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**Pre-trial custody and criminal justice procedures:  
three people from San Juan Sacatepequez  
deprived of liberty for almost three years.**

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Photo: PBI 2011

PBI international accompaniment at the entrance of the Prison in Zone 18, Guatemala City, during a visit in September 2011.



Photo: PBI 2011

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Photo: PBI 2011

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## Follow up to the Community Consultation in Sacapulas, Quiché.



Photo: PBI 2011

Good faith Community Consultation in Sacapulas, 20<sup>th</sup> of May 2011.

The PBI Guatemala Project was invited to observe the **Community Consultation that took place in the municipality of Sacapulas** in the department of Quiché on May 20<sup>th</sup> of this year. The referendum took place in 103 communities with the participation of women and men of all ages including the elderly and children. The process was accompanied and observed by internationals as well as people from other departments across the country. At the end of the consultation the results showed a participation of 28.209 people - 59% of the total population of the municipality- which rejected both mining and hydroelectric activities in Sacapulas<sup>1</sup>.

Sacapulas' territory extends over an area of approximately 213 km<sup>2</sup> with a population of 47 801 inhabitants. According to sources from the Ministry of Energy and Mines (MEM) there are **five applications for mining exploration** in the municipality<sup>2</sup> being processed. The company Cazadores de Sueños, Inc. holds four of these applications: Los Trigales, Media Luna, Los Trapichitos and El Jocote. All four are in their final phases. The fifth is held by Aventuras Mineras Inc. (Cerro Negro)<sup>3</sup>. Ac-

ording to the community of Sacapulas there is another mine called Llano del Coyote that the Canadian company, Firestone Ventures, is prospecting. The company Prominas Inc. has also applied or an exploration license of the La Abundante mine in the Sacapulas region. **One license has been granted already** to an individual, Estuardo Nanne Villagrán for the Yexub mine. Apart from these mining activities the construction of the **Serchil** hydroelectric power plant has already been planned and authorized. The project will be located at the source of the Negro river, in the southern part of the municipality<sup>4</sup>.

On February 7<sup>th</sup>, 2011 the **Coordinating body of the Sacapulas Communities in Resistance and Defense of Natural Resources and the Environment** (Coordinator of Communities) was formed. The objective of this organization is to coordinate the work and actions taken in defense of the land, water and other natural resources of Sacapulas. Even though the organization is made up of individual delegates from several communities, from the beginning the process has depended on the active participation of the communities. The organization's

1 Official Results of the Sacapulas Community Consultation: <http://consultasacapulas.tk3.net/>

2 Public Information requested by Member of Congress Héctor Nuila and given to the various communities of Sacapulas the 30th of September, 2011 by the MEM.

3 Public Information about Sacapulas, Natural Resources and the Resistance of Communities, January 2011.

4 Statement of the communities from the north of the Quiché department, March 2010.

main aim, as laid out in its manifesto published on June 17<sup>th</sup>, 2011, is that the communities and their members should “enjoy a healthy environment, a decent and fair life that includes better development for all families and the future generations of Sacapulas.”

According to the same manifesto, since 2009 various communities of Sacapulas started a process to access publicly available information about government plans for the different areas of Sacapulas. Particularly regarding plans in mining exploration and exploitation and the construction of hydroelectric power plants.

In March and April of 2011 more information was collected and has been shared during assemblies between different groups, both at the community and sub-regional level. These events led to the organization of the First (general) Assembly of the Communities, which took place in April 2011 in the central park of Sacapulas. On this occasion 2000 participants took the decision that a Good faith Community Consultation would be held on May 20<sup>th</sup>, 2011. Along with this decision came the commitment to continue broadening the access to information in the communities through their local and regional assemblies.

To make sure that the Community Consultation had the approval of the municipality, the Coordinator of Communities submitted a written request on behalf of the communities it represents on April 26<sup>th</sup>, 2011. This request asked for the mayor and the council to publish a **Municipal Resolution** giving additional official support to the organization of the Community Consultation<sup>5</sup> which is based on international legal instruments that recognize the right of indigenous peoples to prior consultation<sup>6</sup>.

As a further step towards the Community Consultation a **Second Assembly of Communities** took place on the 16<sup>th</sup> of May including this time the participation of all the deputy mayors and the Community Development Councils (COCODES). During this activity the Coordinator of Communities updated those present and expanded upon the public information available regarding prospecting studies and the planned Serchil hydroelectric power project. This was also an opportunity for all those present to collect all the paperwork needed to carry out the Community Consultations in each of their communities, hamlets and cantons.

The work of the involved communities and the Coordinator of Communities did not end with the May 20<sup>th</sup> Community Consultation. They requested a second **Municipal Resolution on the formalization of the Community Consultation results**<sup>7</sup>.

On the 30<sup>th</sup> of September, 2011 Héctor Nuila, Member of Congress and head of the party caucus of the Guatemalan National Revolutionary Unit (URNG) along with the delegates of the Coordinator of Communities presented the **Community Consultation results to Congress and to representatives of different public institutions**: the MEM, the Ministry for the Environment and Natural Resources (MARN), the Ministry of Agriculture, Livestock and Food (MAGA), the National Electrification Institute (INDE), the Presidential Secretariat for Planning and Programming (SEGEPLAN), the Human Rights Ombudsman's Office and the Presidential Human Rights Commission (COPREDEH). The delegates used this opportunity to present not only the results of the Community Consultation but also to voice the concerns and demands of the population of Sacapulas with regard to exploration and exploitation projects in their territory (both planned and in execution). The delegation asked several questions about mining licenses and hydroelectric power projects. Due to the then forthcoming elections the delegation requested that the representatives of each public institution guard all the information they had received and ensure its transfer to their successors. In response the representatives from the public institutions presented public information on existing plans for energy sector projects that are to be developed in the municipality and the department as a whole. Members of the PBI team were present as international observers during this activity.

