



MEMORANDUM

To: File
From: Robert García, Founding Director and Counsel, The City Project
cc:
Date: December 14, 2015
Re: US STD infections Guatemala reports on domestic and international laws

The English translation is attached of the Guatemala archival report called *Investigación archivística sobre experimentos practicados en seres humanos en Guatemala, 1947-1948 (Abril 2011)*.

Guatemala government has published three reports on the experiments in which the US intentionally infected innocent Guatemalan people and left them untreated and uncompensated from the 1940s until the present day. Each report discusses the legal framework under domestic Guatemalan laws as of the time of the experiments, and international human rights laws. The reports are available online at <http://www.cityprojectca.org/blog/archives/41463>.

1. The Guatemala Presidential Commission Report is called *Consenting to the Damage: Presidential Commission Report for Elucidation of the Experiments Carried Out on Humans in Guatemala (2011)*. The US Department of State provided the English translation to The City Project under the Freedom of Information Act.

The report discusses the Guatemalan legal framework at pages 21-23, 31-32 and 34-35. The report refers to the Nuremberg Code at page 15. See also page 16, 121. See also the pages on responsibilities at 110-13. The report refers to the Helsinki Code at page 115. The report refers to bioethics and human rights at pages 117-18.

2. The Guatemala technical report is called *Experimentos en Seres Humanos: el Caso Guatemala 1946-48 (Abril 2011)*, by Comisión Técnica, Comisión Presidencial para el Esclarecimiento de los Experimentos en Humanos en Guatemala 1946-48.

The technical report states: “18) Given the applicable laws during that period, all directly responsible committed crimes punishable by law and its cover up suggests knowledge of criminal responsibility. (“Ante las leyes entonces vigentes, todos los directamente responsables cometieron delitos punibles por la ley y su encubrimiento insinúa conocimiento de su responsabilidad penal.”) Page 96.

The report refers to the framework of domestic Guatemala laws at the time of the experiments at pages 68-71, including prohibitions against transmission of STDs. See also pages 92-98. The report refers to the framework of international human rights laws in

section 7 at pages 80-82. Appendix One at pages 103-113 is an analysis of domestic and international laws by the Attorney General's Office of Guatemala. Appendix Two at pages 113-119 is an analysis of ethical considerations.

3. The Guatemala archival report is called *Investigación archivística sobre experimentos practicados en seres humanos en Guatemala, 1947-1948 (April 2011)*. This report was prepared by the Archivo General de Centro América (AGCA) (Central American general archives), the Archivo Histórico de la Policía Nacional (AHPN) (historical police archives), and the Dirección de los Archivos de la Paz (DAP) (peace archives).

The introduction at pages 4-6 is relevant. The report refers to domestic Guatemala laws in sections 2.4 at pages 41-45. The report refers to international human rights laws in section 7 at pages 159-66. The report concludes at page 165 that the experiments clearly violated fundamental rights of health, life, and protection, especially for the mentally infirm, and that these practices constituted a crime against humanity and a clear violation of the Nuremberg Code.

The English translation of the technical and archival reports was prepared by Border Philanthropy Partnership / Alianza Fronteriza de Filantropía.

The Guatemala archival report is called Investigación archivística sobre experimentos practicados en seres humanos en Guatemala, 1947-1948 (April 2011). The following is a translation of the pages on the domestic and international legal framework.

Introduction [pages 4-6]

As news of the experiments with venereal diseases carried out in Guatemala between 1947 and 1948 by U.S. Public Health Service doctors broke, the General Archives of Central America (AGCA), the National Police Historical Archive (AHPN), and the Peace Archives Directorate (DAP) of the Peace Secretariat, decided to launch a search for documents in their files to determine what happened. It was considered a citizen's duty that the history of these events that outraged the conscience of human beings should be written upon examining the documentary files.

Recognizing these efforts, the Presidential Commission investigating these actions summoned the leaders of these institutions to a meeting. After the leaders of the archives presented their research plan, the Presidential Commission asked them to prepare a report on the findings contained in their documents, also giving them the protocol of Dr. John C. Cutler (JCC), who led the experiments, to be scrutinized together with the national records found.

We proceeded to the digitization of documents found in Dr. John Cutler's archives, further developing metadata that allowed their correlation and facilitated archival research processes. All necessary measures to ensure the documents integrity were taken.

To prepare the report presented today, 693 sets of files containing 20,790 national Public Health offices records were processed and 2,823 images were reviewed. Also processed were eleven series of Dr. Cutler's protocol for a total of 8,085 pages. As related to the Civil Guard of the National Police Historical Archive, we worked in eleven books and a database containing 850,000 records selecting related information. We also gathered data from 45 books belonging to the Secretariat for Social Assistance organized by the Peace Archives Directorate.

As a result of the national records review, it was possible to outline the administrative and technical structure of the newly created Ministry of Public Health at that time, the agency in charge of the Directorate General of Public Health, a government agency closely related to the work of local and foreign doctors conducting research and experiments at that time.

The documents relating to the Civil Guard explain the control exercised over citizens considered lawbreakers, held at the Central Penitentiary, as well as registered prostitutes subject to periodic examinations by the health system.

The John Cutler files recorded in a detailed and accurate way the whole process to conduct experiments with venereal diseases to which many Guatemalan men and women from the Asylum for the Alienated and the Neuropsychiatric Hospital, the Central Penitentiary and the Guatemala Army were subjected to. A total of 3,780 patient names were found in these files and this universe allowed us to search for further evidence to determine the exact number of

people subjected to experiments or infection.

