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增进和保护人权：人权维护者

人权维护者情况秘书长特别代表希娜·吉拉尼女士
根据人权委员会第 2000/61 号决议提交的报告

增 编

对危地马拉的访问 *

* 本访问报告的内容提要与其他所有正式语文分发。报告正文载于本内容提要的附件，
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内 容 提 要

根据人权委员会第 2000/61 号决议，本报告分析了人权维护者情况秘书长特别代表收到的关于危地马拉的资料，并就解决已发现的问题提出了建议。

危地马拉人权维护者目前状况的背景是，国内武装冲突长期存在，有关人权遭到侵犯，对以往实施的行为在一定程度上有罪不罚。一套适用的国际人权法、国内法律文书、正在审议中的立法议程和持续执行和平协定，为人权维护者目前展开活动提供了一个逐步演变的规范框架。除了非常成熟的民间社会组织以外，还有一些处理人权问题的国家机构或与国家有关的机构，包括议会人权委员会、人权调查员和和平秘书处(*Secretaria de la Presidencia de la República para la Paz, el Desarrollo y la Reconciliación Nacional, SEPAZ*)。

最近已经得到证实或指称的侵害人权维护者的行为包括死亡威胁、恐吓行为、侵犯人身安全(包括殴打和绑架)和侵犯生命权，这些行为有时可以同特定的政治事件和其他事件联系起来。侵权行为的主要目标是参与了解以往侵权行为真象的人权维护者(包括律师、检察官、法医专家、调查员办公室工作人员和受害者本人)和参与增进经济、社会和文化权利和土著人民权利的维护者(包括工会活动家、农业工人、土著人民组织成员和环境活动家)。记者和宗教领袖有时由于其活动也成了打击目标。侵权事件相当集中于危地马拉城，但该国内地，特别是埃尔基切和圣马科斯地区也发生了许多侵权行为。

司法机构的独立性受到限制，必须保护司法官员和证人，司法程序受到拖延和费用昂贵，这些因素交织起来，限制了受害者取得公理的机会，并助长了对侵犯人权行为者有罪不罚的现象。

侵权行为尤其是警察部队和军队成员实施的，它们的职权范围仍然超越民主社会警察和军队体制的职权范围，而且与安全部队有联系的秘密团体也侵犯人权。

从人权维护者及其活动的角度来看，新政府从 2000 年开始采取了一些积极的举措，包括设立各种机制和机构来处理侵犯人权行为，特别报告注意到，危地马拉政府及时答复了其各种函文。

但特别代表注意到，该国的人权情况正在恶化，过去两年里侵害人权维护者的事件有增无减，该国政府执行《全面人权协定》(*Acuerdo Global sobre los Derechos Humanos*)规定的目标与和平协定中的人权构成部分的承诺有所减退。

在这一整个局势下，迫切需要加强国家机构解决人权问题并确保法治的能力，并需要进一步协调政府在这一方面正在展开的工作。执行所有和平协定是危地马拉有一个人权维护者的安全环境和增进和保护人权的必要条件。该国政府还应该加紧努力，取得民间社会的信任，特别是人权维护者的信任，并阻止政府官员将他们视为应予以反对的对手的倾向。

民间社会组织已经成熟起来，而且在困难的情况下坚韧不拔，这给她留下了深刻的印象。它们的勇气和对其影响危地马拉变革进程的能力的信心是有利于改进该国人权维护者情况的因素。

Annex

**REPORT OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL
ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, MS. HINA JILANI, ON
HER MISSION TO GUATEMALA, 26 MAY-1 JUNE 2002**

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Introduction

1. Submitted pursuant to Commission on Human Rights resolution 2000/61, this report presents an analysis of information concerning Guatemala received by the Special Representative of the Secretary-General on the situation of human rights defenders. It includes information received by the Special Representative during her visit to Guatemala, on invitation from the Government, from 26 May to 1 June 2002, as well as information received from individuals and non-governmental organizations (NGOs) in the course of the implementation of her mandate.
2. The purpose of the visit was to study and evaluate the situation of human rights defenders, the conditions under which they pursue their activities in Guatemala, and respect for the rights enshrined in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereafter the Declaration). A first press conference was held prior to the visit and a second in Guatemala at its conclusion.
3. The Special Representative visited Guatemala City and San Marcos and met with the President of the Republic of Guatemala, the Vice-President, the Ministers of the Interior, Labour, Culture and Education, as well as numerous government officials, parliamentarians, municipal authorities, peasants, local religious leaders, human rights defenders in various capacities and representatives of United Nations entities and the international community. A detailed list is attached as appendix I to this report. She wishes to thank everyone she met for their generous assistance, and to express her gratitude for the cooperation extended to her by the Government of Guatemala and for the strong support and insight afforded by the staff of the United Nations Development Programme (UNDP) and the United Nations Verification Mission in Guatemala (MINUGUA).

I. GENERAL OBSERVATIONS AND LEGAL FRAMEWORK

A. General observations

4. In analysing the situation of human rights in Guatemala, the legacy of 36 years of internal war and its impact on the society, the economy and the institutions of the State cannot be underestimated.
5. On 29 March 1994, the process of negotiation of the peace agreement led to the adoption and signature of the Comprehensive Agreement on Human Rights by the Guatemalan Government and the Unidad Revolucionaria Nacional Guatemalteca (URNG). MINUGUA was established in November 1994 to monitor the compliance of both parties with the Agreement and on 29 December 1996, the Agreement for a Firm and Lasting Peace put an end to the armed conflict.
6. On 24 April 1998, the Human Rights Office of the Archdiocese of Guatemala (Oficina de Derechos Humanos del Arzobispado de Guatemala, ODHAG) presented a report, *Guatemala Nunca Más* (Guatemala Never Again), analysing the causes and consequences of conflict.¹ The United Nations-sponsored Commission for Historical Clarification (Comisión de

Esclarecimiento Histórico, CEH), presented its final report, entitled *Guatemala: Memoria del Silencio* (Guatemala: Memory of Silence), on 25 February 1999. CEH estimated that the toll of deaths and disappearances during the armed conflict had reached 200,000. CEH itself had registered a total of 42,275 identified victims, of whom 83 per cent were indigenous and 17 per cent "ladinos". According to both CEH and REMHI reports, government forces and their allied paramilitary bands committed 90 per cent of violations.²

7. According to the UNDP *Human Development Report* and data provided by MINUGUA, Guatemala is the Latin American country with the most unequal distribution of wealth after Brazil and is second only to Haiti in the list of countries with the lowest Human Development Index. Revenue from taxes in Guatemala amounts to 9.4 per cent, the second lowest in Latin America after Haiti. About 60 per cent of the country's population lives in rural areas and 59 per cent of the rural population is indigenous. The indigenous population represents about 50 per cent of the population according to official data, but it may amount to more than 60 per cent according to other sources.

8. The Peace Agreement was signed when the social, economic and political causes of the conflict were still strongly rooted in Guatemalan society. The peace-building process and the re-establishment of democracy and the rule of law were negatively affected from the beginning by the strong resistance of still influential groups of economic and other interests. Equally, the efforts to investigate and verify human rights abuses committed during the years of the conflict provoked the resistance of those interested in covering up the past and gave rise to incidents of violence, threats, intimidation and killing of justice officials and members of civil society organizations.

9. President Alfonso Portillo, of the Frente Republicano Guatemalteco (FRG), took office in January 2000. He affirmed his commitment to the full implementation of the peace agreements. In the first months of the new Government positive steps were taken towards this end. However, progress in the implementation of the peace agreements has been extremely slow and MINUGUA and other international and national observers reported that in the past two years there has been a deterioration of the human rights situation in the country.

10. The Special Representative was presented with numbers, data and statistics showing a worrying increase in the number of attacks against human rights defenders.

B. Legal framework

1. International obligations

11. Guatemala has assumed a range of obligations deriving from international instruments in the area of human rights, notably those contained in the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Optional Protocol to that Covenant, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child and its two Optional Protocols. It should be underlined that Guatemala has not lodged any reservation to these instruments.

Guatemala has also signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Guatemala is also party to the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization (ILO), as well as the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1948 (No. 98). Guatemala has also ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169). It should be noted that Guatemala has not made the declarations under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 22 of the Convention against Torture recognizing the competence of the respective treaty monitoring bodies to receive and consider communications from individuals or groups.

12. At the regional level, Guatemala is also party to the American Convention on Human Rights (Pact of San José), the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador), the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, and most other regional treaties.

13. Article 46 of the Guatemalan Constitution provides that international treaties and conventions ratified by Guatemala in the field of human rights take precedence over internal law.

2. Domestic legislation

(a) Constitution

14. Guatemala is a democratic republic. The 1985 Constitution provides for the election of the president by universal suffrage for one four-year term. The Constitution also provides for a centralized unitary State and for the separation of powers. Executive power is exercised by the President, who is both Head of State and of Government. Legislative power is exercised by a unicameral Congress, while judicial power is vested in a court system headed by the Supreme Court.

15. The Constitution provides for the protection of civil and political rights as well as social, economic and cultural rights, particularly those of indigenous peoples. These rights may be suspended in case of invasion of Guatemalan territory, serious disturbance of the peace, activities against the security of the State and public emergency (art. 138).

