

# **GUATEMALA**

## **In the Wake of the Pope's Visit: A Window of Opportunity to Abolish the Death Penalty?**

### **The Death Penalty in Guatemala: President Portillo responds to the Pope's plea**

The eyes of the world turned briefly to Guatemala in July 2002 when on the occasion of Pope John Paul II's third visit to the country, Guatemalan president Alfonso Portillo made some dramatic announcements regarding the death penalty. The President's statements came in answer to a message from the Pope sent prior to his visit, asking President Portillo to consider abolishing capital punishment in Guatemala. President Portillo responded by announcing his personal opposition to the death penalty, and stating that in homage to the Pope, he would try to ensure that no further death sentences were carried out during his term of office. He also promised to send legislation to Congress calling for the death penalty to be abolished.

President Portillo's actions elicited enthusiasm around the world from anti-death penalty activists. Death penalty opponents in Italy for example have developed the custom of lighting up the Coliseum to mark commuted death sentences around the world, and July saw it emblazoned to welcome President Portillo's promise of a moratorium in Guatemala.

The President's statements also provoked the first death penalty debate in Guatemala for several years. In the past, the issue has customarily surfaced around the time of scheduled executions, with a number of local non-governmental organizations, leaders at the state University of San Carlos, the Guatemalan church and a very few legislators calling for abolition, but the vast majority of the public, frightened by high crime rates, the kidnapping for ransom "industry" in the country, and the phenomenon of mob lynchings, and outraged by the nature of the crimes of which those sentenced to die had been convicted, remaining strongly in favour of capital punishment. The Pope's intervention put the debate on another, moral, level, and suggested that now might be a good time for anti-death penalty campaigning in the country, but capital punishment is still strongly supported: According to a recent survey carried out by the Guatemalan press, 73 % of the members of the public questioned were pro-death penalty, while the few lawyers willing to handle capital cases have frequently been publicly criticized and sometimes threatened because of their work.

#### **Any chance in Congress?**

President Portillo has now reportedly submitted the promised abolitionary legislation to Congress and it is now up to the Congress to consider it. Any hopes of seeing the legislation become law and the death penalty abolished in Guatemala will depend upon convincing the country's

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legislators and the Guatemalan public that the death penalty is not an appropriate nor effective response to the grave social problems the society faces, and that it is time to join the growing international trend towards abolition.

However, many legislators too, have strong pro-death penalty views, and the legislation will face a tough battle in Congress. Indeed, the current Congressional President, General Efraín Ríos Montt was the head of state who ordered six executions to go ahead on the eve of the Pope's first visit to the country in 1983 and in the face of pleas for clemency from both the Pope and the Inter-American Commission on Human Rights.

### **General Ríos Montt and the Special Military Tribunals**

The executions carried out during the government of General Ríos Montt had been ordered by special military tribunals, which he created by presidential decree, and empowered to pass the death penalty against those accused of "political and politically-related" offences, without the right to a defence nor any right of appeal.

Prior to the establishment of the special tribunals, the last known executions had occurred in 1975. Amongst those executed were two former National Police officers, accused of killing a member of a prominent Guatemalan family who was apparently shot in the course of an attack on an opposition figure. The opposition called for a stay of execution to investigate claims by one of the men that he had been involved in the arrest of several opposition figures, who "disappeared" after he turned them over to his superior officers, and were later found dead. However, he was executed before he could tell his story.

There were then no further executions until General Ríos Montt came to power in a coup in 1982, at a particularly brutal period in the long-term civil conflict in Guatemala. The conflict raged in the country at various degrees of intensity over a period of more than 30 years until formally ended by the 1996 Peace Accords. During that period, the army's brutal counter-insurgency campaign cost tens of thousands of Guatemalans' lives including entire indigenous villages, whose inhabitants were massacred in the countryside. Other victims were "disappeared" or extrajudicially executed after torture and their mutilated bodies left in the city streets or alongside the country's highways, leading General Ríos Montt to promise when he took office that Guatemalans would no longer find bodies by the sides of the roads, but that the judicial death penalty would instead be enforced against "subversives."

It was to accomplish this purpose that the special military tribunals were established, to try those accused of crimes ranging from kidnapping to subversive activities. There were reportedly inconsistencies in the evidence against those sentenced to die by the tribunals and strong indications that "confessions" had been obtained under torture. Most defendants had no access to defence counsel and an appeals mechanism was only instituted after widespread international protests following the first executions under the decree in 1982.

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International outrage at the tribunals may have contributed to their demise: the decree establishing them was rescinded when General Ríos Montt was in turn overthrown in August 1983.

