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International Fact-finding Mission

The Death Penalty in Guatemala:
On the road towards abolition

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The opinions expressed in this document are those of the FIDH only and cannot be attributed to the European Union.

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INTRODUCTION: FIDH MISSION ON THE DEATH PENALTY IN GUATEMALA

A. Mission objectives

As part of organized efforts for the universal abolition of the death penalty, the FIDH is carrying out international fact-finding missions in countries where the death penalty is still enforced.

These international missions have four objectives:

1. To condemn a form of punishment that has been abolished in 85 countries for all crimes and in 11 for ordinary crimes only; 24 countries have *de facto* abolished—meaning that although legislation allowing for the death penalty is still in effect, there have not been any executions in the last ten years;

2. To verify that the trials of those persons that have been condemn to death or have been executed filled the minimum standards of due process established, in particular, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;

3. To clarify and expose, when necessary, the living conditions of prisoners on "death row", from the time they are sentenced to the time of their execution. Living conditions for prisoners on death row can frequently be qualified as cruel, inhuman and degrading treatment and are in violation of international human rights law; and

4. To formulate recommendations to relevant authorities and parties in corresponding countries, with an aim to establish dialogue and support, whenever possible, the efforts carried out to abolish the death penalty, or at least to work towards a moratorium on executions.

The current report presents the results of the mission on the death penalty in Guatemala carried out in Guatemala City from the 5th-14th July 2004, by three representatives of the FIDH: Marcela Talamas, an attorney based in Mexico, Catherine Delanoë-Daoud and Emmanuel Daoud, both attorneys based in Paris.

B. Interviews

The delegation interviewed over 40 persons, among them elected members of the National Assembly, magistrates, lawyers, representatives of the prison system, members of civil society, advocates for abolition, and 16 persons condemned to death.

We would like to point out that the level of cooperation provided by the authorities in Guatemala was on the whole satisfactory. The delegation was able to obtain authorization to enter and to photograph two high security penitentiaries, gesture that the FIDH definitely welcomed.

Everyone who FIDH representatives spoke to stated that they were personally in favor of abolishing capital punishment (claiming, in many cases, to be Christians). However, they point out that it is not an easy position to defend given public opinion and the context of endemic violence in which the country is submerged.

FIDH delegation would like to express their profound gratitude to all of the people and the organizations concerned for their time and kind attention. The FIDH delegation would also like to thank the authorities of Guatemala, for their cooperation in the successful carrying out of the mission.

The delegation would also like to express their gratitude to members of the Human Rights Commission of Guatemala (Comisión de los Derechos Humanos de Guatemala - CDHG) and to members of the Center for Legal Action for Human Rights (Centro de Acción Legal para los Derechos Humanos - CALDH), both of which are members of the FIDH, for their warm welcome and invaluable collaboration.

Section I contains a brief description of the historical context, public opinion and the position taken by public authorities with respect to the death penalty. Section II is an explanation of the legal framework in Guatemala and the international legal framework. Section III describes serious violations of due process. Lastly, in section IV we describe detention conditions for prisoners condemned to death.

I. THE APPLICATION OF THE DEATH PENALTY IN GUATEMALA

A. Historical context

From 1983 (the year General Efraín Ríos Montt was deposed) to 1996, Guatemala was considered to be abolitionist *de facto*, because the death penalty was not carried out.

However, on September 13th, 1996, two prisoners who had been condemned to death were executed by firing squad, after all possible forms of recourse were exhausted and after the dismissal by the Supreme Court of Guatemala of the petition made by the Inter-American Commission on Human Rights (IACHR)[1] for precautionary measures and suspension of the execution.

In 1996, the executions by firing squad were broadcast on television on repeated occasions. Criticism from the international community, among other factors, was so strong that the State changed the method of execution to lethal injection.

The same year, Congress passed a law substituting execution by firing squad for lethal injection. The first execution by legal injection took place on February 10th, 1998. And as was the case previously, the sentences were carried out despite the petition for suspension filed by the Inter-American Commission on Human Rights.

Moreover, as before, the execution was broadcast on television. In the face of fierce protests from the international community, the government announced that executions would no longer be aired and that journalists would no longer be able to be present.

Despite the government's announcement, on 29 July 2000, Guatemalan television broadcast—live and subsequently on loop—two executions by lethal injection. One of the convicted prisoners received three consecutive injections; his agony lasted 18 minutes. In addition to the fact that capital punishment is a violation of human rights, the broadcasting of an execution in which the person's death was drawn out in such a poignant manner can only serve to generate profound repulsion to the idea of turning into public spectacle the deprivation of the first and foremost of human rights, the right to life.

Unequivocally, Guatemala continues to be among those countries that still apply the death penalty.

During his visit to Guatemala, on 29 July 2002, Pope John Paul II asked the authorities to abolish the death penalty.

Then President Alfonso Portillo responded to the Pope's request and after having declared his intention to pass a *de facto moratorium* in an interview broadcast on television, he presented before Congress draft legislation aimed at abolishing the death penalty. The proposed legislation was the object of heated debate and was almost immediately dismissed by the Congressional Legislative Commission in August 2002.

During his election campaign, the current President of Guatemala, Oscar Berger (elected on the 28 December 2003 with 54% of the votes) declared that he was in favor of abolishing the death penalty and in the months that followed his investiture as president he repeated his position on many occasions. The President of Congress made a similar declaration before the representatives of the Inter-American Commission on Human Rights, on 22 Mach 2004. After that mission, President Berger, in Rome in March 2005 for the funeral of Pope John Paul II, made a commitment to abolish the death penalty. He pointed out that it had not helped to solve crime problems in Guatemala, given that these are caused by his country's deep-rooted social problems.

Today, social development in Guatemala continues to be in a distressing state. Moreover, rather than making efforts to create channels of communication and joint-action with the relevant social actors, the State appears to be relying on mere repression and on the covering-up of the urgent social problems affecting the country.

Currently, 56% of the population lives in poverty, 82% in rural areas. Additionally, 24.3% of the indigenous population and 6.5% of the mestizo population live in extreme poverty. The indigenous populations are the most affected at a time when the distribution and structure of rights on the land invariably continue to be in the hands of a very small number of people.

This stabbing reality is exacerbated by high levels of violence, exclusion and impunity that seriously hinder all efforts to reinforce democratic structures in the country. The number of violent deaths is still one of the highest in the region, and the incidence of violence against women and women's killings is

1. The organization in charge of overseeing the implementation, by the States that are signatories, of the American Convention on Human Rights (the Pact of san José) adopted on 22 November 1969. Cf. Section II herein.

particularly high. In that context, there are also persistent acts of collective violence, such as lynching, that are either provoked by State authorities directly or by failure to act. We must call particular attention to the permanent state of impunity; the great majority of crimes receive no attention from State. This constitutes a persistent violation of the obligations to uphold justice and provide reparation to victims.

In this context of impunity and erosion of human rights, human rights defenders are increasingly targeted in Guatemala. Agents of justice, associations, religious leaders and trade unionists are also constantly targets of harassment, attacks and threats.

It is difficult to precisely establish the number of persons condemned to death who are detained in Guatemalan prisons; the people we asked provided figures that range from 9 to 61.[2]

B. The positions taken by political and judicial actors and civil society

The current debate prompted by the death penalty illustrates the difficulties the country has to face up to in order to definitively abolish capital punishment.

Public opinion - The influence of the media

According to statements published in the press and in other communication media, the majority of the population in Guatemala is in favor of maintaining the death penalty. In concrete terms, according to a survey conducted by the daily *Prensa Libre*[3] on 25 April 2004, 67.1% of the population advocates for maintaining the death penalty, compared with 29.1% in favor of abolishing it (3.8% had no opinion or did not respond).

The broadcast of executions in 1998 and 2000 is based on the argument that through example capital punishment is a deterrent and therefore contributes to the fight against crime and serves to attenuate the feelings of impunity and insecurity that reign in the country.

Almost everyday, the national press publishes headlines in the front page on a crime. In the 13 July 2004 edition of the daily *Siglo Veintiuno* the editors announced that from that day on it would publish daily figures on violent deaths registered in the Guatemala City regional morgue and that they would specifically report on the type of weapon used by category: fire arms, bladed weapons, and blunt objects.

Generally, articles published in the press do not take into account the presumption of innocence—in the headlines the accused is portrayed as guilty. Whatever possible right of reply may be granted to the persons who have been accused without reason is usually found in very small sections on the last pages, in a clearly marginal part of the newspaper.

Additionally, statistics aside, one could ponder on what type of values does a State have, when in the wake of a recent history marked by violence and the loss of value for human life, it claims to reestablish peace by inflicting death.[4] By doing so, the State shows how little value it confers to human life. Is it not the duty of a democratic State to serve as an example and instill in society respect for the fundamental right to life? The persons interviewed responded to this question in various ways; they are described hereunder.

Political authorities

The Legislative Branch (Congress)

While opinions among the members of Congress with regards to the abolition of the death penalty differ, they all agree that the majority of the population does not want this type of legislation to be passed, given the current rise in crime in Guatemala.

Those members of Congress that are in favor of abolishing the death penalty believe that it should be part of a general reform of the judicial and prison systems in Guatemala. To that end in 2000, the Consultative Commission on the Prison System and the National Commission to Monitor and Support the Strengthening of Justice were created. The latter was created immediately after the peace agreements in 1997

2. The number of persons condemned to death is:
   - 9, according to Judge Luis Alfredo Morales (interview broadcast on television on 28 May 2004),
   - 19, according to Ana Margarita Castillo, Assistant Director of the General of the prison Administration (interviewed on 7 July 2004),
   - 37, according to the Institute for Comparative Studies in Penal Science (interviewed on 12 July 2004),
   - 61, according to the attorneys at the Institute of Penal Public Defense (interviewed on 8 July 2004).
3. On-line daily newspaper posted at www.prensalibre.com. Survey of 1,203 persons conducted on 12-17 April 2004.
4. Cf. arguments put forward in the book *Pena de muerte* [Death Penalty] published by the Myrna Mack Foundation in January 1998, and specifically the article written by Helen Mack, pp. 14-16.

under the name of the National Commission for the Strengthening of Justice (Comisión Nacional para el Fortalecimiento de la Justicia). In 1998 it issued a report entitled *A New Justice for Peace* ("Una Nueva Justica para la Paz"). But given the multiplicity of deficiencies in the judicial system and challenges to be met, it was decided that the commission had to continue its job and was given its current name. The commission is comprised of politicians and civil society. Both commissions are charged with making recommendations and proposals to the government.

Certain political parties are officially against the abolition of the death penalty.

- The Frente Republicano Guatemalteco (FRG, directed by Efraín Ríos Montt, holds 43 seats out of 158 in Congress) has on various occasions stated that it is in favor of capital punishment.

- The chairman of the Partido de Avanzada Nacional (PAN, 17 seats in Congress), Luis Adolfo Tarasena, told the FIDH delegation that his party was officially in favor of capital punishment and added that: (1) if any politician officially expressed that they are in favor of abolishing the death penalty it would mean the end of his political career; (2) capital punishment is only a deterrent when at least 10 persons are executed per year; (3) in Guatemala there is a veritable "culture of war" which explains why there are currently 60,000 gun licenses registered (excluding those in the hands of criminals); (4) all one has to do is visit some of the neighborhoods of Guatemala City to understand that in a context where every family has been affected, either directly or indirectly, by violence, it is only normal that the population favors the death penalty, vigilantism and lynching; (5) the majority of the population believes that those who oppose the death penalty are protecting delinquents to the detriment of "good citizens"; and (6) the current government's priority should be to reinforce the rule of law and improve the judicial system.

Parties such as the Alianza Nueva Nación (ANN, 6 seat in Congress) are in favor of abolishing the death penalty. Their representative, Nineth Montenegro, explained to the FIDH delegation that favoring abolition was a very difficult position to maintain even with left-wing voters, and that it was probably loosing votes for her party.

Despite the fact that President Oscar Berger has declared himself to be personally in favor of abolishing the death penalty, which did not stopped him from being elected, opinions diverge within his party, the Gran Alianza Nacional (GANA, 47 seats in Congress). The same is true of the Unión de la Esperanza Nacional (UNE, 32 seats), a party that has no official position on the subject.

As regards these comments, it is interesting to point out that in many countries where capital punishment is still enforced, one frequently hears public officials put forward the argument that supposedly popular resistance is an unmovable obstacle to the advancement of abolition.

