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First Vice Chairman: Marco Tulio Bruni Celli;  
Second Vice Chairman: Oscar Lujan Fappiano;  
Members: Gilda M.C.M. de Russomano; Oliver Jackman; Leo Valladares  
Lanza; Michael Reisman  
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## PRIOR TO THE ON-SITE VISIT

1. Between November 22 and 29, 1988, in the mountainous area of Guatemala known as the Sierra Madre, near the Cerro Las Minas, the El Soco mountain and the District of San Isidro, which make up a triangle of thick and almost impenetrable forest, there took place the mass murder of 21 peasants who lived some three kilometers away, in a village named El Aguacate, a village composed of 168 mestizos grouped into 34 families related to one another by blood. The population of the village was made up of 38 men, 40 women, and 90 children. The village itself is a series of dwellings scattered on both shores of the Rio de la Virgen, a river located within the area at a distance of four kilometers from the Municipality of San Andres Itzapa, in the Department of Chimaltenango.

On November 29, 1988, the Inter-American Commission on Human Rights, received from the Mission of Guatemala to the Organization of American States the first information confirming the massacre, which was reported as follows:

### The Events:

On the 22nd of this month, Carlos Humberto Guerra Callejas, an aide to the Military Commissioner, disappeared on his way to work in the fields. When his family became aware that he had not returned home, on the following day they organized a search without success. On the 24th a more intense search was carried out by 30 peasants, who came into contact with a terrorist group and tried to talk to its members, but were threatened with firearms. Some of the peasants managed to escape, but 20 persons were seized, including the evangelical minister of the community.

The peasants who fled reported the matter to Military Zone 302, based in Chimaltenango, and a company was detached and clashed with the terrorist group, leaving Second Lieutenant Adolfo Molina Gutierrez wounded. Mr. Carlos Humberto Guerra Callejas was found dead, and on the 26th three mass graves were found, containing the tortured remains of the following peasants: 1. Francisco Callejas Tobar; 2. Rosalio

Callejas Tobar; 3. Pastor Callejas Tobar; 4. Romualdo Callejas Tobar; 5. Julio Callejas Tobar; 6. Luis Callejas Tobar; 7. Oscar Callejas Tobar; 8. Juan Oswaldo Callejas; 9. Aroldo Callejas Tobar; 10. Horacio Tajtaj Callejas; 11. Cristobal Chuy; 12. Pedro Guerra; 13. Isidro Castellanos Guerra; 14. Josñ Leonel Callejas; 15. Antonio Olivares Banse (the evangelical Minister); 16. Factor Callejas Guerra; 17. Humberto Callejas Guerra; 18. Leonel Callejas Aspuac; 19. Isidro Guerra; 20. Esteban Arenales. This grievous fact was confirmed by the press, which witnessed the anguish and pain of the wives and children of the victims. Through me, the Government of Guatemala demands from the OAS the most vigorous condemnation of this unspeakable violence that has left so many children fatherless.

2. Next day, corroborating its report, the Mission of Guatemala sent to the IACHR the text of the cable from the CERIGUA News Agency, which regularly reports the war communiques of the Guatemalan guerrilla, in which the latter, on November 28, apparently claimed responsibility for the murders by issuing the following information:

CERIGUA-83/11/88

UNIDAD REVOLUCIONARIA NACIONAL GUATEMALTECA (URNG)

[GUATEMALAN NATIONAL REVOLUTIONARY UNIT]

REPORT ON OPERATIONS IN THE CENTER OF THE COUNTRY

Guatemala, November 28. (CERIGUA). The Guatemalan guerrilla killed 25 soldiers of the government army in two successive ambushes in the mid-western area of the Department of Chimaltenango, it was reported here today by the Guatemalan National Revolutionary Unit (URNG). The clashes took place in the Municipality of San Andres Itzapa, at a 45-minute distance from this capital and only five minutes from Military Zone 302 in Chimaltenango, last November 25 (the day the peasants were murdered). According to the war communique, the government troops made up a company that was attacked from three positions "with heavy fire from rifles and machine guns." "In short-range combat, we confirm that we inflicted 25 casualties on the army, between dead and wounded," added the insurgents. The URNG has kept up a constant activity in this area since last June, within a territory that also includes the Department of Solola and the northern part of Suchitepequez. (END CERIGUA. AR/CL).

3. On November 29, the CERIGUA News Agency through which the guerrillas had taken responsibility --as an act of war-- for the events of November 25, published a new communique from the Comandancia General de la Unidad Revolucionaria Nacional Guatemalteca (URNS) [General Headquarters of the Guatemalan National Revolutionary Unit] in which, without rectifying or clarifying the previous communique, the Guatemalan Army was accused of having perpetrated the massacre with Government complicity, and denying as a complete and absolute falsehood that guerrilla forces from ORPA (ORGANIZACION DEL PUEBLO EN ARMAS) [ARMED PEOPLE'S ORGANIZATION] belonging to the URNG had abducted and subsequently murdered the peasants. The event, according to the URNG, was part of a new wave of terrorism, repression and intimidation, under a new plan carefully orchestrated by the Government and the army to blame the revolutionary movement for the atrocities they themselves committed.

4. In the course of the second week of December 1988, the Government of Guatemala organized a visit by two peasants from the village of El Aguacate, Oscar Orlando Callejas Tobar and Waldemar Figueroa, to various human rights agencies based in the United States of America, both public and private, including the Inter-American Commission on Human Rights. Later, the testimony of these two persons was challenged by some nongovernmental human rights organizations, which believed that the two were not true survivors of the tragedy and regarded their visit as a fraud prepared by the Government and the army of Guatemala to deceive international public opinion. This was based on the repeated statements made by the two men that neither one had been physically present where and when their family members were seized, that neither one had been himself abducted or had managed to escape the

ambush in which the 20 victims had fallen. In this regard, the testimony from the two villagers was disappointing. But the important fact remained that they vigorously attested to the disappearance of Carlos Humberto Guerra Callejas and stated that they had been part of the three search parties organized to look for him, that they had been eyewitnesses to the presence of guerrillas in the area of the Sierra Madre when their 20 relatives were abducted, for they themselves, the witnesses, were part of that group and had gone along with them, but had then stayed behind when the others went on to try to negotiate the release of Carlos Humberto Callejas. In addition, the first-mentioned of the two witnesses, and his brother Baldomero Callejas Tobar, acted as guides for the army rescue team and were witnesses not only to the clash between the army forces that had come with them to rescue their relatives, on the one hand, and the men who were holding them, on the other, but to the finding of the bodies of their relatives by the search party.

5. On December 15, 1988, a nongovernmental human rights group that was aware of the Commission's inquiry into the events denounced by the Government of Guatemala filed a complaint against that government and requested to be recognized as a complainant.

The new complaint changed the version of the facts by claiming in an additional report and in presentations before the full Commission that the torturing and murder of the peasants had taken place in Military Headquarters 302 of Chimaltenango and not on the mountain, from which the victims were said to have been taken alive to the garrison and, after being killed, returned to the mountain to be buried, so as to make it look as though the killings had taken place there, when the massacre had actually been perpetrated by the Guatemalan army and not by the guerrillas.

6. The complainant stressed several points, which may be arranged as follows:

a. The Municipality of San Andres Itzapa in the Department of Chimaltenango was a combat area that had been under army occupation for the last seven years, during which time the army had frequently launched military operations that affected the civilian population.

b. According to the testimony of Oscar Orlando Callejas, who travelled to Washington D.C. as a surviving eyewitness, Salvajan Gomes, one of the individuals who joined the search parties, had told him that he had come across armed men who threatened to kill him, and that these persons were dressed in green uniforms and black berets.

c. It took the soldiers of the Guatemalan Army less than six hours to discover the bodies after they started to search.

d. All bodies showed signs of torture and some bore evidence of having been burned with hot irons; each victim had been strangled, wore no shoes, and had his hands tied, leading to the conclusion that "these torture methods were the same as the practices and patterns of interrogation and torture used in the past by the army in its military operations."

e. When the bodies were dug up on November 27, the Guatemalan Air Force sent two combat aircraft to the area, on the pretext of supporting the helicopters that were digging out the bodies, and these planes opened fire against alleged guerrilla positions, firing rockets into an area populated by civilians.

f. According to the account of five relatives of the victims, the group of 22 people who disappeared had been arrested between November 24 and 25 by soldiers belonging to Military Base 302 and taken to that garrison (Report on the Massacre at El Aguacate, The Findings of an Independent Investigation).

g. A cleaning woman at Military Base 302 says she heard the unmistakable voice of the abducted Evangelical minister Antonio Olivares Bance while he was being tortured.

h. A soldier from Military Base 302 said: "I saw them being tortured and in the base one could hear the screams and prayers of the minister."

i. A soldier from that Base said: "I saw them with my own eyes."

j. A soldier friend said that the clothes of the detainees were very dirty and that their wives (18 women) took clean clothes for them to Base 302, where a soldier confirmed to them that the men were

being held at the base. This testimony is contradicted in the same report.

k. Two jeeps carrying eight soldiers were seen driving on a highway leading to the mountain where the bodies were found.

