of the evidence and documentation we are submitting on cases which we have actually seen, we cannot conclude that these people have died in armed clashes or that they have been in battle areas because, as I said, we have no evidence about this and we consider, on the basis of the various items of proof to the contrary, that the cases we are submitting are cases of disappearance and that the disappearances policy is a Junta policy, which, on the basis of this evidence is directed against civilians who are not involved in the armed confrontation. If we managed subsequently to prepare a report on what is going on in the liberated zones, we would have to investigate whether anyone who has disappeared is there, but in principle we do not believe any of them are and we maintain that such is not the case; in other words, no one who has been reported as having disappeared has been found anywhere but in security forces' buildings, barracks or the cemetery. (...)

We have testimony from eyewitnesses, especially in Honduras, to the arrests of Salvadorians in refugee camps by the Honduran army or members of the Honduran security forces; the people arrested are handed over to the El Salvador National Guard. Most of them are never found, but sometimes their bodies are found in the border area and there are cases of arrests of refugees which have been witnessed by all the people living in these refugee camps. We have written testimony on the matter and photographs of North American military advisers with Honduran army officers in the refugee camps. We also have other photographs of members of the Honduran security forces in a refugee camp attempting to arrest a family. I refer to the specific case of a family which was not arrested because the entire refugee population came to the family's rescue, and since there were only 10 or 12 security personnel they could not make the arrest. The family then had to flee from that refugee camp and we do not know where they are. I mean, they may be in some other nearby refugee camp for security reasons. In the case of families who were arrested and who disappeared in Tegucigalpa, we even have statements from Dutch people, who are neither Salvadorian or Honduran and are not at all subjective - Dutch people who live near the house where those Salvadorians lived and who reported the arrests of those families, a family called Navarro and another family named Díaz, who were all arrested - entire families, including children - by DIN (the Directorate of National Intelligence in Honduras), which is a kind of secret police. As confirmation that these children and people were really arrested, we have a photocopy of a card (not

really a card, but a migration document) by which the Honduran authorities delivered two minors who are the children of the people arrested to the Salvadorian authorities, claiming that they were found in the border area - something only they could believe. I do not know whether anyone else could believe it but this is how they justify handing these children over to a member of their family in El Salvador. These children too were outside El Salvador for security reasons. They are the only two survivors and if necessary they could describe the arrest. One is 12 and the other seven or eight. The other smaller child is five or six. In other words, we are sure of the complicity between the Honduran military forces and the Salvadorian military forces, and with the Guatemalan army. The Guatemalan army has even crossed the border into Salvadorian territory, and does so whenever it likes, to provide support for Salvadorian army actions. In the case of disappearances in Guatemala, we have no written testimony, but we do have information from some priests and nuns about the situation, and in practice and in view of the consequences and objective facts in our country, this interrelationship does exist. The complicity between the Honduran, Guatemalan and Salvadorian military forces for joint action in El Salvador or in their own territories we have called the triangle of terror. There are two decrees that were enacted by the Junta of Honduras this year, in April or March-April if I remember correctly. One states that "Honduras may allow foreign armies to cross its territory whenever necessary to defend public safety, order and democracy". The other states that "the Honduran army may co-operate with other Central American forces to defend public order, democracy and safety". In other words, an attempt is being made to legalize the participation of the armed forces of these two countries in hunting down possible suspects or opponents of the Junta wherever they may be ...

B. Excerpts from the statement made by the representative of the Legal Aid Office of the Archbishopric of San Salvador

I am sincerely grateful to you for granting me a hearing, which is less a hearing of a single individual than it is a hearing of the many families of persons whose basic rights have been violated in El Salvador. We honestly believe that the causes of the violence in El Salvador are very complex, and I do not think it important to explain them now. As regards the work of the Legal Aid Office of the Archbishopric in connection with enforced or involuntary disappearances, I should first like to point out that in accordance with the statistics which we gave to the Division of Human Rights, by July 1981 we had recorded 1,026 missing persons since 15 October 1979, the date on which the Revolutionary Government Junta of El Salvador seized power through a coup d'état. During roughly the last two months (up to early November) the Legal Aid Office has listed 154 persons whose cases have been reported to the Office and accepted by it following a preliminary investigation prior to the initiation of the necessary legal action before the Supreme Court of Justice of El Salvador. Other cases of enforced or involuntary disappearance have been reported, but they have not met the requirements laid down by the Legal Aid Office for the submission of a complaint or application for a writ of habeas corpus to the Supreme Court of Justice. As is also explained in the document which we submitted to the Division, the Legal Aid Office lays down a number of prerequisites for submitting a complaint or engaging in legal proceedings before the courts.

Before explaining the legal remedies available in El Salvador, I should like to mention the latest cases of enforced or involuntary disappearances which have occurred in my country; some of these are very important. On 21 or 29 October 1981, the armed forces of El Salvador stated that a military operation had been carried out with the primary objective of combating the country's insurgent guerrilla

In view of the rapid developments of the past few days, it is obviously pointless for the Commission to continue its work. Consequently, the Commission considers its mission completed and is hereby dissolved. The documentary and other evidence collected will be transmitted to you by the Secretary of this Commission.

GOD, UNION AND LIBERTY

Roberto Lara Velado
Member

Luis Alonso Posada
Member

Roberto Suarez Suarez
Member

movement. This military operation took place on the south-east side of the Lempa river after the senseless destruction of the Oro bridge, the main bridge joining the two halves of my country. After eight days of military operations, the army reported that 132 alleged guerrillas had been killed. Monsignor Arturo Rivera Damas, Apostolic Bishop and Administrator of the Archdiocese of San Salvador, said at his Sunday mass that the 132 persons killed were not guerrillas, according to the evidence we possessed. Following an investigation we were able to establish that those executed included 36 juveniles aged between 1 and 14 years and 44 women aged between 50 and 70 years, and that the enforced disappearances included the mass kidnapping or disappearance of 24 juveniles and 36 women, in addition to those killed. According to all the evidence which reached the Legal Aid Office and the Archbishopric of San Salvador, helicopters of the El Salvador army were used for this purpose. We have the names of all the persons who were captured or who disappeared involuntarily on this occasion, both the 24 juveniles and the 36 women. It is important to stress that it is often impossible to verify cases of disappearance because they occur en masse in El Salvador. These group disappearances have been taking place since the start of the military operations being carried out by the army, principally in the rural areas of El Salvador. I shall not now discuss the merits or demerits of the military operations. I would stress that our action is always aimed at protecting the human rights of the defenceless civilian population, as has been stated by the Catholic Church in El Salvador and by our Legal Aid Office: we are on the side of that part of the Salvadorian population which is suffering the most.

This is an exceptional case in that ... we know of other mass cases, but they have not met all our requirements. The 154 cases which we have listed in our statistics are those which occurred prior to November; this latest case occurred before my departure, that is to say, we were able to gather the evidence prior to my departure. The 154 cases listed are individual cases; this is a group case which should be added to the 154 cases listed by the Legal Aid Office.

With regard to the legal remedies provided for in the legal codes and the Constitution of El Salvador, the most important is that of habeas corpus; this is provided for in the law concerning constitutional procedures, and in the opinion of many lawyers and of the Legal Aid Office it is a really rapid and effective remedy if used as set forth in that law. We think that basically the problems result from the way the law is applied and the manner in which the sheriffs appointed by the Supreme Court are received when they try to secure the personal appearance of the detained or missing person in the public prison, or rather the prisons of the security forces of El Salvador. We believe that the habeas corpus procedure is swift, from the standpoint of the proceedings involved. I do not think that it is necessary at this moment to go into all the articles of the code of constitutional procedures. Once a writ of habeas corpus has been applied for by a lawyer to the Supreme Court, there is a period of exactly 10 days within which the sheriff must submit a final report on the position in terms of deprivation of freedom of the person detained. The method which the Supreme Court of Justice should really use is the implementation of the articles of the Law on Constitutional Procedures concerning the obligation of the Supreme Court to demand an explanation from the military leaders and the heads of the National Guard, the national police and the rural police, which are the bodies mainly responsible for disappearances and detentions in El Salvador. In many cases, sheriffs appointed by the Supreme Court have been prevented from carrying out searches or having searches made on the premises

of the security bodies - the national police, the rural police and the National Guard - to locate detainees. Another problem they face is the constant movement of detainees among State security prisons. That is to say, when a sheriff calls on a military official or the head of one of the security bodies, the prisoner or detainee has already been moved to some other prison or place of detention belonging to these bodies. There are many cases in which I personally have had to act in habeas corpus proceedings because I was appointed sheriff, and we have subsequently learned through a prisoner who was in another prison that, for example, a former named Rogelio Guarnado, for whom I had been appointed sheriff, had been transferred from the rural police prison to the national police prison of San Salvador on the same day as we had been trying to secure his personal appearance. This makes it impossible actually to carry out the habeas corpus procedure; in other words, it makes it ineffectual, although, I repeat, we believe that from the standpoint of the proceedings involved it is very rapid; but it is not effective because it is frustrated by the directors of the security bodies and their military subordinates in their dealings with the sheriffs. Another point is that most of the sheriffs appointed by the Supreme Court of Justice are lawyers, and without wishing to broach the question of their ethical standpoint, I would say that they do not pay much attention to the details of the habeas corpus procedure; they are very casual about - they attach little importance to - the proceedings set forth in the Law on Constitutional Procedures. We believe that the sheriff appointed by the Supreme Court of Justice has a sacred task of the utmost importance, but this is not the attitude adopted in El Salvador in most cases. The sheriffs make very superficial reports in connection with habeas corpus in the cases referred to them for action.