The work of the Coordinator of Communities and the communities themselves continues to advance with another General Assembly planned for 2012 with the objective of making known information on the progress of their work to the newly elected mayors, deputy mayors (elected in September 2011) and the Community Development Councils. It is seen to be of vital importance by the Coordinator of Communities that these representatives know the work that has been accomplished throughout these last few years in defense of the natural resources of Sacapulas.

5 Municipal Accord 26-2011 <http://consultasacapulas.tk3.net/>, [www.plazapublica.com.gt/content/en-sacapulas-no-quieren-minas-ni-hidroelectricas](http://www.plazapublica.com.gt/content/en-sacapulas-no-quieren-minas-ni-hidroelectricas)

6 PBI Guatemala, Bulletin 22, Third Bulletin of 2010.

7 Municipal Resolution 34-2011, 15.06.2011. “First: We validate the Community Consultation results that took place in all the communities, by highlighting the total rejection of all activities, whether they regard the prospecting, exploration or exploitation of any natural resources in the area of the municipality both above and below the ground. This total rejection also includes the building of hydroelectric dams on the rivers that flow through the municipality of Sacapulas. Second: In response to the overwhelming rejection of these types of projects, the Municipal Council that represents the interests of the municipality, RATIFIES THE TOTAL REJECTION of all activities having to do with the exploration and exploitation of minerals as well as the construction of hydroelectrically projects.”

## Pre-trial custody and criminal justice procedures: three people from San Juan Sacatepequez deprived of liberty for almost three years.

“Prison sentencing continues to be “a necessary evil”. Human-kind has not found a better way of responding to crime than prison. Nevertheless, and precisely because it is violent, it should be used minimally and only when all else has failed. As a society we cannot ignore the effects that our decisions have on people. These stories aim to make clear aspects of judicial procedures often concealed through their cold language of regulations and brief articles in the press. Our hope is that these stories will also help people reflect on the need to find less violent solutions to our conflicts with the aim of achieving, in the words of Radbruch<sup>1</sup>, a more humane criminal law, in the hope of something better than criminal law<sup>2</sup>.”

The following article concerns the situation of the Guatemalan penitentiary system and particularly focuses on access to due process for people deprived of liberty.

Peace Brigades International (PBI) accompanies the 12 rural communities of the Q'a molo Q'i San Juan collective in the municipality of San Juan Sacatepéquez, who work to defend natural resources. Given their opposition to the installation of a cement quarry and factory on the territory where they live, they face threats and for years have denounced violence against them as well as the violation of their human rights. One of the results of the conflict in their municipality surrounding the construction of the cement-works, is that that three people have been accused of homicide. They have been held in on remand since 2008.

### **Legislation, rights and duties of people deprived of liberty: an overview of the Guatemalan criminal justice system**

“It is the duty of the State to guarantee the life, liberty, justice, security, peace and comprehensive development of inhabitants of the Republic<sup>3</sup>”.

In 2006, the Congress of the Republic approved the Law on the Penitentiary System in Decree 33-2006. This regulates the fundamental principles of the administration of prisons and the rights and responsibilities of those incarcerated, accused, as well as those employed by the penitentiary system<sup>4</sup>; principles that are established by the Guatemalan Constitution<sup>5</sup>.

According to media-reports however, the Guatemalan penitentiary system's current situation continues to be questioned by experts and human rights authorities who point out that “the prisons are out of control”, and highlight state failures to both recognize the problem and apply the corresponding laws<sup>6</sup>.

Already in 2006, the United Nations High Commissioner for Human Rights expressed her deep concern over the level of violence within the Guatemalan prison system, particularly after the events of August and September 2005 which resulted in the deaths of some prisoners and various youths in juvenile detention centres. The report concludes that in not providing the necessary security and in not preventing violent actions and corruption in prisons, the State is not upholding its international human rights obligations<sup>7</sup>.

According to figures published in the newspaper the *Diario de Centro América* in 2011, out of a population of almost 15 million people in Guatemala, currently 12,116 are in prison: 849 are women and 11,317 are men. Over half of this figure corresponds to people on remand. At present there are six centres for

1 Gustav Radbruch was a German professor of Penal Law, politician and philosopher who lived between 1878 and 1950.

2 Lorena Seijo, *Testimonios: La Cárcel de Mujeres en Guatemala*, Institute for the Comparative Study of Penal Sciences in Guatemala (Instituto de Estudios Comparados en Ciencias Penales de Guatemala- ICCPG), Guatemala, 2007.

3 Political Constitution of the Republic, Artículo 2, Guatemala, 1985 (rewritten in 1993).

4 Ministry of Governance, [http://www.mingob.gob.gt/index.php?option=com\\_rckdownloads&view=file&Itemid=85&id=138:ley-del-regimen-penitenciario-decreto-33-2006](http://www.mingob.gob.gt/index.php?option=com_rckdownloads&view=file&Itemid=85&id=138:ley-del-regimen-penitenciario-decreto-33-2006)

5 Political Constitution of the Republic, Artículo 19.- Penitentiary System. The penitentiary system should lean toward the social re-adaptation, the re-education and treatment of prisoners through the following minimal norms:

- They should be treated as human beings, they should not be discriminated against for any reason, nor should they receive cruel treatments, physical, moral, psychological torture, coercion or discomfort, work not in keeping with their physical ability, degrading activities, or be made victim of exaction or scientific experiments
- They must abide by their punishment in places designated for this purpose. Penal centres are of civil nature and must have specialised personnel;
- They have the right to communicate, when they wish, with their family, defence lawyer, consult medical or religious support, and if relevant, contact the diplomatic or consular representative of their nation. The infraction of any of the established norms in this article give the accused the right to demand compensation from the state for damages incurred, and the Supreme Court of Justice will order their immediate protection.

