



# **GUATEMALA: A NEW BEGINNING**

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**Report of a Mission by  
The Honorable George C. Edwards  
and William J. Butler, Esq.**

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International Commission of Jurists**

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## Guatemala: A New Beginning

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of the American Association for the  
International Commission of Jurists**

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## Preface

The supremacy of the rule of law, coupled with an independent judiciary and legal profession has long been the prime concern of the International Commission of Jurists (ICJ) and its affiliated sections throughout the world.

Over the years the ICJ drafted and submitted to the international community:

Draft Principles on the Independence of the Judiciary

Draft Principles on the Independence of the Legal Profession

These norms and standards have been welcomed at many international and regional conferences and contributed to the formulation of the United Nations "Basic Principles on the Independence of the Judiciary" which were approved by the General Assembly in Resolutions A/40/32 and A/40/1007.

In the spring of 1986, the AAICJ was informed by Ambassador Arturo Fajardo Maldonado, the Guatemalan Ambassador to the United Nations in New York, of new positive developments in the judicial structure of Guatemala. After meetings with Ambassador Fajardo and Ambassador Raquel Cohen-Orantes, his deputy, and with the encouragement of the United States Department of State, the Board of Directors of the American Association for the International Commission of Jurists (AAICJ) concluded that a mission should be undertaken to inquire more closely into the legal system of Guatemala with particular emphasis on the independence of the judiciary and the legal profession.

The mission took place during the week of September 23, 1986. Its terms of reference were to inquire into the new Constitution, the new Supreme and Constitutionality Courts, the status of writs of habeas corpus and amparo (a procedure designed to protect against violation of the constitutional rights of individuals), the functioning of the Bar



Association and the status, powers and functions of the national police force and the armed forces in the administration of justice.

The members of the mission were: The Honorable George C. Edwards, United States Court of Appeals for the Sixth Circuit, Senior Judge, Cincinnati, Ohio; and William J. Butler, Esq., a New York lawyer and Chairman of the Executive Committee of the International Commission of Jurists in Geneva. They were accompanied by Noel Moran, an Urban Morgan Fellow at the University of Cincinnati School of Law, who acted as Secretary to the mission.

During the course of their stay, the members of the mission interviewed members of the judiciary including the new President Justice of the Supreme Court of Justice, all five members of the new Court of Constitutionality; the President, and several members of the Board of Directors of the Bar Association; the Minister of the Interior, the Deputy Minister of Foreign Affairs, a leading monsignor of the Roman Catholic Church, a senior general in the army, the deans of two leading law faculties, as well as other prominent members of the Bar.

Full cooperation was given to the mission by the Government of Guatemala and its various branches. Prior to its departure, the mission was briefed by the Latin American Bureau of the United States Department of State.

We are particularly grateful for the help and assistance extended to the mission by the governments of Guatemala and the United States, by the Bar Association of Guatemala, which gave such a warm welcome to the mission, and to the Richmond Foundation of New York, which generously provided the resources which made the mission possible.

The report is hopeful—in that it notes extraordinary changes in Guatemala—what appears to be a serious and publicly supported attempt to change thirty years of repressive military rule to civilian rule conforming to, or at least approaching, international standards. The story is

not over, but the beginning warrants the informed understanding and encouragement of the world community. The mission and the report are significant in contributing towards these ends.

George N. Lindsay, Esq.  
Chairman, Board of Directors  
American Association for the  
International Commission of Jurists

New York  
March, 1987

# I. Historical Background

Guatemala is a very beautiful country with a very tragic past. One has only to refer to the Spanish conquest and the colonization which followed in the sixteenth century; the devastating earthquakes which destroyed the original capital, Santiago de Guatemala, in 1651 and another, which claimed 22,000 lives in 1976; and the political history of the last thirty years, during which it is estimated that there have been over 30,000 assassinations, kidnappings, and killings for political purposes.

Although the focus of this report is on the independence of the judiciary and the legal profession, we need to mention some basic facts:

1. Guatemala has a population of over 8,000,000 people and is growing at a rate of three percent annually.
2. The per capita income has fallen by 14 percent over the last three years to \$1,055.
3. Approximately 90 percent of the wealth of the nation is in private hands. The middle class comprises less than 20 percent of the population and this percentage is decreasing. Also, the middle and upper classes receive over two-thirds of the national income and this percentage is increasing.
4. Over 60 percent of the population are Indians, most of whom do not share in many of the benefits enjoyed by the rest of the society.
5. The economy is in a severe recession with inflation running at 60 percent. Currently 10 percent of the population is unemployed, with 30-40 percent underemployed.<sup>1</sup>

Prior to 1986, thousands of individuals were targeted by the government, the army, the private death squads, and the insurgents. Many of the victims were members of the

judiciary and the legal profession, particularly those who sought to educate Indians about their trade union rights. An Amnesty International report of 1979 documented the extrajudicial executions of ten members of the legal profession between July 1978 and May 1979.<sup>2</sup> In April 1984 the Center for the Independence of Judges and Lawyers of the ICJ reported that, "During the years 1980 to 1981 over 60 lawyers were assassinated. This number diminished during the years 1982 and 1983, largely because many lawyers went into exile."<sup>3</sup>

The 1983, 1984, and 1985 reports of the Inter-American Commission on Human Rights of the Organization of American States (OAS) pointed out that the Guatemalan judiciary had been stripped of its independence, autonomy, and impartiality. It was particularly deficient with respect to the more than 800 writs of habeas corpus presented to the courts by relatives of missing persons.<sup>4</sup>

There has been a continuing decline in civilian and non-combatant politically motivated assassinations. In 1984, there were an estimated 491 killings, but in 1985 this number was reduced to 304.<sup>5</sup> It was reported to us by one governmental authority that, so far in 1986, there have been an estimated 80 killings—still a horrendous figure, but at least suggesting that uncontrolled lawlessness, whether by independently acting government groups or by anti-government groups, is diminishing. However, according to a November 1986 issue of the Central American Report published in Guatemala, the number to the November date was 204. While the perpetrators of these killings have not been identified, it is generally believed that those responsible were the army, the civil defense patrols, private squads, or the four insurgent groups operating in the country.

We are convinced that in 1986, Guatemala, although faced with these enormous social, cultural and economic problems, has made a "new beginning," which President Cerezo describes as a "transition" to a democratic society.