As the habeas corpus remedy has been exhausted, because of the way in which it is treated, we have also used and exhausted the remedy of the courts, so far as concerns bringing cases before the ordinary courts of justice responsible for administering the penal system in El Salvador. Although the El Salvador Penal Code and Code of Penal Procedure allows for complaints in cases of wrongful deprivation of freedom, in the cases brought before the ordinary courts of El Salvador the seven criminal judges have nullified the possibility of lodging complaints. The complaints are submitted to the courts, but in many cases, I would say in the great majority, they are not accepted, and in the case of those which are accepted, it is impossible to get them dealt with, for after witnesses have been brought by the families or by the injured party, the proceedings are very long-drawn-out, in spite of the fact that the law and the Code of Penal Procedure establish fixed time-limits for the procedure. We have therefore had recourse to the remedy of complaints to the Public Prosecutor's Department, a State body which is part of the Office of the Government Attorney, whose duties include dealing ex officio with criminal cases and submitting applications to the criminal judges of the districts concerned. In two cases at least we have submitted all the documents, witnesses, photographs, solid evidence of the commission of the offence of deprivation of freedom by two military officers in El Salvador, in the case of the arrest of a family and the arrest of two students. Clear evidence of these arrests was submitted, but the Public Prosecutor's Department literally pigeon-holed the cases brought by the families with the support of the Legal Aid Office. In other words, as lawyers we have what could be considered an effective range of remedies if they were really applied. As far as the Constitutional Codes go, we believe that we are protected, or rather that rights really are protected, particularly the right to freedom, both in the Constitution and in the Code of Criminal Procedure, as well as in the law concerning the Office of the Government Attorney and the Public Prosecutor's Department. The basic problem

lies in their application, in the fact that officials refuse to apply the laws in El Salvador. They refuse to carry out the procedures; that is the basic problem. Finally, in connection with legal remedies and the legal situation, I must say that the recent Decree No. 507 issued by the Revolutionary Government Junta on 14 December 1980 provides encouragement or incitement to cause the disappearance of persons in El Salvador. Although the Decree does not specifically endorse any such action, nevertheless it prolongs for 15 days the possible period of detention by the State security bodies or organs, and this is very dangerous, for it means that a person may be held for 15 days, under Decree 507, wholly incommunicado as regards his family or a lawyer, in the prisons of the security bodies during their investigation. This is provided for in Decree 507, that is to say, it is a law which is applicable to the rights enshrined in the Constitution of El Salvador. Furthermore, after having appeared before a military judge - not a criminal judge - the prisoner or detainee cannot have the benefit of a criminal defence for 180 days following his appearance before the judge. In other words, only after 180 days have passed can the prisoner have a legal defence, the right to defence; I am stressing this in this testimony, in this report, because there has been a striking increase in detentions and disappearances since the promulgation of Decree No. 507. This Decree thus in effect abolishes certain provisions of the Code of Criminal Procedure which are favourable to the detainee. I repeat: it is very important to stress this matter of the 15 days, because many persons or detainees who have disappeared have subsequently been found murdered in El Salvador. What I mean is that many persons whose corpses have been found bearing clear signs of torture were, we believe, unable to withstand the treatment they received from the State security bodies. I should at the same time like to mention, in connection with the present situation of missing detainees, the praiseworthy work carried out by the International Committee of the Red Cross in El Salvador. An office for tracing and searching for missing persons has been opened, with Government consent, which I think is a positive step by the Government in this direction. (...)

During the first 15-day period there is no possibility whatsoever of communicating with the prisoner or engaging in a procedure in accordance with the Constitution on behalf of the prisoner or detainee. Secondly, while it is possible to apply for a writ of habeas corpus during the period of 180 days, there is no right to defence. (...)

It is true that article 167 of the Constitution allows the executive power and the legislative power in a national emergency to order the suspension of certain constitutional guarantees, but these are specified, as follows: the right to freedom, freedom of association, is curtailed by the state of siege; in a stage of siege, freedom of correspondence is violated, correspondence may be violated; the right to freedom of movement in El Salvador is restricted, as are the right to freedom of expression and the free dissemination of ideas. These are the four rights contained in the laws which may be suppressed during a state of siege in El Salvador, in a situation of national emergency. The Constitution does not authorize the promulgation of laws which, like Decree No. 507, revoke the constitutional remedies in favour of a person who is detained. That is why the Legal Aid Office of the Archbishopric of El Salvador has appealed against Decree No. 507 to the Supreme Court of Justice on the ground that it is unconstitutional. Any citizen of El Salvador according to the law on constitutional procedures, may lodge an appeal on the ground of unconstitutionality when a law has been promulgated by the executive or the legislative power which infringes fundamental rights or runs counter to the principles set forth in the Constitution. Here again we have exhausted the only domestic remedy available in El Salvador. (...)

Unfortunately, in some cases we have been able to establish that even the members of the International Committee of the Red Cross have sometimes been deceived by the members of the security forces or State bodies. We have three cases, including that of Mrs. Emilia de Castro, where the International Committee of the Red Cross has found the persons and talked with them but subsequently these persons have not been released or have not been found alive. There is one very important case, concerning which I believe that we will be able to submit information within a very short time, in which the International Committee of the Red Cross visited a detainee in a National Guard prison and informed his father that he was in that prison. The father was unable to go to visit him - the link was established through the International Committee of the Red Cross - and the National Guard was then stated to have transferred the man to another prison, but at the prison to which the father was told that he had been transferred - the Municipal Prison of San Salvador - the director declared that the man had never been transferred there by the National Guard. In other words, this person has disappeared. I think that he is included in the list or statistics of disappearances. I do not recall his name exactly at the moment, but I could find it in the statistics. Thus, this is a case in which deception has been practised both on the victim's parents and on the International Red Cross whose activity in El Salvador has been made a mockery of. I should like to conclude briefly by saying that the normal procedure in El Salvador has in the last year been that of capturing and then murdering people, as a matter of common practice. Regrettably, we have not been able to find the 1,026 persons, and none of the last 154, alive in El Salvador; and the legal remedies used have been fruitless in these 1,026 cases. We can say with complete assurance that we are appealing to you - to your authority and competence - because we have exhausted our possibilities as Legal Aid Office of the Archbishopric, continuing the tradition of the Catholic Church in El Salvador, and of Monsignor Oscar Adolfo Romero y Baldámez who was assassinated in March 1980 - the tradition of using or exhausting all legal remedies open to us in domestic law before having recourse to international legal bodies. (...)

Basically, the main reason why the criminal judges in El Salvador do not act in first instance is because of their fear and the problem of their own safety. There is a percentage, I think quite small, of judges who act as they do for political reasons, to please the Government. But most of the judges who certainly previously behaved as they did out of political corruption, complicity with the Government, have left the country because of the internal struggle in El Salvador, and because they too are the target of action by the El Salvador opposition - the judges who curried official favour. Now, in the case of recently appointed judges, we believe that basically it is from fear for their own safety that they do not act in accordance with the provisions of the Code of Criminal Procedure and the laws to which I referred earlier. It should be pointed out that the first magistrates to deal with cases when events occur are what we call the justices of the peace, of whom there are 261 in the country. Now, unfortunately, most of them, I would say 95 per cent, are appointed by the chiefs of the military garrisons in El Salvador; without the authorization or approval of the military, who are now administering El Salvador, the Supreme Court of Justice cannot appoint these justices of the peace, most of whom belong to the Nationalist Democratic Organization, the notorious so-called order established 10 years ago, whose duty was to destroy the rural organizations in El Salvador. This is done because those who can distort the facts when the case is brought up are first of all the justices of the peace who, after the period established in the Code of Criminal Procedure, send the evidence

to a criminal judge of first instance. In the case of the latter, I repeat, it is basically from fear that the judges act or do not act in accordance with the law. But in the case of the initial proceedings, conducted by the justices of the peace, I do think that there is political complicity, political bias, a clear political readiness to collaborate with the Government, with the régime, on the part of the justices of the peace.

Unfortunately I have to say that there is no separation of powers between the executive and the judiciary. The judges of the Supreme Court of Justice are appointed by the Revolutionary Government Junta. So far there have been no signs that they are acting independently of the decisions of the executive power. If there were such signs, we would be the first to say that there were courageous judges in the Supreme Court. They are appointed by executive decree by the Revolutionary Government Junta, and it should be stressed that there have been many resignations, or at least a number of resignations by judges of the Supreme Court who, through fear or because they do not agree with the executive power's policy, are removed by the Government Junta, are more or less forced to resign. Unfortunately I can say that those in office at the moment, all the judges, seek to please the Revolutionary Government Junta in their decisions. Thus, the sheriffs appointed to deal with cases of habeas corpus have what might be called a bent towards favouring the Government and not complicating matters for the military, not complicating the situation for the chiefs of the military garrisons whom they must serve with a writ demanding that a person illegally detained should be brought forward.

ANNEX E

Reports of the Special Commission to Investigate Political Prisoners
and Disappearances (El Salvador)

A. First report of the Commission (23 November 1979)

We respectfully inform you that, in accordance with Decree No. 9 establishing the Special Commission to Investigate Political Prisoners and Disappearances, we are carrying out an exhaustive investigation and have in our possession specific information which will be made available to you in due course. On the basis of the information gathered, we have concluded that a number of officials of previous régimes have been guilty of abuses of power, to the point of disregarding the most fundamental rights established in our Constitution, such as the right to life and civil liberty.

