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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD WITH PARTICULAR REFERENCE TO COLONIAL
AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Guatemala prepared by
the Special Rapporteur, Viscount Colville of Culross,
in accordance with operative paragraph 14 of Commission
resolution 1985/36 of 13 March 1985

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ANNEX

- I. Resolution 40/140

I. INTRODUCTION

1. This report should be read as an addendum to document A/40/865 presented to the United Nations General Assembly in November 1985. As paragraph 6 of that document states, a final report is due to be submitted to the United Nations Commission on Human Rights, in accordance with its resolution 1985/36, paragraph 14.

2. A comprehensive document has not been prepared. The election which took place in Guatemala in November and December 1985 led to a transfer of power on 14 January 1986 to a new civilian government. On 17 January 1986, an invitation was received from that government for the Special Rapporteur to visit the country. The visit took place between 28 January and 2 February 1986. In the time available, the Special Rapporteur decided to present this document (which is, whenever necessary, cross-referenced to A/40/865) as his final report.

3. The newly-installed government provided the Special Rapporteur with every facility and courtesy. He was granted interviews with the President of the Republic, ministers and other responsible officials; he also visited the Department of Chimaltenango, West of the Capital. Members of the public came of their own volition to speak to the Special Rapporteur in his hotel and elsewhere.

4. The General Assembly resolution 40/140 appears as Annex I to this report.

II. THE ELECTORAL PROCESS

(NOTE. The following paragraphs 5 to 27 of this document supersede completely paragraphs 218 to 234 in A/40/865)

5. Despite certain expressed fears, the elections for President and vice-President, Congress and Municipal authorities, took place in November and December as planned. The Supreme Electoral Tribunal (TSE) which organized the successful election for the National Constituent Assembly in July 1984, remained in charge. Its activities include these matters:

(i) They continued the registration of voters, up to 3 September 1985, when the total reached 2,753,572 (out of a total adult population of 3,860,971)

(ii) The law governing the election was prepared by the TSE and presented to the then Head of State for enactment as Decree-Law 47-85.

(iii) The qualifications for any party or committee wishing to take part were most carefully scrutinized.

(iv) Supervising juntas, each consisting of four persons, were selected for each Department and their names published. Under their control another 16,500 citizens were established as local polling-station staff, to oversee the elections and ratify the results together with tellers from the political parties.

(v) Polling-station staff were trained in the lay-out and conduct of the facilities; 5,142 polling-stations were eventually found to be necessary.

(vi) The ballot-papers were, as in 1984, printed on water-marked paper, manufactured abroad. Because of shortage of foreign exchange in Guatemala, the paper was presented through the AID programme by the United States of America. The ballot-papers bore the name and symbols of each party running in the area where the polling-station was situated.

(vi) The TSE resolved a few minor problems in the process of forming the parties. A more serious difficulty, however, was detected in relation to the registration of voters. The Tribunal itself had for some time suspected that some citizens had registered more than once. The register is computerised and a check established that there were about 40,000 duplicated entries; only the first registration in each case was retained. In answer to complaints the TSE pointed out that neither the computer nor its operators could know the political allegiance of those concerned so that no adverse bias could be involved unless any fraud involved had been concerted effort of the party that complained. In any case the numbers were insufficient to have been able to affect the result. The TSE told the Special Rapporteur in January 1986 that they doubted whether any significant fraud could have been intended; rather the double registrations were on the whole the result of citizens losing the original document.

6. The result of the first presidential round on 3 November was a vote of 648,681 for Lic. Vinicéo Cerezo Ar&valdo, with 339,522 for the next candidate, the UCN leader Jorge Carpio Nicolle. Lic. Cerezo was the candidate for the centrist Christian Democrat party. This party also won an overall majority, 51 of 100 seats, in the election of deputies to the Congress. The UCN were second, with 22 deputies. The Social Democrats, newly returned to Guatemalan politics, gained two seats. The results in full are as follows:

Christian Democrats	51
Union del Centro Nacional	22
MLN-PID coalition	12
PCCN-PR coalition	11
Social Democratic Party	2
PNR	1
CAN	1

7. The Hondt system of proportional representation was used so that smaller parties were not eliminated so long as they obtained at least a minimum number of votes. Nevertheless, the Christian Democrats won 11 out of the 25 seats on the national list and at least one in all but one of the 23 Departments of the|country.

8. Voting was compulsory for the literate and optional for the illiterate. 1,907,771 votes were cast, representing 69.3 per cent of the registered voters; whereas 5.7 per cent of the papers were spoiled and 3 per cent blank.

9. This was for the election of the members of Congress. Voters were in November invited to complete three ballot papers, one for the presidential, one for the congressional and one for the municipal election. By comparison, in the first round of the presidential election, 1,678,300 votes were cast.