6 Barranco C., R., ‘Pandilleros tienen el poder en las cárceles’, *Prensa Libre*, Guatemala, 24 November 2010 [http://www.prensalibre.com/noticias/Pandilleros-poder-carceles\\_0\\_377962219.html](http://www.prensalibre.com/noticias/Pandilleros-poder-carceles_0_377962219.html)

7 Office of the United Nation High Commissioner for Human Rights, (OHCHR), ‘Report on the Situation of Human Rights in Guatemala’, Economic and Social Council Human Rights Commission, 62nd Session, Guatemala, 6 February 2006.

the detention of people serving a sentence and twelve for those on remand<sup>8</sup>. In 2002 the country's prisons were overcrowded with the population surpassing the legal limit by 13%<sup>9</sup>. For Talamonti, former director of the Guatemalan Penitentiary System, this is the result of a small budget and a legal system that offers few possibilities to apply substitute measures in cases where low-impact crimes have been committed<sup>10</sup>. According to a 2008 report by the Human Rights Prosecutor (PDH), existing centres had an approximate total capacity of 7,496 prisoners in 2004<sup>11</sup>.

"Since the year 2000, the Inter-American Human Rights Commission (CIDH) has stated that inhuman conditions and the lack of suitable, trained personnel, together with lack of supervision, are conducive to acts of internal violence, protests, strikes and repeated escapes that generate a feeling of increasing insecurity among citizens.

In relation to the situation of inmates associated with maras or gangs, the Special Rapporteur on the Rights of People Deprived of Liberty in Guatemala, during a visit in 2004, observed that their treatment is characterized by abandonment; overcrowding; lack of adequate infrastructure, hygiene and access to doctors and psychologists; as well as lack of judicial monitoring and projects specifically aimed at their rehabilitation<sup>12</sup>".

### Pre-trial detention

"Detained people or those in pre-trial custody (being held on remand):

1) As a result of the following conditions, people are declared as "accused" when they have been arrested or incarcerated in order to attribute an infraction of penal law to them, when they have been detained in a police cell or in prison, when they have not yet faced trial.

2) The accused benefits from a presumption of innocence and should be treated in accordance (...)"<sup>13</sup>.

In continuation, the Basic Rules for the Treatment of Prisoners, adopted in line with the United Nations over half a century ago,

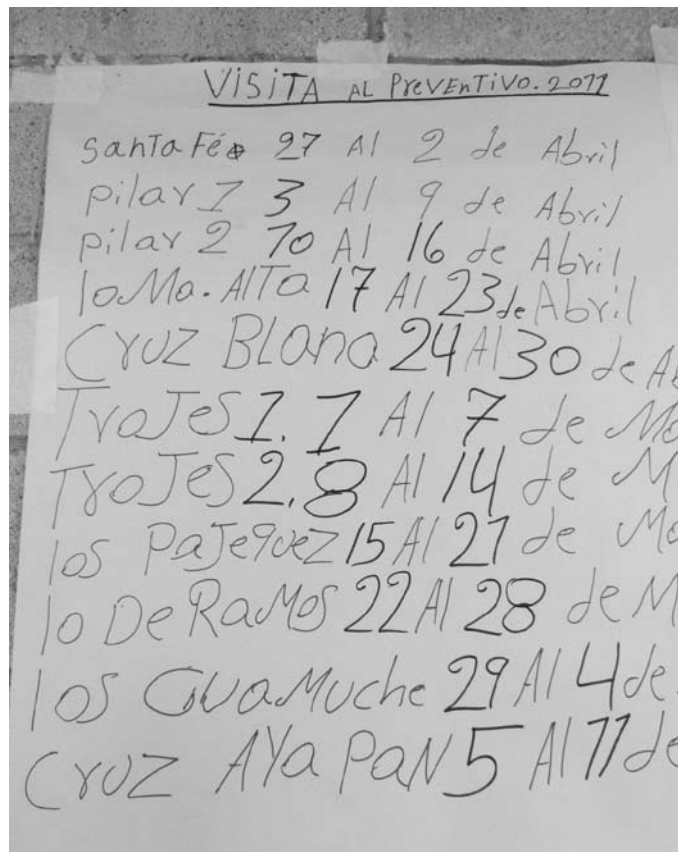


Photo: PBI 2011

Community planning in San Juan Sacatepèquez around the continuation of weekly visits to the Prison in Zone 18 during the first half of 2011.

affirm that detained people or those held on remand should benefit from special treatment.

Some examples that characterize this treatment include: that they should be separated from those serving a sentence; that they should sleep in individual cells "depending on local customs due to climate conditions"; that they are always offered the possibility of working, earning a salary, but will not be required to do so; that they have the right to be informed immediately about their detention; and that they will be given access to all facilities that allow them to communicate with their families and

8 Morales Ama, H. y Figueroa, D., 'El estigma de una acusación falsa', Diario de Centro América, Guatemala, 29 August 2011 <http://www.dca.gob.gt/es/20110829/Nacionales/4836/El-estigma-de-una-acusaci%C3%B3n-falsa.htm>

9 Instituto Latinoamericano de las Naciones Unidas para la Prevención del Delito y el Tratamiento del Delincuente (ILANUD), [http://www.bbc.co.uk/spanish/flash/swf/prisons/prison\\_stats.swf](http://www.bbc.co.uk/spanish/flash/swf/prisons/prison_stats.swf)

10 López, J., 'Caldo de cultivo en la cárcel', Plaza Pública, Guatemala, 22 February. 2011 <http://www.plazapublica.com.gt/content/caldo-de-cultivo-en-la-carcel>

