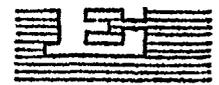


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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY
FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:
QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

Report of the Working Group on Enforced or
Invuntary Disappearances

GE. 86-10157

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INTRODUCTION

1. In compliance with paragraph 3 of Commission on Human Rights resolution 1985/20, the Working Group on Enforced or Involuntary Disappearances submits to the Commission its sixth report, together with its conclusions and recommendations. The task accomplished by the Group in 1985 demonstrates once again that the pernicious phenomenon of enforced or involuntary disappearances continues to assert itself thus requiring the undiminished attention of the international community. As can be seen from the present report, neither the incidence of disappearances nor the number of countries in which the practice takes place has shown any decline.

2. The sixth report follows the structure which the Group determined for its previous report. Since the Group's activities during 1985 cannot be separated from those initiated in previous years, the report essentially updates earlier information presented to the Commission and should therefore again be read and understood in conjunction with the preceding submissions by the Group. It is hoped that, by maintaining what was construed in 1984 as the most logical structure of reporting, a better understanding of the long-term nature of the Group's humanitarian endeavours would be facilitated. Moreover, this clearly brings out the somewhat problematic reality that the Group has to plan its activities for a period of time generally transcending the traditional mandate of one year's duration given to it by the Commission on Human Rights.

3. The Working Group has devoted particular attention to the statistical presentation in the country subsections of its report in an effort to render the statistics as informative as possible. The Working Group has added as the initial figure the number of cases outstanding after subtracting the clarifications received from the total number of cases transmitted to the respective Government. It must, nevertheless, be stressed that the statistics still need to be examined together with the explanations contained in the respective country subsection of the present report as well as previous reports.

4. A new feature of the report is the inclusion of a graph for countries with more than 100 cases transmitted to the respective Government showing the development of disappearances, as reported to the Group, based on the dates of their occurrence. It was thus attempted, though perhaps arbitrarily, to provide the Commission with a more telling picture of the development of disappearances in countries where the problem appears to be assuming considerable proportions. Other matters, such as those dealing with the legal framework of the Group's activities or its methods of work, were shortened as an extensive description of such aspects had been included in the previous report.

5. A major event in 1985 was the visit to Peru which two members of the Working Group carried out at the invitation of that country's Government. Although not the first visit to a country about which reports on disappearances had been received, it was still the first time that members

of the Group could study the problem on the spot in a comprehensive manner and in all its complexities, thanks to the opportunity granted to them by the Peruvian Government for meetings with both official and private sources. Since the report on the mission had to take account of material of an unprecedented scale and, furthermore, describes the situation at the time of the visit, it could not be included in the traditional country subsection but has been issued as addendum 1 to the present report. The country subsection on Peru has nevertheless been maintained, reflecting developments and information received since the visit; both parts of the Group's reporting on the situation in Peru should therefore be examined jointly.

6. The Group has again drawn a number of conclusions from its work in 1985 and has formulated recommendations in chapter IV which it wishes to place before the Commission. It is hoped that they will assist the Commission in its consideration of the question of enforced or involuntary disappearances and in reaching consensus on international and national action with a view to preventing and eradicating the occurrence of disappearances.

I. ACTIVITIES OF THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES IN 1985

A. Legal framework for the activities of the Working Group

7. The legal framework for the activities of the Working Group has remained the same as described in detail in paragraphs 8 to 16 of its previous report (E/CN.4/1985/15). It may be recalled that the basis for the Group's activities was laid in General Assembly resolution 33/173 of 20 December 1978, Economic and Social Council resolution 1979/38 of 10 May 1979 and Commission on Human Rights resolution 20(XXXVI) of 29 February 1980.

8. At its forty-first session the Commission on Human Rights, in resolution 1985/20 of 11 March 1985, extended for another year the mandate of the Working Group as laid down in resolution 20 (XXXVI), and decided to study at its forty-second session the possibility of extending the term of the Working Group's mandate for two years. It requested the Working Group to submit to the Commission, at its forty-second 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. The Commission also requested the Working Group in its efforts to help eliminate the practice of enforced or involuntary disappearances, to present to the Commission all appropriate information it deemed necessary and all concrete suggestions and recommendations regarding the fulfilment of its task; the Commission reminded the Group of the need to observe, in its humanitarian task, United Nations standards and practices regarding the receipt of communications, their consideration, their transmittal to Governments and their evaluation; it renewed its request to the Secretary-General to appeal to all Governments concerned to extend to the Working Group their full co-operation, which was indispensable in solving cases of disappearance; it requested the

Secretary-General to invite the Governments of countries in which there were numerous cases of disappearance to envisage the establishment of a national body for investigations into disappeared persons and to answer requests for information addressed to them by the Working Group in connection with the measures they had taken in application of General Assembly resolution 33/173; and it again encouraged the Governments concerned to consider with special attention the wish of the Working Group, when such a wish was expressed, to visit their country, thus enabling the Working Group to fulfil its mandate even more effectively.

9. The Economic and Social Council, by decision 1985/142 of 30 May 1985, noting Commission on Human Rights resolution 1985/20, approved the Commission's decision to extend for one year the mandate of the Working Group as laid down in Commission resolution 20 (XXXVI).

B. Meetings of the Working Group

10. In 1985, the Working Group held three sessions: its sixteenth session, following an invitation by the Government of Argentina, from 5 to 14 June 1985 at the United Nations Information Centre in Buenos Aires; its seventeenth session from 9 to 13 September 1985 at the United Nations Office at Geneva, and its eighteenth session from 4 to 13 December 1985 at the United Nations Office at Geneva.

11. The holding of a regular session of the Working Group outside Geneva or New York, and in an area from which many reports on disappearances were received again proved very useful. The session in Buenos Aires enabled the Group to acquaint itself fully with the objectives, functioning and results achieved by the National Commission on the Disappearance of Persons, which had been established by the Government of Argentina on 15 December 1983 and which had finalized its report nine months later. It also enabled the Group to hear in detail the position of the Government of Argentina with regard to the follow-up given to the Commission's investigations and to emphasize the need for a case by case clarification of the reported disappearances. Practically all Argentinian human rights organizations and associations of relatives which had provided the Group with information in the past could give their views on the current situation and a number of Government representatives and organizations from the southern cone of Latin America could also be heard.

12. In accordance with paragraph 8 of resolution 1985/20, in which the Commission encouraged the Governments concerned to consider with special attention the wish of the Group, when such a wish was expressed, to visit their country, thus enabling the Group to fulfil its mandate even more effectively, two members of the Working Group carried out a visit to Peru from 17 to 22 June 1985, at the invitation of that country's Government. The report on the visit was considered and approved by the Working Group at its eighteenth session and is contained in addendum 1 to the present report.

13. At its sixteenth, seventeenth and eighteenth sessions, the Working Group continued to examine information it had received on enforced or involuntary disappearances and decided on the transmittal of newly reported cases of missing persons to the Governments of 22 countries. In accordance with the established procedure, it requested those Governments to carry out appropriate investigations into the fate of the persons reported to have disappeared and to inform the Group of the results obtained in the investigations. Reports lacking the necessary minimum elements, which in the Group's judgment would be required by Governments to carry out meaningful investigations, were referred back to the sources and more complete information was requested. The Working Group also considered reports of a general nature giving background information on the problem of disappearances. The development of the Group's methods of work was further discussed in accordance with the provisions of General Assembly resolution 33/173 and other United Nations resolutions relevant to the plight of disappeared persons, as well as with its mandate as laid down by the Commission in resolution 20 (XXXVI) and subsequent resolutions. A description of some additional steps taken during the period under review to make its methods of work more effective is contained in paragraph 33 below.

14. The Group held 16 meetings with representatives of Governments, one meeting with former members of the National Commission on the Disappearance of Persons in Argentina, and 23 meetings with representatives of human rights organizations, associations of families of missing persons and relatives or witnesses directly concerned with reports on enforced or involuntary disappearances.

C. Communications and meetings with Governments

15. In 1985 the Working Group continued to transmit to Governments cases of enforced or involuntary disappearances which were brought to its attention and which it had found admissible after carefully examining their contents. In doing so the Working Group made every effort to provide the Governments concerned with as much pertinent information as it was possible to obtain on each case in order to enable them to make the necessary investigations. In many cases the Group had to seek additional information or clarifications from the sources of the reports and forwarded any new elements placed before it to the respective Governments.

16. Since the latest renewal of its mandate, the Working Group has transmitted some 2,200 newly reported cases to the Governments concerned. In accordance with a decision taken at its sixteenth session, as described in paragraph 33, the Group also retransmitted the summaries of all cases unclarified to date to those Governments which had either never replied to any of the Group's transmittals or asked to be informed of the status of outstanding cases. The Group has further informed Governments whenever a case has been clarified by new information from the sources.

17. In 1984, the Working Group had already requested the Governments of countries where disappearances on a large scale had been reported to provide detailed information on the steps taken by them to respond to the call made in paragraph 1 of General Assembly resolution 33/173. Since no reply from Governments was received to that request, the Working Group decided at its sixteenth session, on the basis of paragraph 7 of Commission resolution 1985/20, to send a questionnaire on the matter to the Governments concerned. To date three Governments, namely the Governments of Colombia, Peru and the Philippines, have replied to the questionnaire (see annex II).

18. As in the past, the Working Group attempted to have as many personal contacts as possible with representatives of Governments and invited all Governments to which it had transmitted reports on disappearances to send representatives to the Group's sessions, if they so wished. In response to these invitations the Group received, at its sixteenth session, representatives of the Governments of Argentina, Colombia, Paraguay and the Philippines; at its seventeenth session representatives of the Governments of Bolivia, Colombia, Guatemala, Indonesia, Peru, the Philippines and Sri Lanka; and, at its eighteenth session, representatives of the Governments of Mexico and the Philippines.

D. Communications and meetings with relatives
and non-governmental organizations

19. In 1985 the Working Group received some 4,500 reports on enforced or involuntary disappearances and, after examination, decided to transmit some 2,200 cases containing sufficient information to the various Governments concerned. The Working Group also received many reports of a general nature describing the circumstances or characteristics of disappearances in different countries as well as shortcomings in the implementation of legal procedures such as habeas corpus or amparo (enforcement of constitutional rights). Such material included allegations of the existence of clandestine detention centres as well as reports on other human rights violations such as torture or summary or arbitrary executions; in the latter instances the Working Group has brought such information to the attention of the Commission's special rapporteur on summary or arbitrary executions. Other material received included photographs and tape recordings of testimonies.

20. In a number of reports, concern was expressed over the harassment, threats and even assassination of members of family associations of missing persons. The Group gave this serious development its particular attention and conveyed its deep preoccupation to the Government concerned, stressing the responsibility of Governments to protect the relatives of missing persons from such criminal acts.

21. The Working Group has maintained correspondence throughout the year with the relatives of missing persons, their associations and the various non-governmental organizations which submitted information, keeping them abreast of the decisions taken on their cases and of replies on the results of investigations received from Governments.

22. Since the Working Group has repeatedly received from Governments requests or even criticism to the effect that the cases transmitted to them should contain more precise or more detailed information, a special written appeal was made to non-governmental organizations and family associations to make increased efforts in obtaining, in their contacts with the relatives of missing persons, precise details on the identity of persons, such as numbers of identity cards, birth certificates, etc., or at least precise dates of birth, as well as information on the legal steps taken by the family. On the whole, it can already be said that the quality of information received from the organizations has improved during the year and the Working Group is paying particular attention to further promoting this aspect.

23. The list of organizations with which the Working Group dealt in the current year remains the same as that given in paragraph 37 of its previous report (E/CN.4/1985/15) with the addition of the following organizations:

Americas Watch, New York;

Asociación Nacional de Familiares de Secuestrados y Detenidos-Desaparecidos en las Zonas Declaradas en Estado de Emergencia del Perú (ANFASEP) (National Association of Relatives of Abducted Persons and Disappeared Detainees in the Zones under a State of Emergency in Peru), Lima;

Association Internationale contre la torture (International Association against Torture), Geneva;

Comité de Familiares de Detenidos Desaparecidos Refugiados en Lima (COFADER) (Committee for Disappeared Detainees' Relatives who Have Taken Refuge in Lima), Lima;

Comité de Solidaridad con los Presos Políticos (CSPP) (Committee of Solidarity with Political Prisoners), Bogotá;

Comité Permanente por la Defensa de los Derechos Humanos (PPDDHH) (Permanent Committee for the Defence of Human Rights), Bogotá;

Grupo de Madres y Familiares de Uruguayos Detenidos Desaparecidos (Group of Mothers and Relatives of Missing Uruguayan Detainees), Montevideo; */

*/ Previously this organization has submitted information through the Justice and Peace Service, Montevideo.

International Federation of Human Rights, Paris;

International League for Human Rights, New York;

Pax Christi - International Catholic Peace Movement, Antwerp;

Pax Romana - International Catholic Movement for Intellectual and Cultural Affairs and International Movement of Catholic Students, Geneva.

E. Information provided in relation to the implementation of General Assembly resolution 33/173

24. It will be recalled that in July 1984 the Working Group addressed letters to a number of Governments, National Commissions and non-governmental organizations requesting information on the steps taken to respond to the call made by the General Assembly in paragraph 1 of resolution 33/173. At the time of the adoption of the Group's previous report, only three replies from non-governmental organizations had reached the Group and were reflected in paragraphs 46 to 49 of that report (E/CN.4/1985/15). In the meantime, two other organizations have replied and their views are given in annex II.

25. In resolution 1985/20, which extends the Working Group's mandate for the current year, the Commission on Human Rights added to the traditional paragraphs of that resolution a request that the Secretary-General invite the Governments of countries in which there are numerous cases of disappearance to envisage the establishment of a national body for investigation into disappeared persons and to answer requests for information addressed to them by the Working Group in connection with the measures they have taken in application of General Assembly resolution 33/173. By a note verbale dated 22 May 1985, the Secretary-General informed Governments of this provision. The Working Group decided, at its sixteenth session, to address a specific questionnaire on this matter to nine Governments. At the time of the adoption of the present report, three replies to the questionnaire by the Governments of Colombia, Peru and the Philippines had been received by the Working Group; they are reproduced in annex II. The Working Group hopes that more responses by Governments will be forthcoming in order to enable it to undertake a meaningful analysis of the measures that have been taken in pursuance of resolution 33/173 and to present the Commission with general recommendations in this regard.

F. Missions by members of the Working Group in 1985

1. Visit by Mr. Toine van Dongen and Mr. Luis Varela Quirós to Peru

26. Following an invitation by the Government of Peru, two members of the Working Group, Mr. Toine van Dongen and Mr. Luis Varela Quirós, visited Peru on the Group's behalf from 17 to 22 June 1985. The report of their visit is reproduced in addendum 1 to the present report.

2. Mission by Mr. Luis Varela Quirós to the Sixth Congress of the Latin American Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM) in Montevideo

27. At its seventeenth session, the Working Group on Enforced or Involuntary Disappearances accepted the invitation by FEDEFAM to attend its Sixth Congress, to be held in Montevideo, Uruguay, from 17 to 24 November 1985, and decided that Mr. Luis A. Varela Quirós would take part in the Congress in accordance with the usual practice of sending an observer to such FEDEFAM meetings. As the participants noted, the Congress was meeting for the second time in a country which had had serious problems of disappearances in the past; that was a sign of progress in the human rights situation in such a sensitive part of the American continent.

28. The theme of the Congress was "For a Latin America without missing persons: trial and punishment of those responsible"; the main objective was to consider the progress being made in investigations of disappearances in Latin America in recent years and, in particular, penalties for those responsible for such practices, which are contrary to human rights.

29. The participants' general feeling was that, although there had been some progress with regard to responsibility, genuine justice had still not been done, since - except in the case of Argentina, about which reservations were expressed - those primarily responsible for atrocities against missing persons had not been brought to trial and neither middle nor high-ranking army and political police officers had been punished in any way. The participants said that they were looking forward to a prompt decision in the trial in Argentina, which they regarded as a historical landmark on the road to be taken in future by the other democratic governments in Latin America.

30. The participants also stated that it was necessary and advisable for the representative powers to conduct impartial investigations in order to offer specific solutions to the problem, to impose penalties of a political nature and to determine the true dimensions of the problem. It was nevertheless agreed that, although such investigations could not establish the criminal liability of the persons concerned, they would have the advantage of making it easier to bring them to trial and punish them. It was shown that the military had played a dominant - if not exclusive - role in some commissions and that that could produce only partial results which would conceal the true dimensions of the problem.

31. The observer from the Working Group took the opportunity of the meeting to obtain further information on the investigations being conducted in each country and to collect last-minute information which was transmitted to the members of the Working Group at its eighteenth session.

G. Methods of Work

32. At its sixteenth and seventeenth sessions the Working Group further examined ways and means of enhancing the effectiveness of its humanitarian activity. It considered that the measures decided upon in 1984, as reflected in paragraph 79 of its previous report (E/CN.4/1985/15), had been useful and would in principle be applied also during the year under review. In particular, the urgent action procedure was again resorted to in cases meeting the criteria outlined in paragraphs 80 to 84 of the previous report (E/CN.4/1985/15). Thus, in 1985, 322 cases were transmitted to Governments under the urgent action procedure.

33. At its sixteenth session, the Group also decided on the following additions to or slight modifications of the measures it had decided upon in 1984:

(a) To retransmit to Governments which have never replied to any of the Group's communications the summaries of all outstanding cases in conjunction with the invitation to the Working Group's three annual sessions;

(b) To inform Governments of clarifications provided by non-governmental sources whenever they appear to be reliable, and no longer to ask for confirmation or disapproval of such information by Governments (see para. 79(d) E/CN.4/1985/15);

(c) To communicate to the special rapporteurs or representatives of the Commission on Human Rights dealing with country situations information of relevance to their spheres of competence, in particular statistical data on cases transmitted by the Working Group;

(d) To communicate to the special rapporteurs of the Commission on Human Rights on summary or arbitrary executions and on torture information pertaining to their areas of concern;

(e) To revise the statistical presentation in its report by indicating as the first item the number of outstanding cases derived from a subtraction of the number of clarifications from the total number of transmitted cases and to add for countries with more than 100 outstanding cases a graph showing the frequency of the disappearances based on the dates of their occurrence;

(f) To renew its efforts to request non-governmental organizations and family associations submitting reports on disappearances to present specific cases in a sufficiently detailed and well documented manner, in particular with regard to information on the identity of persons and the legal remedies taken internally by the relatives of the missing persons.

34. In their replies to the Working Group, Governments frequently stated that certain groups operating in their countries were to be held responsible for cases of disappearances. As a reaction to such statements or similar information from non-governmental sources, which are generally reflected in its reports, the Working Group has received, on at least one occasion, communications from such groups offering their co-operation in investigating and clarifying cases attributed to them. It is the position of the Working Group, as a matter of principle, that such groups cannot be approached by it, with a view to investigating or clarifying cases of disappearances, which, in accordance with the rules of international law, remain the exclusive responsibility of Governments, irrespective of the alleged authorship in specific cases.

II. INFORMATION CONCERNING ENFORCED OR INVOLUNTARY
DISAPPEARANCES IN VARIOUS COUNTRIES REVIEWED
BY THE WORKING GROUP

A. Instances in which more than 20 reports of enforced
or involuntary disappearances transmitted by the
Working Group to a Government remain outstanding

1. Argentina

Information reviewed and transmitted to the Government

35. The past activities of the Working Group in relation to Argentina are recorded in its five previous reports. ^{1/} From 1980 to 1985 the Working Group transmitted 3,393 cases to the Government of Argentina and received replies from the Government on 845 of them; 31 of the cases transmitted to the Government were clarified by these responses. Non-governmental sources have transmitted information which clarified 37 cases. ^{*/}

36. Since the latest extension of its mandate, the Working Group has transmitted to the Government of Argentina, by letters dated 8 August and 24 December 1985, 26 newly reported cases said to have occurred in Argentina during the period 1973-1980. Most of them concern couples who disappeared with their children or women who were pregnant at the time of their arrest and whose children were supposedly born in captivity. These cases include five children aged one month, nine months and two, four and five years at the time of their disappearance.

37. At its sixteenth session and in subsequent letters addressed to the Government of Argentina, the Working Group expressed the hope that it would receive a case-by-case response with regard to disappearances which had been clarified in the mean time. At the request of the Government, the Working Group also provided Argentine courts with information on specific cases received in previous years.

Information and views received from relatives of missing
persons and non-governmental organizations

38. The following organizations of relatives of disappeared persons and human rights organizations in Argentina were heard by the Working Group during its sixteenth session held in Buenos Aires from 5 to 14 June 1985: Argentine Human Rights League, Centre for Legal and Social Studies, Grandmothers of the Plaza de Mayo, Mothers of the Plaza de Mayo, Permanent Assembly for Human Rights, and Relatives of Disappeared Persons and Persons Detained for Political Reasons.

^{*/} For 20 of these cases the clarification was later confirmed by the Government so that only 17 cases have been counted in the statistical summary under the item cases clarified by non-governmental sources.

39. These organizations stated, in general, that their concern for the fate of the missing persons in Argentina continued, since a response on each individual case of disappearances had not yet been given to them. The investigation of the disappearances should continue until the fate of each person reported to have disappeared had been established and the persons responsible for them had been punished.

40. All the organizations commended the National Commission on the Disappearance of Persons (CONADEP) for its work, which was considered a very valuable initial step towards investigating the problem of disappearances in Argentina. The 8,961 cases included in the CONADEP list, as well as the testimonies received by CONADEP and the investigations it carried out gave a preliminary idea of the seriousness and extent of the problem. A representative of one of the organizations said that the cases of disappearances listed by CONADEP did not reflect the actual magnitude of the problem, since many people had never reported the disappearance of their relatives, either because they assumed that their missing relatives were dead or because they had never been able to overcome the terror instilled in the population during the military government.

41. All the organizations expressed the view that the criminal process involving members of former military juntas, which was taking place before the Federal Court of Appeal, had made the whole population aware of the atrocities committed by successive military governments against numerous innocent persons, including children. They stressed that the report of CONADEP as well as the proceedings against junta members had revealed the existence of many clandestine detention centres where disappeared persons had been held, tortured and killed. The centres had been part of an operational structure, under the responsibility of military authorities and the reception, transfer, release or any other movement of each individual detainee had been registered. Thus, the response to questions concerning the fate of the missing persons was in the hands of those who had conducted the operations and/or run those centres and it was essential to identify and try them.

42. The organizations also stated that the identification of bodies buried in unmarked graves was a very difficult and expensive task that often exceeded the limited resources of the courts. Furthermore, many of the bodies had been incinerated ^{*}/ or thrown into the sea, so that the identification of bodies in mass graves would provide an answer to only some of the cases.

^{*}/ Witnesses have disclosed that in some barracks there were special places for the incineration of corpses.

43. Several organizations underlined the fact that the Government had a genuine will to establish responsibility for past human rights violations. They insisted, however, on the need to continue in-depth investigations and to try all persons responsible for disappearances.

44. Some organizations, while acknowledging the great efforts made and the results obtained by CONADEP, said that its work should be continued by a parliamentary commission which should be mandated to investigate and identify those responsible for what they called "State terrorism". They argued that, according to Argentine legislation, a parliamentary commission would be entitled to question witnesses and to take any investigatory measures needed to clarify the cases, while CONADEP had not been given such wide powers. In that connection, several organizations criticized the decision of the Government to entrust the Subsecretariat for Human Rights of the Ministry of the Interior with the continuation of the task initiated by CONADEP, since the resources, personnel and investigation facilities granted to this office were restricted; furthermore, the Subsecretariat was considered to be subjected to political pressure, given that it was an organ of the Executive. It was stated that the Subsecretariat for Human Rights could only receive reports and transmit them to judges, but could not take investigatory measures such as questioning witnesses or seeking evidence. An organization expressed the view that the problem of disappearances would not be satisfactorily investigated by judges in charge of individual cases, since all cases were closely linked and the evidence obtained for each of them should also be examined in connection with other cases. Therefore, an official body was needed that would centralize, connect and contrast the evidence and make itself thoroughly familiar with the findings obtained in all cases. According to the view of this organization, such a body should be answerable to or work in close contact with the judiciary and could be established as a special Government-Attorney's office responsible specifically for the investigation of disappearances. Such an institution would be free from the political constraints foreseen for a parliamentary commission.

45. Some organizations also criticized law 23049. This law, which modifies a previous one, establishes that common law offences committed by military personnel as of the enactment of the law fall within the competence of civil courts, while those committed by armed forces, police and security forces personnel before its enactment continue to fall within the competence of military tribunals. It also establishes that any decision taken by a military tribunal will be subject to review by the competent Court of Appeal and that the Court of Appeal can order the submission of the records or take over the entire proceedings 180 days after initiation of the trial, if the military tribunal has not taken the necessary measures to carry out inquiries or has failed to perform its duties properly. Relatives maintained that, in fact, the military tribunals had rejected the opportunity given to them of investigating and judging the military personnel responsible for human rights violations, and the Court of Appeals, as the delay established in the law had expired for each trial, had ordered the submission of the records to it and

continued the investigation. The proceedings had thus been delayed, but the investigations had finally started to be carried out by civil courts, and progress was expected in many cases.

46. An organization stated that it was necessary to introduce changes in the legislation in order to exclude the military tribunals from any proceedings concerning the investigation of disappearances. It requested the Government enable penal courts, with sufficient technical and human resources, special priority for the investigation of cases of disappearances and to see that special inquiries were made, by administrative bodies, in military units where clandestine detention centres had existed in the past. This organization also requested the President of the Republic to obtain from the armed forces the records of the clandestine detention centres and any other documentation relevant to disappearances.

47. Some organizations referred to the decision taken by military tribunals to the effect that persons accused of serious human rights violations were not responsible for those crimes because they had acted under orders. In that respect, the organizations stated that the atrocities committed by officials under the military governments, which included homicide and kidnapping of children, could not be covered by the principle of acting under orders, since they were acts considered by national legislation and international instruments as crimes, even in wartime, which was not the case for Argentina when disappearances had occurred.

48. The Grandmothers of the Plaza de Mayo expressed their concern over the fate of 180 missing children. The efforts of their organization, together with the relatives and with the co-operation of the population, had been successful in locating 28 missing children. There was evidence that three children had in fact been killed and one had died when the mother was killed. The fate of other children found varied in each case. Some had been given to neighbours for safe-keeping, who had usually contacted relatives in order to hand the children over. Others had been sent to orphanages after security forces claimed they had been found abandoned in the streets; in some cases the children had subsequently been adopted by families in good faith.

49. There were a number of cases in which the grandparents had found that their grandchildren were in the hands of families with police, military or security connections which had claimed the children as their own. In some cases there was strong circumstantial evidence implicating these alleged parents in the kidnapping, torture and secret detention of the real parents. There was evidence, from many different sources (ex-prisoners, civilian medical staff and former members of the security forces) concerning the treatment of pregnant women detained in secret detention centres and the fate of their babies. It would appear that pregnant women had not been spared torture but had been allowed to give birth before being transferred or killed. They had been separated from their babies

shortly after the birth. Many of those children seemed to have been registered on the birth registers by surrogate parents under their names. The Grandmothers also stated that some of those who had been located were currently living with their legitimate parents, but many others continued to live with their surrogate families.

50. All these cases had been brought before the courts, but the trials were long and justice was too slow. Some judges seemed to proceed in an extremely slow manner and to delay unnecessarily the return of the children to their legitimate families, even when their true identity had been thoroughly proved. Delays in judicial investigations had meant that children located after years of intensive searching were again missing because surrogate parents had gone into hiding, failing to submit themselves for blood tests as instructed by the courts.

51. Also the legislation concerning this matter had not been updated for many years and new scientific developments had not been incorporated into it. It had proved difficult to obtain judicial authorization for the new genetic tests based on the latest techniques to establish the real identity of children located by relatives (see E/CN.4/1985/15, paras. 114-115). The surrogate families had generally not agreed to undergo these tests, so that the determination of the children's filiation was subject to a number of additional pieces of evidence such as the testimony of witnesses, obvious alterations in birth records, etc. The Grandmothers had launched the initiative for a genetic data bank and were working, together with official institutions and scientific teams, for its establishment. The data bank would provide the material for the filiation tests not only immediately but also in the future, when the grandparents of the missing children might have died.

Information received from former members of the National Commission on the Disappearance of Persons (CONADEP)

52. During its sixteenth session, in Buenos Aires the Working Group met a group of former members of the National Commission on the Disappearance of Persons (CONADEP) and members of the medical team trained to identify bodies and assist the courts with questions related to the filiation of children. The Under Secretary for Human Rights of the Ministry of the Interior, who had been a member of CONADEP, was also present at the meeting. Mr. Ernesto Sabato, former Chairman of CONADEP, explained to the Working Group that the mandate of CONADEP had been to receive complaints and evidence of disappearances and transmit them to the courts if they related to the commission of an offence; the powers of the Commission to investigate the fate of missing persons included that of requesting information from official institutions, which were obliged to provide it under penalty of law. The Commission was also empowered to enter official and military premises, if necessary, for inquiries concerning disappeared persons.

53. Its mandate had included the investigation of disappearances that had occurred during the period 1976-1982, not in previous years, in which more than 400 cases of disappearances had occurred. Arbitrary executions had not been included in the mandate, so the Commission had not been entitled to investigate the circumstances surrounding the death of many persons.

54. The Commission had also made investigations in prisons, hospitals, cemeteries, mental health asylums, etc., in the capital and in most of the provinces of the country. The time initially allotted to the Commission to carry out its mandate had been six months, but that had been extended to nine months. Even that period had not been long enough, because its task was really endless, but it had sufficed to establish the methods and mechanisms used to make people disappear and also to determine that those methods involved the commission of different crimes. The continuation of the task initiated by CONADEP had subsequently been handed over to the judiciary, which had the means and the powers to further the investigations and punish the persons responsible for those crimes.

55. Members of CONADEP had worked under very difficult conditions, subject to continuous threats from the groups responsible for the disappearances. The Commission had received assistance and financial support from the Government so that it had been able to use highly efficient technical means and gather a considerable amount of information contained in 50,000 pages. CONADEP had filed before the courts 80 cases concerning 1,091 missing persons. Each of the 80 writs submitted to the courts contained a full description of the detention centre, a list of the persons who had run it, as identified by witnesses, and a list of persons seen in those places, who had been missing since. In its presentations before the courts, CONADEP had made no accusation against individuals or institutions; only an objective report of the facts learnt in the course of the investigations was given.

56. At the meeting, it was also stated that the human rights organizations and relatives of missing persons had better understood the importance of the work performed by CONADEP once its findings had been published and they had also realized that a parliamentary commission would not have been more successful in achieving those goals. One of the former members of CONADEP, a representative in the Chamber of Deputies, said that commissions of the legislature existed at the provincial level; in the national parliament, the establishment of a commission to investigate disappearances had never been called for and there had been general agreement at that time that CONADEP had indeed been the best solution to initiate the process of investigation.

Information and views received from the Government

57. During its sixteenth session, held in Buenos Aires, the Working Group met the Minister of the Interior, Mr. Antonio Trócoli, the Under Secretary for Human Rights of the Ministry of the Interior, Dr. Eduardo Rabossi and Ambassador Horacio Ravena, Director General of Human Rights of the Ministry of Foreign Affairs. The representatives of the Government noted that the disappearance of persons as a systematic occurrence in Argentina under previous governments was one of the most serious problems that the Constitutional Government had to face. The Government considered it a moral duty to shed light on the human rights violations of the past. Disappearances had affected wide sectors of the population and had severely damaged the prestige of the forces involved in that condemnable practice. It was necessary to investigate and punish those who had been guilty of such crimes and the Government believed that that task belonged to the judiciary.

58. As a first stage in the investigation, the Government had established the National Commission on the Disappearance of Persons (CONADEP), an administrative body in charge of establishing the general facts and mechanisms by which people were made to disappear and of investigating the fate of the missing persons. The Government had furnished all the technical and financial support needed by CONADEP.

59. During its nine months of existence, CONADEP had received from relatives and organizations in Argentina almost 8,000 reports on individual disappearances, selected about 1,000 further cases containing full evidence of disappearance from those presented by international sources, identified several clandestine detention centres and provided social and psychological assistance to relatives of missing persons. It had also filed 80 cases before the courts concerning 1,091 individual cases.