7. Next, the IACHR received a completely different version from a source independent of the executive branch of the government. The then Ombudsman for Human Rights of Guatemala, Gonzalo Menendez de la Riva, who was one of the first to arrive at El Aguacate with his whole team of investigators, talked to the press on December 12 and said that an investigation had ascertained that the massacre was committed by a "group engaged in pillage, not necessarily involved in politics." A few days later, the same Human Rights Ombudsman pointed to the guerrillas as the perpetrators of the massacre, letting it be known, however, that this conclusion was not final because the investigation was still going on. Subsequently, on June 13, 1989, at a Multisectoral Meeting of Representatives of Human Rights Groups, Interior, Defense and Indigenous Communities, attended as well by the Minister of the Interior and the Director of SIPROC, public security problems were discussed and the Ombudsman for Human Rights declared that the State was responsible for the El Aguacate massacre because it was incapable of protecting the population and incapable of discovering who had done it.

8. By an undated note of March, 1989, the following reply was received from the Government of Guatemala:

HUMAN RIGHTS ADVISORY COMMISSION OF THE PRESIDENT OF THE REPUBLIC, REPORT: (Massacre of El Aguacate). SUBJECT: Review of judicial inquiry in the case labeled "Massacre of Aguacate" in the Department of Chimaltenango.

INFORMATION: Concerning the judicial proceedings, these were instituted in November 1988, before the local District Justice of the Peace for the village of El Aguacate; after three (3) days the case was taken over by the lower-court Investigating Magistrate [Juzgado Primero de Primera Instancia de Instruccion] for the Department of Chimaltenango, case file No. C-2261/88, classified as an inquiry and labeled KIDNAPPING OR ABDUCTION AND MURDER, handled by the second clerk [Oficial Segundo] of the court. At present, the proceedings are in the investigative stage. NO ARRESTS HAVE BEEN MADE.

The Office of the Ombudsman is represented. EVIDENCE COLLECTED: a. 26 statements from witnesses; b. forensic medical reports; c. court inspections connected with the evidence. NO DETAILED INFORMATION IS AVAILABLE because of the secrecy of the investigation provided for under Guatemalan criminal procedure. Guatemala, March 1989.

9. Whether or not related to the massacre of the 21 peasants at El Aguacate, seven months after that event, on June 20, 1989, another member of the same family and from the same village, Alberto Callejas Callejas, was kidnapped by an unidentified group of men and to this day his whereabouts remain unknown. Callejas, another one of the surviving witnesses of the events, was the father of Oscar Orlando Callejas Tobar and Baldomero Callejas Tobar, who served as guides for the army in the operation to search for and rescue their relatives. The former of these two had visited the Commission in Washington, in December 1988. Alberto Callejas Callejas was related, on both his father's and his mother's side, to the then Chief of the National Defense General Staff.

According to his family, the abduction took place when Alberto Callejas Callejas went looking for a cow that had just given birth in a mountain located between San Andres Itzapa and Chicasanga, in the Department of Chimaltenango, an area quite close to the Village of El Aguacate.

10. On June 22, 1989, two days after the mysterious disappearance of Alberto Callejas Callejas, the sons of the kidnapped man, Israel Callejas Tobar and Jairo Callejas Tobar, were looking for their father near the village of El Aguacate, close to the mountain, when they stumbled on a stranger and asked him if

he had seen their father. As they talked, the Callejas had the feeling, because of the demeanor of the man and his nervous answers to their questions, that there was something suspicious about him. While they carried on this conversation the brothers realized that the man was trying to pull something out of his bag without their noticing it. This prompted them to react and take it away from him, and they discovered, to their surprise that it was a loaded revolver, whereupon they decided, rather than "taking justice into their own hands," to take him to Military Base 302 at Chimaltenango and turn him over to the military authorities as a presumed member of the guerrillas who, they believed, had massacred their family in November 1988, and had probably also abducted their father Alberto Callejas Callejas.

11. A few days after the arrest of Eleodoro Sal Siquinajay, the same nongovernmental human rights group lodged a fresh complaint about the arrest of that person.

12. On July 14, 1989, the Commission received a report on the status of the investigations, according to which the case was in the hands of the Lower Court for Chimaltenango, at the investigative stage. The proceedings before the court specifically name as the alleged perpetrators of the massacre the following members of ORPA: Pedro Palma Lau, Pancho, Sandra Chavez Galvez, Captain Ana, Luis Antonio Santacruz Mendoza, Captain Pablo, and Jaime Aurelio Tun Luch, Captain Hernan, against whom the judge will issue the proper arrest warrants so that they may be apprehended and brought before the Court.

13. In the course of the 76th session held in Washington, D.C. from September 18 to 29, 1989, at a hearing attended by the complainants, the Government of Guatemala extended an official invitation for the IACHR to "visit the site" in Guatemala, there to conduct such inquiries as it deemed appropriate in Case 10400 concerning the events that had taken place at the hamlet of El Aguacate, and to see for itself -in the words of the invitation-- that the domestic remedies were in progress and, consequently, had not yet been exhausted in this case.

14. In line with the regulations governing the IACHR, the full Commission entrusted the visit to a special commission headed by its Vice-Chairman, Dr. Leo Valladares Lanza, by its member Ambassador John Stevenson, and by David Padilla, the Assistant Executive Secretary of the IACHR and Manuel Velasco Clark, the lawyer in charge of Guatemala.

#### THE ON-SITE INVESTIGATION

15. The visit was divided into two parts: a preparatory period from January 22 to 29, handled by Dr. Velasco Clark from the IACHR Secretariat, and the official visit itself, from January 29 to February 3, 1990, conducted by the IACHR special commission.

Just before starting the visit, the members of the special commission issued a press release explaining the purposes of the investigation.

16. The special commission began its meetings on Monday 29, at 8:30 a.m., by visiting the Chief Justice of the Supreme Court and head of the Guatemalan judiciary, Dr. Edmundo Vasquez Martinez. The IACHR delegates explained the object of the visit and requested the cooperation of the head of the judiciary in order to enlist for their activities the support of the various magistrates who had taken part in the judicial inquiry. Dr. Vasquez offered and provided the assistance requested, thanks to which the special commission was able to interview not only the judges who took part in the investigation but also the other lesser court officials who played a role in it, including the forensic physician for the town of Chimaltenango.

Furthermore, thanks to Dr. Vasquez' support, the special commission was given a photocopy of the judicial case file, which made it possible to make a thorough study and review of the proceedings.

17. Next, at 10 a.m. on that same morning, the special commission met with the Minister of Foreign Affairs of Guatemala, Ariel Rivera Irias. Besides the members of the special commission, this meeting was also attended by high officials from the Ministry of Foreign Affairs.

The Minister welcomed the members of the special commission and informed them that in order to expedite the work of the Commission a special committee had been set up to coordinate the visit from the IACHR. This committee was made up of the following persons: Ileana de Rosario Acuca Ordoce, Chairman of the Human Rights Advisory Committee of the President of the Republic; Infantry Colonel Luis Arturo Issacs Rodríguez, Chief of Public Relations of the Army; Major Marco Vinicio Gonzalez Vega, from the Ministry of National Defense; Juan Carlos Cuestas Galvez, Minister-Counselor from the Special Affairs Department of the Ministry of Foreign Affairs; Hilario Roderico Pineda Sanchez, Representative from the Ministry of the Interior; Carlos Anelu, Deputy Secretary for Public Relations of the Presidency of the Republic; Humberto Castillo, Representative from the General Bureau of the National Police, and Víctor Hugo Garrido Colyn, Representative of the Office of the Attorney General.