11 PDH, Observatorio guatemalteco de cárceles, 'Segundo Informe 2005-2007', Guatemala, 2008.

12 CIDH, 'El relator especial sobre derechos de las personas privadas de la libertad de la CIDH expresa profunda preocupación por sucesos violentos registrados en diferentes centros penitenciarios guatemaltecos', Comunicado de Prensa 32/05. Washington, D.C., 18 August 2005

13 PDH, Defensoría del Debido Proceso y Recluso, 'Cartilla de los derechos de la víctima y al debido proceso', Guatemala, 2006. See section relative to (Minimum Standard for the Treatment of Prisoners), adopted by the First Congress of the United Nation on the Prevention of Crime and Treatment of Prisoners", adopted in Geneva in 1955 and approved by the Economic and Social Council in 1957 and 1977. Paragraphs 84 to 93 refer to the rights of the detained or people in custody.

[http://www.pdh.org.gt/index.php?option=com\\_phocadownload&view=file&id=66%3Acartilla-de-derechos-de-la-victima-y-al-debido-proceso&Itemid=6](http://www.pdh.org.gt/index.php?option=com_phocadownload&view=file&id=66%3Acartilla-de-derechos-de-la-victima-y-al-debido-proceso&Itemid=6)



Photo: PBI 2011

Mural on the wall of Santa Fe Ocaña school, San Juan Sacatepéquez, May 2011

to receive visits “within the restrictions and under the necessary surveillance to comply with standards regarding the administration of justice, security and order in the establishment”, among other measures<sup>14</sup>.

Article 9.3 of the International Pact for Civil and Political Rights (PIDCP), ratified by the State of Guatemala in 1992, establishes that “... Pre-trial detention of people who have yet to be judged should not be the general rule, but their liberty can be subordinated on condition that the appearance of the accused before the judicial system or any sort of legal proceedings can be guaranteed and that a judgement can be given on their case”<sup>15</sup>. According to this international legal guarantee, any accused person has the right to be brought without delay before a judge or other functionary authorized by law to exercise judicial functions and will have the right to be judged within a reasonable period of time or be granted liberty, given that pre-trial detention is considered an exception. In similar terms, the rights of detained or incarcerated persons are guaranteed by the American Convention on Human Rights (CADH)<sup>16</sup>.

According to Sánchez Romero in his article “Pre-trial Detention in a Democracy”, in the American criminal justice system one sees not only high levels, but also an extensive duration of

pre-trial detentions, which becomes a sentence in itself<sup>17</sup>. Along the same lines, a special report by the Guatemalan Centre for Studies (CEG) on the situation of the penitentiary system in Central America already noted in 2006 that “in recent years, the high number of people arrested for suspected crimes and the length of and obsolete judicial processes, increasingly alienate the common citizen since the usual judicial procedures result in their rapid placement in prison, where they remain for long periods without constitutional and universal rights to the due judicial procedures”<sup>18</sup>.

In Guatemala this is reflected in a report by Eddy Morales, director of the Penitentiary System, which reveals that in 2010 60 people were accused of minor crimes and remained in pre-trial detention for a period of two to six years without tribunals passing a sentence or releasing them from custody. Furthermore, according to this report there were “three representative cases of accused people who were in prison for crimes of murder or rape, but who did not know what their crime was nor which tribunal was responsible for the cases”<sup>19</sup>.

For Sánchez, pre-trial detention reproduces a repressive policy used to tackle crime and yet the incredibly serious personal and family consequences override the supposed benefits and

14 Ibid.

15 PIDCP, <http://www2.ohchr.org/spanish/law/ccpr.htm>

16 CADH, San José, Costa Rica, 1969. Articles 5 (Right to Personal Integrity), 7 (Right to Personal Freedom), 8 (Judicial Guarantees) y 9 (Principles of legality and retrospectivity) principio de legalidad y retroactividad). <http://www.cidh.org/basicos/basicos2.htm>

17 Sánchez Romero, C., ‘La Prisión Preventiva en un Estado de Derecho’, Revista de la Asociación de Ciencias Penales de Costra Rica, Ciencias Penales, Año 9, N° 14, Costa Rica, December 1997.

18 CEG, ‘Sistema penitenciario: el reto de la rehabilitación’, Special Report, Guatemala, April 2006. [http://alainet.org/active/11699&lang=es#\\_ftnref19](http://alainet.org/active/11699&lang=es#_ftnref19)

19 Villagrán, G. y Pérez, A., ‘Informe del Sistema Penitenciario evidencia saturación en centros carcelarios del país’, Diario de Centro América, Guatemala, 7 September 2010

furthermore, “provoke social and family breakdown that pushes entire groups towards crime as a way of living”. From his point of view, repression does not have any practical benefits: “the offender loses because there is no benefit or reason for him to change his behaviour or attitude, the victim loses because their wound is not healed and finally society loses because often the conflict that it creates turns out to be more violent than the original infraction”<sup>20</sup>.

In 1998 the Office for the Protection of Due Process and Prisoners was created in Guatemala as part of the PDH with the aim of safeguarding the respect and implementation of guarantees to due judicial process, the understanding of national and international laws that regulate it as well as knowledge of prisoners or the accused of their constitutional and procedural guarantees<sup>21</sup>.

### **Peace Brigades International's visit to pre-trial detention centres- accompanying Q'a molo Q'i San Juan**

In February 2011 we observed in the capital a hearing for three people detained at the end of 2008 and who since then have been held on remand. It was the opening hearing against them accused of illegal detention, instigation to commit a crime, and the murder of Francisco Tepeu Pirir<sup>22</sup>. The three defendants, Faustino Camey Equite, Efraín Cotzójay Díaz (detained on the 6th of October 2008 and at present in a prison known as El Pavoncito in the municipality of Fraijanes), and Porfirio Cotzójay Díaz (detained on the 3rd of December 2008, held in Pre-Trial Detention Centre 18 in Guatemala City).

