





GUATEMALA Working Group on the Universal Periodic Review 28° session November 6th to November 17th, 2017

Interlocutors:

Grupo de Apoyo Mutuo

The Grupo de Apoyo Mutuo or GAM is an organization which brings together relatives of persons illegally detained and disappeared in Guatemala, has been operating since 1984 and is working hard against impunity, and the respect for human rights (@apoyomutuo).

The Advocates for Human Rights

Founded in 1983, The Advocates for Human Rights (The Advocates), is a voluntary nongovernmental organization dedicated to the impartial promotion and protection of human rights standards and the rule of law. The Advocates manages a range of programs to promote human rights in the United States and around the world, including monitoring, research, direct legal representation, education and training, and publications. In 1991, The Advocates formally pledge to oppose the death penalty in the world and organized the Death Penalty Project to offer free aid for sentencing appeals, together with education and support to abolish capital punishment. Currently, the Advocates hold on the Steering Committee of the World Coalition Against the Death Penalty.

The World Coalition against the Death Penalty

The World Coalition against the Death Penalty (World Coalition), an alliance of more than 120 NGOs, bar associations, local authorities and trade unions, was established in Rome on May 13th, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its main purpose is to obtain the universal abolition of the death penalty. To this end, the World Coalition advocates a definitive end to death sentences and executions in the countries where the death penalty is still in effect. In some countries, it is seeking a reduction in the use of the death penalty as a first step towards total abolition.

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In the 2nd Cycle – 14th session of the Universal Periodic Review, Guatemala supported the following recommendations, among others:

- 99.29 Adopt measures to completely abolish the death penalty, while commuting existing sentences for life imprisonment (Slovakia);
- 99.50 Improve the conditions of detainees, in accordance with the Standard Minimum Rules for the Treatment of Prisoners (Hungary);
- 99.51 Improve the living conditions of prisoners and implement rehabilitation plans in penitentiary establishments (Spain).

As of the date of this report, Guatemala has not taken steps to completely abolish the death penalty. In the last five years since its affirmation to improve the conditions of detainees, the situation of persons deprived of their liberty has not improved, but, due to the increase in overcrowding and the undiminished deterioration of the prison infrastructure, conditions have worsened.

Executive Summary

- 1. Guatemala maintains the death penalty in the Political Constitution of the Republic and in the criminal laws¹ as the maximum punishment for crimes that present extreme connotation. Since 2000, there has been a moratorium on the conviction of the State of Guatemala by the Inter-American Court of Human Rights², which caused the Supreme Court of Justice to interrupt the execution of sentences of this nature. Later in 2012, 28 death sentences were commuted to the maximum prison sentence, so there are currently no people sentenced to death in Guatemala. However, capital punishment persists in the country's legislation, and there is a movement to reinstate the death penalty, which due to the increase in violence has become more notorious and sympathetic.
- 2. The present report sets forth the international human rights obligations of the State of Guatemala, as well as the constitutional and ordinary regulations that maintain the death penalty. Reference is also made, to the inhumane prison conditions in the country. This report concludes by advising the Guatemalan government to abolish the death penalty and create legal and material conditions to improve conditions in prisons, which will allow the country to reach international standards.

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I. Recommendations

a. Officially Abolish the Death Penalty

- 3. Today, the death penalty in Guatemala is suspended due to a conflict of law in which the absence of a pardon process results in the impossibility of carrying out executions under the international rules subscribed by the government. However, there is political sentiment encouraging the restart of executions as a tool of popular revenge. The Guatemalan government should repudiate this policy and abolish the death penalty officially, instead putting in place efficient and effective security policies. The legal codes should be amended to eliminate the death penalty as an element of Guatemalan justice. The Article 2 of the Constitution defines the duties of the State "It is the duty of the State to guarantee the inhabitants of the Republic life, liberty, justice, security, peace and the integral development of the person."³ The official and definitive elimination of the death penalty is a step in favor of these duties of the State of Guatemala.
 - i. Officially abolish the death penalty in the national legislation.
 - ii. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR OP2), aiming at the abolition of the death penalty.

b. Improve the Condition of Prisoners

- 4. The report of the General Directorate of the Penitentiary System, Guatemala, C.A. details the problems and deficiencies of the penitentiary system. The willingness of the government to carry out this kind of self-criticism should be applauded; however, the difficulty lies in implementing the reforms that the government has to put in place. The most critical reform would be the effective use of budgetary resources dedicated to the penitentiary system. Improving facilities and staffing would be a great achievement in the reform process. However, reforms to the legal system are necessary for such a reform to be significant. This is a long and complicated process, and the international community should be prepared to respond to the request of the Government of Guatemala in this matter.
 - i. Improve the conditions of detainees, in accordance with the Standard Minimum Rules for the Treatment of Prisoners.
 - ii. Improve the living conditions of prisoners and implement rehabilitation plans in penitentiary establishments.
 - iii. Improve the prison officers, allocating resources for their training and supervision, and the judicial system in general.