60. By Decree No. 3090 of September 1984, the Subsecretariat for Human Rights had been established within the Ministry of the Interior, which was in charge of human rights questions, including the question of disappearances. In this connection, the Subsecretariat had received and reorganized the files of CONADEP and had been entrusted with the job of continuing to file cases related to disappearances before the courts, examining needs and proposing pertinent measures concerning technical or scientific assistance for the identification of bodies found in unmarked graves and examining and proposing action in relation to the genetic data bank that would make the identification of missing children possible.

61. The representatives of the Government referred also to the practical measures taken and progress achieved in the determination of the fate of the missing persons. They stated that the CONADEP criteria for considering that a report of a disappearance was based on a solid certitude were: (a) that the relatives, friends, colleagues, school fellows, neighbours, etc., had good reason to think that the person had been arrested or detained by officials; (b) that the detention had not been officially acknowledged and (c) that official forces or institutions charged with the task of making inquiries had never investigated the report on the disappearance in the past.

62. Regarding the reports considered by CONADEP to meet those criteria, there were three different levels of evidence: (a) those in which evidence was very plentiful; (b) those in which some evidence was available, such as witnesses to the arrest, and (c) those with no evidence of the arrest. About 1,200 persons reported as having disappeared had been seen by witnesses in clandestine detention centres and 180 of them had been seen at the time when their habeas corpus proceedings were rejected by the courts because the detention had not been acknowledged by the forces holding the missing persons. The cases mentioned by CONADEP in its report on the investigations occurred between 1973 and 1983. A graph included in the report showed that, between 1973 and 1975, 400 disappearances had occurred and that in 1976, when the military came to power, disappearances had become a systematic method of repression and the figure for that year was 3,800.

63. One of the initial tasks undertaken by the constitutional Government was to determine whether missing persons were held within official premises. Prisons, military barracks, police stations, places that had been used as clandestine detention centres, hospitals and mental health asylums were inspected when reports were received that disappeared persons could be held there. Missing persons were not found in any of those places. The Government had never asserted that all the missing persons were dead, but from the findings of CONADEP, it could be concluded that physical extermination was an integral part of the methodology of disappearances and, very often, the bodies had been destroyed to prevent identification. Many witnesses had agreed on that fact in their testimonies. Concerning the identification of bodies found in unmarked graves, the Government had extended all possible co-operation, including financial support for bringing specialized technical and scientific teams to help and train local professionals. The task was not an easy one, because relatives sometimes refused to accept that their dear ones were dead; furthermore, the identification itself required sophisticated techniques and lengthy tests, given the conditions in which the bodies were found. However, the Government intended to continue the investigation until clarification of the fate of the missing persons.

64. The representatives of the Government further stated that such clarification was also linked to the information that would probably be obtained in the trials of those accused of crimes related to disappearances. Many of these processes were currently taking place and some evidence had already been obtained which would be amplified as new testimonies were heard and new investigations were made by the courts. It was hoped that the fate of many missing persons would be determined in those trials and that the Government would provide the Working Group with the relevant information.

65. Since the beginning of its mandate, one of the main concerns of the Government had been to ensure that the population fully enjoyed human rights and fundamental freedoms and that the guarantees for the protection of those rights were effective. The fact that the investigation of past violations of human rights had been put in the hands of the judiciary was in accordance with the democratic and institutional principles contained in the Constitution. The Federal Parliament could at any moment decide to establish a commission to investigate disappearances, as had been done by provincial legislatures.

66. By note verbale dated 22 October 1985 the Government transmitted to the Working Group information concerning 822 cases of disappearances, clarifying 25 of them; */ in 14 of the 25 clarified cases, the information from the Government confirmed what had been previously received from the sources; in eight cases the person concerned had been released; in 13 cases of missing children, their whereabouts were currently known; and four bodies had been identified as those of missing persons. With regard to 794 cases, the Government stated that a writ had been filed before the courts, either by CONADEP or by the Subsecretariat for Human Rights, containing a request for investigation. **/

67. The Government of Argentina also referred, in its note verbale, to 179 cases transmitted by the Working Group which were not included in the lists of disappeared persons prepared by the National Commission on the Disappearance of Persons (CONADEP); to 48 cases in which the spelling of the name and/or a part of the name transmitted by the Working Group did not coincide exactly with the real name of the missing person as registered in national files, and to 12 cases which had not yet been submitted to the courts.

*/Three additional clarifications included in that information had previously been received by the Working Group and had been reflected in the statistics in its last report.

**/The Government was informed by letter of the decision taken by the Group in this regard as well as of all clarifications provided by the sources.

Statistical summary

I.	Outstanding cases	3,345
II.	Total number of cases transmitted to the Government by the Working Group	3,393
III.	Government responses:	
	(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	845
	(b) Cases clarified by the Government's responses <u>a/</u>	31
IV.	Cases clarified by non-governmental sources <u>b/</u>	17

<u>a/</u>	Persons released from detention	10
	Children located	17
	Persons whose bodies have been identified	4.
<u>b/</u>	Persons released from detention	7
	Children located	1
	Persons whose corpses have been identified	9.

2. Brazil

Information reviewed and transmitted to the Government

68. The Working Group's activities in relation to Brazil are recorded in its five earlier reports to the Commission on Human Rights.^{2/} Between 1980 and 1984 the Working Group transmitted to the Government of Brazil nine reports of enforced or involuntary disappearances which allegedly occurred between 1970 and 1975. The Working Group received nine replies from the Government of Brazil which could, however, not be considered as clarifying these cases.

69. In 1985, the Working Group continued to receive and to examine information about enforced or involuntary disappearances in Brazil and transmitted to the Government, by letter dated 8 August 1985, 35 newly reported cases. Many of the 35 persons reported as missing were employed in academic professions and in banking, some of them were students and others were workers. One of the persons was a former federal deputy who was arrested together with his wife; his wife was later released. The places where the arrests or abductions took place were the Araguaia region, Maraba, Rio de Janeiro and Sao Paulo.

70. Eighteen out of the 35 reports concern disappearances which occurred between 1971 to 1975, with the exception of one which took place in 1964. According to the reports almost all of the persons were arrested by security agents and held in secret detention centres, allegedly run by the Department for Internal Information/Centre for Operations for National Defence (DOI/CODI) in Rio de Janeiro and Sao Paulo, whence they disappeared. In many cases the persons were seen at the detention centres by witnesses. The other 17 reports refer to cases with regard to which there is a strong presumption that the persons died in detention, in the period between 1969 and 1975, or in the guerrilla warfare in the Araguaia region in 1972-1973. The deaths of these persons were, however, never acknowledged and their bodies were never found or identified. By the same letter, the Government was reminded of the nine reports transmitted to it on previous occasions.

Information and views received from relatives of missing persons and non-governmental organizations

71. The cases that the Working Group transmitted to the Government of Brazil were selected from reports submitted by the Committee for the Defence of Human Rights in the Southern Cone of the Archdiocesan Pastoral Commission on Human Rights and the Underprivileged (CLAMOR - Comité de Defesa dos Direitos Humanos para os Países do Cone Sul orgao vinculado à Comissao Arquidiocesana de Pastoral dos Direitos Humanos e Marginalizados). Three cases had also been directly submitted by a relative. CLAMOR further reported that some cases of missing persons could be clarified in the course of investigations undertaken by committees of relatives in cemeteries and forensic institutes and through obtaining classified information. CLAMOR also gave examples of persons

who allegedly died under torture and were then buried under false or similar names and their personal data falsified. The organization estimated that at least 300 persons had disappeared since 1964, some 100 of them during the guerrilla warfare in the Araguaia region.

Information and views received from the Government

72. Since the adoption of its latest report, the Working Group has been informed by the Permanent Representative of Brazil to the United Nations Office at Geneva, by note verbale dated 10 September 1985, that the Brazilian Government, through an appropriate body, was in the process of analysing the cases of disappearances transmitted to it by the Group.

Statistical summary

I.	Outstanding cases	44
II.	Total number of cases transmitted to the Government by the Working Group	44
III.	Government responses:	
	(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	9
	(b) Cases clarified by the Government's responses	0

3. Colombia

Information reviewed and transmitted to the Government

73. The previous activities of the Working Group in relation to Colombia are recorded in its latest report to the Commission on Human Rights.^{3/} The Working Group has transmitted to the Government a total of 183 cases of enforced or involuntary disappearances. The Government replied on 21 cases clarifying 10 of them.

74. In 1985, the Working Group transmitted to the Government of Colombia 162 reported cases of enforced or involuntary disappearances. Three cases occurred in 1985 and were transmitted to the Government under the urgent action procedure. Of the remaining 159 cases, 55 were reported to have occurred in 1980, 33 in 1982, 44 in 1983 and 27 in 1984. All cases contained information on the place and date of the arrest or abduction and on the persons reportedly responsible. Most of the arrests were allegedly carried out by military, police or paramilitary forces. In some cases information was also provided on the vehicles used. Most of the disappearances took place in the areas of Antioquia, Caqueta, Santander and Córdoba.

75. In accordance with the decision taken at its sixteenth session, the Working Group, by letter dated 8 August 1985, also addressed to the Government of Colombia the questionnaire on the implementation of General Assembly resolution 33/173. At the same time it reminded the Government of the cases transmitted in 1984 and requested it to provide information on the results of the investigation of those cases.

Information and views received from relatives of missing persons and organizations representing relatives of missing persons

76. In a written communication, the Colombian Association of Relatives of Disappeared Detainees (ASFADDES) expressed its concern about the content of the report issued by the Investigatory Commission set up by the Office of the Attorney General in Colombia (E/CN.4/1985/15, para. 252). According to the Association, the report did not reflect the magnitude of the problem of disappearances in Colombia. The Association maintained that the number of disappearances throughout the country had considerably increased to over 300 cases, as opposed to the 150 mentioned in the Commission's report. In October 1984, the Association, together with the Permanent Committee for the Defence of Human Rights, had presented to the Working Group a list of more than 300 cases, of which 159 were transmitted to the Government by the Group; the remaining cases did not contain sufficient information and the organizations were therefore asked to provide additional details.

Information and views received from the Government

77. During the period under review, the Working Group received information in writing from the Government and from the Office of the Attorney-General in Colombia regarding 14 cases previously transmitted to the Government.

78. By note verbale dated 15 May 1985, the Government of Colombia provided information on one case of an enforced or involuntary disappearance that was brought to its attention under the urgent action procedure in April 1985. The Government stated that the person arrested by agents of the military forces in February 1985 had been released three weeks later and was currently residing in Cartagena.

79. By letter dated 5 December 1985, the Permanent Representative of Colombia to the Office of the United Nations at Geneva, sent the Working Group documents issued by the Office of the Attorney-General providing, inter alia, replies on 13 further cases which were transmitted by the Working Group to the Government of Colombia. These documents also contained a response by the Government to the Group's questionnaire on the implementation of General Assembly resolution 33/173, which is reproduced in annex II to the present report.

80. With regard to the 13 cases, the Office of the Attorney-General stated that one person had been sentenced for murder and was currently in prison; two other persons had escaped from prison;*/ three persons had declared under oath that they had been detained and later released by unknown persons; three persons had been detained by the army and were now free; one person whose name did not fully coincide with the name of the missing person had sent a cable to the Office of the President two years after the reported disappearance;*/ one person had presented herself to the Office of the Regional Attorney in Valle; one person had always been free according to his brother's testimony; and one person, an ex-member of the National Liberation Army, had been under the army's protection and had subsequently travelled to Miami.*/ Other cases referred to in the documents provided by the Attorney-General do not concern cases transmitted to the Government by the Working Group.

81. In a letter dated 5 December 1985, the Permanent Representative of Colombia requested recognition of the fact that there were no large-scale violations of human rights in Colombia, particularly disappearances carried out by Government officials. The violations which had occurred were due to other causes or were the work of other agents and the few cases of unlawful conduct or offences by Government officials were isolated instances which had happened not simply independently of, but specifically against, the wish of a democratic Government mindful of its international commitments in that regard and its own internal legal order. It was not denied that acts of violence had taken place, but he could affirm that they had occurred despite the Government or against the Government.

*/These cases were not considered clarified by the Group. The Government was informed by letter of the decisions taken by the Group in this regard.

82. The Permanent Representative also requested the Working Group to investigate the capacity of the complainants, to ascertain whether they were reliable, sure of the facts and whether they had exhausted domestic remedies before proceeding with their complaints. In view of the high number of cases the complainants should be required to assume the appropriate burden of proof in conformity with traditional legal practice and with the precedents of the United Nations. A government such as his, which had given so many proofs of observance of the law and respect for its international commitments could not be expected to provide evidence that certain Colombians, whom the Government might not be able to produce, had not disappeared. The complainants should therefore be asked to provide evidence concerning the alleged disappearances.

83. During its sixteenth session, held in Buenos Aires, the Working Group met an attorney of the Judicial Police, representing the Office of the Attorney-General, who was accompanied by the Colombian Ambassador to Argentina. The attorney provided the Working Group with information on the historical background, functioning, activities and methods of investigation used by the Office of the Attorney-General to determine the whereabouts of missing persons. He said that most of the disappearances brought to the attention of his Government, as recorded in the previous report, had occurred under the past administration. Nevertheless each case received had been forwarded to the Office of the Attorney-General which was currently conducting investigations on all of them. In doing so, the Office of the Attorney-General enjoyed complete autonomy in relation to the executive power. The representative also mentioned that investigations in the densely forested areas of Colombia were extremely difficult. It was certainly not official policy to make persons disappear and despite all efforts made by the Government to control security throughout the country, most persons reported as missing to the Government had died as a result of the fighting in the mountains.

84. The representative outlined the three main steps that had been taken by the Government for the pacification of the country. He recalled that the incumbent President had promulgated an amnesty law aimed at freeing political prisoners so that they could become officially involved in the political life of the country and participate in the national dialogue. The Government had, therefore, established a commission entrusted with the task of proposing basic reforms that the country would need and ensuring the reintegration of the released political prisoners. Finally, the Government had negotiated a military truce which, according to the representative, appeared to have failed due to continued guerrilla activity.

85. During its seventeenth session, the Working Group met the Permanent Representative of Colombia to the United Nations Office at Geneva. He also referred to the amnesty law enacted by the Colombian Congress for those who had taken up arms against the Government in the past. As a result of the amnesty law, many released detainees had again joined the armed opposition attacking citizens and disrupting law and order as well as the country's economy. Whereas public opinion had initially favoured a general amnesty, it now called for a strong stand against those who continued to participate in armed opposition.

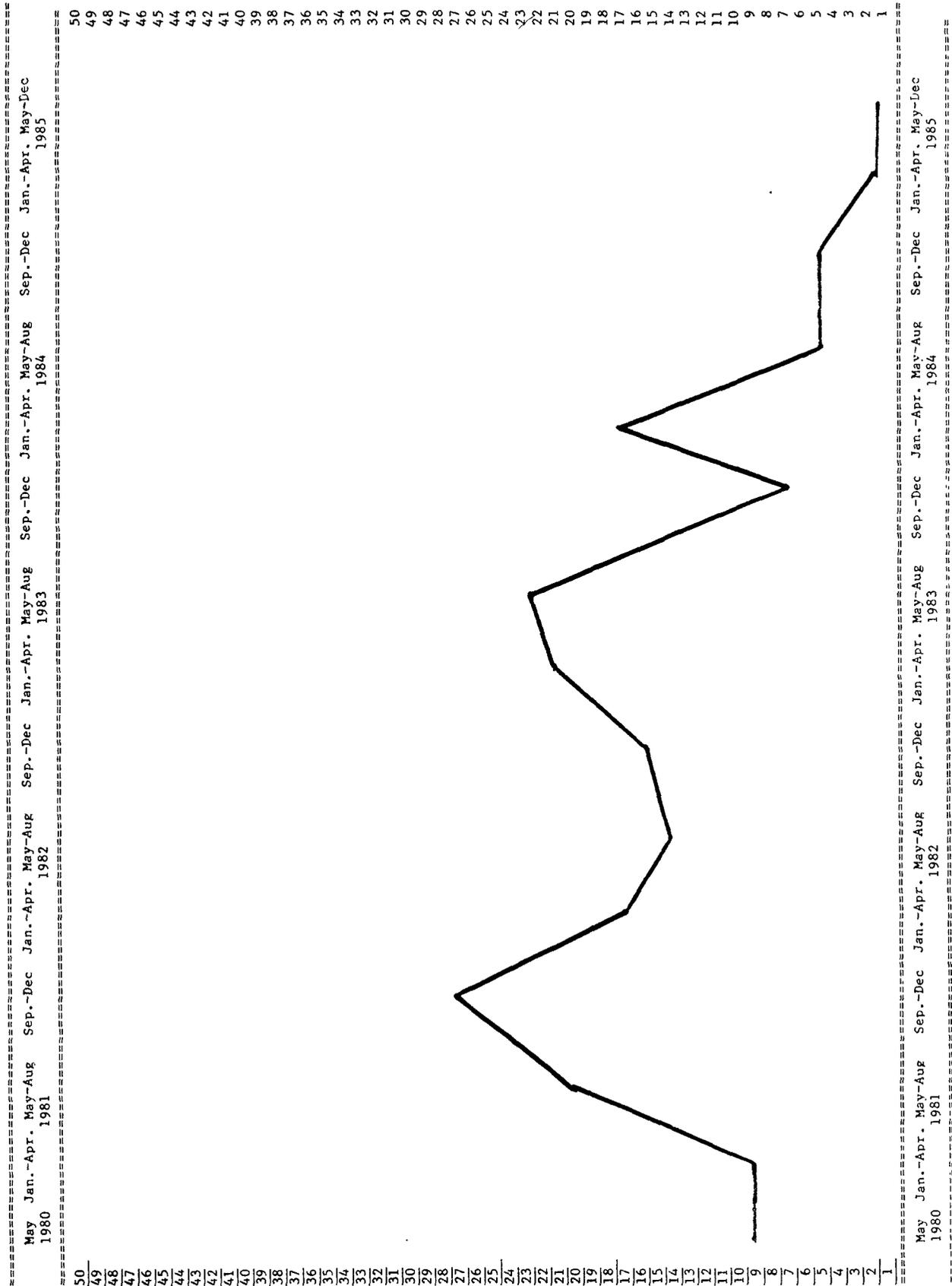
86. The Permanent Representative further stated that the legal manner to deal with those who had committed crimes through their involvement in armed opposition was to consider each case individually. He observed that such an approach took time but was nevertheless necessary. The officials of the Office of the Attorney-General were appointed by Congress and from a constitutional viewpoint served as a bridge between the Government and Congress. For all practical purposes those officials were independent and empowered to denounce cases and did so vigourously. With regard to the number of reports on enforced or involuntary disappearances, the Permanent Representative remarked that many of those who had benefited from the amnesty had reported their own disappearance before joining armed opposition groups. The Government needed time to furnish concrete proof to the Group on specific cases of such occurrences.

Statistical summary

I.	Outstanding cases	173
II.	Total number of cases transmitted to the Government by the Working Group	183
III.	Government responses:	
(a)	Total number of responses received from the Government relating to cases transmitted by the Working Group	21
(b)	Cases clarified by the Government's responses <u>a/</u>	10

a/ See paras. 78 and 80.

FREQUENCY OF DISAPPEARANCES IN COLOMBIA
 SINCE 1981 BASED ON THE DATE OF OCCURRENCE



4. Cyprus

87. The Working Group's previous activities in relation to Cyprus are recorded in its five earlier reports.^{4/} In October 1980, the Group transmitted information on cases of enforced or involuntary disappearances received from the Government of Cyprus, the Pancyprian Committee of Parents and Relatives of Undeclared Prisoners and Missing Persons and other organizations to the Government of Turkey and to the authorities of the Turkish Cypriot community. Also in October 1980, the Group transmitted information received from the Turkish Cypriot community on enforced or involuntary disappearances to the Government of Cyprus. Reported disappearances from both sides amount to about 2,400.

88. After the establishment in 1981 of the Committee on Missing Persons in Cyprus, the Working Group, at its eighth session in September 1982, decided to address a letter to the Chairman of the Committee stating that the Group had formed the view that the Committee provided not only adequate but also appropriate machinery for resolving the outstanding cases from both communities. Moreover, the Group noted that the Committee's purely humanitarian aims exactly coincided with its own mandate. The Group was therefore convinced that its role should not be to supplant the Committee, but rather to give it all the assistance within its power. At later sessions, the Working Group endorsed the view that it would continue to remain available to assist the Committee, as appropriate, if so requested.

89. In 1985, the Working Group noted with satisfaction that, following the death of the third member of the Committee in November 1984 and the appointment of a successor in May 1985, the Committee on Missing Persons in Cyprus had resumed its activities in June and held a series of meetings between September and the end of the year.

5. El Salvador

Information reviewed and transmitted to the Government

90. The activities of the Working Group in relation to El Salvador are recorded in its five earlier reports to the Commission on Human Rights. ^{5/} Since its establishment, the Working Group has transmitted to the Government a total of 2,296 cases of enforced or involuntary disappearances. The Government replied on 352 of these cases clarifying 279 of them.

91. In accordance with the decision taken at its sixteenth session, the Working Group, by letter dated 8 August 1985, addressed a questionnaire on the implementation of General Assembly resolution 33/173 to the Government of El Salvador and to the (governmental) Commission on Human Rights. Pursuant to the Working Group's decision at the same session, the Chairman, by letter dated 29 August 1985, informed the Special Representative on the situation of human rights in El Salvador of the latest statistical data on cases transmitted to the Government. By letter dated 18 December 1985, the Working Group provided the Special Rapporteur with a copy of the subsection in the present report concerning El Salvador.

92. In 1985 the Group has transmitted a total of 296 newly reported cases of disappearances to the Government. Of these, 11 cases (four reported to have occurred in January, three in September, one in October and three in November 1985) were transmitted under the urgent action procedure. The other 285 occurred between 1977 and 1981, but were received by the Working Group only in 1985. All transmitted cases contained information about the identity of the missing persons and the date and place of abduction or arrest (mainly the Department and city of San Salvador). Most of the reports also contained information about the age and profession of the missing persons. The professions most frequently mentioned were farmers, workers, teachers and a large number of students and minors whose ages ranged from 12 to 17; 26 reports concerned women. Most of the arrests reportedly took place at the missing person's home or place of work or at a specific public place, such as a market or a bus station.

93. Each of the reports transmitted to the Government contained information about the persons allegedly responsible for the arrest or abduction. These included members of the armed forces, national police, national guard, treasury police (Policía de Hacienda), air force, customs police, security forces or simply armed men in plain clothes. In most cases, it was reported that habeas corpus petitions presented on behalf of the missing person as well as visits to the security services had had no result.

94. The Group received some 300 more cases of disappearances reported to have occurred between 1977 and 1981 which did not, however, contain all the elements of information required by the Group's criteria. The sources were therefore asked to supplement their reports accordingly.

Information and views received from relatives of missing persons
and non-governmental organizations

95. Since the latest extension of its mandate, the Working Group has continued to receive and examine information relating to enforced or involuntary disappearances in El Salvador brought to its attention by relatives of the persons concerned either directly or through organizations acting on their behalf. These organizations are Christian Legal Aid, the (non-governmental) Salvadorian Commission on Human Rights, the Monsignor Oscar Arnulfo Romero Committee of Mothers and Relatives of Salvadorian Political Prisoners, Disappeared and Assassinated Persons, the World Council of Churches, the Central American Association of Relatives of Disappeared Detainees and Amnesty International.

96. With regard to 12 reports transmitted to the Government during the period 1982-1985, non-governmental sources indicated that the cases had been clarified in the mean time. In 10 cases the missing persons had been released from prison; in one case the person was in acknowledged detention and in another case the person was dead. By letter dated 21 May 1985, Christian Legal Aid of El Salvador submitted to the Working Group a list of 42 persons who had reportedly been arrested and were missing for a certain number of weeks and who were later released or found in prison.

97. In a written communication dated 22 August 1985, Christian Legal Aid provided information in relation to the functioning of the habeas corpus procedure. It stated that "the process provided for in the Constitutional Proceedings Act is that of habeas corpus to demand the production of a person illegally deprived of his freedom. The text of the law provides for a flexible procedure but the actual position is totally different. The remedy of habeas corpus has been virtually nullified by the abductors who use a variety of methods and abuse their authority to hide the victims. The investigating judges designated by the Supreme Court of Justice are often hampered in their work. As a rule they are not allowed to visit the prisons of the security agencies, and when they learn of secret places of detention, they encounter the greatest difficulties in fulfilling their judicial functions". Christian Legal Aid concluded that the remedy of habeas corpus was completely ineffective, although that procedural requirement had been strictly fulfilled in every case brought to the knowledge of the Working Group.

Information and views received from the Government and the
(governmental) Commission on Human Rights of El Salvador

98. Since the adoption of its latest report, the Working Group has received information in writing from the Government and from the (governmental) Commission on Human Rights of El Salvador regarding 13 cases previously transmitted to the Government.

99. By notes verbales dated 4, 11, 20, and 26 March and 30 May 1985, the Government stated that in two cases the persons were at liberty, that in one case the person was being held by the authorities awaiting trial, that in eight cases, after investigation, no records had been found of the person's arrest or detention and that in two cases investigations continued.

100. By letter dated 6 May 1985, the (governmental) Commission on Human Rights submitted information to the Working Group on the Commission's composition, functioning and methods of investigation in the field of disappearances. The Commission had set up three regional offices in the cities of Santa Ana, San Vicente and San Miguel and these offices, together with the central office based in the capital, provided nation-wide coverage in supervising and protecting respect for human rights. Special attention had been given to seeking and locating persons whose disappearance had been reported. In order to perform this work, the Commission had a search department, which, when it learned of a disappearance, either through a complaint lodged with the Commission's offices or through other means, immediately began location efforts through its search teams, made up of appropriately qualified staff. These teams, which were composed of three representatives in each of the offices, carried out searches through daily visits to all detention centres in the country, security bodies, military regiments and barracks, hospital centres, migration offices and other places where information for locating disappeared persons might be obtained. In carrying out its work, the team used transport vehicles adapted to this type of activity and provided with radio communication equipment. The Commission also mentioned that it enjoyed the co-operation of the military authorities and security bodies, which notified it daily of arrests made both for ordinary offences and for other reasons.

101. In a further communication dated 24 September 1985, the Commission stated that as a result of the work carried out by its delegates in monitoring the observances of human rights, the level of human rights violations had declined appreciably. At the same time the Commission pointed to the difficulties in obtaining precise data on disappearances in view of the generalized violence prevailing in the country.

102. The Commission also informed the Working Group about the functioning of the habeas corpus procedure, which, in the Commission's view, had to some extent proved ineffective and, therefore, could not be considered a genuine safeguard against arbitrary detention. The Commission expressed the opinion that the above-mentioned law should be revised with a view to making it more effective. The Commission also emphasized the need for recognition and support of the work by international human rights bodies. It also expressed the view that such bodies should provide the necessary technical assistance to improve the Commission's procedure and methods of work.

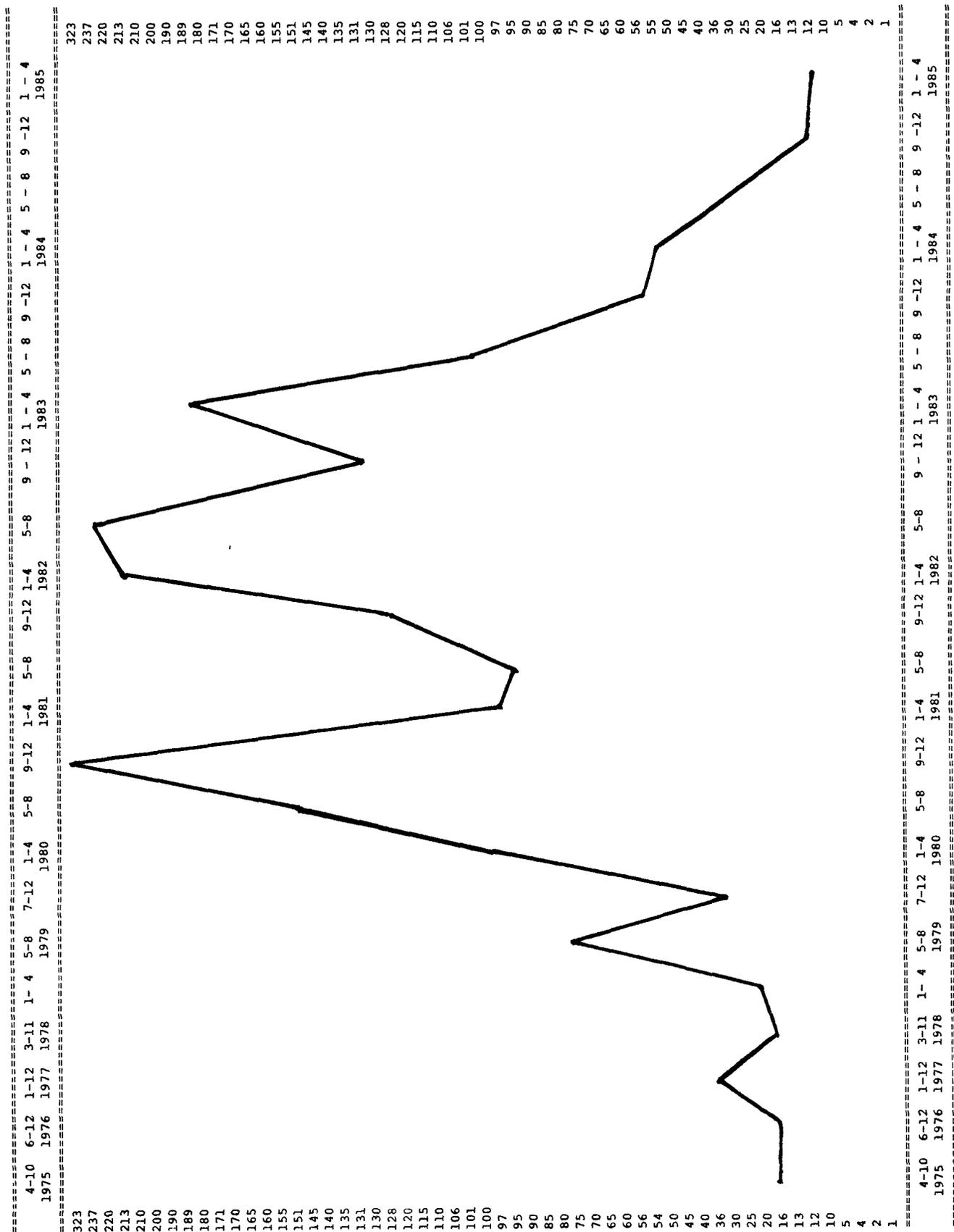
Statistical summary

I.	Outstanding cases	2,005
II.	Total number of cases transmitted to the Government by the Working Group	2,296
III.	Government responses:	
	(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	352
	(b) Cases clarified by Government responses <u>a/</u>	279
IV.	Cases clarified by non-governmental sources <u>b/</u>	12

a/ Persons in prison: 162
Persons released from detention: 113
Persons officially reported dead: 4.

b/ Persons in prison: 1
Persons released from detention: 10
Persons reported dead: 1.

FREQUENCY OF DISAPPEARANCES IN EL SALVADOR
 SINCE 1975 BASED ON THE DATE OF OCCURRENCE



6. Guatemala

Information reviewed and transmitted to the Government

103. The Working Group's previous activities in relation to Guatemala are recorded in its five previous reports.^{6/} Between 1980 and 1985, 2,156 reports of enforced or involuntary disappearances have been transmitted to the Government of Guatemala. The Government replied to 30 reports clarifying 19 of them.

104. In 1985, the Working Group revised its files in order to ensure that the Government had a sufficiently detailed description for each case. The Group also requested further information from the sources with regard to reports which, according to the Group's criteria, did not contain all the required elements. During 1985, the Working Group also continued to receive information about enforced or involuntary disappearances in Guatemala and transmitted 552 new cases to the Government, 78 of them through the urgent action procedure. These disappearances reportedly occurred in the following years: 1980: 5 cases; 1981: 21 cases; 1982: 91 cases; 1983: 88 cases; 1984: 168 cases and 1985: 179 cases. Certain reports which did not fall within the Working Group's mandate were transmitted, at the request of the sources, to the Special Rapporteur on the situation of human rights in Guatemala or to other pertinent special rapporteurs, depending on the contents of the reports. In accordance with a decision taken at the sixteenth session, the Chairman of the Working Group, by a letter dated 21 August 1985, brought to the attention of the Special Rapporteur on the situation of human rights in Guatemala an updated statistical table of disappearances in Guatemala and a graph showing the frequency of disappearances in that country. By a letter dated 30 December 1985, the Chairman of the Working Group provided the Special Rapporteur with a copy of the subsection in the present report concerning Guatemala.