After the special military tribunals were abolished in 1983, there were then no further death sentences carried out in Guatemala until 1996, when in the midst of renewed public fears at the high crime rate and heated debate about public security issues, two men, Pedro Castillo Mendoza and Roberto Girón, convicted of raping and killing a four-year-old girl in 1993 were executed by firing squad. Their executions were televised as they occurred, and the film clips shown over and over again on both Guatemalan and foreign television. Neither died after the initial volley of shots, and viewers saw as the coup de grace was then administered to both by the chief of the firing squad. Reportedly, the two had had no access to lawyers for the first three weeks of their detention, and were then defended by law students. Doubts were also cast on the validity of the evidence presented against them.

### **Lethal injection introduced in Guatemala**

Revulsion at repeated transmission of the macabre execution scenes led Guatemala to conclude that it needed a more “humane” and “modern,” manner of killing those sentenced to the death penalty. Congress quickly approved a measure providing for executions to be carried out by lethal injection, and a delegation was dispatched to the United States to see how lethal injection executions were carried out there. In due course, a “*módulo letal*” (lethal injection chamber) was constructed within the *Granja de Rehabilitación de Pavón* (Pavón Rehabilitation Prison) southeast of Guatemala City, and was formally opened by the then Deputy Prime Minister in July 1997.

The first execution by lethal injection, that of indigenous farmer Manuel Martínez Coronado, was eventually carried out in February 1998. He had been sentenced to die for the multiple homicide of seven members of a family to whom he was related and with whom he had been contesting a small plot of land, sufficient to maintain the livelihoods of only one of the families. An earlier execution date had been stayed to hear additional pleas from his lawyers.

Again, there had been concerns about the nature of the evidence used to convict Martínez and as regards the standard of legal representation he received. And again the execution was broadcast live in Guatemala. Martínez took some 18 minutes to die and his wife and children could be heard sobbing in the antechamber to the execution room. The Guatemalan Medical Association had refused to have its members participate in the killing, and the paramedics who carried it out were reportedly shaking so badly that they had difficulty finding the condemned man’s veins for the lethal injection. By the time they succeeded, Martínez’ arms were reported to have been bleeding heavily. Both the execution judge and the Human Rights Procurator who

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had been present during the execution publicly expressed their distress at seeing how much the condemned man suffered before his death.

In June 2000, there were two further lethal injection executions of two men found guilty in 1998 of the kidnapping and murder of a woman. Again, the men took longer to die than had been anticipated, as a power cut in the midst of the execution meant that the machine feeding the poison into their veins malfunctioned.

### **Executive clemency rescinded**

Also in 2000, Congress rescinded the law which had provided for executive clemency, even though this power exists in most of the countries which have the death penalty and is recognised and sanctioned under international law including the American Convention on Human Rights and the International Covenant on Civil and Political Rights. Both the American Convention and the ICCPR provide that amnesty, pardon or commutation may be granted in all cases carrying the death sentence. Such measures are also required by the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (UN Safeguards) adopted by the Economic and Social Council in 1984.

However, despite Congress' rescission of his powers of clemency, President Portillo nonetheless reviewed the clemency petitions that had been pending at the time he came to office, and extended clemency to an indigenous peasant farmer with mental problems who had nonetheless been judged fit for trial after psychological examinations carried out in Spanish, which he did not speak. The trial at which he was found guilty of the 1996 murder of his wife was also conducted in Spanish.

### **Constitutional Court ruling**

In another development that year, the Constitutional Court rescinded five death sentences on the grounds that under the Guatemalan Constitution, in human rights matters, international law is to prevail over national legislation. (Article 46: "Establishes the general principle that, in matters relating to human rights, the treaties and conventions ratified by Guatemala take precedence over domestic law".)

Since then, there have been no further executions, although some 37 people are currently known to be on death row and a massive escape in 2001 of 78 convicts, some of them under sentence of death, from a high security prison in Escuintla department further fuelled the public's fear of crime and their desire to see those convicted of serious offences executed rather than sentenced to long prison terms.

### **The death penalty in Guatemalan law**

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The Guatemalan penal code of 1973 (amended 1994) specifies that the death penalty shall be extraordinary and can only be imposed for those crimes expressly subject to capital punishment. These include aggravated homicide of the President (and for the Vice-President when serving as President) or a member of the culprit's immediate family; killing of a kidnap victim; and rape of a girl under 10. Under the 1985 Constitution, (amended in 1993), the death penalty cannot be imposed when a conviction has been based on circumstantial evidence, on women, people over 60, those guilty of political crimes or related common crimes, or people whose extradition has been conceded on the condition that they will not be subject to the death penalty. A sentence can be imposed only after all appeals are exhausted, though as noted above, the possibility of executive clemency no longer exists. The Constitution also gives the Guatemalan Congress the power to abolish the death penalty.

