

EXTERNAL (for general distribution)

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Death Penalty

27 August 1993

GUATEMALA:

Nicolás GUTIERREZ CRUZ, soldier

Amnesty International is concerned that Nicolás Gutiérrez Cruz may face execution following the recent denial by the Constitutional Court of an appeal made on his behalf, and the exhaustion of all legal recourses. The organization is further concerned that, if carried out, this execution would be the first in Guatemala for 10 years and is appealing to the Guatemalan government not to take a retrograde step in the protection of human rights by resuming the use of the death penalty.

According to reports, indigenous soldiers Nicolás Gutiérrez Cruz and Eliseo Suchité Hernández were initially convicted by a military court and sentenced to 30 years imprisonment for the killing on 17 January 1992 of Juan Xan Calel, Francisco Gideo Yax López, Juan Calel Grave and his nine-year-old son Marvin Xan Santizo, all members of indigenous displaced families, in Ciudad Peronia, municipality of Villa Nueva, Sololá department. Prior to being sentenced by the military courts, both soldiers escaped from the military barracks where they were being held, but only Nicolás Gutiérrez was recaptured. Subsequently, the Public Ministry reportedly appealed against the military court's sentence and the case was transferred to the Fourth Court of Appeals, which revoked the sentence and imposed a sentence of death. An appeal was then made to the Supreme Court, which in August 1992 confirmed the sentence of death. On 29 April 1993 Nicolás Gutierrez's lawyer filed an injunction, but this was denied by the Constitutional Court. A further appeal for clarification and extension was then filed on behalf of Nicolás Gutiérrez, but was denied.

Now that all legal recourses have been taken, the only possibility of overturning the sentence of death is a presidential pardon. President Ramiro de León Carpio has the power to commute death sentences to terms of imprisonment under Decree 159 of the Legislative Assembly which dates back to 1892.

BACKGROUND INFORMATION

Amnesty International is unconditionally opposed to the death penalty, which it considers the ultimate form of cruel, inhuman and degrading treatment or punishment and a violation of the right to life, as embodied in the Universal Declaration on Human Rights. The Guatemalan Penal Code provides for the death penalty for aggravated homicide of the President or of a member of the defendant's immediate family, killing a kidnap victim and rape of a child under 10. It is optional for parricide, homicide and homicide of the Chief of State, but mandatory for rape and kidnapping when death results and the victim was under the age of 10. In September 1992 the Guatemalan Congress approved a new law which extended the scope of the use of the death penalty to include persons found guilty of drug-trafficking activities which result in the death of others, either through drug consumption or acts of violence.

The last executions were carried out in 1982 and 1983, on charges such as kidnapping and

"subversion" under an emergency decree promulgated under the *de facto* administration of General Efraín Ríos Montt, which established secret military tribunals empowered to impose the death penalty for a wide range of political offences.

RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express and airmail letters either in Spanish or English or in your own language:

- expressing concern that Nicolás Gutiérrez Cruz may face execution;
- urging that his death sentence be commuted;

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- urging the Guatemalan government not to take a retrograde step in the protection of human rights by resuming the use of the death penalty;
- reminding President Ramiro de León Carpio that previously, in his role as Human Rights Procurator, he did not advocate the death penalty;
- stating that Amnesty International is unconditionally opposed to the death penalty, which it considers the ultimate form of cruel, inhuman and degrading treatment or punishment and a violation of the right to life, as embodied in the Universal Declaration on Human Rights.

APPEALS TO

1) President of the Republic:

S.E. Ramiro de León Carpio
Presidente de la República de Guatemala
Palacio Nacional, Guatemala, GUATEMALA
Telegrams: Presidente de León Carpio, Guatemala, Guatemala
Faxes: + 502 2 537472, + 502 2 519702
Telexes: 5331 CAPRES GU

Salutation: Excelentísimo Sr. Presidente / Dear President

2) Minister of Interior:

Lic. Arnaldo Ortiz Moscoso
Ministro de Gobernación
Ministerio de Gobernación
Despacho Ministerial, Of. No. 8
Palacio Nacional, Guatemala, GUATEMALA
Telegrams: Ministro de Gobernación, Guatemala, Guatemala
Faxes: + 502 2 518105
Telexes: 5085 MINGOB

Salutation: Sr. Ministro / Dear Minister

3) Minister of Defence:

Gral. Mario Enríquez Morales
Ministro de Defensa
Ministerio de Defensa
Palacio Nacional, Guatemala, GUATEMALA
Telegrams: Ministro de Defensa, Guatemala, Guatemala
Faxes: + 502 2 537472
Telexes: 5361 COMGUA GU

Salutation: Sr. Ministro / Dear Minister

COPIES OF YOUR APPEALS TO:

1) Human Rights Procurator:
Lic. Jorge García Laguardia
Procurador de los Derechos Humanos
12 Avenida 12-72, Zona 1,
Guatemala, GUATEMALA
Faxes: + 502 2 81734

2) Head of the Presidential Commission
Coordinating the Policies of the Executive
relating to Human Rights:
Lic. Jorge Gonzalo Cabrera Hurtarte
Presidente
COPREDEH
15 Avenida 18-38, Zona 13
Guatemala, GUATEMALA

3) Archbishop's Human Rights Office
Oficina de Derechos Humanos del
Arzobispado de Guatemala (ODHAG)
Apartado Postal 723
Guatemala, Guatemala

and to diplomatic representatives of Guatemala accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 8 October 1993.