10. Since Lic. Cerezo obtained 38.59 per cent of the votes in the presidential election as opposed to Sr. Carpio Nicolle's 20.28 per cent - less than the absolute majority required - a run-off took place on 8 December. This was the first such event in the history of Guatemala; the turn-out was 1,800,324, of which 127,913 papers were spoiled and 14,588 blank. Of the valid votes 68.37 per cent went to Lic Cerezo, with a majority in all but two departments. Both candidates attended the ceremony where the result was announced, and there were mutual congratulations.

11. The TSE pointed out that abstentions took second place on this occasion. However, the Special Rapporteur has not seen comments on this occasion that abstentions, spoiled or blank papers carry any political connotation. The TSE told the Special Rapporteur that they had heard no such comments after the elections. The URNG (the guerrillas' coalition) was quoted in Prensa Libre on 8 December 1985 as saying that they had not boycotted the elections, although they did not see in the process a solution for Guatemala's problems. They also held meetings and stopped buses and political caravans, to denounce the elections. There were no substantial complaints of fraud within the country.

12. Comments by observers.

Many international observers had been invited to the election and the first round in particular was well-attended. Many journalists were also there to report. It is not feasible to refer to more than a selection of the comments. Observers came from the OAS, the Sub-Commission for the Prevention of Discrimination and Protection of Minorities, 14 Latin-American countries, the USA, Canada, Spain France, Federal Republic of Germany and several NGOs. Those quoted in the press said that they were satisfied with the elections as being free and fair; there was no fraud and any irregularities were technical and not important. Many observers and journalists added their praise for the way in which the electors conducted themselves, and for the TSE's organization of the actual process.

13. The Special Rapporteur only has copies of two full reports by observers:

(a) OAS - the two appointed members were based at a hotel where the TSE had set up its headquarters. They considered that an honest and efficient system had been set up. They emphasised the liberty of political activity, expression and thought which they noticed. They visited 12 polling-stations, and commented on the discipline and enthusiasm of the electorate. They also remarked upon the absence of the security forces or other government interference.

(b) A joint delegation sent by the International Human Rights Law Group and the Washington Office on Latin America (IHR/LG/WOLA), consisting of five persons from USA, Canada and United Kingdom visited Guatemala in September and over the election period. Their carefully structured and extremely full report is entitled "The 1985 Guatemalan Elections: Will the Military Relinquish Power?" The report covers much more than the election process itself, and constitutes the authors' views on most of the issues concerning violence and oppression in the country over the last 25 years; this is described as the setting against which the elections must be seen. The electorate was sceptical about the entire exercise, and the possibility that it would bring any change.

14. The report constitutes a wide-ranging and balanced survey of the situation in Guatemala, which the Special Rapporteur broadly accepts insofar as it is a factual report; some aspects and the prognostications for the future fall outside the Special Rapporteur's mandate. So far as concerns the elections the findings may be summarized thus:

(i) the elections were procedurally correct (the report sets out the process in great detail),

(ii) towards the end of the campaign (though not earlier) the candidates began to discuss the fundamental human rights and economic and military issues,

(iii) party members and workers at both ends of the political spectrum suffered acts of violence during the campaign,

(iv) the general wave of violence continued, as did guerrilla activity,

(v) some voters feared that a failure to vote would lead to imprisonment, or loss of jobs (if in government employment).

15. Their summary is this:

"During the last two months of the general election campaign, the delegation observed, and were advised by credible sources, of constraints on individual rights, organizations, assembly and expression which made it impossible to speak of a wholly free and fair election. These constraints generally stemmed from the oppressive and repressive role of the armed forces in the political system."

16. In addition, the Special Rapporteur has a copy of a letter to the TSE from the Chief Electoral Officer of Canada and member of the Canadian observer team. It records satisfaction and congratulations on the process.

17. Such comments are relevant to paragraph 13 of Commission resolution 1985/36 which appealed to all parties to create a climate free of intimidation and terror for the election.

18. The Special Rapporteur said in his oral introduction to his interim Report before the Third Committee of United Nations General Assembly said that observers were not permitted to go to the North-west Department of Huehuetenango and El Quiché, nor to the larger northern Department of El Peten. This was incorrect. There was no prohibition, and observers were free to go. However, the distance and state of the roads made visits to these areas impracticable except by air. Military aircraft and helicopters were not requested by the TSE to transport observers. Thus, these areas could only be seen by observers with their own aircraft, it is thought that a few did go to these Departments.

19. The Special Rapporteur was given a complete computer print-out of both rounds of the election and this is available for inspection in the Centre for Human Rights. The rest of the formal documentation relating to the election supplied by the TSE is similarly deposited.

20. In his interim report, the Special Rapporteur referred to the question of political education of the electorate. The most useful comment known to the Special Rapporteur comes from page 55 of the IHRLG/WOLA report referred to at para 13 (b) above:

"To counteract (earlier scepticism among the electorate) the TSE, together with CEDEP, an independent political studies institution, conducted a vigorous television, radio, and newspaper campaign to encourage voting. The TSE's information campaign was accompanied by others, such as posters distributed by the Ministry of Government (Interior) which touted the elected and proclaimed, "The promise is kept! Democracy is being born!"