The Judicial Branch

According to Juan Francisco Flores, Magistrate on the Constitutional Court, the death penalty is deplorable, but given the situation of extreme violence and impunity in Guatemala, where "the law" is simply words, the death penalty is one problem among many. He added that "...it is jungle and we can't see the end of the tunnel." Judges and witnesses are frequently threatened; he was sent a funeral wreath in 2003. In this context of violence, the population may see the abolition of the death penalty as a gift to criminals involved in organized crime.

In that regard, it cannot be said that the Constitutional Court has conducted itself in an exemplary manner in its role as the highest court in the land. In early in July 2003, after the Supreme Court of Justice invalidated Ríos Montt's candidacy for the presidency in the election scheduled for 9 November 2003[5], the former candidate organized a show of force. On the 24th and 25th of July, which have been called "black Thursday" and "Friday of mourning", a crowd of 4,000 to 5,000 hooded instigators ... invaded various symbolic institutions: the Constitutional Court, the Supreme Court of Justice, the Supreme Electoral Tribunal, etc. [...] Five days later, the Constitutional Court reversed its decision to invalidate Ríos Montt's candidacy for the presidential election."[6]

Magistrate Flores believes that according to the Constitution, only Congress can pass a *moratorium* or abolish the death penalty.

5. The former dictator, instigator of the March 1982 *coup d'État*, President of the Republic until August 1983, and President of Congress since 14 January 2000; once again became a candidate for the presidency, but was not allowed to continue because article 186 of the Constitution prohibits persons who carry out *coups d'État* to run for the presidency.
6. Excerpts of the article by Stéphanie Marseille, published in *Le Monde Diplomatique* in November 2003.

As relates to petitions for pardon, Mr. Flores considers that article 46 of the Constitution is misleading with regards to primacy of international agreements on national laws, which would explain why its interpretation created controversy. According to him, petitions for pardon, as provided for by the Pact of San José, cannot be cancelled by subsequent decrees. A person condemned to death might consequently petition the President of the Republic for pardon.

Napoleón Gutiérrez, President of the Penal Chamber of the Supreme Court of Justice, considers that the abolition of capital punishment does not fall within the competency of judges, whose role is only to administer the law. When asked about his declarations to the press supporting the death penalty, he indicated that it depended on the context; he then gave the names of six persons condemned to death who he believe had no possibility of being rehabilitated and "deserved to be executed." He did state, however, that Guatemala is a country undergoing modernization and should, just as all of the countries in the world, abolish the death penalty. In the mean time, he believes that with crimes for which the law provides for capital punishment, judges must hand down the sentence and those sentenced must be executed. He goes on to explain that judges are under enormous pressure and that he, like many other judges, has received death threats from organized crime.

Mr. Gutiérrez declared that Guatemalan law does not contain any provision that enable prisoners condemned to death to petition for a pardon (which contravenes the Pact of San José). According to him, all Latin-American constitutions lack clarity as to primacy between international treaties and national law, and on this matter, Guatemalan Constitution prevails over the Pact of San José.

Sergio Morales, Secretary of State in charge of Human Rights in Guatemala, has energetically proclaimed his absolute opposition to the death penalty. He emphasized that public opinion in Guatemala was against abolishing the death penalty because of the insecurity and the climate of violence that reign throughout the entire country and especially in cities.

Yolanda Pérez, Second Judge of Execution of Sentences at the Supreme Court of Justice and standing President of the College of Lawyers, indicated to the FIDH delegation that she, personally, was against the application of the death penalty. However, she went on to explain that the execution judge has no right to discretion when dealing with an order to administer capital punishment. In other words, in these cases, the judge of Execution of Sentences has to organize the practical aspects of the execution, but cannot object to it. The execution judge can, however, inspect detention centers located in his jurisdiction and write reports assessing conditions for inmates and prison staff. In the cases where the rights of inmates are violated, the judge of Execution of Sentences can request the prison administration to take punitive action against guards, officers, or detention center administrators. Mrs. Pérez informed the FIDH delegation that the justice system and the penal administration lacked the financial resources and material means needed to guarantee inmates detention and rehabilitation conditions that comply with international standards.

Rubén Anibal Delgado Paz, Second Judge of Sentencing for the City of Mixco, told the FIDH delegation that it is not his role to have a personal opinion on the death penalty, that he must simply apply the law. He did add, however, that judges are under enormous pressure, particularly from the press, because they publish pictures of the "perpetrators" before the investigation is started. Widely disseminated by the press, the idea that the police "catch" criminals but the courts free almost all of them, strengthens public opinion against the efforts of abolitionists in Guatemala.

The Executive Branch

The President's Executive Policy Coordination Office on Human Rights (Coordinadora Presidencial de la Política del Ejecutivo en materia de derechos humanos - COPREDEH) is an entity that reports to the President's Office. It represents the Guatemalan State before the Inter-American Commission on Human Rights and drafts legislation on human rights. The FIDH delegation interviewed four members of the COPREDEH, including the Director, Franck La Rue. The COPREDEH has prepared and submitted three draft decrees to the government:

- The first bill, that Congress is to vote on, abolishes the death penalty and provides for the commutation of death sentences to maximum prison terms;

- The second bill, that Congress is to vote on, abolishes the death penalty, provides for the commutation of death sentences to maximum prison terms, and maintains the prisoner's right to have the sentenced reviewed; and

- A third project of governmental agreement that requires the approval of the Ministry of Foreign Affairs, provides for the ratification of the Protocol to the American Convention on

Human Rights to Abolish the Death Penalty (the Asunción Convention, Paraguay, 8 June 1990) and a *moratorium* on death sentences that have already been handed down.

All three projects have been submitted to President Berger's General Secretariat and were favorably received during the first months of the President's mandate. The President now has to decide which project he will submit to Congress. The COPREDEH actively supports the first project for straightforward abolition, but the majority of members of Congress is against it (all previous bills to abolish the death penalty have been voted down). Consequently, the President has to convince the parties in the governmental alliance (GANA, UNE, and PAN), using as a basis their agreement for a coalition government. Despite the favorable report that the projects received in August 2004 from the President's General Secretariat, at the time of the publication of the current report, the Ministry of Governance had not submitted any of the projects to Congress.

Ana Margarita Castillo, Assistant Director of the Penal Administration, advocates for the abolition of the death penalty and believes that it should be included in a general project to improve the prison system in Guatemala, which would ideally provide for:

- The drafting of new disciplinary rules for the prison administration (specifically aimed at eradicating current corruption in prisons, among prisoners and between prisoners and guards);

- The creation of a training institute to give greater value to the professions that are part of the prison administration (the school would issue diplomas and directors would be hired on the basis of competitive examinations, etc.). In fact, currently 70% out of 18 detention centers are run by former prison guards (without specialized training) and any new positions, changes in personnel and sanctions are made at the discretion of the director of the prison administration;

- The salaries of guards and prison directors need to be increased (in 2004 the average salary for directors was approximately 200 euros per month); and

- Rehabilitation programs for prisoners should be elaborated.

In May 2004 Mrs. Castillo created a network to rehabilitate prisoners and help their integration into society, The Support Network for the Prison System *(Red de apoyo al Sistema Penitenciario)*. The network was the first initiative taken to improve the prison system in Guatemala.

The position held by the legal profession

The FIDH delegation interviewed the person that runs the Center for the Defense of the Constitution (Centro de Defensa de la Constitution - CEDECON), composed of four lawyers specialized in penal law who are members of the Institute of Criminal Public Defense *(Defensa Penal)* and two lawyers, members of the College of Lawyers of Guatemala.

Roberto Molina Barreto, Centro de Defensa de la Constitution (CEDECON), the current State General Prosecutor (Procurador General de la Nación)

The center was created in 1990 to study constitutional standards. The director of the center interprets article 46 of the Constitution of Guatemala and the issue of hierarchy between international agreements and the Constitution in the area of human rights to mean that international agreements prevail over the Constitution in principle. However, in case of contradiction, the Constitution prevails.

Consequently, even if the Pact of San José provides for petitions for pardon, this right does not exist in Guatemala, because it was suppressed by decree. Congressional action would be necessary to change the situation.

Furthermore, according to the director of CEDECON, although one may personally be in favor of abolition, once the death penalty has been pronounced and all avenues of recourse have been exhausted, as a jurist he considers that the sentenced must be applied. Otherwise, the message sent out to criminals, and in particular to drug traffickers, is one of laxity.

Institute of Criminal Public Defense

This legal aid organization was created in 1994 to replace the *"Bufete Popular"* (People's Law Offices) that had law students providing legal aid to prisoners. Since 1998 it is a body independent from the judicial administration, with its own budget. It is comprised of 140 lawyers, most of them specialized in criminal law. Most persons condemned to death rely on the services provided by the lawyers at Defensa Pública.

The FIDH delegation interviewed four lawyers at Defensa Pública. They are advocates of abolition (the walls of their offices are covered with Amnesty International posters filled with abolitionist slogans) and they believe that the government should be pressured to establish a procedure to petition for indulgence as provided for in the Pact of San José.

The Guatemalan College of Lawyers (Colegio de Abogados)

The College of Lawyers represents approximately 8,000 lawyers, 6,500 of whom are still practicing law.

The person who spoke to the FIDH delegation spoke on behalf of the president and the general secretariat of the college. She told the delegation that she was convinced that the death penalty is neither a deterrent nor does it lower the crime rate, and should be abolished. Notwithstanding, the FIDH delegation was told that opinions within the organization are mixed, and that a significant number of attorneys are in favor of the death penalty.

The College of Lawyers has participated in the Commission to Strengthen Justice that prepared draft legislation to reform the prison system, which is currently being examined by Congress.

The seven officers of the College of Lawyers could be a driving force for proposals; for example, the officers of the college took a clear stance, on behalf of all lawyers, against the eligibility of Ríos Montt.

C. Civil society

Abolitionist Movements and NGOs

The FIDH delegation interviewed the representatives of local NGOs, all of which are very active in human rights and the abolition of the death penalty. They are as follows:

a. The Myrna Mack Foundation;

b. The Institute for Comparative Studies in the Penal Sciences (Instituto de Estudios Comparados en Sciencies Penales de Guatemala - ICCPG);

c. The Legal Action Center for Human Rights (Centro de Acción Legal para Derechos Humanos - CALDH); and

d. The Human Rights Commission of Guatemala (Comisión de Derechos Humanos de Guatemala - CDHG).

These NGOs and the local section of Amnesty International have submitted reports to the UN Human Rights Committee and to the Inter-American Commission on Human Rights. They have also participated in the organization of forums and meetings aimed at educating the public, namely, the Ibero-America Forum held in Guatemala on 2 August 2002, during which human rights activists from Latin America declared that they were in favor of the abolition of the death penalty.

The Myrna Mack Foundation and the ICCPG have each published comprehensive books on the death penalty in Guatemala.

Various members of NGOs told the FIDH delegation that certain segments of the press (linked to business and paramilitary groups) manipulate public opinion and promote feelings of impunity and injustice. They believe that certain movements have a real interest in fomenting a tense atmosphere that would justify the return to a “iron hand” policy.

The position of the families of victims and of victims’ associations

The members of the population that are most staunchly against the abolition of the death penalty are, of course, the families of the victims of the crimes committed by the persons who have been condemned to death.

Beverly Richardson, the mother of Beverly Sandoval who was raped and murdered in 1996, says that she feels “disappointed and betrayed” by initiatives to abolish the death penalty. She stated that “I do not think it is right to abolish the death penalty after all the suffering we have gone through.”

The FIDH delegation spoke to the representatives of two victim defense associations, Anguished Mothers (Madres Angustiadas) and Women’s Sector (Sector de Mujeres). Neither of these associations has taken an official stance on abolition given the huge divergence of opinion among members.

Madres Angustiadas is very active in providing training and educating the population at large, schoolchildren, the police, etc. They regularly organize debates and daylong training sessions, mostly in schools, in collaboration with the Ministry of Education. The association is also part of the recently established prison system network launched by Mrs. Castillo (see above interview with Ana Margarita Castillo).

The representative of Sector de Mujeres, a coalition composed of 50 women’s organizations spread throughout the entire country, told the FIDH delegation if there were an abolitionist movement, the association would be willing to participate in the debate. Sector de Mujeres works with the Myrna Mack Foundation to organize training sessions, mostly on the ratification of the Rome Statute on the International Criminal Court.

The position of the Catholic Church

According to the spokesperson for the Archbishopric of Guatemala City, abolishing the death penalty is not enough, the entire penal system needs to be reformed. Currently the system is only punitive; it does not provide, in practical terms, any rehabilitation program. Essentially, prisons continue to be the best school for crime.