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c. Increase Transparency

- 5. The Government of Guatemala, together with all governments of the world, should take steps to open its processes and decisions to the public, relying on civil society. The report about prison conditions of the General Directorate of the Penitentiary System, mentioned above, is an example. Transparency is fundamental to end the corruption that is affecting the penitentiary system, and to inform the national dialogue on justice and security that is essential for the full development of Guatemala citizens.
 - i. Implement transparency programs and commitment to civil society with a focus on improving the judicial system and prison conditions.
 - ii. Open local and national dialogues on the role of justice in society (retributive or recuperative), and encourage education programs to reduce the stigma of prisoners to reduce incidences of recidivism.

II. Legal Framework

a. Scope of International Obligations

- 6. The Article 46 of the Political Constitution of the Republic of Guatemala states that "in matters of human rights, treaties and conventions accepted and ratified by Guatemala have precedence over domestic law."⁴ Guatemala has recognized the jurisdiction of the Inter-American Court of Human Rights and has ratified the following international treaties relevant to the topic of the death penalty:
- International Covenant on Civil and Political Rights
- First Optional Protocol to the International Covenant on Civil and Political Rights
- Convention on the Rights of the Child
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- American Convention on Human Rights
- Inter-American Convention to Prevent and Punish Torture

b. The legal Basis for the Death Penalty

7. According to Article 18 of the Political Constitution of the Republic of Guatemala, the State cannot impose the death penalty in certain situations, and explicitly excludes women and people over sixty years of capital punishment.⁵ In its second paragraph, it authorizes the Congress of the Republic to abolish the death penalty.⁶ Congress has not taken this prerogative until today.

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- 8. The Criminal Code of Guatemala prescribes the death penalty for aggravated crimes such as parricide or murder. In cases where the maximum sentence of imprisonment has been established, it could be commuted to the death penalty. In addition, according to the Criminal Code, the death penalty will be applied to whom it commits, among other crimes, forced disappearance resulting in serious injuries, permanent psychological trauma or death of the victim.⁷
- 9. The Law against Narcoactivity prescribes the death penalty when, as a consequence of the crimes defined in that law, the death of one or more people results.⁸
- 10. Despite instances of the death penalty in Guatemalan legal codes, the country does not have the mandatory death penalty, and in practice, the Government has not implemented the death penalty since 2000.⁹ In that year, the Decree Law 159 of 1982, which established the procedure for the President of the Republic to decide on the request for clemency, was repealed.¹⁰ This derogation constitutes the main obstacle to the current and future application of the death penalty, due to the impossibility to applying all remedies. Without a pardon process for people condemned to death, any execution would be illegal under the American Convention on Human Rights, which the Government of Guatemala ratified in 1978.¹¹
- 11. Currently, there are no people sentenced to death in Guatemala, and since February 2012 the Criminal Chamber of the Supreme Court of Justice had commuted death sentences of the 53 convicted prisoners to capital punishment, replacing their death sentences with sentences of imprisonment.¹² However, the death penalty persists in the country's legal codes and there is a social impetus¹³, repeated by several Congressmen¹⁴ and the current President, Jimmy Morales,¹⁵ for the recognition of the death penalty. The promoters of the application of the death penalty believe that its application will serve to alleviate the criminality and violence that affect the country.

III. Promotion and Development of Human Rights in Guatemala

a. The conditions in prisons

i. Intrapenitentiary insecurity

12. The lack of resources dedicated to the penitentiary system, detailed below, has resulted in a progressive deterioration of the security situation within prisons, according to the General Directorate of the Penitentiary System.¹⁶ Between 2010 and 2014, 23 inmates died inside prisons for situations of violence.¹⁷ According to a study conducted in 2014, the mortality rate within Guatemalan prisons was three times higher than the mortality rate outside.¹⁸ Inmates are subject to physical and sexual aggression along with extortion by other inmates with the acquiescence of the