They are members of Q'a molo Q'i San Juan – Uniting People of San Juan- an organization made up of 12 communities from the municipality of San Juan Sacatepéquez. Their situation contrasts with the nationally and internationally recognized rights on detained people, particularly the right to due process within a reasonable time frame. The gravity of the defendants' situation is more serious given the length of time they have spent in prison and waiting for a judge's decision. The

presumption of their innocence has been undermined. According to a report published by the Institute for Comparative Studies on Criminal Sciences in Guatemala (ICCPG) any accused person has the right to judicial proceedings within three months following their arrest<sup>23</sup>. PBI began accompanying Q'a molo Q'i San Juan in December 2009 based on their petition resulting from the threats and persecution faced by various members. The follow up on the situation in the municipality was to a great extent facilitated due to PBI's accompaniment of the Association of Mayan Lawyers and Notaries (between 2008 and 2009), who provide advice and legal support to the communities of San Juan Sacatepéquez.

Since 2006 the Guatemalan company Cementos Progreso S.A. has been working on the “San Juan project” that includes the construction of a factory and quarry on the San Gabriel Buena Vista ranch and the villages of San José Ocaña and San Antonio las Trojes I and II. In this factory Cementos Progreso is contributing 80% of the investment and the remaining 20% comes from Swiss multinational company Holcim<sup>24</sup>.

Q'a molo Q'i San Juan is continuously working on social community monitoring the work of the company and its potential consequences for the communities and natural resources that exist in the area. Within this framework its members have denounced a wide variety of violations of their collective and individual rights.

On 13<sup>th</sup> of May 2007 the communities of San Juan Sacatepéquez conducted a Good faith popular referendum over the installation of the factory with 8,950 people participating of whom 8,946 voted against and 4 in favour. Although the Mayor and Municipal Council promised to take the results of the referendum into account before any licence was granted, the factory installation went ahead<sup>25</sup>. Since the referendum the inhabitants of San Juan Sacatepéquez have denounced numerous human rights abuses<sup>26</sup>. On 21<sup>st</sup> of June 2008 a group of people tried to enter the property belonging to the Cement-works with the intention of inhibiting the entry of machinery to the company. A day later, a local resident, Francisco Tepeu Pirir, who was linked to the company, was murdered. Following the murder

20 Sánchez Romero, C., Op. Cit.

21 A tool for the Office for the Protection of Due Process and Prisoners is the diffusion of the “Booklet of the Rights of the Victim and Due Process”, cited previously, with the objective of expanding understanding of the rules that regulate rights and judicial guarantees. [http://www.pdh.org.gt/index.php?option=com\\_phocadownload&view=file&id=66%3Acartilla-de-derechos-de-la-victima-y-al-debido-proceso&Itemid=6](http://www.pdh.org.gt/index.php?option=com_phocadownload&view=file&id=66%3Acartilla-de-derechos-de-la-victima-y-al-debido-proceso&Itemid=6)

22 Denuncia 2038-2008, Judgement of the Criminal Court of First Instance, Narcoactivity and Crimes against the Environment of Mixco.

23 Juárez Elías, F. E., ‘Normativa Procesal’, en ICCPG, Revista centroamericana justicia penal y sociedad, N° 27, Special edition on the observation of criminal justice, first report, Guatemala, July-December 2007.

24 PBI Alert, July 2008. [http://www.pbi-guatemala.org/fileadmin/user\\_files/projects/guatemala/files/spanish/0807\\_Alerta\\_San\\_Juan\\_Sacatepequez-espa%C3%B1ol.pdf](http://www.pbi-guatemala.org/fileadmin/user_files/projects/guatemala/files/spanish/0807_Alerta_San_Juan_Sacatepequez-espa%C3%B1ol.pdf)

25 Memorial de la consulta comunitaria de buena fe presentada a la municipalidad por las 11 comunidades en resistencia. November 2007. (At present there are 12 communities.)

26 Miranda, U. G., “La consulta: es una obligación del Estado y un derecho colectivo de los pueblos indígenas de rango constitucional”, COPAE.

<http://resistencia-mineria.org/espanol/files/documents/ResumenSentenciaSJ.pdf>

See also Alerts published by PBI in June 2010 and March 2011: [http://www.pbi-guatemala.org/fileadmin/user\\_files/projects/guatemala/files/english/100615\\_Alerta\\_PBI\\_Guatemala\\_San\\_Juan\\_Sacatepequez.pdf](http://www.pbi-guatemala.org/fileadmin/user_files/projects/guatemala/files/english/100615_Alerta_PBI_Guatemala_San_Juan_Sacatepequez.pdf)

[http://www.pbi-guatemala.org/fileadmin/user\\_files/projects/guatemala/files/english/110310\\_ALERTA\\_PBI\\_Guatemala\\_Violencia\\_en\\_San\\_Juan\\_Sacatepequez.pdf](http://www.pbi-guatemala.org/fileadmin/user_files/projects/guatemala/files/english/110310_ALERTA_PBI_Guatemala_Violencia_en_San_Juan_Sacatepequez.pdf)

and due to the prevailing violence in San Juan Sacatepéquez, the government declared a State of Emergency<sup>27</sup>. That same day in the community of San Antonio Las Trojes, an operation was conducted by 1000 National Civil Police agents (PNC) and elements of the Military, together with personnel from the Presidential Commission on Human Rights (COPREDEH) and the Ministry for Peace (SEPAZ), which culminated in the arrest of 43 people<sup>28</sup>.