Every year, on the anniversary of the death of Archbishop Gerardi who was killed on 26 April 1998, the Catholic Church reiterated its position in favor of abolition. More recently, on the 15th of April 2005, the Episcopal Conference of Guatemala reiterated its commitment to support the abolition of the death penalty in Guatemala, by making a public statement to that effect.

II. THE NATIONAL FRAMEWORK FOR THE DEATH PENALTY DOES NOT COMPLY WITH INTERNATIONAL COMMITMENTS

A. The basic legal texts on the death penalty in Guatemala

Article 18 of the Constitution of Guatemala reads as follows:

"The Death Penalty. The death penalty cannot be applied in the following cases:

a) when the case is based on assumptions;
b) to women;
c) to persons over age 60;
d) to persons convicted of political crimes and ordinary crimes committed in connection with political crimes; and
e) convicts whose extradition was conditioned on the non-application of the death penalty.

When the sentence is the death penalty, all relevant legal recourse is admissible, including reversal; the latter will always be available. The death penalty will only be carried out once all avenues of recourse have been exhausted.

The Congress of the Republic has the power to abolish the death penalty."

Consequently, article 43 of the Penal Code (PC) reflects what is established by the Constitution, but also extends the scope of restrictions to political crimes and specifies that the death penalty "is exceptional and can only be used is cases specifically provided for by law and will not be administered until all legal recourses have been exhausted." The article also establishes that in cases where the death penalty is commuted to imprisonment, the maximum prison term will be applied.

The crimes for which the death penalty applies under Guatemalan law[7] are:[8]

Parricide (article 131 PC)

In cases where the circumstances of the act, the manner in which it was committed or the determining motives demonstrate that the perpetrator is highly and particularly dangerous.

Homicide (article 132 PC)

In cases where the circumstances of the act, the occasion, the manner in which it was committed or the determining motives demonstrate that the perpetrator is highly and particularly dangerous.

Extra-Judicial Execution (article 132 PC)

In any of the following cases:

a) When the victim is under 12 years of age or over 60 years of age.

b) In cases where the circumstances of the act, the occasion, the manner in which it was committed or the determining motives demonstrate that the perpetrator is highly dangerous.

Rape (article 175 PC)

When the victim is under age 10.

Kidnapping (article 201 PC)

Perpetrators providing material means or orchestrating a kidnapping are subject to the death penalty. In cases were the death penalty cannot be pronounced a prison term of 25 to 50 years will be applied, in which case no mitigating circumstance will be considered.

Torture (article 201 bis PC)

The use of the death penalty for this crime is provided for by article 201, "The perpetrator or perpetrators of torture shall be tried in the same manner as for kidnapping."

Forced Disappearance (article 201 ter PC)

In cases where at the time of the crime or during the crime, the victim is seriously or very seriously injured, or suffers psychological trauma, or permanent psychological damage, or dies.

7. For an analysis of the constitutionality of these crimes, See Alejandro Rodríguez. La pena de death en Guatemala, un estudio político criminal, criminológico y dogmático. Instituto de Estudios Comparados en Ciencias Penales. Guatemala, 2002. Pages 115-148.
8. According to figures put out by the Instituto de Estudios Comparados en Ciencias Penales, of the 37 persons have been condemned to death, 23 have been condemned for kidnapping (in 11 cases the victim did not die), 10 for homicide and 4 for kidnapping-homicide. Kristin Svendsen and Gustavo Cetina, *El corredor de la muerte*, Instituto de Estudios Comparados en Ciencias Penales. Guatemala, 2004. Pages 189-190.

The killing of the President of the Republic or of the Vice-president (article 383 PC)

When the circumstances of the act, the means utilized to carry out the act or the determining motives demonstrate that the perpetrator is highly and particularly dangerous.

Crimes that qualify because of their consequences, (article 52 of the Law on drug-related activities, *Ley contra la narco-actividad - LCN*)

Depending on the circumstances of the act, when the crimes described in the LCN, result in the death of one or more persons.

Military Code

The military code provides for capital punishment for certain types of crime.

B. Aspects of the legal framework for the death penalty contrary to Guatemala's international commitments

Particularly noteworthy is the fact that article 46 of the Guatemalan Constitution stipulates that "It is established that in general principle, in the area of human rights, the treaties and conventions approved and ratified by Guatemala have primacy over national law."

The American Convention on Human Rights[9] and the International Covenant on Civil and Political Rights[10] were ratified before the current Guatemalan Constitution came into force, which means that the legislature by acknowledging the above mentioned primacy, did so with full knowledge and with the intention of integrating international human rights instruments that would supercede the Guatemalan legal system.

The FIDH believes that various aspects of the Guatemalan legal system are in serious contradiction with the following texts: article 6 of the International Covenant on Civil and Political Rights (ICCPR); article 4 of the American Convention on Human Rights; and the UN Safeguards to Guarantee the Protection of the Rights of those facing the Death Penalty.[11]

These articles stipulate the following obligations.

Article 6 of the International Covenant on Civil and Political Rights (ICCPR):

"1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court. [...]

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."

Article 4 of the American Convention on Human Rights Pact of San Jose (Costa Rica) on the Right to Life:

"1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply."

This provision uses the terms in article 6 of the ICCPR, and specifies that the death penalty cannot be applied to crimes for which it was not provided for at the time the convention was ratified.

Two bodies were created to oversee the workings of the Convention: the Inter-American Commission on Human Rights; and a jurisdictional entity, the Inter-American Court of Human Rights, whose headquarters are in San José, Costa Rica.

9. Ratified by Guatemala on 25 May 1978, recognizes the competency of the Court on 9 March 1987.
10. Ratified by Guatemala on 6 May 1992.
11. Approved by the Economic and Social Council in Resolution 1984/50, 25 May 1984.

1. The application of the death penalty in Guatemala is not restricted to the most serious crimes

In countries such as Guatemala, where the death penalty existed at the time of the ratification of the ICCPR or of the Pact of San José, it was established that the death penalty could only be used for the most serious of crimes, by which was understood premeditated crimes with lethal or extremely serious consequences. According to the UN Committee on Human Rights *"... the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure."*[12] While the ICCPR and the Pact of San José do not specifically prohibit the death penalty[13], they do prohibit its application when there is no premeditation and when the consequences are neither lethal nor extremely serious.

As a signatory of the ICCPR, Guatemala is required to provide reports in response to the concerns of the Human Rights Committee describing the measures established to make national legislation compliant with obligations under the Covenant. In 1996, when the UN Human Rights Committee examined Guatemala's compliance with the International Covenant on Civil and Political Rights it expressed great concern,

"E. Suggestions and recommendations [...]

36. The Committee urges the Guatemalan Government to restrict the application of the death penalty to those crimes which might be considered most serious, in accordance with article 6, paragraph 2, of the Covenant. [...]"

The UN Human Rights Committee considers the use of the death penalty in cases such as kidnapping to be incompatible with the ICCPR.[14] Notwithstanding, Guatemala maintains the death penalty as possible punishment for cases of kidnapping without loss of life, cases of rape when the victim is under age 10, as well as for crimes related to drug trafficking. The UN Human Rights Committee also established[15] that the words "most serious crimes" were meant to prohibit mandatory capital punishment for crimes where the victim did not die.

As regards the death penalty being referred to as an exceptional measure in international treaties, article 43 of the Penal Code states that its application should be exceptional. Unfortunately, this is not reflected in the practice of the judicial system, which continues to readily sentence prisoners to the death penalty. Nor is it reflected in the conduct followed by the legislature, which maintains the death penalty as mandatory in cases of kidnapping where the victim dies and extended its application to other crimes and determined circumstances, as is explained further on.

Consequently, we believe that the Guatemalan penal system does neither comply with the criteria that derive from the words "application to the most serious crimes" nor with the principle of proportionality in the application of the death penalty.

2. The extension of the application of the death penalty to crimes for which it was not provided for at the time of ratification is prohibited

The application of the death penalty cannot be extended to crimes for which it did not apply at the time of the ratification of the Pact of San José (article 4.2 of the American Convention on Human Rights). Guatemala has acted contrary to this obligation. Since the ratification and entry into force of the Pact of San José, the National Congress has issued decrees that have extended the death sentence to the crimes of kidnapping without loss of the victim's life (Decree 38-94, 14-95 y 81-96)[16], forced disappearance (Decree 33-96), and extrajudicial execution (Decree 48-95)[17].

Currently, out of the 37 persons condemned to death, 11 were found guilty of kidnapping without loss of the victim's life.

The broadening of the application of the death penalty to include cases of kidnapping without the death of the victim has been examined by the Constitutional Court, who argued that,

*"... this Court concludes that **as the death penalty has been established for kidnapping in the current Penal Code, its***

12. UN Human Rights Committee, General Comments No. 6, paragraph 7, 16 Session, 1982.
13. Although this is done in subsequent instruments such as the Protocol to the American Convention on Human Rights Against the Death Penalty and the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at abolishing the death penalty.
14. UN Human Rights Committee, final observations in a report on Guatemala, paragraph 17, A/56/40, 2001.
15. UN Human Rights Committee, case of Lubuto vs Zambia, paragraph 7.2 (refers to a person condemned to death for armed robbery).
16. Figures taken from Kristin Svendsen y Gustavo Cetina, *El corredor de la muerte, op. cit.,* pages 189 and 190.
17. This is not the first time that Guatemala, violating its international human rights obligations, extends the scope of the death penalty. During the military dictatorship of Ríos Montt, the death penalty was provided for new crimes, including political crimes committed in connection with ordinary crimes; the Inter-American Court on Human Rights expressed the consultative opinion No. 3-83 establishing that Guatemala was not allowed to extend the scope of the death penalty to crimes for which it was not provided for when it ratified the IACHR.

imposition does not contravene article 4, paragraph 2 of the Convention, *not only because kidnapping is a serious crime, but because in order for the death penalty to be applied, strict observance of due process is required and all relevant recourse has to exhausted before the penalty can be deemed enforceable ... extending the penalty–in this case the death penalty–on the basis of the level of accountability of the person who perpetrated the crime, is not prohibited by article 4, para. 2 of the Convention, as* ***the crime (sic) remains the same; the application of said penalty has not been extended to other crimes for which the death penalty did not apply at the time said Convention came into force, as would be the same for crimes*** *such as homicide, rape, and fraud, for which, despite their seriousness, said penalty was not (and is not) provided for. Consequently, as the application of the death penalty has not been extended to crimes beyond kidnapping by the reforms that have been mentioned, this Court considers that the application of article 201 of the Penal Code by the courts that have been challenged by the plaintiff, does not violate article 46 of the Constitution or article 4, numeral 2 of the convention even in the case of kidnapping that does not result in the death of the victim..."*[18] (emphasis added).

Although article 4 of the Pact of San José establishes that *"The application of such punishment shall not be extended to crimes to which it does not presently apply",* it cannot be interpreted[19] in an isolated, literal and textual manner, the clearly abolitionist spirit of the Pact of San José has to be taken into account.[20] Therefore, the fact that the death penalty was provided for in the case of kidnapping prior to the ratification of the Pact of San José does not mean that the Guatemalan State is allowed to extend the application of the death penalty to additional circumstances; this is true even if the type of crime remains the same (kidnapping without death). Moreover, it should be taken into consideration that according to article 2 of the Pact of San José, Guatemala has committed to adopting legislative measures, and any other type of measure, necessary to put into effect the rights and liberties recognized by the Pact.

Two of the bases of the arguments put forward by the Constitutional Court are noteworthy. On the one hand, homicide is listed as an example of a crime for which the extension of the application of the death penalty could be considered to be in violation of the Pact of San José, and the reasoning should be the same as for kidnapping. Article 132 of the PC established, prior to the ratification of the Pact of San José, the death penalty for homicide in cases where the circumstances, opportunity, execution, and motives relevant to the crime are such that they indicate that the perpetrator is highly and particularly dangerous. In other words, the death penalty is applied in cases of "qualified" homicide. In the second example provided by the Constitutional Court, if the death penalty were applied to "ordinary" homicide it would constitute a violation of the Pact of San José; this in spite of the fact that the death penalty would not be extended to a new crime, but rather to new circumstances for an existing crime.

On the other hand, the Constitutional Court implicitly acknowledges that the death penalty cannot be applied in cases of extra-judicial execution and forced disappearance, because these types of crimes are completely new and established after the ratification of the Pact of San José.