The special commission advised the Minister that it would confine its activities to investigating and reviewing Case 10.400 dealing with the events at the hamlet of El Aguacate, that the program and inquiries it carried out would be confidential, that no statements would be given to the media concerning progress or difficulties encountered in its work, that, as usual, an official communique would be issued at the outset of the mission and another at its end, so that public opinion might be aware of the general outline and purpose of the visit, and that the special commission hoped to be able to rely on the cooperation of officials, police, and military authorities.

Lastly, the Minister was reminded of the Government's commitment to prevent retaliation of any kind against all persons to be interviewed by the Commission in the course of its inquiry.

18. The special commission carried on with its official meetings by next visiting the Ombudsman for Human Rights, Ramiro de Leon Carpio, who had been recently selected to replace Gonzalo Menéndez de la Riva.

The new Ombudsman for Human Rights told the special commission that on January 17, 1990, he had issued a resolution broadening the investigation of the El Aguacate events. Under that resolution the Ombudsman ordered the completion of his investigation within 30 days. It is the Commission's understanding that the investigation was finished by the deadline established but that its results were inconclusive.

19. The special commission also met with two other governmental authorities. They were then Minister of Defense, General Víctor Alejandro Gramajo Morales, and the Minister of the Interior, retired General Carlos Augusto Morales Villatoro.

20. The special commission likewise met with leaders of two Guatemalan NGOs, namely Nineth Montenegro de García of the Grupo de Apoyo Mutuo (GAM) and Factor Mendez, director of Guatemalan Center for the Study, Research and Promotion of Human Rights (CIEPRODEH). GAM was helpful in urging widows of the El Aguacate victims to talk to the special commission. CIEPRODEH made available a witness whose testimony was recorded. The witness asked for anonymity.

21. The special commission also met with Luis Alfredo Dardon de La Riva and Luis Mazariegos, Chimaltenango court officials who serve as Justice of the Peace and Investigating Magistrate, respectively, and who were in charge of this case. Also present was the Secretary of the Court, Freddy Avila.

22. The Commission met twice with Dr. Emilio Mendizabal Ferrigno, the coroner who conducted the post mortem of the 22 cadavers.

The doctor, who is the forensic physician of Chimaltenango, was first invited to an interview in the Military Zone where the bodies had been identified. He was asked to explain how or why he had gone there on November 28, 1988 to conduct the medical-forensic examination of the bodies of the 22 peasants from the Village of El Aguacate, how he had carried out this work and whether he had received cooperation from the base commander, Colonel Quilo. He said he had been summoned to do the medical-forensic examination by Freddy Eduardo Avila Rodriguez, the Secretary of the lower court judge, and had gone to the Military Zone and done the medical-forensic examination of the bodies but not an autopsy, because of the evidence of death by strangulation and the advanced state of decomposition of the bodies.

Dr. Mendizabal said he could not affirm that the victims of the massacre had been tortured since the state of decomposition of the bodies was such when he examined them that the dark blotches which looked like burns or bruises might simply have been the result of blood clotting. He said that he did not conduct complete autopsies of all the bodies, first because the cause of death, strangulation was obvious, and second, because he only had facilities in Chimaltenango for two cadavers.

23. The special commission also met with nine villagers from El Aguacate who had formed part of the search party that had set out to find Carlos Humberto Guerra Callejas. This meeting took place in the City Hall of San Andres Itzapa. All of these men belong, in one degree or another, to the Callejas family. Of these, three were present but fled when the search party was detained by the presumed assassins. None of these ascribe responsibility to Government agents.

Moreover, all of these men reported guerrilla activity in the vicinity in recent times. They also testified to armed confrontations between the Army and guerrillas between November 22-27, 1988. They went on to relate how they went out to search for Carlos Humberto Guerra Callejas, led by their evangelical pastor, Antonio Olivares Bances, and how they intended to pay a ransom because they believed their kinsman had fallen into the hands of the guerrillas, punishment for his having served as a military agent.

Oscar and Baldomero Callejas testified in separate and lengthy interviews, that they had informed the military of the kidnappings of their relatives, had served as guides for the Army search party and were present when the bodies of the 21 victims were discovered. They also corroborated Army reports about hostilities with the guerrillas during the time in question. One even placed six men dressed as civilians, presumably guerrillas, near the site of the graves.

24. The special commission met twice with the prisoner Eleodoro Sal Siquinajay who complained of a mental block and was clearly confused about some or all of the details of his situation. In any event, Sal Siquinajay's testimony was so addled, and inconsistent that the special commission was of the view that it shed no light one way or the other on the El Aguacate massacre.

25. In the course of its on-site visit, the special commission visited Military Zone 302, the Army base, in Chimaltenango. In the company of Colonels Jose Luis Quilo Ayuso, Zone commander at the time of the massacre and Marco Antonio Gonzalez Taracena, present commander, the special commission inspected the premises of the military headquarters, because --as explained to the above officers-- serious accusations had been made by the complainants that the 22 peasants had been murdered by the Guatemalan army within the military base and then taken back to the Mountain at El Aguacate, where the bodies presumably turned up as having been discovered by the Army itself.

26. In the company of the above officers, the following facilities were visited:

A heliport where the bodies were brought in November 1988; the area where they were placed for identification by the civilian authorities and next of kin and for the judicial and medical-forensic procedures carried out by the proper authorities: the construction materials warehouse and bedroom of the local bricklayer and plumber; the vehicle repair shop; laundry building; kitchen and mess hall for the troops; food supplies warehouse of the logistics section; commissary; sleeping barracks of the troops; officers' club; correctional building.

27. It was observed during the tour of the facilities that, for the most part, Military Zone 302 has no wall around it and looks more like a school than a military installation, so that it would seem unlikely that the peasants could have been executed within it, as there does not seem to be a truly secluded area that is set apart and might serve to murder 20 persons in the manner described in the complaint. In addition, the surrounding area is very populated, and includes the La Alameda school that looks directly into the interior of the Zone. Furthermore, among the civilian personnel in the Zone are natives of San Andres Itzapa who perform administrative or domestic work as clerks, cooks, and so on, so that there would have been hundreds of eyewitnesses to the killings.

28. The special commission held several private meetings with the officers who had been involved in the events connected with El Aguacate. They told the IACHR that they had acted in accordance with the law, with their duties and with the appeal from the El Aguacate residents to protect and help them find their missing family members. In addition, thanks to the help of two local guides, the bodies of the peasants had been found almost immediately, though unfortunately murdered and buried in an area of the Sierra Madre mountains. Otherwise, they might still be listed as missing to this day.

29. The officers, non-commissioned officers and soldiers interviewed were informed that they too were under investigation, because they had been named not as rescuers of the villagers but as their kidnapers and murderers.

30. The officers told the members of the special commission that they were aware of the charges brought against the Guatemalan Army and had been instructed and authorized to provide any information requested of them, regardless of its confidential or secret nature; they said that in connection with the El Aguacate investigation to be conducted by the Inter-American Commission on Human Rights they had the full support of the Government of Guatemala and the backing of the Army.

31. Colonel Quilo was asked for information concerning the charges in one report that he had obstructed the work of the forensic doctor. Colonel Quilo replied that all members of his military command had provided at all times the fullest cooperation in order to solve any problems arising in the course of the court proceedings, and he suggested that the Commission should meet with the court officials and the forensic doctor to find out about his --Colonel Quilo's-- own personal attitude and that of his subordinates.

32. Another matter that the special commission wanted to look into was that of the human rights organizations which had met with Colonel Quilo to obtain information about the case. Colonel Quilo reported having received only one visit from the Ombudsman for Human Rights, Mr. Gonzalez Menendez de la Riva, the week after the incident. The Ombudsman had been in the company of his two Assistants, and Colonel Quilo was asked to narrate the role of the Army in the events of El Aguacate. Colonel Quilo also reported that he had received no visits from any other human rights group or any other national or international agency connected with the protection of human rights anywhere in the world, and that he had been interviewed about this matter only by reporters from various national and foreign media.