It is not the only legal case that has been undertaken against leaders or delegates of the Q'a molo Q'l San Juan community. The Association of Mayan Lawyers and Notaries has documented relevant information for analysis: in total 83 people from the organization have been tried and held in prison for more than 40 days; five people have arrest warrants issued against them for over three years which up to date have not been enforced, but have also not been withdrawn<sup>29</sup>; and four people are awaiting trial. A resident of San Juan Sacatepéquez, Abelardo Curup, has been judged and sentenced to 150 years in prison for the murder of three persons. In September 2011 this proceeding was at the appeal stage with the conviction being questioned by civil society.

Given these figures, there is concern among the communities and the international community over the apparent disparity in the application of justice, which has been identified by United Nations Rapporteur, Sr. James Anaya during his visit to Guatemala in June 2010<sup>30</sup> as he highlighted the issue of legal cases filed against human rights defenders. In the existing San Juan Sacatepéquez conflict there is an obvious difference between the limited advances made in investigations in cases filed by members of Q'a molo Q'l San Juan regarding the violation of individual and collective rights as well as threats and attacks which those who are opposed to the San Juan Project are facing, in comparison to the advances made in the legal cases filed against them. In this context, the communities have expressed concerns regarding guarantees to due process, including the rights of the accused, the detained or held in preventive custody.

On two occasions PBI visited the penitentiary installations where the three defendants are being held: accompanying

UDEFEUGUA on a visit to the two people held in custody in El Pavoncito, and accompanying Porfirio Cotzajay's wife on her weekly visit to the pre-trial detention centre in Zone 18 of the capital.

The accused men find themselves in an extremely difficult situation. Local residents in the community of Las Trojes were collecting money so that Porfirio Cotzajay could pay for a place to sleep in a cell that he shares with various inmates.

According to his account, he can only make few phone calls every week, given that there are two telephones that are constantly occupied. Three times a day he eats beans and from time to time rice and sausage. Therefore the food that his wife brings him every week is indispensable. He also confirmed that in sector 4, where he is being retained, there are a total of 285 people. He calculated that between the 12 sectors in the centre there are 3,400 people (according the PDH report there is a capacity for 1,338 people<sup>31</sup>). There is not much to do and as a campesino, he misses working. Porfirio values the work his wife is doing to support the family. He has two daughters, Faustino and Efraín, who have seven underage sons and daughters.

To visit the pre-trial detention installation in Zone 18, as a strict rule women have to wear skirts and sandals and pass through the various security controls. According to them, it is uncomfortable to take off the clothing to get through the control. "The idea is that visitors pass through a strict security control (...) this involves a meticulous search of the people who come to the detention centre", explained Carlos Menocal, Governance Minister<sup>32</sup>.

During the opening hearing, observed in February 2011, the next date for the trial was set for the 28<sup>th</sup> of December. However, in October 2011 it was decided to postpone it to the 7<sup>th</sup> of March 2012, more than a year after the opening hearing.

27 Article 151 of the Political Constitution of the Republic of Guatemala, and the Law of Public Order from 1965.

28 According to the Congressional Commission on Human Rights, these detentions are illegal for having been undertaken a day before they were published in the Official Diary for the State of Prevention.

29 PBI, Interview with Carmela Curup, Association of Mayan Lawyers and Notaries, Guatemala, 2011.

30 OACNUDH, Preliminary observation of the United Nations Special Rapporteur on the human rights situation and fundamental freedoms of indigenous people, Sr. James Anaya, on his visit to Guatemala (13 to 18 June 2010), 18.06.2010. "In this sense it highlights the speed with which these processes are carried out compared with the seeming lack of response in demands presented by communities in relation to violations of their rights, which can be seen as a tendency to discriminate access to justice."

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10173&LangID=S>

31 PDH, Guatemala Prison Observatory, Op. Cit.

32 Government of the Republic, Intensifican controles en el Preventivo de la zona 18, Guatemala, 1 May 2011 <http://www.guatemala.gov.gt/noticia4.php?codigo=12680&titulo2=Guatemala>



“Several international legal instruments regulate different aspects of the penitentiary system. However not all Central American countries have ratified these agreements.

- Standard Minimum Rules for the Treatment of Prisoners, United Nations.
- The Universal Declaration of Human Rights.
- Article 10 of the International Covenant on Civil and Political Rights that states “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”
- Article 5, paragraph 2 of the American Convention on Human Rights.
- The resolutions passed in the First United Nations Congress on Crime Prevention and the Treatment of Offenders, Geneva, 1955. Passed by the Economic and Social Council in resolution 663 C31 7 57 also complemented by resolution 2076 on May 13th, 1977.
- American Declaration of the Rights and Duties of Man, that states in article XXV that the person deprived of their liberty “has the right to humane treatment during the time he is in custody.”
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and its Optional Protocol”.

Guatemalan Studies Center, The Penitentiary System: The Challenge of Rehabilitation, a Special Report. Guatemala, 2006.

## News regarding our work

***Our work in Guatemala is focused on three themes: the struggle against impunity, the issue of land and the negative effects of the globalisation on human rights.***

In the second half of 2011 (May to October), we observed an increase in threats against persons that promote, support and participate in judicial processes which aim to put an end to the impunity for serious crimes and human rights violations committed during the internal armed conflict.<sup>1</sup> The human rights situation in Guatemala during this period and the role that the state, the army and other security forces played, have been widely documented in the **Report of Recovery of Historical Memory (REMHI)**, produced by the **Office of Human Rights of the Archbishop of Guatemala (ODHAG)**, as well as in the comprehensive report “Guatemala: Memory of Silence”, by the **Commission of Historical Clarification (CEH)**. Both studies concluded that the majority of human rights violations committed during the war against the civilian populations, essentially peasant and indigenous peoples, occurred at the end of the 1970s and beginning of the 1980s. Most pertinently, the CEH concluded that:

