

## The death penalty: A last minute reprieve

### New government, and the death penalty?

Between 12 February and 14 March 2008 lay a month of painful uncertainty for the 19 prisoners on Guatemala's death row. In February the Guatemalan Congress passed the Law of Presidential Pardon, Decree 6-2008, seeking to revive a death penalty regime which had lain dormant since the annulment of the previous law of presidential pardon<sup>1</sup> by President Portillo's government on 1 June 2000.<sup>2</sup> Article 4



**Congress vote in support of death penalty. Source: Nacion.com/El Mundo, Costa Rica, Friday March 28, 2008.**

(6) of the American Convention of Human Rights (ratified in 1978) ("ACHR") makes clear that "every person condemned to death shall have the right to apply for [pardon]" and that "capital punishment

shall not be imposed while such a petition is pending".<sup>3</sup> Taken together with Article 43 of the

Guatemalan Penal Code and Article 46 of the Guatemalan Constitution (which states that international treaties have preeminence over domestic law in the area of human rights) removal of the right to apply for pardon created a legal black hole which prevented executions from being carried out. The Guatemalan Constitutional Court confirmed the same in 2002.<sup>4</sup> However the legislation passed in February was not published into law.

On 14 March President Colom announced his exercise of the power of presidential veto under article 178 of the Constitution. Despite the efforts of opposition parties, the previous majority (140 of

<sup>1</sup> Guatemalan Congress, Decree 159 of 1892.

<sup>2</sup> Guatemalan Congress, Decree 32 of 2000.

<sup>3</sup> See also Article 6.4 of the UN International Covenant on Civil and Political Rights (ratified 5 August 1992).

<sup>4</sup> www.jurist.law.pitt.edu. See also (14) below.



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158 members) did not hold, and the new law was defeated on its return to congress on 26 March. The death penalty in Guatemala therefore continues as before: death sentences, but no executions. It is applicable to crimes of murder, extrajudicial killing, kidnapping, aggravated rape of children and patricide. It cannot be applied to political crimes, to women, to men over 60, or to youths below the age of criminal responsibility.<sup>5</sup> The last executions were carried out in 2000 by lethal injection. Execution by firing squad was abandoned after the televised executions of Pedro Castillo Mendoza and Roberto Girón in 1996 was botched, requiring a coup de grace.

## Swift reaction

The law passed in February had been tabled by the Patriot Party amidst public hysteria following the murders of 14 bus drivers during the previous week. It was passed in one day as a national emergency, thus avoiding the constitutional requirement for three readings of the bill but also effectively excluding civil society from the process. Orlando Blanco, head of the Presidential Commission for Human Rights and Peace, characterized the development as a “political trap” set for President Colom. Gustavo Palma of the Association for the Advancement of Social Sciences in Guatemala (AVANCSO) stated that it was “*a controversial issue that cannot be dealt with in such a slight and simplistic manner*”.<sup>6</sup>

Trade union groups, campesino organisations, legal rights groups and international organisations all indicated their opposition in the days which followed, despite the death penalty’s status as a taboo subject amongst sectors of civil society, partly for fear of playing into the hands of those who characterise human rights defenders as “friends of the maras” (street gangs). Amnesty International stated that “*the death penalty is the ultimate cruel, inhuman and degrading punishment. It is arbitrary [and] it has proven ineffective in reducing crime.*”<sup>7</sup>

The Coordinating Body of Indigenous and Campesino Organisations (CONIC) highlighted the disproportionate representation of the poor on Guatemala’s death row, in contrast to the impunity which still surrounds the massacres of the internal armed conflict.<sup>8</sup> An opinion piece in Prensa Libre highlighted the dangers of applying the death penalty in a legal system “*fundamentally corrupt and plagued with errors and bias, such as that which prevails in Guatemala*”.<sup>9</sup> Others claimed that the new law was not compliant with the ACHR and Inter-American Court judgments as it required executions to be carried out 31 days after the application for pardon even if the President had not considered the application.<sup>10</sup> The European Union publicly asked the president to veto the new law<sup>11</sup> and Archbishop Quezada complained that it signified a return “*to the times of Nero*”.<sup>12</sup> Nevertheless, other powerful sectors such as evangelical groups and the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) publicly indicated their support of the death penalty.<sup>13</sup>

## Public opinion

After the new law was passed, a phone-in vote<sup>14</sup> found that 97.4% of 7770 people surveyed supported the change. A more traditional survey in May 2007 registered 65.2% support for the death penalty.<sup>15</sup> Nevertheless a majority of the population appear to support the death penalty, exasperated with a murder rate which reached 5781 in 2007, an impunity rate of at least 97% for those crimes, and the violence which fills the pages of the daily tabloid newspapers in Guatemala.

## International obligations and trends

Since 1990, 50 countries have abolished the death penalty for all crimes. In the Americas, the only countries which retain the death penalty for “ordinary” (non-military) crimes are the USA, Cuba,

<sup>5</sup> Guatemalan Constitution, Article 18.

<sup>6</sup> Opinion Column, Palma, Gustavo, AVANCSO, 19 February 2008.