105. The reports transmitted to the Government fulfilled the criteria established by the Working Group for their transmittal. Among the 552 new cases, 65 concerned women, 40 concerned minors between 18 months and 17 years old and 4 concerned persons over 60 years old; 123 of the arrests reported had taken place at the missing person's domicile and 19 at the person's place of work. In 74 cases there was a precise indication that the person had been arrested in a rural community or village, in the presence of the neighbours; in one case the person had been kidnapped from a hospital and in 10 cases the persons had been summoned to a military barracks or had entered police offices and subsequently disappeared. In the rest of the cases, the arrest had been made in a public place (road, bar, restaurant, street, market, etc.) or the report mentioned a specific geographical location without further details. In relation to the question of responsibility for the arrest, in 141 cases the reports indicated that "heavily armed persons in plain clothes" had kidnapped or arrested the missing person (in 4 cases it was reported that the kidnappers had covered their faces); in 137 reports it was stated that the

arrest had been made by security forces (in 12 of these cases the Department of Technical Investigation (DIT) was held responsible); in 4 cases it was stated that the arrest had been made by "government officers"; in 33 cases by paramilitary groups; in 7 cases by local "civil defence" patrols; in 184 cases by military personnel (in 120 of these cases the group allegedly responsible was the army, and in 46 cases the local detachment to which the soldiers or officers belonged was specifically mentioned, including 9 cases in which the G-2 unit (Army security service was reportedly responsible); in 16 cases the National Police, the Judicial Police and the Special Operations Brigade of the Police (BROE) were reported to have made the arrest. In 28 cases those who made the arrest had been identified and their names provided by the source. In 33 cases the place where the person had been held in custody, either at the beginning of the detention or later, was indicated: 6 of these places of detention were reportedly police premises and 27 were military barracks. In three cases, the missing persons had sent messages from these detention centres which reached their relatives.

106. Having received further information on a number of cases already transmitted to the Government, the Working Group has retransmitted to it the summary of 14 of those cases, which included detailed information on the circumstances of the arrest and, in many cases, the groups responsible for it. In some cases, reports from witnesses who had seen the missing person in a detention centre were mentioned.

107. With regard to information from the sources concerning 14 persons whose detention had reportedly been acknowledged orally by the President of Guatemala to relatives who visited him, the Working Group requested the Government to confirm or deny this information.

108. In the first half of the year, several non-governmental organizations addressed various cables and letters to the Working Group, requesting its intercession to protect the life and the security of relatives of missing persons in connection with the abduction and subsequent murder of three members of the Mutual Support Group (Grupo de Apoyo Mutuo) and a two-year-old child. The Group considered this question at its sixteenth session and decided to include in the press release for that session, an expression of deep concern over the reports received on the harassment and criminal acts affecting relatives of missing persons, stressing the duty of Governments to grant the necessary protection to the relatives of missing persons and their organizations. In the second half of the year, the Working Group again received reports on the murder of a member of the Mutual Support Group who had been shot dead in Guatemala City. In view of the continuing information on the persistence of that serious problem, the Working Group, in a letter addressed to the Government, expressed its concern over the reports on persecution and threats against relatives of missing persons and their organization and stressed in particular the Government's responsibility to grant those relatives and organizations the necessary protection.

109. In relation to General Assembly resolution 33/173, a questionnaire on the implementation of this resolution was sent to the Government, as indicated in paragraph 25 of this report.

Information and views received from relatives of missing persons or from non-governmental organizations

110. The reports on enforced or involuntary disappearances transmitted to the Government of Guatemala were submitted by relatives of the missing persons, by Guatemalan organizations inside and outside Guatemala, namely, the Guatemalan Commission on Human Rights (CDHG), the Mutual Support Group for the Return of Missing Relatives Alive (GAM) and the Guatemalan Justice and Peace Committee, as well as by Amnesty International. The views reflected in the subsequent paragraphs include statements received from the above mentioned organizations and from the Central American Association of Relatives of Disappeared Detainees (ACAFADE), the Latin America Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM), and from Pax Christi International.

111. Early in 1985, all these organizations expressed serious concern over an increase of what some of them called "institutional violence" against the population, which had resulted, inter alia, in a further increase in cases of disappearances. One of the organizations reported that it had received reports on 241 cases which had occurred during the period January-September 1985. According to several statements received, the responsibility of the Government for the disappearances emerged from the testimonies of persons who had been detained in clandestine detention centres; from reports established by governmental and non-governmental international organizations; and, in particular, from the fact that the persons who arrested or kidnapped those who subsequently disappeared operated freely and with ample means and resources and were never tried and punished for their crimes. This was corroborated by the fact that practically none of the cases of disappearances reported to the courts had been investigated. One organization drew the Working Group's attention to the 1984 report of the Inter-American Commission on Human Rights, in which it was stated that disappearances were one of the major human rights problems in Guatemala and that missing persons had disappeared after reportedly having been kidnapped or illegally arrested by security forces of the Government or by death squads.

112. Some organizations reported that relatives of missing persons had been received several times by the President of Guatemala in 1984. They reportedly presented the Head of State with an extensive list of all the people they believed to be missing as well as details of the location of secret detention centres. In one of the meetings, the President reportedly promised them that an extensive investigation of the cases they had presented would be carried out and gave them information which led them to believe that 16 persons who had disappeared in the previous few months were being detained and would be released (14 of those persons were on the lists which relatives' organizations sent to the Working Group). However, there had since been no information on those persons. In another meeting, the Head of State had agreed to set up a three-person commission to investigate disappearances.

113. According to statements received by the Working Group, the Commission, formed by three government officials, submitted a report after several months, in which it was stated that the missing persons included in a list provided by relatives to the President were not detained, because they were not held in official prisons or detention centres. This report was rejected by relatives' organizations, who criticized in particular the fact that the report implicitly denied the existence of clandestine detention centres. Relatives claimed, in their statements, that the existence of clandestine detention centres operating all over the country in military barracks, in police premises or in private houses had been proved by the testimony of those persons who had succeeded in escaping or had been released from those centres.

114. One relatives' organization was reported to have submitted more than 750 writs of habeas corpus; another organization submitted 74 cases in which writs of habeas corpus had recently been filed. These organizations stated that the judiciary had not carried out genuine investigations into reports of human rights violations and that the writs of habeas corpus had been systematically blocked by the military authorities. The former President of the Supreme Court had reportedly stated, during the ceremony marking the transition of authority to his successor, that, while in office, he had "found it necessary to call attention to abuses committed against the inhabitants of the Republic and against judicial authorities" and that "the greater part of these abuses had originated and continued to originate from police and military circles". His successor had declared, a few months later, that the military authorities continued to obstruct writs of habeas corpus; he had also accused various judicial authorities of negligence in dealing with such petitions.

115. In the first months of 1985, the Working Group was informed that members of relatives' organizations had been threatened that they would be murdered if they continued the search for their missing relatives and that many of them had been subjected to various kinds of harassment. It was also reported that the national media had received "suggestions" from the Director of the National Police that they should not publish the relatives' organizations notices or accept their paid advertisements.

116. In April 1985 the Working Group was informed that on 30 March 1985 a member of the Mutual Support Group (GAM) had been assaulted by several armed men and taken away and that the following day his body had been found abandoned on a highway near his home town with evident signs of torture. A few days later, a new report was received concerning the kidnapping of another member of GAM, together with her brother and her two-year-old son, who were subsequently found dead on a highway. Several organizations expressed their deep concern over these terrible crimes and requested the Working Group to contact the Guatemalan authorities calling on them to stop all attacks against GAM members, to investigate fully these events and bring to justice those found responsible. These organizations expressed particular concern over a statement reportedly made by the President of Guatemala on 15 March 1985 to the effect that "actions intended to request the return of missing persons alive are subversive actions and measures will be taken to counteract" such activity.

117. In August 1985, the Working Group again received reports from several organizations on the assassination of one of the leaders of GAM on 30 July 1985 in Guatemala City. The reports emphasized the dramatic situation of relatives of disappeared persons in Guatemala and requested the Working Group to intervene at the highest level. It was also reported that some GAM leaders who had received death-threats, had been forced to leave Guatemala and go into exile.

118. At its seventeenth session, the Working Group met a representative of the Guatemalan Commission on Human Rights. The representative stated that disappearances continued to be brought about by governmental security forces and paramilitary and para-police groups to which the State granted impunity. The disappearances, which were a part of government policy, violated national and international human rights instruments and humanitarian principles. This problem would not be solved unless the following measures were taken by the Government: (a) dismantling of the illegal structure of government agents in charge of carrying out disappearances; (b) punishment of those responsible for this kind of crime; (c) dissemination of information to relatives and the public in general, on the fate of each of the missing persons; (d) halting of disappearances and indictment of persons accused of insurgency or conspiracy before the courts and their trial in accordance with national legislation.

Information provided by the Government

119. A member of the Permanent Mission of Guatemala to the United Nations Office at Geneva met the Working Group at its seventeenth session and handed over a letter from the Permanent Representative concerning 10 persons who had been granted amnesty and had returned to their respective homes. Reports on the disappearance of four of the persons mentioned in the letter had been received by the Working Group and transmitted to the Government. These four cases were thus considered clarified.*

120. By a letter dated 23 September 1985 the Permanent Mission of Guatemala to the United Nations Office at Geneva transmitted to the Working Group a copy of a document issued by the Ministry of the Interior which contained the "methodology of the investigations supervised by the Tripartite Commission appointed by the Head of State to establish the whereabouts of the missing persons". In this document, it is stated that the Tripartite Commission, in its endeavour to achieve genuine results, has carried out the investigation on the whereabouts of the so-called "disappeared persons" at the national level. To that end, it gave instructions to all the security forces and requested the co-operation of the civil authorities, including judicial and local authorities, to make every possible attempt to investigate each and every one of the cases reported in the appropriate list. From the outset of the Commission's work, the co-operation of the

*/The Government was informed by letter of the decision taken by the Group in this regard as well as of all clarifications provided by the sources.

concerned parties had been invited, particularly that of the representatives of the Mutual Support Group (GAM), but the information supplied by the concerned parties in the document they had described as "proof" had been insufficient to carry out effective investigations. The lack of direct co-operation from the concerned parties had made it impossible to complete the said investigation.

121. The Commission concluded that the persons appearing on the list supplied by GAM were not being held in any penal establishment or pre-trial detention gaols in the Republic; that in the course of the investigation circumstances had emerged which manifested the complexity of the situation (such as the production of persons before the courts at a date subsequent to that given as the date of their disappearance and the statement by a person in hiding that photographs of himself and others had been published as those of persons who had disappeared); that the investigation could not be regarded as completed until a list of the Guatemalans who had emigrated to Mexico was available; that proceedings had been initiated by the Office of the Attorney-General on the basis of reports of abduction or kidnapping; and that during the investigations carried out in the departments of the Republic, no reports had been received of the existence of places of detention other than the legally constituted penal establishments. The Tripartite Commission had thus recommended that: (a) the investigations should be continued and that a specific commission should be established for that purpose; (b) a new commission made up of parliamentarians, professional persons and representatives of private and religious entities, excluding government institutions and officials, should be set up; (c) the concerned parties should be requested to furnish the commission thus established with the items of evidence which would enable it to complete its investigation; (d) the Office of the Attorney-General should continue its investigations of the cases reported and should receive further reports; (e) all the cases reported should remain open so that both the State, through its competent organs, and the parties directly concerned could take any steps they considered relevant.

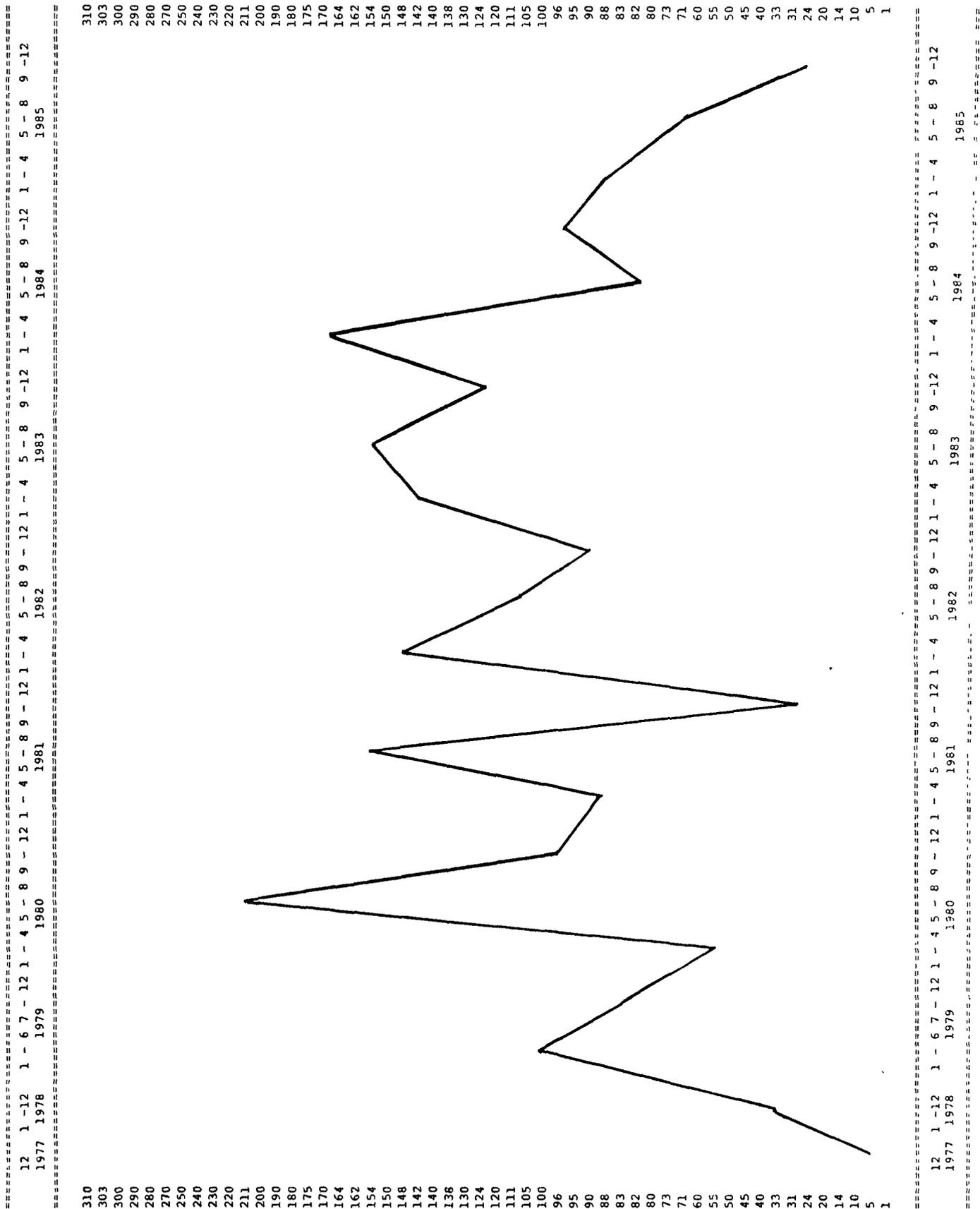
Statistical summary

I.	Outstanding cases	2,117
II.	Total number of cases transmitted to the Government by the Working Group	2,156
III.	Government responses	
	(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	30
	(b) Cases clarified by the Government's responses <u>a/</u>	19
IV.	Cases clarified by non-governmental sources <u>b/</u>	20

a/ Persons at liberty: 14
Persons in prison: 4
Persons with a suspended sentence: 1.

b/ Persons released: 10
Persons found dead: 10.

FREQUENCY OF DISAPPEARANCES IN GUATEMALA
 SINCE 1977 BASED ON THE DATE OF OCCURRENCE



7. Honduras

Information reviewed and transmitted to the Government

122. The Working Group's activities in relation to Honduras are recorded in its five earlier reports to the Commission on Human Rights.^{7/} Since its establishment, the Working Group has transmitted to the Government of Honduras a total of 123 reports of enforced or involuntary disappearances. The Government provided the Group with responses on 73 cases clarifying 12 of them.

123. In accordance with the decision taken at its sixteenth session, the Working Group, by letter dated 8 August 1985, addressed a questionnaire to the Government requesting it to provide detailed information on the steps taken to implement paragraph 1 of General Assembly resolution 33/173. By letter dated 18 October 1985, the Group informed the Government of 12 clarifications received from non-governmental sources and provided it with a list of the remaining unclarified reports. The Group also retransmitted to the Government three cases on which new information had been received from non-governmental sources.

124. Since the latest extension of its mandate, the Working Group, by letters dated 8 August and 30 December 1985, transmitted to the Government 35 newly reported cases of disappearances. One of the reported disappearances occurred in 1980, 17 in 1981, eight in 1982, two in 1983 and seven in 1984. The reports contained details of the identity of the missing persons and their nationalities; 12 cases concerned Hondurans, five concerned Salvadorians, two concerned Nicaraguans, one concerned a Guatemalan and one a Costa Rican. In the 14 remaining cases the nationality was not mentioned. The date and the place of the arrest or abduction were always indicated; most persons disappeared in the capital or at Choluteca, Comayaguela, San Pedro Sula, Belén, El Guasaule and Cortés. Seven persons were reportedly last seen in camps allegedly run by the Nicaraguan Democratic Forces (Fuerzas Democráticas Nicaraguenses FDN) in the Department of El Paraíso. Details were also provided about the persons who reportedly carried out the arrest; in most cases agents of the National Directorate of Investigations (Directorio Nacional de Investigaciones DNI) were held responsible; some of the reports mention agents of the army, of the Public Security Forces (Fuerzas de Seguridad Pública FUSEP) and agents of the Migration Services. In nine cases agents of the FDN, and in some other cases unidentified armed men were reportedly responsible. The Group found that some other cases did not contain the required minimum elements for transmittal and, therefore, sought further details from the sources.

Information and views received from the Government

125. Since the adoption of its previous report, the Working Group has continued to receive information in writing from the Government of Honduras. By note verbale dated 6 August 1985, the Government of Honduras provided information on a case which was not transmitted to it by the Working Group.

126. By note verbale dated 17 October 1985, the Government of Honduras informed the Working Group that the Commission of Investigation set up in 1984 by the armed forces for the purpose of examining the question of disappearances had continued its investigation on the basis of the recommendations included in its interim report of 28 December 1984 and had issued its final report on 27 March 1985 (see E/CN.4/1985/15, para. 168). The Commission had reached the conclusion that it was not possible to establish with any certainty that military personnel had participated in the cases of disappearances and that the allegedly missing persons had been arrested and were detained in any military or security unit. The Commission also concluded that the reports received from the relatives were vague, obscure and in many cases contradictory, with the result that genuine information was impossible to obtain.

127. After having examined the records of the National Directorate of Investigations and of the Migration Services, the Commission had been able to ascertain that there was no proof that the allegedly missing persons were being detained or that the foreigners on the list had entered the country legally. The Commission of Investigation also made the following recommendations:

"(a) The Commission's reports should be given appropriate publicity;

(b) It should be emphasized that they may expedite the proceedings initiated by private individuals in the courts to determine the responsibility of those members of the armed forces who are considered to have participated in some way in cases of disappearance;

(c) The firm intention of the armed forces to make all possible efforts to ensure that events such as those reported do not occur in Honduras should be reiterated;

(d) This Commission's functions should be terminated."

Information and views received from relatives or from organizations representing relatives of missing persons

128. The reports that the Working Group transmitted to the Government of Honduras in 1985 were submitted by relatives of missing persons and two organizations acting on behalf of relatives, namely the Committee of Relatives of Disappeared Detainees in Honduras (COFADEH) and the Committee for the Defence of Human Rights in Honduras (CODEH), as well as by Amnesty International.

129. During its seventeenth session held at Geneva, the Working Group heard the testimony of a person who had been reported to the Group as having disappeared in 1983 and who had subsequently reappeared and was currently living in the Federal Republic of Germany. According to the witness, she was arrested in March 1983 and kept incommunicado for several weeks by agents of the Public Security Forces who accused her of subversive activities. She stated that during her detention she was repeatedly interrogated and severely ill-treated. During her disappearance, three writs of habeas corpus were submitted by her relatives and organizations, without any result.*

130. The Committee for the Defence of Human Rights in Honduras also provided the Working Group with information and documents indicating that, in two cases on which the Government had provided responses which the Group considered to be clarifications, the information related to persons other than those reported missing. The same organization also submitted new cases to the Working Group that had reportedly occurred between December 1984 to October 1985. The Working Group found that the information submitted on all those cases was not sufficient and decided to ask for more details from the source.

131. Concerning the final report of the Commission of Investigation, the Committee for the Defence of Human Rights in Honduras and the Committee of Relatives of Disappeared Detainees in Honduras stated that the relatives had doubts as to the report's credibility since it had been prepared by the armed forces and concerned abuses of which they had themselves been accused. The two organizations also provided a list of names of military officers whom they alleged had planned and carried out acts of repression, including the establishment of four secret detention centres. They also stated that a number of vehicles belonging to missing persons had been found in a house rented in the name of one of the officers interviewed by the Commission. The two organizations had thus decided to work for the establishment of a commission of inquiry in which different sectors of Honduran society would be represented.

*/The case was clarified by information provided by the Government in October 1983 (see E/CN.4/1985/15, para. 166).

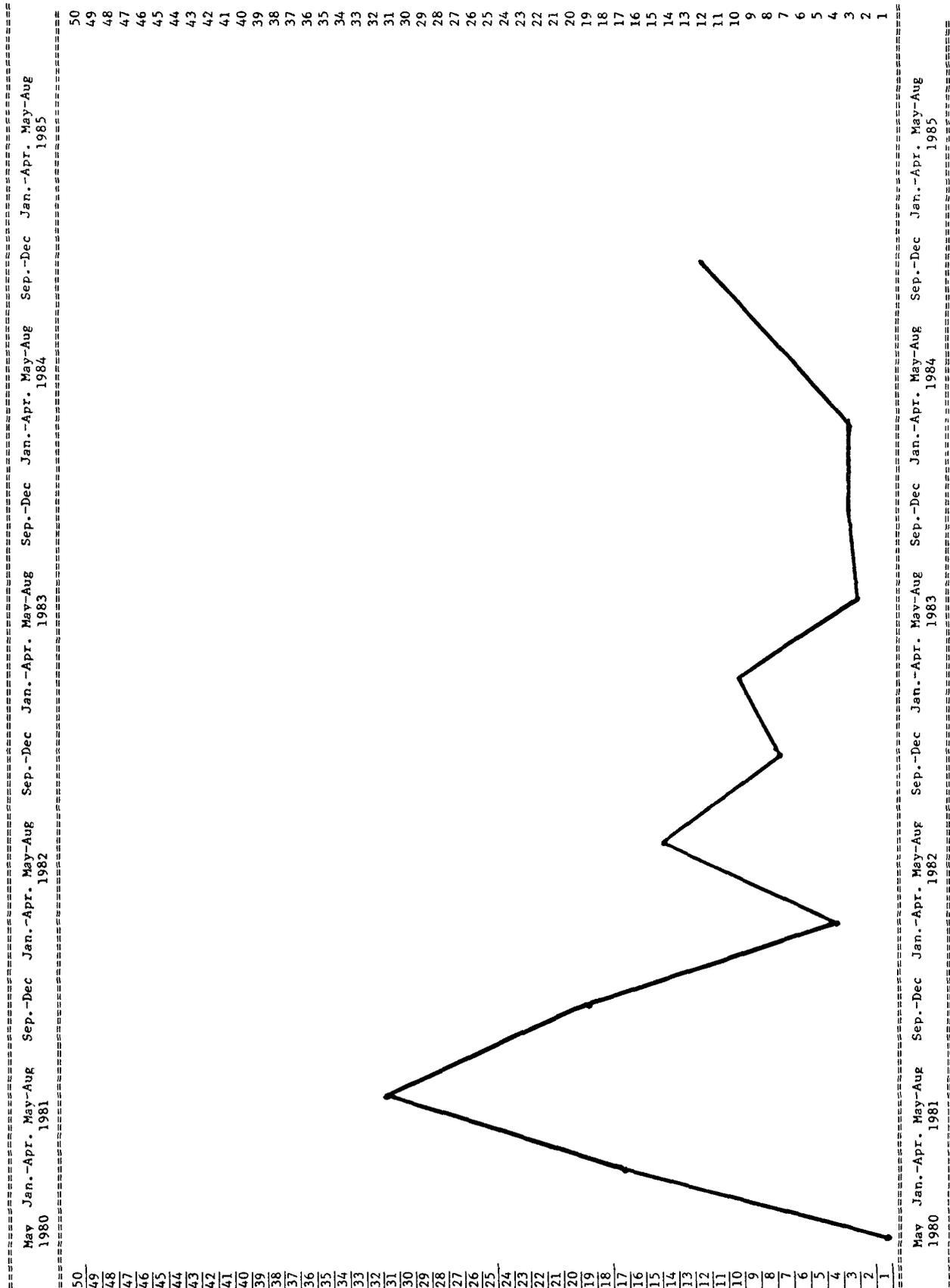
Statistical summary

I.	Outstanding cases	99
II.	Total number of cases transmitted to the Government by the Working Group	123
III.	Government responses	
	(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	73
	(b) Cases clarified by the Government responses <u>a/</u>	12
IV.	Cases clarified by non-governmental sources <u>b/</u>	12

a/ Persons at liberty: 11
Persons before the courts: 1

b/ Persons at liberty: 12.

FREQUENCY OF DISAPPEARANCES IN HONDURAS
SINCE 1980 BASED ON THE DATE OF OCCURRENCE



8. Indonesia

Information reviewed and transmitted to the Government

132. The Working Group's activities relating to Indonesia are recorded in its five previous reports to the Commission on Human Rights.^{8/} Between 1980 and 1985 the Working Group transmitted to the Government of Indonesia a total of 76 reports on enforced or involuntary disappearances which occurred in East Timor during the period 1977-1984. To date no reply has been received from the Government on the results of any investigations concerning the 76 reports and the Group regrets, therefore, that it is unable to report concretely to the Commission regarding these pending cases of disappearances.

133. Since the latest renewal of its mandate, the Working Group has transmitted to the Government of Indonesia, by letters dated 8 August 1985 and 18 October 1985, a total of 53 newly reported cases of enforced or involuntary disappearances which occurred in East Timor in the years 1979, 1980, 1983 and 1984. The Group retransmitted to the Government 10 cases, dating back to the period 1977-1979, on which additional information had been received. With regard to another two cases also transmitted on previous occasions, the Working Group communicated to the Government that they had been clarified by the source.

134. Many of the 53 missing persons were reportedly arrested by members of the Indonesian army at Iliomar, Loslapos, Luro and Vikeke in East Timor. Several of them were allegedly seen at the Commander's headquarters in some of those villages. Most of the persons were under 30 years of age; two of them were women. It was also reported that several persons had been held in a specified prison up to a certain point in time in 1983 and 1984. In some cases, witnesses reported that the missing persons were flown out by helicopter and never returned. Some of the persons were allegedly ill-treated while being detained.

Information and views received from non-governmental organizations

135. Since the latest extension of its mandate, the Working Group has continued to receive and to examine information relating to enforced or involuntary disappearances in East Timor from Amnesty International and Pax Romana. At its sixteenth session the Group received from Pax Romana new reports of disappearances which allegedly occurred in East Timor from August 1983 to November 1984. Pax Romana stressed that in view of the isolation of East Timor it had been difficult to obtain complete information on all cases. At the same session, Amnesty International also submitted newly reported cases relating to the years 1979, 1980 and 1984 and information updating 12 of 23 cases originally submitted by it in 1980. Both non-governmental organizations submitted background papers on the human rights situation in East Timor, including disappearances.

136. At its seventeenth session, Pax Romana again placed before the Working Group a large number of newly reported cases of enforced or involuntary disappearances in East Timor. At the same session, Amnesty International sent the Group a publication entitled "East Timor: Violations of Human Rights - Extrajudicial Executions, Disappearances, Torture and Political Imprisonment", containing another extensive list of missing persons. Most of the above-mentioned reports did not, however, contain the minimum information required by the Group and the sources were, therefore, requested to provide additional details.

Information and views received from the Government

137. By letter dated 6 September 1985, the Permanent Representative of Indonesia to the United Nations Office at Geneva responded to the transmittal of newly reported cases allegedly to have occurred in East Timor in the following manner:

"The Government of Indonesia, as in the past, will continue to respect its informal understanding of 1983 with ICRC relating to persons who have supposedly disappeared in East Timor; Until now the Government of Indonesia has not received any request from ICRC to trace persons alleged to be missing in East Timor".

138. During the seventeenth session, the Working Group met a representative of the Government of Indonesia and, inter alia, informed him about the large number of newly received reports of disappearances which were still being examined by the Group. The Representative stated that he merely wished to reconfirm the position of his Government, as outlined in its previous letter to the Group. He considered it sufficient to deal with cases of missing persons through ICRC on the basis of the bilateral understanding reached between his Government and that organization. In view of the fact that the reports on enforced or involuntary disappearances submitted to the Working Group were received from certain sources, the Representative reminded the Group of the different positions expressed at previous sessions of the Commission on Human Rights by those organizations and by his Government.

139. The Group, in turn, emphasized that the informal understanding with ICRC (see E/CN.4/1984/21, para. 76) had in fact not proved practicable as far as the Group's mandate and criteria were concerned, since ICRC was not entitled to undertake investigations, unless directly requested by the families to do so and, given the confidentiality it had to observe, was not in a position to provide the Working Group with the name and whereabouts of a missing person it might have been able to trace. The procedure followed by the Working Group with regard to all reports of disappearances, whenever they occurred, consisted in transmitting admissible cases directly to the Governments concerned, asking them to carry out appropriate investigations and to inform the Group about their results. In line with the Group's mandate, this approach was also to be applied with regard to reports concerning Indonesia. In its letter dated 18 October 1985, by which it transmitted 23 newly reported cases, the Working Group, while noting the contents of the Permanent Representative's letter of 6 September 1985, emphasized once more:

"that, in accordance with the mandate given to it by the Commission on Human Rights and the established practice of dealing with reports on enforced or involuntary disappearances relating to all countries, the Group communicates directly with each Government concerned and reports to the Commission on the status of the cases of disappearances which it decided to transmit officially to Governments as well as on the replies or clarifications received thereon".

140. On 20 November 1985 the Permanent Representative of Indonesia, in reply to the letter of 18 October, addressed a further letter to the Working Group, stating his Government's position as follows:

"1. As in its previous replies, the Indonesian Government would wish to reaffirm its position that the procedure of tracing allegedly missing persons in the province of East Timor should be conducted in accordance with the understanding reached between the Government of Indonesia and ICRC in 1983. By abiding by this understanding, the Indonesian Government not only strengthens its determination to protect the human rights of its people, but it refutes, at the same time, any dubious information on allegedly missing persons received from unreliable sources.

2. The mechanism of tracing persons established by this agreement has ensured both the credibility of the procedure itself, and the results obtained. To date, as documented in the 1984 annual report of ICRC, some cases have been dealt with and others solved.

3. The Government of Indonesia strongly believes that its co-operation with ICRC, whose impartiality and humanitarian spirit are internationally recognized, constitutes the most appropriate method for tackling the issue of allegedly missing persons. Therefore, any duplication of work in this matter would not only be futile, but would allow certain quarters to manipulate such an issue for their own political purposes against Indonesia.

4. Since ICRC is now responsible for tracing activities in accordance with the said understanding between the Government of Indonesia and ICRC, it is appropriate that any request for information regarding any allegedly missing persons in the Province of East Timor be addressed to this organization."

141. The Working Group again considered the position of the Indonesian Government at its eighteenth session and stated its own position in that regard in a letter dated 30 December 1985 to the Permanent Representative of Indonesia as follows:

"1. The mandate given to the Working Group on Enforced or Involuntary Disappearances by the Commission on Human Rights in resolution 20 (XXXVI) and subsequent resolutions requires it to examine questions relevant to enforced or involuntary disappearances of persons and, in doing so, to seek and receive information from Governments, intergovernmental organizations, humanitarian organizations, and other reliable sources, bearing in mind the need to be able to respond effectively to information that comes before it and to carry out its work with discretion.

