

GUATEMALA

Human rights conditions for lawyers and members of the judiciary in Guatemala have deteriorated. A marked increase has been reported in instances of intimidation, criminal assault and killing of lawyers and judges, especially those who have been active in pursuing violators of human rights during the internal conflict. A substantial decrease in the budget for the judiciary endangers its efficient functioning. The implementation of the Law of the Judicial Career and the judgement in the case of Bishop Gerardi were among the positive steps the country has taken during this period.

BACKGROUND

The 1985 Constitution (amended in 1993) states that Guatemala is a democratic and representative republic and provides for the division of powers among the executive, the legislature and the judiciary. The hierarchy of sources of law in the civil tradition, with which the Guatemala legal system accords, is the Constitution, legislation and regulations. The President of the Republic, who is the head of the Government and chief of State, exercises executive power. The President is elected by universal and secret suffrage for a non-renewable period of four years. A 113-deputy unicameral Congress exercises legislative power. Deputies are elected for a renewable four-year period using a system of proportional representation based on population, through election of 91 deputies from districts and 22 from a national list. The Constitution provides for an independent judiciary and a court system.

In January 2000, the conservative Guatemalan Republican Front (FRG) candidate, Alfonso Portillo Cabrera, assumed power, pursuant to the outcome of the 1999 elections. The FRG also obtained a majority in the Congress (56 per cent) and the former Revolutionary Guatemalan National Unity (URNG) guerrillas became a political party and competed in the elections, obtaining eight per cent of the seats. The working majority the ruling party enjoys allowed its current leader, former *de facto* President (1982-1983) Efraín Ríos Montt, to become the President of the Congress. Ríos Montt's influence is viewed with mistrust because during his tenure as head of State and commander of the armed forces, the army killed tens of thousands of indigenous peasants, in collaboration with unofficial security units and civil patrols.

During the period covered by this report, the country experienced substantial political instability. Together with controversial tax reforms sponsored by the Government, evident tension between the presidency and the FRG leadership contributed to the difficult political situation. Furthermore, there arose repeated rumours of a coup d'etat and of the imminent resignation of the President following accusations of corruption.

HUMAN RIGHTS ISSUES

The overall human rights situation in Guatemala has deteriorated. There has been an increase in intimidation, criminal assaults, extrajudicial killings and forced disappearances. Torture carried out by the National Civil Police continue to be a matter of concern. Lawyers, prosecutors and judges,

especially those who have tried to bring to account persons responsible for human rights violations during the internal conflict, have come under attack. According to Guatemalan NGOs, the purpose of these attacks is to weaken the institutional structure of the country so as to create a political and ideological environment hostile to democratic reform and to obstruct the fulfilment of the peace accords. Moreover, there have been reports of participation by State agents in the perpetration of such acts. This situation has led to the general belief that Guatemala is facing a reverse in the democratic progress, which had incrementally advanced during recent years.

Although President Portillo promised to give priority to the 1996 peace accords that ended the 36-year Guatemalan internal conflict, steps towards their fulfilment have been slow and sometimes backwards. One example is the approbation of the decree that allowed the military to assist the National Civil Police (PNC) in fighting common crime, which disrespects the provision of the accords that restricted the army's mission to external defence. President Portillo has also failed to implement the recommendations of the 1998 report of the Guatemalan Church's Recuperation of the Historical Memory (REMHI) project, and of the UN-sponsored Historical Clarification Commission (CEH). Among the recommendations contained in the CEH report of 1999, were the establishment of a programme to exhume the bodies of those killed in the civil war, the founding of a commission to review the actions of military members during the conflict, and the establishment of the fate of the disappeared.

In December 2000, the UN Committee against Torture (CAT) analysed the periodic report of Guatemala. The CAT expressed concern at the increase of acts of intimidation, harassment and death threats against judges, prosecutors, complainants, witnesses and members of human rights bodies and organisations of victims and journalists. These acts serve to obstruct the submission of complaints in politically sensitive cases and in those involving military officials. The existence of parallel investigations tacitly authorised or agreed to by the State and conducted by Government bodies clandestinely was said to affect the autonomy and independence of the judiciary. The CAT concluded that it was absolutely necessary to prohibit this practice. The Service for the Protection of Persons Involved in Proceedings and Persons (*Servicio de Protección de Sujetos Procesales y Personas Vinculadas a la Administración de Justicia*) connected with the Administration of Justice, was considered to be inadequate and ineffective.

The CAT also raised concerns about the lack of an independent commission with broad-ranging powers and resources to investigate on a case-by-case basis the circumstances of the kidnapping of disappeared persons and to locate their remains. The CAT reiterated that articles 201 and 425 of the Penal Code should be amended to bring the definition of torture into compliance with the Convention Against Torture, and, finally, the Committee recommended the State to modernise the system of administration of justice and to strengthen its independence.

In June 2001, the UN Committee on the Rights of the Child (CRC) issued its recommendations after considering the periodic report of Guatemala. The CRC noted that there was a lack of proper investigation on alleged involvement of the National Civil Police in some of the cases of violence against children.