16. The Constitutional Court (Corte de Constitucionalidad) receives complaints via requests for amparo, and may strike down any actions, orders, decisions or laws made by the authorities which the Court determines to be a threat to or to restrict rights guaranteed by the Constitution and the law. There are no circumstances in which amparo is inapplicable.

17. The Constitution also recognizes, in article 31, the right of persons to have access to information concerning them personally and to correct and/or update such information. The right is, however, limited by several exceptions stated in the Constitution and the law.

(b) Legislation on freedom of association, assembly and expression

18. Article 34 of the Constitution provides for freedom of association. It also provides that no one shall be required to join or be a member of a group or association established for self-defence or similar purpose. Article 102 (r) of the Constitution further provides that the right to form trade unions is not subject to any authorization but only to requirements established by law. It also provides that workers cannot be fired for belonging to a trade union. The Labour Code covers all matters relating to trade unions in its articles 206-234. All workers, including public sector employees, have the right to form or join unions, with the exception of members of the security forces. The Labour Code was revised in 2001 with a view to bringing the legislation into line with ILO Conventions Nos. 87 and 98. Under the reformed Code, the Labour Ministry has the responsibility for guaranteeing the free exercise of union rights. However, the authorization of the Ministry of Labour must be sought before a union can begin its activities. The reform also permitted industry-wide unions, in addition to enterprise unions. In order to be recognized legally a new industry union must have a membership that totals one half plus one of the number of workers in the industry.

19. Articles 30 and 35 of the Constitution regulate the right to individual freedom of expression and assembly. Everyone has the right to hold a public demonstration, provided that he/she complies with the pre-established legal requirements, such as requesting authorization in advance. The crimes of slander and defamation (*injuria, calumnia y difamación*) are contained in the Criminal Code. The United Nations Human Rights Committee has expressed concern that the defamation laws in force might be used to restrict criticism of the Government or public officials and recommended they be reformed in order to ensure a proper balance between the protection of a person's reputation and freedom of expression.

(c) Other laws or measures which have a direct impact on the work of human rights defenders

20. Decree Law No. 145 of 1996 (National Reconciliation Act) provides for the extinction of criminal responsibility for political or related ordinary offences which occurred during the armed conflict. However, it prohibits amnesty for acts which may not be pardoned or amnestied under national and international law, i.e. enforced disappearances, torture and genocide.

21. Article 30 of the Constitution provides that all documents of the administration are public. Anyone interested has the right to obtain, at any time, copies of such documents and to have access to the information he/she wishes to consult, with the exception of military or diplomatic information concerning national security and information provided confidentially.

22. The Code of Criminal Procedure in article 116 gives the victim or his/her representative the right to institute proceedings or become a party to proceedings already instituted by the Public Prosecutor's Office (Ministerio Público): "This right may be exercised by any citizen or association of citizens against public officials or employees who have directly violated human rights."

(d) The Peace Agreement and the pending legislative agenda

23. The Comprehensive Agreement on Human Rights comprises nine main commitments. Those particularly relevant to the mandate of the Special Representative are: the general commitment regarding human rights; strengthening institutions for the protection of human rights; the commitment to eradicate impunity, and that regarding safeguards and the protection of individuals and entities working for the protection of human rights; guarantees regarding freedom of association; the commitment to dismantle illegal security forces and clandestine security apparatus and to regulate the traffic and sale of firearms; and the commitment to provide compensation and assistance to the victims of human rights violations.

24. In the opinion of MINUGUA and the representatives of the various human rights organizations with whom the Special Representative met, even though progress has been made in some respects, the pending legislative agenda for the implementation of the peace agreements is still very heavy. No affirmative action has been undertaken to increase indigenous peoples' participation in public life and discrimination is still not characterized as a crime under the Penal Code. Reform of the labour laws with respect to maternity leave, prevention of sexual harassment, equal pay, agricultural work and the conditions of women working in private homes has not been approved by Congress. Amendments to the Labour Code with regard to restrictions on the right to strike, child labour, social security and other matters are still pending. The adoption of the Agrarian and Environmental Procedure Code and of a law on land regularization is also pending.

25. The judicial reform has so far achieved limited results in increasing access to justice, while no progress has been made with regard to the elimination of impunity and harmonization of State law and customary law. The laws on the creation of a national intelligence system to regulate and supervise State intelligence agencies have not progressed, while the reform of military training and the formulation of a new military doctrine are still being debated. Finally, the demobilization of the Presidential General Staff (Estado Mayor Presidencial, EMP)³ has been postponed to 2003.

26. A Government-sponsored Access to Information Law that would establish an Ombudsman's Office to protect the right to freedom of information, including the ability to petition the Government for personal records, is still pending before Congress. This law would widen the scope of article 31 of the Constitution and would extend access to personal information to private archives and give judges the power to access illegal archives.

27. The Government of Guatemala informed the Special Representative that progress had been made in some areas, including the creation of the Secretariat for Agrarian Affairs and the approval of the Law on Community Development Councils, the Municipal Code and the Law on

Decentralization, which will allow for greater participation of indigenous peoples in the formulation of public policies affecting their communities. Furthermore, the Constitutional Court, in an advisory opinion, ruled in favour of the ratification of the Rome Statute of the International Criminal Court.

(e) Principal Guatemalan institutions dealing with human rights issues

28. A Human Rights Commission of the Congress and a Human Rights Ombudsman are provided for in the Constitution.

29. The Office of the Ombudsman is an important institution, and has national coverage with its headquarters in Guatemala City and regional offices in the provinces. The Ombudsman is appointed for a five-year term and has a wide mandate for monitoring respect for human rights in the public administration and reporting on conduct of public officials that is in violation of human rights. The mandate also includes investigating all types of complaints of human rights violations, recommending action and measures for relief in individual cases, and improving systems and procedures to promote and protect human rights.

30. The Presidential Commission for the Coordination of Human Rights Policies (Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos, COPREDEH) was created by presidential decree in 1991⁴ following a recommendation of the independent expert on the situation of human rights in Guatemala of the Commission on Human Rights. It is directly linked to the President of the Republic. COPREDEH is chaired by a President, appointed by the President of the Republic, and includes the Minister for Foreign Affairs, the Minister of Defence, the Minister of the Interior, the Public Prosecutor (Fiscal General) and the Coordinator of the Peace Commission.

31. COPREDEH has the following mandate: to coordinate actions of ministries and other institutions of the executive in the field of human rights; to supervise the communication and cooperation between the executive, the judiciary and the Office of the Ombudsman; to centralize information on complaints of human rights violations and to promote their investigation through the Ministry of the Interior and the Public Prosecutor's Office; to establish a mechanism to constantly follow up on investigations of human rights violations and judicial proceedings resulting from them in order to be able, through the Ministry for Foreign Affairs, to provide information to the international community and mechanisms; to study and propose laws to improve the situation of human rights in the country; to promote international cooperation aimed at strengthening national institutions for the promotion and protection of human rights; and to establish, through the Ministry for Foreign Affairs, a cooperative relationship with international mechanisms for the promotion and protection of human rights. COPREDEH has its main office in Guatemala City and seven regional offices.

32. Presidential Decree 525-99 of 19 July 1999 created the Office of the Ombudsman for Indigenous Women (Defensoría de la Mujer Indígena, DEMI). DEMI is linked to the COPREDEH. The Ombudsman (Defensora) for Indigenous Women is appointed by the President of the Republic from among three candidates chosen by regional and national indigenous women's organizations and COPREDEH.

33. Presidential Decree No. 538-94 of 5 August 1994 created the Secretariat of the Presidency of the Republic on Peace, Development and National Reconciliation (SEPAZ) with the mandate to support and coordinate policies for the implementation of commitments under the peace agreements.

34. A wealth of presidential and other commissions and forums have been created in the past few years. Among them, of particular relevance is the presidential Cabinet for Security and Human Rights (Gabinete de Seguridad y Derechos Humanos), composed of the Vice-President, the Ministers of Defense, the Interior and Foreign Affairs, the President of COPREDEH, the Administrative and Security Affairs Secretariat (Secretaria de Asuntos Administrativos y Seguridad, SAAS), SEPAZ and the Secretariat for Strategic Analysis (Secretaría de Análisis Estratégico, SAE). In the past few months SAE has assumed a leading role within the Government in dealing with the issue of threats and violations against human rights defenders.

35. On 24 May 2002, by Presidential Decree 170-2002 a presidential commission to investigate threats against and intimidation of members of human rights NGOs was created. It was to be composed of the Vice-President, the Secretary of SAE, the Minister of the Interior, the Public Prosecutor and representatives of interested organizations. However, civil society groups decided not to participate and the Commission's mandate expired on 30 June 2002.

36. On 24 May 2002, the Public Prosecutor announced the appointment of a special prosecutor to investigate cases of violence against and intimidation of human rights defenders. A special prosecutor on threats against justice officials and a special prosecutor on threats against trade unionists and journalists had previously been established. The Special Representative was also informed of the intention to create a special police unit to investigate cases against human rights defenders.

II. MAIN FINDINGS AND CONCERNS

A. Violations of the fundamental rights of human rights defenders

37. During her visit, the Special Representative was informed about a considerable number of cases of human rights violations committed against human rights defenders in Guatemala. Some of them had previously been transmitted to the Government in the exchange of communications with the Special Representative. In this regard, the Special Representative would like to refer to the two annual reports she has submitted to the Commission on Human Rights (E/CN.4/2001/94 and E/CN.4/2002/106), which contain the communications sent by her to Guatemala and the responses received from the Government.