2. As reflected in previous reports to the Commission on Human Rights, the Working Group has given due consideration to the understanding reached between the Government of Indonesia and ICRC with a view to tracing persons alleged to be missing in the Province of East Timor. An examination of the procedure envisaged in that understanding has, however, revealed that it can not supplant the Group's task of seeking information from the Indonesian Government on cases of disappearances brought to its attention. Nor can it be resorted to in the framework of the Group's standard procedure, since ICRC has informed the Group that it only carries out tracing activities when it receives a direct request from the relatives of the missing person and, moreover, that it could not provide the Working Group with the name and whereabouts of a person it might have been able to trace.

3. In keeping with its mandate and methods of work applied to all cases of disappearances wherever they occur, the Working Group therefore has to continue to transmit sufficiently documented cases of disappearances allegedly carried out by Indonesian armed or security forces to the Government of Indonesia. In doing so it will continue to request the Government, on a purely humanitarian basis, to conduct appropriate investigations into the alleged cases of disappearances in order to establish the whereabouts of the missing persons and to inform the Group of their results. In fulfilling its mandate the Working Group will report to the Commission on Human Rights accordingly."

Statistical summary

I.	Outstanding cases	74
II.	Total number of cases transmitted to the Government by the Working Group	76
III.	Government responses	0
IV.	Cases clarified by non-governmental sources <u>a/</u>	2

a/ At liberty: 1
Arrested and detained: 1

9. Iran (Islamic Republic of)

Information reviewed and transmitted to the Government

142. The Working Group has dealt with reports of enforced or involuntary disappearances alleged to have occurred in the Islamic Republic of Iran in four of its earlier reports to the Commission on Human Rights.^{9/} Since 1982 the Working Group has transmitted a total of 58 cases of enforced or involuntary disappearances to the Government. The Government did not provide any replies to the cases transmitted to it by the Group and the Group therefore regrets that it cannot report concretely to the Commission regarding these pending cases of disappearances.

143. In accordance with a decision taken at its sixteenth session, the Working Group retransmitted to the Government of the Islamic Republic of Iran, by letter dated 8 August 1985, 37 cases transmitted to it on several previous occasions. At the same time, the Group addressed a special appeal to the competent authorities of the country to co-operate with it by providing information on the results of any investigations which might have been carried out to determine the whereabouts of the persons reported missing.

144. In accordance with a decision taken at the same session, the Working Group, by letter dated 24 October 1985, informed the Commission's Special Representative on the situation of human rights in the Islamic Republic of Iran of the latest statistical data on cases transmitted to the Government. By letter dated 30 December 1985, the Group provided the Special Rapporteur with a copy of the subsection of the present report concerning the Islamic Republic of Iran.

145. By letter dated 18 October 1985, the Working Group transmitted to the Government of the Islamic Republic of Iran 10 newly reported cases of enforced or involuntary disappearances which occurred between February 1981 and February 1983. The reports indicate that the arrests took place in Mashhad, Karaj, Tehran and the village of Roodsaar and were allegedly carried out in almost all cases by Pasdaran agents. Three of the missing persons are women. The professions of those arrested were given as engineer, publisher, physicist, student, teacher and social worker. According to the reports three of the persons were seen in a prison; two of them had been allowed visits up to a certain date; the name of the third detainee was later eliminated from the list of inmates. By letter dated 30 December 1985, the Group transmitted to the Government of the Islamic Republic of Iran 11 further reports of disappearances, all of which concerned supporters of the People's Mojahedin Organization of Iran and had occurred between August 1981 and February 1985. The arrests which eventually led to the disappearances were made in Ghaemshar, Gorgan and Ramsar in Northern Iran, at Shiraz airport and in Tehran. According to the reports they were carried out by security guards.

Information and views received from organizations representing relatives of missing persons

146. The cases transmitted in 1985 were reported to the Working Group by the National Council of Resistance of Iran and the People's Mojahedin Organization of Iran. At the Working Group's seventeenth session in September 1985, a representative of these organizations, speaking on behalf of relatives of missing persons, described the circumstances in which the reported disappearances occurred. He stated that it was becoming more difficult to obtain well-documented information or witnesses' reports on disappearances, since the security forces frequently broke into houses at night and abducted the persons before they could even call for help or notify other family members or neighbours. The practice had allegedly been stepped up during the 1985 election campaign through the use of unidentified cars for abducting persons. Many families, out of fear of reprisals, had refrained from submitting a report on the disappearance of a relative.

147. At its eighteenth session, the Working Group heard witnesses presented by the People's Mojahedin Organization of Iran and the National Council of Resistance of Iran. One witness who had been detained for a year and a half stated that several fellow inmates had disappeared from prison. The witnesses also reported that the setting up of road-blocks and the staging of road accidents were methods frequently used for making persons disappear. They also asserted that under-age children were taken from their homes and conscripted into the army, without their parents being informed.

Statistical summary

I.	Outstanding cases	58
II.	Total number of cases transmitted to the Government by the Working Group	58
III.	Government responses	0

10. Iraq

Information reviewed and transmitted to the Government

148. The Working Group's activity in relation to one report of an enforced or involuntary disappearance in Iraq transmitted to the Government of Iraq in October 1984 is recorded in its previous report (E/CN.4/1985/15, para. 284). Since 1984, the Group has transmitted 111 cases of enforced or involuntary disappearances to the Government. The Government provided answers on 56 cases, clarifying 10 of them.

149. In accordance with a decision taken at its seventeenth session, the Working Group transmitted to the Government, by letter dated 18 October 1985, reports on the disappearance of 56 male members of a well-known Shiite family in Iraq. The occupations of these persons were connected with religious activities and included a dean of a faculty of Islamic law and member of the Academy of Sciences, head of a library, prayer leader, professor of theology, religious leader (including ayatollah and hodjatoleslam) and seminarists. The ages of the disappeared persons ranged from 15 to 75, the majority being teenagers or in their twenties. All 56 persons were reportedly arrested at their homes in the city of An Najaf on 10 May 1985 around midnight by members of the secret police who did not produce a warrant. They were allegedly taken to a Baghdad prison and since then their whereabouts have not been established. According to the report, other male members of the same family were arrested around the same time, four of whom were later released. Seventeen others were allegedly executed.

150. In accordance with a decision taken at its eighteenth session, the Group, by letter dated 30 December 1985, transmitted to the Government another 54 cases of disappearances. Twenty-seven of these reports related to other members of the above-mentioned family, including three women; all of them were allegedly arrested under the same circumstances on 10 May 1983. The arrest or abduction of 27 other persons reportedly took place in Baghdad between May 1980 and August 1985. The persons were in their twenties or their teens, two of them being a woman and her three-year-old child. The professions of these persons were civil servant, employee, soldier, student and worker. According to the reports they were arrested at their homes, at the homes of relatives or at their place of work. In all cases the arrest was witnessed. The majority of the detainees were believed to have been taken to Abu Gharib prison in Baghdad, others to the general intelligence prison in Baghdad, Fattaliyyah prison, Habania prison, Kademiya prison and Nograti Al Salman prison. A large number of arrests took place around the time when the remaining family members were being expelled to a neighbouring country.

Information and views received from relatives of missing persons and witnesses

151. At its seventeenth session the Working Group heard a witness who stated that the family mentioned in paragraph 149 was composed of many religious leaders and scholars who were not involved in political activities, but had pronounced themselves in favour of ending the armed conflict with a neighbouring country. Iraqi security forces had therefore taken reprisals against the whole family which consisted of some 500 persons. For the time being the disappearance of 56 male members of the family and the execution of another 16 men had been reported, but there was also uncertainty about the fate of other relatives. Information from inside the country was very difficult to obtain, and most of the family's houses were heavily guarded. He also feared for the fate of the female members of the family since three months earlier their names had been taken down by security agents. He alleged that the phenomenon of disappearances in Iraq was widespread and did not affect minority groups only.

152. He further stated that, on 13 May 1985, six members of the above mentioned family had been executed in a Baghdad prison in the presence of a cousin who had later been released, escorted by secret police to a plane and instructed to tell a relative in exile that more detained members of his family would be shot unless he and two other brothers discontinued their political activities abroad. According to the witness, on 5 March 1985, another 10 members of the same family had been executed while in detention and their bodies had been identified by a relative. A seventeenth person had reportedly died in custody on 10 May 1983.

153. At the eighteenth session the Group received witnesses who asserted that families, frequently belonging to minority groups, had been deported from Iraq. However in many cases a member of the family, usually a male member, was being held inside the country at an unknown destination so that the relatives were left without any means of inquiring about the fate or whereabouts of the detainee. Some of the missing detainees had presumably previously refused to join the majority party in Iraq.

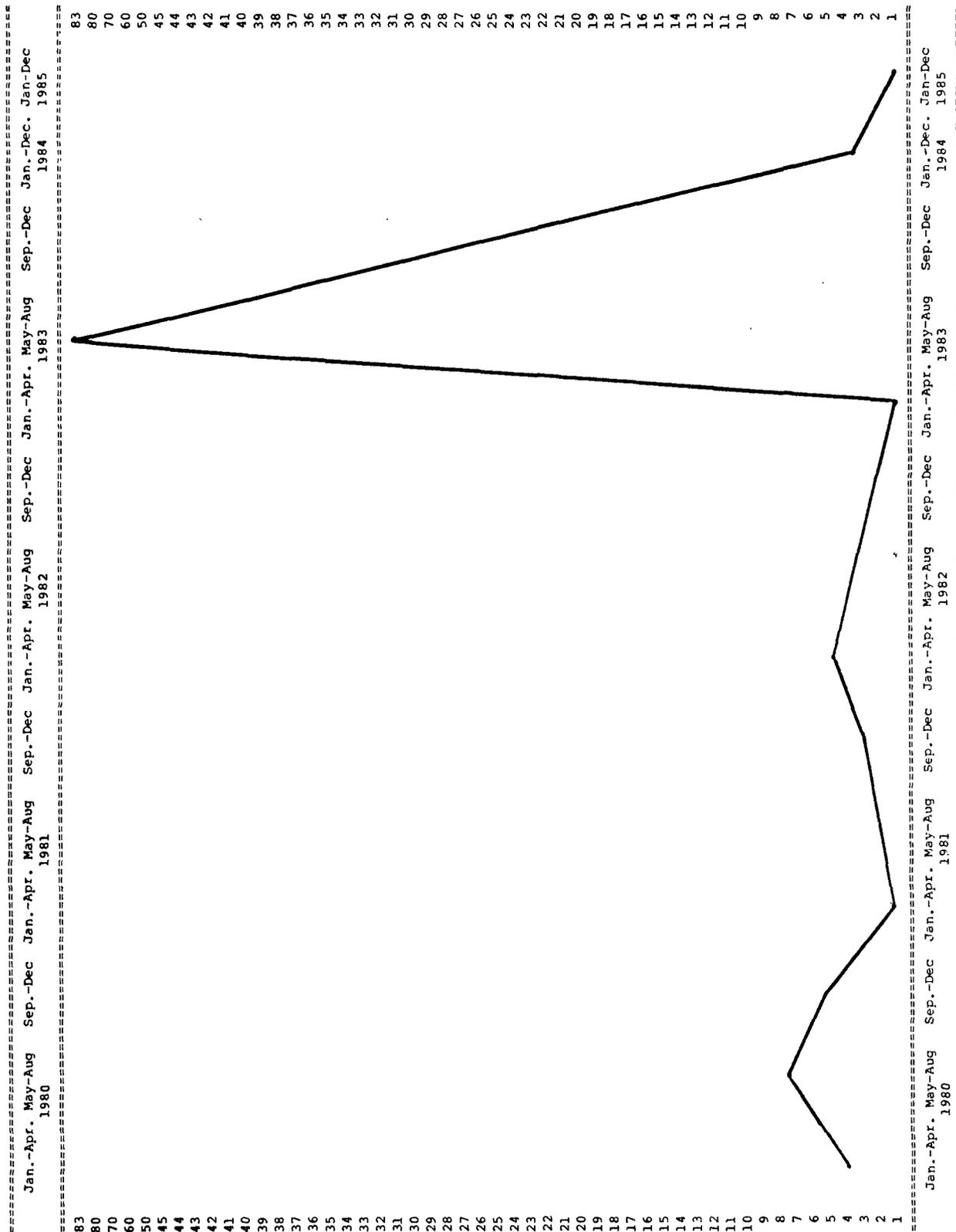
Information and views received from the Government

154. By note verbale dated 29 October 1985, the Permanent Representative of the Republic of Iraq to the United Nations Office at Geneva stated that 10 members of the above-mentioned family whose cases had been transmitted by the Working Group had, in fact, been executed. They had been sentenced to death on charges of treason, including armed conspiracy, and collaboration with a country with which his Government was in conflict. By a further note verbale dated 17 December 1985 the Government repeated the information on the 10 executions and stated that the allegations contained in the Group's letter of transmittal of 18 October 1985 were unfounded. All other persons among those reported to have disappeared in the Group's transmittal of 18 October 1985 were not detained.

Statistical summary

I.	Outstanding cases	101
II.	Total number of cases transmitted to the Government by the Working Group	111
III.	Government responses;	
	(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	56
	(b) Cases clarified by the Government's responses	10

FREQUENCY OF DISAPPEARANCES IN IRAK
SINCE 1980 BASED ON THE DATE OF OCCURRENCE



11. Lebanon

Information reviewed and transmitted to the Government

155. The activities of the Working Group in relation to Lebanon are recorded in its reports to the thirty-ninth, fortieth and forty-first sessions of the Commission on Human Rights.^{10/} Since its establishment, the Working Group has transmitted to the Government of Lebanon a total of 240 reports of enforced or involuntary disappearances, most of which allegedly occurred as a result of abductions carried out by political or religious groups or their militias. To date the Working Group has received no reply from the Government of Lebanon on the fate of the missing persons. The Working Group regrets, therefore, that it is still unable to report concretely to the Commission regarding these pending cases of disappearances.

156. In 1985, the Group transmitted 12 newly reported cases of enforced or involuntary disappearances to the Government and retransmitted summaries of all unclarified reports, requesting the Government to provide it with information on the results of its investigations. Eleven of the new cases contain information on the full identity of the persons reported missing and on their respective nationalities. Six cases concern United States nationals, four cases concern French nationals and one case concerns a British national. Nine of these cases occurred in 1985 and two in 1984. All the abductions took place in Beirut. Seven were reportedly carried out by armed men in civilian clothes and in four other cases the abductors were not described. In some of these cases religious groups such as "Islamic Holy War" later claimed responsibility for the abductions. The twelfth case concerns a Lebanese policeman who was reportedly abducted in 1983 by Druze militia.

157. In accordance with the decision taken at its sixteenth session, the Working Group, by letters dated 8 August and 4 October 1985, addressed a questionnaire to the Government requesting it to provide detailed information on the steps taken to implement paragraph 1 of the General Assembly resolution 33/173.

Information and views received from relatives of missing persons and non-governmental organizations

158. Since the latest extension of its mandate, the Working Group has continued to receive information directly from relatives of missing persons or through organizations acting on their behalf, namely the International League for Human Rights and the Committee for the Protection of Democratic Freedoms in Lebanon acting on behalf of the Committee of Relatives of Detainees, Disappeared and Abducted Persons in Lebanon.

159. One of the 12 newly reported cases transmitted to the Government was brought to the attention of the Working Group by a relative of the missing person. This case reportedly occurred in 1983 near Zahle and concerns the above mentioned Lebanese police officer.

160. At its seventeenth session, the Working Group met a representative of the International League for Human Rights who provided the Group with information on the 11 other cases transmitted to the Government on 4 October 1985. The representative of the League further pointed out that "despite promises by the Lebanese Government to devote its best efforts to freeing the 11 persons, governmental authorities have to date not provided information on the whereabouts of the disappeared individuals or on the identity of the abductors. There have been no investigations, arrests or prosecutions in relation to the cases."

161. At its eighteenth session, the Working Group met a representative of the Committee for the Protection of Democratic Freedoms in Lebanon acting on behalf of the Committee of Relatives of Detainees, Disappeared and Abducted Persons in Lebanon, who stated that the practice of abductions had further increased. Virtually all segments of the population were affected including religious and political groups as well as foreigners residing in Lebanon. He further stated that the practice of making supporters of opposing political or religious groups disappear had become an almost daily occurrence in national political life. He finally gave a brief account of the activities of the Committee during the past year (E/CN.4/1985/15, paras. 184-185).

Statistical summary

I.	Oustanding cases	240
II.	Total number of cases transmitted to the Government by the Working Group	240
III.	Government responses	0

12. Nicaragua

Information reviewed and transmitted to the Government

162. The Working Group's previous activities in relation to Nicaragua are recorded in its five earlier reports.^{11/} Since its establishment, the Working Group has transmitted to the Government of Nicaragua a total of 199 reports of enforced or involuntary disappearances. The Government provided information on 157 cases clarifying 38 of them.

163. In 1985, the Working Group did not transmit any new reports on disappearances to the Government. However, by letters dated 8 August and 18 October 1985 the Government was reminded of all unclarified reports and was requested to provide information on the results of the investigations into those cases. The Government was also informed as to which cases, referred to in its replies of 4 June and 10 December 1985, were considered clarified by the Group.

164. In accordance with the decision taken at its sixteenth session, the Working Group, by letter dated 8 August 1985, addressed a questionnaire to the Government of Nicaragua requesting it to provide detailed information on the implementation of paragraph 1 of General Assembly resolution 33/173. The same request was made to the (governmental) Commission for the Protection and Promotion of Human Rights.

Information and views received from the Government

165. Since the extension of its mandate, the Working Group has continued to receive written information from the Government of Nicaragua. By notes verbales dated 4 June and 10 December 1985, the Permanent Mission of Nicaragua submitted information on 22 reports of enforced or involuntary disappearances that had previously been transmitted to the Government on several occasions. In six cases the Government stated that there were no records of the person's arrest; in eight cases, the persons were implicated in counter-revolutionary activities; in one case the person, a Peruvian national, had been kidnapped by counter-revolutionary groups; in another case, the person had escaped from prison in the Department of Chontales; in one case the person had been arrested for an offence under the Maintenance of Public Order and Security Act and released in 1980 (at a date preceeding his disappearance); and in another case, the person had reportedly been killed in a shoot-out with counter-revolutionary units. On seven cases the Government stated that there were no records of the person's detention. The seven remaining replies, which were considered as clarifications by the Working Group at its seventeenth and eighteenth sessions,^{*} contained the following information: three of the persons concerned had died in an encounter with the armed forces, two others had been released from detention, one person was in the custody of the military authorities who had initiated proceedings against him and another person had been arrested for offences against state security and was currently being tried by the popular tribunals.

^{*}/The Government was informed by letter of the decision taken by the Group in this regard.

166. In accordance with standard procedure, all government replies were forwarded to the sources.

Information and views received from relatives of missing persons or from organizations acting on their behalf

167. Since the renewal of the Working Group's mandate no new reports have been received from non-governmental sources.

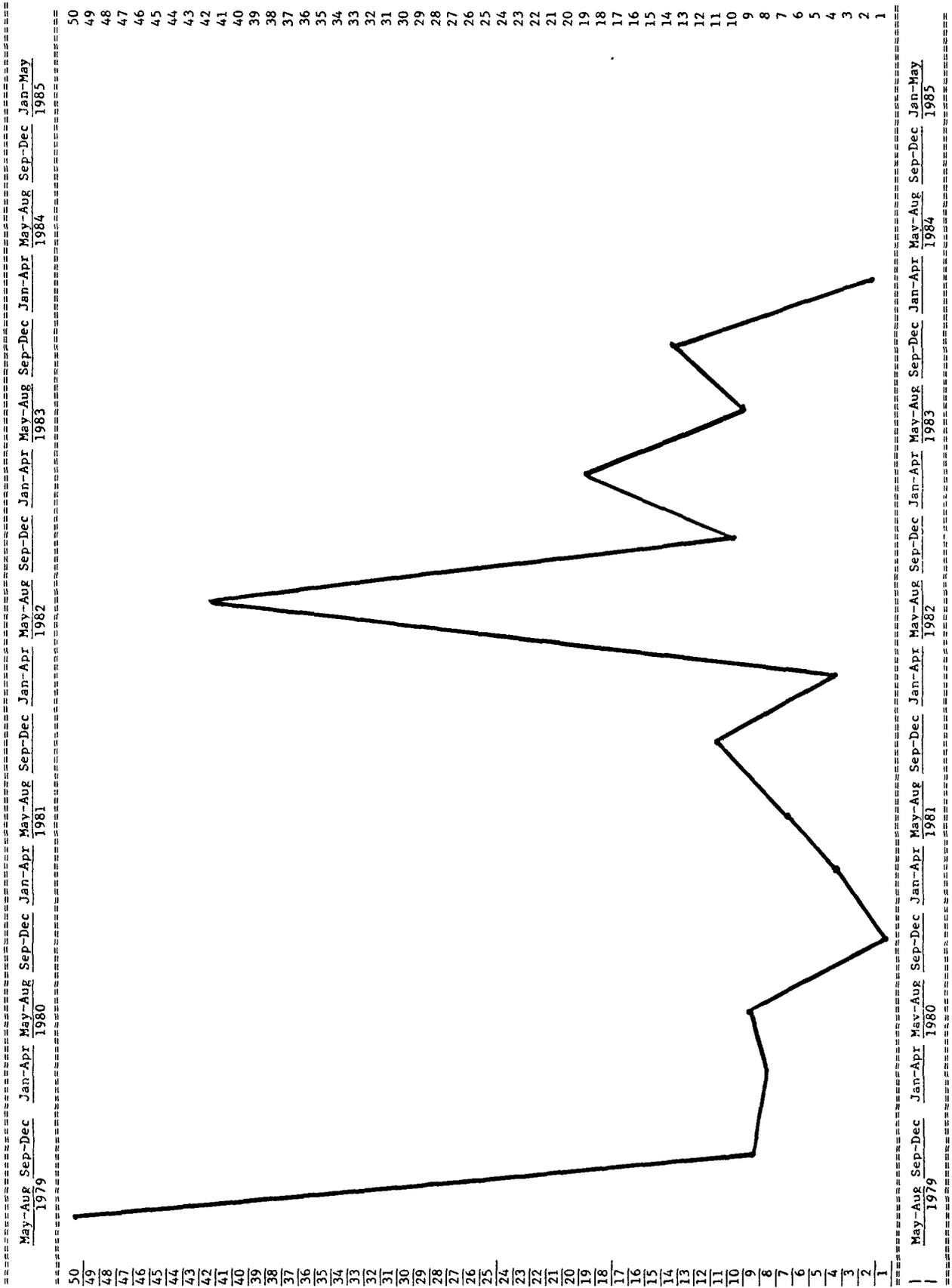
Statistical summary

I.	Outstanding cases	140
II.	Total number of cases transmitted to the Government by the Working Group	199
III.	Government responses:	
	(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	157
	(b) Cases clarified by the Government's responses <u>a/</u>	38
IV.	Cases clarified by non-governmental sources <u>b/</u>	21

a/ Persons at liberty: 14
Persons in prison: 6
Persons dead: 7
Salvadorian fishermen not detained in the country: 11.

b/ Persons whose relatives have been informed by Nicaraguan authorities that they have been executed: 10
Persons reported to be free: 6
Persons reported to be in prison: 2
Persons reported to be in Honduras: 1
Persons reported to have died in a shoot-out with the army: 1
Persons reported to have joined rebel groups operating in the regions of Matagalpa and Jinotega: 1.

FREQUENCY OF DISAPPEARANCES IN NICARGUA
SINCE 1979 BASED ON THE DATE OF OCCURRENCE



13. PeruInformation reviewed and transmitted to the Government

168. The Working Group's previous activities in relation to Peru are recorded in its latest report 12/ to the Commission on Human Rights. Since 1983 the Working Group has transmitted to the Government a total number of 872 cases of reported disappearances. The Government has provided responses to 76, clarifying 21 of them.

169. Since its last report to the Commission on Human Rights, the Working Group has transmitted 497 cases to the Government of Peru, 210 of them under the urgent action procedure. Since most of these cases were received during the visit to Peru which two members of the Working Group carried out in June 1985, the main characteristics of these cases are described in the report on the visit as contained in addendum 1 to the present report. The Working Group also revised the lists of cases transmitted previously, eliminating duplications caused by different spellings of names and updating cases on which more complete information had been received during the year. A total of 75 cases were thus updated, in particular on the basis of information personally given to the members of the Working Group in Peru. The updated information mostly contained newly reported identity data, such as dates of birth, voting card numbers, military card numbers, indications of the groups that made the arrest or places in which the missing person had reportedly been seen.

170. In reply to a request by the Government of Peru that cases transmitted to it by the Working Group should contain the number of the voting card of the missing person and the date of the habeas corpus or other legal measures resorted to by relatives, the Chairman, following a decision taken by the Working Group at its sixteenth session, assured the Government by letter dated 12 July 1985 that every effort would be made to provide the information requested. However, the Group would continue to transmit cases for which some of these details were not available, as long as they met the general criteria it had established for the transmittal of cases to Governments.

171. The Working Group carefully examined the information contained in replies received from the Government of Peru concerning 52 cases of persons reportedly missing, who had registered on the electoral roll of Peru after their alleged disappearance. In only 13 of the 52 cases did the name, the profession and the age of the person on the registration form coincide with the data provided by the source in its report of the case. For five cases, the Government provided two to four registration forms belonging to different persons with the same name. The Working Group transmitted to the sources the information provided by the Government, in accordance with its usual procedure. The sources in six cases pointed to major discrepancies in the identity data and, in two cases, indicated that the person was no longer missing. The Working Group thus decided at its eighteenth session to consider these two cases clarified, together with the 13 cases in which the identity data on the

electoral registration form coincided with that in the Working Group's files.*/ It also decided to send a letter to the sources indicating that with regard to the remaining 31 cases it would consider clarified, at the nineteenth session, all cases without major discrepancies relating to the available identity data, unless further evidential material from the source was received.

172. The Working Group, at its thirteenth session held in June 1984, decided to explore with the Government of Peru the possibility of a visit to the country. By letter dated 12 November 1984, the Government of Peru informed the Working Group that it would be pleased to receive representatives of the Group in Peru. Upon receipt of that invitation, the Working Group decided, at its fifteenth session in December 1984, that two of its members, Mr. Toine van Dongen and Mr. Luis Varela Quirós, should visit Peru on its behalf. Since a suitable date for the visit could not be found before the forty-first session of the Commission on Human Rights, it was agreed that the visit should take place after 23 April 1985, i.e. after the first round of the presidential elections in Peru.

173. By letter dated 28 May 1985, the Permanent Mission of Peru to the United Nations Office at Geneva informed the Group that the period between 15 and 30 June 1985 would be convenient for the visit and the Group, therefore, decided at its sixteenth session that Mr. van Dongen and Mr. Varela Quirós should carry out the visit immediately after that session. The report of the visit is contained in addendum 1.

174. By letter dated 5 August 1985, the Chairman of the Working Group expressed his appreciation to the Permanent Representative of Peru to the United Nations Office at Geneva for the invitation which had been extended to it to visit Peru as well as for the cordial welcome received by its members and informed him that the Group would consider it most useful if it could continue its direct contacts with the newly elected Government of Peru, which took office on 28 July 1985. In its reply of 14 August 1985, the Permanent Mission expressed the Government's desire to co-operate to the maximum extent possible. At its seventeenth session, the Working Group decided, after hearing an extensive account by the Permanent Representative of Peru of the new initiatives taken by the President of the Republic, to reiterate its wish to continue the direct contacts with the Government of Peru. Therefore, in a letter dated 17 September 1985, the Group stressed that the continuation and further intensification of direct contacts with the Government, including the possibility of a second visit, could greatly assist it in fulfilling the mandate given to it by the Commission on Human Rights.

175. By letter of 17 September, the Permanent Representative of Peru informed the Chairman that President Alan García Pérez had given his consent to a second visit by representatives of the Working Group. By letter dated

*/The Government was informed by letter of the decision taken by the Group in this regard as well as of all clarifications provided by the sources.

20 September 1985, the Chairman of the Working Group informed the Permanent Representative that the Group was prepared to carry out a second visit to Peru and, by letter of 26 September, proposed 11 to 15 November 1985 as possible dates for the visit. By letter dated 16 October 1985 the Permanent Representative of Peru replied that the President would be absent from Peru during the suggested period and requested that new dates be proposed, taking into account that the President would return to Peru on 18 November 1985. By letter dated 21 October 1985, the Chairman of the Working Group therefore suggested the period 18-22 November 1985 as new dates for the visit asking the Government to indicate whether they would be convenient. However, to date, no response has been received from the Government.

176. During their visit to Peru, the two members of the Working Group met the Attorney-General and received from him a list of 500 cases of disappearances in Peru, which had been investigated by his Office. The list included a description of the steps taken by the Office of the Attorney-General (Ministerio Público) in connection with those cases. In three of the cases considered by the Attorney-General to be solved, the results of the inquiries had never been transmitted to the Working Group. By letter dated 18 October 1985, the Chairman of the Working Group therefore asked the Government whether the information contained in the list received from the Attorney General could be considered an official reply.

Information and views received from relatives of missing persons
and non-governmental organizations

177. In 1985, the Working Group received several general reports on the situation of human rights in Peru from international non-governmental organizations, namely, Amnesty International, the Inter-Church Committee on Human Rights in Latin America, the International Federation of Human Rights and Pax Romana. Two reports from Americas Watch were also received. The Working Group was further provided with information from national and local human rights organizations and associations of relatives of missing persons in Peru, which are mainly reflected in the report of the visit to Peru by two members of the Working Group.

178. In connection with the question of disappearances, international non-governmental organizations emphasized that, while the Peruvian Government maintained a clear responsibility to protect its citizens from indiscriminate violence such as that practised by Sendero Luminoso, it also had an obligation to ensure that its own forces' response remained within the boundaries of the law. The organization observed that in its view this had not been the case, since both the Peruvian police and the armed forces had been directly implicated in human rights violations, including torture, enforced disappearances and summary executions. It criticized in particular the fact that the Government and the Political-Military Command had adopted the position of systematically denying that excesses by the forces of law and order had occurred in Peru. As a consequence, military and police authorities in the emergency zone under military control refused to provide any information and to co-operate with relatives, as well as with judges and prosecutors, thus making it practically impossible to investigate the missing persons' whereabouts.

179. Non-governmental organizations provided the Working Group with observations by relatives on 12 government replies concerning the registration in the electoral roll of Peru of persons who were reportedly missing, after their alleged disappearance. In two cases, the source reported that the persons were no longer missing. In six cases, the sources stated that the person referred to on the electoral form was not the missing person, either because the name and profession were different (1 case) or because the age, civil status, profession and/or photo of the missing person were different (5 cases). In 4 cases, the sources could not yet indicate whether the form belonged to the missing person and asked for time to conduct further investigations.

Information and views received from the Government

180. Details concerning information and views from Government authorities with whom two members of the Working Group met during their visit to Peru are included in the report of their visit.

181. By letters dated 16 April 1985, 3 May 1985, and 6 June 1985, the Government of Peru requested that cases transmitted to it by the Working Group should contain the number of the voter's registration card of the missing person and the date and authority before which legal steps had been taken to locate the missing persons. In this connection, the Government pointed out that the National Electoral Board had decided that Peruvian citizens should be reregistered on the electoral roll with a view to renewing their voting cards and authorizing them to elect their representatives in the general elections held on 14 April 1985; one of the requirements for reregistration on the electoral roll was "the physical presence of the citizen in order to sign his name and to affix his fingerprint".

182. By letter dated 5 August 1985, the Government of Peru replied concerning 49 cases, stating that the missing persons had been registered on the electoral roll of Peru after their alleged disappearance and provided copies of their respective registration forms. Fourteen of the 49 responses provided in the letter concerned cases that were included in the 17 replies received by the Working Group in February 1985 and mentioned in the report of the Working Group to the Commission on Human Rights at its forty-first session (E/CN.4/1985/15, Add.1, para. 17-18).*/

183. By letter dated 14 August 1985 the Permanent Representative transmitted the text of a statement pronounced on 28 July by the new President of Peru, who stated, inter alia, that:

"The use of death as a means to an end is unacceptable under a democratic system. The fact that we are here to fight for the people is proof that social justice can be achieved under a democracy. The law will be strictly applied to those who violate human rights by killings, extrajudicial executions and torture and through abuse of their functions; for it is not necessary to fall into barbarism in order to

*/The total number of replies concerning registration on the electoral roll thus amounts to 52.

fight barbarism. We know, nevertheless, that there are many innocent people unjustly accused of terrorism who have been detained without reason as a result of delays in legal procedures. I call upon the judiciary to accelerate the proceedings, and I hereby announce that without prejudice to the independence of the judiciary, a Peace Commission shall be appointed forthwith, made up of jurists, human rights institutions and political groups. Its mission will be twofold: first, to look into the position of persons who are considered to be innocent and to propose an immediate solution to the authorities with a view to making a clear distinction between what constitutes an act of terrorism or complicity in it and what should be classified as a political offence, for which democratic party activists are now in prison, unjustly charged with terrorism; and second, to build a bridge of entreaty and dialogue with a view to persuading those who have taken the wrong path to return to democracy".