In July 2001, the UN Human Rights Committee (HRC) analysed the second periodic report of Guatemala. The HRC expressed concern at the absence of a policy directed to ensure judgement, punishment and compensation for cases of human rights violations. The HRC emphasised that the Law of National Reconciliation should be applied in a restrictive way so as to exclude from its scope crimes against humanity. The Committee also recommended that an independent commission with the mandate to investigate cases of forced disappearances should be established and that compensation for victims should be provided.

The HRC called upon the Government to investigate cases of involvement of military and police officers in human rights violations. It added that dismissal of such officers would not be enough; instead, human rights violators should be judged and punished. The Committee also expressed deep concern about cases of lynching and called upon the Government to protect the personal security of judicial officers in the carrying out of their functions. The HRC took note of the harassment, intimidation and killings directed at various sectors of society, particularly members of the judicial branch, lawyers, human rights activists and trade union leaders. The HRC recommended that the Government should take all necessary preventive and protective measures to guarantee that such persons can carry out their functions without any intimidation whatsoever. Finally, the HRC expressed concern at the great number of persons under preventive detention, a practice which violates the right to be presumed innocent.

In May 2001, the UN Special Rapporteur on the Independence of Judges and Lawyers undertook a brief follow-up mission to the country. In April 2001, the Inter-American Commission of Human Rights (IACHR) issued a report on the human rights situation in Guatemala following a visit that took place in November 1998.

Impunity

In June 2001, two army officers were sentenced for their participation in the killing of Bishop Juan José Gerardi. In April 1998, Bishop Gerardi, aged 75, had been battered to death two days after he had submitted the Guatemalan church's report on the internal conflict, which denounced army sponsored human rights violations (*Guatemala: Nunca Más*). The case had become a symbol of impunity because of the death threats made against the investigating team, case judges, the witnesses (a number of whom had to flee the country), prosecutors, and the Archbishop's Human Rights Office (ODHA). The Guatemalan tribunal found retired army Col. Disrael Lima Estrada and his army captain son Byron Lima Oliva guilty of murder and sentenced them each to 30 years in prison. Also convicted were former presidential bodyguard José Obdulio Villanueva and Catholic priest Mario Orantes. This verdict constituted the first time that a military officer was successfully prosecuted for human rights abuses. The defendants appealed the judgement.

In May 2000, a lawsuit was filed on behalf of 10 communities in Quiché and Chimaltenango, whose citizens were massacred by security forces between 1981 and 1982. The lawsuit alleges crimes, including genocide, committed by then *de facto* President Fernando Lucas Romeo García. This action was the first genocide case brought to a Guatemalan court. In 2001, a similar lawsuit was filed against the members of the military junta that removed Romeo García. Efraín Ríos Montt, then head of State and current leader of the ruling party and president of the Congress, is one of the accused.

No substantial progress has been observed in the 2000-2001 period in the Myrna Mack case. The Guatemalan anthropologist was assassinated in September 1990, allegedly pursuant to a command from the army's presidential-security wing (*Estado Mayor Presidencial* - EMP) while she was continuing research on the displacement and destruction of indigenous populations during the armed conflict. The legal defence team of the accused military officers has allegedly conducted delaying tactics, and the judicial authorities have not ruled on the defence's petitions expeditiously, even when these are manifestly inadmissible. To date, an ex-sergeant was convicted in this case, and a retired General and two Colonels are being tried for their role as the masterminds of the assassination.

The IACHR received information of interference by State agencies in the proper development of judicial proceedings. The Minister of Defence has refused to submit information on investigations that are being carried out by courts. The Ministry of Defence's decision is based on article 30 of the Constitution, which establishes the general rule that acts of the Government are public, except in military, diplomatic and national security matters. However, the Criminal Procedural Code establishes that the judge is the one that decides whether any document requires confidentiality.

Following the end of the internal conflict, the Guatemalan Congress adopted the Law of National Reconciliation (*Ley de Reconciliación Nacional*) in 1996. This legislation includes an amnesty for crimes committed during the war. However, the amnesty does not cover crimes such as torture, genocide or forced disappearances, and crimes that have no statute of limitations or crimes in which criminal liability may not be lifted under domestic law and international treaties ratified by Guatemala. In December 1982, a brutal massacre of more than 350 indigenous villagers was carried out by the Army's special counterinsurgency force, called Kaibil, in Dos Erres, El Petén. In 2001, the Constitutional Court held that taking into account that the alleged crimes were committed during the internal conflict and were carried out by members of the armed forces, the Dos Erres case could be studied in the context of the amnesty provisions of the Law of National Reconciliation. By ruling on an *amparo* petition (a legal petition in order to seek protection for fundamental rights), the Constitutional Court ordered a lower court, which had dismissed prima facie the defendants' petition to apply the mentioned law in the case, to study the petition of amnesty. This case could result in the application of the amnesty provisions to cases of serious human rights violations, or in the establishment of a precedent that the Law of Reconciliation does not apply to these kinds of offences. Regardless of the outcome, Guatemala maintains the obligation under international law to prosecute the responsible persons for the Dos Erres massacre, according to human rights treaties ratified by Guatemala and international customary law.