<sup>7</sup> Amnesty International, Press Release, 13 February 2008.

<sup>8</sup> CONIC, Press Release, 15 February 2008.

<sup>9</sup> Prensa Libre, *Opinion: Rodrigo Castillo del Carmen*, 14 March 2008.

<sup>10</sup> Amnesty International, Press Release, 27 February 2008. See also press releases of International Federation of Human Rights and Center for Justice and International

Law (CEJIL), 14 and 15 February 2008 respectively.

<sup>11</sup> Prensa Libre, *UE llama a vetar indulto presidencial*, 6 March 2008.

<sup>12</sup> Prensa Libre, *Retrocedemos a tiempos de Nerón, afirma el Cardenal*, 16 February 2008.

<sup>13</sup> Telediarío 3, *CACIF indicates that the death penalty helps to reduce violence*, 14 February 2008.

<sup>14</sup> Prensa Libre, *Voto Libre*, 15 February 2008.

<sup>15</sup> Prensa Libre, *Mayoría apoya la pena capital*, 2 May 2007.

Guyana, Guatemala and the Caribbean region, and all but the USA and the Caribbean are considered “de facto abolitionist” states as they have not carried out executions in the last five years (in some cases, much longer periods).

On 18 December 2007, for the first time in its history, the General Assembly of the UN passed a resolution clearly signaling opposition to the death penalty, stating that it “*undermines human dignity*” and “*there is no conclusive evidence of...deterrent value*”. It calls on all member states to “*progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed...[and] establish a moratorium on executions with a view to abolishing the death penalty.*”<sup>16</sup> Amongst the 104 votes in favour of the resolution was the vote of Guatemala. Although non-binding, member states (including Guatemala) will be accountable to the general assembly in their implementation of these moratorium/abolition provisions.

But there are also binding obligations on Guatemala regarding the death penalty. In 2005 the Inter-American Court of Human Rights, which adjudicates the ACHR, ordered the amendment of the Guatemalan Penal Code<sup>17</sup> to remove the 1995 extension of the death penalty to kidnapping offenses which do no harm to the victim.<sup>18</sup> The ACHR clearly states that states cannot broaden application of the death penalty after (signing).<sup>19</sup> Meanwhile, offenders continue to be sentenced to death for non-fatal kidnapping in contravention of the ACHR.

Sixty percent of those on death row were sentenced for kidnapping (fatal and non-fatal).

## Future developments

The opposition which was rapidly mobilised after the passage of the law in February demonstrates that for many, the death penalty is a key human rights issue. Some argue that it is largely of symbolic value, given the significant human rights issues of

femicide, impunity, racism, land rights etc. which Guatemala faces. However for the 19 inmates on Guatemala’s death row it is a matter of life or death. For now, the death penalty remains in limbo. But in the medium to long term, Guatemala will have to



Photo by PBI

choose whether to reform the death penalty regime to comply with its convention obligations (a compliant pardon law and the reform of the penal code) or, in light of the historic resolution which Guatemala affirmed before the General Assembly of the UN only 5 months ago, to press ahead with the abolition of the death penalty started by President Portillo in 2000 and choose, in the words of the current President, “a culture of life” over a “culture of death”.<sup>20</sup>

<sup>16</sup> UN General Assembly Resolution 62/149, 18 December 2007.

<sup>17</sup> Raxcaco Reyes v Guatemala, Inter American Court of Human Rights (15 September 2005).

<sup>18</sup> Guatemalan Congress, Decree 14 of 1995.

<sup>19</sup> Inter American Convention on Human Rights, Article 6 (2).

<sup>20</sup> Prensa Libre, *Abogan por abolición de pena de muerte*, 16 February 2008.

# Izabal; agrarian conflict protagonist

In the few months that Alvaro Colom has assumed the presidency of Guatemala, agrarian disputes, inherited from one government to the next and to the present day, have not been resolved, and now they are again portrayed in the national and international press.

To set the scene: Izabal, strategically placed, with the existence of oil deposits<sup>1</sup> and which forms part of the project the World Bank and Inter American Development Bank have called the Mesoamerican Biological Corridor.<sup>2</sup> A region where there is an intermingling of distinct interests in the land. On one hand, the survival of the indigenous poor (82% live in poverty and 37.7% in extreme poverty<sup>3</sup>) who are reclaiming their ancestral rights to live and work the lands that constitutes the base of their daily sustenance.<sup>4</sup> On the other, environmental interests as well as economic interests in future tourist, mining, African palm and livestock projects.<sup>5</sup>

The problem: the unequal distribution of land (where 2% of landowners possess 62.5% of the land in Guatemala)<sup>6</sup> together with a justice system fundamentally biased in favour of landowners and which disfavours campesinos (the majority illiterate in a situation of economic and political exclusion).<sup>7</sup> The result is an increase in the tension between campesinos, landowners, supposed landowners and the State, materialised in violent actions by all involved parties.