This democratic process began in 1985 when Guatemala, after thirty years of military rule and carnage, made an orderly transition from a military regime to civilian rule through elections for the presidency, Congress, and municipal governments.

The armed forces were not allowed to vote in the election, while 69 percent of the eligible voters participated.<sup>6</sup> On December 8, 1985, President Vinicio Cerezo, a Christian Democrat, was freely elected to the presidency for a term of five years.

This "new beginning" is supported by:

- a new Constitution;
- a new Supreme Court;
- a new national police system;
- a pledge of non-interference by the armed forces; and
- the overall majority of the Guatemalan people.

We now turn to a discussion of these new developments.

## **II. The New Guatemalan Constitution**

In August 1984, the National Constituent Assembly was installed to write the new Political Constitution of the Republic of Guatemala. The document was approved by the Assembly on May 31, 1985, but did not enter into effect until January 14, 1986 when the President-Elect took office.

The Constitution has seven titles and 281 articles. Title VIII contains a single chapter of twenty-two articles which sets out transitory and final provisions such as repealing all previous constitutions.<sup>7</sup>

The preamble of the new Constitution exemplifies Guatemala's desire to learn from its past in order to create a confident new future. The document affirms the coun-

try's decision to promote full respect for "Human Rights within a stable, permanent, and popular institutional order, where the governed and the governors act with absolute loyalty to the law."<sup>8</sup> Human rights are strongly emphasized in the document. Rights guaranteed to the people of Guatemala included health, education, employment, and economic rights. The President is Commander in Chief of all military forces and the independence of the judiciary is guaranteed. Special or secret courts are forbidden, as well as illegal or arbitrary arrests. Every individual is guaranteed the right to life, liberty and equality, and no one may be sentenced or deprived of his or her rights without having been tried and convicted before a competent, pre-established court.

Chapter II in part provides for the protection and recognition of the indigenous population of Guatemala. The State "recognizes, respects, and promotes" the native communities in their "form of life, customs, traditions, forms of social organizations, the wearing of Indian dress by men and women, their languages, and dialects."<sup>9</sup> The State has guaranteed to provide land for their development, protect the workers outside their communities, and extend credit assistance and preferential technology to improve their quality of life while maintaining the Indians' cooperative and communal land systems. While these rights are provided for in Articles 66-69, Article 70 specifies that a law will be enacted to regulate these matters. Many provisions of the Constitution require that laws be enacted in order to specify or implement a right.

Title VI is dedicated to the Constitutional Guarantees and Defense of the Constitutional Order. Such guarantees are the right to habeas corpus, amparo, and the ability to initiate legal action to declare laws, regulations, or general provisions totally or partially unconstitutional. The Court of Constitutionality and a Commission of Human Rights are provided in order to defend the Constitution.

We will now outline these constitutional rights and institutions.

# III. The Judicial System

## *Supreme Court of Justice*

Article 214 of the new Constitution calls for the election of nine justices including its president who is elected by all the justices and whose authority extends over the courts of the Republic.

The justices are elected for six years as follows:

- four justices are elected by the Congress of the Republic;
- five justices are elected by the Congress of the Republic, selected from a panel of 30 candidates proposed by an "Applicants Committee" made up of:
  - each of the deans of the faculties of law or juridical and social sciences of each university in the country;
  - an equivalent number of members elected by the General Assembly of the Lawyers' and Notary Publics Association of Guatemala; and
  - a representative of the judicial branch appointed by the Supreme Court of Justice.<sup>10</sup>

Each justice must be a native Guatemalan, a lawyer belonging to the Bar, over 40 years of age, and must have completed one full term as a judge in the Court of Appeals or must have been practicing law for at least ten years.<sup>11</sup>

## *Court of Appeals*

Judges or magistrates in the Court of Appeals must be over 35 years of age and have been a judge in the court of first instance or must have practiced for at least five years.

These judges are elected by the Congress of the Republic from a panel of candidates proposed by the Supreme Court of Justice. The Constitution requires that this panel consist of twice the number of the judges to be elected.<sup>12</sup>

## *Court of Constitutionality*

This is a permanent court of exclusive jurisdiction whose essential function is the “defense of constitutional order.” It exists independent of other State organisms and its economic independence is guaranteed by a percentage of the State revenues “appropriate to the Judicial Organism.”<sup>13</sup> There are five tenured judges, each of whom has an alternate.

When it considers a matter of unconstitutionality against (1) the Supreme Court of Justice, (2) the Congress of the Republic, (3) the President of the Republic, or (4) the Vice President of the Republic, the number of judges is raised to seven, the other two justices being selected from among the alternates.

The judges are elected for five years and are appointed as follows:

- one judge by the plenary Supreme Court of Justice;
- one judge by the plenary Congress of the Republic;
- one judge by the President of the Republic in the Council of Ministers;
- one judge by the Higher University Council of the University of San Carlos de Guatemala; and
- one judge by the Assembly of the Bar Association.<sup>14</sup>

All judges of the Constitutional Court must be native Guatemalans, lawyers belonging to the Bar Association and have at least 15 years of professional experience.<sup>15</sup>

The Presidency of the Court rotates each year, beginning with the eldest member and following in descending order of age.<sup>16</sup>

The Court of Constitutionality has important powers, among which are:

- to hear challenges to laws of partial or total unconstitutionality;
- to hear amparo actions against the Congress of the Republic, the Supreme Court of Justice and the President and Vice President of the Republic;
- to hear appeals of all petitions for amparo brought before any of the courts of justice and, should the ap-



peal be from an amparo decision of the Supreme Court of Justice, the Court of Constitutionality will be expanded to seven members.

- to issue opinions on the constitutionality of treaties, agreements, and bills at the request of any organism of the State.
- to take cognizance and solve issues relating to any conflict in the area of constitutionality, including the right to issue opinions on the unconstitutionality of laws vetoed by the executive on the grounds of unconstitutionality.<sup>17</sup>

### *Commission and Commissioner of Human Rights*

The Constitution requires the Congress to appoint a Commission of Human Rights<sup>18</sup> which will consist of a deputy for each political party represented during its term.