Using the above-mentioned information, we have compiled the following list of disappearances of which we have succeeded in collecting sufficient evidence thus far:

ARRESTED BY THE NATIONAL GUARD

NAME	DATE OF ARREST
1. Narciso de Jesús Rodríguez	19 September 1979
2. Andrés Rivera	19 September 1979
3. Patrocínio Adán Rivera	19 September 1979
4. Carlos Antonio Madriz Martínez	14 July 1976
5. Daniel Ambrosio González	3 July 1979
6. Juana Ramos	30 July 1975
7. José Victoriano Arevalo Rosado	30 October 1978
8. Domingo Chávez Martínez	4 October 1978
9. Jorge Vitelio Martínez	1973
10. Pedro Díaz Barahona	7 September 1977
11. Lil Milagros Ramírez	26 November 1976

ARRESTED BY THE NATIONAL AND ... GUARD

1. German Flores Zañas	17 September 1979
2. Víctor Manuel Rivera Valencia	17 September 1979

ARRESTED BY THE NATIONAL POLICE

1. Eugenio Guardado	15 August 1979
2. Julio César Fabian Villalobos	16 March 1977
3. Raúl Ernesto Sosa Camranza	14 October 1979

ARRESTED BY THE RURAL POLICE

1. Cecilio Ramírez Dubón	5 January 1976
2. José Adalid Melara	9 July 1976

While the persons referred to above are not the only cases of disappearance, they are the only ones whose arrest and disappearance have so far been substantiated.

We have proof of the arrest of the persons mentioned above, as well as of the fact that, a few months ago, they were still being held by the security forces. We have also been informed that no criminal charges have been brought against any of them in the national courts. According to reports by the chiefs of the various security forces, the persons in question are not currently being detained. However, it is not known whether they have been released. All of this provides sufficient grounds to make reasonable assumptions, in accordance with article 408 of the Code of Criminal Procedure, as to their deaths and those responsible. Furthermore, their mere detention for an extended period, without any proceedings being instituted against them, constitutes a punishable offence, under articles 218, 219 and 420 of the Penal Code.

In order to punish those responsible for shameful chapters of our history, as an example to future generations, and to give due satisfaction to the relatives of persons affected by such acts, and also to comply with the just public demand that justice should be done, we wish to make the following recommendations:

(1) In the light of the information received, the military commanders of the Governments of Colonel Arturo Molina and General Carlos Humberto Romero should be prosecuted immediately, in accordance with the legislation in effect at the time when the acts constituting the offences were committed. Proceedings should be instituted in particular against the following: both former Presidents, in their capacities as Commanders-in-Chief of the Salvadorian armed forces; their respective Ministers of Defence and the various commanders of the National Guard, the Rural Police and the National Police, who held those offices during the periods of Government referred to above. Since this Commission is a purely investigatory body, we believe that the nature of the offences involved should be determined by the courts dealing with each case and by the Honorable Junta when ruling, in the respective preliminary hearings, whether there are grounds for instituting proceedings. The evidence which we have collected on the cases referred to above is available for use by the Honorable Junta should it decide that, given the nature of the offices held, preliminary hearings are required, or for use in the respective trials themselves, if no preliminary hearings are necessary.

(2) The existence of cells or even premises for temporary detention in the barracks of the public security or military forces should be prohibited in future, since they lend themselves to all types of abuse, including unlawful detention and the use of torture. Any person arrested should be taken to jails operated by the Ministry of Justice, which are public and therefore may be visited regularly by any persons. This would entail (a) the demolition of existing places of detention in such barracks and (b) appropriate legal reforms.

(3) Proceedings should be instituted immediately against the person acting as Director or Chief of the Rural Police on 16 October of this year, the date of the arrest, in Soyapango, of Tomás Flores García, a sexton, who has not been seen since and who, on the basis of the evidence gathered, can be presumed dead. This evidence is available to the court in which the proceedings in question take place.

(4) A military committee should be set up to work with the Special Commission to Investigate Political Prisoners and Disappearances, and, as a body consisting of honourable military officers, to assist in investigating possible cases of detention in prisons belonging to the security forces, and in tracing persons believed to have disappeared for political reasons.

(5) In cases of political disappearance, where the person concerned is presumed or proved dead, a socio-economic study should be carried out to determine the amount of compensation to be paid to the family. Similarly, compensation should be paid to natural persons or legal entities for material damage caused by armed military or para-military groups.

(6) The Honorable Junta should issue a Decree-Law interpreting and amplifying the existing Amnesty Decree and, if possible, listing the convicted persons to benefiting from it, to enable habeas corpus proceedings in the Supreme Court of Justice to be expedited so that, in accordance with the Amnesty Decree, political prisoners may regain their freedom as quickly as possible. The current wording of the Decree does not permit this in most cases.

We do not wish to conclude without registering our sharp disapproval of members of the Supreme Courts of Justice who held office under the previous régimes referred to in this report for gross negligence in discharging their duty to ensure observance of the Political Constitution and the law, as they had undertaken to do, thereby failing to protect the fundamental rights of the people of the Republic.

San Salvador, 23 November 1979

Dr. Roberto Suarez Suay

Dr. Roberto Laro Velado

Dr. Luis Alonso Posada

B. Second report of the Commission (3 January 1980)

We respectfully inform you of the results of the investigation conducted by the Special Commission to Investigate Political Prisoners and Disappearances, in accordance with Decree No. 9 establishing the Commission. We consider the investigation to be concluded.

Thus far, we have not traced any of the persons listed as having disappeared. However, we have evidence that many of them were arrested by various public security forces and that some of them were confined in cells in the barracks of these forces. In any event, no political prisoners are currently being held in such premises, according to reports of the various Directors-General, which we are transmitting to the Office of the President of the Honorable Junta, together with all the evidence which will be used in preparing the respective preliminary hearings. We found a large number of bodies. Those identified were of persons who had disappeared. Finally, it is common knowledge that the persons listed as having disappeared have not been released. All of the above facts lead us to conclude that all the missing persons can be presumed dead.

The following names can be added to the list of persons missing and presumed dead:

NATIONAL GUARD

NAME	DATE OF ARREST
Herculano Antillon Guerrero	3 September 1979
José Israel Alvarado Alvarado	23 August 1979
Elena del Rosario Gomez Flores	16 July 1979
Carlos Humberto Mendoza Rivera	23 August 1979
Gonzalo Segundo Merino	3 July 1979
Salvador Rubio Hernandez	3 July 1979
Jorge Leonidas Crespín	16 February 1977
José David Guardado Guardado	16 September 1979
Eduardo Castro Smaña	26 July 1979
Carlos Ivan Burgos	28 June 1979

RURAL POLICE

Victor Daniel Rivas Guerra	24 April 1976
José Julio Ayala Mejía	24 April 1977
Maximiliano Jeronimo Hernandez	5 October 1979
José Isaias Hernandez	5 October 1979
Marco Antonio Calles Martinez	8 October 1979
Tomas Flores Garcia	16 October 1979

NIGHT WATCHMEN, MUNICIPAL POLICE AND LOCAL MILITARY

Andres de Jesus Aguirre Panoa	26 April 1979
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INSPECTION OF PREMISES REPORTED AS BEING CLANDESTINE PRISONS

Monserrat
Soyapango
Tecoluca

We also visited the following cemeteries or graves and exhumed the remains described below, which were identified as those of persons listed as missing:

DATE		PLACE
22 November 1979	1 body	Huava San Salvador
24 November 1979	2 skeletons	Kilometres 80-81 International Highway, Canton of Galera Chamoco Montaña El Castillo, District of San Vicente
26 November 1979	8 skeletons	Kilometres 80-81 International Highway, Canton of Galera Chamoco Montaña El Castillo, District of San Vicente
29 November 1979	4 bodies	Kilometre 55, International Highway, District of Verapaz, Department of San Vicente
IDENTIFIED: Ruben Gundjardo and Fredy Orlando Hernandez Cruz		
28 November 1979	4 bodies	Cantons of San Isidro and Talpatate, Verapaz, Kilometres 50-51 of International Highway
IDENTIFIED: Rafael Angel Bonilla Escamilla, Santiago Escobar Najarro, Manuel de Jesus Valle, Juan José Bravo		
30 November 1979	2 skeletons 1 body	Coastal Highway, Department of La Libertad, Kilometre 49
20 November 1979	2 bodies	Apopa cemetery
IDENTIFIED: Jose Nicolas Palacio Gutierrez		
4 December 1979	2 bodies	Nahuizalco cemetery
IDENTIFIED: Jose Amilcar Benavides		

6 December 1979	2 bodies	Salcoatitán, place known as Santa Elena, Department of Sonsonate
7 December 1979	2 bodies	La Zunguera, District of San Luis Talpa, Department of La Paz
IDENTIFIED: Jose Nicolas and Francisco Lainez Cruz		
10 December 1979	1 body	Puente Tihuapa, District of La Libertad
IDENTIFIED: Jorge Leonidas Crespín		
13 December 1979	4 bodies	Aguilares
IDENTIFIED: Vicente Reyna, Gilberto Guzman Martinez, Teresa Castellanos		
28 December 1979	25 bodies	Joya de Cerén, Opico, Department of La Libertad
IDENTIFIED: Jose Oscar Guardado, Antonio Israel Rodriguez Arias, Rene Mauricio Diaz Peñate, Jose Efigenio Mejia Arriaga, Jose Zinio Saravia Andrade, Moises Quijano, Gerardo Martinez, Nelson Antonio Quijano, Lino Mejia Moran, Antonio Maldonado, Ignacia Orellana Guardado de Ortega		

We also visited the headquarters of the National Police, the National Guard and the Rural Police, as well as Cojutepeque Penitentiary. In all of these places we found cells, dungeons and a number of cellars which may well have been used at other times as clandestine prisons or torture chambers, although, when we visited them, they were empty. In our view, these premises should be modified in such a way as to make it impossible for them to be used as prisons.