Land disputes in the Izabal region are not a new

occurrence, on the contrary, years of negotiations and frustration have been endured by the inhabitants of the area who continue to be immersed in processes of legalisation initiated twenty, thirty and up to one hundred years ago and that continue up to now without resolution. According to Jorge Luis Morales, a Guatemalan Lawyer who specialises in agrarian rights, every community possesses its own distinct land problem. Aspects such as the environment for example are problems shared by a great number of the communities living in the protected areas of Chocón Machacas Biotope<sup>8</sup> and Río Dulce National Park, whom had settled in these areas before the Protected Areas Law came into effect, and are now finding themselves with new problems of legality.

Recent events that occurred in the Río Dulce area originate from a long history of agrarian conflict. It was however, the arrest and detention of Ramiro Choc, Q'eqchi and campesino leader of 14 indigenous communities located in the municipal of Livingston that led to the events of March this year. Aggravated usurpation, aggravated robbery and illegal detention<sup>9</sup> were the charges brought against Ramiro Choc, accusations that have been linked to events that occurred in June 2006, when the leader acted as a mediator in the conflict and accompanied campesinos from Buena Vista La Esperanza (Livingston) during the violent eviction<sup>10</sup> from the land on which they lived by officers of

<sup>1</sup> In the department of Izabal petroleum exploration and exploration concessions exist as seen in the case of the company Peterolera Atlantico, who obtained a contract for the protected area Río Sarstún which is classed as a multiple use zone, located in the north of the region. According to members of the organisation Amantes de la Tierra, in 2006 while petroleum exploitation work was being carried out, the company breached boundaries into prohibited areas and the nucleus of Río Sarstún, infringing article 30 of the Protected areas law that declares that petroleum exploration and exploitation are prohibited in these zones Amantes de la Tierra informed the authorities of the National Protected Areas Council (CONAP) regarding the incident, however up to now according to reports from the same environmental organisation, CONAP has not condemned the act.

<sup>2</sup> Communiqué – Anti-imperialist Block (15.03.08) “Before the Livingston crisis last month”.

<sup>3</sup> ENCOVI Opinion poll in Remembrance Guatemala. Number 95. Andrés Cabanas.

<sup>4</sup> Article 14.1 of Convention 169 of the International Labour Organisation (ILO) “The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect”. According to the same article in the second paragraph “Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned”.

<sup>5</sup> Infopress Central America (29.02.08) “Izabal is again the setting for Agrarian Conflict”

<sup>6</sup> Amnesty International (2006). “Guatemala ¿Land of Injustice”.

<sup>7</sup> Ibidem.

<sup>8</sup> The Chocón Machacas Biotope was declared a protected area by means of Decree 4-89.



the National Civil Police (PNC), causing the burning of houses and panic amongst indigenous communities.<sup>11</sup> As a form of protest on 21 February, 29 officers of the PNC were detained by inhabitants from Livingston who demanded the release of their leader, who according to a number of campesino organisations, was detained illegally in an attempt to criminalize and undermined the indigenous and campesino leadership.<sup>12</sup> A day later, after arrangements were made for regional talks, the 29 officers were released.<sup>13</sup>

During a statement to the national press, President Colom described the campesinos as “terrorists”. The campesinos have continued to express their discontent for the lack of effective responses and have urged the Human Rights Ombudsman’s office, in their capability as facilitator, to arrange a second meeting in which *high ranking authorities with political willing* should participate to look for solutions to this problem.<sup>14</sup> In the light of what was considered the continued disinterest of the government to respond to their needs and demands, on 14 March a group of campesinos took hostage four Belgian tourists and two Guatemalans who

were then released the following day. To ensure the release, according to statements from Vice Minister of the Interior Édgar Hernández, the government sent 400 police and army officers to Izabal, *ready to intervene* if the talks broke down.<sup>15</sup>

The excessive deployment of security forces provoked

the death of the campesino Mario Caal in the village of Puntarenas, whose body was left for 19 hours without intervention from the Public Ministry.<sup>16</sup> The violent intervention also caused dozens of injuries, the victims included children who suffered severe damage from tear gas.<sup>17</sup> The preliminary autopsy suggested that death was caused by fatal blows.<sup>18</sup> In the following days, Rolando Yoc, PDH assistant described Caal’s death as an “extrajudicial killing” while Sergio Morales Human



Izabal’s protected area. Photo by PBI.

Rights Ombudsman, argued that the participation of the PNC and the Military in the release of the tourists was unnecessary.<sup>19</sup> Witnesses from the village stated that a tear gas canister exploded on the victim’s chest and was subsequently beaten by security agents of the Special Police Force.

<sup>9</sup> During the arrest, the police attacked Ramiro Choc and he had the impression that *they were going to make him disappear*, according to information taken from Preliminary Report of the Situation of Human Rights Defenders”, January – February 2008. Unity for the Protection of Human Rights Defenders.

<sup>10</sup> According to the organisation Agrarian Platform, the eviction was carried out on the basis of complaints by Mrs Solórzano Lemus de Castellanos who stated she had ownership of the Buena Vista Nueva Esperanza territory, contradicting the Livingston municipal who declared themselves to have ownership.

<sup>11</sup> Campesino Organisations Verapazes Union UVOC (21.02.08) “Rights of Indigenous Communities Violated by the State and Private Enterprise ¿For whom is the justice?”.