Human rights defenders faced an escalating number of attacks in the period covered by this report including murder, robbery, anonymous telephone threats, surveillance of workplaces and residences, and loss of reputation. Certain Government officials have characterised NGOs as destabilizers, and even terrorists, when the groups have tried to organise demonstrations. Casa Alianza, the Citizens Movement for Justice and Democracy (*Movimiento Ciudadano por la Justicia y la Democracia*), the Centre for Legal Action in Human Rights (*Centro para la Acción Legal en Derechos Humanos*), the Relatives of the Disappeared People in Guatemala (*Familiares de los Detenidos y Desaparecidos de Guatemala*), the Centre for Studies, Information and Basis for Social Action (*Centro de Estudios, Investigación y Bases para la Acción Social*), the Guatemalan Shanty-Town Dwellers Association (*Frente de Pobladores de Guatemala*), an Amnesty International delegate, and the Myrna Mack Foundation have all reported attacks and harassment during the period under review.

Finally, lynching continued to be a concern in Guatemala. Thirty-five cases were reported in 2000 involving a total of 47 victims. The judicial system has only been able to solve 2,3 per cent of the total lynching cases. The Special Rapporteur on the Independence of Judges and Lawyers considered impunity to be one of the causes of this phenomenon.

THE JUDICIARY

The judiciary clearly failed to protect human rights during the Guatemalan internal conflict, given the large number of abuses that were neither investigated nor judged by the State. Subordination of

the judiciary to the executive and disrespect of basic principles were the general rule during the internal conflict. The 1996 peace accords called upon the judiciary to play a key role in the reconciliation and democratisation process. Among the challenges to be addressed by the Guatemalan judiciary were impunity, land and property disputes and recognition of indigenous costumes. Although some steps have been taken towards this purpose, the administration of justice continues to suffer various of the problems that undermined it in the past. In 2001, the IACHR stated that the Guatemalan judiciary continues to uphold impunity in cases of human rights violations and common crimes.

Article 203 of the Constitution provides that magistrates and judges are independent in the exercise of their functions and are subject solely to the Constitution and the laws. Whoever attempts to undermine the independence of the judiciary would face the penalties set by the Penal Code and be barred from exercising any public office. However, the judicial system has often failed to carry out fair trials because of inefficiency, corruption, insufficient personnel and funds and intimidation of justice system operators. Political pressure and fears for personal security endanger the independence of the judiciary.

Structure

The organisation and functioning of the judiciary is governed by the Constitution, the Law of the Judicial Organism (*Ley del Organismo Judicial-Decree 2-89*) and the 1999 Law of the Judicial Career (*Ley de la Carrera Judicial - Decree 41-99 - LJC*), which is still in the process of implementation. The Guatemalan Constitution provides guarantees for the judiciary such as, functional and economic independence, the security of tenure of magistrates and first instance judges and free selection of its personnel. Since 1994 the Government has expanded the presence of the judiciary throughout the country. By the end of 2000, there were judges in more than 300 of the 331 municipalities in Guatemala.

The judiciary is composed of the Supreme Court, Appellate Courts and lower courts, including the courts of peace (*Juzgados de Paz*) and the communal courts of peace (*Juzgados de Paz Comunitarios*). There are also specialised tribunals for juvenile and labour issues. The 13-member Supreme Court has both administrative and judicial competency.

The Courts of Peace are composed of one judge (*Juez de Paz*) and deal with traffic infractions and with of other major offences only in emergency cases, which are later submitted to the higher courts. By September 2001, there were 378 courts of peace thorough the country. The Communal courts of Peace are composed of three judges who are elected by the local community. These courts are permitted to use alternative dispute resolution methods and so far only five have been established in the country on an experimental basis.

There is also a Constitutional Court, which has as its primary function the defence of the constitutional system. The Constitutional Court is composed of five magistrates, with five alternates, who serve a term of five years and are elected individually by the Supreme Court, Congress, the President of the Republic, the University of San Carlos and the Bar Association respectively. The number of magistrates of the Constitutional Court increases to seven in cases of disputes over constitutional issues with the Supreme Court. In such cases, the two other magistrates are elected at random among the alternates.

According to the Constitution, the Prosecutor's Office (*Ministerio Público*) collaborates with the administration of justice. The Attorney General is mandated to prosecute and investigate criminal

offences. The President elects the Attorney General for a four-year term from a list of six candidates proposed by a commission similar to that involved in the election of the magistrates of the Supreme Court.