In view of the above, we make the following recommendations:

1. We reaffirm our earlier recommendation that proceedings should be instituted against the military commanders referred to in our first report;

2. The premises listed below should be modified to prevent them from being used as prisons:

Cells of the National Police, second floor, at the top of the second flight of steps, on the extreme left, south side of the barracks building;

Cells at the National Guard barracks, second floor of the barracks building, southside;

At the premises of the Rural Police, fill in cellar used as prison and demolish cistern which may have been used as a place of confinement;

3. As soon as the respective judicial proceedings have been instituted, the necessary steps should be taken to secure the extradition of those of the accused who are out of the country.

ANNEX XI

Excerpts from the statement made to the Working Group
by the Permanent Representative of El Salvador to the
United Nations Office at Geneva

[17 September 1981]

(...)

As you know, our situation involves more than simply a problem of missing persons. That problem is set in a much broader social, economic and political context which is affected not only by internal factors but also by international elements. You are aware of the importance attached to the case of El Salvador and the international interest in our country which, it is claimed, is a hotbed of international tension, whereas the situation has been basically an internal matter. I repeat, it is not only a problem of missing persons: thousands of people have died in the wave of violence in my country and it is our own flesh and blood that is suffering from this very distressing situation. The Government of El Salvador is committed to a search for peace and to implementing a programme of social reforms to improve the situation in the country. I should say that we come with an open mind to offer you our co-operation, as we look to you for co-operation and understanding of the real causes of the current phenomenon.

Before going on, I would like to inform you that my Government has taken a very clear legal position with regard to a series of resolutions adopted within the United Nations and that our agreeing to attend this hearing does not imply recognition or acceptance of the content of those resolutions.

Despite that reservation which we hold, we are offering our co-operation, and have been giving it in other very important areas, including - and under the same understanding - to the Special Representative, Mr. Pastor Ridruejo, who received information from us and even visited the country recently. On that understanding then, as I said, although we do not accept the legal basis of the mandate as far as El Salvador is concerned, we are co-operating so that our case can be better understood. We hold this reservation because of the adoption of resolutions with a political slant which are biased and lacking in objectivity; they are often adopted without the necessary information being available and without there having been any prior investigation, so that they become political weapons within this global process which, as I said before, involves international elements that are trying to influence the situation in our country.

A recent resolution adopted here in Geneva by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, for example, is extremely regrettable, because it goes so far as to assess whether or not the climate is propitious for holding elections and it almost takes the position that it is not possible to hold elections in my country, thus obstructing political progress towards peace. This makes us indignant. In the first place the Government sought to deal with this situation within the framework of regional bodies, because it considered that they were best able to understand it. The OAS Inter-American Commission on Human Rights was invited, came to El Salvador and carried out an on-the-spot study which resulted in a report. I would like to inform you that our invitation to OAS and our work in this field continues to have priority, in that, legally, as we understand it, if two international jurisdictions are involved, the regional one can take precedence.

We have received all your reports, notes and telegrams here in Geneva, and forwarded them to El Salvador, where there is an internal procedure for dealing with them.

What has produced the violence in El Salvador? Our social structure was too rigid, and after 1930 the country was ruled by military Governments in virtual alliance with a small conservative group holding economic power. This blocked the social change needed in a country with a very high population density. At bottom, perhaps, our population problem is the main social problem from which the over-all situation we are now facing has stemmed. That, together with hard-line Governments which often overrode the popular will which sought to express itself through electoral means, led to the appearance in the 1970s of guerrilla movements which, given this existing injustice, had grounds for opposing authoritarian régimes and for trying to find solutions to the country's problem by other means, as the path of elections was denied them. Ever since, we have had very serious activity on the part of those groups and they have not accepted the political possibilities available since 15 October 1979, when a politically open Government took power and extended an invitation to even the most radical elements, some of which participated in the government framework of the Junta.

In October 1979 President Romero was ousted and the Revolutionary Government Junta took power. Various changes have occurred since then. Among its first measures the El Salvador Government (the same government as the present one, with the changes in composition which I mentioned) displayed particular concern for the question of human rights: it ratified the United Nations covenants on human rights; it set up the Committee of Inquiry into political prisoners and missing persons, to which you referred in your previous report; and it strove to find and form a pluralist Government. Unfortunately, from the outset the more radical groups turned their backs upon these political opportunities and maintained and even stepped up their violence. They carried out large-scale activities against the capitalist groups in El Salvador, who became the target of their violence, which basically took the form of kidnappings. This was probably their main source of funds. They are said to have received as much as 100 million dollars in ransom money, which gave them a large capacity for action and the ability to set up a complete national infrastructure geared to guerrilla warfare.

The response to this guerrilla action has been the proliferation of extreme right-wing groups whose violence, perpetrated under various names - Union Guerrera Blanca, Escuadrón de la Muerte - has been most serious. They have been major opponents of the Junta's present political course. President Duarte has referred to the members of these ultra-right-wing groups as his strongest opponents; with their economic power, they have more than once attempted to seize power by infiltrating the army, and have carried out many attacks against officials of the Salvadorian Government and even members of the Junta.

The crisis of violence is very serious. From the Christian Democrat Party alone, to give a figure which I happened to read today, 65 mayors who were members of the Party have been assassinated. A climate of terror has been created. I have here a message from President Duarte in which he analyses right-wing violence and severely criticizes, repudiates and condemns it.

In the face of this problem, which has two sides, socio-economic and political, the Government has tried in the first place to carry out a process of social reform, as has been reported. It involves a far-reaching land reform which at a stroke put

an end to latifundismo in El Salvador. This land was handed over to small farmers, who formed co-operatives and are now carrying forward national production. The banks were nationalized, foreign trade was nationalized, and a number of measures were taken in the interest of profound social justice, which have legitimized the process from the historical standpoint inasmuch as intensive efforts are being made to achieve social justice. The other path has been political. On many occasions attempts have been made to establish a dialogue, and now a political solution has been put forward in the form of elections for March next year. All political organizations have been invited to take part in the electoral process. We believe that if they show goodwill and accept the challenge of elections, we may find the road to peace in El Salvador. That is why we are so grieved, as I said, by the resolution adopted here which seeks to raise objections to a process which is eminently democratic. Every effort will be made to carry it through, even in the face of violence, in an attempt to overcome that violence. We cannot wait to create optimum conditions; we must try to act at once.

To return to the analysis of the violence, those structural reforms also led to an increase in the activity of the right wing, which stepped up its support for those groups or strengthened them in an attempt to recover its former privileges, and those groups have continued to operate. There is no question of any complicity between the Government and these groups, as is being alleged. They are merely groups constantly seeking to mount a conspiracy, as I said earlier. We have some cases to prove this. At one point, a lawful search was made of the homes of persons suspected of being linked with these groups, and in some of them large quantities of weapons were found. In cases where evidence has existed, the judiciary has acted.

Against this backdrop, and so as not to tire you with general introductory remarks, I should now like to take up the specific problem of disappearances as a whole. There is an international body working on the spot in El Salvador in this field, namely, the International Committee of the Red Cross. I have here details concerning the relationship between El Salvador and ICRC. ICRC has set up a large office there, has increased its budget and is working with full Government co-operation. This is reflected in the reports of the International Committee of the Red Cross itself, which I would urge you to study. ICRC is carrying out humanitarian activities. In the field of training it is calling for proper treatment of prisoners and wounded persons as part of a very expensive campaign; it is carrying out a campaign of education and training for the security bodies and soldiers. ICRC staff go to the different barracks giving lectures on humanitarian action and proper behaviour in such cases. The gates of all the prisons are open to them and they can talk with any detainee, without witnesses. They submit reports; I don't know how feasible it is for you to receive them, but we ourselves would have no objection whatsoever to your having the benefit of such reports.

Through this presence, which the Government has authorized in the country, we believe that international co-operative action is really under way to help us in our crisis.

With regard to the reference to missing persons, it is interesting to see that they have managed to trace almost a quarter of the persons reported missing, which shows the scale of their activities, and also that not all those who disappeared are dead, but rather simply cannot be found.