38. In the period August 2000-July 2002, the Special Representative sent communications to the Government of Guatemala concerning 50 cases of alleged violations against human rights defenders, of which about 30 involved more than one victim. (Some of the cases that were brought to the attention of the Special Representative during her visit and concerning which communications were sent to the Government are listed in appendix II to the present report.)

39. The Special Representative notes in the latest MINUGUA verification report⁵ that in the period from 1 January 2000 to 22 May 2002, the Mission received and admitted for consideration 338 complaints (excluding complaints of violations of due process). Of these, 168 (48 per cent) were incidents involving human rights defenders, affecting 619 victims.

40. According to MINUGUA, 95 per cent of the alleged violations against human rights defenders are death threats and acts of intimidation, such as following vehicles, surveillance in front of the victims' homes and offices, anonymous and malicious telephone calls, searching offices and homes, wiretapping and theft of computer files. Defamation campaigns were also reported.

41. According to figures presented to the Special Representative by representatives of the National Human Rights Movement (Movimiento Nacional de Derechos Humanos), of the 125 violations reported in the first five months of 2002, 60.8 per cent were threats, 16 per cent were some form of intimidation, 15 per cent were illegal searches, 4.8 per cent were violations to the right to life and 2.4 per cent were physical attacks.

1. Violation of the right to life and personal integrity

(a) Killing of human rights defenders

42. The National Human Rights Movement reported that in the first months of 2002, eight human rights defenders were killed in suspicious circumstances and two attempted killings of human rights defenders were recorded. In 2001, seven human rights defenders were killed, while there were three cases of attempted killings.

43. Victims of killings in cases reported to the Special Representative included peasant leaders and union leaders in the interior of the country. Allegedly, the majority of the killings in the provinces were related to the activities of the victims in defence of the land or labour rights of the local communities. It is also alleged that members of private security firms, with the participation or acquiescence of the National Civilian Police (Policía Nacional Civil, PNC), were responsible for some of these killings.

44. Those who were killed or victims of attempts on their life were members of NGOs, journalists, religious leaders and members of associations fighting against impunity and investigating cases of corruption of public officials or of environmental damage. Fewer killings were reported in Guatemala City than in the provinces, and those killings appear to be related to investigations of past human rights violations and to be directed against prominent human rights NGOs.

(b) Other attacks against the physical integrity of human rights defenders

45. Cases of attacks against the physical integrity of human rights defenders, including beatings, abductions, one case of rape and one case of forced disappearance, were also reported to the Special Representative. According to the information received, these attacks were mainly directed against representatives of prominent organizations involved in investigations of past human rights violations. The majority of such attacks took place in Guatemala City.

46. Allegations were received that the army was involved in some of these cases. Unfortunately, so far investigations have not come to any conclusions as to the identification of the perpetrators.

47. It was reported that, even though the attacks against human rights defenders would appear, on the surface, to be common crimes, there are elements present that suggest that they might be politically motivated. For example, in several of the cases reported to the Special Representative, armed robbers left behind valuable objects, and in interrogating the victims attackers showed a particular interest in the victims' activities.

2. Threats, intimidation and harassment

48. Threats, harassment and intimidation are directed against human rights defenders in general, including organizations and individuals working for the promotion and protection of economic, social and cultural rights. According to the information received, those most affected by the threats are human rights NGOs, judicial officials, religious leaders, families of victims, forensic anthropologists and peasants. Many of the death threats reported to the Special Representative seem to be linked to efforts to investigate past violations and to clarify the fate of the disappeared.

49. The Special Representative received numerous allegations of theft of computer files and other attacks apparently aimed at obstructing progress in investigating past human rights violations and in collecting evidence. According to the information received, the offices of several organizations were broken into and electronic files containing important confidential information were stolen or destroyed.

50. Organizations and individuals working in the social field also received death threats. Some of them were reportedly linked to disputes over land rights. According to the information received, in one of the cases members of the army reportedly threatened farmers with removal from the land by force if they did not leave voluntarily.

51. The Special Representative learned with concern that, even though labour rights are guaranteed by law and progress has been made in the reform of the Labour Code, in practice trade union members and representatives continue to be victims of violence in connection with the exercise of such rights.

52. Trade unionists with whom the Special Representative met reported serious violations of the right to organize, including death threats, wrongful dismissal and persecution of union leaders and members. Some also reported that they had been blacklisted. Defenders of union rights or critics of the Government were also threatened.

3. Trends of attacks against human rights defenders

53. The Special Representative wishes to refer to a SAE report which analyses information contained in the MINUGUA reports and in reports of the Ministry of the Interior, as well as in complaints made by human rights defenders. The report was presented to the Special

Representative and made public during the visit. SAE analysed 52 cases of alleged break-ins, threats, intimidation, harassment and sporadic short abductions of human rights defenders in the period July 2000-December 2001. The analysis focused on violations against, amongst others, human rights activists, farmers, trade unionists, students, religious leaders, groups seeking justice, groups promoting children's and women's rights and public officials. The victims were people involved in criminal proceedings, scientific investigations, and collecting information on groups or individuals linked to the civil war or to social conflicts. The analysis substantiates the view that the perpetrators in most of the cases have precise information about the victim's work environment, personal life and habits. The report also mentions allegations that perpetrators of some of these violations have been seen in the streets seemingly exercising authority over members of the PNC.

54. Representatives of the National Human Rights Movement claim that it is possible to identify a link between a resurgence of violations against human rights defenders and specific political and other events. The Movement recorded a rise in the number and intensity of violations against human rights defenders in the following periods: in February 2000, in connection with the discussions of the first proposal of the "governability pact" and with public protests against a rise in the cost of public transport; in September/October 2000, when groups of citizens mobilized to protest against a corruption scandal involving the President of Congress, Mr. Ríos Montt; in May 2001, during the hearing of three army officers and a cleric accused of involvement in the murder of Monsignor Gerardi and in connection with actions to file a complaint with the Public Prosecutor's Office against Efraín Ríos Montt and members of his staff; in September-October 2001, when the trial of the suspected instigators of the murder of Myrna Mack was about to begin; in February 2002, in connection with the meeting of the Consultative Group; and in March-May 2002, in connection with the announcement of the visit of the Special Representative and the discussions concerning a MINUGUA report on the transfer of budgetary resources to the army and EMP.

4. Groups most affected by human rights violations

55. The data reported by MINUGUA and the National Human Rights Movement, and complaints received by the Special Representative show that the main targets of the attacks belong to two categories. The first is human rights defenders involved in efforts to discover the truth about past violations and includes victims, witnesses, lawyers, prosecutors, human rights activists, forensic experts and personnel of the Ombudsman Office. The second category is defenders involved in the promotion of economic, social and cultural rights and the rights of indigenous peoples, such as trade unionists, peasant workers, members of indigenous peoples' organizations and environmental activists. Journalists who report on cases of corruption or on investigations of past abuses, as well as religious leaders who support efforts to clarify the fate of the disappeared or provide support to local communities in land rights and other social disputes have also been targeted.

56. While the attacks against the first group of defenders are geographically spread throughout the country, with most cases being concentrated in Guatemala City, the majority of violations against the second group, with few exceptions, occur in the interior of the country. It was pointed out that the situation is particularly tense in the regions of Quiché and San Marcos.

57. It is evident from the information received by the Special Representative from different sources that members of human rights NGOs, in particular those investigating and gathering evidence in cases of forced disappearances, killings, torture, etc., constitute the highest percentage of victims. This would seem to indicate that the attacks are aimed at perpetuating impunity for human rights violations by intimidating those who seek to bring the perpetrators to justice.

58. Furthermore, human rights organizations and activists were targeted for denouncing the violations of which they themselves were the direct victims. By letter dated 11 June 2002, the Special Representative, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an urgent appeal to the Government of Guatemala concerning death threats reportedly received by members of human rights organizations after their meeting with the Special Representative in Guatemala City. According to the information received, on 7 June 2002, a letter signed "*Guatemaltecos de verdad*" ("real Guatemalans") addressed to a group of 11 human rights defenders, calling them "enemies of the State", was sent by fax or delivered to various human rights organizations and press agency offices. In the letter several individuals were threatened with death, insulted and accused of having damaged the image of the country, in particular by providing information to the Special Representative.

59. The Special Representative was glad to learn that the major human rights organizations have recently come together as the National Human Rights Movement and have undertaken a number of joint initiatives to coordinate and harmonize their work. One such initiative was the presentation to the Government of a document entitled "Security is not negotiable", in which they raised concerns about attacks against them and the climate of insecurity in which they work.

B. Other factors which have a direct impact on human rights defenders

1. Administration of justice and impunity

60. All the officials whom the Special Representative met recognized the need to strengthen the administration of justice and fight impunity. It was emphasized that this is a lengthy and costly process and that the efforts undertaken to reform the justice system had been undermined by the lack of economic resources. Court delays were indicated as another obstacle to a speedy and effective administration of justice and as an element favouring de facto impunity. Reportedly, many of these delays are caused by abuses of the amparo procedure.