We received several reports that army commanders of civil defense patrols in the countryside instructed patrol members that they had the right to vote freely, and that military aircraft dropped flyers with a similar message in some areas. By our second visit to Guatemala in late October, such educational efforts appeared to have raised some voters' hopes for the quality of the election and their interest in the campaign."

21. The Special Rapporteur had little time in January to discuss with the Guatemalan people the extent to which the political campaign reached them. However, the village of Xeatzan Bajo is in a comparatively remote part of Chimaltango (and the subject of violence there is discussed in paras 106(b)-108 of A/40/865), the Special Rapporteur was told that four parties had held campaign meetings in the village and their stated policies had been well understood. Men and women had turned out in strength to vote at the municipal centre of Patzún.

22. The Special Rapporteur has previously emphasized that in order to allow full exercise by Guatemalans of the right of self-determination the maximum plurality of electoral choice should be open to them (see A/CN.4/1985/19, para 256 (a)). Attention has been drawn to the repeal of Decree-Law 9-63, and also to the continued existence of article 396 of the Penal Code (see E/CN.4/1985/19, paras 183 and 166). The latter has not been repealed. The article reads:

"Artículo 396 (Asociaciones ilícitas): Quienes promovieren la organización o funcionamiento de asociaciones que actúen de acuerdo o en subordinación a entidades internacionales que propugnen la ideología comunista o cualquier otro sistema totalitario, o destinadas a cometer delitos, o tomen parte en ellas, serán sancionados con prisión de dos a seis años."

23. The Special Rapporteur in August 1985 asked the President of the Supreme Court about that article, in the context of freedom of association for the elections. He was provided with a detailed explanation. Examination of the Constitutions of 1956 and 1965 revealed a restriction on that freedom where the association was concerned with communist or totalitarian ideology (1956 Constitution, article 54, 1965 Constitution, article 64). The current Penal Code was enacted by Decree-Law 17-73 under the 1965 Constitution. The Fundamental Statute of Government (Decree-Law 24-82) contains restrictions on "totalitarian" association (article 23 (6)).

24. Internally, therefore, article 396 was correctly argued to be constitutional. There is, however, no provision in the new Constitution to the equivalent effect.

25. The Special Rapporteur has no evidence that article 396 of the Criminal Code actually deterred any party from running in the 1985 elections or that it would have been invoked against, for example, an extreme left party. However its existence was a blemish on what otherwise has been careful exercise in preparing for the election. In January 1986 the Special Rapporteur was told that this article is no longer in force, but he thinks that judicial interpretation would be required to establish this.

26. The TSE has been participating in conferences of autonomous non-governmental electoral tribunals and councils for Central America and the Caribbean. The first conference was held in Panama in June 1985 and was attended by delegates from El Salvador, Honduras, Nicaragua, Costa Rica, Panama, Belize, the Dominican Republic, Jamaica, Antigua and Barbuda and Saint Lucia, as well as those from Guatemala, the Guatemalan Tribunal acted as host to a second held in Guatemala City in late September. The Conferences were held under the aegis of the Inter-American Institute of Human Rights, and the agenda provided for the exchange and discussion of information and experience of electoral organization and processes. The 1984 election in Guatemala and the election planned for 1985 were discussed, and the 1984 event was analysed.

27. The outcome of this second conference was the preparation of an Act of Association of the Electoral Institutions of Central America and the Caribbean. It was signed by the representatives of the Electoral Organs of Antigua and Barbuda, Costa Rica, El Salvador, Guatemala, Honduras, Jamaica, Nicaragua, Panama, Dominican Republic, St. Lucia and the central organizing institution. It has already been ratified by enough organizations to come into effect. Apart from technical assistance the agreement provides for the invitation of observers to elections.

III. PARTICULAR ALLEGATIONS OF VIOLATIONS

28. In chapter VI of A/40/865 the Special Rapporteur discussed various allegations, relating to specific places. In February 1986 he obtained further information about the cases quoted, mainly as a result of a day's visit to the Department of Chimaltenango.

Patzón (A/40/865 paras 101-112)

29. There has been no further trouble in Patzón town itself since August 1985 when the Special Rapporteur last visited it. The military detachment still has its headquarters at the south of the town, but in February the soldiers were much less in evidence in the town.

30. Xeatzín Bíjo. The Special Rapporteur visited the village. The figure of 22 men and three women who have disappeared since about 1982 was confirmed. So was the fact that there were no massacres. There has been no trouble since the Special Rapporteur paid his last visit. The spokesman referred to in para 103 (b) of A/40/865 was away on business (the Special

Rapporteur had given no notice of his visit), but is in good health and has suffered no repetition of the previous trouble.