“82. The human rights violations and violence attributable to acts of the state totalled 93% of all such incidents recorded by CEH. Violations as a result of state repression occurred repeatedly. Although of varying intensity, the period of most persistent re-occurrence was between 1978-1984, a period in which 91% of all known violations took place (...). 122. Accordingly, the CEH concludes that agents of the State of Guatemala in counter-insurgency operations carried out between the years 1981 and 1983, executed acts of genocide against groups of the Maya people residing in the regions analysed. This conclusion is based on the evidence that, in light of Article ii of the Convention for the Prevention and Sanction of the Crime of Genocide, members of the Mayan groups were killed (Article II (a)); serious harm to their physical or mental integrity was caused (Article II (b)); and acts of deliberate submission of the affected groups to conditions that gave rise to or could have given rise to their total or partial physical destruction also occurred (Article II (c)). This conclusion is also based on the evidence that all these



<sup>1</sup> PBI, “Alerta sobre la seguridad de actores que buscan justicia por crímenes cometidos durante el conflicto armado en Guatemala”, Guatemala, agosto 2011. [http://www.pbi-guatemala.org/fileadmin/user\\_files/projects/guatemala/files/spanish/Alerta\\_PBI\\_Guatemala\\_actores\\_en\\_procesos\\_judiciales.pdf](http://www.pbi-guatemala.org/fileadmin/user_files/projects/guatemala/files/spanish/Alerta_PBI_Guatemala_actores_en_procesos_judiciales.pdf)  
[http://www.pbi-guatemala.org/fileadmin/user\\_files/projects/guatemala/files/spanish/Anexo\\_Detalles\\_procesos\\_judiciales.pdf](http://www.pbi-guatemala.org/fileadmin/user_files/projects/guatemala/files/spanish/Anexo_Detalles_procesos_judiciales.pdf)

acts were perpetrated “with the intention to destroy totally or partially” the identified groups due to their common ethnicity, independent of the cause, motive and final objective of the acts (Article ii, first paragraph)<sup>2</sup>.

Recently we have observed developments that represent historical advances in the investigation of these serious human rights violations<sup>3</sup>.



Photo: PBI 2011

**Edgar Pérez Archila, lawyer, accompanied by two members of the Guatemala PBI team, in July 2011.**

We are accompanying the lawyer **Edgar Pérez Archila**, who represents the affected communities, families and victims (as intervening parties) in the cases concerning acts of genocide against the Ixil people in the department of Quiché as well as the case of the massacre in the village Las Dos Erres in the department of Petén. The first case is the first charge levelled in Latin America for the crime of genocide. It was opened against the ex-Chief of General Staff of the Army, Héctor Lopéz Fuentes<sup>4</sup> in September. In the case of the massacre of the community Las Dos Erres, on the 2nd of August three ex-military officers belonging to the Kaibiles (an elite corps of the army) and an ex military officer were convicted at first instance for the murder of 201 people and for crimes against humanity<sup>5</sup>.

Threats against those working on these cases took two forms: through a paid advertisement of the Association of Military

Veterans of Guatemala (AVEMILGUA), published in the newspaper *Prensa Libre*, in which acts of human rights defenders were characterised as terrorism and in which the group stated its willingness “to struggle anew if the circumstances demand it”<sup>6</sup>; and secondly, through an attack and through death threats made against members of the **Guatemalan Foundation of Forensic Anthropology (FAFG)**. Members of FAFG participated as experts in the prosecution for the massacre of Las Dos Erres<sup>7</sup>.

In response to these acts, PBI distributed an alert to our Support Network in Guatemala and outside the country to express our concerns regarding the political context in which these cases are taking place, and in order to call the international community’s attention to the issue. We called for close international attention and observation as well as for support to enhance the protection of human rights defenders struggling against impunity<sup>8</sup>. We also met with various Guatemalan national authorities and international institutions to express our serious concerns regarding the security of those involved in these processes. Finally, we intensified our physical accompaniment of the lawyer **Edgar Pérez Archila**, the **National Association of Widows of Guatemala (CONAVIGUA)** and the **Historical Archive of the National Police (AHPN)**. The latter two entities play an important role in the processes of recovering, preserving and documenting historical memory regarding the atrocities of the internal armed conflict.

In the month of June we observed the presentation of the first report of AHPN entitled “From Silence to Memory”, which took place in the presence of various representatives of the international community and Guatemalan civil society. In mid-August the historical archive of the National Police (PN) was discovered in Santa Cruz del Quiché. Upon discovery, it was transferred to the AHPN in the capital for conservation, analysis and digitalisation of the documents found.

In this period, we have intensified accompaniment of **Q’a moló Q’i Sanjuan – People of San Juan**, in the municipality of San Juan Sacatepéquez and we were permanently present for two days in the community San Antonio Las Trojes I, following a violent attack on 19th of May against individuals opposing the construction of a cement factory there. Seven people were injured and the aggressors were identified as members of the community working in the service of the company.

2 CEH, “Guatemala: Memoria del Silencio”, Conclusiones y recomendaciones del Informe de la CEH, Guatemala, 1999. <http://shr.aaas.org/guatemala/ceh/report/spanish/conc2.html>

3 PBI, Op. Cit.

4 CALDH, “Caminando hacia la justicia”, Press Release, 06.09.2011. Also during this period, on 12 October 2011, the National Civil Police (PNC) detained José Mauricio Rodríguez Sánchez, ex-head of the G-2 Military Intelligence Unit, accused of genocide and crimes against humanity in the same prosecution.

5 OACNUDH, “Caso Dos Erres demuestra que es posible vencer la impunidad del pasado”, Press Release, 03 August 2011.

6 *Prensa Libre*, 22 June.2011.