The Commission will propose to Congress three candidates for the election of the Commissioner, who must have at least the same qualifications as those of a member of the Supreme Court of Justice.<sup>19</sup>

The Commissioner will be elected for five years and will have as his or her main responsibility "the defense of Human Rights guaranteed by the Constitution."<sup>20</sup>

The Commissioner, sometimes referred to as a "Human Rights Ombudsman (Procurador)," has powers, *inter alia*:

- to investigate and denounce administrative behavior that is detrimental to the people;
- to investigate any complaint brought by a person regarding a human rights violation;
- to issue public censure for acts or behavior running counter to constitutional rights; and
- to promote reforms, judicial or administrative, in those cases which demand it.<sup>21</sup>

### *Habeas Corpus and Amparo*

Articles 265 and 263 of the new Constitution enshrine the right to amparo and habeas corpus respectively. The

right of amparo is a protective procedure which guarantees that individuals will not have their constitutional rights violated. "There is no area which is not subject to amparo, and it will always proceed whenever the acts, resolutions, provisions, or laws of authority should imply a threat, restraint, or violation of the rights which the Constitution and the laws guarantee."<sup>22</sup>

All citizens also have the right to habeas corpus. This guarantees an individual the right to petition a court of justice for "the purpose of retrieving his liberty, guaranteeing him his release, bringing his ill-treatment to an end, or terminating the constraint to which he has been subjected."<sup>23</sup>

The Constitution further provides that any authority which refuses to present the detainee at the appropriate court or attempts to evade such an order, as well as the executive agents of such an authority, will be guilty of the offense of abduction and will be punished in accordance with law. If any person cannot be located, the court shall "order immediately an investigation of the case until it is totally cleared up."<sup>24</sup>

## **IV. Independence of the Judiciary**

At the outset we wish to say that the present composition of the judicial system, including the courts, the role of lawyers and of the Bar Association, substantially meets the norms and standards of an independent judiciary as promulgated by the United Nations, the international community, and the various recommendations of the ICJ and other international organizations.

We were particularly impressed by the President of the Supreme Court of Justice and by all of the justices of the Constitutional Court who met with us *en banc*. They all appeared to be judges of integrity and ability. They have made it clear to the government that any attempt to inter-

fere with their judicial function will result in their resigning en masse and with public comment.

However, integrity and ability alone do not guarantee an effective judicial system. The President of the Supreme Court of Justice was candid enough to say that it is "too early to tell." Several questions arose:

1. How to ensure a good police system as well as a good political system?
2. What effect does the low level of training, leadership, and discipline of the police have on the administration of justice?
3. How to separate the investigation function of the judges from the sentencing function?
4. What resources is the State willing to commit to the cost of administering justice?
5. Where are the guarantees of judicial tenure and salaries?
6. Will the military abide by its constitutional obligations not to arrest or try civilians in military courts?

The President also described a development whereby all arrests in the country will be put into a computer system to retain and detail information as to the time, place, reason for arrest, and details of detention and notification of a relative. This program, to be finished in October 1986, will, in his opinion, do much to aid the courts in all criminal matters in view of the failure of the police in many cases to keep proper records.

The President of the Court of Constitutionality, a judge of great ability, convened his entire court to meet with us. This court, which is guaranteed independent financing by receiving .001 percent of the national budget, is the guardian of the new Constitution. In the three months of its existence it had, at the time of our interview, 105 amparo and habeas corpus petitions, of which two were against the President, one against the Congress, four against the Supreme Court, and others against the judicial branch.

## *Pending Petitions for Habeas Corpus*

Pursuant to Article 264 of the Constitution, giving the Supreme Court the power to order investigations of habeas corpus cases, the President of the Supreme Court appointed Judge Labbe, a judge of a court of first instance (Court No. 9), to investigate all pending petitions for habeas corpus involving persons who could not be located. Judge Labbe was ordered to report his findings to the President Justice as soon as possible.

Judge Labbe commenced his investigation on May 30, 1986. He was presented with 1,367 habeas corpus petitions. Many of the cases were supported by only names and dates of disappearances. Four hundred and ninety had slightly more information, such as the place of arrest.

Judge Labbe told us that his first task was to create an investigating staff and to set up procedures to carry out his task. He now has seven clerks, two investigators, and a secretary.

The main purpose of his assignment is to locate or to explain the disappearances. He and his staff took the following steps:

- visits to the various places of arrest and other areas where disappearances occurred throughout the country;
- visits to all detention centers in the country; and
- in many cases, he had secured pictures of the disappeared which could be shown in the hope of obtaining more information.

When we interviewed Judge Labbe, he had investigated 690 of the cases and had uncovered evidence in only two cases. One such case involved a person in hiding because of marital problems and the other concerned a person killed in a fight in a bar.

Judge Labbe stated that he had the cooperation of the local and national police and the army and will continue his work until he has exhausted all avenues of explanation of the disappearances.

Many Guatemalan authorities seemed to believe that most of the missing are probably dead. Some of these authorities believe that a few of the missing may be found among the insurgents, or abroad as refugees, but our impression is that most will never be found.

This, in turn, raises the question of amnesty, which was given by the previous military regime to all government officials prior to the installation of the new civilian government in January 1986.

President Cerezo has avoided this issue and will not agree to repeal these laws in the interest of national reconciliation. We take no position on this issue which is constantly being discussed in Guatemala.

## **V. The National Police Force**

The success or failure of the "new beginning" in Guatemala will depend to a large extent upon the ability of the State to rebuild and reconstruct a fair, efficient, and well trained national police force committed to protecting the constitutionally guaranteed rights of Guatemalan citizens.

We say reconstruct because in prior years the national police force was an instrument of death and torture. It was used by the military and sometimes by private interests to eradicate any form of political opposition. When President Cerezo campaigned for the presidency, he promised to put out of business the Department of Technical Investigations (DIT), which has been called "a band of civilian thugs who killed and abducted on orders from G-2 and pillaged on their own account."<sup>25</sup>

Accordingly, in the early days of his administration, President Cerezo ordered a raid on the DIT and seized its records. Of the approximately 600 agents, 200 were dismissed and 400 were sent to remedial police training courses.

President Cerezo has said that he has approximately

3,000 in the police force (some poorly trained) when he needs at least 20,000 to police Guatemalan society properly.