31. Xepatín. A report in Enfoprensa, October 16-24 1985, says that a villager was kidnapped in October. This report was not substantiated by inquiry in the village. They also have had no trouble since the Special Rapporteur's last visit, except for an incident in December 1985 involving two persons living in the village. The details of this, which appear to involve breaches of the code of criminal procedure, are being investigated by the Government.

Saquiya.

32. As the result of further information given to him by private citizens in the course of his visit, the Special Rapporteur went to this village to pursue the matters discussed in paras 109-111 of A/40/865. What now seems clear is as follows:

(a) 18 people from the village were abducted in two separate incidents in April and June 1985.

(b) 11 of them have subsequently reappeared, having been the subjects of an amnesty ceremony in the municipal buildings in July 1985.

(c) The Special Rapporteur spoke to a large group of the villagers, including two of the men who had reappeared (one being the person mentioned in para 109), and the mother and wives of three brothers who have not reappeared.

(d) The two men were both taken, with their hands tied, on foot, to the army detachment in Patzón, which is about 2 km distant. They were put into what is locally referred to as a "phantom prison". This was a hole in the ground within the detachment's headquarters. One was in it for ten minutes, the other for days. They were both then taken to the Military Zone in Chimaltenango whence the "amnesty" proceedings were initiated.

(e) The wife of one of the men who is still missing said that she and her husband were in bed when at about 01.00 hours the door was broken in and her husband taken out. She lit the lantern and saw that the people concerned were the local military detachment. This was the April arrest: her husband and the others were rounded up and taken off on foot.

33. It is the opinion of the Special Rapporteur that these 18 people were taken away from their village by the Patzón military detachment under the command, at that time, of an officer called Cabrera (probably a lieutenant). The judge of the peace in Patzón (the first-level judicial authority) was not involved in any way. The persons abducted were not taken to the detention cells at the municipal centre. The only involvement of the civilian authorities was their conduct, at the request of the comandante of the Military Zone in Chimaltenango, of the amnesty ceremony, which was recorded on a video, as described in para 110.

Finca Santa Anita Las Canoas, San Martín Jilotepeque

34. In para 125 of A/40/865 the allegation is reported of a large massacre in 1985. The Special Rapporteur recorded his doubts about the veracity of this denunciation, but conceded that he had not been able personally to investigate. The Guatemalan United Opposition (RVOG), in a commentary on

A/40/865 dated November 1985, remarked (para 3.4.3) that the Special Rapporteur's chosen methodology had been thus abandoned. At a large meeting on 1 February 1986 in Chimaltenango, the Special Rapporteur invited the newly-elected mayor of San Martín Jilotepeque to read para 125 and give his opinion about the truth of the allegation. He replied that no such massacre had occurred.

Mazatenango, Suchitepequez

35. At paras 142-145 of A/40/865 the Special Rapporteur referred to this incident. He promised to report further. RUOG in para 3.4.7 of their commentary mentioned above accuse the Special Rapporteur of "withholding evidence in order to defend the Guatemalan security forces".

36. The National Police have now supplied the Special Rapporteur with their file, and copies of the three newspaper reports of the incident.

37. The Denunciation evidently came from the newspaper report in La Hora of 9 January 1985. Under a headline "Two bodies were thrown from a helicopter on the Mazatenango football ground" the report continues with further sensational material. The other two large circulation daily papers, El Grafico and Prensa Libre also carried the entry, both on 10 January. They say that an unidentified helicopter landed with the two bodies on the football field, whence the victims were taken for autopsy. They also include vivid details.

38. The police investigation has not succeeded in solving the two murders. They have, however, discussed that helicopter belonged to a private Guatemalan organisation, Helicopteros de Guatemala; it was hired by one of the dead men's relatives to take the bodies to the nearest hospital. The helicopter landed at 15.50 hours and the bodies were handed over to the local emergency services.

IV. LIABILITY FOR PAST VIOLATIONS OF HUMAN RIGHTS

39. Aspects of this subject were discussed by the Special Rapporteur with a group of deputies of the Congress, the Magistrate who will probably be elected as President of the Supreme Court and the President of the College of Advocates. The press also exhibited an interest in the Special Rapporteur's views on the subject. He maintains his opinion stated to the Press that this is an internal matter involving domestic political decisions. Nevertheless the legal situation should be briefly set out. It is a matter of enormous significance.

40. Violations of human rights within the normal concepts of criminal law are covered by the Guatemalan Criminal Code. The Government headed by General Mejía Vétores passed Decree-Law 8-86, dated 10 January 1986, to come into force on 14 January, the day of the new Government's accession to power. The text of the main Article is:

"Se concede amnéstía general a toda persona responsable indicada de haber cometido delitos políticos y comunes conexos, durante el periodo comprendido del 23 de marzo de 1982 al 14 de enero de 1986. De consiguiente, no podrá entablarse ni seguirse acciòn penal de ninguna especie contra autores y cómplices de tales delitos, ni contra quienes hubieren cometido el delito de encubrimiento en relaciòn con los referidos hechos, ni contra quienes hayan intervenido en cualquier forma en su represiòn o persecuciòn."