33. The special commission was taken to a special room named the War Room of the Military Zone, where they were shown maps of the military operations carried out by the Guatemalan Army in the Chimaltenango area, which described in great detail the location of the incident. Next, the special commission asked for the record of military operations, a true log book in which all military operations conducted by that unit are entered day by day. The reports are typewritten in six copies distributed on a strictly secret basis to the senior officers of the Guatemalan Army responsible for fighting subversion, and the garrison keeps only one copy.

34. All officers who had taken part in the El Aguacate incident were present, including Lieutenants Freddie Antonio de la Cruz, Juan Domingo Vivar Cajtic and Second Lieutenant Manuel Adolfo Molina Gutierrez. The officers explained the tactical procedures followed by rescue patrols. The Commission was also shown highly classified (secret) documents containing the directives and orders from the Army High Command to all personnel with respect to operating procedures, including the particular mention that their primary mission is to protect the civilian population, that reprisals against civilians are forbidden, and that no military action is to jeopardize the safety of the inhabitants. It was also mentioned that the documents shown to the special commission at that time would be made available as well to the OAS Inter-American Commission on Human Rights, with such limitations and reservations as might be dictated to preserve the security of operations and individuals.

35. At the request of the members of the Commission, the officers indicated on what days operations had taken place, and their type, and on what days there had been no operations whatever. The daily record was very detailed and showed, in addition, the casualties suffered by the Guatemalan Army or those established or estimated to have been suffered by the guerrillas. It described each military operation, the instructions given to the patrols, the manner in which they had been carried out, the type of military equipment taken along, the munition that was used, the unforeseen events that took place and, if anyone had been wounded, a description of the wounds and the measures taken on behalf of the wounded soldier, all of this with a description of the coordinates of each location.

36. With regard to air support from military helicopters, furthermore, it was pointed out that a detailed control was kept of their operations, including the following aspects: flight plan prior to takeoff, number of flight hours logged by each helicopter every time it leaves its base, whether or not the flight plan specified by the pilot of the aircraft prior to departure has been followed, an estimate of the fuel used, a report of any mechanical breakdowns of the machine, a report of breakdowns or damage attributable to clashes (perforations, total or partial destruction of parts of the aircraft, etc.).

37. The documents kept in Military Headquarters 302 at Chimaltenango were reviewed directly by the members of the special commission, who were allowed to read all pages or portions requested. While the special commission was examining these records, the officers pointed out that although the documents could be reviewed by the Commission, for reasons of national security and in view of the combat situation, they could not be photocopied or removed from the War Room, access to which, as noted before, is strictly restricted.

38. In the record of operations carried out in November 25 was the report from the two local men who had acted as Army guides that Carlos Humberto Guerra Callejas had been abducted on November 22 and that 21 persons who had gone out to search for him in the mountain had been taken prisoner. There was also a record of the military rescue patrols dispatched on that same day, guided by the brothers Callejas Tobar.

39. Each of the statements made by the army about the clashes and the conduct of the search for, and attempted rescue of, the murdered peasants was described in the above-mentioned log book, which also indicated the wounds suffered by the officers who had taken part in the rescue mission. There was

mention as well of the shelling requested by the army and carried out by the Guatemalan Air Force against the mountainsides where the guerrillas were thought to be hiding.

40. The officers then showed the members of the special commission some documents bearing the same date that had also been filed away with these records, proving the preexistence of the records made available to the Commission and the fact that it was not prefabricated evidence. The Commission was also given copies of the maps, diagrams and summary charts containing a detailed explanation of the whole sequence of events, as investigated and established up to that date.

41. To gauge the present situation in the hamlet of El Aguacate and talk with the villagers who still live there, a visit was made in a four-wheel-drive vehicle to the village at the foot of the mountain, where it was observed that most dwellings had been abandoned, the families having gone to a new housing development named "El Eden." There were, however, several persons engaged in farming.

42. The hamlet of El Aguacate lies in a ravine parallel to a small river named Rio de la Virgen and a local road that accommodates only one vehicle at a time.

43. When villagers who were busy with their labors were asked whether the inhabitants of El Aguacate were forbidden to return to their houses and land, they answered no. They said that many worked in El Aguacate by day and slept in San Andres Itzapa, where the government had given them some houses, while others had leased out their lands or were having them worked by other people.

44. They were also asked why they had to take the cattle to graze far from the village, to which they replied that they did so because the land was narrow and was fully used for crops, and if the animals were allowed to roam about the town they would eat everything that had been sown, for which reason the Callejas took their cows to a neighboring mountain area known as Astillero de San Isidro [San Isidro Shipyard], explaining that the name of the place had nothing to do with shipbuilding but only with the splintering of the lumber that was cut down there in order to make the firewood that all dwellers of El Aguacate and neighboring areas used for cooking their food and protecting themselves from the cold.

45. The special commission made two visits to inspect the area of the crime. The first of these was designed to observe, evaluate and assess, to see whether the place offered any clues, hazards, and to get a first-hand idea of the area. This was done on January 25, 1990, by the IACHR Senior Specialist responsible for Guatemalan affairs, who had arrived a week earlier. The second trip was undertaken by the whole special commission group on the 31st of that same month.

46. One of the first findings was that since November 28, 1988, the day the Court Secretary had been there and the bodies had been removed from the mountain, no other visit had been paid to the scene of the events and no court official or any of the nongovernmental human rights agencies that have filed complaints had inspected the place until January 25, 1990, the date of the visit by the IACHR attorney. By sheer coincidence, on the same day the IACHR attorney finished his inspection the place was visited by a group from the Office of the Ombudsman for Human Rights, headed by Luis Fernando Hurtado Prem, Assistant Ombudsman, whom the Ombudsman for Human Rights had sent there to look at the place for the first time.

47. The first trip by the special commission was made aboard a Bell 412 helicopter of the Guatemalan Air Force that took off from Military Zone 302 at Chimaltenango and headed for the area of the incident, flying over San Andres Itzapa, the hamlet of El Aguacate, Cerro de Las Minas, Tuluche, the El Soco Mountain, Quebrada de la Virgen, and landing at the heliport where the 22 bodies had been removed on November 28. Here, with a security patrol and in the presence of the officers who had taken part in that operation, the Commission made its way to the grave where the body of Carlos Humberto

Guerra Callejas and his three dogs had been found, and thence to a campground, described as a subversive camp, where Second Lieutenant Manuel Augusto Molina Gutierrez had been wounded in the armed clash of November 25, 1988. The Commission then went on to the site of the four graves for the 22 bodies. The surrounding area was inspected, and hats and clothing belonging to the victims were still to be found. All the clothing that was found was stuck to the ground, because of the long time it had lain outdoors. The trip then continued to the heliport, along the route followed to bring out the bodies. Finally, a helicopter was radioed for, and the Commission flew back to Military Zone 302, where it landed at about 1:00 p.m.

48. The area of mountainous jungle inspected is situated on one of the chains of the Andes which, in Guatemala, is known as the Sierra Madre. Its deep gorges, mountains and small valleys make access to the area very difficult. The altitude of the mountains here is about 2,800 meters above sea-level and the narrow and craggy paths leading into the area obviously lend themselves to ambushes. It is an area of dazzling beauty, but usually at noon, a strong wind rises and the whole area is enveloped in a dense fog that makes it almost impossible to see.

49. On January 31, in a similar but unarmed helicopter, the members of the Commission took off from the same Military Base 302 in Chimaltenango and overflew to and fro the routes likely to have been followed by Carlos Humberto Guerra Callejas on the day of his abduction, by the various subsequent search parties organized by the villagers of El Aguacate, and by the military search and rescue patrols. Next, on instructions from the members of the Commission, colored flares were fired on land in order to pinpoint as nearly as possible the area where the pickup truck of the Evangelical Minister had been parked, at which point the helicopter let down to allow the members to look at the place and take photographs. Travel was then resumed along the path followed by the peasants who went in to negotiate the ransoming of Carlos Humberto Guerra Callejas. This was verified from the air using the same system of colored flares, and the helicopter flew to the site where the group of peasant negotiators was probably seized and abducted.