Appointment and Security of Tenure

The Constitution (Article 208) and the 1999 Law of the Judicial Career (Article 3), provide for security of tenure for judges and magistrates. The Law of Judicial career formulates the system that regulates the entrance, permanence, promotion, training and discipline of all judges and magistrates, in order to guarantee their dignity, independence and professional excellence. Magistrates and first instance judges serve a five-year term. The former can be re-elected and the latter re-appointed. During that term they cannot be removed or suspended, except as provided by law (see below). The recommendations by the Special Rapporteur on the Independence of Judges and Lawyers and the IACHR that the term of magistrates of judges should be extended to ten years, and that there should not be provisions for re-election, have not been fulfilled. The current five-year period for judges and magistrates is too short, however to extend the term of serving judges requires a constitutional amendment.

Article 4 of the Law of Judicial Career states that the organs in charge of the administration of the judicial career system are the Council of Judicial Career (*Consejo de la Carrera Judicial*), the Board of Judicial Discipline (*Junta de Disciplina Judicial*), the Nominations Commissions (*Comisiones de Postulación*) and the Training Unit (*Unidad de Capacitación Institucional*).

The Council of Judicial Career began to function in July 2000. This Council is formed by 1) the President of the Supreme Court, 2) the Head of the Human Resources Unit, 3) the Head of the Unit of Institutional Training, 4) a representative of the judges, and 5) a representative of the magistrates. The Council has the competency to call for and conduct public merit-based contests for the positions of judges or magistrates, and to review their performance (Articles 5 and 6 LJC). Among the objectives of the Council is to incorporate all judges and magistrates into the judicial career system by the end of 2005.

The Board of Judicial Discipline has competency for disciplinary control over judges and magistrates. This Board consists of two magistrates of the Court of Appeals and a judge of the Court of First Instance appointed for a one-year term. The General Court of Supervision is responsible for the investigation (Articles 7 and 8 LJC). The Nominations Commissions, described in articles 215 and 217 of the Constitution, have the power to submit lists of candidates for positions of magistrates at the Supreme Court and Appeals Courts. The Training Unit is in charge of planning, executing and facilitating the training of judges, magistrates and other judicial officers (See below).

Appointments

The Supreme Court magistrates are elected by the Congress for a five-year period from a list of 26 candidates proposed by one of the Nominations Commissions composed of representatives of sectors related to the administration of justice, such as universities, faculties of law, bar associations and lower tribunals.

Magistrates of the Appeals Courts are elected by Congress for a five year-term from a list submitted by another Nominations Commission, which has a similar composition as that involved

in the election of the magistrates of the Supreme Court, but with the Supreme Court also participating in the election of these magistrates.

Appointments of first instance judges and judges of Courts of Peace are carried out by the Supreme Court following the completion of a training course in the Unit of Judicial Training (*Unidad de Capacitación Institucional*-Articles 18-19 LJC). This Unit plans, executes and facilitates the training of all judicial officers. Candidates are called to apply through announcements in the official and the most widely circulated newspapers. The Unit has the responsibility of evaluating the candidates based on personal interviews and tests. Once the evaluation is over, the Unit numbers the eligible aspirants according to the grades obtained by them. Those applicants who have been considered eligible must undertake the training course, the length of which can not be less than six months. The Supreme Court then appoints those who were successful either as judges of the peace or judges of first instance.

Concerning the training of judges, there are several serious impediments to the establishment of a permanent and working training program. Judges cannot leave their courts for long periods of time, and there is insufficient personnel to replace them while they carry out the training. A program called Virtual Classrooms was devised to address this problem. Currently, it is functioning as a pilot plan in some of the municipalities of the department of Guatemala. A critical problem faced is the lack of infrastructure. There are courts in the country's interior that have neither telephones nor computers. Additionally, there is no clear policy or systematised scheme regarding training. To conduct these training programmes, it is necessary to create a judge's profile and develop the training programs on that basis.

Disciplinary Sanctions and Removal Procedures

Sanctions against judges and magistrates can only be imposed after a disciplinary proceeding, which must observe principles such as the right to a hearing and the right to conduct their defence personally or with the help of legal counsel (Arts. 47-53 LJC). The sanctions that can be imposed for disciplinary faults, which are defined as light, serious and very serious, range from oral admonition to dismissal (Arts. 37-46 LJC).

The Board of Judicial Discipline (*Junta de Disciplina Judicial*) exercises disciplinary control over the judiciary, including the imposition of sanctions. However, if the sanction imposed after a disciplinary proceeding against magistrates or judges is dismissal, the Board of Judicial Discipline can only recommend such a measure to the authority that appointed the magistrate or judge (Congress in the case of Supreme Court and Appeals Courts magistrates, and the Supreme Court with regards to judges of first instance and judges of the peace) – Article 8 LJC.

It is too early to evaluate the efficiency of the Board of Judicial Discipline and the General Court of Supervision, as they have only been recently established. However, some members of the judiciary have expressed concern that these institutions may try to intervene in the exercise of their jurisdiction. This happened recently with the Second Judge of Penal Petition, whose ruling in favour of the arrest of several bank executives was reviewed by the General Court of Supervision.