41. The Special Rapporteur leaves the text in Spanish since lawyers in Guatemala were unsure of the exact meaning of this Decree-Law. It is undoubtedly valid. It does not relate solely to subversive activities, as did previous amnesties, but is of general application.

42. What to do about this is partly legal and partly political. On the legal side, a group of deputies in Congress gave the Special Rapporteur the text of a two-line draft Bill which would provide that Decree-Law 8-86 is repealed with effect from the day of enactment. Legal opinion in the country takes the view that the Constitution does not invalidate any such new law on the grounds of Constitutionality. Unless repealed, however, Decree-Law 8-86 will continue to confer impunity.

43. On the political side, as the Special Rapporteur understands it, the President has said that the Executive will exert no influence in this matter. If the law is changed so as to allow it, private citizens and the Procurator-General will be able to institute legal process in relation to past human rights violations and it will be for the courts to adjudicate.

V. FREEDOM OF ASSOCIATION

44. The Special Rapporteur is aware that he has not recently seen members of the trade union movement (see A/40/865, para 156). On his recent visit, therefore, he was glad to have a long interview with the Secretary-General of the Confederaciòn de Unidad Sindical (CVSG). This is a broadly based confederation of trade unions, including both those organised within individual commercial enterprises and those representing members of a craft or trade, including the agricultural sector. The Secretary-General was cautiously optimistic about the future of the movement but thought that it should have more influence on government. His union had instituted training courses for members in matters such as trade union law, democratic rights and techniques for negotiations.

45. State Employees. The Constitution, by a combination (the Special Rapporteur considers) of Articles 34, 102 (9) and 116, ensures that these employees may form a union. This has now been inaugurated, according to press reports. The union, ANTEG, held its inaugural meeting, to approve its rules and elect officers, on 1 February 1986.

46. The Minister of Labour and Social Services had only been in office for 10 days when the Special Rapporteur spoke to her. She had been elected as a Deputy to Congress, and special arrangements were required for her ministerial appointment.

47. She had already visited the offices of several unions or confederations (but not CUSG), to discuss among other things collective bargaining. She was also much concerned with a particular company which had ceased trading for financial and environmental reasons, but whose large work-force preferred to await a resumption of work rather than to accept redundancy. She planned to visit employers' organisations in the near future.

48. Workers who migrate seasonally to the agro-export estates do need protection in terms of enforcement of their statutory minimum salary as well as improved conditions of work, health and education. She considered that collective organisation would establish and maintain such improvements more effectively than her Ministry's inspectorate.

49. She envisaged the future of the trade union movement as part of the democratic involvement of the population in the country's development. Technical aspects, such as bureaucratic difficulties concerning registration of new unions, would be facilitated. The Constitution guarantees freedom of union activity. The issue is now not technical but political.

VI. FURTHER UPDATING

50. Developments relating to items reported in A/40/865 are now referred to; these are the information obtained by the Special Rapporteur during his meetings in January and February 1986. The cross references are to paragraphs in the interim report (A/40/865).

(i) Para 85. The Commission for Human Rights. The Constitution (Article 273) provides for the appointment by Congress of this Commission, consisting on one Deputy from each political party represented. This had been done and the Commission was brought into effect on the day the Special Rapporteur met its members, 29 January 1986. They already had three candidates for the post of Attorney for Human Rights (Constitution Articles 274, 275), and the nomination would take place within the next two weeks. The Deputies said that the Government was giving the utmost importance to human rights; not to hide the problems, but to solve them.

Para 44 onwards The Rule of Law
Para 146 onwards Disappearances

51. In discussions during his visit in 1986, particularly with the President and the Ministry of Gobernación (Interior), these two subjects were so inter-connected that they should be reported on together. The background is that expressed by the Deputies during their meeting with the Special Rapporteur: in the past the Government has never provided answers about these cases.

52. Both the President and the Minister of the Interior said that the first thing to do was to prevent this phenomenon from continuing. They intended, by way of the first positive action, to disband entirely both DIT and BROE (Criminal Investigation and Special Branches of the Police). The Special Rapporteur received an indication that DIT had already heard of this and were reacting aggressively; but the Special Rapporteur saw reports in the London Times dated 6 and 10 February that the DIT headquarters had been raided by a military unit, and substantial numbers of policemen disarmed and taken away. A complete reorganisation of the security forces is intended. Although national security will remain a military responsibility, it too will be under civilian control, through the President as Commander-in-Chief.