50. After flying over the area in various directions for some minutes, occasionally returning to the same places in order to let the members of the Commission reconcile what they were observing from the helicopter with the charts and air maps being looked at on board, the helicopter pilot was told to try to approach the heliport rigged by the army especially for the purpose of bringing out the bodies of the peasants.

51. Because the mountains are very steep, the helicopter's approach is neither easy nor safe, particularly if a strong wind is blowing, because the aircraft must fly into a canyon flanked by mountains and approach the side of one mountain, the Montaca del Sojo, where in an area some 3 x 4 square meters, felled tree trunks have been placed horizontally, without fastening or securing them in any way to the surface of the small area of the heliport. Due to the incline, moreover, when the helicopter approaches the heliport, the propellers of the aircraft come dangerously close to the branches of trees. Furthermore, as the helicopter nears the heliport, that is to say, the rectangle formed by the tree trunks, one must leap from the air to the ground from a height of some two meters, because the helicopter cannot land on the heliport, which would cave in from the weight. Accordingly, with the helicopter flying stationary in the air, the Members of the Commission jumped to the ground, whereupon they were told to run with their heads down to avoid being hit by the propellers and seek shelter in the mountain from the risk of presenting a target to any snipers posted in the surrounding mountains.

52. Once on the mountain, the special commission had a steep climb of about 100 meters to the summit, and after traversing in every direction the area known as Filyn de las Minas, Filyn del Sojo, and many other places to which the inhabitants give different names, it reached the place where the peasants were supposed to have been stopped and seized, which place had already been observed and pinpointed

from the air. The route followed thereafter was that which the 21 peasants as a group were said to have been taken on, through a matted forest and paths that climb and dip over the thick woods, to where they were murdered and perhaps tortured first, by their captors.

53. After that, the special commission asked to be taken to where the armed clashes took place between the army and the guerrillas during the operation mounted to find and try to rescue the peasants alive.

54. Then the special commission went to the area of the graves, where the murdered peasants had been half-buried, and inspected them one by one, taking photographs of every detail. It was deduced at that time that the graves had not been dug especially to bury the bodies of the peasants, but were trenches carefully dug long before, presumably by the guerrillas operating in that area.

55. Before leaving Guatemala, the special commission also met with the lawyers and representatives of the Government, so as to give them an opportunity to present their arguments and testimony, just as the nongovernmental human rights organizations had done. At this meeting, the special commission received more detailed information, including some of the charts and maps already furnished to it, this time presented in a folder labeled Official Report by the Government of Guatemala on the Massacre of Peasants from the village of El Aguacate. Attached to the report was a section with photographs of the operation to rescue the bodies, the building of the heliport to bring out the bodies, and some pictures of the burial.

56. Before leaving Guatemala, the special commission held a private interview with the President of the Republic, accompanied by the Minister of Foreign Affairs, Ariel Rivera Irias. The Commission explained to him in detail how it had carried out its work and described certain points it considered important.

57. It was during this visit to President Cerezo in the Presidential Palace that the special commission met General Manuel Antonio Callejas, Chief of the National Defense General Staff, who had just retired from his post.

58. It was then, moreover, that it learned of his close family tie with the victims of El Aguacate. General Callejas, dressed in civilian clothes, confined himself to greeting the members of the Commission and reiterating in his own name, that of his family and of the Guatemalan Army, the desire that everything possible should be done to clear up the matter.

59. At this final interview the special commission voiced no opinion whatever about the results of its investigation, but did acknowledge its finding that the internal legal remedies had indeed been functioning albeit with shortcomings, and consequently were not exhausted. To the Chief of State it recommended that the judiciary should be provided with a copy of the "Special Report" prepared especially by the Government of Guatemala for the members of the OAS special commission to clear up the events at El Aguacate, as well as with the same facilities extended to the IACHR to inspect the scene of the events. At that time, the special commission disclosed that its members had formed an opinion about the manner in which the events had taken place, and this view would be conveyed through a special report to the full Commission at its 77th session.

60. Following the special commission's on site visit to Guatemala for the purpose of investigating this case, the Commission held several hearings on the matter with the full participation of the legal representatives of the petitioners as well as diplomatic representatives of the Government.

#### COMPARISON BETWEEN THE REPORT FROM THE COMPLAINANTS AND THE FINDINGS OF THE COMMISSION

61. After studying the depositions in the judicial case file with the help of the eyewitnesses and protagonists of the events, the Commission has established the following chronology of events for the week of the tragedy, from Tuesday the 22 to Tuesday the 29 of November, 1988:

Tuesday 22:

5 a.m. Military Commissioner Carlos Humberto Guerra Callejas left his house with his three dogs to look for two missing animals. The day passes and he does not return.

3 p.m. His family, worried because he suffered from epileptic seizures, organizes a search party to look for him. The search group returns to the village at nightfall without having found Carlos Humberto Guerra Callejas.

Wednesday 23:

6 a.m. With the help of 26 persons divided into five groups, the family resumes the search in places where he is thought likely to be found. One group goes to the "Filyn La Chichicastada or Barranca Obscura," and finds footprints; another group made up of Oscar Orlando Callejas Tobar and Luis Arnaldo Callejas Tobar goes to the "El Chirral" ravine, where it comes across Encarnacion Guerra and Manuel Nieves Coyan, who had gone out earlier, had found the cows in the "El Chirral" field and were bringing them back to the village. There they see the footprints of Carlos Humberto Guerra Callejas and follow them to a place known as "El Caballo Blanco" [The White Horse] and "La Pazona," where they observe that the prints are joined by other prints from smooth shoes, which leads them to reason that he was stopped there by unknown persons. Another group made up of Fernando Callejas, Ernesto Tajtaj, and Ramiro Callejas Figueroa reaches a place known as "La Tepescuintlera" where it joins up with another group, and the comment is made that footprints had been seen. They divide into two other groups and continue the search, agreeing to meet at the "Filyn del Chiquero." By the time they reach "La Pazona" the group composed of Oscar Orlando Callejas Tobar, Fernando Callejas, Ernesto Tajtaj, and Ramiro Callejas find again the footprints of the missing men, which lead up to the place known as "El Chichicastero de la Barranca Oscura," where they meet the other search groups, making a total of nearly 20 persons. Here they discuss the strangeness of the situation and the advisability of notifying the army if the family members decide to do so.

The villagers break up into two groups, the smaller going to El Aguacate and the other continuing the search. Oscar Orlando Callejas and Ernesto Tajtaj Callejas go to San Andres Itzapa looking for Francisco Callejas Guerra, brother of the missing man. When asked, he tells them that no word should be given as yet to the army, because there might be a shootout and his brother would die. They agree to continue the search the next day, and if there were no positive results, to notify the army.

Thursday 24:

5 a.m. The search is resumed by three groups made up of about ten persons each, which follow different routes and agree to meet at the place known as "El Filyn," which means the summit. The first two groups arrive at that place saying they have found nothing. When the group composed of Cristobal Chuy and Romualdo Callejas arrives, these report having seen men dressed in grey overalls and carrying shotguns, whom they believe to be holding the missing person. They have also seen a man wearing a cap.

Given this situation, they decide to send Mr. Rosalio Callejas Guerra to speak with the Evangelical Minister Antonio Olivares Bances and ask him, as a spiritual and religious leader, to come and mediate and secure from the "armed men" the release of the kidnapped Military Commissioner.

On reaching the place, the Evangelical Minister leaves his pick-up truck, asks for volunteers to go with him and climbs to the place known as "El Soco," heading for the place where Romualdo Callejas had reported seeing the "armed men."

10 a.m. While this is happening on the mountain, Baldomero Callejas Tobar, Oscar Orlando Callejas Tobar, and Waldemar Figueroa accompany Augusto Guerra Ugarte, son of the missing man, to report the disappearance of his father to the National Police at Chimaltenango.

12 n. After reporting the matter, the four of them board a bus to the village of "El Sitan" and walk from there to "El Soco." When they reach the area bearing that name, they find the pick-up truck of the Evangelical Minister and, next to it, Arnoldo Guerra Hurtarte, Roberto Guerra Hurtarte, Esteban Salvajan Gomez (also known as Esteban Arenales Gomez), Francisco Javier Guerra Lypez, Hilario Callejas, and Francisco Tajtaj Coyan, who tell them very excitedly that the Evangelical Minister has gone to the "Filyn del Chiquero," has been taken prisoner along with 19 villagers by "armed men" and that the only ones who managed to escape were Francisco Tajtaj Coyan, Esteban Salvajan/Arenales Gomez, and Francisco Hilario Salazar Callejas.

