

GUATEMALA: FURTHER EXECUTIONS LOOM

Summary

The document explains AI's concerns with respect to the death penalty, in general and with specific reference to new developments in Guatemala, where two further televised lethal injection executions were carried out on 29 June. Prior to these new executions, it had been two years since Guatemala's first lethal injection state killing, and Amnesty International (AI) fears that the June executions could signal the beginning of a chain of executions in the country.

Background

The Death Penalty in Guatemala

The range of crimes for which the death penalty is applicable has gradually been extended in Guatemala in recent years and now covers the following crimes: 1) extrajudicial execution when the victim is younger than 12 years old or older than 60 or when the special circumstances of the crime, such as the way it is committed or its motives suggest that the criminal is particularly dangerous; 2) enforced disappearance which resulted in the death of the victim, or serious injuries or permanent psychological trauma; 3) kidnapping committed in any circumstance; 4) the homicide of the president or vice-president of the republic, when the perpetrator appears to be particularly dangerous.

Following the 29 June executions, there are some 30 further people under sentence of death in the country. The high level of public support for capital punishment in Guatemala is undeniable: citizen security is a general concern in the face of rising rates of common crime, including a high incidence of kidnapping for ransom, and successive governments have made it an important plank in their efforts to convince citizens that they are moving to combat crime.

Recent Executions in Guatemala

Previously the country had had a *de facto* moratorium on executions from 1983 until 1996. This ended however, in September 1996, when two men convicted of the 1993 rape and murder of a child were executed by firing squad in a botched, televised execution.¹ One of them required a *coup de grace* as he had not died after the original volley of shots. Prior to their execution, the Guatemalan government had rejected a request from the Inter-American Commission on Human Rights (IACHR) for so-called "precautionary measures," that is that the execution of the death sentences be suspended until it could consider whether the 1995 proceedings which had convicted the condemned men met the human rights protections standards set by the American Convention on Human Rights.

¹ See AMR34/18/96, AMR34/11/97, AMR34/28/97, AMR34/34/97, AMR34/38/97, AMR34/39/97, AMR34/14/98.

However, despite the government's adamancy in carrying out the executions, and widespread public support for them, the repeated re-showing of the executions on Guatemalan and foreign television provoked national and international revulsion. The government responded by sending a Guatemalan delegation to the United States to learn how executions were carried out by lethal injection, which they considered to be a more "modern" and "humane" form of execution. Congress then passed new legislation providing for the introduction of execution by lethal injection, and in due course, Guatemala's first lethal module was opened in July 1997 at a viewing hosted by the Vice Minister of the Interior.

The first execution by lethal injection in Guatemala then took place on 10 February 1998, when Manuel Martínez Coronado, a Chortí indigenous peasant farmer was executed after having been convicted of the 1995 murder of a family of his relatives, with whom he had been in dispute over the family plot of land, large enough only to support one or the other branch of the family. A child, 11 years old at the time he gave his testimony, and the sole survivor from the other branch of the family, was the person who identified Martínez Coronado as responsible for the killings. There were procedural irregularities in his conviction -- both he and his co-accused, his step father, were represented by the same lawyer for example, even though their version of events differed -- and some sources suggested he may have accepted blame out of culturally-influenced deference to his stepfather, who may have been the actual killer. The stepfather was sentenced to 30 years imprisonment because he was too old -- over 60 -- to be executed under Guatemalan law.²

Once again a request for precautionary measures from the IACHR was ignored; some Guatemalan officials and sectors of society considered the effort to intervene by the Commission to be an interference in Guatemala's sovereign affairs, and called for the country to suspend its adherence to the American Convention on Human Rights (1969).