61. The Guatemalan Constitution provides for free access to the courts (art. 29) and for the institution of proceedings against offenders (art. 45). Article 213 guarantees the independence of the judiciary. The Penal Code punishes judges and prosecutors who do not fulfil their obligations "by maliciously failing to prosecute and try offenders", as well as judges who refuse to try a case on the grounds that the law is obscure, insufficient or silent (art. 469). In 1996, the Military Code was amended in order to allow ordinary crimes and offences committed by members of the army to be tried by ordinary courts.

62. A National Commission for Monitoring and Supporting the Strengthening of the Justice System was established to look into, inter alia, the issue of abuse of the amparo procedure, the role of justices of the peace, reform of the Penal Code and the reduction of duplication of work

in the criminal departments run by the police, the Public Prosecutor's Office and the Department of Justice. The law on judicial careers, which regulates the income, terms of office, promotion, training, disciplinary measures, etc. was approved. The Commission also approved a plan for the modernization of the justice system, and a number of subcommissions were created for its implementation (see E/CN.4/2002/102).

63. In spite of the existing legal framework and the steps taken by the Government to strengthen the administration of justice, in Guatemala there is almost total de facto impunity for violations of human rights, including those committed against human rights defenders. There is an obvious link between impunity and the precarious situation of human rights defenders in the country. The fact that structures and individuals responsible for past human rights violations have been left in place favours impunity; and the majority of the attacks against human rights defenders are linked to efforts to eradicate impunity.

2. Independence of the judiciary and protection of justice officials and witnesses

64. There are many reasons why impunity is rampant in Guatemala. The Special Rapporteur on the independence of judges and lawyers stressed that especially in politically sensitive cases where the military or politicians are involved, prosecutors and judges often are so intimidated that they refrain from taking appropriate action. Also, witnesses to crimes are often so frightened that they refuse to give evidence. The President of the Supreme Court clearly stated that Guatemalans do not trust the police; they prefer not to speak or report intimidation and threats, as they are afraid of retaliation.

65. The Special Representative was informed that judges, lawyers, prosecutors and witnesses in judicial proceeding in cases of human rights violations or in cases of corruption continue to be victims of threats and intimidation. In a meeting with the Association of Judges, the Special Representative was informed that in the year 2001, 147 complaints of threats against judges were recorded, three judges were killed and one was lynched. An indication of their vulnerability is that private companies refuse to give life insurance and medical insurance to judges.⁶

66. In 2000, the Supreme Court established the Service for the Protection of Witnesses and Persons Linked to the Administration of Justice and took measures, including coordination with the Public Prosecutor's Office and the PNC, to protect prosecutors and judges who receive threats. However, as mentioned above, in view of allegations of corruption of police officers and of their links with illegal groups, victims often fear that the security guards provided to them might have links to the author of the threats.

3. Cooperation between the police and the Public Prosecutor's Office and effectiveness of investigations

67. There is a general view that inefficiency of investigations is due to the lack of technical means and proper training of the police and prosecutors and to the poor coordination between these two institutions. Parallel investigations conducted by government bodies not legally authorized to do so resulted in the destruction of evidence and impeded convictions. Reportedly, article 30 of the Constitution has been invoked by the army to deny access to information in cases involving investigation of human rights violations, in the interest of national security.

68. The Special Representative met with the recently appointed Public Prosecutor. He informed her that the budget of his Office had been drastically reduced in the past three years,⁷ while the Office had grown bigger. He stressed that he intended to give priority to interinstitutional cooperation and had reached an agreement with the PNC to clearly delineate functions and better define the role of the police in investigations, which would be conducted under the guidance and authority of the Public Prosecutor's Office.

4. Access to justice

69. The Special Representative gathers that access to justice, especially for poor people and indigenous people, continues to be limited. Interpreters most of the time are not available in courts. Despite article 46 of the Constitution, judges do not always apply international human rights provisions, which would be particularly relevant where national legislation is still not in line with international standards, in particular with regard to the rights of indigenous peoples.

C. Major sources of violence committed against human rights defenders

1. Responsibility of the State

70. MINUGUA reported that 58 per cent of the cases of violations against human rights defenders are still open. Investigations in 21 per cent of the cases were closed with the conclusion that there was not enough evidence to attribute responsibility, while in 9 per cent of the cases the State or a State institution was determined to be responsible. However, according to MINUGUA, the State has done very little to help the situation of human rights defenders and investigative and security organs have been unwilling, unable or afraid to follow up complaints adequately.

71. The Special Representative notes with concern statements by senior government officials and the President of Congress that not all the complaints of violations are credible and that the alleged victims often were not cooperative and did not provide details necessary for the investigations. Representatives of the National Human Rights Movement and other human rights defenders with whom the Special Representative met during the visit complained that in spite of details offered by the victims and witnesses, in several cases the police and the Public Prosecutor's Office did not open investigations. They alleged that victims were given the burden of providing information that should be gathered through investigation. Their cases were closed on the pretext of insufficient information or non-cooperation of the victim or witnesses. The Vice-President told the Special Representative that serious investigations could not be undertaken on the basis of oral information when there is no corresponding file with the police or the Public Prosecutor's Office.

72. Human rights defenders reported that one of the elements obstructing their work is the fact that since the beginning of the conflict, the army and right-wing groups have promoted the identification of human rights activity with subversion and terrorism. After the signing of the peace agreements and with the process of democratization, this conception was replaced by the idea that human rights are the rights of criminals and therefore human rights defenders are responsible for the high crime rate.

73. The Special Representative heard of instances of defamatory statements against human rights defenders by senior government officials. In a meeting with the Cabinet for Security and Human Rights, she was assured that such episodes had been isolated and would be discouraged in the future.⁸ The Special Representative underlined the importance of the State authorities supporting the work of human rights defenders. The Special Representative was disappointed to learn that shortly after her visit a resolution tabled by a deputy seeking an announcement by Congress regarding the need to protect human rights defenders had been rejected.

74. Immediately after the end of the visit of the Special Representative and the press conference, President Alfonso Portillo stated that her findings and her vision were "very subjective" and that "in Guatemala no one knows the absolute truth. Whoever says they do is a liar." The Special Representative considers that all complaints demand serious consideration and should not be dismissed without proper investigation. It is the responsibility of the State to find the truth with respect to the violations of human rights. The Special Representative also believes that edging away from the reality of the dangerous situation of human rights defenders would dilute the effect of any proclaimed commitment to eradicate the threats they face and could strengthen the impunity that the perpetrators of these violations enjoy.

(a) Responsibility of the police

75. According to national and international human rights observers, members of the police continue to violate human rights. Instances of torture and ill-treatment, excessive use of force, extrajudicial executions, abuse of power and corruption were reported. According to allegations received by the Special Representative, many of the attacks against human rights defenders were committed with the participation or acquiescence of members of the police. That people responsible for past human rights violations may be members of the police gives credence to allegations of police involvement in attacks aimed at stopping anti-impunity initiatives.

(b) Responsibility of the military

76. The army maintains great power in the country. This, coupled with the fact that the army was responsible for the majority of the violations committed during the armed conflict, makes credible allegations of army involvement in illegal activities aimed at obstructing prosecution for past human rights violations. Also, according to the information received, the methods used would appear to confirm allegations that some army officers, and in particular military intelligence officers, are involved in violations against human rights defenders.⁹

77. The peace agreements, in particular the Accord on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society, contain specific provisions with regard to the number, role, functions, budget, deployment, and doctrine of the army. However, there has recently been a drawing back from the implementation of the peace agreements regarding the role of the army.¹⁰

78. An issue of serious concern and one which is seen as affecting the security of human rights defenders is the "remilitarization" of the State. According to national and international observers, in the wake of the terrorist attacks of 11 September 2001 in the United States, the tendency to remilitarize in the name of the fight against terrorism is particularly strong in the country.

79. The Guatemalan army continues to perform tasks that go beyond those performed by this institution in a democratic society. The army has on several occasions been requested by the Government to support the PNC in its public policing tasks. This, besides representing a violation of the peace agreements, also contributes to increasing the feeling of insecurity among the civil population, which still fears the army. It also enhances the perception that the police are incapable of providing protection. Furthermore, it was reported to the Special Representative by senior army officials that the army continues to perform such tasks as the distribution of fertilizer, the management of businesses, including a bank, the distribution of educational material and the managing of some educational centres.

80. Retired military officers continue to exercise important public functions. At the time of the visit the Minister of the Interior was a retired high-ranking army officer, as was the director of the Institute of Tourism. According to the Constitution, the Minister of Defence should be a general or a colonel in the army. The present Government attempted in 2000 to appoint a civilian as Minister of Defence but the Constitutional Court ruled that this would be unconstitutional.

81. The MINUGUA verification report shows that there was an increase in the budget of the army. Reports received from other sources confirm this. The Mission reported that during the years 2000 and 2001, in spite of the fact that the approved budget respected the established limits, there were constant transfers of funds from the executive to the Ministry of Defence. In the past two years, the budget of the Ministry of Defence was similar to its budgets during the years of armed conflict.