The Minister of the Interior, Juan José Rodil, a former president of the Bar Association summarized the problem as follows:

1. For over 30 years the entire political system (including legislative and judicial functions) was controlled by the executive and the military leaders.
2. The National Police (DIT) and the Army Security Officers (G2) controlled the security of the State. The DIT was the front organization. It was not a well behaved or constructive police force. It had approximately 600 men. They did much of the dirty work, i.e., carried out orders for killings, kidnappings, and torturing of citizens. They were corrupt, as well, helping themselves to bribes and payoffs.
3. Minister Rodil estimates that "over 25,000 citizens were killed by violence prior to January 1, 1986."<sup>26</sup> He estimates that 80 percent of these crimes were committed by government authorities and 20 percent by insurgents. Police and military units would take two to three hundred people alive and if they didn't need them, "they would shoot them in the street." There was not only total ignorance of the law, but what law there was, was enforced by poorly trained police, many illiterate, who arrested citizens, held them without charge, and then tortured, maimed, and killed them with slight provocation.
4. When Minister Rodil came to office under President Cerezo in January 1986, he initiated some fundamental reforms:
  - the DIT was dismantled;
  - police are now required to have a warrant for arrest unless a crime is being committed in their presence;
  - a new computer system was introduced for recording arrests (see above); and
  - new training programs have been instituted to train

the police in law enforcement. Several countries are currently helping. Germany has donated equipment and has sent three specialists to organize a police school. Venezuela has provided funds to instruct six senior police officers, and Spain and France have provided funds to train two and three officers respectively. The United States has opened its ECITA program to train 25 police and three judges in law enforcement techniques.

It will take time for the reforms to take effect. Rodil claims that the police are not only poorly trained, but have minimal facilities, detention centers, etc. As a result, they do not collect sufficient evidence of the commission of the crime for a judge to detain the person charged.

Rodil told us that since January 15, 1986 over 25,000 were arrested for committing crimes of differing magnitudes:

- over 24,000 of those arrested were released by judges for lack of evidence or improper arrest procedures.
- only 1,000 cases remained for trial.

Nevertheless, Rodil believes the system is improving slowly. One year ago only 10 percent of crimes could be traced to a perpetrator, now this figure is over "70 percent."

Insufficient evidence is responsible for the inability of the police to detect the perpetrators of political crimes, according to Rodil. While he believes the government is firmly committed to ending political crimes, there is currently inadequate technical and material means to discover the basis of these crimes. He alleged, however, that there had been a dramatic reduction in 1986 of political crimes. In the preceding three years, he said, there were 1,000 such crimes, while in 1986 it was estimated there were approximately 80.<sup>27</sup> Rodil failed to estimate how many of these could be attributed to the government, the private sector, or to insurgents.

The Minister of the Interior was firm in his insistence that there was *not to be a revolutionary change but an evolutionary change*. He made several points:

1. It is "hard" if not impossible to stop 30 years of illegal practices overnight.
2. "To go from 100-0" is going to take a lot of technical assistance from abroad.
3. The new judicial system, now completely overhauled, will only function effectively with improved police facilities and a reformed police force committed to the legal rights of citizens.
4. Other important segments of Guatemalan society are cooperating:
  - the people overwhelmingly support the new government;
  - the Bar Association and the deans of law schools are extremely active in proposing new laws, electing responsible judges, etc.;
  - foreign governments are funding and actively training key members of the police establishment; and
  - the "Crystal House Policy"—Rodil was proud to say that the government has opened its doors to outside visit and comment. He encouraged the international community to monitor and watch the progress of the country.
5. Finally, he informed us that he had the assurances of the leaders of the armed forces that: (1) they accept that the Commander in Chief, pursuant to the new Constitution, is the newly elected civilian President; and (2) that the army has returned to its barracks to perform its main function to provide for the military defense of the State.

## **VI. The Role of the Bar Association and Law Faculties**

### *The Bar Association*

Our meetings with the Board of Directors of the Guatemalan Bar Association (Colegio de Abogados) were extensive and productive. Pursuant to constitutional authority, the Bar Association is authorized to participate in



the appointment of judges, draft legislation, and protect the human rights and liberties of the Guatemalan citizen.

### *Drafting Legislation*

The Association submitted to the Congress, pursuant to Article 273 of the Constitution, a proposed law creating and regulating the new Human Rights Commission and a new Human Rights Commissioner (sometimes called a Procurador or Ombudsman).

When the Congress rejected the proposed legislation, the Bar Association went to the public press, criticizing the congressional action, complaining that their recommendations were ignored. Immediately, Congress reversed itself and invited the Association to give an opinion on a second draft which provides that two assistants of the new ombudsman will be appointed by the Bar Association.

No one has accepted the position of Ombudsman because the first draft did not give the necessary guarantees of independence and tenure. Now, with the new changes proposed by the Association, it is hoped that an Ombudsman will be appointed.

### *Appointment of Judges*

The Association participates in the selection of senior judges. As has been seen, five of the justices of the Supreme Court are elected by Congress from a panel of 30 candidates proposed by a committee in which the Bar Association participates. The Bar Association also has the right to appoint one of the five justices of the Court of Constitutionality. The Association appointed the distinguished practicing lawyer, Edmundo Quinones, who is now President of the Court of Constitutionality.<sup>28</sup>

### *Weekly Meetings of Presidents of Professional Associations*

This consortium represents about 20,000 professionals from all walks of life. The organization functions as a pressure group with its main goal being the establishment of the democratic process.

### *Law in Rural Areas*

The Association has a program to expand legal developments into the rural areas. It complains that the legal system is too centralized in Guatemala City. The Association's program takes law professors and lawyers into the rural areas. It holds legal seminars in the larger rural towns where lawyers from the surrounding communities attend for legal training. Representatives of the Bar Association in each of these larger towns follows up on the decisions taken at the seminar.

### *Other Important Activities*

- Rendering opinions on legislation, regulations, and other local ordinances (such as divorce laws, a new penal code, human rights law, and police detention regulations).
- Cooperation with law schools in teaching of law, ethics, and the legal aid programs in the schools.
- Meetings with other bar associations in Central America.<sup>29</sup>

### *The Law Faculties*

Of the three main law schools, the University of San Carlos is the largest, with over 5,700 full-time students and 1,500 part-time students.

Again, we found the law schools participating in the judicial process. Like the Bar Association, the Higher University Council of the University of San Carlos has the right to appoint one Justice of the Court of Constitutionality.<sup>30</sup>

We were impressed to hear that the suggestion for a constitutional Commission of Human Rights<sup>31</sup> was presented by the Rector of San Carlos, who is now the President Justice of the Supreme Court of Justice.

In addition to the regular courses of studies, we were pleased to hear that extensive courses are given on Public International Law, Constitutional Law and the Theory of the State. Although no courses were available on interna-

tional human rights or international organizations, the Bar Association had organized a seminar on human rights at the law schools. The deans informed us that a great number of students were interested in the human rights area.