And, once again the execution was badly botched: The paramedics assigned to carry it out after the Guatemalan Medical Association announced its opposition to the participation of its members in executions, were shaking so badly that they repeatedly failed to find a vein in which to insert the needle carrying the deadly chemicals. Then, the machine pumping out the lethal mixture malfunctioned in the course of the execution, apparently due to a power failure. The victim took 18 minutes to die; once again, the execution was broadcast and the condemned man's wife and children could be heard crying in the adjoining room. Witnesses to the execution reported that by the time he died, the victim's arms were covered in blood. Human Rights Procurator Julio Arango, who observed the execution, later stated: "I think we all have the obligation to tell what happened: his arms were bleeding heavily, I think everyone who was there was suffering". ("Creo que todos tenemos la obligación de decir lo que pasó: le sangraban los brazos por todos lados, creo que todos lo que estuvimos allí sufrimos").

² See AMR34/28/97, AMR 34/34/97, AMR34/38/97, AMR34/39/97, AMR34/10/98, AMR34/11/98, AMR34/12/98

Public revulsion was again expressed, and on 25 March 1998, the Guatemalan Congress amended the “Law governing procedures for the execution of the death penalty”, (*Ley que Establece el Procedimiento para la Ejecución de la Pena de Muerte*) which was to have prohibited the media from transmitting live images of executions. Their role was to be confined to observing executions in order to be able to report that they had in fact been carried out.

Guatemala’s New President and the Death Penalty

There were however, no further executions under the administration of President Alvaro Arzú (1996- 2000) and Guatemala’s current head of state, Alfonso Portillo took office in January this year. During a meeting in the organization’s London headquarters in 1999, he had told AI that he had “always opposed the death penalty.” However, upon taking office, President Portillo said that he would not grant presidential pardons or clemency, and expressed support for moves in Congress to remove the prerogative of execution clemency from Guatemalan legislation.

AI wrote to the new President on 28 February 2000, explaining why it believed that the chief executive should retain this prerogative,³ but on 12 May the Guatemalan Congress derogated decree 159 which had given the President the faculty to grant executive clemency to those condemned to the death penalty, thus removing any provision for clemency from Guatemalan legislation.

However, President Portillo did consent to review the appeals for clemency that were pending when he took office, and on 1 June 2000 announced that he had granted clemency to Pedro Rax Cucul, a q’eqchi’-speaking peasant farmer convicted of the murder of his wife in June 1997. Rax was found carrying the severed arm of his victim in his lunch bag with his salt and tortillas, but the Court psychiatrist that examined him determined that his behaviour was “within normal bounds,” and that he was therefore fit for execution. Independent doctors that examined him later however, concluded that he was a paranoid schizophrenic suffering from delusions.

However, the initial medical examination on which the court had relied and Rax’s trial itself had been conducted in Spanish which he does not speak. President Portillo cited clear judicial deficiencies in Rax’ trial, such as the lack of interpreters, in explaining his decision to commute the sentence of death by lethal injection to 30 years in prison, the maximum alternative sentence at the time Rax was convicted. (This has since been raised to 50 years.)

AI wrote to the President, welcoming the clemency decision in the Rax Cucul case, but reiterating its views as to why it opposed the death penalty in all cases, and why it was

³AI’s letter is included as Appendix 1 to this document.

convinced that the executive should retain and exercise the power of executive clemency. AI considers that the grave faults in the trial proceedings which the President pointed to as the reasons for deciding upon clemency, would surely cast doubt on the verdict, and that Rax Cucul was entitled to a new trial, including a second official medical examination. AI also believes that any regime determined for his custody should also provide for mental treatment.

29 June Executions and Further State Killings Looming

In his announcement of the clemency decision in the Rax Cucul case, President Portillo also made public his decision to turn down three other clemency requests, on behalf of Tomás Cerrate Hernández, Luís Amílcar Cetino Pérez and Fermín Ramírez, which had been pending when he assumed office.