Resources

The Supreme Court administers the resources of the Judiciary. It draws up the annual budget and directs its execution. The 2001 budget, which was destined for the justice sector was severely decreased. The Government estimated a decrease in the ordinary income of the State and, therefore,

reduced the contribution to the Judicial Body by 54 per cent from what had been allocated in 2000. It represented a substantial reduction in the sum given to the Constitutional Court, whose budget must correspond to five per cent of the total given to the judiciary. Although the Court itself annulled this reduction of the Constitutional Court's budget, it constituted a clear attempt to leave this institution short of resources.

Similar economic constraints have been imposed on the Public Ministry. For the full implementation of the Law for Protection of Individuals under Legal Process, a higher budget is needed, since the persons involved in penal processes are typically destitute and supporting a large family. The situation of the Institute of Public Penal Defence (IDPP) also remains critical. Due to lack of resources there is a shortage of staff lawyers, limited technological resources, absence of investigators, limited number of social workers and interpreters, little national coverage and scarce growth. Current budgetary allotments do not allow the DPP to function effectively. However, a loan granted by the Inter-American Bank of Development, which will end in 2004, has allowed the office to survive.

Corruption

In response to increasing incidents of corruption, the District Attorney's Office against Corruption was created in 1999 within the structure of the Public Ministry. Its mission was to investigate and prosecute offences of corruption involving officials or public employees. Despite the high rates of corruption in Guatemala, this office has not yet achieved results. No officer has been accused or brought to justice, and it is unknown whether the current district attorney has officially undertaken any investigation. The Special Rapporteur's recommendation that an independent enforcement agency with powers to investigate complaints of corruption in public office, including the judiciary, and refer prosecutions should be set up, has not been fulfilled. In 2001, the IACHR, reiterated the Special Rapporteur's calls for the establishment of this agency.

An illustrative case of political interference in the independence of the judiciary and the difficulties of tackling corruption, involved the alteration of the law of taxes on alcohol (*Ley de Impuesto de Bebidas Alcohólicas*). In this case, members of the ruling party, the FRG, were accused of having altered the law after Congress had approved it. The Supreme Court lifted the parliamentary immunity enjoyed by the deputies involved in the case and ordered legal proceedings against those implicated. During the whole case, members of the Congress belonging to the FRG carried out a defamation war against the Supreme Court. Subsequently, the case prosecutor did not carry out any investigation and joined the defence's arguments by successfully asking the termination of the proceedings and the exoneration of the accused. Following this case, the defendants' lawyer was elected as an alternate member of the Constitutional Court and the Congress approved a severe decrease in the budget of the Court.

On 17 June 2001, a dispute took place between the Supreme Court and four judges of Escuintla over the alleged collaboration of the judges in the escape of 78 prisoners. The Minister of Government accused the judges of transferring the masterminds of the escape in order to bring them together to coordinate the escape. One of the judges, Delmy Castañeda, was accused of prior acts of corruption and a number of irregularities. The Supreme Court suspended her and the judge alleged persecution. The concerns raised by this case have led the Supreme Court to evaluate the possibility of reforming the Law of Judicial Career, considered to be too soft and the source of slow proceedings.

Such an amendment would constitute a step backwards in Guatemala. The law of the Judicial Career has achieved modernisation of the judiciary, and the due process guarantees provided by it should not be perceived as shortcomings.

One positive development has been improvement of the filing system in the courts. This reform has increased efficiency while decreasing corruption and the incidence of disappearance of case files. The number of missing cases has thus dropped from 1000 to three per year. Disappearance of files had been an impetus for corruption because by paying money to court officials, any person could buy the "loss" of a file and secure impunity for himself in a particular case, or cause a person to be held in jail indefinitely. In its 2001 report, the IACHR welcome this development and recommended that these measures should be applied in all Guatemalan courts.

Indigenous Peoples

Concerning the enhancement of access to justice for indigenous populations, the Supreme Court has developed programs in training and selection of assistants for the courts, among whom are translators of Mayan languages. The programmes that allowed the establishment of Judges of the Peace around the country have constituted an improvement in this matter, as they include bilingual judicial officers. While this development is positive, the program lacks judicial interpreters in all regions of the country. In many instances, non-Spanish speakers are tried without the assistance of an interpreter. In 2001, the IACHR recommended that Guatemala intensify its efforts to provide for interpretation services during trials for indigenous peoples.

Members of the indigenous community have asked the Government to integrate indigenous customary law and law practices into the mainstream jurisprudence. The Special Rapporteur on the Protection of Judges and Lawyers said that although the Government should take this request into account, it is necessary that the inclusion of these procedural customs not violate internationally recognised principles of due process. In its 2001 report, the IACHR called upon the Government to take steps towards the respect of indigenous positive traditional practices regarding the resolution of disputes.

Fulfilment of the 2000 Recommendations of the Special Rapporteur on the Independence of Judges and Lawyers.