<sup>12</sup> Comunicado from the Agrarian Platform (15.02.08, 07.03.08), CNOC (22.02.08), CONGCOOP (21.02.08)

<sup>13</sup> Guatehoy (22 y 23.02.08)

<sup>14</sup> Announcement from the Q’eqchies (14.03.08) Encuentro Campesino.

<sup>15</sup> Prensa Libre (15.03.08) “The arrival of 400 Police and Military to Izabal”

<sup>16</sup> La Hora (17.03.08) “PDH opens the case for the extrajudicial killing of a campesino”.

<sup>17</sup> FNL, communiqué 17 March “An urgent call to the common sense”

<sup>18</sup> Prensa Libre (18.03.08) “The search for the hostage taking leaders”

<sup>19</sup> DeGuate (18.03.08) [http://www.deguate.com/news/publish/article\\_7830.shtml](http://www.deguate.com/news/publish/article_7830.shtml)

<sup>20</sup> FNL, Ibidem

<sup>21</sup> Peace Brigades International (2007) “10 years without war, waiting for peace”

<sup>22</sup> According to Article 11.1 of the International Covenant on Economic, Social and Cultural Rights, every person has a fundamental right to “to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. The second paragraph of the cited article recognises the fundamental right of every person to be protected against hunger.

These actions are reminders of the military tactics used during the most brutal years of the scorched earth policy,<sup>20</sup> and have come to show the deficiency in the implementation of the Peace Accords, specifically the Agreement around the Strengthening of Civil Society and the Role of the Military, that committed the government, amongst other things, to focus the Military, solely and exclusively in external security (defence of the country's sovereignty and the integrity of its territory).<sup>21</sup>

These recent events are an effect of the complexity of the agrarian problem that continues in Guatemala, where long standing disputes are currently accentuated by new economic interests in the land. Land disputes remain being one of the greatest challenges for the current and future governments; its importance is reflected in the need of a population that sees their right to food and thus life, limited.<sup>22</sup>

The incidents in Izabal have instigated public protests by national campesino organizations and non campesino organizations alike. Some of whom take grievance against the new government; who they accuse of not having promoted a proposal for integrated rural development nor created urgent legislation to resolve the agrarian conflict in the country.<sup>23</sup> *What we are living nowadays is a consequence of the lack of concern regarding agrarian problems which with each decade gets more and more complicated (...)* As each year and each set of negotiations passes, concrete results for the communities are not achieved, leaving more Guatemalan people frustrated, hopeless and with higher levels of poverty and hunger (...) the judicial system has a clear double standard, cases against campesinos on the grounds of usurpation of land with the aim to bring about evictions have been resolved within the legal timeframe (...) whereas Employment Tribunals' decisions are not implemented; murder cases, threats and assaults against campesinos and indigenous people are never processed.<sup>24</sup> On 5<sup>th</sup> of April 2008 a process of negotiations began regarding the resolution of agrarian conflict, during which campesino organizations and public institutions, such as the Secretariat for Agrarian Affairs, have tried to follow up and bring to a close more than 1500 cases that have been outstanding for years<sup>25</sup>. Currently the government's challenge is to not respond hastily to the conflict in Izabal but to develop permanent solutions to the agrarian conflict in the country. In the meantime the campesinos will have to face the challenge of surviving in a hostile social and political context.

<sup>23</sup> Communiqué - Campesino Organisations National Coordinator (CNOG). 22 February 2008.

<sup>24</sup> Communiqué – Unity of Defenders of Human Rights “Detain the Spiral of Violence” (14.03.08)

<sup>25</sup> El Periodico (19.03.08) “Government looks for Agrarian Conflict Solution”.

# Sexual Diversity in Guatemala

Guatemala, the country of eternal spring, according to Jorge López, Director of the Organisation to Support an Integrated Sexuality to Confront AIDS (OASIS), is also a country of *eternal discrimination*<sup>1</sup> against people of Diverse Sexuality and Gender (DSG). This population is made up of lesbian women, gay men, transvestites, transsexual, transgender, bisexual and asexual people and sex workers – all of these individuals are considered by many to have an abnormal or immoral sexuality.

Sexual diversity (SD) does not fit with the traditional family model, socially established gender roles and gender assignment, the concept of monogamy and other social conducts considered as normal. Leading to segregation, exclusion and discrimination of people LGBT (lesbian, gay, bisexual, transgreder / transexual) in all aspects of life; social, family, work, political-institutional, personal; despite the Universal Declaration on human rights that proclaims rights and freedoms of every individual, *without distinction of any kind such as [...] sex [...] or any other status.*<sup>2</sup> Discrimination and impunity towards this population is generated through a *mechanism that legitimates the hegemonic group which thus acts as a mechanism to illegitimate other social groups.*<sup>3</sup>

## The emergence of the DSG movement

Before a long history of violence and a strong patriarchal, chauvinist and homophobic culture the subject of sexual diversity in Guatemala has been and continues to be taboo. Resulting in the concealment of homosexuality which is reflected by the almost inexistence of research and statistics that describes the situation in this minority group. The signing of the Peace Accords in 1996 *has allowed a certain amount of political space for social organisations in general terms;*<sup>4</sup> which was welcomed by sexual diversity organisations. Later in the 90s, within the population of homosexual males, groups such as OASIS were formed, with the aim to confront AIDS, which

<sup>1,2,7,15,16,20</sup> Interview with Jorge López Sologaito, Director of OASIS, 21 February 2008.