On 29 June 2000, after the lethal module was inspected to make sure it was in working order and conditions there declared “ideal” for new executions to go ahead, Tomás Cerrate Hernández and Luís Amílcar Cetino Pérez were duly executed by lethal injection on 29 June 2000. The two had been convicted in March 1998 of the kidnapping and murder of a wealthy elderly woman. Cetino Pérez died protesting his innocence to the end. Guatemala’s official forensic medical officer had declared before the executions that they would be over in 3-5 minutes, but the men apparently took 9 minutes in one case and 13 in the other, to finally die. Once again, the spectacle was carried live on Guatemala television

Fermín Ramírez now looks like he may be the next to be killed. He was convicted of the rape and murder of a young child in 1997. The testimony of an 8 year old was used as evidence against him. In an apparent last ditch effort on behalf of his client, Ramírez’ lawyer submitted an appeal objecting to the fact that his client was initially charged with one crime, that of rape, but convicted of another, homicide, but the appeal was rejected. Ramírez’ execution will be temporarily delayed until the Executory Court fixes his execution date.

AI’s Opposition to the Death Penalty

Cruel, inhuman and degrading treatment or punishment

Amnesty International opposes the death penalty in all circumstances as a violation of the right to life as embodied in the Universal Declaration of Human Rights, and the ultimate form of cruel, inhuman and degrading treatment or punishment. Amnesty International agrees that the increase in violent crime in Guatemala, including that of kidnapping and murder, calls for effective measures to ensure the safety of the population at risk. The organization also understands the suffering of the victims of such crimes. However AI is firmly convinced that the application of the death penalty does not act as a deterrent to violent crime and it does not believe that it will ever be an appropriate punishment.

Not an effective deterrent

Indeed, Amnesty International has found that the death penalty has not been effective in reducing levels of crime in countries which retain it. Research from a wide range of organizations and experts support this view: There is no convincing evidence to indicate that the death penalty deters crimes more effectively than other punishments and 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”. And in Guatemala, as will be seen below, the extension of the death penalty as applicable to those found guilty of any sort of kidnapping did not result in a decrease in kidnapping, but instead saw a rise in the number of such crimes.

Risk to the innocent and discriminatory in its application

Amnesty International is also concerned that if the death penalty is maintained there will always be a risk that innocent people will be found guilty and will be executed unfairly. Any criminal justice system can be affected by discrimination and the possibility of judicial error, sending innocent people or those unfit to stand trial, to their deaths. As a result, obtaining appropriate legal representation becomes one of the most important factors determining the outcome of a trial. Unfortunately questions of racism, class and poverty can clearly have a considerable effect on access to an adequate defense, as well as on conviction rates and sentencing decisions. The case of Pedro Rax Cucul, discussed above, is a clear example of grave failings in legal proceedings, which resulted initially in the death penalty.

Guatemala’s Obligations under the American Convention and other International Instruments

Sentences of death in Guatemala for the crimes to which the death penalty became applicable after 1978, when Guatemala ratified the American Convention on Human Rights, are also in contravention of Guatemala’s obligation under the Convention. Article 4(2) of the American Convention expressly prohibits States Parties from extending the death penalty to crimes other than those already contemplated in domestic legislation at the time of ratification.⁴ In September 1983 the Inter-American Court unanimously decided 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

⁴Article 4(2) “The application of such punishment shall not be extended to crimes to which it does not presently apply”.

reservation had been made to article 4(4), as in the case of Guatemala.⁵ 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.

Nevertheless, 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. The status of this legislation remains unclear, since the then president, Ramiro de León Carpio (193-1996) neither ratified nor vetoed the law within the legally-specified period. Nevertheless, death sentences have been passed on people convicted of crimes falling within its scope. Tomás Cerrate Hernández and Luis Amílcar Cetino Pérez are cases in point.

In addition, as explained above, the Guatemalan government approved Agreements 234-2000 and 235-2000 removing the provision in Guatemalan legislation for presidential pardon or clemency without creating any appropriate substitute. The United Nations (UN) International Covenant on Civil and Political Rights [1966], ratified by Guatemala 6 May 1992; the American Convention on Human Rights, ratified by Guatemala 25 May, 1978; and the UN's Safeguards Guaranteeing the Protection of the Rights of Those facing the Death Penalty, adopted by the Economic and Social Council on 25 May 1984, all state that in every country where the death penalty is applied, there must be a form of clemency or commutation of sentence available. Therefore, no executions should be carried out, until there is a clemency substitute in the Guatemalan legislative system.

