

PUBLIC

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RAPPORTEUR OF THE
UNITED NATIONS
COMMISSION ON HUMAN RIGHTS ON THE
INDEPENDENCE OF JUDGES AND LAWYERS

AMNESTY INTERNATIONAL'S CONCERNS REGARDING THE ADMINISTRATION OF JUSTICE AND THE INDEPENDENCE OF JUDGES AND LAWYERS IN GUATEMALA

RECENT HUMAN RIGHTS ABUSES COMMITTED AGAINST JUDGES AND LAWYERS

BACKGROUND

In 1996, Guatemala's long-term civil conflict formally ended with the signing of the United Nations (UN)-brokered Peace Accords. A major objective of the Accords was to build a state of law in which human rights would be protected and all citizens would have equal access to justice and could count on the right to be fairly and impartially judged. After extremely slow progress in implementing the Accords in the first three years after their signature, a new Guatemalan President, Alfonso Portillo came to office in January 2000. He promised that the Peace Accords would be considered as state policy, that the recommendations by the Historical Clarification Commission, *Comisión de Esclarecimiento Histórico* (CEH) and the Recuperation of Historic Memory, *Recuperación de la Memoria Histórica* (REMHI), would be implemented and that the parallel structures interfering with the administration of justice would be dismantled. In the judgement of Amnesty International (AI), little progress has been made to implement these promises.

The independence of the judiciary in Guatemala is recognised in principle by the law. However, during the period that the current government has thus far been in office, local analysts suggest that the judiciary has remained subordinate to the legislative authority. Analysts suggest several reasons for this. They point for example to the apparent weakness of President Portillo and the power of the president of Congress, Efraín Ríos Montt. General Ríos Montt founded the political party which brought President Portillo to power, and it was the support of this party, now in the majority in Congress which elected him as its president. General Ríos Montt was Head of state at a period when the Guatemalan military and their civilian adjuncts, the civil patrols were responsible for tens of thousands of human rights abuses, and it is perhaps not surprising that he is identified with efforts to block proceedings intended to identify those responsible for the gross human rights violations which took place during this period.

It has also been of concern to Amnesty International that President Portillo has named other former members of the military similarly accused of responsibility for past human rights violations, to his cabinet. They include for example Byron Barrientos, now Guatemalan Minister of the Interior.

Human rights groups both in Guatemalan and abroad fear that the presence of such individuals in key positions within the government will necessarily impede efforts to bring to justice those responsible for human rights violations.

Amnesty International also considers that there are a number of structural problems in the Guatemalan judicial system which offer impediments to ensuring due process and the rule of law. These problems are summarized in Part II of this submission.

However, the organization believes that the gravest and most pressing current problem in the administration of justice in Guatemala is the lack of personal security of all those involved in the judicial process in Guatemala, particularly as regards efforts to bring perpetrators of human rights abuses to justice. A number of recent cases of this nature are detailed below. AI urges the Special Rapporteur to press the Guatemalan government concerning progress in investigations into any of these

recent incidents and as to what steps it is taking to ensure the security of those threatened and all others involved in key human rights cases and the administration of justice in Guatemala.

In this regard, AI is aware that in February 2001 the Guatemalan government announced the creation of a special investigative office to look into attacks against members of the judiciary and the legal profession as a reaction to the general outcry over recent abuses suffered by them. This office, the *Fiscalía de Delitos contra los Operadores de Justicia*, the Special Investigations for abuses against the Judiciary, began functioning on 27 February, and to AI's knowledge, has thus far initiated the investigation of 27 cases, although it has reportedly received a constant stream of formal requests for investigations into further cases. AI understands that the new *Fiscalía* has reportedly been unable to cope with the demand, but that it has thus far issued 13 arrest orders for persons suspected of responsibility for some of the abuses reported to it. Ten of these are additional suspects in the case of the murder of Judge Alvaro Martínez on 13 March, (concerning which, see below), whose arrests were ordered by Fiscal Leopoldo Liu of the court in Cobán on 3 May 2001.

D) RECENT HUMAN RIGHTS ABUSES COMMITTED AGAINST MEMBERS OF THE JUDICIARY AND LAWYERS

The threats and intimidation suffered by those involved in attempts to make Guatemala's judicial system work to punish the guilty and protect those seeking justice have been constant. The abuses seem particularly directed at intimidating those who have lodged proceedings in national and foreign courts against military officers whom they charge with responsibility for massive human rights violations and/or crimes against humanity during Guatemala's years of civil conflict.