53. In relation to past disappearances, the disbanding of DIT and BROE put the Minister of the Interior in a difficult position, since he was left without anyone to do the investigation. Under the previous regime the police, prison service and immigration had all been under the control of the army and not the Minister of the Interior. He found, on taking office, that he did not even possess a direct telephone link with police headquarters. Moreover, he disagreed with the Special Rapporteur's impression that the police were even effecting in dealing with common crimes (see A/40/865 para 61). They were riddled with corruption; he gave details about the level of the bribe necessary to secure any post, or even to take normal leave. They were hopelessly under-equipped; 33 radio patrol cars to cover the entire country, some of which were out of action; no computerised system to deal with the major problem of vehicle thefts.

54. He had to create an efficient force, with proper training and equipment, and instruction how to present evidence to the courts (another current ineptitude). He was in touch with Governments in North and South America and Europe, seeking technical assistance. It was a priority to create a force properly trained and equipped to investigate crime and to handle any internal disturbance.

55. As an interim measure he proposes to appoint and train about 150 lawyers to act as prosecutors to bring criminal cases before the courts. They will be empowered to inspect police stations and detention centres, and will report directly to him. He may also set up where necessary neighbourhood Watch Committees to assist in combating crime.

56. For the first time police and security forces will be under civilian control. There must be respect for dissenting opinions, which is the essence of democracy. Public officials must react proportionally to any problem which confronts them. Government actions must be open to democratic inspection.

57. As to past disappearances, one reason why no answers had been given was that no investigation seemed to have occurred. The Minister found 1600 files of allegations about disappearances, simply kept in drawers. However, when he has properly trained manpower these will be cleared up; though he envisages problems in ascertaining who was ultimately responsible. He recognised the major problem for Guatemala which arises from such cases.

Paras 163-169 Clandestine Prisons

58. The Special Rapporteur established the existence, at least in mid-1985, of such an illegal detention centre in the military detachment at Patzún (see para 32 (d) above. More generally, it is likely to be difficult to discover the locality of ordinary houses used for this purpose (see A/40/865 para 165).

59. The President of CUSG (see para 44) had personal knowledge of a case where a member of his union had been abducted. He was released, but even after recovering from his ordeal was absolutely unable to give any clue as to the identity of his captors or where he was held.

Para 170-172 Civil Patrols

60. The new policy is set out in the conclusions (para 67-68 below). The Special Rapporteur spoke to members of the Patrol in a rural village in Chimaltenango, which had been in existence since late 1981. They had no knowledge of any changes, and thought service still to be compulsory. However, the President had told the Special Rapporteur that the change would take two months.

Paras 173-198 Development Poles and Model Villages

61. The President explained his policy, which is set out in the Conclusions (para 67-70) below.

62. Co-ordinating of Institutions. This issue concerns the true exercise of power at Departmental level. All activity by governmental, quasi-governmental and private agencies in each Department has hitherto been under the complete control of the military comandante, and not the civilian Governor. Moreover all such comandantes regularly met centrally, with the military Chiefs of Staff, thus enjoying a formidable power base.

63. The Constitution requires that this co-ordination should be carried out by the civilian Governors. New Governors were due to be appointed personally by the President in the week beginning 3 February. The meetings of the comandantes have ceased. The Special Rapporteur asked to meet one of the persons designated to be a Departmental Governor. It was arranged that he should see Sr. Quiní, the next Governor of Chimaltenango. He had gathered a large meeting, including one of the local Deputies, newly-elected mayors of many of the municipalities and local secretaries of the Christian Democrat party (DCG). Sr. Quiní is a Cakchiquel with a wide knowledge of the Department. It was evident that his mayors are also very well-informed. Sr. Quiní had not, of course, yet assumed the responsibility of co-ordination, nor had he, pending his formal appointment, discussed the transfer of power with the comandante at the Military Zone. However, he envisaged no problem. He and the others in the room were already engaged in identifying the priorities for the allocation of resources.

Land

64. Previously, the responsibility for distributing titles to land has been that of an institution called INTA. This now has a new Chairman and other officials, and at his inaugural speech on 30 January he expressed admirable intentions. Time will tell how far these will be fulfilled.

65. An urgent problem, however, had arisen relating to some 12,000 squatters on private land in the outskirts of the Capital. The President said that a special committee had been formed (not through INTA), some land had been found and plots would be allocated to them.

66. In Chimaltenango the Special Rapporteur was told that people who had fled to the Capital and other towns were still returning to their original villages.

Conclusions

67. It is within the Commission's knowledge that a transfer of power took place in Guatemala on 14 January 1986. The President and Vice-President and the Congress were elected in a process which is accepted as having been fair: ("free" in every respect is the subject of some observers' reservations). The event has been widely welcomed in the international community.

68. The new Government and Congress have embarked upon many policies, many of which are relevant to the human rights contained in the two Conventions. More particularly, active steps are being taken to deal with the Special Rapporteur's recommendations in A/40/865. The action now in hand is cross-referenced to the paragraphs of that document.