A unique feature of Guatemalan legal education is the requirement that all students participate in legal assistance to the poor. This program gave us new insight into legal aid. Although the various law faculties have varying requirements, most law students (except those working in the judicial system itself) are obliged to have processed from beginning to final appeal eight cases in each of the civil, penal, and administrative courts before he or she can be admitted to the Bar.

Some students do their court cases during their course of study; some finish their courses first and then perform the court work. It is estimated that the time involved takes between one year to one and a half years. Some students cannot find cases in Guatemala City and must go to other cities to find the cases necessary to meet their requirements. When they attend legal clinics in the province they must pay their own expenses.

Students must take the Bar examination and submit, in addition, a written thesis which is defended publicly. After completing all of these requirements, the student receives his Bachelor of Laws and is admitted to the Bar.

## **VII. The Role of the Military**

The most persistent question continues to be, "What has happened to the Guatemalan military?"

The answer to this question requires us to examine the past, understand the present, and look into the future.

### *The Past*

For more than 30 years prior to January 1986, the Guatemalan military controlled the political apparatus of

the State. All organs of government—the executive, judicial, and legislative branches—were controlled by the military. There was no democracy, no rule of law. Dissent from any quarter was met with immediate repression. At least 25,000 and upwards to estimates of 45,000 citizens lost their lives. Towards the end of the military administration, laws were enacted which granted an amnesty to all military personnel for their participation in the carnage during the period March 23, 1982 to January 14, 1986.

During those military regimes, the army was an instrument of the oligarchy—rich landowners and businessmen—who have since the Spanish conquest controlled the wealth in Guatemalan society. Even today, over 90 percent of the wealth of the nation is in private hands.

Thirty years ago, when the army took over, Minister Rodil estimated that:

- 33 $\frac{1}{3}$  percent of the population was in extreme poverty;
- 33 $\frac{1}{3}$  percent of the population was at poverty level;
- 33 $\frac{1}{3}$  percent of the population comprised the middle and upper classes, and controlled most of the wealth of the country.

*Today*, after 30 years of army rule, he estimates that:

- 66 $\frac{2}{3}$  percent of the population is in extreme poverty;
- 16 $\frac{2}{3}$  percent of the population is at poverty level;
- 16 $\frac{2}{3}$  percent constitute the middle and upper classes, and control most of the wealth of the country.

The conclusion is obvious—the rich are getting richer and the poor are getting poorer.

This model of power concentration—political, social, and economic—was inherited from the Spanish conquest. The oligarchy is composed of two groups, generally described as: (1) landowners of large and small agricultural and coffee farms, and (2) industrial businessmen who produce products and services for the domestic market and who are active in exporting and importing goods.

Of the two groups, the landowners are the most conservative. Most of them were educated abroad. It is alleged that they hold large assets outside the country in the form of

investments, bank accounts, real estate, etc. One minister estimated the financial worth of this group in foreign holdings to exceed 500 million dollars.

The greatest threats to the landowner class have always been (1) the formation of labor unions, (2) the threat of land reform, and (3) local taxation designed to bring about a better distribution of the wealth.

It is estimated by officials in the present government that the murder of 90 percent of the trade union leaders resulted from the action of landowners directly. Allegedly, landowners would meet outside the country, draw up lists of labor leaders and order them killed—all with the acquiescence of the military.

Short of killings, the oligarchy went to great lengths to accomplish its goals. A leading governmental official told us that he represented a group of small coffee farmers who claimed that the wealthy landowners fraudulently rigged the election of officers of the main coffee group. Not long after the complaint was filed, the attorney was offered \$50,000, deposited in a U.S. bank account, to drop the case. When he refused, he was given 48 hours to leave the country. The attorney remained, and the case proceeded to trial. However, the trial judge took the \$50,000 and the attorney lost his case. The next day, the lawyer received a call from the person who had made the offer who told him, "You lost the case the just way."

Some experts feel that the only thing the oligarchy really fears is international pressure.

Today the present government has decided not to discuss land reform or the amnesty law for the military. A senior official even mentioned that should it advance these issues, it would certainly mean the end of the Cerezo government.

### *The New Military Pledge*

To return to the role of the military, there is much to report. The army has a tendency to support the status quo, but now because of a changing army, new younger officers

are coming to power. They have different values. One told us that they are "sick and tired of doing this dirty job." They want changes "not revolutionary change, but evolutionary change." They see their role as guardians of the defense of the State. They want to "wear their uniform with pride," and leave the affairs of State to the President, the Congress and the Judiciary.

During 1986 the army has certainly kept out of the political arena, and has returned to its barracks, save in those zones in the highlands where they are carrying on military operations aimed at the insurgents. The military leaders assert that none of the disappearances of civilians in 1986 have been traced to the army. The military sometimes directly and sometimes through its military police and its control over Civil Patrols (PAC), root out insurgents and maintain local order. It was not within our terms of reference to inquire into this problem, but we recommend the reading of *Civil Patrols in Guatemala* by Jean-Marie Simon published by Americas Watch.<sup>32</sup>

We did, however, have the advantage of an interview with General Hector Alejandro Gramajo who, subsequent to our visit, became the new Minister of Defense, and of hearing a tape recording of his remarks at the U.S. Department of State in September 1986.

We submitted to General Gramajo four general questions:

1. How does he see the role of the army in Guatemalan society under the new Constitution of May 1985?
2. What is the role of the army regarding its authority to arrest and try civilians?
3. Will the army participate in the new national police force; and
4. What is the relationship of the army to the civil patrols in Guatemala?

We found General Gramajo cooperative and frank. He answered in the following manner:

He assured us that the armed forces, under his command will obey both the military and national laws, and

will recognize the President of the Republic as the Commander in Chief of the Army.

He stated that there are terrorists in Guatemala who seek to overthrow the lawfully elected government by force and violence. He recognizes that people have the fundamental right to criticize the government, but that the State has the right to defend itself when illegal violence is employed. He mentioned that he is re-educating the army by having them attend seminars given by senior jurists, the Bar Association, etc. He reiterated that the Minister of Defense is accountable to the President and must report to him.