I (1) LYNCHING OF JUDGE ALVARO HUGO MARTÍNEZ PÉREZ

On 13 March 2001, an estimated 300 people participated in the lynching of Judge Alvaro Hugo Martínez Pérez in Senahú, Alta Verapaz. They attacked him when he was on duty at the court house in the middle of the night by setting fire to the court room and then beating him to death with machetes.

Initially, there were several versions of events. According to one explanation, Judge Martínez had recently made a ruling awarding a financial agreement to a girl and her mother for the injuries caused after an assailant dragged the girl from a car. This decision reportedly infuriated the local population because they did not consider the financial agreement to be a severe enough penalty for the accused. According to another version, those responsible were either ex-civil patrol members or other individuals that had been fined or condemned by Judge Martínez in the past.

AI has now learned that the Human Rights Procurator Office, *Procuraduría de Derechos Humanos* (PDH) has stated that Judge Martínez had received anonymous death threats prior to this lynching, which he had reported to the Supreme Court. According to news reports, the *Procuraduría* stated that the incident might have been avoided if the authorities had chosen to act on Judge Martínez' reports.

Amnesty International also understands that prior to the lynching of Judge Martínez, other judges had asked for transfers or fled the country, because they had feared becoming victims of lynchings.

As you will know, lynchings have been a growing problem in Guatemala: In a 2000 report, the United Nations Verification Mission in Guatemala (MINUGUA), "Los linchamientos un flagelo contra la dignidad humana", "Lynchings: An Offence against Human Dignity" found that there between 1996 and 2000 there have been a total of 635 such victims. MINUGUA stated it has been able to verify that

most of the latest lynchings have been carried out by former members of the civil patrols. As you will know, the civil patrols were groups of paramilitaries implicated in many of the large-scale human rights violations committed during Guatemala's long-term civil conflict.

I.2) THE GERARDI CASE

Background

Bishop Juan José Gerardi Conedera, Auxiliary Bishop of Guatemala and Coordinator of the *Oficina de Derechos Humanos del Arzobispado* (ODHAG), Archbishop's Human Rights Office, was murdered on 26 April 1998. He was the driving force behind the Catholic Church's exhaustive investigation into the country's three decades of civil conflict. In April 1998 he presented the investigation's report, "*Guatemala: Never Again*" which found the security forces responsible for the overwhelming majority of the atrocities committed during the conflict. Two days later he was found bludgeoned to death.

Once the investigation started, the first judge, Isaías Figueroa and prosecutor Otto Ardón were forced to resign after sustained international complaints that they had ignored evidence of military involvement in the murder. The second judge in the case, Henry Monroy resigned after only a month and fled abroad after receiving death threats. The prosecutor that then took over investigating this murder, Celvin Galindo, resigned and fled the country on 7 October 1999 after receiving repeated death threats. Several members of the ODHAG have also been threatened with death since the investigation began.

More recent attacks related to the Gerardi case

Last year judge **Flor de María García Villatoro** and court official, **Patricia Mejía**, who were trying Bishop Gerardi's murder were victims of intimidation when they indicted three high-ranking army officers for the murder: On 18 May 2000 Judge Flor de María García Villatoro ruled that there was sufficient evidence against three high-ranking military officers for them to stand trial for the Bishop's murder. The following day, the movements of Judge García and Patricia Mejía, were constantly monitored by unknown men following them in cars. Both declared that they are committed to continuing with this case but that they also feared for their lives (see UA 137/00, AMR 34/17/00).

In July, **Rodrigo Salvado** and **Mario Domingo**, lawyers working for the ODHAG on the murder of Bishop Gerardi reported death threats. The threats began after Judge García Villatoro's ruling.

After the judge's ruling, Rodrigo Salvado found a message on his mobile phone implying that he was on a "black list" of people being investigated by the government. Since then he received a number of additional threatening phone calls. In one day in alone, he reported about 20 calls at his home, from a man who insulted him and his family and said that a group was on its way to his home to kill him at midnight.