In contravention of the recommendations of the Special Rapporteur with regards to impunity, several persons accused of violating human rights, have been appointed to different key positions in the public administration. Furthermore, the State has failed to consider seriously the establishment of an international commission to study the main obstacles impeding the clarification of homicide cases, especially those of great social impact. In its 2001 report, the IACHR had endorsed the Special Rapporteur's recommendation to this effect.

The Special Rapporteur recommended that university education should be reorganised to create a programme of professional training for graduates, previous to an admission exam to the exercise of law practice. This proposal caused widespread rejection, especially from the Lawyer and Notaries Association of Guatemala, because it would represent one more obstacle to obtaining the university degree.

Government Decree 310-200 allowed the National Commission for the Continuation and Support to the Strengthening of Justice to continue operating. This Commission is mandated to continue proposing reforms of the judiciary, taking into account the recommendations of the Special

Rapporteur. In August 2000, this agency reached agreements with the United States and the United Nation Development Programme to carry out diverse plans in order to improve the administration of justice.

Contrary to the recommendation of the Special Rapporteur, the Government suspended the effect of the Child and Youth Code, arguing that the State did not have the basic infrastructure to implement special administrative and judicial proceedings for their application. It also argued its lack of economical and human resources. Because of this suspension, the former Children's Code is still in force, (Decree 78-79 of the National Congress). This Code, based upon the doctrine of "irregular situation", considers children and youth as persons who need protection rather than persons who have rights. The application of this Code contravenes the Constitution and the Convention on the Rights of the Child.

The Special Rapporteur on the Independence of Judges and Lawyers undertook a short follow-up mission to the country in May 2001. The Special Rapporteur met with various Government officials, the judiciary, the public prosecutor, the bar association, and NGOs. On the last day of his visit, he expressed his preliminary impressions during a press conference, noting that only some of his recommendations were being implemented. He highlighted as positive aspects the establishment of the National Commission for a Follow-up of the Strengthening of Justice to advise on the implementation of his recommendations, the establishment of the Council of the Judicial Career and the appointment of a Special Prosecutor for the investigations of threats to judges and lawyer.

The Special Rapporteur mentioned as negative aspects the rise in threats against judges, prosecutors and lawyers, especially those against the then President of the Constitutional Court when the tribunal was dealing with petitions involving some members of Congress; the lynching of judge Martínez Pérez; the pressure against judges that the "trials by newspapers" impose; and the inadequacy in addressing impunity and the widespread belief that the Government lacked the political will to solve this problem.

Threats and attacks

At least thirteen lawyers were killed between 2000 and March 2001. The jurists targeted most frequently are those involved in cases on human rights violations that occurred during the internal conflict, Judges of the Peace (*Jueces de Paz*), and lawyers dealing with cases of illegal adoption. During the period under review, the HRC, the CAT and the IACHR expressed concern at death threats, intimidation and killings against members of the judiciary and lawyers related to the carrying out of their functions. These human rights instruments recommended that Guatemala take the necessary measures to protect those who were continuously intimidated.

The Government's response to the increase in attacks has been deficient. The recommendations of the Special Rapporteur on the Independence of Judges and Lawyers have not been fulfilled. In 2001, the IACHR concluded that the Law for the Protection of Individuals under Legal Process (Decree 70-96) had not been implemented due to the lack of political will and resources. Due to the growing state of insecurity, the authorities have taken some isolated measures, which do not correspond to a planned policy. For example, no serious official study of the problem has been undertaken to identify the most vulnerable groups, the most frequent intimidation methods, or the identity of the possible perpetrators. In 2001, The Public Ministry created a Special Prosecutor's Office to handle cases related to these matters (*Fiscalía de Amenazas*). However, no progress on the investigations has been reported. The cases have not even been updated.

The Supreme Court has reinitiated proceedings to provide judges with a plan of medical insurance and benefits. However, efforts to supply judges with life insurance, as recommended in 2000 by the Special Rapporteur, have been inadequate, owing largely to the fact that insurance companies consider judges to be a high-risk group and due to the decreased budget of the judiciary.

CASES

Maura Ofelia Paniagua Corzantes {Lawyer}: Ms. Paniagua was the civil law coordinator for the law clinic at the University of San Carlos. In October 2000, she was murdered. She was in charge of receiving complaints of violence against women on behalf of the University. The day before her killing, a person who had come to see her was turned away by her maid. The next day, the same person returned and shot her repeatedly. The case is under current investigation in order to establish motives and suspects.

Conchita Mazariegos {Judge}: Ms. Mazariegos was a justice of the Constitutional Court in 1996-2001 and President of this body during 2000-2001. During her tenure as President of the Constitutional Court, she had disputes with the ruling party as a result of the congressional reduction of 60 per cent of the budget of the Court. The reduction was believed to have been undertaken as a reprisal for the decisions that the Constitutional Court took against 23 members of Congress in corruption cases. On 23 March 2001, two weeks before finishing her period as justice of the Constitutional Court, Ms. Mazariegos was the victim of an armed attack. Unknown persons fired at her house. On 29 March 2001, the IACHR issued preventive measure in favour of Ms. Mazariegos.