KEYWORDS: DEATH PENALTY1 / LEGISLATION1 / EXECUTION / DEATH SENTENCE / TRIALS / IACHR / ACHR

⁵Guatemala had originally ratified the Convention 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," as the constitution of Guatemala at that time excluded the death penalty for political crimes, but not for common crimes connected to political crimes.

TG:

AMR34/00/07

28 de febrero

del 2000

Lic. Alfonso Portillo Cabrera
Presidente de la República
de Guatemala
6a. Avenida "A" 4-18
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Ciudad de Guatemala , GUATEMALA

Excelentísimo Señor Presidente:

Puesto que ésta es la primera comunicación directa que Amnistía Internacional le envía desde la visita que realizó el año pasado a nuestra sede de Londres, me gustaría en primer lugar aprovechar la oportunidad para felicitarle por su elección. Deseo manifestarle también que esperamos que durante su mandato presidencial actúe con la máxima energía en relación con los compromisos de derechos humanos que ha asumido desde su toma de posesión. Ha prometido, por ejemplo, trabajar para que continúe profundizándose en los aspectos de derechos humanos contenidos en los Acuerdos de Paz y aclarar las circunstancias de la muerte del obispo Juan José Gerardi.

Trataremos más detalladamente con usted estas cuestiones dentro de poco. En esta ocasión, me gustaría centrarme en las preocupaciones de Amnistía Internacional en relación con las condenas de muerte que afrontan más de treinta personas en Guatemala y, de forma más inmediata, Fermín Ramírez y Pedro Rax Cucul, ya que, según la prensa guatemalteca, parecen estar en peligro de inminente ejecución.

Según la información de que disponemos, estos dos hombres han agotado todos los posibles recursos judiciales, y han apelado a usted para que ejerza su prerrogativa de gracia. Recordamos que durante su visita al Secretariado Internacional el año pasado, usted afirmó que siempre había estado en contra de la pena de muerte. Por ello, nos ha causado una enorme decepción saber que desde su toma de posesión ha afirmado en varias ocasiones que no tiene intención de ejercer la prerrogativa de gracia y, más aún, que no cree que tal prerrogativa debiera existir en Guatemala.

De hecho, las normas internacionales exigen que exista la posibilidad real de recibir un indulto, por diversas razones: el indulto puede usarse para corregir posibles errores, mitigar la dureza del castigo y compensar la rigidez de la legislación penal al tener en cuenta factores que afectan al caso en cuestión y que la ley no toma en consideración.

Este derecho, el derecho de toda persona condenada a muerte a solicitar el indulto, existe en todos los países en los que está vigente la pena capital. Normalmente es la máxima autoridad ejecutiva del país u otra jurisdicción en la que se use la pena de muerte quien tiene la prerrogativa de gracia.

Esto queda claramente estipulado en los instrumentos internacionales de derechos humanos:

El artículo 6 del Pacto Internacional de Derechos Civiles y Políticos establece, por ejemplo: «Toda persona condenada a muerte tendrá derecho a solicitar el indulto o la conmutación de la pena de muerte. La amnistía, el indulto o la conmutación de la pena capital podrán ser concedidos en todos los casos.»

De forma similar, según el artículo 4 (6) de la Convención Americana sobre Derechos Humanos, «Toda persona condenada a muerte tendrá derecho a solicitar el indulto o la conmutación de la pena, los cuales podrán ser concedidos en todos los casos. No se puede aplicar la pena de muerte mientras la solicitud esté pendiente de decisión ante autoridad competente.»

Las Salvaguardias para Garantizar la Protección de los Derechos de los Condenados a la Pena de Muerte, adoptadas por el Consejo Económico y Social de las Naciones Unidas en 1984, establecen también lo siguiente: «Toda persona condenada a muerte tendrá derecho a solicitar el indulto o la conmutación de la pena; en todos los casos de pena capital se podrá conceder el indulto o la conmutación de la pena.»