(1) Para 252. Technical Assistance. A request of such assistance is likely to be made by the Government (see operative para 14 of Assembly resolution 40/140). This will relate to two aspects:

- (i) training of the police and of the judiciary and court staff, in matters such as investigation of crime, preparation of criminal charges, presentation of evidence to the courts and court procedures in the evaluation of such evidence,
- (ii) criminal procedure including admissibility of evidence.

(2) Para 253 Rules of law and public confidence in it. The Minister of Interior (Gobernación) is now in complete control of the police force. The President is the Commander-in-Chief of the army (which includes land, sea and air forces) and conveys his orders through the Ministry of National Defence (Constitution Article 246, 244). Between them they control the security forces. Major reforms of the investigation and intelligence branches of the police are proposed (see para 52 above). The military unit of G2, and the Policia Militar Ambulante (PMA) are also denounced for copious violations of human rights; these too should be taken in hand by the President. Such measures, together with election of an independent Supreme Court (Constitution Article 215) and the appointment by the President of an Attorney General (Constitution Article 252) will shortly ensue. This, with training and re-equipping of the police and training for junior judges and court staff, should set the scene for a return of the rule of law.

In this way the confidence of the public in the legal institutions of the state may be rebuilt. The Magistrate who will probably be the new President of the Supreme Court confirmed that such confidence does not presently exist.

Whether or not unsolved crimes committed between 23 March 1982 and 14 January 1986 can be cleared up will also depend on a political decision on the general amnesty in Decree-Law 8.86 (see para 40 above).

(3) Para 254 Human rights organisations within Guatemala, The Government accepts the need for such bodies once more to be able to operate. They propose to invite exiled organisations to return but propose to ensure, before they arrive, that they may operate in safety inside Guatemala. GAM had been invited to meet the Minister of the Interior, but had rejected this overture.

(4) Para 255. The ICRC. Negotiations either have been or are about to be opened with the ICRC to enable them to have an effective presence in the country. An agreement will be required between them and the Government of Guatemala containing mutually acceptable arrangements for the ICRC to operate.

(5) Para 256. Refugees in Mexico. The new Government will ask the UNHCR and the Mexican Government for lists of Guatemalan refugees in Mexico. This would assist in the clarification of the lists of disappearances.

Meanwhile, 87 families of refugees were expected to return in the first week of February. They will be allowed to settle wherever they wish, in their original communities or elsewhere.

(6) Para 257. Tripartite Commission's Report. It seems unlikely that this will prove to be worth publishing. It will have to be succeeded by a completely new investigation, this has already started to the extent that the Ministry of Defence is supplying lists of people who have taken advantage of successive amnesties (not that under Decree-Law 8.86) since March 1982. These can then be compared with names transmitted by the Working Group on Enforced and Involuntary Disappearances and others. Other lines of investigation are envisaged, and will certainly be required.

(7) Para 258. Economic and social projects. These projects will continue, under the new Ministry of Development, subject to resources being available. There will be civilian co-ordination of all governmental and private institutions engaged in these projects. In each Department the civilian Governor will be in charge. The Development Pole programme will continue, but such military controls over the population as exist will be discontinued. Whereas the facilities will continue to be provided in convenient local centres, there will be no compulsion on anyone to move to those centres. There is, however, little that can be done to bring modern facilities to those who prefer to remain in scattered farms and hamlets.

(8) Para 259. Civil Patrols. The existence of and service in such organisations, will be voluntary. The existence will be subject to local plebiscite and if such an organisation, under some nomenclature, is desired in a locality, service in it will be voluntary.

69. The Special Rapporteur therefore can say that the Government is proposing to implement all his recommendations in A/40/865 so far as lies within their power. Anyone with a knowledge of the recent history of Guatemala, however, will realise that not all these things can be accomplished at once. The Government certainly recognises this. It had been in office less than three weeks when the Special Rapporteur discussed these matters with Ministers and others. He urged and the President of Guatemala agreed that they should provide tangible results of these declared policies, however modest these results might be, as a earnest of their determination. Such results should be explained to the Commission by the distinguished delegation of Guatemala under the relevant agenda items.

70. The Minister of the Interior said that by pointing an accusing finger, the international community had helped to bring about change in Guatemala, that community should now concentrate on the technical assistance so desperately needed. Again it is for the new Government to formulate its request under the appropriate agenda item.

Recommendations

71. As a result of his discussions with members of a completely new Government, and other leading citizens, in the new political climate, the Special Rapporteur believes that his previous recommendations, summarised above, can be seen to constitute important changes which would help to establish and maintain human rights in Guatemala. The rights defined in the Conventions are wide and various, the Government should have regard to all of them. For immediate action, however, the Special Rapporteur recommends a concentration on the issues discussed in the Conclusions above.