Francisco Javier Mazariegos Cifuentes {lawyer}: On 24 January 2001, he was killed by two unidentified men in Quetzaltenango. Among other cases, Mr. Mazariegos was defending five people accused of drug-trafficking. His wife reported that he had received death threats, but did not know their motive.

Miriam Patricia Castellanos Fuentes de Aguilar {lawyer}: On 21 February 2001, she was murdered while driving her car accompanied by her five-year old daughter and a baby-sitter, in Guatemala City. This killing apparently resulted from mistaken identity, as the killers seemed to be after another woman. On May 16 2001, Francisco Aguilar, Mrs. Castellanos' husband,, was also murdered.

Sonia Urréa Bercián {lawyer}. Ms. Urréa worked with tax law cases. An unknown man waiting near her residence in Guatemala City shot and killed her on 2 March 2001.

Alvaro Hugo Martínez Pérez {Judge of the Peace}: On 3 March 2001, Mr. Martínez was lynched. Prior to his death, he was beaten, stoned and attacked with machetes in the municipality of Senahú, Alta Verapaz. Approximately 200 people surrounded the Court of Peace and for more than 12 hours harassed the judge before killing him. The judge had managed to hide in the toilet, but the crowd put rocks on the roof until it collapsed on him. At the beginning of the aggression the judge had tried to defend himself and shot at the crowd, causing wounds to two men participating in the lynching. After the death of the judge, the crowd, having grown to some 500 persons, destroyed the offices of the National Civil Police and the municipality. No authority, including the mayor who was present, intervened to prevent the lynching. The few police officers in the zone retreated because they did not get additional support. Neither the governor nor the armed forces appeared.

The reason for the lynching is not clear. According to some accounts, some local persons grew angry because the judge had freed an alleged sexual abuser of minors. However, this version has not been confirmed. Other sources indicate that the lynching was not spontaneous, but the outcome of a plan. The judge's relatives agreed with this hypothesis and pointed to several elements before the lynching that support this view. The number of police officers was reduced to four, the communication by radio and telephone were interrupted, the rocks that were put on the roof were brought by a truck because such rocks did not exist in the place of the murder, and the authorities restrained from taking any action and only claimed knowledge of what had happened hours after the lynching had occurred.

Beatriz Estrada de Martínez and Hugo Martínez {lawyers}: parties to the process for the murder of Judge Martínez Pérez, have reportedly received numerous death threats.

Berta Julia Morales {Prosecutor}: She belongs to the Unit against Organised Crime, specifically responsible for cases related to robbery of banks. She has received multiple threats, including one made on 30 March 2001.

Silvia Consuelo Ruiz Cajas {Judge}: Ms. Ruiz is a judge in Quetzaltenango. She issued a warrant of arrest against the departmental chief of police, Gerson López, accusing him of falsifying material and conducting an illegal search. She received death threats after the warrant was issued. The judge reported the threats on 25 May 2001.

Rosalba Corzantes Zúñiga, Thelma Aldana Hernández and Carlos Rubén García {Judges}: They are members of the Board of Judicial Discipline. They reported on 17 August 2001 that they had received numerous death threats related to the disciplinary procedures carried out by them against judges accused of improprieties.

Fausto Corado Morán {Prosecutor}: On 29 June 2001, Mr. Corado received several death threats that were thought to emanate from the kidnapping gang AR-15. Prosecutor Corado has been in charge of the prosecution in cases resulting in the imprisonment of several members of the group.

Ana Patricia Lainfiesta {Prosecutor}: On 29 June 2001, Ms. Lainfiesta asked for increased protection. She feared attack from Manuel Rogelio Camposano Castillo, who had been sentenced to death for the kidnapping and murder of businessman Jorge Abelino Villanueva and who escaped from the prison where he was awaiting his execution.

Eduardo Adilio Juárez Contreras {Lawyer}: On 17 July 2001, Mr. Juárez reported to have received death threats related to the case of Kimberly Pineda Albizúrez, a girl who had been illegally adopted by a Spanish couple and later recovered. Mr. Juárez is party to the process and has said that two family members of the girl have been murdered.

Hector Dionicio Godínez {Lawyer}: Mr. Dionicio Godínez is the legal co-ordinator of the Legal Assistance Programme of *Casa Alianza*. On 10 September 2001, a car tried to run him off of the road. On the same day, he received a telephoned death threat at home. On 26 September 2001, two unidentified men entered his car and tried to steal it while it was parked in front of his office. The day before, Mr. Dionicio Godínez had received two death threats by telephone. (*Casa Alianza* is a human rights NGO working with street children, which handles more than 400 criminal cases, many involving police officers and other State-agents. *Casa Alianza* has been subject of continuous harassment.)

