

**The Minnesota Lawyers International Human Rights Committee Report Series**

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



**October 1990**

**Minnesota Lawyers International Human Rights Committee**

430 Marquette Avenue, Suite 402  
Minneapolis, MN 55401



**JUSTICE SUSPENDED:**

**The Failure of the Habeas Corpus System in Guatemala**

A report of the  
Minnesota Lawyers International Human Rights Committee  
430 Marquette Avenue, Suite 402  
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Cover photo: Guatemalan soldier poses in front of the plaza of Santa Cruz del Quiché.

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MAP OF GUATEMALA





DEPARTMENT OF EL QUICHÉ



## PREFACE

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

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

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

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

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

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

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

## SUMMARY AND RECOMMENDATIONS

### A. Summary of Findings and Conclusions

#### 1. General

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

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

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

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

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

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

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

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

## 2. Habeas Corpus

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

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

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

## 3. The Civil Patrols

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

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

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

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

## B. Recommendations

### 1. Habeas Corpus

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

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

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

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

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

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

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

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

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

## 2. Civil Patrols

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



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

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

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

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

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

**3. International Response**

1. All military aid to Guatemala should be contingent upon the successful completion of the government and international investigations concerning the existence of clandestine prisons, the independence of the judiciary, and the civil patrols. (See Recommendations A-5, A-8, and B-5.)
  
2. Guatemala's Procurator for Human Rights demonstrates significant dedication to his position. The Minnesota Lawyers Committee recommends that foreign governments and international organizations as well as the Guatemalan government itself provide strong technical and other support to the Procurator's office.
  
3. The Catholic Church's efforts to establish a legal assistance office for victims of political violence is deserving of strong national and international support.
  
4. The Inter-American Commission on Human Rights and the United Nations Commission on Human Rights should pay particular attention to the status of human rights in Guatemala during the upcoming transitional phase of pre-election, election, and post-election periods in Guatemala.

## SUMARIO Y RECOMENDACIONES

### Sumario de Hallazgos y Conclusiones

#### A. General

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

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

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

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

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

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

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

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

#### B. Exhibición Personal

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

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

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

### C. Las Patrullas de Autodefensa Civil

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

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

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

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

### Recomendaciones

#### A. Exhibiciones Personales

1. El Organismo Judicial deberá de establecer un sistema por medio del cual todos aquellos expedientes que se refieren a Exhibiciones Personales sean notificados por el órgano que tenga el caso a su cargo, ya sea tribunal, Sala o la propia Corte Suprema de Justicia; independientemente que la respuesta sea positiva, negativa o "improcedente" (que significa que la persona reportada como desaparecida no ha sido encontrada). La Corte Suprema de Justicia deberá preocuparse en desarrollar un sistema para clarificar sus estadísticas anuales, en relación a las peticiones y expedientes de Exhibición Personal sometidas a su conocimiento, para proveer una clara medida sobre el progreso o la debilidad del sistema empleado para resolver éstas.
  
2. El Presidente de la Corte Suprema de Justicia Doctor Vásquez Martínez deberá de clarificar los memorandums dirigidos a sus subalternos, de fechas 11 de agosto de 1989 y 13 de febrero de 1990, para asegurarse que estos no están siendo interpretados en el sentido de que los Jueces deberán de abstenerse de buscar personalmente a los desaparecidos. El Doctor Vásquez Martínez deberá dar instrucciones a los jueces y oficiales para que obren de acuerdo con todas las provisiones de la Ley de Amparo, Exhibición Personal y de Constitucionalidad y especialmente con el artículo 95 de esa ley que indica que: "(Personas plagiadas o desaparecidas). Cuando la exhibición se hubiera solicitado en favor de personas plagiadas o desaparecidas, el juez que haya ordenado la exhibición deberá comparecer por sí mismo a buscarlas en el lugar donde presuntamente se encuentren, ya sean centros de detención, cárceles o cualquier otro lugar señalado, sugerido o sospechado en donde pudieran encontrarse."

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



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

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

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

B. Patrullas de Autodefensa Civil

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

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

3. Deberá ser reiniciado inmediatamente el encausamiento de los comisionados militares Domingo Castro Lux y Juan de León Pérez quienes fueron identificados por testigos como los sospechosos de la muerte de María Mejía. Debido a las serias amenazas de muerte que continua viviendo la familia de María Mejía el Procurador General de la Nación así como el Juzgado Segundo tienen una seria obligación de buscar que la justicia se aplique en este caso.
  
4. El Procurador de Derechos Humanos deberá trabajar conjuntamente con la Policía Nacional y el ejército para crear un plan que garantice la seguridad de las organizaciones no gubernamentales que se encuentran activas en las comunidades y áreas rurales, y específicamente que se garantice la seguridad de los refugiados que retornaron a la aldea Parraxtut, posteriormente a los hechos ocurridos el 27 de marzo de 1990.
  
5. El gobierno de Guatemala deberá reexaminar la necesidad y justificación de la existencia de las patrullas de autodefensa civil. Como mínimo el nuevo gobierno deberá tomar las medidas necesarias para asegurar directamente la protección de los derechos de aquellas personas que decidieron no pertenecer a las patrullas de autodefensa civil. El Comité de Abogados de Minnesota recomienda al Experto Especial para Guatemala ante las Naciones Unidas Christian Tomuschat investigar específicamente sobre la necesidad de la existencia, actividades y estructura de las patrullas de autodefensa civil, como parte de su mandato.

C. Respuesta Internacional

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

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

2. El Procurador de Derechos Humanos ha demostrado una dedicación significativa en su puesto. El Comité de Abogados de Minnesota recomienda que la ayuda gubernamental así como la de otros gobiernos y organizaciones internacionales estén dirigidas a proveer apoyo y una fuerte ayuda técnica a la oficina del Procurador.
  
3. Los esfuerzos de la Iglesia Católica de Guatemala por establecer una oficina de asistencia legal a las víctimas de la violencia política es merecedora también de un fuerte apoyo tanto nacional como internacional.
  
4. Que la Comisión Interamericana de Derechos Humanos y la Comisión de Derechos Humanos de las Naciones Unidas presten particular atención a la situación de derechos humanos en Guatemala, durante el período pre-eleccionario, durante las elecciones, así como durante el período posterior a las mismas.



*Only he who fights  
Has the right to win  
Only he who wins  
Has the right to live<sup>3</sup>*

## I. INTRODUCTION

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

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

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

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<sup>3</sup> Message printed on entrance to army outpost at Sacapulas, El Quiché.

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

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

Political violence and disappearances<sup>7</sup> continue to be commonplace in Guatemala. De León

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

<sup>5</sup> Id at 7.

<sup>6</sup> Interview, February 14, 1990.

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

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

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

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

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<sup>8</sup> Prensa Libre, March 23, 1990, p. 59.