Also noteworthy is that previous to the decision of the Constitutional Court, judges in sentencing tribunals and courts of appeal had presented arguments sustaining that the death penalty could not be applied to cases for kidnapping without the death of the victim, thus acknowledging the primacy of the Pact of San José. However, given the aforementioned decision[21] of the Constitutional Court, the judges are obliged to follow legal doctrine, otherwise they would be guilty of misconduct.

The Inter-American Commission on Human Rights has reported cases in contradiction with the Convention. Some of these cases have been brought before the Inter-American Court of Human Rights. The Inter-American Commission on Human Rights (IACHR), the Institute for Criminal Public Defense (Instituto de la Defensa Pública Penal), the Center for Justice and International Law (Centro por la Justicia y el

18. Constitutionality Court. Gazette No. 60, file No. 872-00, page No. 362, and sentence 28-06-01.
19. "... while there is a fundamental right to life, there is no right to capital punishment. The death penalty is an exception to the right to life and as such has to be interpreted restrictively." Report of the Special Rapporteur on Extra-Judicial, Summary and Arbitrary Executions, Barce Waly Ndiaye, 24 December 1996.
20. The same occurs with the Guatemalan Constitution; the spirit of abolition is conveyed in article 18, which gives Congress the right to abolish the death penalty. This was recognized by the Constitutionality Court in the advisory opinion relative to the validity of the death penalty (file No. 323-93, 22 September 1993), "our Constitution follows a restrictive and abolitionist orientation as regards the death penalty, [...] article 18 allows for the possibility to abolish it from the statutes, giving Congress the power to do so without the decision requiring constitutional reform, as it does not require compliance with the rigorous procedures needed to partially reform other constitutional norms."
21. According to article 43 of the Law on shelter, *habeas corpus* and constitutionality (Ley de Amparo, exhibición personal, constitucionalidad), "the interpretation of constitutional norms and other laws contained in the sentences handed down by the Constitutionality Court, become legal doctrine that

Derecho Internacional), and the Institute of Comparative Studies in Penal Sciences in Guatemala filed a petition on behalf of the victim, against the State of Guatemala, with the Inter-American Court of Human Rights for having condemned Ronald Ernesto Raxcacó to the death penalty, on 18 September 2004 and again on 7 December 2004. The Inter-American Commission on Human Rights claimed that the State of Guatemala had violated Ronald Raxcaco's human rights. On 30 August 2004, the Inter-American Court of Human Rights ruled in favor of Ronald Raxcacó, Hugo Humberto Ruiz Fuentes, Bernardino Rodriguez, and Pablo Arturo Ruiz, all of whom had been condemned to death in application of the aforementioned extended circumstances of a crime.[22] The Court required the Guatemalan State to immediately adopt provisional measures necessary to protect the lives of the persons condemned to death, the aim being to allow for their cases to be heard by the Inter-American system.[23] One significant event is that the Inter-American Court of Human Rights conceded to ask for provisional measures, without previously requiring precautionary measures. The reason being that in the past, on three occasions, despite precautionary measures to protect prisoners who were condemned to death, the Guatemalan State de Guatemala executed the prisoners.

The UN Human Rights Committee, once they had examined the report on Guatemala and the extension of the death penalty,[24] made the following observations,[25]

" D. Principal Subjects of Concerns [...] 15. The Committee is concerned at the extension of the death penalty in a way which might not be in conformity with the requirements of article 6, paragraph 2, of the Covenant. . [...]"

The Inter-American Commission on Human Rights recommended that Guatemala,

"84.1. Considers the possibility to lodge a request for a consultative opinion before the Inter-American Court of Human Rights in order to reconcile the diverging interpretations of the national courts regarding the compatibility of the extension of the scope of the death penalty to kidnapping without death of the victim with the Constitution and the American Convention."

More recently, on 23 March 2004, the Inter-American Commission on Human Rights, when it presented its report to the current President of Guatemala Oscar Berger, entitled *"Justice and Social Integration",* emphasized the need to abolish the death penalty in order to reinforce democracy in Guatemala. The Commission proposed legislative measures that would put an end to the application of the death penalty.

Alejandro Rodríguez has pointed out another reason why the extension of the death penalty is unconstitutional and void *ipso iure:*[26] according to him, the Congress has no legal power to punish crimes with the death penalty, because article 18 of the Constitution only confers Congress the power to abolish it, as public authorities only have the right to do what the law allows them to (article 5 of the Constitution). Consequently, the legislative branch is abusing its powers.

To conclude, the application of the death penalty for kidnapping without loss of the victim's life,[27] extra judicial execution and forced disappearance is in contradiction with Guatemala's international obligations and with article 46 of the Constitution.

The Inter-American Court of Human Rights also judges that the extension of the scope of application of the death penalty by Decree 14-95, adopted in March 1995, to anyone found guilty of kidnapping and anyone who is an accomplice or guilty of concealment constitutes a violation of the Pact of San José.

the courts must comply with once the Court has handed down three decisions." The interpretation that the extension of the death penalty in the case of kidnapping without loss of the victim's life does not violate the Pact of San José, has already been established in three cases (Raxcaco, Pablo Ruíz Almengor and Bernardino Rodríguez Lara).

22. See Press Release issued by the Center for Justice and International Law, San José, 6 September 2004.

23. The case of Edgar Mike Pineda Morales, for kidnapping without loss of the victim's life, is also before the Inter-American Commission on Human Rights.

24. Initial Report on Guatemala CCPR/C/81/Add.7 and HRI/CORE/Add.47.

25. Human Rights Committee, Observations, CCPR/C/Add.63, 3 April 1996.

26. Alejandro Rodríguez, cited, pages 20-27.

27. Another criticism made of this extension is that it encourages the killing of the kidnapping victim, the aim being to eliminate all witnesses.

III. SERIOUS VIOLATIONS OF DUE PROCESS

The analysis of the death penalty in Guatemala provided by Alejandro Rodríguez[28] of the Institute of Comparative Studies in Penal Sciences, the study done by Edgardo Enriquez[29] Defense Attorney with the Institute of Penal Defense along with the access the FIDH delegation had to national and international resources lead FIDH to conclude that there are violations of the right to due process[30] of prisoners condemned to death. Usually, the violation consists of: no grounds for the sentences; convictions based on presumption; the degree of threat posed by the prisoner is inferred; the prisoner is credited with acts not listed among the accusations; errors in qualifying the crime; torture; the right to be heard and to stand trial in one's own language; and violations of the right to appeal and to demonstrate one's innocence. Some of these points are discussed hereunder.

Given the severe and irreversible nature of the death penalty, the observance of due process ensures that its appli-cation is not arbitrary.[31] Compliance with due process includes the following:

- The sentence is imposed pursuant a final judgment,
- Handed down by a competent court, by which is understood independent, having jurisdiction, objective, and impartial,[32]
- Subsequent to a process that provides all possible guarantees for an investigation and a trial that are fair and at least comparable to those described article 14 of ICCPR and in article 8 of the Pact of San José.
- Guilt must be based on clear and convincing evidence; there can be no other explanation than the facts.

The Inter-American Court of Human Rights has established that,
"As death is an irreversible act, the State is required to have the strictest and most rigorous respect for judicial guarantees, so as to avoid the violation of said guarantees which would in turn lead to the arbitrary deprivation of life."[33]

A. Torture

On 5 January 1990, Guatemala ratified the UN Convention Against Torture.

Article 1 of the convention defines torture as *"[...]any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."*

According to article 2, *"Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."* Torture cannot be used under any circumstances to obtain a confession from the accused.

In Guatemala there are known cases of torture being inflicted by agents of the State on persons sentenced to the death penalty. Some of the cases are listed below.

Tirso Román Valenzuela Ávila was tortured when he was arrested and when he was captured after escaping from the Escuintla High Security Detention Center. He was beaten, his testicles were burned with cigarettes, his wrists were pierced with an iron rod, etc. His case is currently before the Inter-American Commission on Human Rights.

During the investigation of his case, Tomas Cerrate Hernández was tortured; he was kicked to the extent that the blows burst

28. Alejandro Rodríguez, cited.
29. Edgardo Enrique Enrriquez Cabrera. *Ilegalidad de las condenas a pena de muerte por el delito de asesinato a ciudadanos maya-hablantes* [Illegal Death Penalty Convictions of Mayan-Speaking Citizens for Homicide]. Speech made for a seminar entitled, "Ten Years After the Penal Procedure Code Went into Effect."
30. "MINAGUA has closely monitored death penalty cases as its falls within its official terms of reference for verification, and has expressed concerns about the violation of guarantees relative to trials and procedures in at least 26 of these 30 cases, the remaining four were still under study." The report of the Inter-American Commission on Human Rights dated 2001 on the human rights situation in Guatemala, paragraph 59.
31. MINAGUA reported that there were confirmed irregularities in the hearings held which led to the executions of Amilcar Cetín Pérez (rape and homicide) and Tomás Cerate Hernández (kidnapping and homicide), by lethal injections on 29 June 2000 (President Portillo had rejected the petition for commutation).
32. Report of the Special Rapporteur on Extra-Judicial Executions, 1995.
33. The Inter-Americana Court of Human Rights, Advisory Opinion 6/99, paragraph 136.

one of his testicles. The confession that was obtained under these circumstances was admitted by the court, despite the fact that the court ordered an investigation on the torture.

There is also the case of Hugo Humberto Ruiz Fuentes who had to have surgery for extremely serious internal lesions, which included intestinal perforation, that were the result of torture.

Ronald Ernesto Raxcaco was also tortured when he was arrested.

Obtaining incriminating testimony through the use of torture is a flagrant violation of human rights that casts doubts on the validity of the judicial process, especially in a death penalty case where the consequences are irreversible.

B. Assessing Criminal Dangerousness

The threat posed by the accused has to be taken into consideration in the application of the death penalty for the following crimes: patricide, homicide, extra-judicial execution, and the killing of the President or Vice-president of the Republic.

Usually, the sentencing tribunal does not prove the degree of threat in accordance with the rules of sound judgment.[34] It commonly imposes the death penalty on the grounds that the accused is a threat to society rather than on the basis of criminal dangerousness, which refers to the probability that the accused will perpetrate new crimes). Moreover, it does not base proof of said dangerousness on the evidence presented and debated during the trial.

Consequently, *"...the dangerousness is not a subjective evaluation, but rather a specific objective condition which is used to determine the probability that the subject may commit more crimes. The criminal dangerousness is a scientific judgment, and not a subjective evaluation made by a judge or a tribunal."*

C. No Procedures for Seeking Pardon, Remission of Sentence or Commutation

The lack of provision for pardon, amnesty or commutation is one of the most recurrent violations of the rights of convicts condemned to death in Guatemala. In principle, there is no legal basis upon which one could seek pardon.

Decree No. 159 dated 1982 stipulated that the Executive branch had the power to do so. However, subsequently, Decree No. 32-2000 dated 1985, argues that with the aim to, "[...] create legal certitude and avoid ambiguity in the application of the law", and continues that, "[...] as there is no norm that can serve as a basis for the executive branch to commute the death penalty" [the current decree] repeals Decree No. 159. Consequently, the power of the executive branch to grant pardons and thereby commute the death penalty is still not regulated by law.

The FIDH delegation learned that there were six pending cases of petitions for pardons. In the past, pardon was awarded in only one case, that of Rax Cucul[35] in May 2000, in which there were serious suspicions of due process violations. However, in the cases of Manuel Martínez Coronado (executed), Tomás Cerrate Hernández (executed), Amilcar Cetino (executed), and Fermín Ramírez, pardon was denied.

The Inter-American Commission on Human Rights has established that,

"While the repeal of Decree No. 159 has generated confusion with regards to the process of petitioning for clemency, **this should not be interpreted to mean that said recourse simply no longer exists–given that is it is required by applicable international law.**"[36] (emphasis added)

The Inter-American Commission on Human Rights has established that the Guatemalan State has the obligation to provide for the commutation of sentences in the law; this obligation lies in the fact that Guatemala has ratified the ICCPR and the Pact of San José, invariably acquiring the obligation to take whatever type of measure is necessary to enforce the rights provided for in these instruments.

Additionally, article 28 of the Constitution stipulates, "The inhabitants of the Republic of Guatemala have the right to address, individually or collectively, petitions to the authorities, who are obliged to process them and to render a decision in conformity with the law." A term of 30 days was established for the rendering of the decision.