<sup>2</sup> Universal Declaration of Human Rights, Article 2.1, UN, 1948

<sup>3,4</sup> Alliance against Impunity, *Investigation into the effects of impunity in Guatemala. Case of homosexual people:* Maria Conchita (Luis Palencia), Guatemala City, 2001.



had started to greatly affect this community. They included in their demands, the recognition of their rights, based on the idea of equality for everyone, proclaimed by the Universal Declaration of the United Nations. There is less societal awareness for lesbian women; this is due to many factors including the existence of roles that 'naturally' assign women to the private and thus invisible sector and a lower exposure to HIV/AIDS. As a result of this the lesbian social movement is focused on social and institutional recognition of sexual diversity, empowerment, violence against women; which is also socially invisible, human rights and opening up a discussion about sexuality and gender. The situation for lesbian Guatemalan women is closely linked to the reality of Guatemalan women in general; in addition this group breaks the rules of the patriarchal society that associates women to maternity and their sexuality to reproduction. With the signing of the Peace Accords, a *constructive change* was achieved<sup>6</sup> in increasing the awareness of the right to diverse sexuality, driven by the lesbian and gay movement. However with this raised profile *the level of violence against LGBT increased*.<sup>5</sup>

## Impunity and discrimination Social-familial aspects

Frequently, when a man or woman openly expresses their SD it results in the rejection of their family, social isolation, persecution, marginalization and threats, inclusive of death threats; in other words it provokes physical, psychological and sexual violence. According to OASIS, 80% of the SD population perceives they are being discriminated against while 24% have been objected to actual discrimination. As a result many prefer to disguise themselves in a false heterosexuality and profess homophobia.

The majority of discrimination cases occur in the private sphere<sup>7</sup> which makes it difficult to document these hate crimes based on sexual orientation. The invisibility allows this violence to continue and be carried out with

total impunity. From an educational perspective, LGBT find themselves excluded from an early age and thus learn to conceal their sexuality or rather they are obligated to conceal it. The lack of information about the subject results in sexual diversity being considered

as *inappropriate social conduct*<sup>8</sup> and connected to delinquency and prostitution. Similarly the deficit in information perpetuates the taboo and the perception of sexual diversity as an abnormal behavior.

In addition to social-familial discrimination, to be a LGBT also has negative affects in the access to work,

public services, housing and consumption (in a consumer society), etc., in what is definitively called social exclusion.

## Employment and health (HIV)

Educational, familial and employment discrimination based on sexual orientation – the justified dismissal for being HIV positive or just the suspicion of being so (not corresponding to sexual stereotypes) – makes *sex work at times the only work option if a non heterosexual identity is assumed*.<sup>9</sup>

In fact 36% of the members of OASIS are dependent on work in the sex industry in order to survive; this demonstrates the economic necessity and social demand for this service. Moreover, 27% of the members of the organization live with HIV. This signifies that a third of this population is at high risk of gender based (and common) violence which is, amongst other factors, a result of working on the street. It can be seen that this type of work is the direct result of being someone of diverse sexuality which thus increases the risk of Sexually Transmitted Infections (STIs) and HIV/AIDS. This leads to this population becoming a *highly vulnerable group...that can manifest itself in professional suicide*.<sup>10</sup> In spite of being such a vulnerable population; *they remain excluded from AIDS treatments*.<sup>11</sup>



Gay pride and a call for LGBT rights. Photo by PBI.

<sup>5,6</sup> Interview with Rosa Gallardo of LESBIRADAS, 28 February 2008 ([www.lesbiradas.blogspot.com](http://www.lesbiradas.blogspot.com)).

<sup>8,9,11,19</sup> *Social exclusion based on non heterosexual sexual orientation in Guatemala*, Number 2001-9, R. Mayorga, M.A. Rodriguez Leerayes, Guatemala, 2001, (pp.8, 5,10).

<sup>10</sup> M.A. Rodriguez Leerayes R. Mayorga Sagastume, S. Alvarez, A.A. Garcia Manzo, *A description of the context of suseptibility of the acquisition of STI/HIV/AIDS in four populations in Guatemala City centre*, August 2000, p. 68.

## Political-institutional aspects

The Guatemalan Constitution *guarantees and protects human life*<sup>12</sup> and the equality of *all humans*<sup>13</sup>. However, the legislation does not specify people of diverse sexuality nor discrimination and violence against a person from this group that could *even be caused by police that earn their wages from taxes*.<sup>14</sup> *This opens a door to impunity*.<sup>15</sup> Data specifically detailing violence against LGBT people of DSG does not exist; because of this these attacks go unnoticed and are filed generally as common crime. Numerous sexual diversity rights and human rights organizations state that these crimes are almost never reported for fear of the authorities and familial repression and due to little hope that the cases are brought to justice. It is due to a *lack of investigation, because of being a marginalized social group, in a climate of impunity that silences these people whose rights have been violated*.<sup>16</sup> People are often unaware of their rights or these rights are unrecognized by society.