Regarding the army's role in the arrest of civilians, he mentioned the constitutional provision, Article 219, which guarantees in essence that "no civilian can be judged by military courts." General Gramajo did say, however, that since 1960 the military has the right to serve the judicial system. When a judge orders the arrest of a civilian, and there are no civilian police available, the army can arrest the person in question pursuant to the judge's order. The prisoner must be turned over to civilian authorities as soon as possible.

General Gramajo told us that there was no direct connection between the new national police force and the army (although a former army officer is directing the unit under the Minister of the Interior). He offered cooperation with the national police force, who have a completely different jurisdiction to that of the army.

Regarding the Civil Patrols (PAC), General Gramajo maintained that they were voluntary in each community; that their goal was to secure peace; that they had some weapons and that the local mayor is usually the chief of the patrol. (The previous regime always claimed that the Civil Patrols were purely voluntary, but there is abundant evidence to the contrary.)<sup>33</sup>

General Gramajo, again and again, reiterated that the army "does not want political power" and does "want and supports democratic government." He said that the army "will respect the authority of the President and the courts"; that "stability within the army" and respect for the army

“for most of us means stability for the country.” He also assured us that President Cerezo has the overwhelming support of the people and that the Army “did not sign any pact with him . . . did not submit to him a list of generals or a list of colonels or anything. We did not work it that way, and the elections were free elections.” He mentioned that the Ministry of Defense will “have some ability to improve things within the army or in the country because we were appointed by an elected President who was elected by the people.”

He continued to say:

So we are legitimate authorities, military authorities, because we have power from above, we don't have power from the runts, as in the late days we used to . . . this strengthened the military position, military morale, military characteristics, and this gives space of maneuver for many political decisions that relate to the military in my country. So it seems that it is nonsense to say we have lost power, as we actually have . . . and I said it many times, we think we have the formula for the betterment of Guatemala. . . . One elected government and one professional army means that we know what our mission is and we convince ourselves that we don't have all the power. We are committed to the success of democracy in Guatemala.

## **VIII. Summary**

We make these comments, fully recognizing the tremendous unsolved social and economic problems existing in the society. Over 60 percent of the population are Indians who live in dire poverty without adequate land, education, or medical care or other benefits enjoyed by the rest of Guatemalan society.

We can, however, report that there is a “new beginning” in the legal and political realms as evidenced by:

- a new freely elected civilian President, and Congress;



- a new federal Constitution;
- a new judicial system with a new Supreme Court of Justice and a Court of Constitutionality;
- a new Commission and Commissioner of Human Rights;
- a new national police force pledged to obey the law; and
- a new group of military leaders pledged to submit to civilian control and not to interfere with the responsibilities of the duly elected officials and the courts of the country.

Whether or not these institutions can be sustained depends to a large degree on the ability of all elements of Guatemalan society to meet the formidable social, economic, and cultural needs of the people.

We were impressed to witness on the last day of our visit an attempt by a Guatemalan human rights group, Grupo de Apoyo Mutuo, known as GAM (families of the disappeared), to forcibly, by strength of numbers, enter the National Palace. Entrance was prevented by a number of local police—all without gunfire, death, or significant injuries. The toleration, in this instance, by the state of the rights to dissent and demonstrate is one of the new government's significant accomplishments.

What we can say, as Jurists, is that there is a new beginning in Guatemala substantially conforming with the norms and standards of a democratic society and we commend President Cerezo, the Congress, the new courts, the military and the Guatemalan people for their efforts to provide their citizens with an opportunity to live in peace pursuant to the rule of law with an independent judiciary and a freely elected democratic government.

### *Conclusions*

1. The Guatemalan Constitution of May 31, 1985, and in particular its provisions relating to the judiciary and its independence, and the creation of a Commission of Human Rights, meet the norms and standards ap-

proved in Resolution A/40/32 of the General Assembly of the United Nations on the independence of the judiciary, subject to guarantees of security of tenure and adequate salaries.

2. The legal profession and the Bar Association of Guatemala are free and independent. They are making substantial contributions to the establishment of the rule of law and an independent judiciary by its participation in the selection of judges, rendering of opinions, legal aid, and training programs.
3. The members of the Supreme Court and the Constitutional Court are talented jurists who are currently carrying out their functions without interference from other government branches or other private or public institutions.
4. The reorganization of the national police force is proceeding under the capable leadership of the Minister of the Interior, but at a pace much too slow to meet the needs of the judicial system and the society as a whole.
5. The role of the military has radically changed from total control of the government (prior to 1986) to its new functions under the civilian control of the President of the Republic as its Commander in Chief.
6. The number of non-combatant killings has continued to drop from an estimated 491 in 1984, 304 in 1985, to estimates varying between 80 and over 200 in 1986 after the installation of a new civilian president.
7. There is a severe lack of law enforcement personnel, equipment, detention centers, and facilities causing increased crime. Of the 24,000 arrests in 1986 only 1,000 cases remained in the judicial process. Most were dismissed due to lack of evidence and improper arrest procedures. Some progress is being made in recording arrest data by the use of computers.
8. Legal aid to the poor is being carried out by thousands of law school students who work in legal clinics throughout the country.
9. Because most of the above changes are recent and, therefore, in their formative stages, no judgment can

be made as to the long range stability of these new institutions, but we found a strong political will to make the process work.

10. We find that there is a "new beginning" in the country which points to a return of Guatemala to democracy.

### *Recommendations*

We recommend that:

1. Congress and the Commission on Human Rights should take immediate steps to appoint the Commissioner on Human Rights pursuant to the Constitutional provisions.
2. The salaries and terms of judges should be sufficient to ensure the independence of the judiciary.
3. The duties of the army in arresting citizens should be clearly spelled out especially in the countryside where adequate police protection is non-existent. Any detention by the military of civilians should always be subject to civilian judicial authority.
4. If confidence in Government is to be restored in Guatemala, the investigations respecting the disappeared must lead to more substantial results.
5. The Guatemalan government should immediately take steps to ratify the International Covenants on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights.
6. A civilian should be appointed as Minister of Defense in order to maintain the civilian and democratic nature of the government.
7. The Guatemalan government with the cooperation of other nations should take steps to build a well trained, responsible, and adequate national police force committed to the rule of law which we consider indispensable to the proper functioning of the judicial system.
8. Bar Associations everywhere should offer their support (including funds and advice) to the Bar Association of Guatemala and to the other institutions dedicated to

establishing the rule of law and an independent judiciary in Guatemala. Efforts should be undertaken to encourage greater participation in the Bar and police forces by Indians and other communities not traditionally represented. It is important to train and develop young leaders from these communities if the new democracy is truly to take hold.