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authorities. According to the General Directorate of the Penitentiary System, prisons have become "schools of crime"¹⁹ where 80% of the extortions in the country are coordinated.²⁰ As will be explored below, insecurity is aggravated by the corruption of prison employees and officers, a phenomenon that has "a major impact on the internal security of the detention centers."²¹

ii. Overpopulation and overcrowding

13. According to the General Directorate of the Penitentiary System Guatemala, C.A., in 2015, "the penitentiary establishments operated almost twice above capacity with 274.8% of population density."²² Half of the detention centers were built between the 50s and 80s, and the total capacity of the system is 6,742 people, while between 2008 and 2016 the prison population in Guatemala increased 153%, from 8,158 to 20,697 people.²³ In some facilities overpopulation and overcrowding have exceeded 400% and 500%.²⁴ It should be mentioned here that 49% of those arrested are under pretrial detention²⁵ and 19% of convictions had involved the imposition of fines that the inmate is not in the ability to pay for being economically insolvent.²⁶ "Overcrowding is also influenced by the judicial backlog, reflecting the absence of a national criminal investigation policy to help expedite them."²⁷ There are complaints that overpopulation is being used as a punishment with areas of overcrowding or punishment "where there are regularly up to 80 people in a small space."²⁸

iii. Health; Access to medical treatment

14. Closely related to the scarcity of resources and the overcrowding of prisons, is the issue of inhuman conditions with respect to health and medical treatment. "In most detention centers basic services have collapsed, detainees sleep and feed on the ground in inhumane conditions, where there is poor lighting, ventilation, hygiene and space."²⁹ In 2015, the penitentiary system employed 14 doctors and 16 psychologists, resulting in ratios above 1:1,000 among detainees and medical specialist.³⁰ "Most of the sanitation facilities, the drains and electrical installations in [prisons] had collapsed by the number of inmates."³¹ Tuberculosis and HIV rates in detained populations are orders of magnitude higher than those of the general population, ie 6.45 to 0.62 and 6.85 to 1.42 per thousand people, respectively.³²

iv. Abuse by officials

15. The lack of state resources for correctional facilities harms the prison staff and results in situations of abuse on the part of those agents. The salary for most agents is close to Q 3,174 (USD 430), while, according to the Guatemalan government, "the basic food basket cost is Q 5,441 and the basic food basket equals 81% of such income."³³ The minimum wage in Guatemala is Q 2,307 (USD 312).³⁴ This reality opens the door to official corruption which explains that everything in prison can be bought – cell phones up to transfers from one prison to another.³⁵ The report of the General

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Directorate of the Penitentiary System outlines the situation: "Although penitentiary work is one of the most dangerous and with greater social responsibility, most of the [penitentiary system] employees do not have job stability, or the equitable wage incentives offered by other institutions in the justice and security sector."³⁶ The lack of a penitentiary career results in the inability to educate, train, professionalize, evaluate and promote prison officers.³⁷ Overcrowding also fosters opportunities for official abuse. The penitentiary system maintains as a goal to have a penitentiary agent for every 13 inmates, however, in some situations "a guard was observed guarding 400 people."³⁸ The reality of the penitentiary system is that the State has left its administration in the hands of the leaders of the prisoners, the State is concerned about the outside, while the inmates are the ones who dictate the rules on the inside, often incurring in serious abuses and acts of corruption. Recently, one of the leaders of the prisoners who ran several penitentiary centers was killed and later discovered that he had property that surpassed ten million dollars, as a result of the enrichment he had achieved in administering prisons.³⁹

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¹ Ley Contra la Narcoactividad, 1992; El Código Militar de la República de Guatemala, 1878, reformada por Acuerdo legislativo No. 41-96 de 1996.

² Caso Fermín Ramírez versus Estado de Guatemala, 20 de junio 2005, Corte Interamericana de Derechos Humanos.

³ Constitución Política de la República de Guatemala de 1985, reformada por Acuerdo legislativo No. 18-93 del 17 de Noviembre de 1993.

⁴Constitución Política de la República de Guatemala de 1985, reformada por Acuerdo legislativo No. 18-93 del 17 de Noviembre de 1993.

⁵ Constitución Política de la República de Guatemala de 1985, reformada por Acuerdo legislativo No. 18-93 del 17 de Noviembre de 1993.

⁶ Constitución Política de la República de Guatemala de 1985, reformada por Acuerdo legislativo No. 18-93 del 17 de Noviembre de 1993.

⁷ Código Penal de Guatemala, Artículo 201, Acuerdo 17-73, de 1973, reformada por Acuerdo legislativo No. 4-2010 de 2010.

⁸ Ley Contra la Narcoactividad, Artículos 39 y 52, Acuerdo No. 48-92, 1992.

⁹ Amnesty International Report 2012-State of the World's human Rights, pág. 161.

¹⁰ Diario de Sesiones del Congreso de la República de Guatemala. Periodo Legislativo 2016-2017, pág. 42, visto en ,

http://www.congreso.gob.gt/manager/images/8F80B542-6D57-DF9F-4D3F-56E9F82A75F1.pdf

¹¹ Convención Americana Sobre Derechos Humanos (Pacto de San José), San José, Costa Rica 7 al 22 de noviembre de 1969, Artículo 4(6): "Toda persona condenada a muerte tiene derecho a solicitar la amnistía, el indulto o la conmutación de la pena, los cuales podrán ser concedidos en todos los casos. No se puede aplicar la pena de muerte mientras la solicitud esté pendiente de decisión ante autoridad competente."