82. The Vice-President informed the Special Representative that the budget of the army respected the limit established in the peace agreements. He stated that higher expenses were connected with expensive services provided by the army, such as providing transportation for the President and Vice-President and transportation of fertilizer, and with the fact that the budget for food for military conscripts had to be increased to meet adequate nutritional standards. The Special Representative was told that the previous Government had increased the salaries of teachers and, therefore, the present Government had to increase the salaries of all public officials, including the army.

83. EMP was to be dissolved under the peace agreements. However, the final dissolution of this body was postponed to June 2003. Allegedly, elements of EMP are involved in surveillance and monitoring operations.

84. Despite the fact that the peace agreements provided a series of steps to limit and regulate the intelligence activities of the military, the army continues to perform intelligence activities to combat organized and common crime. PNC officers continue to be trained in the intelligence

school of the army. According to MINUGUA, military intelligence agents have conducted parallel investigations, obstructing the course of justice. A civilian intelligence service has yet to be created in Guatemala and a proposal for congressional oversight of the intelligence service was still under preparation.

2. Responsibility of clandestine groups

85. Most people whom she met told the Special Representative that there are indications that clandestine groups are involved in the attacks against human rights defenders. It was alleged that such groups are linked to security forces, in particular military intelligence. It was reported that the attacks against human rights defenders are carried out using intelligence methods and structures, through a sophisticated division of work and with the use of substantial resources.

86. MINUGUA reported that there are worrying signs that elements that were responsible for human rights abuses during the conflict have reconverged in State agencies. Reportedly, previous counter-insurgency structures maintain control and influence over local communities through participation in the committees for development, water, electricity, etc., and ex-members of URNG and of police bodies are said to have joined the PNC or private security companies.

87. Many human rights defenders asserted that armed guards hired by private security firms are involved in the activities of clandestine groups. The Minister of the Interior acknowledged that an unknown number of bodyguards have been hired by private individuals. The Minister informed the Special Representative that the authorization to carry a weapon is issued by the Department of Control of Arms and Ammunition of the army. The Minister did indicate that efforts were being made to transfer this department to the Ministry of the Interior.

88. The SAE report recognized the existence of clandestine groups in Guatemala and their responsibility for attacks against human rights defenders. The Secretary of SAE reported that when the Government took office files containing intelligence information on individuals and groups disappeared, and expressed the fear that such information could be in the hands of private individuals who are responsible for the attacks and interfere with investigations.

89. The SAE analysis concludes that the security and justice systems are not effective vis-à-vis these clandestine bodies and apparatus. The report recommends that, with the support of MINUGUA, a census of PNC officers and weapons should be conducted in order to ascertain whether criminal elements operate within the police. It also recommends that the Cabinet for Security and Human Rights consider some test cases with a view to identifying motives for and authors of violations against human rights defenders.

90. The Special Representative welcomes the SAE report as a first step towards concrete and serious efforts by the Government to investigate the existence of clandestine groups involved in illegal activities and stresses the importance of giving immediate follow-up to its conclusions.

91. The National Human Rights Movement has urged the Government to undertake investigations to identify illegal security groups, clandestine organizations and elements of State security agencies acting outside the law, and to present a report on the result of the investigations

into threats, attacks and murders of human rights defenders. It also asked the Government to present a report on the security and investigation mechanisms that have been established for the protection of human rights defenders, both in the countryside and in the capital city.

III. CONCLUDING OBSERVATIONS

92. The Special Representative notes with appreciation several positive measures adopted by the State for the improvement of the situation of human rights, including the establishment of institutions and agencies to deal with human rights violations. The constitutional framework offers enough guarantees to enable the exercise of rights and the enjoyment of fundamental freedoms. Guatemala has not only assumed a range of obligations under international and regional human rights regimes, but has also demonstrated its readiness to cooperate with human rights mechanisms for the better promotion and protection of human rights. The Special Representative would like to express her appreciation in particular for the timely responses from the Government of Guatemala to the communications she has sent within the framework of her mandate.

93. The Special Representative is, nevertheless, deeply concerned at the deteriorating situation of human rights in the country and the consequent effects on the security of human rights defenders. She regretfully concludes that there is a clear decline in the commitment of the Government to pursue the goals set by the Comprehensive Agreement on Human Rights and the human rights components of the peace agreements. This has resulted in a major setback for the reform agenda. Institutional arrangements for the promotion of human rights have not been able to achieve the expected results because of a lack of political support, reflected by the insufficient resources placed at their disposal. The Special Representative was particularly disappointed by the performance of the Congress with regard to the adoption of laws necessary for improving human rights protections, strengthening the rule of law and democratic institutions, and eliminating impunity for human rights violations.

94. The Special Representative observes that the most basic rights of human rights defenders have been violated in recent years in Guatemala and that these violations are rarely properly investigated. Few of the reported cases of violations against human rights defenders have ended with satisfactory legal solutions.

95. The Special Representative takes note of the serious allegations concerning the involvement of the National Civilian Police and the military in attacks against human rights defenders. The lack of control over military intelligence and the absence of a national civilian intelligence service make the task of investigating the alleged involvement of State agents in violations against human rights defenders even more difficult.

96. The Special Representative received credible accounts of the involvement of clandestine structures and groups, allegedly linked to State institutions, in many of these attacks. The existence of such groups was also recognized by SAE. While serious concerns persist of direct or indirect links of security forces with authors of human rights violations, it is not difficult to understand the reluctance of human rights defenders to accept police protection or to file complaints.

97. The Special Representative considers it important to recall that State responsibility for human rights violations and breaches of international humanitarian law is not limited to direct actions or omissions by public officials, but extends to actions of private individuals and non-State elements, especially when committed at the instigation, or with the consent or acquiescence, of the authorities. It is the obligation of the State to protect its citizens from human rights violations, to prevent such violations, to pass relevant internal legislation to punish those responsible as well as to refrain from passing legislation that is contrary to international law, and to award compensation to the victims. The Special Representative finds support for this view in the remarks of the High Commissioner for Human Rights in her report on the situation of human rights in Colombia (E/CN.4/2002/17).

98. The Special Representative apprehends an increase in the climate of fear and uncertainty surrounding the work of human rights defenders with the withdrawal of MINUGUA at the end of 2002. It is therefore imperative to take measures to make the national institutions concerned more effective in dealing with the several aspects of human rights and the rule of law in the country. MINUGUA has been present in Guatemala for eight years, performing impressive work in terms of monitoring, good offices and technical cooperation. The Special Representative noticed, with some concern, that there is a tendency in the Government to rely on the support being provided by various international agencies working in the country without adequate efforts to improve the efficacy of national mechanisms.

99. The elections due to be held next year might become another event that causes a resurgence of violence and a threatening environment for human rights defenders. These fears highlight the need to hasten the pace of reforms and to strengthen peace and security.

100. The Special Representative is greatly impressed by the maturity of the civil society organizations and their resilience in the face of difficult circumstances. She commends their courage and their confidence in their own capacity to influence the course of change in Guatemala.

IV. RECOMMENDATIONS

101. The Special Representative believes that the implementation of all the peace agreements is a necessary condition for the existence of a safe environment for human rights defenders and, more generally, for the promotion and protection of human rights in Guatemala.

102. In response to the worsening human rights situation in the country, the Government has created a number of bodies and institutions to deal with issues such as corruption, impunity, threats against different categories of human rights defenders, etc. Even though this represents a positive development that the Special Representative wishes to acknowledge, it is important to ensure that such institutions work in a coordinated fashion and that they are provided with the human and financial resources and the independence necessary to carry out their work effectively.

103. Equally important is the full implementation of the recommendations made by these bodies in their different spheres of work. Guatemala's progress towards democracy, peace and human rights must be evaluated in accordance with the effective implementation of these recommendations.

104. Finally, the Special Representative urges the Government of Guatemala to take further steps to gain the trust of the civil society, particularly human rights defenders, and to discourage tendencies amongst public officials to see human rights defenders as adversaries to be challenged.

Note

¹ The report is commonly referred to as the Recovery of Historical Memory (Proyecto de Recuperación de la Memoria Histórica, REMHI) project.

² According to the CEH report, the army and paramilitary forces were responsible for 93 per cent of human rights abuses and the guerrilla forces for 3 per cent. According to the REMHI report, the figures were 89.7 and 4.8 per cent, respectively.

³ EMP is a body of the army in charge of ensuring the security and safety of the President of the Republic. CEH concluded that the Department of Security of EMP constituted an intelligence unit that was responsible for numerous violations of human rights during the armed conflict.

⁴ Acuerdo Gubernativo No. 486-91 de fecha 1 de 12 de julio de 1991, modificado por Acuerdos Gubernativos 549-91, 404-92, 222-94 y 192-95.

⁵ "Situación de los Compromisos Relativos al Ejército en los Acuerdos de Paz" ("Situation of Commitments regarding the Army in the Peace Agreements"), May 2002.

⁶ On 21 March 2001 the Supreme Court adopted a decree establishing a payment of Q 150,000 in the event of a judge's death as a consequence of violent acts related to the exercise of his/her duties and a payment for medical expenses of up to Q 150,000 where medical treatment is necessary as a result of violent acts related to the judge's exercise of his/her duties.

⁷ The budget of the Public Prosecutor's Office reportedly went from Q 350,000 three years ago to Q 185,000 this year.