On hearing this, Oscar Orlando Guerra Callejas and Baldomero Guerra Callejas, who had just reported the matter to the police, decides to wait no longer and immediately go to report the events to, and ask for help from, the Military Zone 302 at Chimaltenango, leaving behind, where the minister had left his pick-up truck, Esteban Salvajan/Arenales Gomez, Arnoldo Guerra Hurtarte, Roberto Guerra Hurtarte, Francisco Javier Callejas Lopez, Hilario Callejas, Francisco Tajtaj Coyan, Jorge Augusto Guerra Hurtarte, and Waldemar Figueroa, who dare not move from that place lest their 20 relatives should return. However, fearing that the "armed men" might come out to seize them as well, they get on the pick-up truck and head for Chimaltenango, but they meet with an accident by the five kilometer marker on the highway and subsequently have to be carried to the emergency room at the National Hospital in that town.

4:30 p.m. When they arrive at the Military Base, Oscar Orlando, and Baldomero Callejas Tobar, after reporting the matter and asking for help, agree to serve as guides for the military search party.

6 p.m. The military rescue groups set out from two different points, each guided by one of the Callejas Tobar brothers.

9 p.m. The army troops and the guides come to where the minister had left the vehicle but it is not there. Owing to darkness and fearing that they would be unable to distinguish between victims and kidnappers in the event of an armed clash, they decide to sleep on the mountain and begin the search and rescue operation very early the next morning.

Friday 25:

At dawn, the troops split up, one group guided by Baldomero Callejas Tobar penetrating from the south, through the place known as "La Quebrada de los Cedros," and the other, guided by Oscar Orlando Callejas Tobar going in from the north, along the route known as "La Mosichellada" or "El Rancho Viejo."

On reaching the place named "El Cabo Verde" at about 9:30 a.m., the group that went in from the north has to repel an armed attack from a guerrilla group. At noon, near the "Plan de Canaque," a soldier from the northern patrol finds dug-up earth, and by digging, they find one of the dogs of the missing Carlos Humberto Guerra Callejas and, under that, his own body with another dead dog under his neck and still another at his feet. The patrol immediately radioes the finding of the first body to Military Zone 302. While they prepare to transport the body, at about 1:30 pm there is another armed clash in which Second Lieutenant Manuel Adolfo Molina is wounded and the soldier Cesar Augusto Sum Bac receives a slight injury as well. This is reported to Military Base 302 by radio, asking for a helicopter to evacuate the wounded officer and the dead body. During the combat, Oscar Orlando, and Baldomero Callejas Tobar hear the guerrillas curse the soldiers.

On their way to the upper reaches of the "Cerro Las Minas" the military patrol discovers a campground they describe as subversive, where they find the machetes taken from the persons kidnapped, as well as food remains. When they reach the area known as "La Pinada del Pozo del Zope" they improvise a heliport from which, about 4:30 p.m., the wounded man and the body of Guerra Callejas are evacuated. The military patrol then continues the search. That night they sleep near the place called "La Manzanera."

Saturday 26:

5 a.m. The northern patrol is again attacked by a group of guerrillas and while they are pursuing the subversives an armed clash takes place by the village of "Tuluque" at 9 am.

5 p.m. The southern patrol, which was combing the Canaque mountain, find in the neighborhood of "El

Chiquero" four graves containing the decomposed bodies of the villagers from El Aguacate. This they radio to the Military Zone 302 and receive orders to touch nothing and build a heliport as nearby as possible, in order that court officials might be taken there to inspect the bodies.

Sunday 27:

The building of a heliport begins at dawn, and when a helicopter arrives to supply the patrol with materials it is attacked from the surrounding mountains with machine gun fire, which prompts a request for air support to silence the source of the attacks.

2 p.m. Court officials, local authorities and the press arrive by helicopter to witness the exhuming of the bodies. Owing to the late hour and poor weather conditions, the bodies cannot be evacuated that day.

Monday 28:

8 a.m. The bodies are transported, and at the request of family members and for reasons of security, they are taken to Military Zone 302 at Chimaltenango, where at 9:00 a.m. the Justice of the Peace, Luis Alfred Dardon de La Riva, and the Forensic Physician Emilio Mendizabal conduct the medical- forensic procedures and identify all the bodies except one with the help of family members. This done, the judge orders the bodies coffined and taken for the wake to the municipality of San Andres Itzapa, the procession setting out at 5:00 pm.

Tuesday 29:

9 a.m. The funeral procession leaves for the General Cemetery of the Municipality.

62. In reviewing the allegations set out in the complaint from the complainants, the special commission notes that the mountain area in which the events took place had indeed been a combat zone and that, according to the local people, it still was, but that the village of El Aguacate had not been and was not now an area of combat, which may explain why it did not even have a Civil Defense Patrol. The villagers had refused to form a Civil Defense Patrol authority; most of the inhabitants sympathized with the army, and many of them served as "Military Commissioners."

63. As to the presence of armed men dressed in green uniforms and black berets mentioned in item (b), this fact too has been confirmed, but according to most testimonies heard and those included in the court case file, these armed men did not belong to the army but to the guerrillas.

64. Regarding (c), where it is stated that the soldiers discovered the bodies less than six hours after beginning the search, this is also true in part, but the search that had begun the day before and was resumed at dawn on the 25th, discovered only one body, that of Carlos Humberto Guerra Callejas, not those of the remaining victims, which turned up a day later. The presence of the brothers Oscar Orlando and Waldemar Callejas Tobar as guides of the group searching for their own relatives, rules out a fraud by the army in that search, and underscores that there was a search and there was a find, that there were clashes, that the clashes were provoked by unknown men, according to the witnesses-guides, and that the army defended itself and then went after the attackers, to no avail.

65. Regarding allegations of torture, it is not possible to state with certainty whether the victims were tortured.

Some witnesses to the exhumation testified that the bodies showed signs of torture, burn marks, swollen genitalia, and the like. However, according to the coroner, these signs could have resulted from the state of decomposition of the bodies. Statements that the victims' tongues had been cut or eyes gauged were denied by the coroner. It is curious that both civilians witnesses (excluding the coroner) in this case and initial Government documents claim that the victims had been tortured. During the on-site visit, however, Government and military spokesmen contended that the victims had not been tortured in a systematic

fashion although they may well have been roughed up prior to their murder.

66. On this same point, the rest of the description is accurate; the victims had been strangled and most had their hands tied and wore no shoes. It should be noted that the victims who had been Army collaborators had been stripped of their clothes and buried naked.

67. As for item (e) concerning the dispatching of aircraft in support of the operation to rescue the bodies, this is also true, as is the fact that the guerrillas did fire on the helicopters, which is established by several witnesses and testimonies. What the special commission did establish as untrue is that the firing against the mountains surrounding the heliport was directed at an area populated by civilians, which in fact does not exist. Nobody lives in the surrounding mountains. There is nothing there but impenetrable jungle.

68. As for item (f) according to which there are versions attributed to relatives that the victims were seized by the army, taken alive from the mountain to the military base, then tortured and murdered at the base and subsequently transported back to the mountain and buried, the following comment is in order:

69. The murder of the peasants who had gone into the mountain must have been carried out on the mountain itself, because:

I. It would have been virtually impossible, if the army had kidnapped the peasants in order to murder them, to remove them from the mountain overland without arousing the curiosity of relatives who were anxiously watching every detail of events in the area. Bringing out 22 tied-up persons on foot, which is the only way to leave the area, inasmuch as it cannot be done even by riding an animal, would not have passed unnoticed.

II. This transfer, moreover, would have required a substantial and properly armed military force, to prevent any escape, and any route followed in order to come out of the mountain and reach a place from which to board trucks or heavy vehicles would have been likewise observed by the local people who work everywhere in the neighborhood of the Sierra Madre. It would have been similarly almost impossible to bring them out in trucks from an area near the mountain, because all access roads are torn up as a result of the destruction sowed in that area by the last earthquake and it is only with great difficulty that they can be used by small cars or pick-up trucks equipped with four-wheel drive.