La pena de muerte se diferencia de cualquier otra pena por su carácter irrevocable. Por ello es especialmente preocupante que puedan imponerse y ejecutarse este tipo de penas sobre la base de factores políticos que poco o nada tienen que ver con el caso en cuestión. A este respecto, entendemos perfectamente la preocupación de los ciudadanos guatemaltecos por los elevados índices de criminalidad y la

cuestión de la seguridad ciudadana. No obstante, estamos convencidos de que la ejecución de unos cuantos convictos, a menudo personas de los sectores más desfavorecidos e iletrados de la sociedad, tras juicios que no suelen cumplir las garantías procesales exigidas por las normas internacionales, no es una respuesta eficaz ni justa a los factores sociales y económicos profundamente arraigados que contribuyen de forma tan significativa a estos problemas sociales.

En otras circunstancias, las condenas de muerte pueden ejecutarse sin la información adecuada y sin recurrir a los expertos apropiados. En relación con esto, hacemos notar que, según el Código Penal guatemalteco, no pueden exigirse responsabilidades legales a personas que padecían trastornos mentales en el momento de la comisión del delito. En el caso de Pedro Rax Cucul, nos preocupa que la investigación de los médicos sobre su estado mental y sus facultades mentales en el momento de la comisión del delito no fuera ni exhaustiva ni adecuada. Creemos que existen indicios contundentes de que sufría problemas mentales en el momento en que se cometió el delito por el que fue condenado y que continúa sufriendo esos problemas, evaluación que, según la información de que disponemos, compartía el especialista que le examinó a principios del año pasado.

El especialista que examinó a Rax Cucul a principios del año pasado reconoció que sufría algunos problemas mentales pero, sin aclarar en qué basaba su valoración, consideraba que, sin embargo, su comportamiento «está dentro de los parámetros normales». Esto a pesar del hecho de que, por ejemplo, al día siguiente del asesinato el condenado llevase en el morral, junto con las tortillas del almuerzo, un brazo de la víctima.

Por otra parte, dados sus problemas mentales, y como ketchí que no habla español, no estamos seguros de si el señor Rax pudo seguir el proceso en el que fue declarado culpable o apreciar su trascendencia y, de hecho, no tenemos ninguna información que indique que tuviera lugar una vista judicial para determinar si estaba o no en condiciones de ser juzgado, es decir, su capacidad para seguir el proceso y participar en su defensa.

Le instamos encarecidamente a que, en éste y otros casos en los que exista la más mínima circunstancia atenuante o duda, ejerza la antigua y consagrada prerrogativa de gracia, con el fin de garantizar que no se cometen errores irremediables y que no se ejecuta a personas inocentes o incapacitadas.

Al tiempo que le pedimos esto queremos dejar claro que no pretendemos excusar los crímenes de los que las personas condenadas a muerte en Guatemala, incluidos Fermín Ramírez y Pedro Rax Cucul, han sido declaradas culpables, ni tampoco menospreciar el sufrimiento de las víctimas ni de sus familiares y amigos. Nuestra intención es que el Estado no añada más nombres a la lista de muertos usando una pena que han abandonado la mayoría de los países y que es en sí misma un síntoma de la cultura de la violencia, no una solución a ella. De hecho, en muchos países, entre ellos Estados Unidos, un número cada vez mayor de familiares de víctimas de asesinatos se manifiestan en contra de la pena de muerte, repudiando de ese modo el argumento expresado por muchos políticos según el cual una ejecución puede ayudar a los familiares a reconciliarse con su pérdida.

Una vez más le instamos a que ejerza el liderazgo necesario para apartar a la República de Guatemala de la cultura de la violencia y acercarla a la tendencia mundial hacia la abolición de esta pena desfasada e inhumana.

Muy atentamente,

Javier Zuñiga
Director del Programa de las Américas
Secretariado Internacional
Amnistía Internacional