⁸ See *On the Front Lines*, bulletin on human rights defenders in Latin America and the Caribbean, Amnesty International, AI Index: AMR 34/039/2002: "In September 2001, the then Minister of the Interior of the Guatemalan Government, Byron Barrientos, stated to the press 'We have information that there are groups that are interested in destabilizing and provoking chaos and anarchy.' He claimed that they were going to 'burn down offices, principally those belonging to non-governmental organizations'. Two days later, the Vice-President of Congress stated that 'The Minister of the Interior and the Director of the National Civil Police have informed us that the people who are intending to destabilize the country through confrontation belong to groups which claim to defend human rights.'"

⁹ For example, MINUGUA's eleventh report states "In several of the cases mentioned the authors of the threats used tapped telephone lines and vehicles with registration plates assigned to the Presidential General Staff and had the experience and the infrastructure necessary to terrify their victims. The high operational capacity demonstrated would seem to lend credence to the suggestion that State agents tolerate, acquiesce and participate in such actions" (A/55/174, para. 90).

¹⁰ MINUGUA verification report, *op. cit.* at note 5.

Appendix I

PERSONS WITH WHOM THE SPECIAL REPRESENTATIVE MET DURING HER VISIT

Officials

H.E. Mr. Alfonso Portillo, President of the Republic of Guatemala

Presidential Cabinet for Security and Human Rights with the participation of: Juan Francisco Reyes López (Vice-President of the Republic), Eduardo Arévalo Lacs (Minister of the Interior), Gabriel Orellana (Minister for Foreign Affairs), Alfonso Fuentes Soria (COPREDEH), Edgar Gutiérrez (SAE), Ricardo Augusto Marroquín (SAAS) and Gabriel Aguilaera (SEPAZ)

Nery Saul Dieguero Herrera, President of the Constitutional Court and Ailyn Ordóñez, Special Secretary

Juana Catinac, Ombudsperson for the Defence of Indigenous Women (DEMI)

Efraín Ríos Montt, President of Congress

Victor Hugo Godoy Morales, Minister of Labour

Otilia Lux de Coti, Minister for Culture and Sport

Mario Rolando Torres Marroquín, Demetrio Cojtí (Vice-Minister of Education) and their team

Carlos David de León Argueta, General Public Prosecutor; Uberto Estrada, General Secretary; Ms. Sara Siegel, International Cooperation; Tatiana Morales, Special Prosecutor for Threats against Human Rights Activists; Mario Leal and Leopoldo Liú, Prosecutors for Special Cases

Otto Marroquín, member of the Supreme Court

General Robin Macloni Morán Muñoz, General Staff of the Defence Ministry and his team

Eduardo Arévalo Lacs and Luis Arturo Paniagua Galicia, Chief of the National Civil Police

Julio Arango Escobar, Ombudsman

Sergio Morales, Mariliz de Estrada and Rodolfo Pérez Lara, candidates for the Ombudsman position

Deputies: Alberto Mazariegos (URNG), Carlos Mejía (URNG), Edwin Martínez (UD) and
Giovani Estrada (PLP) from the Human Rights Commission of Congress

Regional Coordinator for COPREDEH, Department of San Marcos

Governor of San Marcos

Mayor of San Marcos

International organizations and diplomatic community

Gerd Merrem, Special Representative of the Secretary-General and Chief of MINUGUA
Laura Canuto, Deputy Chief of MINUGUA

Juan Pablo Corlazzoli, United Nations Resident Coordinator and UNDP Resident Representative
United Nations Country Team

Guillermo Fernandez-Maldonado, Chief of Human Rights Unit of MINUGUA

André Bessier, Head of the Indigenous Peoples Unit of MINUGUA

Fredy Ochaeta, Coordinator of the OHCHR project, and members of the project team
Gladys Acosta, UNICEF

Federico Figueroa, UNESCO

María Castells, Justice Adviser, UNDP

Representatives of the following embassies: Argentina, Brazil, Canada, Chile, Colombia,
Costa Rica, Denmark, Egypt, Finland, France, Germany, Italy, Japan, Netherlands, Norway,
Spain, Sweden, Switzerland, United Kingdom, United States (USAID), Uruguay; representatives
of the European Union and the Organization of American States

Non-governmental organizations

Human rights organizations and representatives

Union leaders and members

Indigenous peoples' organizations

Women's associations

Religious associations

Children's organizations

Forensic anthropologists

Justice groups

Human Rights Office of the Archdiocese of Guatemala

Others

Dina Ochoa, Carlos Aguilar, Ana Cananui, Héctor Mendizabal, Moises Vargas and Rodolfo Zúñiga form the Association of Judges and Magistrates (Asociación de jueces y magistrados), Jorge Briz, Guido Ricci and Ricardo Silva, representatives of CACIF (Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras) Armando Guerra, Vitalino Similox, Arturo Querivero, Mayra Rodríguez from the Ecumenical movement, Wilson Romero, Rodrigo Asturias, Alba Estela Maldonado, Celso Humberto Morales, Hector Nuila from the Executive Committee of URNG (Unidad Revolucionaria Nacional Guatemalteca) Mario René Chávez García, Ramon Saénz Maralox, Luis Alberto Barrientos Suasnavar, Alejandro Muñoz Pivaral, Sergio Antonio Aguilar Martínez and Carlos Aguirre, from the Bar Association

Appendix II

**COMMUNICATIONS SENT BY THE SPECIAL REPRESENTATIVE OF
THE SECRETARY-GENERAL ON HUMAN RIGHTS DEFENDERS TO
THE GOVERNMENT OF GUATEMALA IN CONNECTION WITH THE
VISIT TO GUATEMALA***

1. On 4 June 2002, the Special Representative and the Special Rapporteur on extrajudicial, summary or arbitrary executions sent an urgent appeal regarding **Mario Antonio Castro Barriento** and **César Haroldo Posada Méndez**, former employees of the National Printing Office (Tipografía Nacional), who, together with their families, were reportedly victims of death threats and intimidation. According to the information received, the threats were related with the "Tipografía Nacional" case, in which Mr. Barrientos and Ms. Méndez are key witnesses. Reportedly, they were both involved in the printing of 500,000 leaflets and 50,000 posters bearing defamatory statements and accusations against Jorge Eduardo Briz Abularach, President of the Chamber of Commerce of Guatemala. Allegedly, the order to print the leaflets and posters came from the Vice-President of the Republic, Juan Francisco Reyes López, through his personal assistant, Luz Méndez de Barrios. It was reported that in January 2002, César Augusto Rodas, head of the printing plant, was murdered. In an urgent appeal sent on 22 February 2002, the Special Rapporteur on extrajudicial, summary or arbitrary executions called on the Government to provide protection to 13 employees of the Tipografía who were being threatened with death. Reportedly, in spite of the protective measures provided by the Inter-American Commission to Mr. Castro Barrientos, and the fact that Mr. Posadas Méndez was included in the government witness protection programme, they continued to be followed by unidentified men, lived in fear and went into hiding.
2. By letter dated 6 July 2002, the Government reported that, in accordance with the request of the Inter-American Commission on Human Rights of 7 March 2002, the Government had taken the necessary measures to protect the life and personal integrity of **Santiago Quevado**, **Mario Castro Edgar López**, **César Posadas** and **Edgar García**. Mr. Edgar López nevertheless left the country on 30 April. The Government also reported that it was not possible to contact Mr. Posadas and Mr. García and therefore protection measures could not be put in place.
3. By letter dated 11 June 2002, the Special Representative, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an urgent appeal to the Government concerning death threats reportedly received by members of human rights organizations after their meeting with the Special Representative in Guatemala City. According to the information received, on 7 June 2002, a letter signed by a group that called itself "Guatemaltecos de verdad" ("real Guatemalans") and addressed to a group of 11 human rights defenders whom they called an "enemy of the State" was sent by fax and/or delivered to various human rights organizations and press agencies. In the letter, the following individuals were threatened with death and insulted: **Clara Arenas**, **Miguel Ángel Albizurez**, **Miguel Ángel Sandoval**, **Nery Rodenas**, **Frank La Rue**, **Mario Polanco**, **Abner Guoz**, **Marielos Monzón**,

* A full summary of the communications sent by the Special Representative to the Government of Guatemala and of responses received will be contained in an addendum to this report.

Ronaldo Robles, Rosa María Bolaños and Helen Mack. These individuals, identified as the first of a longer list, were accused in the letter of having damaged the image of the country, in particular by providing information to the Special Representative.

4. By letter dated 24 July, the Special Rapporteur transmitted the following cases to the Government of Guatemala.

5. According to the information received, on 21 July 2002, unidentified individuals broke into the offices of five social organizations, including three human rights NGOs, and stole electronic files containing information on the work of the organizations. The human rights organizations were the **National Coordinator of Human Rights in Guatemala** (Coordinadora Nacional de Derechos Humanos de Guatemala - CONADEHGUA), the **Multi-Institutional Instance for Peace and Harmony** (Instancia Multi-institucional por la Paz y la Concordia) and the **International Centre for Human Rights Investigations** (Centro Internacional para las Investigaciones en Derechos Humanos). These organizations were documenting human rights violations. Furthermore, on the night of 14 July 2002, unidentified individuals reportedly stole computers containing important information on land issues from the office of the **Asociación de Campesinos de Jutiapa** and the **Asociación de Mujeres Campesinas y no Campesinas** in Jutiapa.