You should view the problem of disappearances in the context of a country to which, according to the reports of the Office of the United Nations High Commissioner for Refugees, which is also giving us magnificent co-operation, more than 200,000 persons have moved since the beginning of this year. We have no record of these 200,000 persons and we wonder how many of them are listed here as being missing. There is also the problem of internal refugees in El Salvador. There are refugee camps holding perhaps more than 100,000 people, in all, and they too are not properly registered, at least not in records at our disposal. I have no doubt that there we could find some of these cases, if an extremely complicated process of inquiry were undertaken. In addition, there is the problem of those dying every day in El Salvador. Every day our newspapers carry information on persons who have been found dead in the street as a result of passing through a zone where fighting is taking place, or murdered. These dead people usually carry no identification. They are kept for two or three days, while people come looking for missing persons, and most of the bodies are buried without being identified. Hundreds of unidentified persons have been buried. This is a problem of a poor, small country passing through an economic crisis, with a judicial and investigatory infrastructure set up for normal times. The magistrates have problems to carry out the investigations required for identification. In addition, unfortunately, we have the problem of terror, which affects the man in the street who may have seen something but will not come forward to testify. So then we run into a blank, because we receive no co-operation in that way and also because the enormous number of cases makes action very difficult. That is why I said that I have to try to explain something that is not a normal situation for a State, because we are in a situation of violence, and at the moment the Government is not in a position to put an end to the terrorism because of its vast scale. It is not a question of a power vacuum. The Government machinery, offices, schools, and businesses are all functioning and the people of El Salvador are facing up to their troubles very bravely, and going to work and rejecting strike calls; and although very frequently buses are burnt or there is no electricity, because electric power stations are blown up. Nevertheless two days later the pylons are up again and people go to work. Such is our confidence and our faith in the future, in our own great traditional capacity for work and our own effort. We want peace, we are striving for it; and the people want peace and are sick of the violence. Side by side with the violence there has been a real campaign for peace; the newspapers, the Catholic Church and all sorts of institutions are calling constantly, every day, for peace and understanding; the President speaks of the love we should bear one another; to use his words, "We are not seeking to foster hate, but are searching for understanding". As he swore, in Santa Marta, before nine Presidents of Latin America, that he would strive for peace and democracy in El Salvador, and I am convinced of his goodwill. That is what we are working for.

The problem of disappearances also arises from the participation of many people who have joined the guerrilla movements. Those people simply join without the knowledge of their families and set to work under false names, so that even they themselves do not know each other's real names, as is normal in that type of underground organization. They have made the mistake of starting to attack the civilian population and practising indiscriminate terrorism, which is now affecting their cause, since the people they harm with their acts of sabotage, burning markets, supermarkets, shops, etc., are the civilians, who have now turned against them. They believe that it is necessary to create an economic crisis so as to make it easier for them to take power. Many of them have accepted the offer of amnesty made this year. We do not believe that the road to their participation in the elections is closed. There are many members of those groups whom we believe to be moderates or tending towards moderation, who may perhaps seek to follow a path towards peace in El Salvador.

ANNEX XII

Excerpts from the statement made to the Working Group by the representative
of the Committee for Justice and Peace (Guatemala)

I would first like to thank the Working Group for allowing and inviting a person who represents the interests and sufferings of the people to give evidence which may help, support and explain its work.

I am here to represent the Comité Pro Justicia y Paz, which is a Christian organization, so what I am going to say is said on the basis of my Christian beliefs and in my capacity as a Guatemalan citizen and a human being.

On behalf of the Comité Pro Justicia y Paz, I have provided a list of 275 persons who disappeared between 1 January and 20 July. It is not an exhaustive list because control over the communications media and the law courts and controls by the 12 different kinds of police and the voluntary fire brigade have increased enormously in the past year and it is very difficult for us - and it takes us a long time - to get news and information on circumstances and other important data to prove how people are made to disappear by the Government of Guatemala, the Guatemalan army and the so-called "security" forces.

I would like to draw the attention of the Group to certain constant features in the list I have provided. One of them, one of the indications of Government participation, is that, whenever the witnesses to a disappearance give some clue and dare to speak out, they always speak about heavily armed men who travel in vehicles with number plates which go from 75,000 up or foreign number plates or without number plates or with the number plates dirtied so that witnesses cannot identify them.

As you can see from the list, the "authors" are always heavily armed men.

The second constant feature is that, although the police, whether traffic or military police, may be present, they never try to prevent an abduction or a disappearance and never attempt to follow the authors of the disappearance. This is true not only in cases of disappearances, but also in cases of murder.

The third constant feature which I have noted again in the list for this year is that these armed groups always drive around in complete freedom and even aim their weapons at the civilian population. This is obviously nothing new. In the most central avenues of the capital or the main streets of towns and villages, such vehicles constantly drive in and out and move with total impunity, no one detains them, no one dares to ask them if they have a licence to carry weapons, so that the civilian population, passers-by, men and women walking in the streets are constantly threatened by these armed groups, which travel in well-known vehicles. I would like to cite some specific examples.

The first is that of Father Luis Eduardo Pelliczer Paina, who was abducted on Tuesday, 9 June of this year. He was coming out of the rectory of La Merced Church. The vehicle he was driving was intercepted by a car, I mean a vehicle and a motor cycle. According to eye witnesses, he was forced to stop and was severely beaten by six armed men who put him in their car and took him away apparently unconscious. This all happened, with total impunity, right in the centre of the city some 300 metres from the National Palace. Father Pelliczer's car was left abandoned with the engine running and the doors open. It was later taken away by the police to the police parking lot and registered under its owner's name at 7 a.m. the following day.

Eye witnesses also said that two cars apparently belonging to the police went to a house in which Father Pelliczer sometimes spent the night for security reasons. According to these witnesses, the occupants of the cars entered the house, murdering one young man whose body was left there and taking another young man away with them.

Another specific case is that of Alaide Fope, the poetess and art critic, whose vehicle was also intercepted right in the centre of the capital; she was savagely beaten by Government agents and taken away and has not been seen again since.

I would like to add something which I did not say last year concerning these Government men, armed Government teams which abduct civilians whom they consider to be dangerous because of what they say. On 25 July 1979, I was also a victim of seven armed men driving a Government Toyota jeep. They positioned themselves on either side of the car and told me to go with them to the police. I shouted and told them: "I shall never go with you: you can get on with torturing me and killing me right here in the street" and there was an argument which lasted some 15 minutes; it was 6 p.m. and people were coming out of their offices. The argument continued. They wanted me to go with them and I was shouting so loudly that people gathered round. They took my camera away from me. Another vehicle full of very well-dressed men wearing ties approached and asked me: "Madam, are you a journalist?" and, just as I was about to take out my identity card as a correspondent for a women's magazine here in Switzerland, someone sitting in the back of the vehicle opened the door and I saw a machine gun and I backed away against the wall. So you have evidence not only from the priests who wrote the report on the abduction of Father Pelliezer, the evidence of friends and fellow Christians, but also my own evidence. This is why I venture to say that the armed groups referred to in the last column of the list of missing persons are teams in charge of repression used by the current Government of Guatemala.

Another constant feature in these cases of missing persons is that the courts of justice no longer function as courts of justice and no longer serve the civilian population. Why? Because they are constantly threatened. For example, when Mr. Jorge's (?) case was up before the courts, three judges refused to take the case and resigned their posts because of death threats. And in the past year, several members of the courts, not only judges, and lawyers, but also officials, who only handle case records, have been murdered or have disappeared. So we no longer have the remedy of habeas corpus and there is absolutely no authority to which the relatives and friends of missing persons can apply in order to rescue even so much as the body of the person abducted.

Another constant feature is that many of the people we reported missing this year are no longer missing; that is why there are only 275. There are far fewer this year than last year because many of the missing persons, such as the journalist Alirio Fulvio Mejías or the 100 peasants who were abducted in an army lorry last year, are no longer missing. Theirs are no longer cases of enforced or involuntary disappearance; but, rather, cases of murder or massacres. That is why there have not been as many cases of disappearances this year.

All this shows that the disappearances and abductions, the anxiety and suffering caused to families and relatives have a very obvious purpose: in the case of missing journalists, such as Alaide Fope and Irma Flaker, and in the latest cases of women who have been reported missing, it is to silence the

communications media. In the case of missing lawyers, it is to prevent lawyers from taking responsibility for the court cases of trade unions or workers fighting for justice, better salaries or collective agreements. Cases of disappearances must be seen in the context of the general situation in the country because they are a part of the terrifying over-all pattern that has been planned and is cynically being sustained by the Government itself.

I would like, gentlemen, to read out evidence sent to us from the interior of the country by a member of a local Christian community who tells the terrible story of how the army causes the disappearance of persons in rural areas. The letter we have received is badly written in the idiom of the rural areas. I have made a copy of some of this evidence and would like to read part of it to you.

2 July 1981.

The army abducted José [...] from his house at 9 a.m. Spies from the same district dressed in green and others who were wearing masks, as well as some who were not, arrived at his house. His wife is a leader of Acción Católica in town. José was 35 years old, had three children and belonged to a workers' organization. His wife is still living there with her children. The people help and encourage her, but none of us has much to eat; we do not have enough to help them. When they captured José, they took him to his house and tied him up; they stole soft drinks, money and a silver necklace from him. His daughter was in the house preparing the utensils to make the batter for maize tortillas. The abductors asked her: "What are you doing that for? Is it for the guerillas? Anyone who is making tamales or food for those people should watch out because one of these days we'll be back". The child, i.e. the little girl, said: "What business is it of yours what I'm cooking for my family?"

José's wife asked the army there and then in front of her daughter and her sons to kill her husband. They did not do so and they took him away.

This is a typical case of a disappearance in a rural area. Obviously, this method of abducting people through or by the army is not new; it began in 1966, when 28 leaders of a labour organization were abducted by police and soldiers, taken to the Matamoras barracks in the eastern part of the capital city, tortured, put in a plane and thrown into the Pacific Ocean, where there are schools of sharks. ...