Mario Domingo, the ODHAG's legal adviser on the Gerardi case, also received threatening phone calls at work. Once the caller played a song called "*El Desaparecido*", "The Disappeared". On another occasion, a man called repeatedly asking for "Colonel Ochoa", despite being told that no such person worked there (see UA 199/00, AMR 34/28/00).

On 1 February 2001 **Eduardo Cojulún**, the judge presiding over the court investigation of the case announced that the trial would go ahead and that oral proceedings would begin on 15 February. The same day he declared that he had received a death threat on his answering machine a few days before.

He reported the threat to the authorities and took security measures. He said that he would withdraw from the case if the situation became untenable (see follow up to UA 199/00).

Also the same day, judge **Rudy Chin** announced that he would be withdrawing from the case. He justified his decision on the grounds that he knew one of the suspects, although it had been widely believed that he had been threatened and was too frightened to go ahead with the trial. Two other judges admitted they have been intimidated, but refused to say whether the intimidation was connected to their involvement with this trial, possibly because they feared their safety would be at risk if they did so.

On the evening of 22 March, two grenades were thrown into the back garden of judge **Iris Yasmín Barrios**, one of three judges slated to hear the trial, which was to re-open the following day (see UA 71/01 AMR 34/008/2001). This attack was the latest of three that the judge had suffered recently. Although she did not publicly attribute any of the attacks to the Gerardi case, Judge Barrios did remark that the latest one was carried out few hours before the trial was to due to re-start.

On 4 April, during the trial hearing, ODHAG staff made public the information that a letter had been sent to the Human Rights Procurator's central office in Guatemala City addressed to **Mynor Melgar**, a prominent lawyer working for the ODHAG, in which he was threatened with death.

I.3) THE "GUATEGATE" CASE

Historical background

General Ríos Montt was head of State during 1982-1983, a period when tens of thousands of indigenous peasants were killed or "disappeared" at the hands of the army and their civilian agents, the civil patrols. He is the founder of the party in power, the *Frente Republicano Guatemalteco* (FRG), Guatemalan Revolutionary Front, and current president of Congress.

Current context

General Ríos Montt and 23 other members of his party had initially been accused of corruptly altering a liquor tax law after it had been passed by Congress. As members of Congress they were immune from prosecution, but the Supreme court lifted their immunity in early March. The Congress' internal law stated that members of the Congressional Executive Committee would have to relinquish their Congressional seats during any proceedings against them. With their Congressional majority, General Ríos Montt's party passed a decree to ensure they kept their seats.

On 21 March, Judge Conchita Mazariegos, president of the country's highest appeal court, the Constitutional Court (*Corte de Constitucionalidad*), presided over a Constitutional Court hearing that ruled unconstitutional this attempt by Congress members, including General Rios Montt, to amend the Congress' internal law in order to keep their seats on the Congressional Executive Committee.

Many Guatemalan human rights activists welcomed the Constitutional Court's decision to remove his immunity in the liquor tax affair, as a possible step towards eventually prosecuting him for crimes against humanity.

The attack

On 24 March at 7.40pm shots were fired at Judge **Conchita Mazariegos'** front door. A few days earlier she had received threatening telephone calls. In statements to the national press she said: "Somebody has been calling me by phone but nobody replies when I answer; they just play funeral music. I did not want to report this as I didn't want to harm Alfonso Portillo's government..." ("*Me han llamado por teléfono y no contestan; lo que hacen es ponerme marchas fúnebres. No lo quise denunciar, por no dañar al gobierno de Alfonso Portillo...*") (see UA 71/01 AMR 34/008/2001).

On 4 April, the Interamerican Commission on Human Rights recommended that the Guatemalan government give judge Conchita Mazariegos 24 hours police surveillance, that a thorough investigation be initiated into the attack and those responsible brought to justice. AI is unclear as to what if anything has been done to fulfil these recommendations.

I.4) HUMAN RIGHTS CHARGES AGAINST RÍOS MONTT

On 20 December 2000, **Mynor Melgar**, prominent lawyer working in the legal department of ODHAG publicly announced that the ODHAG had been preparing to charge retired general Efraín Ríos Montt with genocide. General Ríos Montt was president of Guatemala from 1982 to 1983, during which time a number of serious human rights violations were perpetrated. He is currently the leader of Congress.