6. According to the information received, on 20 May 2002, the offices of the **Coordinadora de Asociaciones y Organizaciones de Desarrollo Integral** (CASODI) in Chichicastenango, Department of El Quiché, were broken into. Computers containing important electronic files on the work of the organization were destroyed.

7. People affiliated with the **Forensic Anthropology Foundation of Guatemala** (Fundación de Antropología Forense de Guatemala, FAFG) were reportedly threatened and intimidated. On 27 February 2002, a note was received threatening 11 people with death, 4 of whom work with FAFG and who were mentioned in reports submitted to the Public Prosecutor's Office in connection with forensic investigations in Guatemala. Reportedly, on 7 March 2002, threatening telephone calls were received. These threats were officially reported to COPREDEH and to the Public Prosecutor's Office.

8. During 2002, **Juana Contreras**, the wife of a person allegedly arbitrarily detained and later disappeared in 1983 and who is the representative of the **Grupo de Apoyo Mutuo (GAM)** in the municipality of Tiquisate, Escuintla, was threatened with death in connection with her work in "Los Amates", Izabal. Ms. Contreras visited Los Amates on several occasions during the year to secure the exhumation of the remains of people who had been massacred during the conflict. She was reportedly threatened at gunpoint and told that she would be killed together with her family. The authors of the threats are allegedly six former members of the death squad Mano Blanca and members of the G-2, who were identified by name. In spite of repeated complaints to the competent authorities, reportedly no steps were undertaken to provide protection to Ms. Contreras.

9. Cases of harassment, threats and intimidation against members and representatives of the **Comité de Unidad Campesina (CUC)** were reported. According to the information received, **Arturo Caniz**, CUC member in Guatemala City, has been under surveillance since January 2002

and has been threatened and harassed in connection with his activities. On 19 February 2002, Arturo Caniz was stopped by four men travelling in a white Toyota Corolla with blacked-out windows while he was driving in Calzada de la Paz. The four men, heavily armed, asked for his documents. They then reportedly insulted him and told him to stop his activities. Threats continued by phone and in writing. On 30 April and 1 May, Mr. Caniz received threatening anonymous notes at his home. Allegedly, in spite of having reported the incidents to MINUGUA, the Public Prosecutor's Office and the police, no investigations were undertaken. On 11 May, Mr. Caniz was followed by two men on motorcycles who took at least four pictures of him.

10. According to the information received, at the end of 2001, other CUC members in the community of Morales, Izabal, were threatened. **Tránsito Ramírez**, of Cerritos Morales, Izabal, **Maria Antonia Asencio** and **Romeo López Muñoz**, CUC leaders in Los Amates, reportedly received death threats. On 28 May 2002, **Ramón Pos** and **Carlos Hernández**, farmers, were allegedly threatened by army officials, who told them to leave the farm of San Basilio in Río Bravo, Suchitepéquez, or they would be removed by force. It was reported that since 31 January 2002, the group of farmers occupying the farm has been the object of threats, which reportedly increased as a result of a verification mission conducted in May 2002.

11. It was reported that Ms. **Rosalina Tuyuc Velásquez**, Coordinator of the Coordinadora Nacional de Viudas de Guatemala (CONAVIGUA), was a victim of threats, intimidation and harassment. On 20 March, Ms. Tuyuc Velásquez took a bus in Calzada Roosevelt and a few minutes later a car stopped in front of the bus and two young men got off the car and got on the bus. Reportedly, the two unidentified men stopped in front of her and laughed at her. On 21 March, Ms. Tuyuc Velásquez took another bus, on the same line but at a different time. On the bus, she reportedly met the same two men who stared at her and laughed at her. In March, Ms. Tuyuc Velásquez expressed concern for the security of her sons, who were reportedly being watched by unidentified individuals. According to the information received, Ms. Tuyuc Velásquez since the 1980s has been the object of persecution, allegedly by army officers, for her work with farmers and women's organizations and as a catechist. Ms. Tuyuc Velásquez's father was allegedly kidnapped by army officers in 1982 and her husband, Rolando Gómez Zotz, disappeared in 1985.

12. According to the information received, **Guillermo Ovalle**, an accountant for the Rigoberta Menchú Tum Foundation, was killed on 29 April 2002 while eating in the restaurant "Las Delicias". Reportedly, unidentified men entered the restaurant and, after looking over the diners, fired about 25 shots, injuring two people and killing Mr. Ovalle. Reportedly, the attackers did not steal anything. At the time of the shooting, the Menchú Tum Foundation received four telephone calls playing funeral music.

13. It was reported that the employees of the legal section of the **Oficina de Derechos Humanos del Arzobispado (ODHA)**, lawyers and complainants in the case of Monsignor Gerardi were the object of threats, harassment and intimidation. According to the information received, on 7 May 2002, **Teresa Laines Reynoso** and **Rosa Elena Ramírez Leiva**, typists with the Recuperación de la Memoria Histórica (REMHI) project, were also victims of threats and harassment outside the ODHA office by unidentified men who honked repeatedly at them when they left the office. When they crossed the street, one of the men, with a gun in his

hands, got out of the car and walked towards them. They ran back into the office. Other members of ODHA allegedly received threats this year, including the Director of the Office, Nery Rodenas.

14. Other members of the **REMHI project** were reportedly also victims of harassment and threats. On 21 February 2002, at around 3 a.m., the church of Santa Maria Nebaj was set on fire. **Father Rigoberto Pérez Garrido** reported the fire to the Public Prosecutor's Office and since has been receiving threats. On 23 February, Fr. Garrido reportedly received a phone call from an unidentified man who told him "if you continue to investigate you are going to die".

On 27 February, a person who identified himself as a representative of the Public Prosecutor's Office visited Fr. Rigoberto in Santa Cruz del Quiché and on behalf of the Public Prosecutor's Office told him that he should not continue to investigate because the fire was "an accident". Reportedly, on 25 April, the Public Prosecutor's Office presented a report confirming that the fire was not accidental. Allegedly, the fire was set in connection with exhumations being undertaken in a clandestine cemetery; human remains were kept in the church and were lost in the fire.

15. On 20 March 2002, four offices of the **Asociación para el Avance de las Ciencias Sociales en Guatemala (AVANCSO)** were broken into by unidentified men. According to the information received, the security guard at the offices stated that the men told him that he would not be hurt and that they would not steal anything. The incident was reported to the Public Prosecutor's Office on 9 April 2002.

16. On 18 July 2001, the residence of **Alba Liluvina Valdez Sosa**, 46, an employee of the Alianza para el Desarrollo Juvenil Comunitario, was broken into by unknown individuals who searched the house without stealing any valuable objects. The following day, an individual "looking like a bodyguard", asked Ms. Valdez's neighbours about a tall, black-haired woman with two children, a description that corresponds to Ms. Valdez. Ms. Valdez requested the Intervention of the Ombudsman's Office (PDH) on 20 July 2001. On 23 July 2001, Ms. Valdez was allegedly threatened and her computer was stolen. On 21 August 2001, a note was received at the offices of the Centro de Educación y Promoción de los Derechos de la Niña y el Niño, of the Alianza para el Desarrollo Juvenil Comunitario, that said "Alba and supervisors, soon you'll be eliminated". It was suggested that these incidents could be linked to Ms. Valdez's work on the effects of lead contamination on children in the area.

17. According to the information received, on 19 November 2001, at 5.30 p.m., **Carlos Alberto Tamup Canil**, a staff member of the Proyecto de Desarrollo Santiago (PRODESSA), **Lorenza Laynes Reynoso**, of the Menchú Tum Foundation, **Pascual Pérez Jiménez**, technical secretary of the Coordinadora por los Derechos Económicos, Sociales y Culturales (COODESC) and **Lucía Xiloj Cuin**, secretary of COODESC were photographed by an unknown man when leaving a meeting. They immediately got into a car with blacked-out windows with another four men inside and drove in a slow and threatening way in front of them before taking a different street.

18. According to the information received, on 29 February 2000, in Puerto Barrios, Izabal, **Erwin Aroldo Ochoa López** and **Julio Armando Vásquez Ramírez** were shot dead. Mr. Ochoa was the legal adviser to the **Consejo Nacional de Áreas Protegidas (CONAP)** and

was carrying out an investigation on illegal deforestation in the region of Punta de Manabique, Puertos Barrios, Izabal. Mr. Vásquez Ramírez worked as administrative assistant of CONAP in the same region. Reportedly, in 2002, the Public Prosecutor's Office temporarily shelved the case owing to a lack of progress.

19. According to the information received, members of the Asociación para el Desarrollo Integral de las Víctimas de la Violencia en las Verapaces, Maya Achi (ADIVIMA), received threats. **Carlos Chen Osorio**, in charge of the Human Rights Commission of the Association, **Pedrina Burrero López**, attorney for the Association, and **Juan de Dios García Xajil**, administrator of the Association, received several calls in which they were threatened in connection with their work. On 1 April, shots were reportedly fired close to Mr. Chen Osorio's house and on 2 May close to Ms. Burrero's house.