Nothing is said in article 28 of the need for a specific procedure to recognize the right to petition. Therefore, as long as the right exists and does not require a specific process to

34. See articles 186 and 385 of the Penal Procedure Code.
35. The death penalty was commuted to 30 years of imprisonment.
36. Inter-American Commission on Human Rights, 2001 Report on Human Rights in Guatemala, paragraph 63.

make it enforceable, the authorities concerned cannot use the lack of a specific procedure as a justification to restrict the exercise of a right, since the omission is clearly their own doing.

D. Executions Cannot Be Carried Out If There Are Other Procedures or Recourse Pending

This restriction applies to any type of procedure or recourse, national and international,[37] seeking pardon or commutation of a sentence or of an appeal.

As relates to the above, the Inter-American Commission on Human Rights has determined that,

"75. In accordance with article 18 of the Constitution and articles 4, 8 y 25 of the American Convention, the death penalty can only be applied when all other applicable recourse has been exhausted. This includes recourse to national and international bodies. Consequently, petition for the adoption of precautionary measures guaranteeing the final conclusion of procedures before this Commission must be observed."

Consequently, the executions of a Roberto Girón and Pedro Castillo by the Guatemalan State in September 1996, despite the fact that the Inter-American Commission on Human Rights had requested precautionary measures, constitute flagrant violations of international human rights commitments. Furthermore, in 1998, Manuel Martínez Coronado was executed, despite the fact that the Commission had requested precautionary measures in his favor.

On the basis of this precedent, the Inter-American Commission on Human Rights petitioned the Inter-American Court of Human Rights for provisional measures to be taken in the cases of Ronald Raxcacó, Hugo Humberto Ruíz Fuentes, Bernardino Rodríguez, and Pablo Arturo Ruíz, all of whom had been condemned to death for kidnapping without loss of victim's life.

E. The Right to an Interpreter

Given the social and linguistic context in Guatemala, it is important to make reference to the cases of Mayan-speaking citizens who in many cases are denied the right to an interpreter.[39] This constitutes a violation of due process, and leaves them with a lack of proper defense, which in turn makes the conviction invalid. This situation takes on greater relevancy when the person is on trial for the death penalty and the tribunals must have even stricter regard for judicial guarantees.

Rights are denied in the following ways,

"By not translating minutes or resolutions in his native tongue and not informing him of his right to an interpreter when testifying before the court, even when it has been evident that his native tongue is not Spanish but one of the native languages; the fact that an translator was not assigned to him during the trial and the he had no opportunity to communicate with the tribunal, or to cross examine testimony presented in a language other than his own."[40]

Of relevant importance here is that article 14.3 of the ICCPR specifically stipulates that,

During the trial, the person accused of a crime has the right, in full equality,

"To be informed promptly and in detail **in a language which he understands** of the nature and cause of the charge against him." (emphasis added)

According to the Institute for Comparative Studies in Penal Science, 20% of the 37 persons who have been convicted to capital punishment are indigenous people and 13.3% speak Spanish and the native language of the indigenous people.

Everything that has been discussed so far must be placed in the current Guatemalan context. For further explanation of the problems generally encountered in the administration of justice in Guatemala the reader can refer to the FIDH report

37 .The UN Human Rights Commission has urged States not to execute any person as long as any related legal procedure, at the international or at the national level, is pending. Human Rights Commission, Resolution 2001/68, 25 April 2001 (E/CN.4/RES/201/68).
38. The argument was that national legislation did not provided for any measures to apply the suspension that derived from the petition made by the Inter-American Commission of Human Rights.
39. A right recognized in article 8, section 2, paragraph "a" of the Pact of San José, article 14, section 3, paragraph "f" and articles 90,142 and 143 of the Penal Procedure Code.
40. Edgardo Enrique Enrriquez Cabrera. *Ilegalidad de las condenas a pena de muerte por el delito de asesinato a ciudadanos maya-hablantes.* Cf. page 3.

entitled *¡Violación flagrante al derecho a la justicia!* [Flagrant Violation of the Right to Justice][41]

F. The Death Penalty was Wrongly Applied in the Case of Pedro Rax Cucul

The international instruments ratified by Guatemala prohibit the application of the death penalty for political crimes and ordinary crimes linked to political crimes, and in cases of: persons under 18 years of age; persons over age 70; pregnant women; women who have recently given birth, and persons who are not in full possession of all of their mental capacities.

The legal system in Guatemala complies with these principles. Article 18 of the Constitution and article 43 of the Penal Code clearly stipulate that it is impossible to carry out capital punishment in cases where: the person is over 60; the person is convicted of political crimes; the person is convicted of ordinary crimes in connection with political crimes;[42] and the person has been extradited on the condition that capital punishment not be applied. As for persons suffering from mental illness or minors, nothing prohibits the application of the death penalty for these two categories because according to article 23 of the Penal Code they cannot be charged with a crime and are not, therefore, subject to any penal sanction of any kind.

However, there are cases where none of these restrictions have been applied. The Inter-American Commission on Human Rights accepted a petition to determine whether Pedro Rax Cucul, condemned to death for homicide,[43] was mentally ill. The court that convicted him did not take this into consideration.

41. Report of the FIDH entitled *¡Violación flagrante al derecho a la Justicia!*, published on the 6th of August, 2004, available at: http://www.fidh.org/article.php3?id_article=1709

42. In 1978, with the ratification of the American Convention of Human Rights (The Pact of San José), Guatemala formulated reservations concerning article 4.4 as article 54 of the constitution dated 1965, which was in force at the time stipulated that, "The death penalty shall be exceptional in nature. It cannot be imposed on the basis of presumptions, it cannot be imposed on women or minors, on elderly of more than 70 years old, for political crimes or crimes for which extradition has been allowed on the condition that the death penalty would not be applied." The death penalty was consequently possible for ordinary crimes connected to political crimes. Guatemala withdrew the reservation in Government Agreement No. 281-86, dated 20 May 1986, given that the new constitution, adopted the same year and which is still in force, prohibits the death penalty under the circumstances stipulated in the reservation.

43. In May 2000, President Portillo commuted the death sentence because of the existence of serious concerns with respect to violations of due process.

IV. LIVING CONDITIONS OF PERSONS CONDEMNED TO DEATH

One of the things that most called the attention of the FIDH delegation was the fact that the number of prisoners condemned to death varied from one interview to another, to such an extent that it made it impossible to determine the exact number. The current report contains the names and information on 32 persons condemned to the death penalty.[44]

Persons condemned to death and waiting execution are currently detained at the High Security Detention Center in Escuintla, the Preventive Detention Center for Zone 18 and the Preventive Detention Center in Zacapa. Sixteen persons condemned to death were interview during the course of the FIDH mission.[45]

The section that follows is partly based on information taken from the above mentioned interviews, additional interviews, and documents furnished by the Human Rights Commission of Guatemala, the Center for Human Rights Legal Action, the Institute for Comparative Studies in Penal Sciences, Defensa Pública, and the General Administration of Penal System.

A. Access Given to the Delegation to Detention Centers Housing Prisoners Condemned to Death

1. Sector 11 of the Zone 18 Preventive Detention Center
General conditions in the center and access provided to the FIDH delegation

The building that houses prisoners condemned to death, as well those already convicted, is separate from the rest of the center. At the entrance there is a desk meant for a guard, it was empty at the time the delegation obtained access. On the right there are small rooms set aside for visits and on the left there is a corridor (in which there is a public phone that accepts cards) where the prisoners' cells are located. Inside the cells there are small patios (with mesh ceilings instead of roofs that enable the sun and air to come through) equipped with sinks.

The cells were designed for two, three or four prisoners. The delegation had access to two of the cells, one of them was occupied, the other was not. In certain cases (the majority) the interviews were carried out through small windows located in the doors to the cells, but in some cases FIDH was able to speak to the prisoners directly.

The delegation obtained unrestricted access (no time limits, no supervision, no areas off limits, etc.) to the sector and was able to interview all of the prisoners it identified as being those condemned to death.

2. The Maximum Security Prison in Escuintla
General conditions in the center and access provided to the FIDH delegation

The prison is located outside of the city in a rather hot and humid area. The delegation did not have access to prison cells and spoke to prisoners in an office provided by the prison director. All five prisoners interviewed had been chosen by the prison administration. The prison administration turned down the delegation's specific request to interview prisoners involved in irregular proceedings reported by the lawyers at Public Defense *(Defensa Pública)* and the Institute for Comparative Studies in Penal Sciences. The delegation was told that there are three sectors, one of which is separate from the rest, the all three appear to have been designed differently.

The mayor informed the delegation that there were 11 prisoners condemned to death out of a total of 109. The delegation was able to speak to five prisoners, four of whom were condemned to death and one had had his death sentence commuted.

The interviews took place in a separate room, there were no guards present. However, the room was equipped with tinted glass, one could be watched without being aware of it. Moreover, guards were standing facing the outside window. There were no time restrictions. Prisoners remained handcuffed. While the delegation was unable to visit the cells, it was able to visit the surroundings of the center.

The delegation learned that two convicts were kept in isolation. This raised concerns because they are kept in cages (we learned of this from previous interviews with public servants). The population does not want them and they run the risk of being assassinated. They have been in cages for approximately a year. These prisoners were not condemned to the death, and

44. See in annex the list of the 32 persons condemned to death (July 2005).
45. It is important to point out that authorization to visit the detention centers was readily provided and we were allowed to bring in cameras and tape recorders.

according to the information received, they had been convicted of homicide and kidnapping.

During the FIDH visit to both centers, as well as during the interviews with civil servants and members of civil society, the delegation focused the interviews on obtaining information relevant to the trials and detention condition of persons condemned to death.

B. Detention Conditions[46]

1. The absence of clear norms

Article 19 of the Guatemalan Constitution set down the bases for the prison system in Guatemala,

> "The prison system shall be oriented to the social rehabilitation and reformation of detainees and shall, as regards their treatment, comply with the following minimum norms:
>
> 1/ They shall be treated as human beings: they shall not be discriminated against for any reason whatsoever; nor shall they receive cruel treatment, physical, moral or psychological torture, or be the victims of coercion, molestation, work that is incompatible with their physical state [of health], acts that demean their dignity, nor shall they be victims of exaction or submitted to scientific experiments;
>
> 2/ They shall serve their sentences in places set aside for that effect. Prisons are civilian institution staffed by authorized personnel; and
>
> 3/ They have the right to communicate, when they request to do so, with their family members, defense attorney, religious counsel, and doctor; and with relevant the diplomatic or consular representative of their country.
>
> The infraction of any of the norms stipulated in this article give detainees the right to petition the State for remedy for the damage inflicted and to request immediate protection from the Supreme Court of Justice.
>
> The State shall create and promote the conditions necessary for strict compliance with what is provided for in this article."

Article 10, paragraph 1 of the ICCPR establishes that, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

As relates to the aim of penal system, the same article stipulates that: "The prison system shall provide treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."

Also, article 5.6 of the American Convention on Human Rights states, "Punishments consisting of deprivation of liberty shall have as an essential aim the reformation and rehabilitation of the prisoners."

Conditions of detention have been the object of various standards established by the UN, among them:

I. Standard Minimum Rules for the Treatment of Prisoners;[47]
II. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;[48] and the
III. Basic Principles for the Treatment of Prisoners.[49]

As for the existence of clear norms (based on the international standards listed above), the Guatemalan State is in complete non-fulfillment, given that not only does it not have any adequate public policies for prisons, it also has no laws on the matter. The secondary legal system is limited to the Ley de Redención de Penas (The Law on the Remission of Sentences).

This creates legal insecurity for the prisoners and the administrators of penitentiaries with respect to their rights, obligations, capacities, and procedures and gives way to arbitrariness and corruption and completely deprives prisoners of the right to a defense. This results in an extremely serious situation where

46. See note 9. All of the figures that appear in this chapter are taken from the information obtained on detention conditions for prisoners condemned to death from research carried out by Kristin Svendsen and Gustavo Cetina and the Institute for Comparative Studies in the Penal Sciences. The results cited further on are taken from interviews and questionnaires filled out by 30 prisoners condemned to death detained in Sectors 1, 2 and 11 of the Preventive Detention Center for Zone 18, the Maximum Security Detention Center in Escuincla, and the Preventive Detention Center in Zacapa.
47. Adopted by the First UN Congress on the Prevention of Crime and Treatment of Offenders held in Geneva in 1955 and approved by the UN Economic and Social Council in resolutions 663C (XXIV), 31 July 1957 and 2076 (LXII), 13 May 1977.
48. Adopted by the UN General Assembly in resolution 43/173, 9 December 1988.
49. Adopted and proclaimed by the UN General Assembly in resolution 45/111, 14 December 1990.

the supervision of civil servants working in penitentiaries is left to their own discretion, without any legal or judicial controls. Deficiencies and power struggles, generated to a great extent by the lack of laws and public policies that would enable the adequate administration of penitentiaries, has led to the creation of the type of organization that breeds insecurity within detention centers.