This is what has caused the suffering of the Guatemalan people, what has led to its opposition and why it has established the Democratic Antirepression Front. The just struggle of the Guatemalan people is the result of this kind of action, i.e. enforced disappearances caused by armed men from the army, whether in civilian clothes or military uniform.

El Liscán is now a concentration camp; the communications media in Guatemala report that the army in El Liscán is serving and helping the people and describe the co-operative project as an army project, but the fact is that the El Liscán project was started by the Church, by Father Guillermo Woods (?), who had an accident; he also disappeared and the necessary inquiries into his disappearance were never made. (...)

ANNEX XIII

Comments by the Government of Guatemala on the proceedings of the
United Nations Commission on Human Rights at its thirty-fifth,
thirty-sixth and thirty-seventh sessions

Guatemala has closely followed the work of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities and of their working groups, which shows the interest that Guatemala has taken in their activities.

During the thirty-fifth session of the Commission on Human Rights, the Guatemalan delegation observed that when the Commission was considering item 12 of its agenda a draft telegram to the Government of Guatemala appeared as if by magic.

This draft was originally submitted by Cuba (document E/CN.4/L.1456), which sought to make political capital by exploiting the tragic death of a distinguished Guatemalan official, and was adopted by the Commission (decision 12 (XXXV)).

A number of members of the Commission presented cogent arguments to demonstrate that the sending of the telegram was a blatant political manoeuvre.

At its thirty-sixth session, the Commission on Human Rights once again had before it an informal draft resolution produced by Cuba (see annex I) which clearly displays the Cuban delegation's political designs, neglecting the exclusively humanitarian reasons which moved the members of the Commission to decide by consensus to send the above-mentioned telegram, and drawing in other delegations to co-sponsor the draft. The latter agreed on condition that the text should be amended at least to include the name of the distinguished official concerned.

This shows once again how Cuba is seeking to make political capital out of the tragic death of Alberto Fuentes Mohr.

Bypassing all the procedures provided for in Economic and Social Council resolution 1503 (XLVIII), the Commission decided to adopt resolution 32 (XXXVI), entitled "The situation of human rights and fundamental freedoms in Guatemala"; in that unfair and discriminatory text, it decided to keep the "situation of human rights and fundamental freedoms in Guatemala" under review at its thirty-seventh session, without allowing the observer delegation for Guatemala a chance to exercise the right to speak in the country's defence and make known its views in closed session, in conformity with the Commission's own rules of procedure and resolutions.

At the thirty-seventh session, an attempt was made to amend the procedure a posteriori by inviting the Government of Guatemala to discuss the situation of human rights in Guatemala in closed session, in accordance with notes G/SO 212/21 and G/SO 215/14, dated 6 February 1981, of the Division of Human Rights.

Despite these substantive and procedural defects, the Government of Guatemala, displaying its willingness to co-operate with the Commission, whose essential function is to assist governments, appeared before the Commission at the closed meetings held on 3 and 4 March 1981. It presented a comprehensive review of the situation and explained the country's institutions and legal system, as well as the nature and origin of the human rights violations.

By the above-mentioned invitation, the Government of Guatemala was called upon to appoint a representative to address the Commission and answer any questions put by members of the Commission within the framework of Economic and Social Council resolution 1503 (XIVIII), which lays down a procedure for the private and confidential consideration of situations.

We appeared before the Commission in good faith and with good will, to extend our co-operation, hear questions and give sincere and truthful explanations or replies in order to enable the Commission to discharge the important responsibilities for which it was set up, namely to assist the States Members of the United Nations.

In the middle of the closed meetings the terms of our invitation were altered and the sovereign right of a State Member of the United Nations was curtailed by restricting our freedom of expression, as the view was upheld that consideration of the case of Guatemala should continue at public meetings, a move largely instigated by Cuba.

What, then, was the purpose of that invitation?

To apply the most severe penalty which the Commission on Human Rights can impose on a sovereign State, by subjecting it to a public debate?

To allow advantages to the accusers while placing constraints on the accused?

To inflict a public humiliation upon that Member State, producing a reaction of opposition, resentment and a profound sense of injustice at such treatment?

Are these really the functions of the Commission?

ANNEX XIV

Communication of 4 December 1981 from the Foreign
Minister of Nicaragua

I refer to your note of 15 November 1981, which was transmitted to me by telex by our Mission in Geneva and in which, on behalf of the Working Group on Enforced or Involuntary Disappearances, you requested my Government to transmit, for consideration at the next session of the Working Group, any information which it deemed relevant to the reports of alleged enforced or involuntary disappearances submitted to my Government on which the Group states that it has as yet received no information.

In this connection, I would draw your attention, and that of the Working Group, to our note No.N.336 of 5 September 1981, in which we presented once again, candidly and clearly, our views on this question.

While it is true that my Government has been unable to provide detailed replies on each of the cases submitted to the Group, the explanations given to the Group itself at the end of 1980, and subsequently to the plenary of the Commission on Human Rights at its thirty-seventh session, made it quite clear that there was no guarantee that the authorities would achieve any result in their investigations, in view of the situation prevailing in Nicaragua at the time when most of the alleged disappearances took place. The individuals concerned can in fact be regarded as war victims.

Most of the allegations therefore concern occurrences for which it has been established that my Government can accept no responsibility. If these are excluded, there remain only a few cases, some of which have already been the subject of detailed replies. In the remaining cases, of which there are only two, investigations have as yet yielded no results. Nevertheless, we shall continue our inquiries. The lack of results is due to the fact that only limited information is available and to the confusion which still exists because of the duplication of names of detainees and the presence in the northern border area of several thousand armed former national guardsmen and persons who collaborated with the former régime whose identities, with a few exceptions, are unknown and which they themselves conceal.

I also consider it necessary to point out to the Group that the subject of its deliberations is the disappearance of persons as a systematic means of eliminating political opponents, with the consequent suffering and anguish on the part of the relatives of the victims. From the number of allegations made against Nicaragua, the circumstances in which the alleged disappearances took place and the inconsistency of the arguments advanced, it may be concluded that no phenomenon of disappearances exists in my country. At most, there may be a few isolated cases, which, in fact, do not necessarily represent actual disappearances.

For the above reasons, my Government requested, at the thirty-seventh session of the Commission, that the "case" of Nicaragua should no longer be considered by the Working Group or feature in the future reports of the Group to the Commission. This would prevent a country in which human rights are respected and promoted, despite a heritage of hatred and crime, from being grouped with others in which torture and disappearances constitute the daily bread of the political opposition.

It is also worth noting that the fact that the same questions are raised in various forums and instances creates serious difficulties for my country. It was precisely with a view to avoiding duplications that we attached part of the report of the Inter-American Commission on Human Rights to the above-mentioned note. We believe that the Working Group, in considering our situation, cannot overlook the conclusion reached by the IACHR that, as far as Nicaragua was concerned, the question of enforced or involuntary disappearances did not arise. It is also worthwhile recalling that the Latin-American Congress of Relatives of Missing Persons, held at San José, Costa Rica, in January this year, and the Paris symposium, held in the same month, at which your own Division of Human Rights was represented, exonerated my Government from all responsibility in this respect.

Despite these allegations, my Government wishes to express its firm resolve to co-operate with the Group, should the occasion arise again in the future.

ANNEX XV

Letter dated 23 March 1981 from the Deputy Permanent Representative of
the Philippines to the United Nations Office at Geneva

This has further reference to the Mission's Note No.61-B/81 dated 9 March 1981 giving information on certain individuals alleged to have disappeared in the Philippines.

In this connection, I wish to inform the Working Group that while martial law in the Philippines was made to operate within a democratic framework, one prominent aspect of its implementation which somehow created an atmosphere of apprehension among various segments of the society arose from the arrest of persons who have committed violations of General Orders, Presidential Decrees and Letters of Instruction issued pursuant to Martial Law.

The emergence of the military detention system in the Philippines arose from the highly pressing necessity of isolating known leaders of the subversive movement in the country as well as the rebellion in Southern Philippines. For strategic reasons, the system was also deemed necessary to handle the detention of criminal syndicate leaders who had become too powerful to be handled by local civilian authority.

Aside from its purely strategic objectives, however, the military detention system was also necessary for the rehabilitation of subversive and criminal elements as well as to ensure humane and decent treatment of detainees under Philippine laws, the guiding principles of the United Nations Charter on Human Rights, and the guidelines of the Geneva Convention.

The overall supervision of the administration of detainees was characterized by the strict enforcement of and adherence to prescribed procedures and policies, particularly:

- a. Expeditious reporting of arrests made;
- b. Continuing accurate accounting of all detainees;
- c. Maintenance of a comprehensive listing of all types of detainees;
- d. Proper and humane treatment of detainees from the time of arrest;
- e. Seasonable reporting on unusual happenings in detention centres;
- f. Continuing evaluation of meritorious cases having no pronounced national security implications for purposes of recommending temporary release of detainees connected therewith; and
- g. Minimizing pre-charge detention period for common crime offenders.

After the lifting of Martial Law, all detainees were ordered transferred to the National Penitentiary, except a few who are facing charges for violations of laws against national security and public order.

By constitutional mandate, a detainee enjoys the following rights:

1. The right against compulsory testimonial self-incrimination;
2. The right, when under investigation for the commission of an offence:
 - a. To remain silent;
 - b. To be assisted by counsel; and
 - c. To be informed of such rights.
3. The right against the use of force, violence, threat, intimidation or any other means which vitiates his free will;
4. The right against the admission in evidence of any confession obtained in violation of the foregoing.