Guatemala's Constitution is based upon sex classification – *man and woman (...) have equal opportunities*<sup>17</sup> – excluding LGBT people.

This exclusion is doubled, firstly for the fact that the Constitution guarantees social, economic and legal protection, by means of family and the legal base of marriage (between men and women);<sup>16</sup> and secondly the protection of the individual is not guaranteed; non heterosexuals see this as denial of access to social protection. Political-institutional discrimination is also apparent in the rejection of funding of sexual diversity

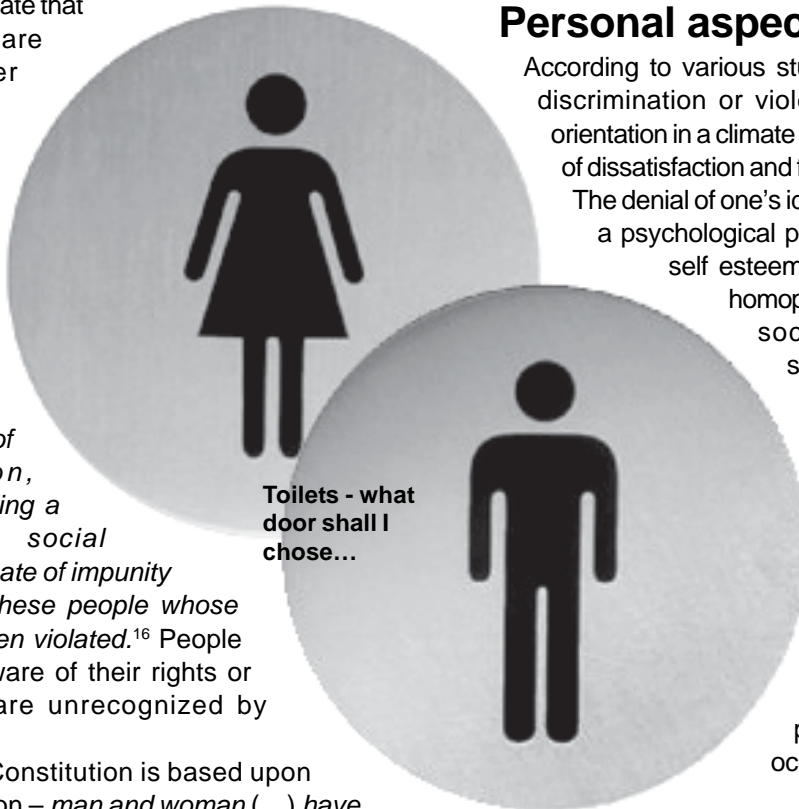
rights and AIDS organizations as seen in current government's budgeting reorganization.<sup>18</sup> In the past various projects have been cancelled for *attempts against morals*.<sup>19</sup> This form of discrimination directly affects organizations such as Lesbiradas or in the case of OASIS that has seen a cut in their funding due to increasingly restricted international policies and more specifically for not declaring themselves as organizations against sex trade work. This makes the fight against HIV and the physical and legal accompaniment of victims of violence or discrimination increasingly difficult.

## Personal aspects

According to various studies,<sup>21,22</sup> being subjected to discrimination or violence due to one's sexual orientation in a climate of impunity provokes feelings of dissatisfaction and frustration at a personal level. The denial of one's identity causes problems from a psychological point of view such as loss of self esteem, self blame or internalized homophobia, often forcing familial or social isolation. One consequence of psycho-emotional stress can be the consumption of legal or illegal drugs. From a physical perspective, as a consequence of discrimination and violent attacks currently suffered by people of SD in Guatemalan society there is the possibility of permanent injury that on occasion includes death.

## Conclusion

With all of these factors in mind, Jorge Lopez, Director of OASIS, considers *it necessary to work on the social context and conditions that are the base of the discriminations and their consequences*.<sup>23</sup> Furthermore, the sexual diversity rights movements have highlighted the need to expand their activities to rural areas, where structures do not exist and where these individuals are even more vulnerable.



<sup>12,13,17,16</sup> Political Constitution of Guatemala 2007 (1985), Art. 3,4,4,47.  
<sup>14</sup> Amnesty International, *Hate Crimes, conspiracy of silence. Torture and abuse based on sexual identity*, Report written as part of the world campaign against torture, October 2000, p.14.

<sup>18</sup> Prensa Libre, 24 January 2008, Patients with HIV ask PDH to intervene, Gema Palencia: This entity received [Marco Antonio Foundation] the support of Q6,270,000 in 2007, but in the budget for 2008 these funds were granted to other organisations.