2. The Administration of Prisons

The delegation learned of a system of organization within the Maximum Security Detention Center in Escuintla whereby each sector has its own representative or spokesperson.[50] The person is chosen by the other prisoners on the basis of criteria such as his capacity to speak with the authorities, his charisma, temperament, or the fact that he belongs to a particular group.

The function of the representative-spokesperson is to serve as an interlocutor with the authorities at the center,[51] as well as maintain security and order within the group. They provide internal standards of conduct;[52] the delegation was informed that meetings on moral principles had been created. When the rules are broken, the sanctions applied run from a reprimand to beatings, and there are acts that they consider call for death. Negotiation is allowed, if someone has been assigned a chore he does not want to perform, he can pay to not do it.

Some of the persons interviewed believe that this type of organization is "a necessary evil" because in one way or another the chores have to be defined and assigned and for practical reasons the group, collectively, cannot negotiate with the administration of the detention center.

The delegation considers this system to be in contradiction with paragraph 28(1) of the Standard Minimum Rules for the Treatment of Prisoners, "No prisoner shall be employed, in the service of the institution, in any disciplinary capacity." Its is also in contradiction with paragraph 30 (1) "No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence." And, 30 (2) "No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case."

The delegation recalls the Inter-American Commission on Human Rights 2001 report on Guatemala recommended that the Guatemalan State,

"(Chap VIII, 70.10) Adopt an internal discipline policy which does not permit some inmates to persecute others in the name of 'order,' and which ensures equality of treatment among inmates; and ensure that there is a system in place for inmates to complain about problems and abuses within the facilities and for such complaints to be met with effective investigation and disciplinary action."

There are 18 detention centers, most of which are run by people who have been trained as prison guards. There are only three prison directors with university degrees. Salaries at all levels are rather low; this promotes corruption within prisons and erodes staff involvement and commitment.

The Inter-American Commission on Human Rights, in its 2001 report on Guatemala pointed out the turnover rate for authorities responsible for the administration of the prison system,

(Chap. VIII , 16) "[...] None of the high officials who assumed their positions in 1998, including an assistant director, and directors of security and finances, lasted out the year. The director of the system resigned in 1999 before a replacement for the assistant director had been found."

The first recommendation made by the Inter-American Commission on Human Rights in their 2001 report on Guatemala, addressed this issue,

(Chap. VIII, 70.1) "Establish specialized recruitment, screening and training programs for all personnel assigned to detention facilities, with special attention to those who work in direct contact with inmates."

The issues relative to discipline and control also have to encompass prison directors. A law should be passed to set down duties, guiding rules, and the consequences of failure to comply with the rules. The absence of a law to this effect results in the complete lack of any administrative procedure that could be taken against prison staff. It is common knowledge that if a report is made against a prison guard the practice is to transfer the guard to another center. At the most,

50. There are also religious leaderships who seem to benefit the people who belong to the group.
51. These can be in written form or presented personally, the subject of the communication can be issues directly related to the detainees and can even be a request for a fan or light bulbs, for example.
52. For example, radios cannot be turned on until 10:00 a.m. and at 11:00 p.m. every must be quiet, they distribute food and assign cleaning chores.

the Oficina Nacional de Servicio Civil [National Civil Service Office] takes the report to the Ministry of Governance to dismiss the guard.

3. Medical Services

Although the Preventive Detention Center for Zone 18 and the Maximum Security Prison in Escuintla[53] have dispensaries on the premises,[54] interviews carried out by the FIDH delegation at those centers provided information on deficiencies in the prison health system: difficulties accessing medications, bureaucratic procedures are required to transfer patients who require medical attention, same medication is used for all types of illness, medical visits are infrequent,[55] etc. Inadequate medical care creates a situation whereby many of the illnesses that the detainees suffer from continue to progress and can lead to irreversible damage to their health.[56]

The delegation was not provided with information that would confirm that prisoners condemned to death are systematically seen by a psychologist or a psychiatrist for palliative treatment for the anguish caused by the situation. As could be expected, many of the detainees suffer from illnesses related to the tension and stress that are associated with their specific situation.

Once an inmate is admitted into the center, he has to undergo a medical examination. Of the 30 prisoners condemned to death that were interviewed, 26 pointed out that they did not undergo a medical examination when they first arrived, thus making it impossible to establish their medical needs. The Inter-American Commission on Human Rights 2001 report recommends that the Guatemalan State:

(Chap. VIII 70.1 and 70.2) "Establish specialized recruitment, screening and training programs for all personnel assigned to detention facilities, with special attention to those who work in direct contact with inmates.

2. Improve reception procedures to ensure that every person received in a detention facility is (1) assessed by a competent official to identify those who may be ill, injured, at risk of harming themselves, or otherwise require special attention, to ensure that such persons receive the supervision and treatment required; and (2) screened by medical personnel for infectious diseases to ensure isolation from the general prison population where necessary and access to proper medical treatment."

4. Visits

Detainees have the right to have visitors and send and receive correspondence[57] from family members and friends. Virtually all of the condemned prisoners exposed the deficiencies in the visits system. In many cases, the fact that the center was so far coupled with their families' economic situation made traveling difficult. Furthermore, the time allowed for visits is extremely short; it includes the time needed to go through the administrative procedures required to gain access to the center. This creates much frustration among visitors and seriously damages the prisoners' relationships with their family members and their friends.

At the Maximum Security Detention Center in Escuintla, visiting hours are on Tuesday and Saturday, and all prisoners take turns. Conjugal visits can take place once a week and last 30 minutes.

5. Nutrition, working conditions, respect of the right to religious beliefs, cultural and educational activities

One of the deficiencies of the prison system is clearly the lack of adequate nutrition for detainees. While prisoners are fed three times a day, the meals do not have the required nutritional value, the quantities are insufficient, on occasion meals have made people sick, and the food is very often undercooked.

Eighteen out of thirty prisoners condemned to death believe that the way the food is inadequate and they pointed out that the center does not provide them with potable drinking water. Nineteen of the 30 respondents also said that they do not have access to potable water.

53. The delegation was informed of an ophthalmology day organized at the Maximum Security Detention Center in Escuintla.
54. Nineteen out of the thirty persons condemned to death who were interviewed believe that the clinics are understaffed and 20 out of 30 pointed out that the clinics do not provide dental care.
55. Of the 30 persons interviewed, only one said that he saw the doctor once a week, while 10 claimed that they never saw a doctor.
56. Some of the detainees among them Hugo Humberto Ruiz Fuentes, Tirso Valenzuela, and Ronald Ernesto Raxcaco, bear the physical signs of torture and suffer from organ dysfunction as a result of torture for which they require specialized medical care that is not available through the prison system –prisoners are regularly denied authorization to go for appointments in private hospitals, this is the case of Tirso Valenzuela.
57. When asked, "Can you send or receive letters and telegrams?", 12 prisoners answered that they could, 16 said they could not and two said that they did not know. Twenty-two out of thirty respondents said that they were not told of deaths in the family. When asked, "Do you have access to newspapers and magazines?", 14 said yes and 14 said no, two of the prisoners did not answer.

According to the information the delegation had access to, there are "permits"[58] available so prisoners can perform work,[59] but there is no corresponding infrastructure in place. They are not provided with the materials needed to carry out the jobs. In cases where family or friends can provide the materials, they usually have problems getting them in. Also, there is no program to sell the goods they produce.

In addition to these conditions, what little work is done inside prisons centers would not cover the needs of the inmate, let alone the needs of his family. Some of the prisoners condemned to death are under the obligation to pay child support, but the conditions required are non existent.

The delegation did observe that in the centers that were visited there was a lot of religious work being done. Much of it was fomented by prisoners who in certain cases are religious ministers. The delegation learned of catechism classes, retreats and visits from fellow faith members who brought with them clothing, food and medicines.

The delegation also learned that authorization had been given to celebrate Father's Day and Mother's Day inside the Maximum Security Detention Center in Escuintla, and that religious ministers were also allowed into the center.

Some of the prisoners do study. However, the delegation learned that in many cases prison management makes it difficult for those who can teach to give lessons to their fellow inmates.

Of course, there are small initiatives within prisons to organize cultural activities and recreation, but from what the delegation was able to learn none of these activities are in way part of programs established by the prison system administration. Most of the activities are the result of initiatives taken by the prisoners and the good will of prison authorities who allow them to be carried out.

Fifty-three (53) percent of the prisoners condemned to death who were interviewed exercise, however, 19 out of 26 (four did not respond) pointed out that the center does not have the facilities, the equipment, or materials needed to practice a sport.

6. Inhumane, cruel and degrading treatment

According to international standards, under no circumstances can persons subject to the penal process such as convicts, be submitted to any form of torture or cruel, inhumane, or degrading treatment or punishment. This is established in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture.[60]

The life and physical integrity of detainees are unalienable rights; the State has to ensure that these rights are respected by prison authorities and by prisoners. The high number of suicides and unexplained deaths in prisons and detention centers in recent years generates great concern, as do the frequent threats, attacks, acts of intimidation, and persecution among prisoners that are the result of allowing security committees to make decisions concerning internal discipline. Another source of great concern, as mentioned above, is the use of torture against prisoners to obtain a confession.[61]

The consequences of the death penalty are not limited to the moment of execution. The term "death row phenomenon" gives an indication of detention conditions for persons awaiting execution. International human rights bodies have established parameters to determine under what circumstances prison conditions constitute torture or cruel, inhumane and degrading treatment:

- The duration and conditions of the trial;
- The uncertainty and time spent waiting for execution;
- The prisoner's own personal circumstances;
- The conditions of detention before the execution;
- The form of execution; and
- The punishment must be proportionate to the crime.

The Institute for Comparative Studies in the Penal Sciences base their observations of the cruel and inhumane treatment that prisoners condemned to death are subject to in Guatemala on the parameters listed above, on in-depth theoretical analysis and on research in the field. The study is mostly based on the following two arguments:

58. Ninety-three percent (93%) of prisoners condemned to death who took part in the survey carried out by the Institute for Comparative Studies in the Penal Sciences perform some type of job; 67% of them perform the jobs in their cells.
59. The jobs performed are making mesh and objects made of foam, etc.
60. Ratified by Guatemala on 29 January 1987.
61. See above.

1/ The duration of the trial and the time spent awaiting execution. In Guatemala, the average the time spent in prison awaiting execution was five years. This information was obtained in August 2004, but there have been few changes with respect to persons condemned to death, and the average, at the time this report was written, was approximately seven years, although there are prisoners who have been on death row for more than nine years.

Moreover, the average waiting time can be extended because there is no procedure for seeking pardon or commutation of the sentence. Thusly, the State is violating the right so seek effective remedy and is indefinitely prolonging the period of uncertainty and thereby increasing the suffering of persons condemned to death. Under no circumstances should this observation be taken as an appeal to reduce the time needed to carry out all avenues of recourse available to the prisoner. The observations are meant to denounce the ungrounded prolongation of time that creates more anguish for the prisoner because of the uncertainty of his situation.

2/ Detention conditions while awaiting execution. Prisoners condemned to death are housed in high and maximum security prisons. This implies that they are submitted to rules that force them to remain locked in their cells or sectors almost 24 hours a day. These conditions aggravate their emotional anguish and psychological suffering. Prisoners have problems due to lack of: space (overcrowding); adequate lighting and ventilation; hygiene; health; nutrition; recreation; work; education; contact with the outside (including visits); exercise; medical attention and medical care; dental care; and psychological and psychiatric care. These conditions are intrinsic risks to their health that aggravate their suffering and therefore constitute cruel, inhumane and degrading treatment.

7. The form of executions must cause as little suffering as possible

In 1996 (after a *de facto moratorium*) two prisoners convicted of raping a minor[62] were executed by firing squad; one of them required a coup de grace. The execution was broadcast live on television and retransmitted later. It was also broadcast on foreign television, which brought on national and international criticism.

Consequently, the method was replaced with lethal injection. There have been three executions by lethal injection.[63] During the first one, it took 18 minutes for the person to die because the equipment failed to function properly. Moreover, the person bled profusely from the arms because those in charge had difficulties finding a vein.