In practice, as can be seen from the survey of death sentences executed, given above, the death penalty has rarely been carried out in Guatemala. However, the widening of the range of crimes for which the death penalty is applicable in recent years has been of grave concern.

### **Extension of the death penalty in Guatemala**

In March 1995 the Guatemalan Congress approved Decree 14-95, extending the death penalty to cover anyone convicted of kidnapping, including accomplices and those attempting to conceal such crimes. Kidnapping is understood to be a criminal act of the deprivation of freedom, usually with the intent to make financial, or other, gain. Paradoxically, statistics produced by the national police show that the incidence of kidnapping rose significantly immediately after Congress approved the Decree.

In July 1995, Decree 48-95 was introduced, making extrajudicial executions by members of the security forces or members of "subversive and terrorists bands" punishable by the death penalty when the victim is under 12 years of age or more than 60 years old, among other reasons. Forced disappearance was also made punishable by the death penalty, when the victim, as a consequence of forced disappearance, suffers serious injury, permanent psychological trauma or death.

### **In violation of Guatemala's international obligations: The Inter-American system**

Both of these new pieces of legislation appear to violate Guatemala's obligations under the American Convention on Human Rights (1969). Guatemala ratified that Convention in 1978 but did so with a reservation as to Article 4.4 which states that "In no case shall capital punishment be inflicted for political offences or related common crimes." However, under Article 4.2, concerning which Guatemala expressed no such reservation, "In countries which have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such

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punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.”

In 1983 at the time that the special military tribunals were in operation, and political crimes and common crimes related to them were made punishable by the death penalty, the Inter-American Commission on Human Rights (IACHR) requested an advisory opinion from the Inter-American Court of Human Rights in relation to the extension of the death penalty by a State Party to the American Convention. The Court found that such an extension would violate the American Convention, and would therefore constitute a failure of the State Party to fulfil its obligations under it. The Court was unanimous in its decision that governments of States Parties to the American Convention could not extend the death penalty to crimes not already contemplated in domestic legislation at the time of ratification, even if a reservation had been made to article 4.4, as in the case of Guatemala.

Subsequently, in May 1986, Guatemala withdrew its reservation to article 4.4, thereby committing itself to be fully bound by the American Convention. In March of the same year, Guatemala had accepted the jurisdiction of the Inter-American Court and declared its recognition of the competence of the Court on all matters relating to the future application or interpretation of the American Convention.

The matter of compatibility of domestic legislation with the American Convention was also the subject of a later consultative opinion (OC-14/94) of the Inter-American Court. In December 1994, the Court unanimously decided that the issuing of a law contrary to the obligations of a State Party to the American Convention would constitute a violation of the Convention itself. In the case of such a law affecting the protected rights and freedoms of given individuals, the Court decided that the state would be held to be internationally responsible, as would agents involved in its implementation if it were determined that the violations constituted international crimes.

In the light of the consultative opinions of the Inter-American Court, there can be no doubt that the implementation of Decree 14-95 and Decree 48-95, which expand the number of crimes liable to the death penalty, clearly breach the American Convention. Amnesty International considers that in introducing and applying such legislation the Guatemalan Government is undermining the commitments to the protection and promotion of human rights it freely undertook on ratifying the American Convention. The Guatemalan Government reiterated and strengthened those commitments when it freely accepted the jurisdiction of the Inter-American Court and withdrew its previous reservation to article 4.4.

### **Obligations under the ICCPR**

In 1995 Guatemala ratified the International Covenant on Civil and Political Rights (ICCPR), (1966) and thereby accepted the competence of the Human Rights Committee in matters relating to its implementation. Article 6 of the ICCPR has been interpreted by the Committee

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as referring “generally to abolition [of the death penalty] in terms which strongly suggest [...] that abolition is desirable”<sup>1</sup>. Under Article 6 states are also obliged to limit its use and, in particular, to impose it only for the “most serious crimes”<sup>2</sup>. The UN General Assembly has repeatedly reiterated the desirability of abolition<sup>3</sup> as has the UN Commission on Human Rights. In April this year for example, the latter’s Resolution 2002/77 once again urged all retentionist states to “establish a moratorium on executions, with a view to completely abolishing the death penalty.”

In the past, both the Human Rights Committee and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions<sup>4</sup> have expressed their specific concerns in relation to the moves taken in 1995 to extend the application of the death penalty in Guatemala.

In March 1996 the Human Rights Committee examined the initial report of Guatemala and on the basis of its findings made a series of recommendations to the government. The Committee urged the Guatemalan Government to “restrict the application of the death penalty to those crimes which might be considered most serious.” The Committee also recommended that there be a thorough review of the legal framework for the protection of human rights to ensure full conformity with the ICCPR and that the independence of the judiciary be ensured and a law regulating it be enacted.