The attack

On 22 December 2000 at midday, two unidentified armed men called at Mynor Melgar's home. When answering the front door, he was ordered to the bathroom at gunpoint. The two men tied him, his wife and his two sons up and said to them: "*Este es un aviso, y la próxima...; a nosotros nos mandaron*", "This is only a warning, but the next time ...; we were sent here". They then took some valuables and important documents and made off with Mynor Melgar's car (see UA 04/01, AMR 34/001/2001).

The Minister of the Interior, Byron Barrientos, said that this incident is just another case of common crime.

I.5) LEGAL PROCEEDINGS RELATED TO THE ADMINISTRATION OF GENERAL FERNANDO ROMEO LUCAS GARCÍA

In May 2000, a association of indigenous survivors of a number of massacres, the *Asociación Reconciliación para la Justicia*, The Reconciliation Association for Justice, filed a suit, assisted by *Centro de Acción Legal en Derechos Humanos* (CALDH), the Centre for Legal Action in Human Rights, against officials of the administration of General Fernando Romeo Lucas García (July 1978-March 1982), for ten large-scale massacres carried out during that period against nine indigenous communities. The Association and CALDH are now collecting further evidence for a second suit regarding massacres under the subsequent administration of General Efraín Ríos Montt (March 1982-July 1983).

The attack

Celso Balán, is a representative for CALDH and a human rights worker. He was working in the San Martín Jilotepeque, Chimaltenango area, assisting relatives to exhume mass graves of villagers massacred by the Guatemalan army and the civil patrols when he was detained, beaten, robbed, drugged and left unconscious by two people thought to be involved in paramilitary organisations. Mr. Balán and his family were threatened not to report the attack.

The circumstances of the attack on Mr. Balán were as follows: On 1 August 2000, Balán was making his way towards the courthouse in Chimaltenango to check on local efforts to exhume clandestine cemeteries when two people called him by name from their pick-up truck. Pretending to be journalists they showed him press cards and offered a lift to the courthouse. Once he was in the truck they forced him onto the floor of the vehicle with a gun at his head and drove away.

He was interrogated for several hours about a particular mass grave, where the remains of those massacred by the army in 1982, had recently been exhumed and returned to their families for a traditional Mayan burial ceremony. He was asked how it was possible to establish that it was army bullets which had killed the victims. He was then forced to accompany his attackers to the local CALDH office, where he was beaten with a gun-butt while the office was ransacked as the attackers searched for information.

Once there he was forced to drink a strong sedative which doctors say could have produced paralysis or even death had the dose been only slightly stronger. He was dumped at the local cemetery where he regained consciousness two days later. The experience has left him with neurological, physical, psychological and emotional problems for which he is receiving treatment.

Despite the threats, Celso Balán went public about his ordeal and announced that he intended to continue his work with other communities in the area still seeking exhumations.

It is believed that those who attacked Celso Balán are linked to those responsible for the Chipastor massacre, and that the orders may have come from army personnel at the Chimaltenango military base (see UA 256/00, AMR 34/34/00).

I.6) ATTACKS AGAINST THE HUMAN RIGHTS PROCURATOR'S REGIONAL OFFICE IN SOLOLA

On 6 November 2000, the *Procurador de Derechos Humanos*, National Human Rights Procurator, found police officers responsible for the fatal shooting of a demonstrator, Teodoro Saloj, in Quiché department during a 10 October demonstration.

The National Procurator's report concluded that nine officers from the *Policía Nacional Civil* (PNC), National Civil Police, were responsible for killing Teodoro Saloj. Teodoro Saloj was shot from a pickup truck during a protest march. Police near the scene refused to give chase to his killers. The report condemned the PNC's action and called on the Minister of Interior, Byron Barrientos, and President Alfonso Portillo, to take disciplinary action against those responsible and to compensate Teodoro Saloj's family. The report was submitted to the *Ministerio Público*, Public Prosecutor's Office, in an effort to initiate a prosecution of those responsible. Thus far, AI does not know of any specific action taken by the authorities to bring to justice those police officers responsible for the crime nor to compensate the widow and several children for the death of Mr. Saloj.

Intimidation

The staff of the Sololá office of the PDH's Regional Office, whose investigation led to the findings summarized above, have faced harassment and intimidation from the police since beginning their investigation into the killing. The Regional Procurator at the Sololá Office expressed concern that staff in the Sololá office may have been targeted by the police following the publication of National Human Rights Procurator's report on the incident. Amnesty International has received unconfirmed reports that

others who took part in the 10 October demonstration have suffered further intimidation (see follow up to UA 315/00, AMR 34/48/00).