III. After ruling out as virtually impossible the transfer of the 21 peasants by land, consideration was given to the idea, eventually discarded, that they might have been transported alive by helicopter to base 302, killed there and then returned to be half-buried where they were found. This was also held to be impossible, since it would have required several helicopters and numerous round trips. This is because each helicopter, owing to the altitude and operating difficulties of the area, cannot carry more than five or six persons besides the pilot and co-pilot.

IV. This view was corroborated by the fact that the graves where the victims were buried had not been dug recently but are foxholes carefully dug, presumably by the guerrillas, to surprise and destroy the military patrols that come looking for them. A thorough examination of the graves, climbed into by the members of the delegation in order to inspect them more closely, showed that the walls were smooth and perfectly vertical.

V. Having discarded the possibility that they might have been taken overland or flown to Chimaltenango to be murdered at the garrison and then returned to the mountain area --by whatever method of transportation, there would necessarily have been a very obvious activity that could not have passed unnoticed by the people in the area and would have been reported in the complaints, yet not a

single one speaks of or mentions any such massive movement on land or in the air--, the special commission concluded, in principle, that the murder of the peasants had taken place in the mountain and not in the garrison, and that consequently, all versions according to which the peasants had been killed at Base 302 in Chimaltenango were incorrect.

70. The versions under items (g), (h), (i) and (j) of the complaint that support the theory of the killings taking place at the garrison, were explained to the widows who were asked if they were true, and they denied them. It should be noted also that the widows were questioned and interviewed by the special commission in private.

71. As to item (k) concerning the presence of army jeeps and soldiers in the area, this is perfectly possible in light of the rescue operation mounted on those days by the army to rescue the peasants alive and to protect their families. The witness Waldemar Figueroa confirms this in one of his statements, when he says he was leaning against an army jeep and could hear how the army rescue teams, guided by Callejas, communicated on the radio with the Chimaltenango base and reported their efforts to free the villagers, their clashes with the guerrillas, etc., all of which could be heard over the radio terminal installed in the jeep next to the witness.

72. In summary, the special commission's examination of witnesses and visit to the scenes described above, clearly contradict many of the assertions, allegations, and conclusions contained in the complaint.

73. Another conclusion reached during the course of the investigation was that it would have been absurd for the army to murder the peasants and then, while helping the relatives find and rescue them, fire against its own men engaged in the rescue operation, even wounding some of the officers and non-commissioned officers who had taken part in the rescue. For this, accordingly, an opposing and different force had to be responsible.

74. Another conclusion that emerges from the examination of the site and the testimony of eyewitnesses is that the peasants abducted while trying to locate and rescue Carlos Humberto Guerra Callejas were murdered by their captors when these were encircled and cornered by the army that was coming to the rescue. Had they spared the lives of these victims, any of them could have easily identified who had taken them prisoner and had probably abducted and murdered Carlos Humberto Guerra Callejas earlier on.

Furthermore, herding or leading through the mountain the 21 peasants, who were probably gagged and had their hands tied, was an extremely difficult task, for in order to walk and make any headway in that jungle, even when following a path, it is necessary to have one's hands completely free to hold onto tree branches. This, as previously noted, because of the steep inclines to be ascended and descended.

75. It appears that the peasants must have been tied up from the time they were seized and that it was probably certain that they were being looked for by the army, for in the face of the abduction of 21 men, which accounted for more than half the village, it was evident that the families had no other choice but to report the matter to the army, which they had previously refrained from doing so as not to pressure the captors into murdering Carlos Humberto Guerra Callejas. Which leads to another conclusion: the fact that the Callejas family did not report the matter to the army explains their certainty from the outset that responsibility for the abduction of Carlos Humberto Guerra Callejas lay not with the army but with the guerrillas. This was confirmed by the family and witnesses, who in the end, after becoming more familiar with the special commission, ceased to use the euphemism "armed men" and began to blame the guerrillas directly.

76. This point is further corroborated by the negotiation procedure adopted by the relatives and villagers of El Aguacate to secure the freedom of Carlos Humberto Guerra Callejas, namely, to collect

money in order to pay for a ransom. If the people had suspected the army of being responsible for the kidnapping, they obviously would have gone to the garrison and not to the mountain to negotiate his release. They surely would have chosen the way that was easiest and closest at hand, namely, to go to the garrison, and not the one that was most difficult and dangerous, that is to say, to negotiate with a presumed military patrol which, having carried out the abduction, would have had to share out the amount of the ransom among all officers and soldiers, with no guarantees that they might not be later reported by the Callejas, various of whom were Military Commissioners and had army friends and relatives.

77. Nor can a very important and little-mentioned fact, which the special commission came to know only because of its visit, be overlooked: General Manuel Antonio Callejas, Chief of the National Defense General Staff, during the El Aguacate massacre in November 1988 and until January 10, 1990, was a member of the Callejas family and a native of that area. This explains a number of things and highlights certain aspects that were left out of consideration. Among these, that any military patrol that had arrested Military Commissioner Carlos Humberto Guerra Callejas and later all the Callejas and other relatives of these that were coming to their rescue (many of whom are also Military Commissioners), would not have dared to take any action against them without consulting the Chimaltenango base by radio, and that in the face of steps taken by the remainder of the family, in other words, by those who had not been seized and were taking steps to have their relatives released, full and immediate support would have been forthcoming, instead of the killing of the peasants. In addition, if Carlos Humberto Guerra Callejas had been taken by the army it would not have been necessary to negotiate even with the Colonel of the military base in the little town of Chimaltenango, since a single intervention from General Callejas, Chief of the National Defense General Staff, would have been more than sufficient and decisive.

78. It cannot be ignored, furthermore, that to murder a family member, and worse, nearly the whole family of General Callejas was too serious a matter to be decided by a military patrol in that area, for there is no doubt that disobeying an order or committing murder in connection with extortion or some other criminal purpose would have brought on the most severe disciplinary punishment against the members of any military patrol acting in such a manner against the villagers.

79. The family tie of the Callejas to the Chief of the National Defense General Staff and their close relationship with the army serve, conceivably, to explain why El Aguacate never had any civilian self-defense patrols, and points as well to the existence of one more possible motive on the part of the guerrillas.

80. It has been established that the family of Carlos Humberto Guerra Callejas, beginning with the latter himself, not only collaborated with the army but were Military Commissioners for the village of El Aguacate, where, in the absence of a civilian self-defense patrol, Carlos Humberto Guerra Callejas, his brothers and other members of the family had for years been the eyes and ears of the army as well as the embodiment of military force in the village. The guerrilla has murdered many Military Commissioners because it regards them as dangerous enemies and combat targets. This circumstance should be kept in mind.

81. The bulk of the Guatemalan guerrilla is made up of native Indians, and between the Indians and the "ladinos" (mestizos) there has been a traditional antagonism that, according to some, still endures and has in fact led to many instances of confrontation and the shedding of blood.

82. In the village of El Aguacate the population was made up almost entirely of ladinos, in contrast to the surrounding and neighboring areas as well as the capital of the Chimaltenango Department, where the population is overwhelmingly Indian. In other words, in this case the peasants were the ladinos and the urban population, the people living in the towns, are Indians. Accordingly, as mentioned to the special commission, because most guerrillas come from the neighboring urban areas, a natural hostility against

the ladinos of this small village cannot be ruled out.

83. Another circumstance that may explain the murder of Carlos Humberto Guerra Callejas and the Callejas family, according to neighbors in the area, is that the Callejas, because of their connections with the army and the local authorities, were a relatively wealthy, influential and privileged family in El Aguacate, which served to place them in the position of bosses, landlords and a privileged caste.