184. On 17 September 1985, the Permanent Representative wrote the Chairman of the Working Group a letter in which he informed the Group that, by Supreme Resolution No. 221/85/Justicia of 14 September 1985, a Peace Commission had been set up as an advisory and consultative body of the Office of the President of the Republic and that, among its functions it would channel and bring before the authorities such complaints as are or may be submitted regarding human rights violations involving killings, extrajudicial executions, disappearances of persons, torture and abuse of power by the authorities" and "report on the situation of victims of acts of violence, and also on their relatives, and propose measures for adoption".

185. By letter dated 17 September 1985, two communiqués issued by the Government of Peru on 12 and 15 September, concerning the discovery of seven bodies in a common grave in the Pacayacu area, were also transmitted to the Working Group for its information. In the first communiqué the President stated that the Government resolutely maintained its decision to guarantee that exclusively lawful and constitutional means were used in the fight against terrorism and ordered the heads of certain military regions and the chiefs of operations in the district of Ancosmarca and adjoining areas to report on the matter to the legislature. In the second communiqué the Government stated that the report received from the Joint Command of the Armed Forces had pointed to the clear responsibility of three army officers and a driver, who had been brought before the courts. The communiqué stated that, in addition, the verbal report had revealed that, on the instructions of the previous Government, the facts about the struggle against subversion had been kept secret. The way in which the forces of subversion recruited their members had not been made public. There had been no reports about how they operated using large numbers of poorly armed members of the population. The high casualties of the past three years had not been reported, which meant that they had not been identified or documented but had been declared missing, and consequently the armed forces had been portrayed as acting in a manner consistent with acts of genocide, thereby doing much harm to their image..." The communiqué finally indicated the Government's decision to replace the Chief of the Joint Command of the Armed

Forces and reiterated its decision to continue the vigorous struggle against subversion without committing any excesses and called upon the judiciary to be more expeditious in trying persons who were indicted for the offence of terrorism and had still not been sentenced.

186. At its seventeenth session, the Working Group met the Permanent Representative of the Government of Peru, who explained that a multisectoral commission had been set up during the preceding Government to investigate disappearances. This Commission was still functioning under the present Government and was formed by representatives of the Ministry of Foreign Affairs, the Ministry of Justice, the Office of the Attorney-General (Ministerio Público), the Ministry of the Interior, the Joint Command of the Armed Forces and the National Electoral Board. The Commission received the reports on disappearances transmitted by the Working Group and distributed a copy to the national organs represented on the Commission, with a view to investigating the cases through the channels under their respective authority. The fact that in Peru persons had only two identification documents, the voting card and the military card should be taken into account, it was necessary to provide the most accurate information possible to permit a quick identification, in order to avoid the delays caused by so many homonyms. For that reason, the Permanent Representative requested the Working Group to provide the numbers of the voting cards or military cards of the missing persons or their date of birth, names of the parents, etc.

187. The representative of Peru also said that the state of emergency in a part of his country's territory was declared by a constitutional Government, in accordance with the Constitution of Peru, and in order to protect the security of the population, which, according to the Peruvian Constitution, was the supreme goal of society and the State. He stressed that in August 1985, two new terrorist incidents had occurred in which six marines and two policemen from the Republican Guard (Guardia Republicana) had been killed and about 14 other persons, including civilians, had been wounded; a vehicle had exploded in front of the Prefecture of a city located in a zone which was not under a state of emergency.

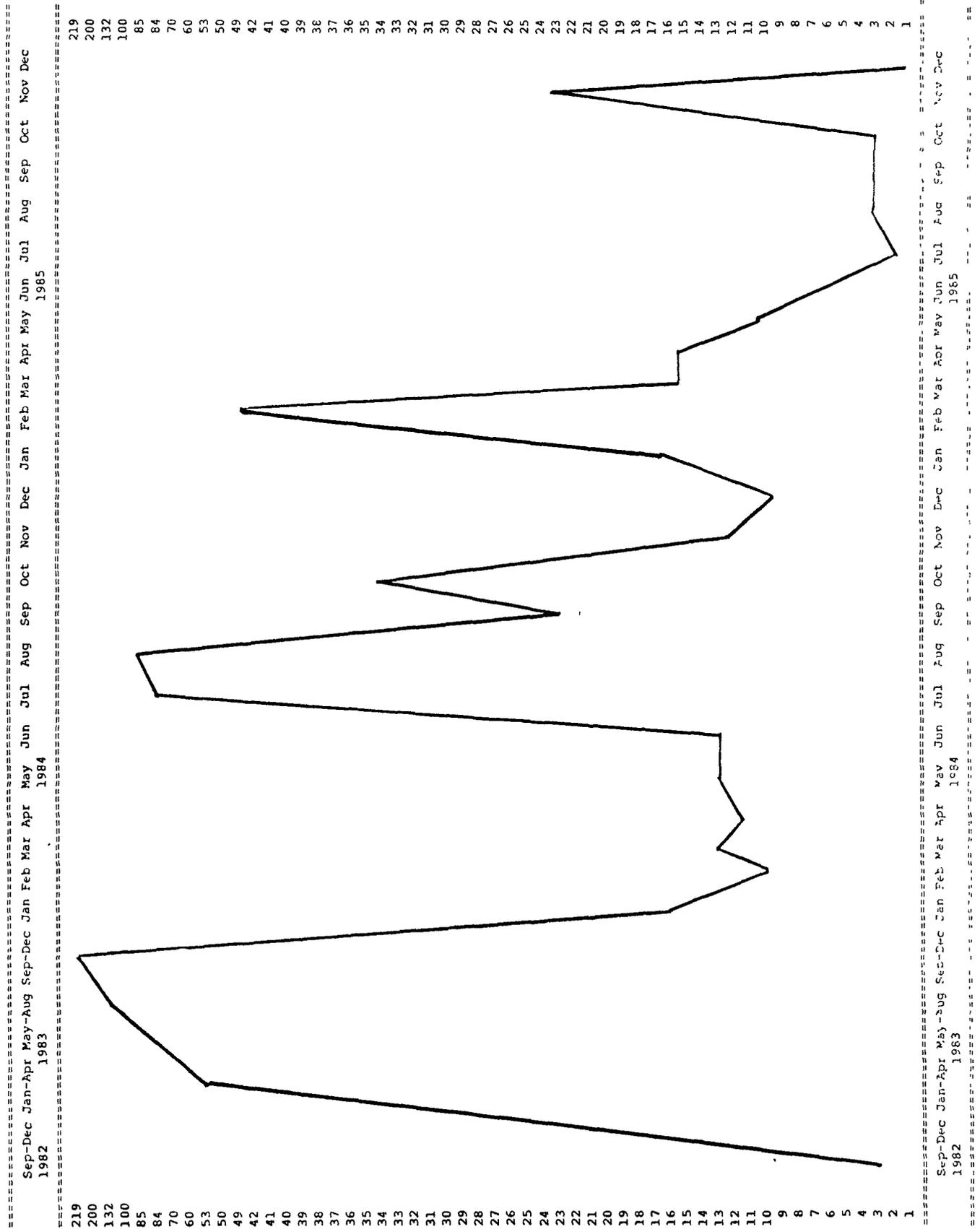
188. The representative of Peru further stated that the Parliament, at the request of the President of the Republic, had recently enacted a law which had established that all police forces were to be reorganized and had empowered the executive to promulgate the Organizational Law of the Ministry of the Interior and organizational laws of the police forces and of the national intelligence services and that changes in the highest ranks of all police corps had recently been introduced. By such reorganization the Government intended to exclude from the police forces persons who appeared to be involved in criminal offences, including disappearances. With regard to Law 24150, enacted by the previous Government in June 1985, which had been criticized because of the wide range of offences that it placed under the jurisdiction of military tribunals if they were committed by military or police personnel, the representative of Peru indicated that it had been neither abrogated, nor in fact applied, since a number of legal modifications were planned or being implemented in connection with changes in the socio-economic structure of the regions under a state of emergency. Furthermore, the abrogation of that law had been requested by a member of Parliament.

Statistical summary

I.	Outstanding cases	831
II.	Total number of cases transmitted to the Government by the Working Group	872
III.	Government responses:	
	(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	76
	(b) Cases clarified by the Government's responses <u>a/</u>	21
IV.	Cases clarified by non-governmental sources <u>b/</u>	20

<u>a/</u>	Persons detained:	4
	Persons arrested and released:	1
	Persons who obtained a voter's card after the date of their alleged disappearance:	15
	Persons found dead:	1.
<u>b/</u>	Persons whose bodies were found and identified:	13
	Persons released from detention:	5
	Persons in prison:	1
	Persons wounded in a summary execution and subsequently able to return home:	1.

FREQUENCY OF DISAPPEARANCES IN PERU
SINCE 1982 BASED ON THE DATE OF OCCURRENCE



14. Philippines

Information reviewed and transmitted to the Government

189. The Working Group's activities in relation to the Philippines appear in its five previous reports to the Commission on Human Rights.^{13/} At the request of the Government of the Philippines, the Working Group at its sixteenth session reviewed all cases transmitted to the Government from 1980 until June 1985, keeping on file a total of 173 unclarified cases of enforced or involuntary disappearances. The revised and updated lists of outstanding as well as clarified cases were transmitted to the Government of the Philippines by letter dated 8 July 1985. At the end of 1985 the total number of cases transmitted to the Government of the Philippines amounted to 443. The Government provided the Group with 245 replies on these cases, 70 of which were considered clarified.

190. In 1985 the Working Group transmitted to the Government 213 newly reported cases, 15 under the urgent action procedure. All reports, with the exception of one, referred to disappearances reported to have occurred in 1984 and in the first eight months of 1985. A first set of 100 cases containing all elements, including a description of the security and/or police units which allegedly made the arrest, was transmitted to the Government by letter dated 8 August 1985. By letter dated 18 October 1985, another 98 reports of disappearances relating to 1984 and the first three months of 1985 were transmitted to the Government. The 213 disappearances, as reported, occurred mainly in the areas of Luzon, Metro Manila, Mindanao and Visayas. The occupations given for the persons reported to have disappeared were those of business administrator, church worker, driver, domestic helper, farmer, fisherman, out-of-school youth, student, trader, vendor and worker. In a few cases it was indicated that the missing persons might have been suspected of being members or sympathizers of the New People's Army (NPA) or of the Moro National Liberation Front (MNLF). A number of persons were last seen when participating in large demonstrations. The majority of persons were under 30 years of age, among them were one eight-year-old and two seven-year-old children.

191. The 15 cases transmitted by the Chairman of the Working Group under the urgent action procedure concerned a redemptionist priest from Cebu City, a co-ordinator of a lay leadership programme, a staff member of Task Force Detainees of the Philippines and secretary of a provincial branch of the New Country Alliance (BAYAN), a national coalition of opposition parties, two farmers who were abducted during a military operation, and workers who had participated in a rally against alleged military abuses in San Fernando, Pampanga. One person was reportedly brought from his place of detention to a hospital for treatment and was abducted from there by men believed to be military agents. The circumstances surrounding these cases of disappearances were particularly well-documented and there were witnesses to the abductions.

192. In accordance with its decision taken at the sixteenth session, the Group reiterated its request that the Government provide detailed information on the steps taken to implement paragraph 1 of General Assembly resolution 33/173.

Information and views received from relatives of missing persons and from non-governmental organizations

193. The cases which the Working Group transmitted to the Government of the Philippines in the reporting period were submitted by relatives of missing persons, Amnesty International, the International Commission of Jurists and Task Force Detainees of the Philippines on behalf of relatives. Regarding one report transmitted to the Government in 1981 and two reports transmitted to it in 1985, these sources indicated that the cases could be considered clarified. This information was communicated to the Government.

194. At its sixteenth session, the Working Group had before it a paper submitted by Amnesty International entitled "Philippines: continuing violations of human rights" which included a section relating to disappearances. According to the information Amnesty International presented, emergency powers remained in force after the lifting of martial law in 1981. These included the power to order the arrest and detention without trial of persons suspected of crimes against national security. Letter of Instruction (LOI) No. 1211 of 9 March 1982 permitted military commanders and heads of law enforcement agencies to apply to the President for a Presidential Commitment Order (PCO) "when resort to judicial process is not possible or expedient without endangering public order and safety." Amnesty International further commented that the Preventive Detention Action (PDA) of August 1983 extended the same powers as the PCO, with the exception that it provided for a review procedure of a case within a year. However, the review committee's recommendations under PDA did not have to be accepted by the President. Amnesty International criticized the extensive application of the provisions under PDA and asserted that in many cases not even the PDA procedure was applied to persons allegedly kept in secret "safe houses" and unauthorized interrogation centres run by intelligence units of the armed forces.

195. In a communication issued for the seventeenth session of the Working Group, Amnesty International provided individual case histories of persons reported to have disappeared in July 1984 and in the period from January to April 1985, who were active in various social and political fields. This group of missing persons included a number of union organizers and members of Church groups, a social worker with responsibility for tribal Filipinos and a human rights worker. At its eighteenth session, Amnesty International provided the Group with a further circular entitled "Philippines: arrests, disappearances and possible executions of human rights workers", which referred, in particular, to reports as recent as August 1985 on the disappearance of persons associated with one of the major human rights organizations in the Philippines, Task Force Detainees of the Philippines (TFDP). All these cases were transmitted to the Government by the Working Group.

196. By letter dated 16 October 1985 Task Force Detainees of the Philippines informed the Working Group about the foundation by relatives of missing persons in the Philippines of an organization called Families of Victims of Involuntary Disappearances (FIND).

Information and views received from the Government

197. Since the adoption of its last report and the addendum thereto, the Working Group, at its sixteenth and seventeenth sessions, received oral and written information from the Government of the Philippines on 35 reports of enforced or involuntary disappearances, clarifying eight of those cases.*/ By cable dated 31 May 1985, the Permanent Representative of the Philippines to the United Nations Office at Geneva informed the Group that one person was being detained at the Narcotics Commission (NARCOM) headquarters and was awaiting charges of violation of national security. At a meeting with the Working Group during its seventeenth session the Permanent Representative informed the Group that one person, a suspected member of a subversive organization, had been killed in an encounter with Government troops on 20 January 1979. Another person was reported to have been released and had been requested to report to the authorities at intervals. By letter dated 18 November 1985, the Permanent Representative informed the Group that a fourth person, an alleged member of the Communist Party of the Philippines, was now facing charges for violation of the Anti-Subversion Law (Presidential Decree No.855) before the Regional Trial Court of Ley del Sur. He was currently being detained under the provisions of the Presidential Commitment Order (P.C.O.). By letter of 11 December 1985 the Permanent Representative informed the Group that two persons had been shot on 14 May 1984. However, the court had acquitted the accused on the ground that the evidence presented had failed to establish sufficient proof of guilt. Another two persons had been killed in an encounter with Government troops in 1977.

198. The remaining replies received from the Government indicated that either there was no information available on the reported disappearances, or the arrest or abduction of the persons had not been on police records, or their whereabouts could not be established because of the lack of more precise information, i.e. the exact location of the place of abduction. In some cases doubts were raised about the identity or names of the persons**/ who were reported to have disappeared. In other cases the Government stated that the persons in question had joined subversive organizations or gone into hiding.

199. During its sixteenth session in Buenos Aires, the Group met a representative of the Government of the Philippines with special responsibility for human rights matters in the Ministry of Defence. The representative elaborated on the difficulties encountered by the various governmental and police units involved in locating disappeared persons. He also informed the Group about the considerable manpower earmarked by the

*/The Government was informed by letter of the decisions taken by the Group in this regard as well as of all clarifications provided by the sources.

**/In pursuance of the statement made to this effect by the Representative of the Philippines during the seventeenth session, five names were found to be pseudonyms and the respective cases were, therefore, eliminated.

armed forces for investigating cases on the spot. The representative informed the Group about the imminent creation of an inter-agency committee on human rights, consisting of various units in the Ministries of Defence, Justice and Foreign Affairs and other governmental agencies concerned to deal with cases of disappearances and human rights matters expeditiously and on a sufficiently high level.

200. During its seventeenth session the Group met the Permanent Representative of the Philippines to the United Nations Office at Geneva who expressed his concern about the fact that some of the cases on which the Government had given a reply were retained by the Working Group on record as unclarified. In this connection, the Permanent Representative reminded the Group that the Government had replied on some cases that the persons in question had managed to escape or had been forcibly abducted from prison or rejoined their subversive organizations.* He had noted that in the past some of the sources had been requested to provide comments on the reply or further information on the respective case. If that type of information was not forthcoming, a case should be considered clarified. He therefore suggested that the Group communicate more closely with both the Governments concerned and the source of the information. The Permanent Representative also stressed the difficulties encountered by the Government in locating missing persons because of the geographical situation and because of the priority which had to be given by his Government to the particular needs of a developing country.

201. At the eighteenth session, the Permanent Representative of the Philippines to the United Nations Office in Geneva again met the Working Group. On that occasion the Permanent Representative submitted information on a number of outstanding reports of enforced or involuntary disappearances. He also furnished summaries of the pertinent legislation and rules to ensure the rights of individuals against illegal detention. He further provided the Working Group with his Government's reply with regard to questions 5, 6 and 7 of the questionnaire on the implementation of General Assembly resolution 33/173 (see annex II). Information was also provided on the establishment in the Philippines of the Inter-Agency Commission on Human Rights, composed of senior officials nominated by the Ministry of National Defence, the Ministry of Justice and the Ministry of Local Government which, inter alia, had been entrusted with the task of clarifying outstanding reports of disappearances.

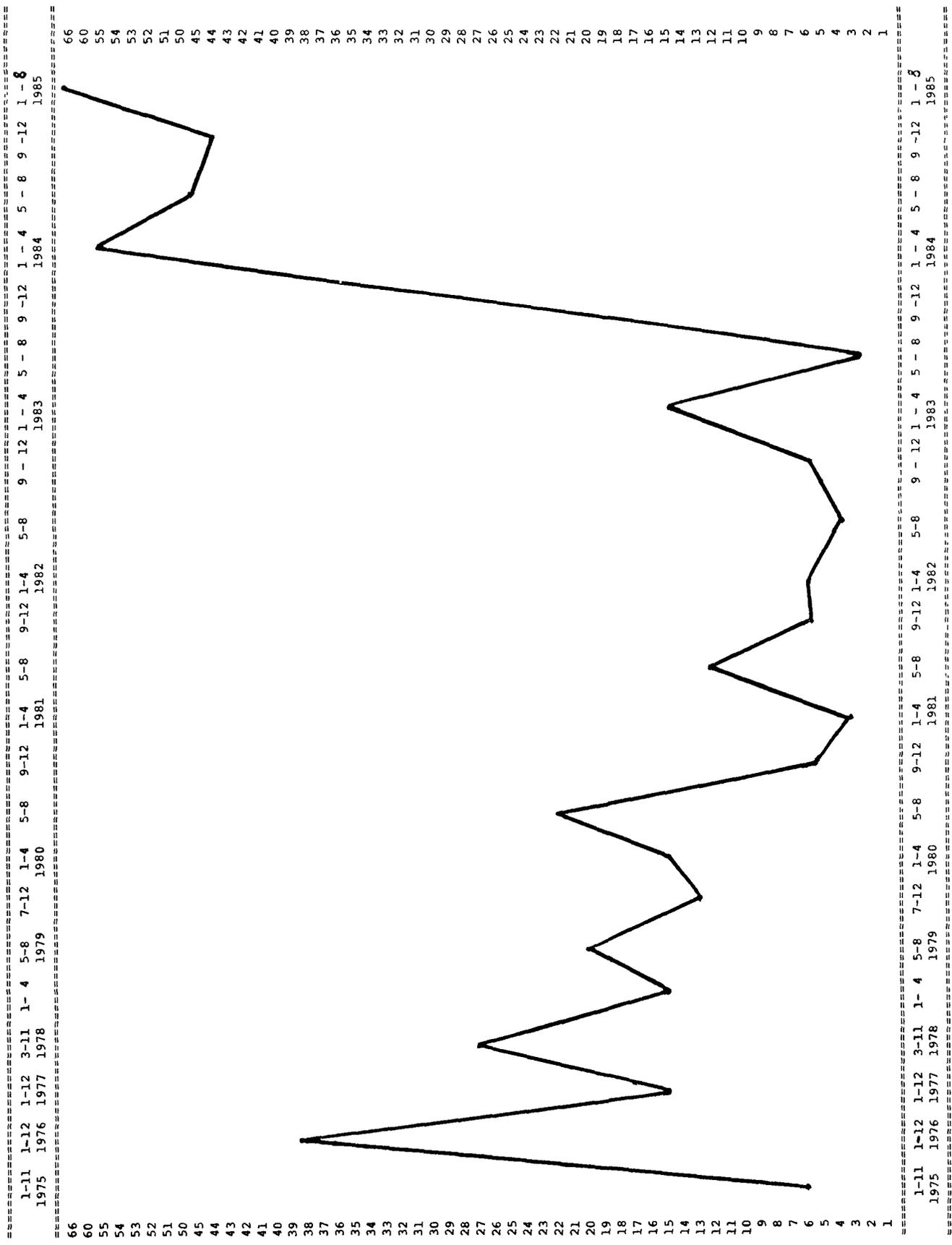
*/In accordance with the criteria applied by the Group these replies could not be considered as clarifying the respective cases.

Statistical summary

I.	Outstanding cases	370
II.	Total number of cases transmitted to the Government by the Working Group	443
III.	Government responses:	
(a)	Total number of responses received from the Government relating to cases transmitted by the Working Group	245
(b)	Cases clarified by the Government's responses ^{a/}	70
IV.	Cases clarified by non-governmental sources ^{b/}	3 ^{c/}

^{a/}	At liberty	7
	Arrested and detained	4
	Released	43
	Dead	16
^{b/}	Arrested and detained	3
^{c/}	Three additional clarifications received from non-governmental sources were confirmed by the Government and are therefore included under III (b)	

FREQUENCY OF DISAPPEARANCES IN PHILIPPINES
SINCE 1975 BASED ON THE DATE OF OCCURRENCE



15. Sri LankaInformation reviewed and transmitted to the Government

202. The Working Group's previous activities in relation to Sri Lanka are recorded in its last four reports to the Commission on Human Rights.^{14/} Since 1981 the Group has requested information from the Government on the outcome of investigations with regard to three persons who were reported to the Group as having disappeared in July 1979. In August 1983 the Government of Sri Lanka provided copies of the document entitled "Report of the Parliamentary Select Committee to inquire into and report on the allegations against the Sri Lanka Police", in which reference was made to the disappearance of the three youths. The report did not, however, clarify their fate but merely recommended additional investigations (E/CN.4/1985/15, para. 275).

203. In 1985 the Working Group has transmitted to the Government of Sri Lanka 194 cases of enforced or involuntary disappearances. By letter of 8 August 1985 the Working Group brought to the attention of the Government one newly reported case of a disappearance which occurred on 2 December 1984 in the area of Vavuniya. By the same communication the Government was again reminded to clarify the three outstanding cases which had initially been reported to it in 1981. By letter of 8 October 1985, the Group transmitted to the Government 184 cases of disappearances reported to have occurred in the areas of Batticaloa, Mannar, Jaffna and Vavuniya in the Eastern and Northern Provinces of Sri Lanka. Three of the alleged disappearances related to 1983, 130 to 1984 and 51 to 1985. Almost all reports for 1984 indicate the same date for the disappearance, i.e. 2 December 1984. The cases which have been reported for 1985 occurred in the period from January to May. By that letter, an updated version of the case transmitted on 8 August 1985 was also brought to the attention of the Government. By letter dated 30 December 1985 the Group transmitted to the Government of Sri Lanka another nine cases of disappearances reported to have occurred between December 1984 and May 1985. By the same communication the Group provided the Government with more detailed information on 17 cases transmitted to it earlier.

204. In almost all cases the full name of the person, their father's name, their place of residence, the date they were last seen and the army or security forces who allegedly made the arrests were given; in some cases these forces were specified by the sources as being from the Criminal Investigation Department (CID), the Police Special Task Force (STF) or air force personnel. The occupations of the persons reported as missing were those of labourer, farmer and employee. All were under 55 years of age and about half were in their twenties. Details were also given about the marital status and family situation of the disappeared persons. The circumstances in which the reported arrests took place varied. Some persons were arrested at their homes or in the compound or area where they lived and some of them at their place of work. The only woman among the persons reported missing was allegedly arrested when she saw her son in prison.

205. In many cases it was reported that the arrests or abductions occurred on the same day at about the same time. The largest number of such reported mass arrests concerning 99 men took place in the early morning of 2 December 1984 in Chemamadu and Cheddikulam. It was reported that members of the army and/or security forces carried out the arrest and took the persons by trucks to an unknown destination. The Government agent of the area was reported as having said that he doubted whether any of those persons were still alive. Another group of 24 people was reportedly taken on 17 May 1985 in Natpattimunai, Batticaloa, by members of the Special Task Force (STF). Another group of missing persons from the same area was reportedly released from detention on the day of their arrest (4 December 1984). However, it was also alleged that a number of persons were shot by the army the very same day and their dead bodies burnt thus leaving no trace of their identity.

206. One tenth of the reports on enforced or involuntary disappearances were supported by testimony from eyewitnesses to the arrests or to the events surrounding the arrests. Some of the persons were reportedly seen in a specified prison. In over 100 cases it was reported that inquiries were made of the government agent, the police or the co-ordinating officer of the army camp in the area. In their reply these authorities either denied that an arrest had been made or stated that the person had been transferred to another place of detention or taken to the capital for interrogations. However, the relatives could then not locate the missing person at those places.

Information and views received from relatives of missing persons or from non-governmental organizations

207. The Working Group received information on enforced or involuntary disappearances from the International Commission of Jurists (ICJ) and Amnesty International. At the Group's sixteenth session, the International Commission of Jurists (ICJ) submitted one very well-documented case of an enforced or involuntary disappearance of a Tamil irrigation officer which occurred on 2 December 1984, and later provided further testimony.

208. Most reports of enforced or involuntary disappearances were submitted by Amnesty International; they were also well-documented and included sworn statements for some of the cases. Amnesty International further submitted a separate paper with more background information and photographs of bodies found which could not be identified. It suggested to the Working Group that it investigate the reported disappearances on the spot by requesting the Government of Sri Lanka to invite the Group for a visit. Amnesty International also pointed out that, with regard to the three disappearances reported earlier to the Working Group, the recommendation of the Sri Lankan Parliamentary Select Committee of July 1982 to set up a separate team of investigators had not been implemented.

209. Amnesty International, informed the Working Group at the eighteenth session that it had received further reports of alleged disappearances and more detailed information on reports previously submitted by it. The organization also drew the attention of the Group to the case of a person who had been missing for several weeks. The father of a 17-year-old youth stated in an affidavit that, despite repeated efforts to trace his son's whereabouts, the various agencies had repeatedly denied that his son was in army custody. However, after one and a half months, his son had been released from unacknowledged detention. It appeared that he had been mistakenly arrested by the army. In a further affidavit by the son, a detailed account was given of the interrogation methods, including allegations of torture.

Information and views received from the Government

210. In 1985 the Working Group received oral and written information from the Government of Sri Lanka. By letter of 4 September 1985, the Government replied to the above-mentioned first case of a disappearance transmitted to it in the reporting period, but did not clarify the missing person's present whereabouts. In a letter dated 11 September 1985, the Permanent Representative of Sri Lanka to the United Nations at Geneva, in response to a question raised by the Working Group during its seventeenth session, submitted excerpts from the Prevention of Terrorism Act (PTA), No.48, of 1979 describing the authorities empowered to act under its provisions and the type of custody imposed on detainees. The Permanent Representative also forwarded to the Group a list of 128 abductions or disappearances conducted by terrorist groups since June 1985. In only 17 of those cases were the names of the persons given. None of the names corresponded to those previously submitted to the Working Group by non-governmental organizations.

211. By letter of 29 November 1985, the Permanent Representative of Sri Lanka to the United Nations Office at Geneva provided the Group with replies on five cases of reported disappearances, clarifying three of them. One person was released from detention on 12 July 1985. Two other persons were detained in Welika prison, one of them was being charged with an offence under the Prevention of Terrorism Act (PTA) and the other was awaiting charges. The fourth and fifth persons were reported to be in custody and detained under PTA, however, there was no indication on their present whereabouts and the cases were thus not considered clarified.*

212. During its seventeenth session the Working Group met the Permanent Representative of Sri Lanka to the United Nations Office at Geneva who gave information on the political efforts made by his Government since 1981 to settle the internal strife relating to the Tamil minority. He also referred to the recent rounds of talks held between the President of Sri Lanka and the Prime Minister of India and other parties concerned with a view to reaching a political settlement. The Permanent Representative expressed the view that a campaign of political violence in the northern and

*/The Government was informed by letter of the decision taken by the Group in this regard.

eastern parts of Sri Lanka had been unleashed by separatist elements to impair a negotiated settlement. The reports received by the Group would have to be viewed in that context. A large number of abductions had, in fact, been carried out by militant groups. As far as internal remedies in cases of disappearances were concerned, the habeas corpus procedure was applicable even under the state of emergency which had been proclaimed, recourse to a court was free and the language of the court was that of the district. The Permanent Representative expressed the hope that the legal remedies had been resorted to before a case was submitted to the Working Group.

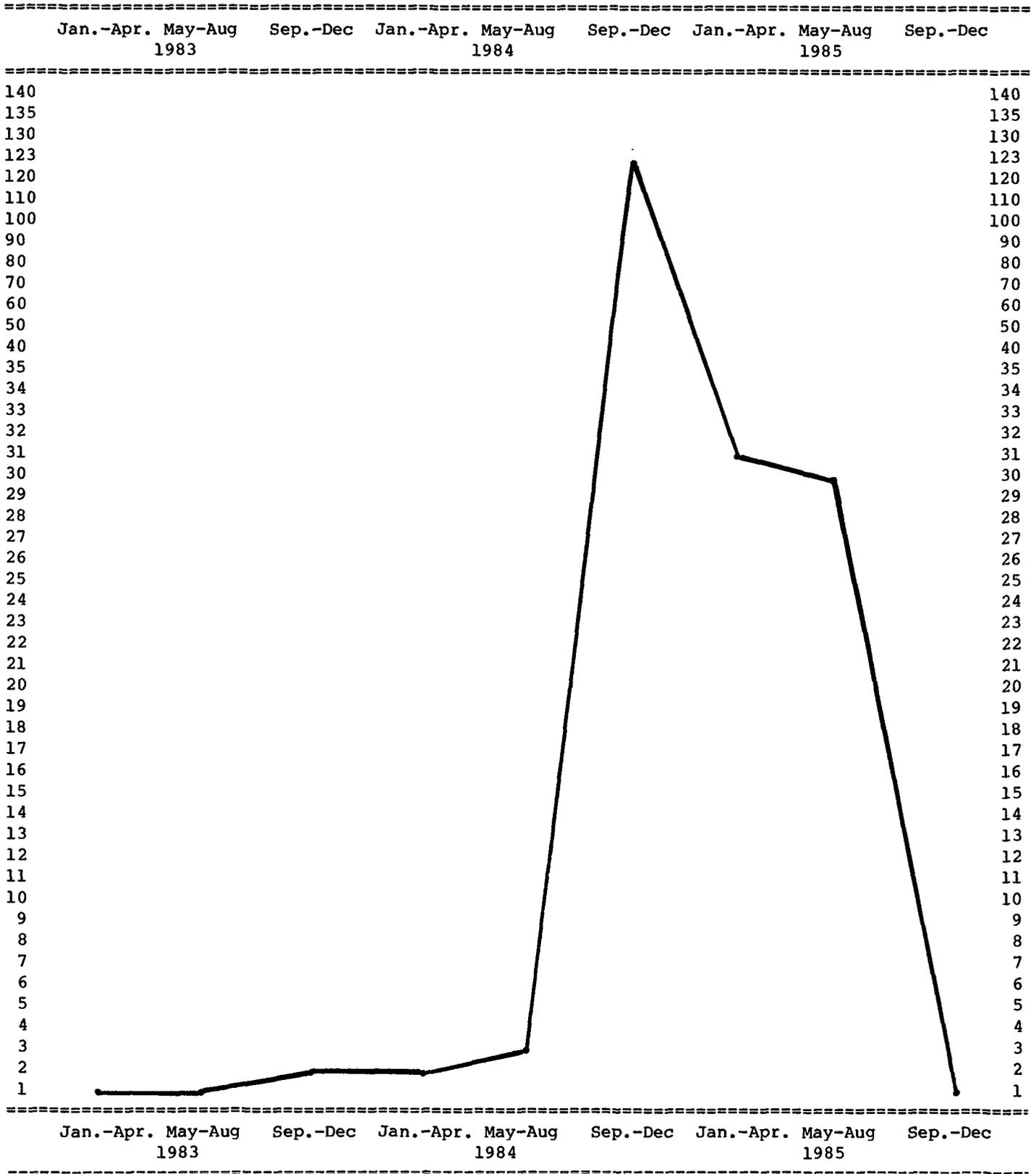
213. By note verbale dated 10 December 1985 the Permanent Representative of Sri Lanka brought to the attention of the Working Group for information at its eighteenth session a report of the Committee for the Monitoring of the Cessation of Hostilities (CMCH). The terms of reference of CMCH include visits to detention and refugee camps and the facilitation of meetings between persons detained under the Prevention of Terrorism Act and their relatives. The report describes the visits of the Committee, between 19 and 26 October 1985, to some of the camps. According to the report, there are currently some 23,500 Sinhalese or Tamils staying in camps.