¹² "Suprema Corte de Guatemala revoca la pena de muerte a 53 condenados," Hoy Digital, 23 de enero de 2012. Visto en http://hoy.com.do/suprema-corte-de-guatemala-revoca-la-pena-de-muerte-a-53-condenados/; "Corte anula pena capital," Prensa Libre. Visto en http://www.prensalibre.com/guatemala/justicia/cc-declara-inconstitucional-aplicar-pena-de-muerte-por-asesinato

¹³ "Ciudadanos exigen la reactivación de la pena de muerte," Prensa Libre, 26 de febrero, 2017, visto en

http://www.prensalibre.com/guatemala/politica/ciudadanos-exigen-la-reactivacion-de-la-pena-de-muerte-en-guatemala ¹⁴ "Dificil tramo para la pena de muerte," Prensa Libre, 27 de marzo de 2016, visto en

<http://www.prensalibre.com/guatemala/politica/dificil-tramo-para-la-pena-de-muerte>; "Congreso rechaza dictamen para restablecer la pena de muerte," Prensa Libre, 4 de octubre de 2016, visto en

<http://www.prensalibre.com/guatemala/politica/congreso-rechaza-dictamen-para-restablecer-la-pena-de-muerte>

¹⁵ "Presidente sí aplicaría la pena de muerte," Prensa Libre, 15 de marzo de 2016, visto en

<http://www.prensalibre.com/guatemala/politica/presidente-si-aplicaria-la-pena-de-muerte>

¹⁶ Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015, pág. 50.

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¹⁷ Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015, pág. 50.

¹⁸ STCNS. Reporte de tasa de muertes violentas por cada 100 mil habitantes a nivel nacional 2008 a 2014. Consejo Nacional de Seguridad. Guatemala:2014, pág. 6. ¹⁹ Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema

Penitenciario Guatemala C.A. Febrero de 2015, pág. 50.

²⁰ "El 80% de extorsiones provienen desde las cárceles," 20 de febrero, 2014, Emisoras Unidas. Visto en

<emisorasunidas.com/noticias/nacionales/80-ciento-extorsiones-provienen-desde-carceles/>

²¹ Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015, pág. 51.

²² Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015, pág. 48.

²³ Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015; World Prison Brief-Guatemala, Institute for Criminal Policy Research, Birkbeck University of London, visto en <http://www.prisonstudies.org/country/guatemala>

²⁴ Contribución del Procurador de los Derechos Humanos de Guatemala de la Oficina del Alto Comisionado para los Derechos Humanos, sobre las Causas y Efectos del Hacinamiento en los Centros de Detención y sus Implicaciones para los Derechos Humanos. Procurador de los Derechos Humanos de Guatemala, abril de 2015, pág. 2.

Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015, pág 39.

²⁶ Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015, pág 54.

²⁷ Contribución del Procurador de los Derechos Humanos de Guatemala a la Oficina del Alto Comisionado para los Derechos Humanos, sobre las Causas y Efectos del Hacinamiento en los Centros de Detención y sus Implicaciones para los Derechos Humanos. Procurador de los Derechos Humanos de Guatemala, abril de 2015, pág 3.

²⁸ "Cárceles: ingresar un celular vale Q500; traslados cuestan hasta Q150 mil," 3 de febrero 2014, La Hora. Visto en <http://lahora.gt/hemeroteca-lh/carceles-ingresar-un-celular-vale-q500-traslados-cuestan-hasta-q150-mil/>

²⁹ Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015, pág 42.

³⁰ Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015, pág 46-47.

³¹ Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015, pág 33.

³² Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015, pág 40.

³³ Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015, pág 36.

³⁴ "Guatemala: ingreso promedio no llega al salario mínimo," 28 de marzo de 2014, El Economista. Visto en

http://www.eleconomista.net/2014/03/28/guatemala-ingreso-promedio-no-llega-al-salario-minimo ³⁵ "Cárceles: ingresar un celular vale Q500; traslados cuestan hasta Q150 mil," 3 de febrero 2014, La Hora. Visto en

<http://lahora.gt/hemeroteca-lh/carceles-ingresar-un-celular-vale-q500-traslados-cuestan-hasta-q150-mil/>

³⁶ Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015, pág 80.

³⁷ Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015, pág 80.

³⁸ Política Nacional de Reforma Penitenciaria 2014-2024: Rehabilitación para la paz social. Dirección General del Sistema Penitenciario Guatemala C.A. Febrero de 2015, pág 36.

³⁹ "Byron Lima Oliva compró bienes por US\$10 millones," 27 de febrero 2017, Prensa Libre. Visto en

<http://www.prensalibre.com/guatemala/justicia/byron-lima-oliva-compro-bienes-por-us10-millones>

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