84. Cause and effect. Before these events, the army and the guerrilla, each on its own, had a direct relationship with the victims on account of the following circumstances:

a. Both the army and the guerrilla carried out military operations within the area where the peasants went to look for Carlos Humberto Guerra Callejas. The cause-effect relationship between the agent and the victim, however, points first to the guerrillas, in light of the first communique from the Cerigua News Agency, No. 83/11/88 dated November 28, 1988, in which they take responsibility for inflicting 25 casualties on the army in two continuous ambushes carried out in the mid-western area.

b. The description of the clash, the date given, the description of the area and of the number of dead and wounded, accurately confirmed the position, the hour and the number of casualties, a fact that points directly to the guerrilla as the perpetrators and to the peasants and the army personnel engaged in the search and rescue mission, as the possible victims referred to in the report.

c. The military report released by the guerrillas is consistent with the secret military report drawn up by the Guatemalan Army, which the IACHR special commission was able to review. This enabled the members of the Commission to establish that the army had no combat personnel in that area on the day the 24 peasants were abducted, namely Thursday the 24th, but played a role in trying to help and rescue the peasants abducted by the presumed guerrillas after 6 p.m. on Thursday, November 24, and in the course of the 25, 26, 27, and 28. Whereas the statements from the army are corroborated by its report, the opposite is true of those of the guerrillas, whose allegations are gainsaid by a prefabricated document that points to it as the perpetrator.

85. The opportunity. In line with the above-cited documents and the testimony of the brothers Callejas Tobar, the opportunity factor would exclude the army because during the day of the events, it had no opportunity to act against the villagers of El Aguacate but only for them. On the other hand, the guerrillas did have the opportunity, as indicated by the communique from CERIGUA, the accounts of eyewitnesses and the guides who vouch for the clashes.

86. Another piece of circumstantial evidence against the subversives who presumably murdered the peasants, according to several witnesses, was the fact that a well-known cleric such as Minister Olivares, who lived in Chimaltenango, instead of appealing to the member of the Callejas family who happened to be the Chief of the National Defense General Staff or to the head of the Military Base in Zone 302, over whom he might have been expected to wield greater psychological and moral influence and who was furthermore close by and able to communicate by radio with the abductors --if these were military personnel--, instead made the long trip from his home to where the Guerra Callejas were being held and went into the area saying to those who were with him that "with the help of God he would go in but those who had the courage to come along should come in with him and those who didn't should stay, because those poor souls ..."

#### CONSIDERATIONS SURROUNDING THE ON-SITE INVESTIGATION

87. Because more than a year had passed since the tragedy, the special commission entertained few hopes of uncovering the truth. It was also aware of its own limitations as to the time allotted to investigate and try to discover what other commissions that had visited Guatemala were unable to find: Evidence. The Commission took it for granted that most evidence had been erased or had vanished from the site,

that witnesses and relatives, so long besieged by the press and the curious, would no longer wish to cooperate, that the memory of those who had key knowledge of the matter had by now faded, etc.

88. When it later discovered in the course of the visit that in fact nothing had been moved, that no one had visited the place before the arrival of the special commission, that clothing and other personal belongings of the victims, including underwear, were still to be found at the site, that apparently nothing had been touched, that no further personal inspection of the site had been made by the courts, and that the judges had not received all of the documentary evidence made available to the special commission, all of this did indeed open new and unexpected prospects, and in line with the principle that evidence may be produced at any time before the end of legal proceedings, the Commission heard, reviewed and processed all the evidence of which it had no prior knowledge and looked deeper and deeper into the tangled web of events, in an effort to establish the truth.

89. Another problem kept in mind by the Commission was fear. To protect themselves, the witnesses, and relatives of the victims, besieged on every side, had learned that by resorting to euphemisms they could avoid lying or committing themselves. Thus, every time the press asked them who had killed their relatives, they would invariably reply, as noted by the special commission even before its visit, that it had been "armed men," a term that the Commission was also later able to look into and clarify in the course of the visit.

90. The Commission notes that although this was a case of "reciprocal incrimination," it could not open an investigation in which the Government of Guatemala was the complainant, because the Commission does not process cases against groups alleged to be subversive but against "Contracting States." Nor could it process a case on a complaint from an entity such as the Guatemalan National Revolutionary Unit (URNG), because it cannot accept complaints from guerrilla organizations that "are not recognized under the law." Below is the text of Article 44 of the American Convention on Human Rights, which deals with jurisdiction:

#### Article 44

Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

91. The Commission believes that two further clarifications are in order: this case, N° 10.400, was not set in motion by a complaint either from the Government of Guatemala or from the complainant whose complaint was lodged when the case was already being processed. The Commission began processing this case, in view of the seriousness of the matter, *ex officio* under the powers granted to it by Article 26 (2) of its own Regulations, which provides:

2. The Commission may also, *motu proprio*, take into consideration any available information that it considers pertinent and which might include the necessary factors to begin processing a case which in its opinion fulfills the requirements for the purpose.

92. It should be noted that the complainant in this case requested that its identity be kept secret under the applicable legal provisions, but that for reasons beyond the control of the Commission, its identity became evident to the representatives of the Government of Guatemala in the course of the 76th session, when both parties participated in a debate on the El Aguacate case.

93. It is likewise important to note that the number of 22 dead in this case results from the following: besides Carlos Humberto Guerra Callejas (1), the 20 relatives and neighbors who went to the rescue also

died, which makes a total of 21 known dead. There is, however, an "unidentified" body that was found with the 20 villagers, which makes a total of 22 bodies. According to the Coroner this individual too had died from strangulation.

94. Concerning the unexplained presence of this body, the special commission has been able to establish nothing. Two versions have been put forward, one from the complainants, according to which the body is that of a soldier who had allegedly revealed that the villagers were in the garrison, and the other, also reported to the special commission, that the body belonged to a guerrilla who was acquainted with the Callejas family and refused to take part in their mass murder, whereupon he was himself murdered by the perpetrators of the massacre in order to prevent him from revealing what he knew.

95. As regards the complainants' explanation of the 22nd victim, the Commission was provided with a written statement to this effect by a witness who claimed to have heard the victim-soldier-guard state that indeed some or all of the Callejas were being held in the garrison. He also claims to have told this to Col. Quilo. Finally he claims to have recognized the 22nd victim's cadaver when it was returned from its mountain top grave to Zone 302.

96. It should be mentioned that this written declaration was received almost one year after special commission's visit to Guatemala. The complainants explained that he didn't come forward personally or earlier out of fear for himself and his loved ones.

97. Because the Commission has been unable to personally interview this witness, it is difficult to evaluate his statements. The Commission is doubtful that a common soldier, who allegedly is from Chimaltenango and thus presumably well known, could be killed by fellow soldiers and passed off as another victim of a guerrilla massacre. In sum, the Commission is not persuaded by this individual's written statement.

98. Rejection of the complainants' explanation does not mean acceptance by the Commission, however, of the other version. The truth is that the evidence on the identity of the 22nd victim is insufficient to permit a firm appreciation by the Commission.

99. With respect to the Guatemalan judiciary, it should be noted that in Guatemala no one can be tried "in absentia." To be convicted, even where there is circumstantial evidence or proof of culpability, a person has to appear before the court and have the opportunity to learn what he is being accused of, to deny it and to defend himself. Lacking physical presence he cannot be convicted. In this case, even though the alleged perpetrators of the massacre are named in the case file, there has been no court ruling on the charges against them because they have not appeared in court. This explains why, even though the proceedings have ended, the case against them is still open and they remain under investigation.

100. At the end of its investigation, which dealt only with case No. 10.400 concerning the massacre of the El Aguacate villagers and no other aspect of human rights in Guatemala, the IACHR special commission filed its report to the full Inter-American Commission on Human Rights at its 77th Session.

101. The Commission thereafter sent its draft report on this case to the Government of Guatemala and to the complainants requesting their respective observations.

102. At its 78th and 79th Periods of Sessions the Commission continued to study this case in light of the written observations of the parties and the oral submissions made by both sides at those meetings.

## FINDINGS

A. Procedural Aspects

103. With regard to the exhaustion of internal remedies, as a precondition for admissibility, as required under Article 46.1.a of the Convention, the Commission finds that there has been an unwarranted delay in rendering a final judgment by the competent authorities of Guatemala. Therefore, the Commission finds this case admissible.

B. Substantive Aspect

104. On the merits of the case, the Commission, having carefully examined the matter, pursuant to Article 48.1.b, determines that grounds for the petition do not exist, and accordingly, orders the record to be closed.

105. The Commission further orders the publication of this finding in its 1990-91 Annual Report.