A joint Circular issued by the Secretary of National Defense and Secretary of Justice on 11 July, 1974, directs all officers, civilians and military personnel to strictly adhere to the aforesaid constitutional provision and provides the manner by which the detainee is effectively informed of such rights.

As additional safeguards of the rights of detainees under investigation, the Secretary of National Defense in Memorandum dated 12 December, 1975, issued the following instructions:

1. All interrogations to be conducted shall be supervised by a commissioned officer with a rank not lower than captain or by a military lawyer not lower than the rank of first lieutenant or by a supervising investigation agent of the Criminal Investigation Service of the Philippine Constabulary;
2. Complete minutes of the interrogation shall be accomplished and maintained containing particulars as to place of interrogation; the identities and particulars of those being interrogated and the interrogators, and identity of all persons present during the interrogation;
3. A certification shall be signed under oath by interrogators and supervising officer that the persons interrogated were informed during the interrogation about their constitutional and other rights and that there was absolutely no duress, maltreatment, torture, injury or any other form of harassment committed on the persons being interrogated.

Policy instructions were issued and implemented to ensure the humane and decent treatment of detainees. Every member of the Armed Forces of the Philippines was directed to act and behave in accordance with the principles of justice, honour, and humanity, especially in the treatment of detainees.

Privileges were granted to detainees to make their detention as comfortable as possible and opportunities afforded them for self-improvement and rehabilitation. The privileges designed to enhance their moral and physical well-being include:

1. adequate food and comfortable living quarters;
2. regular medical and dental check-ups;

3. conference with lawyers of their own choice;
4. visitation privileges to immediate members of their families; relatives and friends; and home passes on certain important or urgent occasions;
5. communications with the outside, including correspondence and telephone calls; and
6. religious services, recreational and sport facilities, reading materials such as books, magazines, newspapers and even radio and television sets.

A rehabilitation programme for the detainees was carried out to prevent mental or physical deterioration which is a by-product of confinement, to break undesirable habits, and to develop new skills, interests and attitudes among the detainees. A full range of vocational courses from farming and animal husbandry to automotive training and other specialized courses like shellcraft and furniture-making were given to the detainees. Motivation, intellectual enrichment and cultural activities were likewise undertaken.

While the Philippine Government has exerted the utmost effort in ensuring the humane treatment of detainees a number of complainants claimed that military personnel abused or maltreated detainees in the course of their investigation. Most complaints were found to be baseless, but some indeed indicated the culpability of certain military personnel.

Under the direction of the President, actions on disciplinary cases against Armed Forces officers and men had been swift, both in terms of providing remedies to the aggrieved and in punishing those guilty.

A United States Department document on the state of human rights in the Philippines notes that certain violations have occurred, but it takes care to point out that these are not the result of explicit government policy; that they are imputable only to ill-disciplined lower ranking military personnel; that the incidence of human rights violations has steadily decreased; and that the government was doing its best to correct this problem.

Several international organizations have visited the Philippines to investigate the detainee situation. Their reports vary in their overview of the situation, largely because some, like Amnesty International, limited themselves to visiting detention centres where the government itself was investigating abuses, while others, like the International Committee of the Red Cross, chose to make a survey of detention centres all over the country. In general, reports of the Red Cross have confirmed that incidence of maltreatment are few and isolated and are immediately proceeded against.

All in all, the issues affecting human rights and detainee affairs in the Philippines were at times blown out of proportion due to the fact that such issues also serve as a grist for the propaganda mill of the subversive movement, who are bent on taking advantage of every opportunity to discredit the government and to undermine its sincere efforts in protecting and preserving human rights in the Philippines.

The government was aware that many of the members and followers of subversive associations, activist groups and front organizations were not die-hard ideological believers of the subversive movement, but had been drawn into such organizations because of their association with, or as a result of, their subtle indoctrination by its hard-core leaders.

As misguided elements in Philippine society, they were treated by the government with compassion and understanding so that they may regain their faith in the duly constituted authorities and become co-workers in the attainment of the objectives to reform the country's social, economic and political structures. Thus, as early as 11 January 1973 or about three (3) months after the proclamation of Martial Law, the President by Presidential Decrees, proclaimed amnesty for certain offenders. No less than ten (10) amnesty decrees were issued by the President covering practically all segments of subversive associations and front organizations.

The socio-economic and political institutions evolving from the Philippine experience under a crisis government have gradually changed the orientation, attitudes and goals of the Filipino people.

Self-reliance as a key principle has become a national source of confidence and inspiration. The Philippines today has risen from the ashes of disorder, anarchy, stagnation and colonial dependency of the past. It looks to the future with a greater measure of hope, self-assurance and strength. In both its domestic and foreign policies, the nation which underwent the trauma of centuries of colonial exploitation and subservience is now asserting itself.

The Philippine perception of human rights transcends purely political rights. Human rights and consequently human freedom entails a capability to develop and to share in the spiritual and material wealth of the world. This is a perception anchored on social justice.

To the achievement of this end, the Philippine government is fully committed.

ANNEX XVI

Excerpts from the statement made to the Working Group
by the Representative of Uruguay to the Commission on
Human Rights

[1 December 1981]

In the first place, I should like to express my appreciation of the kind welcome just extended to me by the Chairman of the Group and to greet once more the members of the Group who are colleagues on the Commission.

In the second place, I shall try, in a short statement, to deal with the three points which the Chairman has just evoked. In the first place, I should like to say that the answers of the Government of Uruguay to the points raised by the Group will be made formally in writing, and that only a few days ago I received the documents referred to just now. So, notwithstanding the fact that I shall now deal extensively with some of these questions, the Government of Uruguay will send a written note in which it will state its point of view and give the information it has been able to obtain.

This brings me, Mr. Chairman, to state our view on one of those matters, namely the comments by the association of parents. When, voluntarily and eager to co-operate, I met this Group for the first time, we held a frank exchange of ideas, during which, I, at least, bore in mind that, in view of the Group's mandate, a certain discretion was needed in order to facilitate the inquiries whose purpose is to locate the missing persons. In our view, it was not desirable to place statements by representatives of the Government in the hands of other elements extraneous to the Group; otherwise, we would become involved in a dispute and we would find ourselves with documents such as those about which I shall speak. I shall comment on this document, although it is a document which we should certainly reject, because it contains views which we are unable to accept, and because it makes capital out of what I said here and did not think would be reported so widely (...)

... Let us start with the comments by AFUDE, which is the Association of parents or families of missing persons. Let us take up paragraph 2. Paragraph 2 states that the representative of the Uruguayan Government, that is to say, myself, stated that there had been mass escapes. That is true. When I described the situation in Uruguay, I pointed out that during the period of disorder we were confronted with a series of mass escapes. We had to face a situation in which our Government was virtually unable to control terrorist activities and armed violence and in which law enforcement and prison officers were threatened. We have evidence concerning families that were threatened and magistrates who were threatened, the organization of escapes, and I spoke of many escapes. It states here that there certainly were escapes, but, needless to say, that the escapes were unrelated to the disappearances, and it says that my statement was therefore inaccurate. I said absolutely nothing that was not absolutely accurate. I said that terrorists frequently escaped during that period. Here it says that only two out of the 140 terrorists who escaped are still missing. Only one would be needed to corroborate what I said. Furthermore, we are dealing with events which occurred in 1970 and in 1971, and the escapes are public knowledge because they were reported in all the newspapers, but they were not the only ones; there were many more. Uruguay was a defenceless country, a peaceful country, a country with a model democracy, but it was not organized to withstand such a violent attack against its institutions. Thus, we were confronted with the spectacle of offenders being arrested and escaping a few days later. This recurred frequently. I cannot

say how many missing persons were among the offenders who escaped. However, they tell us that we are in the wrong. I wish to stress that there is no contradiction, that the offenders who escaped, or a part of them, cannot be among the missing persons since the Government has no responsibility for them. Thus, such an apparent or flagrant contradiction does not exist. In a statement we spoke of the escapes. We did not even state the opinion of the Government. We were describing what the situation was like when there was armed violence in our country. Now they want to force us into contradiction and they tell us that only two of the offenders who escaped are missing. Very well, this simply confirms what we said.

Later they speak of a series of cases. They say that there are statements in evidence by Washington Pérez and Enrique Rodríguez Larreta who are reported to have been brought from Argentina to Uruguay. I wish to stress the following: the persons who testify to that, some of whom I know personally, were tried in Uruguay, imprisoned in Uruguay and released in Uruguay. Consequently, they made these statements after leaving prison. None has disappeared subsequently. We are not responsible for the disappearance of anyone. That is what I want to stress. And in order to make Uruguay's position with regard to disappearances perfectly clear, I wish to deny categorically the statement appearing at the beginning of the document. Speaking of those who escaped from prison, it says that out of a total of 133 missing Uruguayans, only two escaped. However, I should like to dispel the view which may obtain in the Group that 133 Uruguayans are missing. That is correct and the figure is 133 or 132, but 123 of them disappeared in neighbouring countries, and this association of parents is aware of this, but it does not say so. When I was working in Montevideo, I interviewed something like 120 out of the 123 families, and I was affected by the human tragedy caused by the disappearance of those 123 people. (...) However, when we were in the Commission on Human Rights of the Organization of American States, we said, in connection with these 123 disappearances, that we had 123 files in which we showed that despite our excellent relations with the Governments and the countries where the disappearances occurred, we had taken every possible step to find these missing persons through the diplomatic channel and through our security agencies. As I told you, I met the families of these missing persons and I understand the human situation in which they find themselves. However, we have also provided them with evidence, showing each one the relevant documents and papers, that although the Government of Uruguay considers most of these missing persons to be enemies of the Government, it made all requisite enquiries. But to state here, in a document which is circulated, that 133 Uruguayans are missing, without stating that 123 of them disappeared outside Uruguay is misleading. First of all, this statement gives me an opportunity of saying that during the seven or eight years of the difficult and distressing period when we were fighting against subversion, probably no more than eight or ten people disappeared in Uruguay. And of these eight or ten missing persons, in some cases we have been able to obtain information which enables us to know what has become of them. I do not believe Uruguay to be a typical case for the work of this Group. However, only one person has to disappear in unusual circumstances to enable the Group to state its interest.