Baldemar Barrera {Ombudsman}: Mr. Barrera is head of the human rights ombudsman office (*Procuraduría de los Derechos Humanos* - HROO) in Puerto Barrios, Izabal. Since September 2001, lawyer Barrera has constantly received death threats and been subject to surveillance. The attacks started when the ombudsman began investigations into the murder of journalist Jorge Alegría, which occurred on 8 September 2001. The Human Rights Ombudsman's Office concluded that Mr. Alegría had been murdered due to his radio program, through which he revealed cases of corruption allegedly committed by local authorities in Portuaria, Santo Tomás de Castilla.

Urías Bautista {Ombudsman}: Mr. Bautista is head of the Human Rights Ombudsman's Office (HROO) in Sololá. The HROO investigated the murder of the peasant Teodoro Saloj, member of the National Council of Peasants' Organisations. On 10 October 2000, Mr. Saloj was killed while taking part in a demonstration that included a road block of a major road leading to Sololá. The HROO concluded that officers of the National Civil Police had provoked the death of Mr. Saloj when they began shooting indiscriminately at the crowd. After members of the National Civil Police were sentenced, lawyer Urías Bautista and the Sololá HROO staff were threatened and harassed repeatedly. The HROO blames the National Civil Police for these attacks.

Jorge Ríos {Ombudsman}: Mr. Ríos is the head of the HROO of Quetzaltenango. The Office, directed by Mr. Ríos, investigated accusations against Gersón López, Chief of the National Civil Police in Quetzaltenango. The charges against Mr. López included corruption, abuses and unlawful detentions and led to his dismissal and to criminal proceedings against him. Mr. Ríos has received written death threats, responsibility for which he attributes to Mr. Gersón López. The now former Police Chief has also been implicated in death threats against Ms. Silvia Consuelo Ruiz Cajas (see above).

Julio Cesar Miranda {Ombudsman}: Mr. Miranda works in the HROO of Chimaltenango. He reported on 9 November 2001 that he had been subject to several acts of harassment and death threats. His car was searched, its windows destroyed, and some items stolen in the course of two different events. He has also received death threats at his office and residence. Mr. Miranda has investigated several cases against police officers. He also is in charge of a case involving teachers, students and parents of the Pedro Molina School, and the Guatemalan Army. (In the 1980s, the army occupied lands that belonged to the school and established a Military Zone. The army and the community are currently negotiating the eventual redistribution of the land.)

Bishop Gerardi Case

In 2000 and 2001, threats continued against those involved in the investigation of the Bishop Gerardi murder:

Eduardo Cojulón Sánchez {Judge}: Mr. Cojulón is the President of the Third Criminal Tribunal on drug-trafficking and environmental crimes. This Tribunal carried out the trial concerning the murder of Bishop Gerardi. From 3 to 20 February 2001, the judge received death threats through pamphlets that circulated within judicial circles. On 28 April 2001, Mr. Cojulón received a letter in which threats were made to his life and subsequently asked to abandon the case. On 8 June 2001, after the tribunal pronounced sentencing in the case, the judge received fresh death threats by telephone.

Iris Yassmín Barrios Aguilar {Judge}: Ms. Barrios is Judge of the Third Criminal Tribunal, handling drug-trafficking and crimes against the environment. Between 3 and 5 February 2001, the judge reported death threats. On 19 March 2001, she allegedly received further threats, after which

several individuals attempted to enter her house. On 21 March, the night before the public hearing, the Judge's residence was attacked with grenades, causing substantial damage to her house.

Leopoldo Zeissig Ramírez {Prosecutor}: Mr. Zeissig was subject to a number of acts of intimidation throughout 2000. On 5 January 2001, he received death threats by telephone. From 16 to 22 January 2001, a pickup truck, similar to those used by the EMP, remained parked in front of the Attorney's office. On 5, 10 and 20 February 2001, the attorney and his assistants received further death threats by telephone and through anonymous pamphlets. On 22 and 23 March 2001, Zeissig was pursued by cars and was again threatened. Additional threats were reported on 2 April 2001. In July Mr. Zeissig fled the country due to the continuous death threats he had received. On 6 August 2001, the ICJ sent a letter to the President of the Republic of Guatemala, asking the Government to take the necessary steps to guarantee that Mr. Zeissig and other lawyers, prosecutors and members of the judiciary would be able to work in an atmosphere in which their lives were not constantly threatened.

Nery Rodenas Paredes {lawyer}: Mr. Rodenas is the director of the Archbishop's Human Rights Office (ODHA), which was involved in the Gerardi Case in representation of the Guatemalan Church. Mr. Rodenas has received multiple threats throughout the process. On 22 February, he allegedly received death threats and reported that unknown persons were surveying his residence. In April 2001 he was threatened by one of the accused, Captain Byron Lima Oliva.

Mynor Melgar Valenzuela {lawyer}: Mr. Melgar is also a lawyer in the ODHA. In December 2000 unknown armed intruders threatened and beat him while searching his house. The intruders also demanded that he abandon the case. On 4 April 2001, he reported having received a threatening anonymous letter. A member of the army, Alvaro Ramírez, was reported to have signed another such letter received later.