# Endnotes

1. United States Department of State, *Country Reports on Human Rights Practices for 1985*, 542 *et seq.* [hereinafter referred to as *Country Reports*].
2. Amnesty International, *Memorandum Presented to the Government of Guatemala Following a Mission to the Country in April 1985*, AI Index: AMR 34/01/86, 22 [hereinafter referred to as *Memorandum*].
3. 13 *Centre for the Independence of Judges and Lawyers Bulletin*, 3, April 1984.
4. *Memorandum*, 2.
5. *Country Reports*, 543.
6. *Id.*, 542.
7. See Title VIII, Article 22. Specific articles of the May 1985 Guatemalan Constitution have been copied and are located in the Appendix. The translated, full text of the Constitution will appear in the next edition of Blaustein, Albert P. and Gisbert N. Flanz, eds., *Constitutions of the Countries of the World* (Dobbs Ferry, NY: Oceania Publications, Inc.).
8. Preamble to Political Constitution of the Republic of Guatemala, May 31, 1985.
9. Article 66.
10. Article 215.
11. Article 216.
12. Article 217.
13. Article 268. It is currently .001 percent of the national budget.
14. Article 269.
15. Article 270. Alternates are simultaneously elected by the same process.
16. Article 271.
17. Article 272.
18. The enacting legislation was adopted by the Congress of Guatemala in November, 1986. See *The Reagan Administration's Record on Human Rights in 1986*, 59 (published by The Watch Committees and Lawyers Committee for Human Rights, February 1987).
19. Article 273.
20. Article 274.
21. Article 275.
22. Article 265. See also Article 276.
23. Article 263.
24. Article 264.

25. Nairn, Allan and Simon, Jean-Marie, "Bureaucracy of Death," *The New Republic*, June 30, 1986, 13, at 14.
26. Americas Watch reports that "38,000 people are estimated to have 'disappeared' in the past twenty years." Simon, Jean-Marie, *Civil Patrols in Guatemala*, 3 (published by Americas Watch, August 1986).
27. Other sources put this figure at 204, *see* text at page 2.
28. Article 271 provides that the first President of the Constitutional Court shall be the eldest of the five judges.
29. A meeting of bar associations is planned for January 1987 in Guatemala City, supported by the American Bar Association.
30. Article 269.
31. Article 273.
32. Simon, Jean-Marie, *Civil Patrols in Guatemala* (Americas Watch, August 1986).
33. *See id.*

# Appendix

## SECTION II

### The Supreme Court of Justice

*Article 214.—Composition of the Supreme Court of Justice.* The Supreme Court of Justice is made up of nine judges including its president and will organize itself into the chambers determined by law.

The President of the Judicial Organism is also that of the Supreme Court of Justice and his authority extends over the courts of all the Republic.

In the case of the temporary disability of the President of the Judicial Organism or when in accordance with the law he is unable to act or take cognizance of given cases, the other judges of the Supreme Court of Justice will replace him, in the order of their election.

*Article 215.—Election of the Supreme Court of Justice.* The judges of the Supreme Court of Justice will be elected by the Congress of the Republic for a period of six years as follows:

- a. Four judges are to be elected directly by the Congress of the Republic;
- b. Five judges are to be elected by the Congress of the Republic, selected from a panel of 30 candidates proposed by an Applicants' Committee made up of each of the deans of the faculties of law or judicial and social sciences of each university in the country; an equivalent number of members elected by the General Assembly of the Lawyers' and Notary Publics' Association of Guatemala; and a representative of the judicial branch appointed by the Supreme Court of Justice.

In the vote, both to make up the Applicants' Committee and to make up the panel of candidates, no representation whatever will be accepted.

The judges of the Supreme Court of Justice will elect from among their members the president of same.

*Article 216.—Requirements for Judgeship on the Supreme Court of Justice.* In order to be elected judge of the Supreme Court of Justice, besides the requirements mentioned in Article 207 of this Constitution, it is necessary that the candidate be over 40 years of age and that he will have completed one full term as judge in the Court of Appeals or other collegiate court with similar characteristics, or that he will have exercised the profession of lawyer for more than ten years.

## SECTION III

### Court of Appeals and Other Courts

*Article 217.—Magistrates.* To be a magistrate in the Court of Appeals, of collegiate courts, and of others that will be created in the same category, besides the requirements mentioned in Article 207, it is necessary that the candidate be over 35 years of age, that he will have been judge of the first instance or that he will have exercised the profession of lawyer for over five years.

The magistrates to whom this article refers will be elected by the Congress of the Republic, selected from a panel of candidates proposed by the Supreme Court of Justice. This panel will have a number double that of the judges to be elected.

## TITLE VI

### Constitutional Guarantees and Defense of the Constitutional Order

#### Chapter I Habeas Corpus (Exhicion personal)

*Article 263.—Right to Habeas Corpus.* Whoever finds himself illegally imprisoned, detained, or restrained in any other way in the enjoyment of his individual freedom, who is threatened with the loss of same, or suffers ill-treatment, even when his imprisonment or detention is based on the law, has the right to petition for an immediate hearing before the courts of justice for the purpose of retrieving his liberty, guaranteeing him his release, bringing his ill-treatment to an end, or terminating the constraint to which he has been subjected.

Should the court decree the freeing of the individual illegally confined, the latter will be released at the same hearing and place.

When it is so petitioned or the judge or court deems it pertinent, the requested habeas corpus will occur at the location where the detained person is being held, without previous warning or notification.

The habeas corpus of the detainee in whose favor it may have been requested is unavoidable.

*Article 264.—Responsibilities of the Violators.* The authorities which order the concealment of the prisoner or which refuse to present him at the appropriate court or which in any form evade this guarantee as well as the executive agents will be guilty of the offense of abduction and will be sanctioned in accordance with the law.

If as a result of the proceedings pursued the individual benefiting from habeas corpus cannot be located, the court having jurisdiction will order immediately an investigation of the case until it is totally cleared up.

#### Chapter II Amparo

*Article 265.—Proceeding of Amparo.* Amparo is instituted for the purpose of protecting individuals against the threats of violations of their



rights or to restore the rule of same should the violation have occurred. There is no area which is not subject to amparo, and it will always proceed whenever the acts, resolutions, provisions, or laws of authority should imply a threat, restraint, or violation of the rights which the Constitution and the laws guarantee.