## Notes on the human rights situation

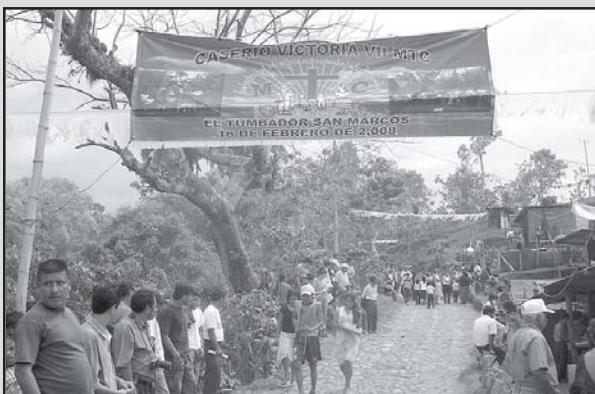
The beginning of the year and entrance of President Álvaro Colom's new government saw the arrival of Hina Jilani, United Nations Special Representative of the Secretary-General on Human Rights Defenders. The official visit aimed to observe the situation of human rights defenders in Guatemala. After meetings with public authorities, international institutions and several national NGOs, Hina Jilani expressed her concerns regarding the increasing number of assaults against Human Rights Defenders and the intensity of violence the country has seen over the last five years. She presented a preliminary report of her visit to Guatemala, which highlights the unequal distribution of wealth, the increasing level of violence, the almost total impunity and the existence of

organised crime and parallel powers within the Government as determining factors that create conditions where these assaults against Human Rights Defenders can easily be carried out.

In January the International Commission against Impunity in Guatemala (CICIG) officially began operating which gives some hope to the belief that impunity can be tackled in the country. In particular, the Commission will initiate an investigation into murder cases of women (feminicide) as well as the wave of murders of urban bus drivers in and around the city. In this context of impunity and general insecurity, PBI's accompaniment work continues as intense as ever and requires us to put in place extra precautionary measures.

## News from our accompaniments

We continue accompanying the following organizations: ASALI in its base in El Estor and also with activities in communities surrounding Lake Izabal, UVOC in Alta Verapaz and CONAVIGUA, with regular visits to its office in the capital and also during exhumations and inhumations in other areas of the country. We have maintained contact with MTC in San Marcos, where finally in January 2008, after hard negotiations with the landlord of Las Delicias, the ex inhabitants and were able to buy a new piece of land their lack of resources, they have begun constructing their new community. However, the promise of withdrawing the accusations against Julio Archila has not been realised.



**The former residents of the Las Delicias estate celebrate the inauguration of their new community.**  
Photo by PBI.



**The CUC's 30 year anniversary, a march to demand campesino rights.** Photo by PBI.

In December, we started accompanying Commission of Peaceful Resistance (CPR) in the municipality of San Marcos, whose members have suffered several threats due to the position they have adopted in relation to the construction of a hydroelectric plant in the area. In the capital, we have continued accompanying CONAPAMG with visits to its offices in the capital and accompanying its members in their work around the country. In March 2008, a number of communities from rural areas, supported by CONAPAMG arrived in the capital seeking a place to settle, they inhabited an abandoned area in Zone 21. Subsequently however, they were violently evicted from the land by the military and with support from neighbouring areas.

## Observations

In January 2008, we observed the submission of a complaint presented by Rigoberta Menchu and the PDH (Ombudsman's Office for Human Rights) against the Constitutional Court's decision in not recognising universal jurisdiction over those who have been accused of murder, torture, and genocide by the Spanish National Audience and had thus denied their extradition to Spain.

On the 25 of February, Remembrance Day for the victims of the civil war we were present as international observers at a march which was held in memory of victims of massacres, forced conscriptions, sexual assaults and crimes committed during the internal armed conflict. During the march, the CEH (Historical Clarification Commission) report was cited, which describes the atrocities of the civil war, committed at a national and an international level and which affected women, children and Mayan communities. Following the march, we observed at the changing of the rose in the Peace Patio of the National Palace, this solemn event took place to honour of the victims of the armed conflict. We also attended as observers at number of events in celebration of International



Women's groups demand law against femicide during International Women's Day celebrations. Photo by PBI.

Women's Day, organised by Coordination March 8, of which the Women's Sector, an organization which PBI accompanies, forms part. During this event, a Programme in Favour of Women was delivered to authorities that outlined a 100 day plan to respond to social, economical and the most urgent political needs of Guatemalan women, such as

a Femicide Law and a reform of Employment Law for rural and urban employees.

## Peace Brigades International

PBI is an international non-governmental organization (NGO) which protects human rights and promotes nonviolent transformation of conflicts. At the request of threatened social organizations, it provides international accompaniment and observation. The presence of international volunteers backed by a support network helps to deter violence. In this way, PBI creates space for local activists to work for social justice and human rights.

### PBI in Guatemala

PBI maintained a team of volunteers in Guatemala from 1983 to 1999. During those years, it carried out accompaniment work with human rights organizations, unions, indigenous and campesino organizations, refugees and churches. In 1999, after

an evaluation process, it was decided to close the project since the country had greatly advanced in the opening of space for the work of human rights organizations. Nevertheless, PBI continued attentive to the happenings in Guatemala through a follow-up committee.