Executions in Guatemala clearly demonstrate that all methods are painful. Some may be less unpleasant for the persons carrying out the execution and for those watching, but they do not guarantee less suffering for the person executed, his/her family, or for the other prisoners condemned to death who hear of the execution or may even watch it on television.

The decree providing for the death penalty stipulates that execution must be private, even though it does allow for the presence of members of the written and broadcast media. Live broadcast, recordings of any kind for later transmission as well as photographs from the moment the prisoner enters the execution area or during the execution itself are prohibited.

This was raised in a case before the Constitutional Court[64] on the grounds that it violated article 35 of the Constitution, which guarantees freedom of thought for all types of broadcast media, without censure or previous authorization. Furthermore it was argued that it went against article 5 of the Ley de Emisión del Pensamiento (law on the transmission of thought), which because of constitutional rank bears more weight than the decree. This law provides unrestricted freedom of information and gives journalists access to all sources of information.

The decision handed down by the Constitutional Court was that the decree was unconstitutional, but not the part that established that executions must be private, but rather the part that prohibits the transmission, recording, or photographing of the prisoner as he enters the execution area and while he is there.

The Constitutional Court considered that establishing privacy for executions is not unconstitutional and based their arguments on article 14.1 of the ICCPR,

> "Thus, the argument of the plaintiff that the administration of the death penalty is the conclusion of a public process, thus

62. Messrs. Giron and Castillo, who were denied a proper defense–they were represented by university students.
63. In 1998 Manuel de Jesús Martínez Coronado (convicted of the homicide, with a firearm, of a family of five) was executed, despite the fact that there was petition for precautionary measures before the Inter-American Commission. In 2002, Tomás Cerraté Hernández and Amilar Cetino Pérez were executed (for kidnapping with death of the victim) although their guilt was not irrefutably proven.
64. The Constitutional Court files No. 248-98, 19 January 1999.

making it a source of information must be balanced with the fact that the information may be freely transmitted as news, but under no circumstances as a public performance."

The Court does establish that prohibiting the transmission, recording, or photographing of the execution is "clearly unconstitutional" given the primacy of the Ley de Emisión del Pensamiento; the Court further states that:

"... the provision in article 35 of the Constitution cannot prevail over the fundamental rights of individual privacy and national public order provided for in other laws of equal weight. A natural person has an unalienable and imprescriptible right to dignity; a **condition that he does not lose even when condemned to capital punishment**..." (emphasis added).

The Court later argues:

"... photographic or videographic publicity of a profoundly private event such as the death of an individual **can be afflictive to the family**. As the worth of a human being is a fundamental value, and although the right to die with dignity is not specifically mentioned in the Constitution, this [right] corresponds to the category of implicit rights referred to in article 44 of the Constitution; it should therefore, **even though the words indicated in this paragraph must be stricken from the law called into question** *(relative to the prohibition of the broadcast, recording or photographing of the execution)*—which is being done for reasons of form—the rights of the person condemned must be protected, and the sentence must be carried out in strict respect of his right to privacy, of which the sentence has not deprived him; doing otherwise would contradict the rights enshrined in the Constitution and in domestic legislation." (emphasis added).

What is difficult to understand is how, given the arguments put forward by the Constitutional Court, it is still possible to broadcast, record and photograph executions.

The questions we need to ask are: How is privacy ensured during the execution, as established by the Constitutional Court, if the media are present and can transmit what goes on in the execution room? How is this preventing the family from the suffering referred to by the Constitutional Court? How are the dignity and privacy of the prisoners being preserved? What measures are being taken to guarantee that the execution does not become a public performance when it is broadcast? What are these "reasons of form" that serve as the grounds to strike from the decree the prohibition to broadcast, record or photographing of the execution?

While we do consider freedom of information to be an indispensable right, the exercise of this right does have limits. The decision of the Constitutional Court, on the basis of the arguments it put forward, should have been to allow the presence of journalists so that they can report the information, but not to allow the broadcast, recording and photographing of the event in the execution room; this would have respected a necessary balance between freedom of information, on the one hand, and the dignity and privacy of the prisoner, on the other.

We should point out that the UN Human Rights Committee has on many occasions stated that the public execution of a person condemned to death is incompatible with human dignity, and is therefore in violation of the ICCPR.[65]

65. Final Observations on reports on Nigeria, A/51/40, paragraph 282, 1996 and A/48/40, paragraph 265, 1993.

CONCLUSIONS ET RECOMMENDATIONS

CONCLUSIONS

Guatemala currently applies the death penalty.

Statements made to the press and other communication media, such as those made by the politicians and magistrates interviewed by the FIDH delegation, indicate that the population is opposed to the abolition of the death penalty. Although opinions on the matter diverge within political circles, all politicians claim that it is impossible to support abolition before voters. However, several members of NGOs informed the FIDH delegation that a certain type of press (linked to business and paramilitary groups) manipulate public opinion and help to foment public sentiment against the abolition. According to the members of these NGOs, certain movements would like to promote a climate of tension that would justify a return to more hard-line policies. The current debate generated by the death penalty illustrates the difficulties the country faces to obtain the definitive abolition of capital punishment.

The difficulty the FIDH delegation had in determining the exact number of persons condemned to death detained in Guatemalan prisons is significantly noteworthy. The persons the FIDH spoke to provided discrepant figures, ranging from 9 to 61 prisoners.

Article 46 of the Guatemalan Constitution "Establishes the general principle that as relates to human rights, the treaties and conventions adopted and ratified by Guatemala have primacy over national law." The American Convention on Human Rights and the International Covenant on Civil and Political Rights were ratified before the current Guatemalan Constitution came into force, which confirms that when congress decided the aforementioned primacy, they did so having full knowledge of these international human rights instruments and intended to incorporate them and have them prevail over the Guatemalan legal system. While the American Convention on Human Rights does not prohibit as such the death penalty, it does prohibit its application for crimes that are not premeditated or have no fatal or extremely serious consequences. Despite this Guatemala maintains the death penalty as possible punishment for kidnapping without loss of the victim's life and for the rape of minors under age ten. Consequently, we consider that the Guatemalan legal system does not comply with the criteria that ensue from "application to the most serious crimes" and the criteria of proportionality in relation to the death penalty.

Furthermore, by extending the application of the death penalty to the crimes of kidnapping without loss of life to the victim, forced disappearance and extra judicial executions, Guatemala has failed to comply with the prohibition to impose the death penalty to crimes for which it was not provided for at the time of the ratification of the American Convention on Human Rights. The same is true of the Anti-Drug legislation.

The FIDH delegation also observed violations of due process in the case of prisoners condemned to death; for example, there are known cases of torture carried out by agents of the State and there is no legal provision that allows the Executive branch to grant a pardon and, subsequently, to commute a death sentence. The Guatemalan State has executed various individuals despite the fact that the Inter-American Commission on Human Rights had petitioned for precautionary measures; this constitutes a flagrant and recurrent violation of Guatemala's international human rights commitments.

Finally, the FIDH delegation calls attention to serious deficiencies. The Guatemalan State, in addition to not having adequate public policies for prisons, also has no laws regulating prisons and conditions of detention, in spite of the fact that various UN instruments are devoted to that question. The secondary legal system is limited to the Ley de Redención de Penas (the Law on the Remission of Sentences). Human resources in the prison system are also insufficient and salaries at all levels are fairly low, a situation which foments corruption within the prisons and erodes the interest and involvement of the staff. Detainees live in conditions that raise great concern. Medical care is inadequate; consequently many of the prisoners' illnesses worsen, creating irreversible damage to their health. In many cases they do not receive enough food. The delegation received reports of how in many cases the prison director makes it difficult for students to study and stops those who can teach their fellow inmates from doing so. The delegation was able to ascertain the cruel, inhuman and degrading treatment inflicted on persons condemned to death in Guatemala. The high rates of unexplained homicides, suicides and unexplained deaths give an indication of the extent of the problem.

RECOMMENDATIONS

Despite the apparent hostility of the public towards the abolition of the death penalty, the position of the President of the Republic and of many of the persons interviewed, leads the FIDH delegation to believe that the moment has come to promote, in a decisive manner, the abolition of the death penalty from the Guatemalan legal system.

Considering the results of its fact-finding mission to Guatemala, the FIDH has formulated the recommendations expounded hereunder.

I. RECOMENDATIONS TO THE EXECUTIVE AND LEGISLATIVE BRANCHES IN GUATEMALA

Recommendations related to the death penalty

A. The abolition of the death penalty in the law and the commutation of death sentences to prison terms, in compliance with the provisions of articles 18, 171, 174, and 183 of the Constitution of the Republic of Guatemala, article 4 of the American Convention on Human Rights, with article 3 of the Universal Declaration of Human Rights, and article 6 of the International Covenant on Civil and Political Rights.

Abolition of the death penalty would require amendments to articles 43, 131, 132, 132 bis, 175, 201, 201 bis, 201 ter and 283) of the Penal Code, article 52 of the Ley contra la Narcoactividad (Law Against Drug-Related Activities) and the provisions in the Military Code providing for the death penalty.

B. An immediate moratorium. The FIDH calls on the Executive Branch to establish a moratorium on the application of the death penalty, on the basis of article 183 of the Guatemalan Constitution, pending the finalization of the legislative process required for abolition.

C. Constitutional reforms, in compliance with article 278, so that the Guatemalan legal system complies with international standards.

D. Introduce a procedure enabling prisoners to seek pardon in compliance with the Pact of San José, and with the United Nations safeguards Guaranteeing the Protection of the Rights of those facing the death penalty (approved by Economic and Social Council in resolution 1984/50, 25 May 1984). The law should also guarantee that executions cannot be carried out while the petition for pardon is under consideration.

E. Adhere to the Additional Protocol to the American Convention on Human Rights, as well as the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at abolishing the death penalty, in conformity with article 183 paragraph (k) and article 171 paragraph (l) of the Guatemalan Constitution, and with article 46 of the Constitution which recognizes primacy of these international instruments over national law.

F. Implement international obligations taken on by the Guatemalan State as a sovereign State and avoid, at all times, adopting legislation that contravenes these obligations as it did when it extended the application of the death penalty to kidnapping without loss of the victim's life, forced disappearance, and extra judicial execution, which was in contradiction with article 46 of the Constitution.

G. Plan and implement an abolition campaign. We recommend the creation of a campaign to completely abolish the death penalty, in which the Ombudsman (Defensor del Pueblo), NGOs and academics can participate. The campaign would be focused on informing the public and raising awareness on the significance and necessity of abolishing the death penalty.

Recommendations relating to detention conditions and the administration of justice

- Strengthen the judiciary and implement the recommendations of the July 2004 report published by the FIDH, *¡Violación flagrante al derecho a la justicia!*

- Create a prison system where the treatment of detainees is in line with the principles set down by the United Nations and that guarantees reformation and rehabilitation as provided for by the principles established in article 19 of the Constitution. Create a reliable record of the condition of prisoners that could be used as a basis for determining needs within the system and formulating solutions.

- Guarantee remedy for all forms of harm. This requires the creation of a fund that could be used to address all of the needs of the victims of crime.

- Promote legislation that enables the prison system to apply international standards and article 19 of the Constitution.

- Strengthen prison policies by increasing the budget, training prison directors, adopting a law on the prison system which would include alternative punishments.

- Implement appropriate public policies (that should be established, implemented and assessed with the participation of civil society) addressing the structural causes of violence. Avoid fallacious solutions, such as capital punishment, which barters rights and freedoms in exchange for a fake concept of security for citizens.

- Implement the international human rights obligations that the Guatemalan State recognizes and accepts through the exercise of its sovereignty. Among these obligations are those related to the respect and recognition of the right to life, the guarantee of due process and the treatment of prisoners, bearing in mind the primacy of international human rights law that is recognized by Guatemalan legal order (article 46 of the Constitution); and bearing in mind that the rights and guarantees enshrined in the Constitution do not exclude other rights and guarantees not expressly set down in the Constitution even if they are inherent to human beings (article 44 of the Constitution).

II. RECOMENDATIONS TO OTHER PUBLIC AUTHORITIES, CIVIL SOCIETY, AND THE INTERNATIONAL COMMUNITY

A. The Judicial System

Take on the international obligations that the Guatemalan State assumes through the exercise of its sovereignty and avoid, at all times, the application of the death penalty, specifically in cases where the circumstances of crimes for which it was applicable were extended after the American Convention came into force.