Statistical summary

I.	Outstanding cases	194
II.	Total number of cases transmitted to the Government by the Working Group	197
III.	Government responses:	
(a)	Total number of responses received from the Government relating to cases transmitted by the Working Group	9
(b)	Cases clarified by the Government's responses ^{a/}	3

^{a/} See para. 211

FREQUENCY OF DISAPPEARANCES IN SRI LANKA
SINCE 1983 BASED ON THE DATE OF OCCURRENCE



16. Uruguay

Information reviewed and transmitted to the Government

214. The activities of the Working Group in relation to Uruguay are recorded in its five previous reports to the Commission on Human Rights.^{15/} Since its establishment, the Working Group has transmitted to the Government of Uruguay a total of 53 reports of enforced or involuntary disappearances. The Government provided information on 24 cases clarifying six of them.

215. In 1985, the Working Group did not transmit any new reports on disappearances to the Government. However, in accordance with the decision taken at its sixteenth session, the Working Group, by letter dated 8 August 1985, addressed a questionnaire on the implementation of General Assembly resolution 33/173 to the Government of Uruguay and to the newly created Commission of Inquiry into the Situation of Missing Persons and the Events Leading Thereto. (Comisión Investigadora sobre Situación de Personas Desaparecidas y Hechos que la Motivaron). By the same letter and a letter dated 18 October 1985, the Government was reminded of the remaining unclarified cases and was requested to provide information on the results of their investigation.

Information and views received from non-governmental organizations and relatives of missing persons

216. In 1985, the Working Group has continued to receive both oral and written information from organizations acting on behalf of relatives of missing persons, namely from the Association of Relatives of Disappeared Uruguayans and the Justice and Peace Service. By letter dated 5 May 1985, the Working Group received reports on enforced or involuntary disappearances from the Justice and Peace Service. As the reports did not contain sufficient information for transmission to the Government, a letter was sent to the source asking it to provide further information on the cases; no reply has been received to date.

217. At its sixteenth session, the Working Group met a representative of the Association of Relatives of Disappeared Uruguayans who stated inter alia that, since the new civilian Government had come into power, all political prisoners had been freed, but the missing persons had not reappeared. The cases of disappearances had, therefore, been filed with the courts. However, little progress had been made in the court proceedings since, according to Uruguayan law, military personnel could not be summoned by civilian judges. The representative further expressed the view that this law should be abrogated and that the Parliamentary Commission, set up by the Chamber of Deputies to look into problems of disappearances, should be granted comprehensive powers to carry out full investigations from which the military would not be exempt.

218. In a written communication of October 1985 the Justice and Peace Service deplored the lack of effective investigations into, and appropriate legal proceedings against, abuses perpetrated under the military Government. The organization also criticized the fact that all cases before the courts concerning allegations of human rights violations were blocked by disputes over civil or military jurisdiction.

Information and views received from the Government of Uruguay

219. By note verbale dated 30 May 1985, The Permanent Mission of Uruguay to the United Nations Office at Geneva informed the Working Group of the establishment of the Commission of Inquiry into the Situation of Missing Persons and the Events Leading Thereto set up by the Chamber of Deputies of Uruguay and indicated the composition of this Commission. No further information has been received from the Government despite a specific request addressed to it by letter dated 23 July 1985 to provide detailed information on the mandate and objectives of the Commission as well as on the results achieved by it.

Statistical summary

I.	Outstanding cases	47
II.	Total number of cases transmitted to the Government by the Working Group	53
III.	Government responses:	
(a)	Total number of responses received from the Government relating to cases Transmitted by the working Group	24
(b)	Cases clarified by the Government's responses <u>a/</u>	6

a/ Persons released from detention: 2
Person arrested and in prison: 4.

B. Instances in which less than 20 reports of enforced or involuntary disappearances transmitted by the Working Group to a Government remain outstanding

1. Angola

Information reviewed and transmitted to the Government

220. The Working Group's activities in relation to Angola are recorded in its two previous reports.^{16/} In October 1983, the Working Group first transmitted five reports concerning six disappeared persons to the Government.

221. In accordance with a decision taken at its sixteenth session, the Working Group, by letter dated 8 August 1985, once again transmitted these outstanding cases to the Government of Angola, together with an urgent appeal to co-operate with the Group by providing information on the results of any investigations which might have been carried out to determine the whereabouts of the six persons reported missing.

222. To date the Working Group has received no reply from the Government of Angola on the fate of the missing persons. The Working Group regrets, therefore, that it is still unable to report concretely to the Commission regarding these pending cases of disappearance.

Statistical summary

I. Outstanding cases	6
II. Total number of cases transmitted to the Government	6
III. Government responses	0

2. Bolivia

Information reviewed and transmitted to the Government

223. The activities of the Working Group in relation to Bolivia are recorded in its five earlier reports to the Commission on Human Rights.^{17/} Since its establishment, the Working Group has transmitted to the Government of Bolivia a total of 32 reports on enforced or involuntary disappearances. The Government provided replies on all cases clarifying 21 of them.

224. In accordance with the decision taken at its sixteenth session, the Working Group, by letters dated 8 August and 18 October 1985, requested the Government of Bolivia to provide it with information on the results of further investigations into the 11 remaining cases. The Working Group received no new information on disappearances from relatives and non-governmental sources.

Information and views received from the Government and from the
National Commission of Investigation of Disappeared Citizens

225. Since the extension of its mandate, the Working Group has continued to receive information orally and in writing from the Government of Bolivia and from the National Commission of Investigation of Disappeared Citizens.

226. At its seventeenth session, the Working Group met a representative of the Government of Bolivia who stated that the new constitutional Government would continue to co-operate with the Group and to support the National Commission of Investigation of Disappeared Citizens with a view to elucidating the remaining cases. The representative also referred to paragraph 2(e) of Commission on Human Rights resolution 1985/34 which, *inter alia*, refers to assistance to Bolivia in the matter of enforced or involuntary disappearances. In compliance with that resolution, the Assistant Secretary General for Human Rights had offered to hold a national human rights seminar to train Bolivian government personnel and personnel of other institutions such as the Permanent Human Rights Assembly of Bolivia and the National Commission of Investigation of Disappeared Citizens.

227. On the same occasion and subsequently by letter dated 31 October 1985, the Government of Bolivia informed the Group that the case of a child who had been arrested in Bolivia in 1976 and then handed over to the Argentine authorities together with her mother and another Argentine detainee on 29 August 1976 had been clarified by the National Commission.* In the same letter, the Government assured the Working Group that it would continue to co-operate with it and to support the National Commission, in particular with respect to the cases which had not yet been clarified.

228. In a written communication dated 2 September 1985, the National Commission of Investigation of Disappeared Citizens forwarded to the Working Group a report on its activities in relation to enforced disappearances since November 1984. The Commission stated that the investigation unit it had set up had achieved little during the past nine months of its activities due to lack of technical know-how regarding sophisticated inquiries. Another difficulty raised by the Commission in its report was the lack of funds which even made it impossible to travel to places outside the capital. The Commission also stated that the Government had completely ceased funding it and that it was currently supported only by international human rights organizations. Since it had started its work, the Commission had received 211 complaints of enforced disappearances. Sixty-one of those cases had been clarified, but 150 more remained to be investigated and clarified (see E/CN.4/1985/15/Add.1 para. 2). The Commission's staff consisted of only 7 persons who had to complete that task and to take care of a comprehensive programme of social welfare for victims of enforced disappearances.

*/ The Working Group transmitted this case to Argentina only, since the reported disappearance had occurred there.

Statistical summary

I. Outstanding cases	11
II. Total number of cases transmitted to the Government by the Working Group	32
III. Government responses:	
(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	32
(b) Cases clarified by the Government's responses ^{a/}	21

^{a/} Persons at liberty : 18
Persons officially reported dead: 3.

3. Chile

Information reviewed and transmitted to the Government

229. The activities of the Working Group in relation to Chile are recorded in the five earlier reports to the Commission on Human Rights.^{18/} Since its establishment, the Working Group has transmitted a total of six reports of enforced or involuntary disappearances to the Government of Chile.^{*} To date the Working Group has received no reply from the Government of Chile on the fate of the missing persons. The Working Group regrets, therefore, that it is still unable to report concretely to the Commission regarding these pending cases of disappearances.

^{*} At its first session, the Working Group decided that it would be appropriate for the question of enforced or involuntary disappearances in Chile to continue to be part of the mandate of the Special Rapporteur on the situation of human rights in Chile (E/CN.4/1435, para. 42). The Working Group has only dealt with cases of enforced or involuntary disappearances that have occurred and were reported to it since its creation. In his report to the thirty-ninth session of the General Assembly in 1984 (A/39/630, para. 179), the Special Rapporteur noted that, with regard to the number of cases of missing detainees thought to have occurred between 1973 and 1977, the authorities themselves estimated that there were 471 cases and stated that the judicial investigation of those pending cases was continuing. In the preliminary report to the fortieth session of the General Assembly in 1985 (A/40/647, para. 16) the Special Rapporteur referred to a statement made by a Chilean human rights group, according to which, by the end of June 1985, a total of 700 people had disappeared since 1973.

230. In 1985 the Working Group transmitted to the Government of Chile two newly reported cases, one of them under the urgent action procedure. In accordance with the decision taken at its sixteenth session, it also addressed a special appeal to the Government to co-operate with the Group. One case, transmitted by letter dated 8 August 1985, concerned a Chilean national who entered Chile illegally under a false identity; he was reportedly arrested by agents of the National Information Agency (Central Nacional de Información (CNI)) and seen by witnesses between December 1984 and the beginning of February 1985 in bad physical condition at the CNI prison in Santiago. The other case, transmitted to the Government under the urgent action procedure on 7 March 1985, referred to a person who was allegedly arrested in the capital by the police (carabineros). This case was subsequently clarified by information provided by the source on 26 March 1985, to the effect that the person was released 10 days after his reported detention by unidentified men. The Government has been informed accordingly.

231. Pursuant to the Working Group's decision at the same session, by letter dated 29 August 1985, the Chairman brought to the attention of the Special Representative of the Commission on Human Rights on the situation of human rights in Chile the latest statistical data on disappearances in Chile, as reported to the Group. By letter dated 18 December 1985, the Working Group provided the Special Rapporteur with a copy of the subsection in the present report concerning Chile.

Information and views received from relatives of missing persons and from non-governmental organizations

232. In 1985 the Working Group continued to receive information concerning enforced or involuntary disappearances in Chile from the World Council of Churches, Amnesty International and relatives of missing persons. The information on the urgent action case was submitted by the World Council of Churches while information on the other case was brought to the attention of the Working Group by a relative of the missing person.

Statistical summary

I. Outstanding cases	4
II. Total number of cases transmitted to the Government by the Working Group	6
III. Government responses	0
IV. Cases clarified by non-governmental sources	2

4. Dominican Republic

Information reviewed and transmitted to the Government

233. The Working Group's activity in relation to one report of an enforced or involuntary disappearance in the Dominican Republic, transmitted in December 1984, is recorded in its previous report (E/CN.4/1985/15, para. 284). In 1985, The Working Group, by letter dated 8 August 1985, transmitted to the Government of the Dominican Republic another case of enforced or involuntary disappearance reported to have occurred in 1984 at Santo Domingo. In the same letter, the Government was reminded to inform the Working Group on any progress in the investigations on the case transmitted in 1984.

Information and views received from non-governmental sources

234. The first report transmitted to the Government in December 1984 was submitted to the Group by the Dominican Committee for Human Rights and the second was brought to its attention at the sixteenth session by the International League for Human Rights.

235. The first case concerns a Dominican national who was reportedly arrested by the national police in 1984, whereas the second case concerns an Haitian national who was allegedly arrested in 1984 by a guard at Batey Montellano and then transferred to Dabajon.

236. Both organizations provided the Group with information of a general nature on disappearances and with lists of names of a number of persons who reportedly disappeared in the Dominican Republic in the period 1981-1984. These cases did not, however, contain sufficient information for transmittal to the Government and were therefore referred back to the sources for possible completion.

Information and views received from the Government

237. The Permanent Representative of the Dominican Republic to the United Nations Office at Geneva provided information on the case that was transmitted to the Government on 8 August 1985, stating that, despite exhaustive investigations throughout the country, it had not been possible to locate the disappeared person. The Government also reported that the missing person had been charged before courts on several occasions with a variety of offences, including that of leaving the country secretly.

Statistical summary

I. Outstanding case	2
II. Total number of cases transmitted to the Working Group	2
III. Government responses:	
(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	1
(b) Cases clarified by Government responses	0

5. EthiopiaInformation reviewed and transmitted to the Government

238. The Working Group's activities in relation to Ethiopia are recorded in its four previous reports.^{19/} In 1980 and 1983, 17 cases concerning disappearances which occurred in 1978 and 1979 were transmitted to the Government of Ethiopia for the first time. The Government provided replies on two cases, which could not, however, be considered clarified.

239. In 1985, in accordance with a decision taken at its sixteenth session, the Group, by letter dated 8 August 1985, reminded the Government of Ethiopia of the outstanding 17 cases and again provided it with a list of those cases previously transmitted to it on several occasions.

Information and views received from the Government

240. By letter of 4 February 1985, the Permanent Representative of Ethiopia to the United Nations Office at Geneva communicated to the Group that, due to the severe drought, the catastrophic situation in the country and the resulting work-load on Government agencies, the Government had not been in a position to carry out the necessary investigations. To date the Working Group has not received any further reply from the Government of Ethiopia on the fate of the missing persons.

Statistical summary

I. Outstanding cases	17
II. Total number of cases transmitted to the Working Group	17
III. Government responses:	
(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	2
(b) Cases clarified by Government responses	0

6. GuineaInformation reviewed and transmitted to the Government

241. The Working Group's previous activities in relation to the Republic of Guinea are recorded in its three previous reports to the Commission on Human Rights.^{20/} In 1981 the Working Group transmitted to the Government eight cases of enforced or involuntary disappearances which occurred between 1971 and 1977. The Government of Guinea has not provided any reply on these cases.

242. In accordance with a decision taken at its sixteenth session, the Working Group, by letter dated 8 August 1985, again transmitted the summaries of the eight cases to the Government, and made a special appeal to it to co-operate with the Group by providing information on the results of any investigations which might have been carried out to determine the whereabouts of the persons reported missing. By letter dated 18 October 1985, the Working Group informed the Government of Guinea that the Group had received information from a non-governmental organization to the effect that seven of the eight reports could be considered clarified.

Information and views received from relatives of missing persons or from non-governmental organizations

243. The eight above-mentioned reports were submitted to the Working Group by the Association of French Families of Political Prisoners in Guinea (Association des familles françaises de prisonniers politiques en Guinée). By letter dated 22 August 1985, the Association informed the Working Group that it had received from the Government of Guinea official declarations of the death of seven of the eight persons reported to have disappeared, together with a letter of rehabilitation of the deceased persons. The Government of Guinea had also informed the organization that investigations into the eight cases were being continued.

Statistical summary

I. Outstanding cases	1
II. Total number of cases transmitted to the Government	8
III. Government responses	0
IV. Cases clarified by non-governmental sources	7

7. HaitiInformation reviewed and transmitted to the Government

244. The activities of the Working Group in relation to Haiti are recorded in the previous report to the Commission on Human Rights (E/CN.4/1985/15, paras. 259-262). The Working Group has transmitted to the Government of Haiti a total of 14 reports on enforced or involuntary disappearances. The Government has provided replies on 13 cases clarifying nine of them.

245. In accordance with the decision taken at its sixteenth session, the Government, by letters dated 8 August and 18 October 1985, was reminded to inform the Working Group of any progress in the investigations of the five remaining cases transmitted to it on several previous occasions. The clarifications previously provided by the Government were communicated to the sources who made no further comments. Since the latest extension of the Working Group's mandate no new information has been received from non-governmental sources.

Information and views received from the Government

246. By letter dated 6 November 1985, the Permanent Mission of Haiti to the United Nations Office at Geneva informed the Working Group that the President had promulgated an Amnesty Law on 28 April 1985. Thirty-six detainees were liberated on the basis of that law; three of them are included in the list of cases transmitted to the Government and clarified by it in 1984.

Statistical summary

I. Outstanding cases	5
II. Total number of cases transmitted to the Government by the Working Group	14
III. Government responses:	
(a) Total number of responses received from the Government to cases transmitted by the Working Group	13
(b) Cases clarified by Government responses ^{a/}	9

^{a/} Persons at liberty: 4
Persons in prison: 5.

8. Mexico

Information reviewed and transmitted to the Government

247. The Working Group's previous activities in relation to Mexico are recorded in its reports to the thirty-seventh, thirty-eighth, thirty-ninth and forty-first sessions of the Commission on Human Rights. ^{21/}

248. In 1985, the Working Group received no newly reported cases of disappearances in Mexico. However, it has received new information from relatives and non-governmental organizations concerning cases previously transmitted to the Government. In some instances the new information relates to cases included among those transmitted to the Government in 1980 and 1981 on which the Working Group had not, at that time, proposed to take any further action, as reflected in paragraph 80 of the Working Group's report to the Commission on Human Rights at its thirty-ninth session (E/CN.4/1983/14). At its eighteenth session, pursuant to discussions with a representative of the Government of Mexico and on the basis of assurances given by him that any new elements would be promptly and thoroughly investigated and their results communicated to the families, the Working Group decided to forward the new information to the Government.

Information and views received from the Government

249. By letter of 25 July 1985 the Government of Mexico informed the Working Group that, in two cases in respect of which it had previously reported that investigations were continuing, the competent authorities had concluded that the available information did not suffice to establish the missing persons' whereabouts.

250. At its eighteenth session, the Working Group received a letter from the Permanent Representative of Mexico at the United Nations Office in Geneva in which information was provided concerning the results of the investigations carried out by the Mexican Government on six cases transmitted to it by the Working Group. In this letter it was stated that the Government had spared no resources or efforts in its attempt to discover the whereabouts of those persons; it was aware of its commitment and co-operated at all times in providing reliable information on the cases transmitted to it, which sometimes involved inquiries going back over 15 years to try to shed light on cases for which only a bare minimum of information was available. The fact that the number of disappearances had constantly decreased confirmed that the Government had made serious efforts and that the disappearances were not part of a government policy involving the violation of human rights.

251. At the same meeting the Working Group met the chief of the cabinet of the Under-Secretary of the Interior, who is the authority in charge of ensuring respect for and observance of constitutional guarantees and is also in charge of the investigation of cases of disappearances. The representative gave information on the investigations carried out by his Government in connection with the six cases of disappearances included in the above-mentioned letter. A preliminary reply on those cases had been provided by letters dated 3 October 1984 and 25 July 1985, indicating the state of the investigations at that time.

252. The representative of Mexico stated that the position of his Government was to defend human rights and, in that sense, his Government was on the side of the relatives and wished to co-operate fully with the Working Group. His Government had made every effort to investigate cases of disappearances reported to it and, to that end, had kept close contacts with the Mexican National Committee for the Defence of Prisoners, Persecuted and Missing Persons and Political Exiles. The fact that people generally reported cases concerning disappearances, detentions, refugees, etc., to the Committee was accepted officially. Thus, representatives of the Committee were frequently received at the Government's offices and a response on each of the cases submitted by the Committee had been provided to it. If relatives were not satisfied with those responses, the investigation would continue, as long as the Mexican Government received new information. If the results of the investigations led to the conclusion that a person was dead, it was not possible to issue a death certificate unless the body was found, which in many cases had proved impossible.

253. The representative also stated that his Government would continue to co-operate with the Working Group and was thus prepared to receive any further information that the Working Group wished to transmit to it. However, his Government considered that, in a number of cases, investigations had been exhausted and the responses provided by it had clarified the cases.

Statistical summary

I. Outstanding cases	6
II. Total number of cases transmitted to the Government by the Working Group	8
III. Government responses:	
(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	8
(b) Cases clarified by the Government's responses <u>a/</u>	2

a/ Persons reported dead: 1
Persons reported free: 1.

9. MoroccoInformation reviewed and transmitted to the Government

254. The activities of the Working Group in relation to Morocco appear in its reports to the Commission on Human Rights at its thirty-ninth, fortieth and forty-first sessions.^{22/} The Working Group transmitted to the Government of Morocco a total of 12 reports on enforced or involuntary disappearances. The Government provided replies on eight cases clarifying two of them.

255. In accordance with decisions taken at its sixteenth and seventeenth sessions, the Working Group, by letters dated 8 August and 18 October 1985, transmitted three newly reported cases of disappearances to the Government of Morocco. At the same time, the Government was reminded of the unclarified reports and was requested to provide information on the results of the investigations into those cases. The Government was also informed of the two clarifications provided by non-governmental sources in September 1984 and January 1985.^{23/}

256. Of the three cases transmitted to the Government in 1985, two occurred in 1973 and one in 1983. All reports contained details about the identity of the missing persons, as well as the date and place of the arrest or abduction. One of the persons reportedly disappeared in Casablanca, whereas the other two disappeared in the Provinces of Ouarzazate and Er-rachidia. Details were also provided on the agents who allegedly carried out the arrest or abduction, in two cases agents belonging to the Gendarmerie Royale and in one case the police. According to the reports habeas corpus petitions were presented in two cases with no result.

Information and views provided by relatives and non-governmental organizations

257. The reports transmitted to the Government in 1985 were submitted by Amnesty International and the Union of Arab Lawyers. The Working Group also received oral and written information from the Association of Relatives and Friends of Missing Persons in Morocco. In May 1985, the latter organization submitted information to the Working Group on six cases of enforced or involuntary disappearances which had already been transmitted to the Government.

258. During its sixteenth session, the Working Group met a representative of the Association of Relatives and Friends of Missing Persons in Morocco who gave the Working Group numerous reports on disappearances, most of which had occurred between 1965 and 1977. He also referred to other cases and to the difficulties encountered by the families in communicating with their detained relatives. He asserted that several persons had been abducted abroad and then transferred to Morocco where they had disappeared. He further alleged that some of the missing persons had disappeared immediately after their arrest by the police. In other cases, he stated that the persons had been arrested, charged and sentenced and had subsequently disappeared in prison; others had been arrested and absolved and had then disappeared. The representative also provided the Group with written statements containing allegations about the existence of clandestine detention centres.

259. An examination of this material revealed that eight cases had already been brought to the attention of the Government and that the others did not contain the required minimum elements for transmittal. Further information was therefore requested from the source.

Statistical summary

I. Outstanding cases	8
II. Total number of cases transmitted to the Government by the Working Group	12
III. Government responses:	
(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	8
(b) Cases clarified by the Government's responses <u>a/</u>	2
IV. Cases clarified by non-governmental sources <u>b/</u>	2

a/ Persons in prison: 2

b/ Persons released: 2.

10. Paraguay

Information reviewed and transmitted to the Government

260. The activities of the Working Group in relation to Paraguay are recorded in its first, fourth and fifth reports to the Commission on Human Rights.^{24/} Since its establishment, the Working Group has transmitted to the Government of Paraguay a total of 23 reports of enforced or involuntary disappearances. The Government provided replies on all 23 cases clarifying 11 of them.

261. By letter dated 8 August 1985, the Working Group informed the Government of Paraguay of the 11 cases that it considered clarified and retransmitted to it the summaries of the 12 outstanding cases.

Information and views received from relatives of missing persons and non-governmental organizations

262. In 1985, the Working Group has continued to receive written information from non-governmental organizations acting on behalf of missing persons, namely from the International Solidarity Commission of Paraguay and from Amnesty International. During the months of January and February 1985, the

above-mentioned organizations submitted to the Working Group two lists of missing Paraguayans alleged to have disappeared in Argentina and Paraguay. All the cases contained in these lists for which there was sufficient information had been transmitted to the Governments of Argentina and Paraguay previously. The respective sources were so informed and were asked for additional information concerning the remaining reports. To date no reply has been received to this request.

263. During its sixteenth session, the Working Group met representatives of the Group of Relatives of Disappeared Paraguayan Detainees in Argentina, the International Solidarity Commission of Paraguay, the Co-ordinator of Relatives of Disappeared Persons in Paraguay and Paraguayan Accord in Exile. These organizations emphasized in particular that enforced or involuntary disappearances should be considered as a crime against humanity.

Information and views received from the Government

264. During its sixteenth session held in Buenos Aires, the Working Group met two representatives of the Government who provided it with replies on all cases previously transmitted. The same information was given to the Working Group in writing in letters dated 12 June and 26 August 1985. Eleven of the 23 cases were considered clarified by the Working Group on the basis of the Government's replies.

265. Five of the 11 cases were deleted from the list of Paraguay because the arrest or abduction of the persons concerned had taken place in Argentina. In two other cases, the transfer of the missing person to Argentina had been witnessed and subsequently confirmed by the Government of Paraguay. These seven cases will therefore continue to appear on the list concerning Argentina. Two other cases, in which the transfer of the missing persons to Uruguay was witnessed and subsequently confirmed by the Government of Paraguay, continue to be included in the list concerning Uruguay. In the two remaining cases, the persons were reported to have died in encounters with the Paraguayan police.

Statistical summary

I. Outstanding cases	12
II. Total number of cases transmitted to the Government by the Working Group	23
III. Government responses:	
(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	23
(b) Cases clarified by the Government's responses	11

11. Seychelles

Information reviewed and transmitted to the Government

266. In 1985, the Working Group, by letter dated 8 October 1985, transmitted to the Government of the Seychelles three cases of enforced or involuntary disappearances reported to have occurred on the main island of Mahé in the years 1977 and 1984. All three persons were allegedly abducted shortly after they left their homes by persons believed to belong to the security forces.

Information and views received from non-governmental organizations

267. At its seventeenth session the Working Group had before it a submission from Amnesty International entitled "Seychelles: Political Imprisonment and Allegations regarding the 'Disappearance' or Extrajudicial Execution of Suspected Opponents of the Government". Amnesty International stated that persons had disappeared because they were in opposition to the Government in power.

Statistical summary

I. Outstanding cases	3
II. Total number of cases transmitted to the Government by the Working Group	3
III. Government responses	0

12. Syrian Arab Republic

Information reviewed and transmitted to the Government

268. The Working Group's activities in relation to the Syrian Arab Republic are recorded in its three previous reports.^{25/} Since 1982 the Group has transmitted to the Government of the Syrian Arab Republic three cases of enforced or involuntary disappearances which reportedly occurred in 1980.

269. In 1985, in accordance with a decision taken at its sixteenth session, the Working Group retransmitted to the Syrian Arab Republic the three cases, together with a special appeal to co-operate with the Group by providing information on the results of any investigations which might have been carried out to determine the whereabouts of the persons reported missing.

Information and views received from the Government

270. By note verbale dated 8 October 1985, the Permanent Representative of the Syrian Arab Republic to the United Nations Office at Geneva replied to the Working Group that the Syrian authorities had no information on two of the cases transmitted to it. The third person had been arrested by the competent Syrian security authorities because of his alleged involvement in matters affecting State security.*/

Statistical summary

I. Outstanding cases	3
II. Total number of cases transmitted to the Government by the Working Group	3
III. Government responses:	
(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	3
(b) Cases clarified by the Government's responses	0

13. Uganda

Information reviewed and transmitted to the Government

271. The Working Group's previous activities in relation to Uganda are recorded in its first and its fifth report to the Commission on Human Rights.^{26/} Between 1981 and 1984 the Working Group transmitted to the Government of Uganda seven cases of enforced or involuntary disappearances, two of which reportedly occurred in 1981 and five in 1984. One of the disappearances reported in 1981 was clarified by the Government in the course of the same year.

*/ The reply was not considered by the Working Group as clarifying this case since it did not contain an indication of the present whereabouts of the missing person. The Government was informed by letter of the decision taken by the Group in this regard.

272. In 1985 the Group transmitted to the Government of Uganda 11 newly reported cases of enforced or involuntary disappearances relating to the period 1981-1985, one of them under the urgent action procedure. The reported arrests or abductions occurred in Ihungu, Kampala, Mukono district, Nangana and Tororo. According to the reports, some of the persons who were arrested outside Kampala were later brought to the capital. One person was allegedly abducted while in exile in Kenya and taken to Kampala. The occupations of the disappeared persons were given as cattle farmer (1), civil servant (2), employee (1), engineer (1), teacher (1) and politician (5). The politicians among those reported missing were connected with the Democratic Party, the Uganda National Liberation Front and the Federal Democratic Movement (FEDEMU). It was reported that the arrests were made by either policemen, soldiers or officials of the National Security Agency (NASA). In all cases places of detention were indicated where the missing persons were last seen.

273. By letter dated 18 October 1985, the Working Group, inter alia, informed the Government of Uganda that, on the basis of new information received from non-governmental sources, it had decided to consider four cases transmitted to the Government on previous occasions clarified. The Government did not reply to the Group's communications.

Information and views received from relatives of missing persons and non-governmental organizations

274. With regard to the above-mentioned alleged abduction of a Ugandan in exile in Kenya, the source of the information, Amnesty International, informed the Group that the person had died in Kireka Military Barracks in Kampala soon after his arrest. Amnesty International further informed the Group that three of the persons previously reported as missing were now in acknowledged detention.

275. At its sixteenth session in June 1985, the Working Group had before it a paper entitled "Uganda: Disappearances of Political Detainees" submitted by Amnesty International. The organization stated that it had received many reports of disappearances of political detainees in Uganda since 1981. It was believed that those persons died in detention, but the lack of information about the circumstances surrounding the disappearances had left doubts over their exact fate. Relatives pursuing inquiries with the Ugandan authorities, had placed their life at considerable risk; in some cases, relatives making such inquiries had been killed. Prisoners who disappeared from custody were reported to have been unlawfully held by the Ugandan National Liberation Army or the National Security Agency (NASA), although by law the army had no legal power of arrest or detention. The legal remedy of habeas corpus was provided for under the Constitution, but in most cases this procedure was either not resorted to or the writs never reached the courts.

Statistical summary

I. Outstanding cases	12
II. Total number of cases transmitted to the Government by the Working Group	18
III. Government responses:	
(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	1
(b) Cases clarified by the Government's responses	1
IV. Cases clarified by non-governmental sources	5

14. Viet Nam

Information reviewed and transmitted to the Government

276. In 1985 the Working Group transmitted to the Government of Viet Nam seven cases of enforced or involuntary disappearances reported to have occurred in December 1984. The persons reported missing belonged to the family of a now deceased former Deputy Prime Minister. They were his three sons, two daughters-in-law, and two grandsons of six and eight years of age. The three men were a former high-ranking security officer, a former instructor at a rangers training centre and a human rights lawyer. They were reportedly connected with the now defunct Vietnamese affiliate of the International League for Human Rights.

Information and views received from non-governmental organizations representing relatives of missing persons

277. The above-mentioned seven reports were submitted to the Working Group at its sixteenth session by the International League for Human Rights. At the seventeenth session, the International League informed the Working Group that four of the seven missing persons, namely the two women and the two children, had reappeared. The whereabouts of the three brothers, however, remained unknown.