From the middle of 2000, PBI began receiving a number of requests for international accompaniment. Due to these requests, PBI carried out an investigation in the field that made evident a turn in the direction and a losing of space for human rights defenders. In April of 2002, PBI decided to reopen the Guatemala Project in order to carry out international accompaniment and observation in coordination with other international accompaniment NGOs. In April 2003, the new PBI office was opened in Guatemala.

## PBI's accompaniments

PBI accompaniments are undertaken after studying petitions from organisations that are concerned with one or more of the following areas: the fight against impunity, land rights and the effects of globalisation on human rights. Over the past months we have accompanied the following organisations:

**The Coordinator of Widows of Guatemala, CONAVIGUA.** We carry out regular visits to their office and also accompany during exhumations in hidden cemeteries, and inhumations thereafter.

**The Union of Campesino Organisations of the Verapaces, UVOC.** We accompany various leaders of the UVOC, in particular **Carlos Morales**, since the 13th of May 2005, during activities in the Verapaces and other parts of the country.

**Guatemalan Association of Mayors and Indigenous Authorities, AGAAI.** We make regular visits to their office and accompany **Carlos Guarquez** of the association in his movements during his work on community referendums.

**The MadreSelva Collective.** We carry out regular visits to their office and accompany them during their activities throughout the country where members are seen to be at greater risk.

**The Movement of Campesino Workers, MTC.** We started accompanying the organisation in November 2005. We carry out regular visits to their headquarters in San Marcos and accompany some of the movement's leaders who have received threats because of their work.

**The Association of Friends of Lake Izabal, ASALI.** We continue to accompany the association's legal representative, **Eloyda Mejía**, as well as other members of the organisation, during their activities in El Estor, Izabal.

**Organisation to Support an Integrated Sexuality to**

**Confront AIDS, OASIS.** Since March 2006 we accompany the organisation with regular visits to their office. In particular we accompany **Zulma**, witness to the murder of a transgender person, a crime allegedly committed by members of the National Civil Police.

**Women's Sector.** In June 2006 we began to accompany members of the organisation working in the capital after they were victims of two unlawful entries into their office. Since then we have regularly visited their workplace and also accompanied them during activities outside of their office.

**The National Coordination of Residents of Marginal Areas in Guatemala, CONAPAMG.** We have intensified the accompaniment of the coordinator **Roly Escobar**

after the threats he received on the 10th of September, and for intimidations and constant vigilance suffered by him and the organisation.

**Centre for Legal Action on Human Rights, CALDH** We began accompanying **José Roberto Morales** after he received death threats in February 2007.

**Project Counselling Services, PCS.** We accompany a worker of the organisation in their daily

movements and with presence in their home, after an assault and robbery on the 7th of May 2007 followed by a threatening telephone call on the 17th of May 2007.

**Commission of Peaceful Resistance of San Rafael Pie de la Cuesta (CRP).** We accompany **Jose Manuel Morales**, Vice President and other members of the organisation after a meeting on 15 September 2007 during which a founding member of the Commission was detained and questioned by police who falsely accused the organisation of carrying out illegal actions.



CONAPAMG demands housing solution. Photo by PBI.

## Other activities

As part of our work to reinforce PBI's international support network, we have met with various diplomats, including the Ambassadors from the United States, Spain, the UK and Germany.

We also visited a number of communities in the outskirts of the capital who are supported by

CONAPAMG. We had the opportunity to visit the National Police Archives in Zone 6 where we observed the processes of restoration and analysis of the archived documents as the PDH attempts to gather evidence of atrocities that occurred during the armed conflict.



# Peace Brigades International

## Mission

To improve the human rights situation in Guatemala and contribute to the democratizing process of the country through an international presence that works to maintain open political space for human rights defenders, lawyers, union members, campesino and indigenous organizations, and civil society groups that are suffering repression due to their work supporting human rights.

## Objectives

1. To provide an international presence that contributes to the opening and protection of the political space of Guatemalan organizations that are working for an end to impunity, national reconciliation and compensation to the victims of human rights violations and the fulfillment of the commitments achieved through the Peace Accords.
2. To sensitize the international community of the human rights situation in Guatemala through the regular communication of information as well as frequent contact with international authorities and the diplomatic community both within and outside the country.
3. To sensitize the Guatemalan Government about the vigilance and concern of the international community to the human rights situation in the country through the regular communication of information and frequent contact with the pertinent national authorities.
4. To share with Guatemalan organizations the experience and pedagogical tools that help reach the general objective of PBI's project.



### PBI Guatemala Team

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## Life in the team

Three new volunteers have become part of the team in the last few months, Wiebke Schramm from Germany, Jacqueline Benfield from the UK and Giovanna Tejjido Vazquez from Spain. A recent training session for prospective volunteers was held in Manchester/UK in April 2008.



## Team April 2008

Maria José Urgel (Spain)  
Maren Enders (Germany)  
Marion Sornay (France)  
Valentina Gori (Italy)  
Johanna van Strien (Holland)  
Wiebke Schramm (Germany)  
Jacqueline Benfield (United Kingdom)  
María Giovanna Tejjido Vázquez (Spain)