RESOLUTION 40/140

Situation of human rights and fundamental freedoms in Guatemala

The General Assembly,

Reiterating that the Governments of all Member States have an obligation to promote and protect human rights and fundamental freedoms,

Recalling its resolution 37/184 of 17 December 1982, 38/100 of 16 December 1983 and 39/120 of 14 December 1984,

Noting Commission on Human Rights resolutions 1984/53 of 14 March 1984 and 1985/36 of 13 March 1985, in which the Commission expressed its deep concern at the continuing serious and systematic violations of human rights in Guatemala and at restrictive measures that limit the freedoms of the rural and indigenous populations,

Mindful of resolution 1985/60 of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities,

Welcoming the general elections held on 3 November 1985, for President, Vice-President and representatives to the National Congress and of municipalities, with the participation of various political parties,

Noting with satisfaction the set of provisions to safeguard human rights and fundamental freedoms contained in the new Constitution, which, when fully complied with by the Government and all others concerned, could lead to a significant improvement in the situation of human rights in Guatemala,

Alarmed at the continuation of politically motivated violence, particularly killings and kidnappings, as well as enforced and involuntary disappearances and the lack of effective measures by the authorities in investigating such practices,

Recognizing that the internal armed conflict of a non-international character which continues to exist in Guatemala stems from economic, social and political factors of a structural nature,

Expressing its concern with the widespread sufferings caused by disregard for the principles of international humanitarian law applicable to that conflict,

Welcoming the co-operation of the Government of Guatemala with the Special Rapporteur as well as the invitation made by the Government to several international human rights organizations to assess the situation of human rights and fundamental freedoms,

1. Welcomes the efforts of the Special Rapporteur to fulfil his mandate and takes note of his interim report on the situation of human rights in Guatemala, 1/ submitted in accordance with Commission on Human Rights resolution 1985/36 of 13 March 1985;

2. Expresses the hope that the recent elections will be the first step in a process leading to complete and effective enjoyment of human rights by the people of Guatemala;

3. Notes with satisfaction that a new Government and Congress are to take office on 14 January 1986, following a second round in the presidential elections on 8 December 1985, and that a new Constitution, which provides inter alia for the establishment of a national commission of human rights as well as a commissioner for human rights, is to take effect on the same date in January 1986;

4. Reiterates its deep concern at the continuing grave and widespread violations of human rights in Guatemala, particularly the violence against non-combatants, the widespread repression, killings, including extrajudicial executions, the practice of torture, disappearances and secret detention, as well as at practices such as the displacement of rural and indigenous populations, their confinement in development centres and forced participation in civilian patrols organized and controlled by the armed forces;

5. Strongly urges the Government of Guatemala to take all measures necessary to halt the violations of human rights and fundamental freedoms, particularly enforced and involuntary disappearances, as well as to take effective measures within the framework of the Constitution to ensure that all its authorities and agencies, civilian as well as military, fully respect the human rights and fundamental freedoms of all Guatemalans, such as trade unionists, catechists and the predominantly indigenous rural and peasant population;

6. Requests again the Government of Guatemala to investigate and clarify the fate of those who have disappeared and whose whereabouts continue to be unknown, and to include in such investigation the publishing of the full details of the Tripartite Commission's report;

7. Further urges the Government of Guatemala to establish the necessary conditions to ensure the independence of the judicial system and to enable the judiciary to uphold the rule of law, including the right of habeas corpus, and to prosecute and punish speedily and effectively those, including members of the military and security forces, who are responsible for violations of human rights;

8. Calls upon the Government of Guatemala to allow independent and impartial bodies to function in the country to monitor and investigate alleged human rights violations as well as to respect and protect human rights defenders such as the Mutual Support Group;

9. Calls upon the Government of Guatemala to guarantee to the rural and indigenous population the freedom to choose their place of residence and the freedom from forced participation in civil patrols;

10. Calls upon all parties to the conflict to apply fully the principles and rules of international humanitarian law and reiterates its appeal to the Government of Guatemala to admit the International Committee of the Red Cross, and subsequently to facilitate its operations for the alleviation of the suffering of the people in Guatemala;

11. Calls upon all Governments to refrain from intervening in any way in the internal situation in Guatemala, which could step up the internal armed conflict and the violation of human rights;

12. Deeply deplores the continuing gross violations of human rights arising from that conflict, which are largely due to the failure of the military and security forces to conduct their activities with the necessary respect for protecting the human rights of all Guatemalans;

13. Invites the Government of Guatemala and other parties concerned to continue co-operating with the Special Rapporteur of the Commission on Human Rights;

14. Invites the Commission on Human Rights to study carefully the report of the Special Rapporteur, as well as other information pertaining to the human rights situation in Guatemala, and to consider further steps for securing effective respect for human rights and fundamental freedoms for all in that country including, if so requested by the Government of Guatemala, the provision of appropriate technical assistance under a programme of advisory services in the field of human rights;

15. Decides to continue its examination of the situation of human rights and fundamental freedoms in Guatemala at its forty-first session.