20. It was reported that on 2 April 2001 the Programme of Social and Labour Reinsertion, the Street Teachers and the Legal Support offices of **Casa Alianza** were broken into by unknown individuals and 12 files concerning street children were stolen, along with cameras. The incident was reported to the Public Prosecutor's Office. On 7 March 2002, the offices were reportedly again broken into and 19 files on street children were stolen. This incident was also reported to the Public Prosecutor's Office. However, as of May 2002 the investigations had not produced any results. Several Casa Alianza employees reportedly received threats. On 8 May 2002, **Mirza Evelyn Juárez Cavaría**, coordinator of the Programme of Social and Family Reinsertion, was allegedly the victim of an assault while she was walking in Guatemala City: an armed individual in a beige car with licence plate number P-224278 suddenly stopped, pointed a weapon at Ms. Juárez Cavaría's head and stole her mobile phone.

21. Reportedly, on 5 February 2002, five heavily armed individuals entered the Casa Alianza offices asking for **Leonel Asdrubal Dubon Bendfeldt**, who was not present at the time. They left the office, threatening that they would find him and kill him. On 16 May 2002, **Manases Salazar López**, a Casa Alianza teacher, was approached by two individuals driving a car and threatened with a weapon. He was told to hand over his mobile phone and his beeper. One of the individuals then reportedly said, "Tell the members of Casa Alianza to shut up."

22. According to the information received, Ms. **Juana Trinidad Ramírez de Vega**, was killed on 5 February 2002 in La Libertad Río Dulce, municipality of Livingston, Izabal. Allegedly, the killing was linked to the victim's activities for the promotion of women's health and the eradication of violence against women. On 10 March 2002, at around 2 p.m., **Emma Julieta Cruz Paz de Alvarado**, professor and President of the board of directors of the Association "Mujer vamos adelante", of San Miguel Tucurú, Alta Verapaz, was abducted by two men when getting off a bus. The following day she was released with a warning that she should stop her activities.

23. It was reported that Mr. **José Benjamín Pérez González** was killed in the farm Lanquin II, Morales, Izabal, on 8 March 2002, when working the land of the Lanquin II community. The community was the object of a forced eviction in which security personnel of the farm and PNC officers participated. **José Ángel Perdomo**, **Roberto Méndez Miguel** and **Alicia Belteton**, members of the negotiating commission of the 757 farmers of Lanquin II, received death threats.

24. Mr. **Sarbelio Ramos Hernández**, member of the Asociación Campesina de Los Cerritos, Morales, Izabal, was reportedly killed on 15 April 2001 in connection with incidents following the attempt of the owners of the farm Las Quebradas to prevent the Los Cerritos community from preparing the land for corn planting. Mr. Hernández was reportedly shot while he was going to work. According to the information received, the community of Los Cerritos has survived for the past 30 years by cultivating the land that is now the subject of the dispute. The investigation into the death of Mr. Ramos are being conducted by the Public Prosecutor's Office, which reportedly has encountered difficulties in the investigations. Reportedly, Mr. **Eugenio García**, member of the Los Cerritos community was killed on 27 September 2001 on his way to the farm. He was allegedly killed by members of the security guard of the Las Quebradas farm, who were said to have acted with the complicity of elements of the PNC of Morales, Izabal. In both cases, the facts seem to be linked to the struggle over the land.

25. According to the information received, Ms. **Patricia Rosidelia Velásquez Orozco**, secretary of the Union of Health Workers (Sindicato de Trabajadores de Salud) of Malacatán, San Marcos, received threats from the authorities of the National Hospital of Malacatán and by the Ministry of Public Health as a consequence of complaints by the Union of alleged illicit acts committed in the hospital. Ms. Orozco was reportedly transferred against her will and in violation of her rights from Malacatán to the health centre of the municipality of Concepción Tutuapa.

26. On 14 February 2002, at around 11 a.m., Mr. **Miguel Ángel Ochoa González**, an official of the Union of Professional Drivers and Heavy Cargo Transported by Road, was reportedly abducted by three individuals in a beige vehicle in zone 4 of Mixco. According to the information received, the perpetrators told him, "You are manipulating the drivers. Who is the other one who works with you? If you continue with this you are going to die." He was then put out of the car close to the capital. Mr. **Wilson Armelio Carreto López**, another Union official, was reportedly threatened on 15 February 2002 when unidentified individuals left an anonymous note at his home reading, "Directors of the Union of Drivers, we inform you that if you continue manipulating the drivers for them to join your organization you will be killed. Mr. Wilson Armelio Carreto López and Mr. Miguel Ochoa González, we are warning you." The threats were reported to the PNC, the Department of Criminal Investigations, the PDH, COPREDEH, the Public Prosecutor's Office, the Special Prosecutor on Crimes against Journalists and Trade Unionists and MINUGUA. Allegedly, these incidents are linked to the activities of the Union of Drivers. Finally, Mr. López was fired by the firm Cowley Line Servicio because he was organizing the firm's workers.

27. According to the information received, on 26 July 2001, Ms. **Telma Hernández**, 35, a member of the Comité Unidos por Mixco (CUM), was attacked and threatened while demonstrating with members of the Students Association of the University of San Carlos (AEU) and teachers in Mixco. Upon receiving the information that the Secretary-General of AEU had been detained by the PNC, a group of protesters began to walk towards the police station but stopped when they saw smoke coming out of a building. Ms. Hernández, together with other people, approached the building when she was reportedly hit in the legs by a woman police officer. She reportedly fell to the ground and was beaten by other police officers. She was then forced into a pick-up truck where she was threatened with death while she was taken to the

No. 14 police station in Avenida Petapa. Later she was taken to the Preventive Detention Centre for Women Santa Teresa. Members of CUM and other union organizations paid the bail for her release. On 29 July 2001, Ms. Hernández was reportedly abducted while walking towards a church in Mixto. One of the men who abducted her reportedly said: "She is the woman in the picture; she'd better stop annoying us and she should warn them [apparently referring to the protesters] that if they don't stop they'll be killed." Reportedly, another man told her that "Major Byron Barrientos orders you to stop annoying us and to tell all the leaders of the movement that under the other Government they'd be killed because there were videos and personal data on them and their families." A man in the car reportedly tried to rape her and she was afterwards put out of the car in Colonia Los Alpes, in San Lucas Sacatepequez. She reported the incident to the PDH on 31 July 2001 and to the Public Prosecutor's Office on 2 August 2001.

28. According to the information received, during the years 2001 and 2002 **members of the Workers' Union of Guatemala (UNSITRAGUA)**, were victims of harassment and threats. On 6 June 2001, between 1 p.m. and 2.30 p.m., calls were received at the organization's office from an unidentified individual who said, "This is a warning. If you protest against the Government you will see" and "we'll throw a bomb at your office and you'll die". Reportedly, representatives of UNSITRAGUA intervened in the case of the agro-industrial firm Cecilia in support of the negotiations between the owners of the Santa Cecilia farm and the workers. Since 16 May 2002, the leaders of the farm workers' union have allegedly received threats. Journalists with Radio Victoria, in particular Mr. **Leonel Mejia Melgar**, who reported on the problems of the Santa Cecilia farm workers, were also reportedly victims of threats.

29. It was reported that members of the Executive Committee and Consultative Council of the Workers' Union of the Department of Migration of the Republic of Guatemala (STM), were victims of threats and harassment. In particular, it was reported that Mr. **Juan Fidel Pacheco Coc**, Secretary-General, was systematically threatened with death in connection with allegations of corruption and mismanagement made by him on behalf of the STM. **Jaime Roberto Reyes Gonda, Rodolfo Quiñónez Mendoza and Lily Marisol Navarro Méndez** were also allegedly victims of threats. On 13 March 2001, the union's car was found to have technical problems, allegedly due to sabotage, that could have provoked a fatal accident. The following day, the wife of Juan Pacheco received a phone call from a man who told her, "You are his wife; tell that son of a bitch that we are going to kill him. We control you and your children. We are going to kill you if that son of a bitch doesn't leave the country soon because he is annoying us too much with his Union." The threats were reported to the Public Prosecutor's Office, MINUGUA, COPREDEH and the National Federation of Workers' Unions of Guatemala (FENASTEG).

30. Reportedly, on 6 April 2001, Ms. **Ingrid Janeth Casasola Catalana** found on the wall of the STM office posters bearing insults directed against the Union, especially its Secretary-General. According to the information received, on 16 May 2001, members of the Union stated that they were under pressure to leave the Union. On 25 June, Mr. **Luis Mendizábal**, Director of Migration, was dismissed following numerous allegations of illegal trafficking and acts of corruption received by the Ministry of the Interior. Reportedly, following the dismissal, the harassment of and death threats against Mr. Pacheco Coc increased.

On 14 July 2001, Mr. Pacheco allegedly received an anonymous call on his mobile phone from an unidentified person who said, "Son of a bitch, we are going to kill you." Members of his family were also allegedly threatened.

31. Mr. **Miguel Ángel Gómez de León**, member of the Workers' Union of the municipality of Chichicastenango, received death threats on 14 July 2000, allegedly from the mayor and members of his council. It was reported that Mr. Gómez was fired as a result of his allegations of corruption against the mayor. The first instance labour court of Quetzaltenango reportedly ordered Mr. Gómez reinstated. Before this could be done, the mayor allegedly instigated the members of the Town Council to organize a demonstration, which took place on 10 January 2002. It was reported that the participants looked for Mr. Gómez with the intention of "lynching him", but that they could not find him.