Yet despite these interventions, the executions of Pedro Castillo Mendoza and Roberto Girón were carried out only 6 months after the Human Rights Committee had communicated its concerns and recommendations to the Guatemalan government. For its part, the IACHR concluded that due process had not been followed in the case and asked the Government of Guatemala to implement precautionary measures, that is, to grant a stay of execution until it could be determined whether Guatemala was in breach of its obligations under the Convention. The request was rejected on the grounds that no such measures were authorized under Guatemalan law. Similar requests for precautionary measures from the IACHR were also turned down prior to the executions in 1998 and 2000.

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<sup>1</sup> CCPR, General Comment No.6, para. 6.

<sup>2</sup> The Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (1990) obliges states party to take all necessary measures to abolish the death penalty and not to carry out executions. Guatemala has not yet ratified the protocol.

<sup>3</sup>Resolution 32/61 states that “the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment”.

<sup>4</sup>UN Doc. E/CN.4/1996/4, 25 January 1996.

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Amnesty International considers that the refusal of Guatemala to accede to the IACHR's requests for such measures is unacceptable as it is contrary to the standards and procedures established by the Inter-American system of human rights protection. The Constitutive Charter of the Organization of American States (issued 1948) states in its current version, Article 106 for example, that the principle function of the Inter-American Commission on Human Rights shall be "to promote the observance and defence of human rights and to "serve as the consultative organ [of the American States] on such issues," functions also delineated in Article 1.1 of the Rules of Procedure of the IACHR (approved 2000, entered into force May, 2001.) Furthermore, Article 25 of the Rules of Procedure provide that "In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons."

### **Amnesty International's concerns**

#### **Right to due process**

In the light of the concerns raised by the Human Rights Committee regarding delays and failures of the process of law in Guatemala, Amnesty International believes that it is the responsibility of the Guatemalan Government to take steps to ensure that executions are not carried out where there is any doubt regarding the fair and just administration of justice in death penalty cases. Moreover, the UN Safeguards emphasise that the strictest possible standards must be observed in cases where the accused faces the death penalty. Article 4 states: "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts." Article 5 declares: "Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings."

#### **Not an effective deterrent**

Amnesty International is also convinced that there is no convincing evidence to support the position that the death penalty deters crimes more effectively than other punishments whether in Guatemala or elsewhere. The most recent survey of research findings on the relation between the death penalty and homicide rates, conducted by the United Nations (UN) in 1988 and updated in 1996, concluded: "Research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment and such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis". Amnesty International urges the Guatemalan government to seek solutions to its deep-seated economic and social problems beyond the occasional imposition of the death penalty.



### **The judicial lottery and the risk of executing the innocent**

Finally, Amnesty International is also concerned that as long as the death penalty is maintained there will always be a risk that innocent people will be executed. All criminal justice systems are vulnerable to discrimination and the possibility of judicial error must be taken into account. When the ability to obtain good legal representation becomes one of the most important factors in determining the outcome of a trial, questions of race, class and poverty can have a considerable effect upon the administration of justice. In Guatemala as elsewhere, as well as its inherent cruelty and potential for killing the wrongfully convicted, the death penalty tends to be applied in a discriminatory and arbitrary manner as a flawed and under-resourced legal system attempts to select which of the many hundreds of murders or other crimes punishable by the death penalty each year in Guatemala “deserve” an execution in response.

#### **Amnesty International recommendations to the Guatemalan authorities on the abolition of the death penalty**

1. The Government should abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.
2. Pending abolition the Government should declare an immediate moratorium on all executions.
3. Pending abolition, the Government should repeal Decrees 14-95 and 48-95 and commit itself not to introduce any extensions of the death penalty.
4. Pending abolition, the Government and the appropriate judicial bodies should ensure all defendants in death penalty cases enjoy all the safeguards and fair trial rights set out in the American Convention on Human Rights, the ICCPR and the UN Safeguards guaranteeing protection of the rights of those facing the death penalty, and other international standards. The defence of those charged with crimes which could carry the death penalty should only be undertaken by qualified, practising lawyers as called for in the UN Basic Principles on the Independence of the Judiciary (1990), Principle 6, which states that “Any such persons [accused of having committed a crime] who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.”

Post Script:

Since this text was originally written a further two prisoners have been sentenced to death for kidnapping, only six weeks after the President's announcement. This new development calls into further question the likelihood of the President's stated intentions being implemented. Nonetheless Amnesty International believes it is important to carry out actions to influence the Guatemalan public and legislature.