However, we shall dispel the impression that there were large-scale disappearances in Uruguay. In Uruguay, many people were tried, many were sentenced and many were released, but people did not disappear. I shall continue to comment on the text of this document which, as I have said, arrived a few days ago and to which we shall send a written reply on the basis of the relevant information. I should like to give the Group what might be called our preliminary point of view. I should like to speak about the statements concerning the Liliana Celiberti case, in which a couple was arrested on the border between Uruguay and Brazil on which I gave the Government's views in the Commission on Human Rights on two occasions. Mrs. Liliana Celiberti and

Mr. Universando Ramírez, the two persons involved, are in Uruguay. They have been tried, the prisons in which they are confined have been specified, they receive visits from members of their families and they have a defence counsel. The accusation that we carried out a raid in Brazil to bring them from Brazil to Uruguay is a matter on which I read out two communiqués in the Commission and during the last two sessions when the representative of Brazil alluded to the case, I pointed out that Uruguay is a small country whose security agency is not powerful enough to take action outside the country and still less in neighbouring countries with which we have excellent relations. I recalled the history of the border between Uruguay and Brazil, which extends for over 1,000 kilometres and I also said that the case was not one of a disappearance but a problem which we shall discuss in the Commission on Human Rights when the occasion arises, but that Mrs. Liliana Celiberti and Mr. Universando Ramírez are in Uruguay. I myself saw her mother, who asked that she should be transferred from the unit where she was confined to the women's prison and we succeeded in bringing about this transfer. So, this Group should discontinue consideration of this case because, as I repeat, they are in Uruguay, they have been tried, they have all necessary guarantees and if, subsequently, it is claimed that they were captured inside or outside Uruguay, our position on the matter, backed up by a number of documents remains very firm. As I say, the matter is one which has no place here because they are not missing persons.

However, some of the other cases before us are very old ones and are indeed disappearances. I refer to the Bleier case. In the Bleier case, we had a lot of dealings with the embassy of Israel which showed great concern about it. As far as we are concerned, the case is one of a genuine disappearance. There are cases dating back to 1973, 1974 and 1975 when there was considerable confusion in the security agencies in which these things occurred. But I mention this in order to say that even in the midst of this confusion, when Uruguay was organizing itself to withstand bloodthirsty violence, when diplomats were being kidnapped, when diplomats magistrates and civil servants were being assassinated, we estimated that three or four people disappeared during that unsettled period. We find it interesting, but there were not more than that. Mr. Miranda, a well-known notary whom I knew very well, as I did his family, is said to have been arrested at that time and afterwards when the authorities were approached - Montevideo is a small town, everyone knows everyone - they declined to give information about Mr. Miranda. I personally - the sister-in-law of Mr. Miranda is the secretary of the Association of Diplomatic Officials - made representations. We all did our utmost to find him. Unfortunately it was not possible. The Government of Uruguay declared that it had no responsibility in the case; the family continued to think that a security agency or a paramilitary force had arrested him. The investigation continued, Mr. Miranda even had relatives who were serving in the armed forces in Uruguay who moved heaven and earth, but were not able to find him. The same occurred in the other two or three cases. However, there is one case about which I should like to talk, without prejudice to a subsequent written explanation. It is the case of the man who caused most problems in Uruguay, Mr. Julio Castro. Mr. Castro, on whose behalf initiatives were undertaken by the representatives of almost all the Latin American countries, was the editor and publisher of "Marcha", perhaps the newspaper with the largest circulation in Latin America and which was openly opposed to the Government. Mr. Julio Castro disappeared on 1 August 1977. It was reported that he too had been taken away by the police. When the Government of Uruguay received complaints from many other Governments, some friendly and some less friendly, concerning his disappearance, it made a thorough investigation and discovered that Mr. Julio Castro, probably afraid because of his links with certain anti-governmental elements, had decided to leave the country and had taken a plane for Buenos Aires. We issued a communiqué, and this communiqué which I read out three years ago in the Commission on Human Rights is represented in

this document as a tissue of lies. You may not remember what happened in the Commission on Human Rights. We were aware that he boarded, with ticket No. 27, a Fluna airlines flight, I do not remember which one it is, and we were going to include him among the group of missing persons and when we asked the Argentine authorities whether he was registered on Aeroparque - you should bear in mind that there is an air shuttle between Montevideo and Buenos Aires every half hour - the first answer they gave was that he was not registered and we were accused of lying. We pressed the matter and as there is a duplicate immigration declaration for arrivals and tourists, it was finally possible to establish with certainty that Mr. Julio Castro, who was shown as leaving Montevideo, was also shown as arriving in Buenos Aires. So that there could be no doubt about this, we conducted an extremely careful investigation and at the time when the matter was under discussion in the Commission on Human Rights of the Organization of American States, we had in our possession a telegram from the Minister for Foreign Affairs of Argentina announcing the conclusion of the investigations and unequivocally stating that Mr. Julio Castro arrived in Buenos Aires on the date indicated by the Uruguayan authorities. I read all this out - when the representative of Cuba accused us of lying, I read out the telegram from the Argentine Chancellor which eliminated any possibility of doubt. Mr. Julio Castro left Uruguay and arrived in Argentina. There is no doubt of that. We have supporting evidence which we shall submit to the Group. The members of the Group should bear in mind that I received this document little more than a week ago, a week and a half, and it is being studied in our Chancellery. I can answer certain things, not all, and I shall possibly be able to answer any other questions.

The last paragraph concerning the individual cases deals with that of Miss Elena Quinteros. It is an extremely important case. The last time I was here, the representative of Costa Rica showed interest in it. I have discussed the case three or four times in the Commission on Human Rights, as well as in this distinguished Group. The disappearance of Elena Quinteros has caused us considerable problems. It led to the severing of our relations with Venezuela. It gave rise to a controversy in the Uruguayan newspapers, some of which asked whether or not the Uruguayan authorities were implicated. We issued various communiqués on the matter. I remember how moved I was on seeing the mother of Elena Quinteros appear before this Commission three years ago. Unfortunately, I also understand why she considers any representative of the Government as an enemy. The first time she came to see me and gave me a letter, I said to her "Mrs. Quinteros, if you are convinced that it was the Uruguayan authorities who arrested your daughter who then disappeared and not a green Volkswagon, as the communiqué states, I will go to Montevideo and I will talk to all the officials and, believe me, if I find out that your daughter is a prisoner and that we have kept her incommunicado for reasons of security - which is not the custom of the Uruguayan authorities because there are no such cases, in Uruguay people are arrested and tried but no one disappears - you will be the first person to know". This was a personal impulse on my part. In the following year Mrs. Quinteros accused me of having promised her that her daughter would be released and having told her that she was in the hands of the Uruguayan authorities. I should like to be God so that I could tell this lady that her daughter is in their hands, because obviously, first and foremost, it would relieve us of a considerable problem, but unfortunately I have talked to soldiers, civilians and magistrates and unfortunately Miss Quinteros cannot be found. You remembered that Mr. Quinteros went into the Embassy of Venezuela. Before she was able to go inside and before she could initiate the procedure for applying for asylum, two persons removed her forcibly from the entrance to the Embassy of Venezuela, put her in a car and took her away. (...) The

fact is that Miss Quinteros disappeared and we continue to be seized with this affair which is a case of disappearance. The official position of the Government is that it was not the Government which caused her to disappear. This case comes up each year, and I hope that some evidence will come to light which will enable us to establish the whereabouts of Miss Quinteros with certainty. But the official position of the Government is that the Government of Uruguay did not intervene in this incident. I have stated this for three years and I am repeating it here and now. Unfortunately, I have no other solution to offer the Group in respect of the problem of Elena Quinteros.

Afterwards we have the case of the minor, Paula Eva Logares, whose photo is shown, and her parents. The complaint indicates that the case is one of disappearance in Uruguay occurring on 18 May 1978, a time when there were virtually no more problems, I have sent all this to the Government, I have here the note, the telegram and inquiries are being made, so that I hope I shall be able to send the Group the Government's reply that in a few days' time and it may be possible, I repeat may be possible, to find some evidence about this minor.

Having touched upon three cases, I should like, first of all, to stress that the Government of Uruguay and ourselves have always sought to co-operate with the Commission and the Group. At times the co-operation may be positive, at times it may be less positive, but the desire to co-operate remains, it will continue to remain, and I should like to end by saying that we shall give you the true picture of the problem of disappearances in Uruguay (...)

Between now and the next meeting of the Commission on Human Rights, we shall try to produce as much documentation as possible and hope that it may be possible to further clarify the remaining cases.