B. Legal Aid (Defensa pública penal)

Continue the commendable efforts to defend prisoners condemned to death in the national and international spheres, and pave the road to abolition in Guatemala with legal arguments.

C. Public Defender and Minister in charge of Human Rights

Become involved in and promote abolitionist initiatives and along with the three branches of government, NGOs and academics, carry out an awareness campaign to inform the public on the death penalty and the need to abolish it.

D. Civil society, the Church, law schools, the College of Lawyers, prosecutors, and the legal community at large

- Organize seminars and workshops with law students to examine the causes of crime and better ways to combat it

- Include in learning events (forums, workshops, meeting, etc.) the abolition of the death penalty.

- Promote awareness campaigns for the legal community and abolitionist initiatives through press releases, public declarations as institutions, through the media (magazines, newspapers, public interviews, public debate, etc.).

E. The Media

- Report the news objectively, observing at all time the presumption of innocence.

- Actively participate in awareness campaigns to abolish the death penalty.

F. The International Community

- At all levels of political negotiations with Guatemala, appeal for the abolition of the death penalty. For what regards the European Union and its member states, this would be in line with the EU Guidelines on the death penalty, adopted in 1998.

- Continuously support civil society's activities on the death penalty, and the development of abolitionist initiatives and movements.

ANNEX: LIST OF THE PERSONS CONDEMNED TO DEATH, JULY 2005

OFFENCE	NAMES/NUMBER	DETENTION CENTER
ASSASSINATION	Dimas Samayoa García	Pavón
	Mario Huales	Sector 11 of the Zone 18 Preventive Detention Center
	Vicente Huales	Sector 11 of the Zone 18
	Tirso Román Valenzuela Ávila	Secteur A, Maximum Security Prison, Escuintla
	Miguel Ángel López Calo	Granja de Remodelación Canadá, Escuintla
	Miguel Ángel Revolorio	Granja de Remodelación Canadá, Escuintla
	Juan Pablo Eduardo Ocampo Alcalá	Sector 11 of the Zone 18
	Adolfo Rodas Hernández	Sector 4 of the Zone 18
	Santos Hernández Torres	Secteur B, Maximum Security Prison, Escuintla
	Antonio Israel Jiménez Godinez	Sector 11 of the Zone 18
	Edgar Iván Zeceña	Secteur B, Maximum Security Prison, Escuintla
Total	**11 persons**	
KIDNAPPING or ILLEGAL CONFINEMENT without death of the victim	Marvin Aroldo Ramos Rosales	Preventive Detention Center El Boquerón, Santa Rosa
	Carlos Amilcar González Díaz	Granja de Cantel, Quetzaltenango
	Byron Giovany Ortiz Colindes	Sector 11 of the Zone 18
	Audelio Díaz González	Secteur B, Maximum Security Prison, Escuintla
	Ramiro Geovany Padilla Marroquín	Pavón
	Edward Mike Pineda	Sector 11 of the Zone 18
	Samuel Antonio Coguox Reyes	Preventive Detention Center El Boquerón, Santa Rosa
	Waldemar Hidalgo Marroquín	Granja de Remodelación Canadá, Escuintla
	Humberto Portillo González	Preventive Detention Center El Boquerón, Santa Rosa
	Aroldo Campesano Castillo	Sector 11 of the Zone 18
	Pablo Arturo Ruiz Almengor	Sector 11 of the Zone 18
	Jorge Arturo Mazate	Sector 11 of the Zone 18
	Ronald Ernesto Raxcaco Reyes	Sector 11 of the Zone 18
	Hugo Humberto Ruiz Fuentes	Secteur A, Maximum Security Prison, Escuintla
	Tirso Román Valenzuela Ávila	Secteur A, Maximum Security Prison, Escuintla
	Moisés Santizo Ola	Secteur B, Maximum Security Prison, Escuintla
	Bernardino Rodríguez Lara	Secteur B, Maximum Security Prison, Escuintla
	Jaime Quesada Corzo	Secteur B, Maximum Security Prison, Escuintla
	Raúl Ramos Ramírez	Sector 11 of the Zone 18
Total	**19 persons**	
ILLEGAL CONFINEMENT with death of the victim	Carlos Enríquez Chun Choc	Sector 11 of the Zone 18
	Gustavo Adolfo Carranza Castañeda	Secteur B, Maximum Security Prison, Escuintla
	Douglas Montt Solórzano	Secteur B, Maximum Security Prison, Escuintla
Total	**3 persons**	
TOTAL	**32 PERSONS***	

* Tirso Román Valenzuela Ávila has been condemned to death twice; this is the reason why there are 33 death sentences for only 32 condemned persons.

FIDH represents 141 Human Rights organisations

141 organisations

Albania-Albanian Human Rights Group
Algeria-Ligue algérienne de défense des droits de l'Homme
Algeria-Ligue algérienne des droits de l'Homme
Argentina-Centro de Estudios Legales y Sociales
Argentina-Comite de Accion Juridica
Argentina-Liga Argentina por los Derechos del Hombre
Austria-Österreichische Liga für Menschenrechte
Azerbaijan-Human Rights Center of Azerbaijan
Bahrain-Bahrain Human Rights Society
Bangladesh-Odhikar
Belarus-Human Rights Center Viasna
Belgium-Liga Voor Menschenrechten
Belgium-Ligue des droits de l'Homme
Benin-Ligue pour la défense des droits de l'Homme au Bénin
Bhutan-People's Forum for Human Rights in Bhutan (Nepal)
Bolivia-Asamblea Permanente de los Derechos Humanos de Bolivia
Brazil-Centro de Justica Global
Brazil-Movimento Nacional de Direitos Humanos
Burkina Faso-Mouvement burkinabé des droits de l'Homme & des peuples
Burundi-Ligue burundaise des droits de l'Homme
Cambodia-Cambodian Human Rights and Development Association
Cambodia-Ligue cambodgienne de défense des droits de l'Homme
Cameroon-Maison des droits de l'Homme
Cameroon-Ligue camerounaise des droits de l'Homme (France)
Canada-Ligue des droits et des libertés du Québec
Central African Republic-Ligue centrafricaine des droits de l'Homme
Chad-Association tchadienne pour la promotion et la défense des droits de l'Homme
Chad-Ligue tchadienne des droits de l'Homme
Chile-Comite de Defensa de los Derechos del Pueblo
China-Human Rights in China (USA, HK)
Colombia-Comite Permanente por la Defensa de los Derechos Humanos
Colombia-Corporación Colectivo de Abogados Jose Alvear Restrepo
Colombia-Instituto Latinoamericano de Servicios Legales Alternativos
Congo Brazzaville-Observatoire congolais des droits de l'Homme
Croatia-Civic Committee for Human Rights
Czech Republic-Human Rights League
Cuba-Comisión Cubana de Derechos Humanos y Reconciliación National
Democratic Republic of Congo-Ligue des Électeurs
Democratic Republic of Congo-Association africaine des droits de l'Homme
Democratic Republic of Congo-Groupe Lotus
Djibouti-Ligue djiboutienne des droits humains
Ecuador-Centro de Derechos Economicos y Sociales
Ecuador-Comisión Ecumenica de Derechos Humanos
Ecuador-Fundación Regional de Asesoria en Derechos Humanos
Egypt-Egyptian Organization for Human Rights
Egypt-Human Rights Association for the Assistance of Prisoners
El Salvador-Comisión de Derechos Humanos de El Salvador
Ethiopia-Ethiopan Human Rights Council
European Union-FIDH AE
Finland-Finnish League for Human Rights
France-Ligue des droits de l'Homme et du citoyen
French Polynesia-Ligue polynésienne des droits humains
Georgia-Human Rights Information and Documentation Center
Germany-Internationale Liga für Menschenrechte
Greece-Ligue hellénique des droits de l'Homme
Guatemala-Centro Para la Accion Legal en Derechos Humanos
Guatemala-Comisión de Derechos Humanos de Guatemala
Guinea-Organisation guinéenne pour la défense des droits de l'Homme
Guinea Bissau-Liga Guineense dos Direitos do Homen
Iran-Centre des défenseurs des droits de l'Homme en Iran
Iran (France)-Ligue de défense des droits de l'Homme en Iran
Iraq-Iraqi Network for Human Rights Culture and Development (United Kingdom)
Ireland-Irish Council for Civil Liberties
Israel-Adalah
Israel-Association for Civil Rights in Israel
Israel-B'tselem
Israel-Public Committee Against Torture in Israel
Italy-Liga Italiana Dei Diritti Dell'uomo
Italy-Unione Forense Per la Tutela Dei Diritti Dell'uomo
Ivory Coast-Ligue ivoirienne des droits de l'Homme
Ivory Coast-Mouvement ivoirien des droits de l'Homme
Jordan-Amman Center for Human Rights Studies
Jordanie-Jordan Society for Human Rights
Kenya-Kenya Human Rights Commission
Kosovo-Conseil pour la défense des droits de l'Homme et des libertés
Kyrgyzstan-Kyrgyz Committee for Human Rights
Laos-Mouvement lao pour les droits de l'Homme (France)
Latvia-Latvian Human Rights Committee
Lebanon-Association libanaise des droits de l'Homme
Lebanon-Foundation for Human and Humanitarian Rights in Lebanon
Lebanon-Palestinian Human Rights Organization
Liberia-Liberia Watch for Human Rights
Libya-Libyan League for Human Rights (Switzerland)
Lithuania-Lithuanian Human Rights Association
Malaysia-Suaram
Mali-Association malienne des droits de l'Homme
Malta-Malta Association of Human Rights
Mauritania-Association mauritanienne des droits de l'Homme
Mexico-Liga Mexicana por la Defensa de los Derechos Humanos
Mexico-Comisión Mexicana de Defensa y Promoción de los Derechos Humanos
Moldova-League for the Defence of Human Rights
Morocco-Association marocaine des droits humains
Morocco-Organisation marocaine des droits humains
Mozambique-Liga Mocanbicana Dos Direitos Humanos
Netherlands-Liga Voor de Rechten Van de Mens
New Caledonia-Ligue des droits de l'Homme de Nouvelle-Calédonie
Nicaragua-Centro Nicaraguense de Derechos Humanos
Niger-Association nigérienne pour la défense des droits de l'Homme
Nigeria-Civil Liberties Organisation
Northern Ireland-Committee On The Administration of Justice
Pakistan-Human Rights Commission of Pakistan
Palestine-Al Haq
Palestine-Palestinian Centre for Human Rights
Panama-Centro de Capacitación Social
Peru-Asociación Pro Derechos Humanos
Peru-Centro de Asesoria Laboral
Philippines-Philippine Alliance of Human Rights Advocates
Portugal-Civitas
Romania-Ligue pour la défense des droits de l'Homme
Russia-Citizen's Watch
Russia-Moscow Research Center for Human Rights
Rwanda-Association pour la défense des droits des personnes et libertés publiques
Rwanda-Collectif des ligues pour la défense des droits de l'Homme au Rwanda
Rwanda-Ligue rwandaise pour la promotion et la défense des droits de l'Homme
Scotland-Scottish Human Rights Centre
Senegal-Organisation nationale des droits de l'Homme
Senegal-Rencontre africaine pour la défense des droits de l'Homme
Serbia and Montenegro-Center for Antiwar Action - Council for Human Rights
South Africa-Human Rights Committee of South Africa
Spain-Asociación Pro Derechos Humanos
Spain-Federación de Asociaciones de Defensa y Promoción de los Derechos Humanos
Sudan-Sudan Organisation Against Torture (United Kingdom)
Sudan-Sudan Human Rights Organization (United Kingdom)
Switzerland-Ligue suisse des droits de l'Homme
Syria-Comité pour la défense des droits de l'Homme en Syrie
Tanzania-The Legal & Human Rights Centre
Thailand-Union for Civil Liberty
Togo-Ligue togolaise des droits de l'Homme
Tunisia-Conseil national pour les libertés en Tunisie
Tunisia-Ligue tunisienne des droits de l'Homme
Turkey-Human Rights Foundation of Turkey
Turkey-Insan Haklari Dernegi / Ankara
Turkey-Insan Haklari Dernegi / Diyarbakir
Uganda-Foundation for Human Rights Initiative
United Kingdom-Liberty
United States-Center for Constitutional Rights
Uzbekistan-Legal Aid Society
Vietnam-Comité Vietnam pour la défense des droits de l'Homme (France)
Yemen-Human Rights Information and Training Center
Yemen-Sisters' Arabic Forum for Human Rights
Zimbabwe-Zimbabwe Human Rights Association Zimrights

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