Information and views received from the Government

278. By letter dated 6 December 1985 the Permanent Representative of Viet Nam to the United Nations Office at Geneva informed the Chairman of the Working Group that the above-mentioned three brothers had been arrested for recent activities in breach of the laws in force in the Socialist Republic of Viet Nam and that they would be tried in due course. ^{*/}

Statistical summary

I. Outstanding cases	3
II. Total number of cases transmitted to the Government by the Working Group	7
III. Government responses:	
(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	3
(b) Cases clarified by the Government's responses	0
IV. Cases clarified by non-governmental sources	4

15. ZaireInformation reviewed and transmitted to the Government

279. The activities of the Working Group in relation to Zaire are recorded in its reports to the Commission on Human Rights at its thirty-eighth, thirty-ninth and fortieth sessions.^{27/} It will be recalled that 14 reports of enforced or involuntary disappearances were transmitted to the Government of Zaire on several previous occasions and that, in 1984, the Government

^{*/} The reply was not considered by the Working Group as clarifying these cases since it did not contain an indication of the present whereabouts of the missing persons. The Government was informed by letter of the decision taken by the Group in this regard.

provided information on all of them. This information was transmitted to the sources which replied that they were not able to confirm it with regard to eight cases. In December 1984, the Government was asked to give additional details on those eight cases, but no information has been received to date.

280. In 1985, the Working Group transmitted two cases of enforced or involuntary disappearances to the Government of Zaire under the urgent action procedure. These cases were submitted to the Working Group by the World Council of Churches. Both cases reportedly occurred in August 1985 and concern a 13-year-old girl and her 15-year-old brother who were allegedly taken from their home in Kinshasa by police agents to the police headquarters in Ngombe District. According to the sources these abductions are related to political harassment that the children's family had suffered since 1985.

Statistical summary

I. Outstanding cases	10
II. Total number of cases transmitted to the Government by the Working Group	16
III. Government responses:	
(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	14
(b) Cases clarified by the Government's responses <u>a/</u>	6

a/ Persons at liberty: 6

16. Other countries

281. In November 1984 the Working Group transmitted one case of an enforced or involuntary disappearance to the Government of Togo. By letters dated 8 August and 18 October 1985 the Government was reminded of this case, but has not replied to the Group's communications.

282. In June and October 1985 the Working Group also transmitted one case of a reported disappearance to the Governments of the Central African Republic and Nepal respectively.

III. INFORMATION CONCERNING ENFORCED OR INVOLUNTARY DISAPPEARANCES
IN SOUTH AFRICA AND NAMIBIA REVIEWED BY THE WORKING GROUP

Information reviewed and transmitted to the Government of South Africa

283. The Working Group's activities in relation to enforced or involuntary disappearances in South Africa and Namibia are recorded in its five previous reports to the Commission on Human Rights.^{28/} Between 1981 and 1983 the Working Group transmitted to the Government nine cases of enforced or involuntary disappearances which reportedly occurred between 1976 and 1982. In 1984 the Government clarified one of these cases. In accordance with the decision taken by the Working Group at its sixteenth session, the Government was reminded of the outstanding eight cases.

Information and views received from the Government of South Africa

284. By letter dated 8 July 1985 the Permanent Representative of South Africa to the United Nations Office at Geneva provided the Group with more information on one case to which the Permanent Representative had already referred in 1984 (see E/CN.4/1985/15, para. 287). He stated, inter alia,

"You were advised in my letter of 23 November 1984 that the Supreme Court of the South West Africa/Namibia Division was at the time considering an application for an appeal against the finding on 14 June 1983 by Mr. Justice C.J. Mouton in the case of Mrs. (name provided) by the Minister of Police that on the balance of probabilities Mr. (name provided) had died on or about 5 August 1980 at Opuwa, South West Africa/Namibia.

The application was dismissed by the Supreme Court on 14 December 1984, whereafter applicants addressed a direct petition to the Chief Justice of the South African Appellate Division in terms of Art. 21 of Act 59 of 1959. The Chief Justice also found insufficient grounds to justify the petition which he in turn dismissed."

Information and views received from organizations representing relatives of missing persons

285. The International Defence and Aid Fund for Southern Africa (IDAF) brought to the Working Group's attention a compilation of newspaper cuttings on disappearances reported to have occurred in Southern Africa and on selected issues covering the period January to August 1985. The organization drew the attention of the Group to the fact that in the current period of unrest it was becoming increasingly difficult to establish more precise data.

Statistical summary

I. Outstanding cases	7
II. Total number of cases transmitted to the Government by the Working Group	9
III. Government responses:	
(a) Total number of responses received from the Government relating to cases transmitted by the Working Group	9
(b) Cases clarified by the Government's responses ^{a/}	2

^{a/} In prison : 1
Declared dead by court decision: 1.

IV. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

286. In conclusion of this report, the Working Group would like to share a few thoughts with the Commission, in addition to those presented in previous reports. The Group's findings over the past year have certainly not given it any cause to view the situation of disappearances around the world with more optimism than before. On the contrary, the Working Group is of the opinion that the number of people victimized by this phenomenon is still increasing in proportion to the population in the affected areas. In any event, the Group remains convinced that disappearances together with arbitrary executions and torture constitute one of the most wicked violations of human rights which warrant the unstinted attention of the world community.

287. As has been observed by the Working Group on more than one occasion, the occurrence of disappearances appears to be closely linked to the level of political and social stability in a given country. Social upheaval and political unrest, once they have engendered revolt and repression or, worse, have led to terror and counter-terror, set the stage on which disappearances and concomitant human rights violations have long been known to thrive.

288. The grief and anguish, not to mention the social and economic hardship, which are the sorry lot of relatives of missing persons, have long been recognized as a corollary of this mode of repression. It is all the more disconcerting, therefore, to see that relatives are being victimized even further. Indeed, an increasing number of reports indicate that family members, particularly those who have organized themselves or have otherwise been strident in their quest for justice, have become the targets of harassment and ill-treatment. In some cases relatives have even been callously killed or have disappeared themselves. This practice of essentially adding one injury to another is a particularly despicable one, which deserves to be condemned by the Commission on Human Rights.

289. Another emerging trend which the Working Group was able to observe is the disappearance of persons while serving a sentence in gaol. There appears to be no credible ground for a government to exculpate itself from a disappearance under those circumstances. The Group intends to keep a watchful eye on this development.

290. In its last report, the Working Group recommended to the Commission that it consider drafting an international instrument on enforced or involuntary disappearances. During the past year the Group was again asked by the Latin American Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM) to study that organization's draft of such a convention and further its consideration by other United Nations organs. Since the Working Group is obviously not the appropriate body to conduct such a study, the Commission may wish to give urgent consideration to this request and cause the necessary study to be undertaken in an appropriate forum, such as the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.

291. The Working Group wishes to stress the importance of greater awareness of its object and purpose as well as its modus operandi. Such awareness may avoid erroneous ideas about what the Group was set up to do and prevent false

expectations about what it could reasonably achieve. Furthermore, it may prompt organizations that have hitherto been unaware of the Group's existence to seek a working relationship with it. Enhanced publicity could thus lead to a more diversified flow of information, particularly from those corners of the world where the human rights infrastructure - in the form of non-governmental organizations, national commissions and the like - is as yet rather frail. This, in turn, might remedy the geographical imbalance that has inevitably crept into the Group's output, dependent as it is on the influx of denunciations from independent sources. Following many examples within the United Nations system, the Working Group therefore wishes to improve its public relations, an idea which was discussed during the Commission's forty-first session and attracted widespread support at the time. The Group intends to do so with the help of established channels of communication in the United Nations Secretariat, notably the Department of Public Information.

292. Last year, the Working Group proposed to the Commission that, if it decided to extend the Group's mandate, it should consider doing so for a period of two years instead of one, on the understanding that the Group's annual reporting cycle be maintained. The main reason for that proposal was a desire to stabilize and thus improve the Secretariat services available to the Working Group. The supporting arguments are to be found in paragraph 89 of the previous report. The Group is seeking a two year mandate not only on the basis of a firm precedent elsewhere in the United Nations, but also in view of the complexities involved in the performance of its essentially long term task. Therefore, the Group wishes to reiterate its proposal, bearing in mind also that in resolution 1985/20 the Commission decided to come back to that question at its forty-second session.

293. In addition to recommendations made in previous reports, the Working Group recommends that this year the Commission on Human Rights:

(a) Condemn the practice of violating human rights of relatives of missing persons;

(b) Request the Subcommittee on Prevention of Discrimination and Protection of Minorities to advise the Commission on the need for and feasibility of drafting an international instrument on enforced or involuntary disappearances;

(c) Reiterate its appeal to Governments to respond more promptly to requests from the Working Group for information on the measures they have taken in pursuance of General Assembly resolution 33/173;

(d) Consider again the possibility of renewing the Working Group's mandate for a period of two years, while maintaining its obligation to report to the Commission on Human Rights annually.

V. ADOPTION OF THE REPORT

294. At the last meeting of its eighteenth session, on 13 December 1985, the present report was adopted and signed by the members of the Working Group on Enforced or Involuntary Disappearances:

Ivan Tosevski (Yugoslavia)
Chairman/Rapporteur

Toine van Dongen (Netherlands)

Jonas K.D. Foli (Ghana)

Agha Hilaly (Pakistan)

Luis A. Varela Quirós (Costa Rica)

NOTES

1/ E/CN.4/1435, paras. 47-78 and annexes IX-XII; E/CN.4/1492, paras. 33-52 and annexes IV-VII; E/CN.4/1983/14, paras. 22-37; E/CN.4/1984/21, paras. 22-44; E/CN.4/1984/21/Add. 1, paras. 3-6 and E/CN.4/1985/15, paras. 91-116.

2/ E/CN.4/1435, para. 165; E/CN.4/1492, paras. 58-61; E/CN.4/1983/14, paras. 102-104; E/CN.4/1984/21, paras. 123-125 and E/CN.4/1985/15, paras. 240-244.

3/ E/CN.4/1985/15, paras. 248-256 and E/CN.4/1985/15/Add.1, para. 3.

4/ E/CN.4/1435, paras. 20, 36 and 79-83; E/CN.4/1492, paras. 65-66; E/CN.4/1983/14, paras. 43-46; E/CN.4/1984/21, paras. 49-51; E/CN.4/1985/15, paras. 127-130 and E/CN.4/1985/Add. 1, para. 4.

5/ E/CN.4/1435, paras. 84-101 and annex XIII; E/CN.4/1435/Add.1, para. 6; E/CN.4/1492, paras. 67-87 and annexes IX-XI; E/CN.4/1492/Add. 1, paras. 11, 12 and 19; E/CN.4/1983/14, paras. 47-56; E/CN.4/1984/21, paras. 52-61; E/CN.4/1984/21/Add.1, para. 8; E/CN.4/1985/15, paras. 131-141 and E/CN.4/1985/15/Add.1, para. 5.

6/ E/CN.4/1435, paras. 107-116 and annex XIV; E/CN.4/1492, paras. 91-102 and annexes XII-XIII; E/CN.4/1492/Add.1, para. 19; E/CN.4/1983/14, paras. 57-63; E/CN.4/1984/21, paras. 62-68; E/CN.4/1985/15, paras. 142-157 and E/CN.4/1985/15/Add.1, para. 8.

7/ E/CN.4/1492, paras. 106-109; E/CN.4/1492/Add.1, paras. 13 and 19; E/CN.4/1983/14, paras. 64-69; E/CN.4/1984/21, paras. 69-74; E/CN.4/1984/21/Add.1, para. 10; E/CN.4/1984/15, paras. 158-170 and E/CN.4/1984/15/Add.1, paras. 9-10.

8/ E/CN.4/1435, paras. 117-121; E/CN.4/1492, paras. 110-113; E/CN.4/1983/14, paras. 70-73; E/CN.4/1984/21, paras. 75-77; E/CN.4/1984/21/Add.2, para. 1; E/CN.4/1985/15, paras. 171-174.

9/ E/CN.4/1492, paras. 114-117; E/CN.4/1983/14, paras. 116-120; E/CN.4/1984/21, paras. 132-133; E/CN.4/1985/15, paras. 175-179; E/CN.4/1985/15/Add.1, paras. 11-12.

10/ E/CN.4/1983/14, para. 121; E/CN.4/1984/21, paras. 78-84 and E/CN.4/1985/15, paras. 180-186

11/ E/CN.4/1435 para. 131-144 and annex XV; E/CN.4/1435/Add.1, para. 3; E/CN.4/1492, paras. 122-130 and annex XIV; E/CN.4/1492/Add.1, para. 14; E/CN.4/1983/14, paras. 82-86; E/CN.4/1984/21, paras. 85-91; E/CN.4/1984/21/Add.2, paras. 3-4; E/CN.4/1985/15, paras. 187-204 and E/CN.4/1985/Add. 1, para. 14.

12/ E/CN.4/1985/15, paras. 211-224 and E/CN.4/1985/Add.1, paras. 15-18.

13/ E/CN.4/1435, paras. 145-149; E/CN.4/1492, paras.131-137; E/CN.4/1492/Add.1, paras. 15-16; E/CN.4/1983/14, paras.87-90; E/CN.4/1984/21, paras.92-98; E/CN.4/1984/21/Add.1, para. 11; E/CN.4/1985/15, paras. 225-231 and E/CN.4/1985/15/Add.1, paras.19-20.

14/ E/CN.4/1492, paras. 138-139; E/CN.4/1983/14, para. 128; E/CN.4/1984/21, para. 166 and E/CN.4/1985/15, paras. 274-276.

15/ E/CN.4/1435, paras. 150-163 and annex XVI; E/CN.4/1935/Add.1., para. 5; E/CN.4/1492, paras. 142-147 and annex XVI; E/CN.4/1492/Add.1, para. 18; E/CN.4/1983/14, paras. 91-95; E/CN.4/1984/21, paras. 99-108 and E/CN.4/1985/15, paras. 232-237.

16/E/CN.4/1984/21, paras. 121-122; E/CN.4/1985/15, paras. 238-239.

17/E/CN.4/1435, para. 164; E/CN.4/1492, paras. 53-57; E/CN.4/1983/14, paras. 38-42; E/CN.4/1984/21, paras. 45-48; E/CN.4/1984/21/Add.1, para. 7; E/CN.4/1985/15 paras. 117-126 and E/CN.4/1985/15/Add.1, para. 2.

18/E/CN.4/1435, paras. 40-42; E/CN.4/1435/Add.1, para. 6; E/CN.4/1492, paras. 62-64; E/CN.4/1983/14, paras. 105-108; E/CN.4/1984/21, paras. 126-128; E/CN.4/1985/15, paras. 245-247.

19/ E/CN.4/1435, paras. 102-106; E/CN.4/1492, paras. 88-90; E/CN.4/1983/14, paras. 109-111; E/CN.4/1985/15/Add.1, paras. 6-7.

20/ E/CN.4/1983/14, paras. 112-115; E/CN.4/1984/21, paras. 129-131; E/CN.4/1985/15, paras. 257-258.

21/ E/CN.4/1435, paras. 122-130; E/CN.4/1492, paras. 120-121; E/CN.4/1492/Add.1, paras. 2-9; E/CN.4/1983/14, paras. 74-81 and E/CN.4/1485/15, paras. 263-270.

22/ E/CN.4/1983/14, paras. 122-123; E/CN.4/1984/21, paras 134-136; E/CN.4/1985/15, paras 271-273 and E/CN.4/1985/15 Add.1, para. 13.

23/ E/CN.4/1985/15, para. 273 and E/CN.4/1985/15 Add.1, para 13.

24/ E/CN.4/1935, para. 173; E/CN.4/1435/Add.1, para. 4; E/CN.4/1984/21, paras. 137-141; E/CN.4/1985/15, paras. 205-210.

25/ E/CN.4/1983/14, para. 125; E/CN.4/1984/21, paras. 142-143 and E/CN.4/1985/15, paras. 277-278.

26/ E/CN.4/1492, paras. 140-141; E/CN.4/1492/Add.1, para. 17; E/CN.4/1985/15, paras. 279-283 and E/CN.4/1985/15/Add.1, para. 21.

27/ E/CN.4/1492, paras. 148-151; E/CN.4/1983/14, para. 126; E/CN.4/1984/21, paras. 144-145;

28/ E/CN.4/1435, paras. 175-183; E/CN.4/1492, paras. 158-163; E/CN.4/1983/14, paras. 96-100; E/CN.4/1984/21, paras. 109-120; E/CN.4/1984/21/Add.1, paras. 12-16; E/CN.4/1985/15, paras. 285-290.

Annex I

GENERAL ASSEMBLY RESOLUTION 40/147*/

Question of enforced or involuntary disappearances

The General Assembly,

Recalling its resolution 33/173 of 20 December 1978 concerning disappeared persons, and its resolution 39/111 of 14 December 1984 on the question of enforced or involuntary disappearances,

Deeply concerned about the persistence, in certain cases, of the practice of enforced or involuntary disappearances,

Expressing its profound emotion at the anguish and sorrow of the families concerned, who should know the fate of their relatives,

Convinced of the importance of implementing the provisions of its resolution 33/173 and of the other United Nations resolutions on the question of enforced and involuntary disappearances, with a view to finding solutions for cases of disappearances and helping to eliminate such practices,

Bearing in mind Commission on Human Rights resolution 1985/20 of 11 March 1985, in which the Commission decided to extend for one year the term of the mandate of the Working Group on Enforced and Involuntary Disappearances, and Economic and Social Council decision 1985/142 of 30 May 1985, in which the Council approved the Commission's decision,

1. Expresses its appreciation to the Working Group on Enforced and Involuntary Disappearances for the humanitarian work it has done and to those Governments that have co-operated with it;
2. Welcomes the decision of the Commission on Human Rights to extend for one year the term of the mandate of the Working Group, as well as to consider at its forty-second session the possibility of extending to two years the term of the mandate of the Working Group;
3. Also welcomes the provisions made by the Commission on Human Rights in its resolution 1985/20 to enable the Working Group to fulfil its mandate with even greater efficiency;

*/ The final edited text of this resolution will be published in Official Records of the General Assembly, Fortieth Session, Supplement No.53 (A/40/53).

4. Appeals to all Governments concerned to provide the Working Group and the Commission on Human Rights with the full co-operation warranted by their strictly humanitarian objectives and their working methods based on discretion;

5. Encourages the Governments concerned to consider with special attention the wish of the Working Group, when such a wish is expressed, to visit their country, thus enabling the Working Group to fulfil its mandate even more effectively;

6. Calls upon the Commission on Human Rights to continue to study this question as a matter of priority and to take any step it may deem necessary to the pursuit of the task of the Working Group when it considers the report to be submitted by the Group at its forty-second session;

7. Renews its request to the Secretary-General to continue to provide the Working Group with all necessary assistance.

116th plenary meeting
13 December 1985

Annex II

QUESTIONNAIRE ON THE IMPLEMENTATION OF GENERAL ASSEMBLY
RESOLUTION 33/173 AND REPLIES RECEIVED THEREON

The text of the questionnaire reads as follows:

1. Have any special measures been adopted for the purpose of investigating reported cases of enforced or involuntary disappearances? and/or have any resources been allocated to such investigations?
2. Explain the procedure and powers of the judiciary, and/or of any specialized organs or institutions which may have been established, to investigate cases of disappearances or allegations of unacknowledged arrest or detention of persons by the security authorities or by the armed forces, including any special provisions adopted for areas under state of siege or emergency.
3. What steps have been taken to ensure speedy and impartial investigations?
4. How many denunciations of cases of disappearances have been received by your Government during the past five years and in how many cases has the investigation led to a clarification of the person's fate or whereabouts?
5. Describe any available procedures such as habeas corpus, amparo, exhibición personal, or similar petitions, aimed at determining the fate or whereabouts of missing persons and indicate how much time is usually required to process such petitions.
6. How many such petitions have been filed during the past five years and in how many instances has this led to the discovery of the person's fate or whereabouts?
7. What legal provisions exist to ensure that law enforcement and security authorities or organizations are fully accountable for unjustifiable excesses which might lead to enforced or involuntary disappearances and to other violations of human rights?
8. Are there any cases of criminal offences committed by law enforcement officials or members of the security and armed forces in relation to enforced or involuntary disappearances which have been brought before the courts in the past five years?
9. What steps have been taken to co-operate with other Governments, relevant United Nations organs, specialized agencies, intergovernmental organizations and humanitarian bodies in a common effort to search for, locate or account for missing persons in the event of reports of enforced or involuntary disappearances?

A. REPLIES RECEIVED FROM GOVERNMENTS

Reply from the Government of Colombia:

1. In the context of the responsibilities conferred on him by article 143 of the Constitution, the Attorney-General of the Republic of Colombia established a number of committees, including the Human Rights Commission, for the purpose of investigating and controlling acts committed by members of the armed forces and national police in the performance of their duties with extensive powers to proceed with investigations of acts in violation of human rights, such as enforced or involuntary disappearances, ill-treatment and torture, arbitrary and unlawful detention and, in general, acts that constitute an abuse of authority (annex 1)*/.

The Assistant Attorney-General for the Armed Forces assigned to one of his lawyers the task of "ascertaining the truth of reports relating to the alleged disappearance of individuals in acts attributed to members of the armed forces".

Recently, two representatives of the Standing Committee for the Defence of Human Rights and two representatives of the Association of Relatives of Disappeared Persons, both private organizations, were admitted to the Human Rights Commission.

2. As far as the power of the judiciary is concerned, at the present time there is no criminal classification that completely fits the acts that constitute enforced or involuntary disappearances. In the event of relatively typical cases, criminal justice has been guided by the analogy of in bonam partem, since without infringing the universal principle of nullum crimen, nulla poena sine lege, the majority of cases have applied the most appropriate of the rules contained in title X of the Colombian Criminal Code (Decree No. 100 of 1980), which lists offences against the freedom of the individual and other guarantees (art. 268 - 297). In general criminal investigations treat enforced or involuntary disappearances as simple abductions under article 269 of the Criminal Code (see appendix).*/

In addition to the Human Rights Commission of the Office of the Attorney-General, which is a contributory factor in the presidential policy for achieving political peace, attention should be drawn to Decree No. 2711 of 19 September 1982 (annex 2.1) establishing the Advisory Peace Committee of the Colombia Government, article 10 (c) of which identifies as one of its objectives "options for a substantial improvement in justice and the security of the population, both in urban and rural areas, as well as in the vigilance of the Civil Service and the protection of the rights of the community". On 28 March 1984, as a result of the Commission's activities, an agreement was concluded with the largest guerrilla organization in the country, the Revolutionary Armed Forces of Colombia (FARC-EP), in which it "bears witness to the fact that the Government fully intends to remain

*/ The texts of the annexes and the appendix mentioned in this reply are available for consultation, in Spanish only, in the Secretariat files.

committed to its firm objective whereby the protection of the rights of citizens established in the Constitution and laws and the preservation and restoration of public order should be the sole responsibility of the institutional forces of the State on whose professionalism and continuing improvement the tranquillity of the population depends". In order to implement that commitment, the President of the Republic set up, on 31 May 1984, the Monitoring Commission for the Peace Agreements, one of whose objectives is to "work for the restoration of normal conditions for the population in the zones of violence". Amnesty was granted by Law No.25 of 1983 (see annex 2.2).

3. Once the Human Rights Commission had been set up, the Office of the Attorney-General of the Nation adopted the working method of sending his officials directly to those places listed as epicentres of political and social unrest.

The best indication of the speedy and impartial investigations conducted by members of the Human Rights Commission is provided by the report, made available to the Colombian public on 4 February 1983, on the paramilitary group calling itself "Muerte a Secuestradores" (MAS) (Death to Kidnappers), which had a criminal link with members of the army. Lawyers immediately answerable to the Office of the Attorney-General have also been appointed to act as special representatives and to give fresh impetus to criminal proceedings in which members of the security organs appear as trade unionists. Reference may also be made to Decree No. 240 of 4 February 1983, by which the executive branch established posts of senior peace officials and described their functions, all of which are directed towards the rehabilitation of amnestied persons in civilian life with full guarantees for their lives and rights (annex 3.1).

4. We enclose a copy of the report concerning disappearances issued by the Attorney-General to the nation on 20 October 1984. At the present time and within the scope and competence of the Human Rights Commission of the Office of the Attorney-General of the Nation, official cognizance has been taken of 344 cases of disappearances. In the course of the investigations, it transpired that 71 people were still alive and 67 people were dead. Thus, it has been possible to clarify 40.1 per cent of all the complaints received. In view of the fact that, out of this large number of disappearances, certain cases are of major importance at the international level, we invite attention to the statistical table on preliminary investigations concerning missing persons drawn up by the Office of the Attorney-General (annex 4.2).

Moreover, on 10 September 1985, the Government received a further report concerning 159 cases of missing persons made available by the United Nations Working Group set up for that purpose. The Attorney-General will confirm, by letter, that until the date of receipt, the Human Rights Commission had cognizance of only 34 of those persons, 11 of whom were found to be alive, 4 dead, with the remaining 19 still under investigation. For better systematization and comprehension, information of major interest will be found in the statistical tables, which are attached. (annex 4.3).

5. The remedy of amparo, or protection of individual freedom, enacted by means of habeas corpus, has obvious constitutional justification in our legal system (art. 23 of the Constitution). Decree No.409 of 1971 or the Code of Criminal Procedure regulates its justification, exercise and exceptions to its use in articles 417 to 425.

Habeas corpus may be invoked by any person deprived of his liberty for more than 48 hours, if he considers the law to have been breached in his case. Accordingly, he may address a petition directly, or another person acting on his behalf or the representative of the Office of the Attorney-General may do so. The petition "shall be reviewed forthwith and shall not be reserved for separate assessment. The court to which it is addressed shall take prior cognizance of it".

In the event that the application should appear to be inadmissible, the court shall immediately request the appropriate authorities to state, within a period of 24 hours, in writing, the date of arrest and the reasons therefor. The court may also question the injured party personally if it considers such a course to be appropriate. If the reports or any other medium confirm that the person is being held or detained without the legal formalities "the court shall order his immediate release and shall institute the appropriate criminal investigation". To ensure strict compliance by that machinery, the legislator provides that any "official who impedes the handling of a writ of habeas corpus, fails to process it immediately, or who fails to take action within the specified period of time, shall, by that act alone, incur liability for arbitrary detention, without prejudice to the penalty of dismissal which shall be applied by his superior by means of the procedure established for the enforcement of disciplinary sanctions". Title X, "Offences against freedom and other guarantees", of the Criminal Code contains a second chapter that deals exclusively with the punishment of arbitrary detention in articles 272 to 275 (see appendix). No remedy lies against any decision in respect of a writ for habeas corpus.

Article 28 of the National Constitution contains the sole exception to habeas corpus. In order to reaffirm the nation's policy in this delicate matter, Congress adopted Act No.25 of 1983 which is designed to put an end to the violation of human rights through the improper use of article 28 of the Constitution. The full text of the Act appears in annex 2.2.

6. Owing to the short time available for replying, we cannot say how many habeas corpus applications have been filed in Colombia during the last five years since they are usually handled by the criminal courts (a total of 530 offices in the country).

7. In principle, such provisions are to be found in the Constitution. Article 20 states: "Private persons are accountable to the authorities only for violations of the Constitution or the laws. Public officials are accountable on the same ground and also for exceeding their powers or for omissions in the fulfilment of their duties". In order to ensure that

military authorities, security agencies and public officials "are fully accountable for unjustifiable excesses which might lead to enforced or involuntary disappearances and to other violations of human rights", article 8 of the Criminal Code confirms the principle of equality before the law: "Criminal laws shall apply to everyone regardless of any consideration other than those established by law". Consequently, the Criminal Code characterizes offences in the case of persons defined as follows in article 63: "for the purposes of the criminal law, an official employee is any public official or employee, official worker, member of a public corporation or of the armed forces and any other person performing a public duty even temporarily or responsible for a public service". The Criminal Code provides for the following offences committed by such official employees which may lead to the violation of human rights: articles 272 to 275, 279, 286 and 293 (see appendix). Criminal law in general, in particular the articles to which we have just referred, applies to members of the armed forces and the police except where they commit such offences "while on active service and in connection with such service", in which case they are tried by the military criminal court in accordance with article 170 of the Constitution and Decree No. 025 of 11 July 1958 or the Military Criminal Code. The principle established in article 21 of the Constitution also applies to such officials. That article states: "in case of a clear violation of a constitutional provision to the detriment of any person, the order of a superior shall not exempt from responsibility the agent who executed it. This provision does not apply to soldiers on active service, with respect to whom the responsibility shall devolve exclusively on the superior who gave the order". On the basis of these provisions, the disciplinary court has established that some offences committed by military personnel, such as those made public by the Attorney-General as a result of the investigation into the "Muerte a Secuestradores" paramilitary group (see annex 5), fall within the jurisdiction of the special or military courts.

However, members of the armed forces (army, navy and air force) are also subject to a special disciplinary régime provided for by Decree No. 1,776 of 1979, which is intended to ensure that they carry out their duties in exemplary fashion and therefore punishes the slightest shortcoming in the performance of those duties. The Assistant Attorney-General for the Armed Forces is responsible for the corresponding administrative investigation and disciplinary measures. Likewise, members of the police are subject to the provisions of Decree No. 1,835, or rules of discipline of honour, and the specific supervision of the Assistant Attorney-General for the Police, whose office has carried out 242 investigations concerning allegations of torture and ill-treatment and 18 investigations into cases of enforced or involuntary disappearances in the course of the year (see annex 6).

8. Following the investigations carried out by the Human Rights Commission headed by Dr. Jaime Hernández into the "Muerte a Secuestradores" paramilitary group, as stated above criminal proceedings were instituted against a number of members of the army: Lieutenant Colonel Alvaro Hernán Velandia, Lieutenant Colonel Ramón Emillo Gil Bermúdez, Lieutenant Colonel Luis Fernando Ricardo Perdomo, Sergeant Luis Francisco Vega Rodríguez, Sergeant Marcos Cristián Jaime Díaz and Sergeant Rafaelino Hernández.

9. Colombia is a signatory to the Charter of the United Nations, which contains an article stating that one of "the purposes of the United Nations" is "to achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all". To further this purpose, a number of international courts have been established with jurisdiction and powers to deal with complaints of human rights violations in the States parties to the relevant treaties.

Colombia has signed and ratified the following international instruments:

1. International Covenant on Economic, Social and Cultural Rights;
2. International Covenant on Civil and Political Rights;
3. Optional Protocol to the International Covenant on Civil and Political Rights;
4. Convention on the Prevention and Punishment of the Crime of Genocide;
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed on 10 April 1985 but not yet ratified by Congress.

In addition to the fact that Colombia has acceded to these international instruments, on 19 June 1985 Dr. Guillermo Fernández de Soto, Deputy Minister for Foreign Affairs, made a statement on behalf of the Government of Colombia accepting the mandatory jurisdiction of the Inter-American Court of Human Rights.

It may be recalled that the Inter-American Court has two established functions, namely, to hear disputes and to give advisory opinions.

The importance of this fact should be underlined, since the effectiveness of a judicial system relating to human rights depends fundamentally on the powers conferred upon the body responsible for ensuring the proper implementation and interpretation of the rights established by treaty instruments and on the access available to that body by those whose rights have been violated.

In view of the fact that the powers and functions of an international judicial body concern matters normally within the internal jurisdiction of States, they must be set out in a treaty instrument which established the obligations which the States Parties take upon themselves. In the case of the Inter-American Court of Human Rights, the Court's powers and functions are governed by the American Convention on Human Rights.

Reply from by the Government of Peru

1. In view of complaints regarding alleged disappearances in Peru, for the purpose of dealing with the question, co-ordinating activities and exchanging information on the complaints received, an ad hoc Multisectoral Commission was set up, consisting of representatives from the:

Ministry of Foreign Affairs;
Ministry of Justice;
Office of the Attorney-General;
Ministry of the Interior;
Joint Command of the Armed Forces; and
National Electoral Board.

The President of the Republic has also announced the establishment of a Peace Commission, and one of its tasks will be to build bridges by calling on those who engage in terrorist violence and pursuing a dialogue to persuade them to return to democracy. A response to this appeal, which is the wish of the overwhelming majority of Peruvians, as shown by the massive participation in the recent general elections, will help to clear up some of the alleged disappearances, bearing in mind particularly that some of these allegedly missing persons have gone underground to carry out their terrorist activities.

