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Guatemala Mulls Death Penalty

by LADB Staff

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Oct. 10 is World Day against the Death Penalty. The commemoration is a project of the European Union (EU), which supports anti-death-penalty projects worldwide under the European Initiative for Democracy and Human Rights (EIDHR). The only Central American country for which the day has specific relevance is Guatemala, unique among its neighbors in offering death as a judicial option.

In the hemisphere, it is joined only by the US and Cuba. Guatemala is also somewhat unique in the gracelessness with which it carries out the ultimate sentence. In September 1996, with reporters and other witnesses standing by and live TV cameras rolling, the state attempted the execution of Roberto Giron and Pedro Castillo by firing squad. The marksmen missed one of them, leaving their leader to march up to the victim and pump pistol shots into his slowly slumping body. Millions watched first live, then repeatedly on videotape in succeeding days, the electronic media seemingly unable to stop. The government later announced a change in technique, and lethal injection became the norm. But they still broadcast it on TV. The last episode was June 29, 2000.

It is uncertain how many condemned people await execution in the prisons. The official number is 37, but assistant director of penitentiary affairs Margarita Castillo Chacon could only account to the press for 20. She said her records were not in order. There is no death row in Guatemala; the condemned are simply thrown in with the rest of the prison population in maximum-security conditions that have been called inhuman.

Unknowns ad absurdum

There have been no executions since 2000 because, according to the Corte Suprema de Justicia (CSJ), "It is unknown who can authorize executions." The CSJ does know, however, that many, perhaps most, of the condemned have been convicted of crimes that do not even carry the death penalty. Kidnapping, where the victim was not killed, for instance, is not a capital crime, but local judges, intimidated by an angry, vengeance-seeking citizenry, impose the sentence anyway. Or perhaps the judges do not know the law.

Edgardo Enriquez, a public defender with 10 capital cases on his agenda, estimated that there are "fundamental judicial errors" in more than 75% of capital cases. A report by the ICCPG said 54% of those waiting to die were convicted of a noncapital crime. But whatever the reason for their condemnation, said CSJ magistrate Napoleon Gutierrez, "In these moments it is unknown who has the power to authorize the executions, because

[former President] Alfonso Portillo (1996-2000) renounced this power and the current president is in the same line." The president was also the only official with the power to issue a reprieve, but now, by the same renunciation, he cannot do that either, putting the Guatemalan law in violation of the OAS Pacto de San Jose, to which Guatemala is a signatory.

The pact stipulates that a person cannot be executed without evaluation of the possibility of reprieve. The Inter-American Court of Human Rights (IACHR) has decreed specifically that Guatemala must eliminate the penalty for kidnapping where no death occurs.

Catches 22

The CSJ is studying several options for a way out of its legal dilemma. One is to constitute a commission to evaluate reprieve petitions, following which the court would sign execution orders, taking the president out of the loop. The constitutionality of that would then presumably have to be ruled upon by the Corte de Constitucionalidad. Another solution has been offered by the Comision Presidencial de Derechos Humanos (COPREDEH). That solution is for the elimination of the penalty by presidential initiative with the final decision left to the Congress, opening the political floodgates.

Said Gerardo Cetina of the Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG), "We know that this decision is political because the inefficiency of capital punishment to reduce the incidence of violence is demonstrated, but it is also true that a large part of society is in favor of it."

A month after Cetina spoke those words, on Sept. 9, legislators proved him correct. Responding to a recommendation from the EU to abolish the death penalty, Otto Perez Molina, an accused extrajudicial executioner (see NotiCen, 2004-09-30) and now leader of the right-wing Partido Patriota (PP), told the press, "For the current situation of violence in the country, it is not the opportune moment to abolish capital punishment."

Joining Perez in these sentiments was President Oscar Berger's party, the Gran Alianza Nacional (GAN), the Frente Republicano Guatemalteco (FRG), led by another accused murderer, Efraim Rios Montt (see NotiCen, 2002-06-27), the Unidad Nacional de la Esperanza (UNE), and the Partido Unionista. The only deputy to speak in favor of abolition was Congress president Rolando Morales, who voiced his feelings weakly, as a question, "Is it necessary to apply the death penalty, typical sanction of authoritarian countries?" Morales, a UNE deputy, is also a physician with a history of humanitarian advocacy. The occasion for this straw vote was a two-day seminar organized by the EU.

The negative response to abolition drew from Swedish legislator Hadars Cars, a participant, the comment, "The day that Guatemala makes the decision to disassociate itself from this reduced club of countries that apply this punishment will be welcome not only in the EU but in all democratic

nations." Politically wounded by the outcome of the seminar, COPREDEH Director Frank LaRue said he had presented the president an abolition proposal, but Berger had not yet considered it.

Vice President Eduardo Stein, however, who claimed to be personally against the death penalty, put what might have been an end to the matter, saying that "there are other more severe problems in the country, and to debate the abolition of capital punishment is not contemplated in the coming year." Nor would there be sanctions because of the outcome of the discussions. Bea Ten Tusscher, Netherlands ambassador to Guatemala, said there would be no pressure from the EU and financial aid to the country would be neither curtailed nor diminished.

Looking elsewhere for help

The seminar's outcome left what little hope abolition advocates had to institutions outside the country, and on the same day the seminar ended, the IACHR in San Jose issued a temporary injunction against the execution of four condemned Guatemalans. It was a mixed blessing because the court chose that ruling over a more stringent 'preventive-measures' judgment because Guatemala had ignored the preventive ruling three times in the past. But with Guatemala stuck on the horns of its authorization dilemma, the four prisoners would probably not have been executed soon anyway. They have been awaiting death since 1999.

With no clear chance at eliminating the penalty, advocates have turned to improving the conditions of the condemned. They are not segregated from the general prison population, but they are subject to greater deprivations. The ICCPG report said they receive no medical care, are limited to weekly family visits of only 45 minutes, are subject to more frequent abuse from guards than are other prisoners, and do not participate in work or recreational activities. Assistant director Castillo Chacon acknowledged the abuses, attributing them to a lack of funds to segregate the condemned and to the social stigma within the prison against the kinds of crimes these prisoners have committed. The prison system, housing 8,500 people, is 35%-40% over capacity.

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