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## **Guatemala: Failings in Investigations and Due Process Support the Need for A Moratorium and Eventual Abolition of the Death Penalty**

The denial of the right to due process in several cases capital punishment cases in Guatemala supports the immediate need for a moratorium and eventual abolition of the death penalty, Amnesty International said today in a special report on the application of the death penalty in the country.

"Six people are currently under death sentence in Guatemala and more than 150 are facing charges for crimes that could carry this punishment," the organization said. "A visit by an Amnesty International delegation to the country last week confirmed our concerns about failings in the current criminal and judicial system that make it very difficult to ensure a due process for people facing criminal charges -- a fact that bears extremely serious implications in death penalty cases."

The recent execution of Pedro Castillo and Roberto Girón -- which took place on 13 September 1996 and was the first in 13 years -- raised serious concerns about the violation of their right to a fair trial. The two prisoners were without a lawyer for the nine days of their detention -- a vital period for the collection of evidence -- and were later defended by inexperienced law students.

"Although defence by law students under the supervision of a qualified lawyer was permitted under previous Guatemalan law, it is totally inappropriate in cases that carry the death penalty, as it denies the accused the right to competent counsel," Amnesty International said.

On 11 September -- two days before the execution -- the Guatemalan Supreme Court rejected a request for precautionary measures made by the Inter-American Commission on Human Rights (IACHR), on the grounds that such measures were not authorized by Guatemalan law.

"The refusal to cooperate with the IACHR in that instance is unacceptable, as it impeded the Commission from carrying out the functions for which it was created: the promotion and defence of human rights as set out in the American Convention on Human Rights," Amnesty International said.

In many of the current cases where people could face the death penalty there are serious doubts whether all the due guarantees of the accused were respected. For instance, in the case of three policemen convicted of the murder of two men on the outskirts of Guatemala city in February 1995 -- at the moment in the final stages of appeal -- serious irregularities took place during the initial stages of the investigations. Their identification was done, for example, by matching their photographs, and without either the judge or the defence lawyer being present.

The Amnesty International delegation discussed the issue with the Guatemalan authorities last week, and requested before the President of the Supreme Court that all UN safeguards be applied in death penalty cases. The organization, however, is doubtful that such will be the case.

In meetings with different authorities, the Amnesty International delegation also expressed concern about the recent extension of the death penalty in Guatemala to cover anyone convicted of kidnapping -- including accomplices and those attempting to conceal such crimes-- extrajudicial executions where the victim is under 12 years of age or over 60, and certain cases of forced disappearance.

"By extending the scope of the death penalty to crimes for which it was not applicable at the time Guatemala ratified the American Convention of Human Rights, the country has violated its obligations as a State Party to the Convention," Amnesty International said.

The human rights organization presented a series of recommendations to the Guatemalan authorities, including the abolition of the death penalty, and -- pending that step -- no further extensions on its application, and a guarantee that all legal safeguards will be applied in cases carrying such punishment. The Guatemalan authorities failed to express a formal commitment to follow such recommendations.

Amnesty International will call on the next General Assembly of the Organization of American States (OAS) to adopt a resolution insisting that Guatemala must not extend the death penalty, in violation of its commitments under the American Convention on Human Rights, and urging the country not to carry out any more executions.

### **Background**

Amnesty International considers the application of the death penalty as incompatible with international obligations of states to respect basic human rights -- the right to life and the right not to be subjected to cruel, inhuman and degrading punishment. The organization understands that the increase in violent crime in Guatemala, including that of kidnapping, calls for effective measures to ensure the safety of the population at risk. Nevertheless, Amnesty International believes, based on current research, that the application of the death penalty does not deter violent crime, or constitute an appropriate punishment under any circumstance.

As an organization campaigning for the worldwide abolition of the death penalty, Amnesty International urges all states which have not abolished the death penalty to stop carrying out executions. Of the 25 State Parties to the American Convention on Human Rights, 16 have abolished the death penalty and a further two have become *de facto* abolitionist countries.  
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