#### Chapter IV The Court of Constitutionality

*Article 268.—Essential Function of the Court of Constitutionality.* The Court of Constitutionality is a permanent court of exclusive jurisdiction whose essential function is the defense of the constitutional order. It acts as a collegiate court with independence from the other organisms of the State and exercises specific functions assigned to it by the Constitution and the law in the matter.

The economic independence of the Court of Constitutionality will be guaranteed through a percentage of the revenues appropriate to the Judicial Organism.

*Article 269.—Organization of the Court of Constitutionality.* The Court of Constitutionality consists of five tenured judges, each of whom will have his respective alternate. When it is seized with matters of unconstitutionality against the Supreme Court of Justice, the Congress of the Republic, or the President or the Vice President of the Republic, the number of its members will be raised to seven, the other two judges being selected by lot from among the alternates.

The judges have a tenure of five years and shall be appointed in the following manner:

- a. One judge by the plenary Supreme Court of Justice;
- b. One judge by the plenary Congress of the Republic;
- c. One judge by the President of the Republic in the Council of Ministers;
- d. One judge by the Higher University Council of the University of San Carlos de Guatemala; and
- e. One judge by the Assembly of the Bar Association.

Simultaneously with the appointment of the judge, that of the respective alternate will occur before the Congress of the Republic.

The installation of the Court of Constitutionality will become effective 90 days after that of the Congress of the Republic.

*Article 270.—Requirements of the Judges of the Court of Constitutionality.* In order to be a judge of the Court of Constitutionality, he must meet the following requirements:

- a. Be a native Guatemalan;
- b. Be a lawyer belonging to the Bar Association;
- c. Be of recognized integrity; and
- d. Have at least 15 years of professional experience.

The judges of the Court of Constitutionality will enjoy the same privileges and immunities as the judges of the Supreme Court of Justice.

*Article 271.—Presidency of the Court of Constitutionality.* The Presidency of the Court of Constitutionality will be filled by the same tenured judges on a rotating basis changing every year, beginning with the eldest member, and following in descending order of age.

*Article 272.—Functions of the Court of Constitutionality.* The Court of Constitutionality has the following functions:

- a. To take cognizance in each instance of the charges brought against the laws or provisions of a general character, challenges of partial or total unconstitutionality;
- b. To take cognizance in each instance in its status of Extraordinary Tribunal of Amparo, in amparo actions brought against the Congress of the Republic, the Supreme Court of Justice, the President or the Vice President of the Republic;
- c. To take cognizance on appeal of all amparos brought before any of the courts of justice. If the appeal were against an amparo decision of the Supreme Court of Justice, the Court of Constitutionality will be expanded by two members in the form anticipated in Article 268;
- d. To take cognizance on appeal of all the challenges against the laws charged with being unconstitutional in specific cases, in any trial, on appeal, or in the cases contemplated by the law in the matter;
- e. To issue an opinion on the constitutionality of treaties, agreements, and bills at the request of any organisms of the State;
- f. To take cognizance and solve issues relating to any jurisdictional conflict in the area of constitutionality;
- g. To compile the doctrine and constitutional principles that are established with the purpose of resolving them through amparo and of unconstitutionality of the laws, keeping up to date the jurisprudential journal or gazette;
- h. To issue an opinion on the unconstitutionality of laws vetoed by the Executive alleging unconstitutionality;
- i. To act, render opinions (opinar), dictate, or take cognizance of those matters under its competence established in the Constitution of the Republic.

#### Chapter V Commission and Commissioner [Procurador] of Human Rights

*Article 273.—Human Rights Commission and Commissioner of the Commission.* The Congress of the Republic will appoint a Commission of Human Rights made up of a deputy for each political party represented during its term. The Commission will propose to the Congress three candidates for the election of an Commissioner [Procurador] who will have to meet the requirements of a judge of the Supreme Court of Justice and will enjoy the same immunities and privileges as the deputies to Congress. The law will regulate the powers of the Com-

mission of Human Rights and of the Commissioner as they pertain to this article.

*Article 274.—Commissioner of Human Rights.* The Commissioner of Human Rights is a commissioner of the Congress of the Republic for the defense of Human Rights guaranteed by the Constitution. He will have the powers to supervise the administration, will have a term of five years, and will make an annual report to the full Congress with which he will have dealings through the Commission of Human Rights.

*Article 275.—Powers of the Commissioner of Human Rights.* The Commissioner of Human Rights has the following powers:

- a. To promote the adequate functioning and speeding up of government administration in the area of Human Rights;
- b. To investigate and denounce administrative behavior that is detrimental to the interests of persons;
- c. To investigate every type of denunciation that may be brought by any person regarding the violations of Human Rights;
- d. To recommend privately or publicly to officials that they modify their administrative behavior to which objections are raised;
- e. To issue public censure for acts or behavior running counter to Constitutional rights;
- f. To promote actions or resources, judicial or administrative, in those cases which demand it; and
- g. The other functions and powers assigned to him by law.

The Commissioner of Human Rights, routinely or on challenge, will act with due diligence so that, during the regime of exception, fundamental rights whose application may not have been expressly restrained may be fully guaranteed. For the fulfillment of his functions, every day and all hours are considered working hours.

## Chapter VI Law of Amparo, Habeas Corpus [Exhibición Personal] and Constitutionality

*Article 276.—Constitutional Law in the Matter.* A constitutional law will develop matters relative to amparo, habeas corpus, and the constitutionality of the laws.

### SECTION III

#### Native Communities

*Article 66.—Protection of Ethnic Groups.* Guatemala is made up of various ethnic groups among which are native groups of Mayan descent. The State recognizes, respects, and promotes its form of life, customs, traditions, forms of social organization, the wearing of Indian dress by men and women, their languages, and dialects.

*Article 67.—Protection of Native Agricultural Lands and Cooperatives.* The lands of the cooperatives, native communities, or any other forms of communal possession or collective of agrarian ownership, as well as the family heritage and popular housing, will enjoy the special protection of the State.

*Article 22.—Repeal.* All the Constitutions of the Republic of Guatemala and constitutional amendments decreed prior to the present Constitution are repealed, as are any laws and provisions that may have had the same effects.

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NIALL MACDERMOT

It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that Human Rights should be protected by the rule of law.

United Nations Universal Declaration  
of Human Rights, 1948