2. In view of the special situation in the emergency area as a result of terrorist activities, the lawfully established Government, with the aim of safeguarding the human rights of the population as well as its property, was compelled to place some provinces under a state of emergency, in conformity with the relevant constitutional powers. This state of emergency, although it does suspend certain constitutional safeguards, does not in any way prevent or impede the work of the judiciary. Thus, it can be seen that many of the complaints about alleged disappearances which have been transmitted to the Working Group have also been received and duly recorded in the provincial public prosecutors' departments. The powers held by the judiciary in the emergency area are still the judiciary's powers under the Constitution, without any restriction, and the representatives of the Working Group who visited Peru by official invitation were able to ascertain this situation on the spot.

3. The main purpose of setting up the Multisectoral Commission has been to ensure transmittal to the competent authorities of the complaints submitted. Unfortunately, the desired speediness has fallen off because, in many instances, the requisite minimum of information about the alleged missing persons has not been supplied, such as the number of the electoral card or military service card, the names of the parents and so on, in other words, the additional information needed for more rapid processing of a complaint and for surer identification of the persons said to have disappeared. On other occasions, moreover, the names have been transmitted inaccurately, and there have also been cases of repetition, causing problems in the searches in the corresponding registers.

Despite this, as soon as a complaint is received, the Ministry of Foreign Affairs transmits it to the Office of the Attorney-General, the Joint Command of the Armed Forces, the Ministry of Justice and the National Electoral Board, asking for any relevant information to be supplied without delay.

4. Peru has received 428 denunciations through the Working Group about persons who have allegedly disappeared. Of these, 49 persons reregistered on the electoral roll after the date of their alleged disappearance. The Ministry of Foreign Affairs has forwarded to the Working Group photocopies of the electoral reregistration in each case. If the Working Group were to supply more information about the other cases, it should be possible to clear up a large number of complaints. Searches in the electoral registers have revealed a number of persons with the same names and surnames. In the absence of the additional information mentioned in item 3 above, it has not been possible to consider these cases as solved. Again, a census is being conducted of the prison population in Peru and this may perhaps shed some light on the matter.

It must be remembered that, on some occasions, when routine arrests have been made in the legal framework of the state of emergency, the members of the family promptly make a complaint of disappearance; when the persons are subsequently released, the complaint is not withdrawn either from the public prosecutors' departments or from the Working Group, so that the Peruvian authorities and the Working Group continue to consider the cases as disappearances, thereby artificially inflating the lists.

5. Habeas corpus and the remedy of amparo are provided for in article 295, title V (Constitutional safeguards), of the Peruvian Constitution. The Law on the subject was enacted by Congress on 8 December 1982.

Habeas corpus is available whenever the freedom of the individual, in terms of the freedoms established by the Constitution, is violated or threatened. As regards procedure, the injured person or any other person acting in his name can initiate the proceedings without having to produce power of attorney, use stamped paper, submit reports, pay duties or comply with any other formalities. The suit may be initiated either in writing or verbally. In the latter case, it is recorded by the judge or the clerk of the court, subject only to the requirement of a brief description of the facts in order to proceed further. Action may also be taken by telegram, provided the applicant is identified.

As to the remedy of amparo, it is available for the defence of the rights and freedoms of the individual guaranteed by the Constitution. This remedy is available only after all other remedies have been exhausted. Bearing in mind the importance of these legal provisions, it has been considered relevant to annex a copy of the above-mentioned L

6. As the Working Group is aware, habeas corpus and amparo proceedings are regulated by Law No. 23506. For any cases that arise during the state of emergency, it must be borne in mind that such proceedings have been suspended as provided in article 38 of the above-mentioned Law.

7. The legal provisions in force are to be found in the Constitution, the laws and the regulations therein. The state of emergency in the security area does not in any sense mean that the armed forces and the police, whose task it is to protect citizens from terrorist acts, are above the law or can disregard constitutional rights. Any excesses which may have been committed have been referred to the judiciary, the independence of which is absolute.

8. Whenever the authorities have been informed of excesses committed by the forces of law and order, a thorough investigation has been carried out and criminal proceedings have been initiated against the guilty parties. It must be remembered that on many occasions in which accusations have been made against officials of the forces of law and order, it has been subsequently found that the criminal act was committed by terrorists using army or police uniforms.

A few members of the police forces are at present before the Peruvian judicial authorities on formal charges of having committed excesses, brutalities and other acts in violation of human rights.

In this connection, it is worth stressing that the President of the Republic, in his message to the nation, stated: "The law will also be applied with severity to those who violate human rights by killing, extrajudicial executions and torture, as well as by abuse of their powers, since the fight against barbarity does not call for a lapse into barbarity".

9. Peru, as a country which defends and observes human rights, cannot fail to take action on such reports. Against this background, it considered it relevant and necessary to invite a delegation of the Working Group to make an official visit to the country. This mission, during its stay in Peru, was afforded all appropriate facilities, visited the emergency area and was able to talk with all the national authorities the Working Group wished to meet.

Moreover, almost immediately afterwards, Peru received a mission from a non-governmental organization, the International Commission for the Defence of Human Rights, headed by Adolfo Pérez Esquivel, the Nobel Peace Prize winner, and consisting of nationals of various countries of the world. This mission too was given all appropriate facilities and was able to travel throughout Peru and to meet the persons it wished. The members were also received by high-ranking authorities of the Government of the time.

*/ Available for consultation in Spanish in the Secretariat files

Reply provided from the Government of the Philippines with regard to questions 5, 6 and 7 of the questionnaire

5. Under the Rules of Court of the Philippines, the writ of habeas corpus applies to all cases of illegal confinement or detention by which any person is deprived of his liberty and all cases where the rightful custody of any person is withheld from the person entitled thereto (sect.1, rule 102, Rules of Court).

The essential object and purpose of the writ of habeas corpus is to inquire into all manner of involuntary restraint, as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal (Villavicencio vs. Lukban, 39 Phil. 778). Habeas corpus therefore is not a remedy for determining the fate or whereabouts of missing persons.

It is when a missing person is believed to be in the custody or detention of an identified person that habeas corpus is made use of as a remedy for the release of such person from custody or detention.

The writ of habeas corpus may be granted on any day and at any time by the Supreme Court or any member thereof, by the Intermediate Appellate Court or any member thereof in the instances authorized by law and by a Regional Trial Court or Judge thereof (sect.2, rule 102, Rules of Court).

The application for the writ shall be by petition, signed and verified either by the party for whose relief it is intended or by some person on his behalf and shall set forth: (a) that the person in whose behalf the application is made is imprisoned or restrained of his liberty; (b) the officer or name of the person by whom he is so imprisoned or restrained; or, if both are unknown or uncertain, such officer or person may be described by an assumed appellation, and the person who is served with the writ shall be deemed the person intended; (c) the place where he is so imprisoned or restrained, if known; and (d) a copy of the commitment or cause or detention of such person, if it can be procured without impairing the efficiency of the remedy, or, if the imprisonment or restraint is without any legal authority, such fact shall appear (sect.3, rule 102, Rules of Court).

While no time frame is provided in the Rules of Court for the issuance of the writ, a court or judge authorized to grant the writ must, when a petition is presented and it appears that the writ ought to be issued, grant the same forthwith, and immediately thereupon the clerk of the court shall issue the writ under the seal of the court; in case of emergency, the judge may issue the writ under his own hand, and may depute any officer or person to serve it (see sect.5, rule 102, Rules of Court). This mandate of the Rules of Court clearly indicates that habeas corpus cases are to be given immediate consideration by the court or judge.

"Amparo" and "exhibición personal" are not provided for in the Philippines Rules of Court. Hence, we are not in a position to make the comment desired.

6. We find it unnecessary to react to this question in view of our comment in item 5. Needless to reiterate, habeas corpus is not the legal remedy for the discovery or determination of a missing person's fate or whereabouts.

However, we may state that there is hardly any difficulty in obtaining a writ even from the Supreme Court itself. The practice has been that once a petition is filed, the writ is issued as a matter of course.

7. The following provisions of the Philippine Constitution and statutes make law enforcers fully accountable for acts constituting violations of human rights:

1. Philippine Constitution, article XIII

"Sect. 1. Public Office is a public trust. Public Officers and employees shall serve with the highest degree of responsibility, integrity, loyalty, and efficiency, and shall remain accountable to the people."

"Sect. 5. The Batasang Pambansa shall create a special court to be known as Sandiganbayan which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offences committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law."*

"Sect. 6. The Batasang Pambansa shall create an office of the ombudsman, to be known as Tanodbayan, which shall receive and investigate complaints relative to public office, including those in government-owned or controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body."**

*/ To implement the above-quoted provisions the President has promulgated Presidential Decree No.1468, creating the "Sandiganbayan". This decree was revised by P.D. No.1606.

**/ To implement the above-quoted provisions the President has promulgated Presidential Decree No.1487, creating the Office of the "Tanodbayan". This Decree was revised by P.D. No.1607 and further revised by P.D. No.1630.

2. Revised Penal Code of the Philippines

"Art. 124. Arbitrary detention - Any public officer or employee who, without legal grounds, detains a person, shall suffer:

1. The penalty of arresto mayor in its maximum period to prisión correccional in its minimum period, if the detention has not exceeded three days;

2. The penalty of prisión correccional in its medium and maximum periods, if the detention has continued more than three but not more than fifteen days;

3. The penalty of prisión mayor, if the detention has continued for more than fifteen days but not more than six months; and

4. That of reclusión temporal, if the detention shall have exceeded six months.

The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be legal grounds for the detention of any person.

"Art. 125. Delay in the delivery of detained persons. The penalty provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of six hours, for crimes or offences punishable by light penalties, or their equivalent; nine hours, for crimes or offences punishable by correctional penalties, or their equivalent; and eighteen hours, for crimes or offences punishable by afflictive or capital penalties, or their equivalent: Provided, however, that the President may, in the interest of national security and public order, authorize by Executive Order longer periods, which in no case shall exceed 30 days, or for as long as, in the determination of the President, the conspiracy to commit the crime against national security and public order continues or is being implemented, for the delivery of persons arrested for crimes or offences against public order namely: articles 134, 136, 138, 139, 141, 142, 143, 144, 146 and 147, and for subversive acts in violation of Republic Act. No.1700, as amended by Presidential Decree No.885, in whatever form such subversion may take, as well for the attempt on, or conspiracy against, the life of the Chief Executive of the Republic of the Philippines, that of any member of his family, or against the life of any member of his Cabinet or that of any member of the latter's family; the kidnapping or detention, or, in any manner, the deprivation of the Chief Executive of the Republic of the Philippines, any member of his family, or any member of his Cabinet or members of the latter's family, of their liberty, or the attempt to do so; the crime of arson when committed by a syndicate or for offences involving economic sabotage also when committed by a syndicate, taking into consideration the gravity of the offences or acts committed, the number of persons arrested, the damage to the national economy or the

degree of the threat to national security or to public safety and order, and/or the occurrence of a public calamity or other emergency situation preventing the early investigation of the cases and filing of the corresponding information before the civil courts.

"Art. 126. Delaying release. The penalties provided for in article 124 shall be imposed upon any public officer or employee who delays for the period of time specified therein the performance of any judicial or executive order for the release of a prisoner or detention prisoner, or unduly delays the service of the notice of such order to said prisoner or the proceedings upon any petition for the liberation of such person.

"Art. 127. Expulsion. The penalty of prisión correccional shall be imposed upon any public officer or employee who, not being thereunto authorized by law, shall expel any person from the Philippine Islands or shall compel such person to change his residence.

"Art. 128. Violation of domicile. The penalty of prisión correccional in its minimum period shall be imposed upon any public officer or employee who, not being authorized by judicial order, shall enter any dwelling against the will of the owner thereof, search papers or other effects found therein without the previous consent of such owner, or having surreptitiously entered said dwelling, and being required to leave the premises, shall refuse to do so.

"If the offence be committed in the night-time or if any papers or effects not constituting evidence of a crime be not returned immediately after the search made by the offender, the penalty shall be prisión correccional in its medium and maximum periods.

"Art. 129. Search warrants maliciously obtained and abuse in the service of those legally obtained. In addition to the liability attaching to the offender for the commission of any other offence, the penalty of arresto mayor in its maximum period to prisión correccional in its minimum period and a fine not exceeding 1,000 pesos shall be imposed upon any public officer or employee who shall procure a search warrant without just cause, or having legally procured the same, shall exceed his authority or use unnecessary severity in executing the same.

"Art. 130. Searching domicile without witnesses. The penalty of arresto mayor in its medium and maximum periods shall be imposed upon a public officer or employee who, in cases where a search is proper, shall search the domicile, papers or other belongings of any person, in the absence of the latter, any member of his family, or in their default, without the presence of two witnesses residing in the same locality.

"Art. 131. Prohibition, interruption, and dissolution of peaceful meetings. The penalty of prisión correccional in its minimum period shall be imposed upon any public officer or employee who, without ground, shall prohibit or interrupt the holding of a peaceful meeting, or shall dissolve the same.

"The same penalty shall be imposed upon a public officer or employee who shall hinder any person from joining any lawful association or from attending any of its meeting.

"The same penalty shall be imposed upon any public officer or employee who shall prohibit or hinder any person from addressing, either alone or together with others, any petition to the authorities for the correction of abuses or redress of grievances.

"Art. 132. Interruption of religious worship. The penalty of prisión correccional in its minimum period shall be imposed upon any public officer or employee who shall prevent or disturb the ceremonies or manifestations of any religion.

If the crime shall have been committed with violence or threats, the penalty shall be prisión correccional in its medium and maximum periods.

"Art. 235. Maltreatment of prisoners. The penalty of arresto mayor in its minimum period, in addition to his liability for the physical injuries or damage caused, shall be imposed upon any public officer or employee who shall overdo himself in the correction or handling of a prisoner or detention prisoner under his charge, by the imposition of punishments not authorized by the regulations, or by inflicting such punishments in a cruel and humiliating manner.

If the purpose of the maltreatment is to extort a confession, or to obtain some information from the prisoner, the offender shall be punished by prisión correccional in its minimum period, temporary special disqualification and a fine not exceeding 500 pesos, in addition to his liability for the physical injuries or damage caused."

3. Presidential Decree No.971: (providing legal assistance for members of the Integrated National Police who may be charged or service-connected offences and improving the disciplinary system in the Integrated National Police, appropriating funds therefor and for other purposes)

"Sect. 2. Minor offence defined. Minor offence refers to an act or omission not involving moral turpitude but affecting the internal discipline of the Integrated National Police.

In no case shall the following offences be considered as minor: disloyalty to the government; grave misconduct; gross inefficiency or incompetence; oppression; serious irregularities or serious neglect; notoriously disgraceful or immoral conduct; engaging directly or indirectly in partisan political activities; falsification; other crimes involving moral turpitude; directly or indirectly obstructing, defeating or violating the civil rights and liberties of an individual; receiving a fee, gift or other valuable thing from any person who gives

the same in consideration of services or favours received or in the hope or expectation of receiving a favour or better treatment than that accorded to other persons."

"Sect. 4. Preventive suspension by reason of pending criminal case. Whenever a member of the Integrated National Police is accused in the civil or military court of any felony or violation of law by the municipal or city attorney, the provincial or city fiscal, the prosecutor or the Department of Justice or the authorized representatives of the Philippine Constabulary/Integrated National Police, the National Bureau of Investigation or any major service of the Armed Forces of the Philippines, the station or higher commander concerned or the National Police Commission shall immediately suspend the accused from office pending final decision by the court. For this purpose, it shall be the duty of the judge or clerk of court concerned to furnish the station commander or police superintendent and the National Police Commission with the copy of the complaint or information against said member. The preventive suspension of the accused shall remain operative pending the hearing of the case by the court unless sooner lifted by the said Commission by reason of the exigency of the service upon recommendation of the Director General."

"Sect. 8. Removal and suspension of members of the Integrated National Police. Members of the Integrated National Police may be suspended for a period not exceeding one year or removed from the service for misconduct, incompetency, dishonesty, disloyalty to the government, irregularities in the performance of duties, neglect of duty or violation of law, upon written complaint filed under oath with the Hearing Officer of the National Police Commission, in the province or city where such member is assigned: Provided that, once an administrative complaint on any of the grounds herein mentioned is filed under oath with the Hearing Officer or with the commanders referred to in section 1 of this Decree, such commanders may, based upon their own findings of fact and in the interest of the service, suspend the respondent pending resolution of the case unless lifted by the Director General of the National Police Commission: Provided, further, that the commander concerned shall, in case the complaint is filed directly with him, refer the same to the Hearing Officer without unnecessary delay. In provinces where there are no appointed Hearing Officers yet, such complaint shall be filed with the Board of Investigators of the locality".

4. Presidential Decree No. 1487, as revised by P.D. Nos. 1607 and 1630

"Sect. 10. Powers. The Tanodbayan shall have the following powers:

(a) He may investigate, or complaint, any administrative act whether amounting to any criminal offence or not of any administrative agency including any government-owned or controlled corporation;

.....

(e) If after preliminary investigation he finds a prima facie, he may file the necessary information or complaint with the Sandiganbayan or any proper court or administrative agency and prosecute the same;

(f) He may file and prosecute civil and administrative cases involving graft and corrupt practices and such other offences committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office".

"Sect. 18. Prosecution of public personnel or other person. If the Tanodbayan has reason to believe that any public official, employee, or other person has acted in a manner warranting criminal or disciplinary action or proceedings, he shall conduct the necessary investigation and shall file and prosecute the corresponding criminal or administrative case before the Sandiganbayan or the proper court or before the proper administrative agency".

B. REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

Excerpts from the reply provided by the Guatemalan Justice and Peace Committee*

Paragraph 1(a)

Enforced or involuntary disappearances are not a chance occurrence, but are carried out under a deliberate programme. Nor are they acts of any particular Government, but are a continuing phenomenon uninterrupted by changes of government. In this connection, the Inter-American Commission on Human Rights (ICHR) of the Organization of American States, in its report on the human rights situation in Guatemala of 13 October 1981, stated that: "the matter of disappeared persons in Guatemala was one of the most serious problems, given the way in which the disappearances have occurred and the extraordinary number of victims".

Since 1954, real power in Guatemala has come to lie in the hands of the army, whose officers and specialized troops have been instructed and trained in the doctrine of "national security". This is one of the reasons for the failure of successive Governments to devote appropriate resources to searching for disappeared persons and to undertake speedy and impartial investigations. The policy of massacres and devastation pursued by the army under Ríos Montt's command resulted in a toll of thousands of dead, hundreds of villages destroyed, thousands of orphans,^{a/} between 500,000 and 1 million displaced persons, and hundreds of cases of abductions and disappearances, of which the Government recognized only 400 and brought them before the arbitrary Special Tribunals.

Paragraph 1(b)

There has been a failure to comply both with internal and international law and with United Nations recommendations. Through intimidation or force, the judges are prevented from taking investigatory action in accordance with the law. This happens with every kind of human rights violation. In the specific case of enforced or involuntary disappearances, the situation is even worse since this practice is an important component of a political terror programme. On 31 August 1984, magistrates, judges of first instance, justices of the peace and clerks of the courts of the Departments of Sacatepéquez, Chimaltanango and Sololá, complained to Baudilio Navarro Batres, President of the Supreme Court of Justice, about "obstruction of justice, particularly in regard to applications for habeas corpus, by military authorities...".

The Office of the Government Attorney takes part only as public prosecutor in proceedings related to ordinary offences, in which there are prisoners. We may affirm that the Office of the Government Attorney has

*/ The full text of the reply is available for consultation, in Spanish only, in the Secretariat files.

failed to investigate more than 90 per cent of the reports concerning abductions and disappearances, although required to do so by law in all cases. The Judicial Police, an expert police body for technical and scientific investigation, operated as a subsidiary organ of the Office of the Government Attorney. The Judicial Police was disbanded by General Efraín Ríos Montt through Decree Law No.57-83, and the Department of Technical Investigations (DIT) of the National Police was established in its place. In this connection, presidential candidate Vinicio Cerezo stated that DIT personnel had arrested citizens without a warrant from a competent judge, and "are hiring themselves out to the highest bidders to intimidate third parties, even over financial debts".b/.

None of the officials who worked for the Governments of Lucas García and the deposed General Ríos Montt has been tried or sentenced for the human rights violations perpetrated. After the coup d'état, a number of officials of the Lucas García Government were brought before the courts, but for corruption. Most of them are now at liberty. Between 16 August 1983 and September 1984, 189 police officers were taken to court, charged with various ordinary offences. None of these persons was accused of human rights violations in a context of political violence. The massacres, levelling of entire villages, murders, abductions and disappearances continue to go unpunished.

Article 111 of the Fundamental Statute of Government, made into the supreme law by the coup organizers under Decree-Law No. 24-82, provides that "an application for amparo is not admissible in respect of acts and decisions deriving from security measures ordered under the provisions of this Statute". No other article of the Statute or the subsequent Decree-Law defined the scope or meaning of "security measures". This omission opened the way for all kinds of abuses and arbitrary acts. The action of constitutionality was abolished and no similar remedy was introduced for enforcing or ensuring constitutional safeguards. In this way, decree-laws subsequent to the Statute involved violations even of the limited principles of that "supreme law", for example the Decree-Law establishing the Special Tribunals.

The Supreme Court of Justice declared inadmissible the applications for amparo lodged against the verdict of the Special Tribunal of Second Instance by certain prisoners who had been sentenced to death. The decision to declare these applications inadmissible gave legal sanction to the judgements of the secret tribunal and the summary proceedings conducted without a proper defence and a fair trial. It also signified acceptance that those courts were directly subordinate to the Ministry of Defence and not to the judiciary, as provided for by the law of the land. It has been officially recognized that more than 400 persons were brought before these tribunals. Information concerning the whereabouts of these individuals has never been provided.

Instead of devoting appropriate resources to searching for missing persons and undertaking speedy and impartial investigations and ensuring

that those responsible for systematic and massive violations of human rights, including enforced or involuntary disappearances, were accountable in law, the Government introduced Decree-Law No. 33-82, exonerating officials and authorities who had violated human rights under previous régimes. Article 1 of this instrument reads as follows:

"An amnesty is granted for political and related ordinary offences in which persons who, individually or collectively, form or have formed part of the subversive factions which have been taking violent action against the legal and political order of the nation, have participated as principals or accessories, or in respect of which they have committed the offence of abetting. Members of the State security forces who have participated in counter-subversion actions in the course of their duties are covered by the amnesty referred to in the present article."

Paragraph 1(c)

Reports of both our Committee and other Guatemalan human rights organizations and international organizations have established that there is no assurance of the human rights of all persons being fully respected in Guatemala. At the present time the Guatemalan population, especially in the rural areas, is under the iron grip of the military. The military exercises control over the population, the territory and material resources, especially food, through model villages, poles of development, civilian self-defence patrols, road-blocks, murders, abductions and disappearances, and many other forms of repression and terror perpetrated by the army and the security forces.

Regarding ordinary prisoners, the following analysis may be made. Living conditions in the public prisons constitute a violation of their prisoners' fundamental rights. Although the prisons are built to house a given number of detainees, the overcrowding is such that all services are inadequate and limited. The prisoners' situation is further exacerbated by the existence of multiple irregularities, such as drug traffic in the gaols with the participation of the authorities, a lack of hygiene and services, overcrowding, etc. There is evidence that ordinary prisoners are subjected to torture once they are detained so as to induce them to "confess to" their crimes. They are not brought before the courts within the time-limit laid down by the Penal Code, although in the police reports it is stated that the prisoner made a "voluntary confession" or that "as a result of shrewd questioning by his captors" the prisoner admitted the facts.

The death squads have claimed victims among released prisoners who are kidnapped along the route from the prison to the place where they are to pick up transport. Corpses bearing signs of torture have subsequently appeared. Many prisoners have viewed their release with apprehension, especially when it occurs at certain hours of the day.

The existence of clandestine prisons in Guatemala is a proven fact. Various pieces of evidence in our possession point to the basement in the Old Polytechnic (the premises of the former Military Academy) as a

clandestine prison. For example, Mrs. María Cruz López Rodríguez, who was brought before the Special Tribunals, reported the existence of a clandestine prison at that site where she was held together with her sister and Miss Ileana del Rosario Solares Castillo, who so far has remained missing despite the desperate efforts of her relatives. Other witnesses have detected prisons in private houses, inter alia, close to Colón Park in Guatemala City and the El Quiché military base. The Mexican press has carried reports of the existence of clandestine prisons on Guatemalan air force premises. Access to such premises has not been granted to investigators of international institutions for the protection of human rights, let alone to the judicial authorities. Access to the clandestine prisons, their dismantlement and the release of the hundreds of persons undergoing unspeakable punishment in them are an urgent need.

Paragraph 1 (d)

It should be emphasized that, far from co-operating, the Government of Guatemala is concealing information and has set up a programme of disinformation to "improve Guatemala's image abroad", without providing a solution or a response to the constant and massive violations of human rights and fundamental freedoms. The deterioration of Guatemala's image abroad is attributed to propaganda and to a diplomacy lacking appropriate strategies, rather than to systematic human rights violations.

When Dr. Antonio García Borrajo conducted an investigation into enforced or involuntary disappearances in Guatemala, he ascertained the existence of clandestine prisons and many cases of disappearances and abductions. He was threatened on account of his investigations and had to leave the country under the protection of the French Embassy.

Various delegations which have visited the country on official missions have been provided with such patently obvious security arrangements that witnesses cannot approach them without fear and testify without thinking about subsequent reprisals by the security forces or paramilitary bands. The state of terror prevailing in Guatemala has to be borne in mind in order to understand the significance of the presence of security forces.

Recommendations of the Guatemalan Justice and Peace Committee to the Working Group on Enforced or Involuntary Disappearances

(a) Enforced or involuntary disappearances in general

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, or national or social origin, property, birth or other status, we recommend that:

1. It should be recognized that the practice of enforced or involuntary disappearances is inflicting losses on mankind, which thus needs to be rid of this odious scourge through international co-operation;

2. Enforced or involuntary disappearance, whether perpetrated in peacetime or in time of armed conflict, should be declared an offence under international law which ought to be prevented and punished;
3. Anyone who has perpetrated an enforced or involuntary disappearance, whether a high-ranking official, a public servant or a private individual, should be punished;
4. The practice of enforced or involuntary disappearance should be declared a crime against humanity to which the statute of limitations does not apply;
5. International co-operation should be called for in order to identify, arrest, extradite and punish individuals guilty of this crime against humanity.

(b) Enforced or involuntary disappearances in Guatemala

1. The practice of enforced or involuntary disappearances being perpetrated by the Government and its security forces as part of the counter-insurgency struggle which directly infringes on the non-combatant population, both in the towns and in the rural areas, should be condemned.
2. The de facto Government of Guatemala should be called upon to provide satisfactory clarification in respect of all the requests presented by the Working Group on Enforced or Involuntary Disappearances since its establishment.
3. In reporting to the General Assembly and the Commission on Human Rights of the United Nations, the Working Group on Enforced or Involuntary Disappearances should specify what kind of replies it receives from the de facto Government of Guatemala.
4. The military Government of Guatemala should be called upon to dismantle all clandestine prisons existing both on its own military and police premises and in private houses, allowing international observers to verify the process and releasing the prisoners.
5. The military Government of Guatemala should be called upon effectively to disband the armed paramilitary groups which in most cases are responsible for carrying out the enforced or involuntary disappearances.
6. The military Government of Guatemala should be called upon to ensure that its security forces eliminate the practice of physical or psychological torture as a method of interrogation or intimidation.
7. A committee of the Working Group should be appointed to carry out an exhaustive investigation in the country on the whereabouts of detainees reported missing and clandestine prisons. The committee in question should:

- (a) Investigate by all possible means, hearing family members and interested parties both within and outside the country when they can provide information on the identity of the disappeared persons, on those responsible for the disappearances and on the possible whereabouts of the victims;
 - (b) Have access to all State and private premises, including military installations of all kinds, in order to search for missing detainees, accompanied by the President of the Supreme Court of Justice and a notary public.
8. Guarantees should be provided for the safety and physical integrity of the family members of disappeared persons searching for their loved ones.
 9. A standing organ or committee of the Working Group or the United Nations Centre for Human Rights should be set up in Guatemala to deal with petitions from the relatives of disappeared persons, given the seriousness and systematic practice of enforced or involuntary disappearance.
 10. The military Government of Guatemala should be called upon to guarantee the effective exercise of the remedy of habeas corpus and the independence of the judiciary, so that justice can be applied, and access to military installations of all kinds should be ensured.
 11. The military Government of Guatemala should be called upon to provide satisfactory clarifications of the number, names, and present situation of all persons who were brought before the Special Tribunals and who at the moment are still swelling the list of disappeared persons.

Reply by the International Federation of Human Rights

In connection with ways and means of strengthening the application of resolution 33/173, on disappeared persons, the International Federation of Human Rights has the following recommendations to make.

The Federation considers that the corpus of rules relating to international human rights law constitutes a coherent system, the various elements of which converge in solidarity upon a single objective. Consequently, the Federation recommends:

With regard to paragraph 1(a), that Governments should prepare national detention registers, combining the registers from all the places of detention in the country, which should themselves be prepared according to rule 7 of the Standard Minimum Rules for the Treatment of Prisoners, a rule which also protects persons who are detained without having been indicted.

The Working Group should be able at any time to obtain a copy or have access to such registers.

With regard to paragraph 1(b), that the Working Group should remind the Commission of the existence of the draft body of principles for the protection of all persons under any form of detention or imprisonment,^{c/} so that the Commission may act with a view to securing its prompt adoption by the General Assembly. These draft principles provide, inter alia, as follows:

Principle 3 states that the nature of the authority empowered to order detention must be specified.

Paragraphs 1 and 2 of Principle 9 provide that the person concerned must be given an opportunity to be heard before an order of detention is issued, and that a copy of the order of detention, together with the reasons therefor, must be communicated to the detained person and to his counsel.

Principle 11 stipulates that the time of the arrest, the time at which the arrested person was taken to a place of custody and the time of his first appearance before a judicial authority must be recorded.

Principle 30 states that an inquiry must be held whenever a person has died in detention.

With regard to paragraph 1(c), that, having first sent the Government a questionnaire relating not only to its legislation, but also to the regulations concerning prison establishments and the training of members of the police and prison services, the Commission could, on an annual basis, consider the state of application of the Standard Minimum Rules and the Code of Conduct for Law Enforcement Officials, and propose that observers be assigned to assist the public authorities to put these standards into practice.

With regard to resolution 33/173 as a whole, that the Working Group should act in concert with and call upon the various United Nations organs concerned with a view to declaring the enforced or involuntary disappearances of persons a crime against humanity. We recall, in that connection, that the Parliamentary Assembly of the Council of Europe^{d/} and the Organization of American States^{e/} have already made pronouncements to that effect.

The International Federation of Human Rights, the Latin American Federation of Associations for Relatives of Disappeared Detainees and many other non-governmental organizations are appealing for such a declaration. The Federation is of the opinion that by taking a decision which corresponds to the actual features of this crime,^{f/} the international community would thus give itself the means to eliminate it and to apply paragraph 1(b) in full.

On the other hand, when a Government's refusal to co-operate with the Working Group is patent and, in addition, allegations of disappearances in the country in question are sufficiently pertinent, the Working Group should be able, in the course of the public meetings of the Commission, to draw the attention of the Commission and of international observers to that Government's attitude.

Lastly, the sending of representatives of the Working Group, or of the Commission, to countries in which many cases of disappearances have been reported seems to us to be of the highest importance. If necessary, such representatives should be empowered to remain quite a long time in the country in question; they should also have sufficiently wide powers not to be restricted to a mission of observation but should be in a position to fulfil the obligation to carry out a search, an obligation that has long been hallowed by international humanitarian law. It is, indeed, paradoxical that in peacetime persons should not have protection which is given to them in time of war.

Notes

a/ In September 1984, according to official data collected by the Juvenile Courts of First Instance in the Departments of Quiché, Chimaltenango and Huehuetenango, there were more than 50,000 and possibly over 100,000 orphaned children.

b/ Television news bulletin "Teleprensa", Guatemala, 29 August 1984.

c/ Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its thirty-first session (E/CN.4-E/CN.4/Sub.2/417), para. 109 adopted by the Sub-Commission and submitted by the Commission of Human Rights to the General Assembly.

d/ Resolution 828 (1984) on enforced disappearances.

e/ R.66 XIII-O/83.

f/ See E/CN.4/Sub.2/1985/NGO/16, and Luis Joinet "Study on amnesty laws and their roles in the safeguarding and promotion of human rights" (E/CN.4/Sub.2/1984/15).