7 FAFG, “Amenaza y atentado a peritos de la Fundación de Antropología forense de Guatemala por sentencia de Caso de la masacre dos erres, Petén, ocurrida en 1982”, Press Release, 10 August 2011.

8 For further information, see PBI Guatemala Alert published in August 2011: [www.pbi-guatemala.org](http://www.pbi-guatemala.org)

9 PBI, “Alert regarding acts of violence and threats in communities of San Juan Sacatepéquez”, Guatemala, March 2011. [http://www.pbi-guatemala.org/fileadmin/user\\_files/projects/guatemala/files/english/110310\\_ALERTA\\_PBI\\_Guatemala\\_Violencia\\_en\\_San\\_Juan\\_Sacatepequez.pdf](http://www.pbi-guatemala.org/fileadmin/user_files/projects/guatemala/files/english/110310_ALERTA_PBI_Guatemala_Violencia_en_San_Juan_Sacatepequez.pdf)

10 *El Periódico*, ‘En 70 municipios hubo disturbios luego de las elecciones’, 13.09.2011. <http://www.elperiodico.com.gt/es/20110913/pais/200953/>

During this period we have also been in communication with three community members detained without charge in connection with the situation regarding the proposed plant construction and with their families. We accompanied the wife of one of the detainees during her monthly visit to Preventative Centre 18 (remand centre) in the capital. We are concerned about this situation of 'pre-trial detention' which has continued for approximately three years, consequently putting in question their guarantees for due judicial process (see separate article regarding this topic in the current bulletin).

We also continue to accompany two members of the community Pilar I in their search for justice. They were seriously injured during an attack in the night of 26th to 27th of February of this year<sup>9</sup>. On the 4th of October, the Second Judge of the First Tribunal for Crime, Drug-Trafficking and Crimes Against the Environment of Mixco, Guatemala, convicted two persons of attempted murder in connection with the attacks and sentenced them to 10 years in prison as well as imposing a fine of Q 60.000 plus prosecution costs.

During a visit that we carried out in the community of Mata-sanos (Jocotán), where various members of the **Central Chortí Campesino Coordinator New Day** live, we witnessed an electoral campaign event in which confrontations occurred, although the situation later resolved itself without grave consequences. The following day we accompanied members of the community to register an official complaint with the Justice of the Peace regarding the confrontations. In light of these confrontations and the tense political context in the municipality, we were asked to maintain a presence there in the first round of the elections.

Accordingly, we remained present before, during and after the national elections in September in two municipalities - Jocotán (Chiquimula) and San Juan Sacatepéquez (Guatemala). In both of these municipalities we currently accompany social organisations and indigenous communities that defend and promote human rights, in particular economic, social and cultural rights and the collective rights of indigenous peoples. Our presence at this time was an example of our work as permanent international observers in the country, without engaging in an official role of verification or electoral observation, but supporting the peaceful organisation of the electoral process. In the places where we were present, the voting process passed off peacefully. Unfortunately, in some municipalities of the country violent incidents did occur following the closure of voting stations<sup>10</sup> and the electoral observation mission of the Organisation of American States (OEA) stated in its report that it had received complaints of the "purchase of votes"<sup>11</sup>.

On 25th of June we observed the eleventh march in the capital city celebrating sexual diversity and gender identity, co-organised by the **Organisation of Support to Integrated**

**Sexuality in Resistance to AIDS (OASIS)** together with other organisations and gay, lesbian, bisexual, transsexual and transgender (LGBT) groups.

In October we organised a workshop on security issues for social organisations together with the **Association Security in Democracy (SEDEM)**, in which delegates from various communities and organisations that we accompany participated.

**Visit of the Rapporteur for Human Rights of the Inter-American Commission of Human Rights (CIDH)** As part of the celebration activities for the 30th anniversary of PBI<sup>12</sup>, José de Jesús Orozco Henríquez, Rapporteur for Human Rights Defenders of the Inter-American Commission of Human Rights (CIDH), and Jorge Meza, legal adviser of the Rapporteur, participated in the workshop between human rights defenders and the international community regarding security measures. Jorge Meza also met with various social and human rights organisations to learn more about their security needs and to share information on the protection mechanisms used by the CIDH to strengthen their protection. He also gave a workshop on the issue of the Inter-American system of human rights protections in which various delegates of organisations and social collectives took part.

Finally, we continue to accompany the **Association of Indigenous Women of Santa María Xalapán (AMISMAXAJ)**, the **Camoteca Campesino Association (ACC)**, the **Association for the Protection of Grandillas Mountain (APMG)**, the **Communities Council of Cunén**, the **Verapaz Union of Campesino Organisations (UVOC)** and the **Guatemalan Human Rights Defenders Protection Unit (UDEFEQUA)**.

In May the accompaniment to OASIS passed to a 'follow-up' phase, after a positive evaluation of the organisation's security situation observed a diminution of the threats against the organisation and its members.

11 OEA, 12 September 2011, 'OEA resalta alta participación aunque preocupa lentitud en entrega de resultados de la jornada electoral', viewed on 18 October 2011 en <http://www.oas.org/es/sap/deco/moe/Guatemala2011/default.asp>

12 More information regarding the activities in Guatemala for the 30th Anniversary of PBI will be published in Bulletin 25.



## PEACE BRIGADES INTERNATIONAL GUATEMALA PROJECT

**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.

The accompaniments realized by **PBI** after receiving a petition by the Guatemalan organizations are focused in three areas: fighting impunity, right for land and negative effects of the economic globalization on human rights.

### 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 International Community of the need for creating and applying policies, tools, and mechanisms for the protection of human rights defenders.
4. To share experiences and tools with Guatemalan Organizations that help in achieving the general objectives of **PBI** in Guatemala.

### Team in Guatemala

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