In the past several days, it has been reported that some of the employees in the PDH office in Sololá have received renewed death threats. A staff member was subjected to short time arrest in April.

I.7) THREATS AGAINST LAWYERS DEFENDING PEOPLE FACING DEATH SENTENCES

Lawyers Arturo Recinos, Mario A. Menchú Francisco, Luis A. Vázquez Menendez, Luis R. Romero Rivera and Carlos N. Palencia Salazar, reportedly received anonymous death threats apparently because of their work in defending members of the kidnapping gang *Los Pasaco* who were sentenced to death (see UA 19/00, AMR 34/03/00).

Two of the gang *Los Pasaco* escaped from prison, and sources suggest that this spurred death penalty advocates to threaten the men's lawyers, whom they see as protecting people who deserve to die. The death penalty has widespread public support in Guatemala.

Arturo Recinos, who had lodged an appeal on behalf of one of the condemned men, apparently received anonymous telephone death threats for several weeks. He was so afraid for his life that he resigned as defence counsel for his client.

After this, the other four lawyers, who were appealing on behalf of other members of the gang who had been sentenced to death, also started receiving threatening phone calls, and were followed by cars. They have also been forced to resign, in fear for their lives.

Two of the lawyers, Mario A. Menchú Francisco and Arturo Recinos, reported formally the threats and intimidation to the authorities, but they received no response, a factor which influenced their decision to withdraw from the cases.

II. GENERAL PROBLEMS IN THE GUATEMALAN JUDICIAL SYSTEM

In addition to its concerns about abuses suffered by members of the Guatemalan judiciary, AI would also like to take this opportunity to point to some more general problems it has identified with regard to the operations of the Guatemalan judicial system.

A) Dismissal of or failure to renew contracts of judges by the Supreme Court

In April last year, the Supreme Court dismissed 18 judges. The official explanation was that some of them were dismissed for their alleged involvement in corrupt acts. In others cases their contract expired without been renewed, allegedly because the judges in question had not fulfilled their professional obligations.

The Supreme Court names lower court and appeal judges, supervises judicial studies and is empowered to exercise disciplinary sanctions. This, it is said, allows the court to exercise pressure and control, through imposing sanctions, transfers and nominations. Local analysts have charged that the fact that the Supreme Court holds such powers inevitably influences sentences and decisions by judges, anxious not to fall foul of the Court and so risk losing their jobs.

Last year, Amnesty International received a communication from a Guatemalan judge, member of the Association of Judges and Magistrates for the Judicial Organism (*Asociación de Jueces y Magistrados del Organismo Judicial*), AJMOJ. In this communication this judge expressed worries about these dismissals, and outlined this judge's beliefs that the Supreme Court had acted in an irregular and illegal way. As explained by this judge, under Guatemala's new Law on the Judicial Career (*Ley de Carrera Judicial*), the decision as to whether a judge's contract is to be renewed or not should go to a special committee within the Judicial Organism (*Organismo Judicial*) OJ. This procedure apparently did not take place for these dismissals. Indeed, the OJ did not take any steps to create this commission, as it should have done in order to implement the Law on the Judicial Career.

Other expert sources within Guatemala have confirmed the judge's analysis, adding that some judges were dismissed because of their activism within the lawyer's association, others because of their efforts to bring perpetrators of past abuses to justice. These same analysts have also suggested that some judges were assigned to their positions because of their known sympathy to the Supreme Court's policies and that some judges have been threatened with being transferred to courts in remote areas as a reprimand because their decisions or sentences had been contrary to those apparently desired by the Supreme Court.

B) Election of new Constitutional Court magistrates

This year has been marked by the election of 10 new magistrates to the Constitutional Court (*Corte de Constitucionalidad*), the highest judicial organ in Guatemala, charged with interpretation of the Constitution. By law, five organisms are to select them; two of these are highly political, one being the President and the other the Congress. Human rights groups have pressured these organisms to maintain a selection process free of political interests but fear that the politicization of the electoral process can only serve to compromise the independence of the Court which will continue to be influenced by political interests.