This report includes a total of 1,160 people affected by inoculation with methods described in chapter four and men infected through contact with previously infected women.

In this report we also try to reconstruct, among others, the following topics: What was the context of the country? How were the institutions responsible for the health of the population articulated? Did they have knowledge of the experiments conducted by local health officials and doctors? Who were responsible for the institutions involved and to what extent? Who were their counterparts in the United States? At the same time, it was essential to establish: How many people were subjected to experimentation? Who were they? As well as knowing what methods were used.

The report contains eight chapters that initially address the socio-political context in which the experiments were conducted and the organizational structure responsible for managing the health authorities in the country. Next, we explain how the investigation of sexually transmitted diseases in the country was carried out to reconstruct the facts relating to the experiments conducted, the identity of patients, and responsible officials and physicians to finally spend the closing chapter discussing human rights and bioethics.

Annexes include a table that records a total of 69 deaths according to Dr. Cutler's documentary series. With the information available it has not been possible to fully establish if their death was caused by the verified experiments.

Also included are numerous quotations from the documents reviewed, searching for evidence to sustain the major findings presented in this report. However, we reiterate that this archival product developed by staff of the institutions presenting this report today, represents a first approximation of what happened based on the documents analyzed. Further research is needed to extract the best lessons and set a precedent to ensure this does not happen again in Guatemala or any other country.

2.4 Legislation in the context of investigations [pages 41-45]

Article 10 of the July 5, 1933 Government Agreement Regulation of Communicable Disease Prophylaxis, established the obligation to declare venereal diseases when patients were a danger to public health because of their occupation. In that sense, a health certificate or health card was mandatory for principals, teachers and employees of public and private educational institutions, food handlers and retailers, slaughterhouse workers and butchers, pharmacy clerks, hotel personnel, barbers, wet nurses, servants and other groups designated by the Department of Public Health.

Furthermore amendments to the Civil Code of 1935 regarding STDs and prenuptial certificates, only excluded infected persons contracting marriage (...) at the point of death and indigenous population (Civil Code Reform, 1935: Art. 9).

On June 7, 1938, the government of General Jorge Ubico issued the Regulation of the Sexual Prophylaxis and Venereal Diseases Section. Through this Regulation, the Sexual Prophylaxis and Venereal Diseases Section was created under the authority of the Directorate General of Public Health. This agency aimed to *ensure the health of the community in relation to the spread of venereal diseases, using the preventive and curative measures necessary, with particular attention to social [and] economic (...) issues* that caused and maintained prostitution.

Measures to control prostitution included mandatory registration of women involved (...) in the sex trade (...) at the Directorate General of Public Health. Women who did not enroll would be considered clandestine and subject to established penalties. On the other hand, those who registered should be examined and screened twice a week at the prophylactic clinic.

Regulation stated that in order for women registered before the Sexual Prophylaxis Section to have the possibility to start over and get a stable job leaving prostitution, fifty percent (50%) of taxes paid monthly to the Treasury of Public Health would go toward an individual savings fund.

Regulation outlined the obligations, rights, procedures and sanctions for people subjected to comply and it was the responsibility of the Health Court, the departmental Health Delegations and port managers to enforce it.

In 1949, several articles of the Regulation of the Sexual Prophylaxis and Venereal Diseases Section were repealed by a Government Agreement. One of the reforms stated that all accounts of women enrolled would be cancelled and the savings fund should be given to them; if within three months the women did not withdraw their funds, they would go to the common fund of the Nation. It can be concluded that except for some reforms, the 1938 Regulation of the Sexual Prophylaxis and Venereal Diseases Section was in effect at least until 1949.

There is no evidence in the above legislation of any legal norms as a basis for experiments in the context of investigations of STDs, except the legal prosecution of prostitution, one of the resources used to have large numbers of people available for serological tests.

However, the Government Agreement of January 11, 1946¹ contained rules that allowed the conduction of experiments. This Agreement in its sole recital established that it was convenient (...) to unify treatment practices of social care facilities supported with government funds, using for this purpose drugs and medication whose effectiveness has been scientifically proven. That the country does not have, as of today, a qualified

¹ AGCA, Public Health Documentary Fund, Transcript of the Government Agreement dated on January 11, 1946, printed on letterhead of the Department of Social Assistance with the number 06638, unsigned, no sender or recipient identified, 23794 , DSC02987 .

experimental laboratory to do those kinds of studies in all cases.

Therefore, concludes that part of the Agreement, the list of these substances should be reduced as much as possible to facilitate the work of the Procurement Office and make consequent savings and experimentation and the use of new drugs should not be prevented (...).

The legislation in question, in its operative part stated: (...) Article 1. The Procurement Office of the Public Health and Social Assistance department will provide the Branch offices only upon request drugs, medicines, and serums, vaccines and other preparations for therapeutic use which are registered in the latest editions of the French Pharmacopoeia (Codex Medicamentarius Gallicus), the U.S. Pharmacopoeial Convention (USP), the American National Formulary (NF), and the list of unofficial new drugs of the American Medical Association (new and non official Remedies, NNR).

Meanwhile Article 3 stated: When any of the agencies wishes to acquire any product for experimental or other purposes not included in such list, the respective Directorate General shall request a special authorization from the Ministry, stating the reasons for the request.

It could be possible that the Government Agreement of January 11, 1946 set the legal framework that enabled the creation of the Venereal Diseases Training and Research Center, and therefore the experiments. No document recording any legislation for the creation of the center mentioning the practice of human experimentation has been found.

The presidential report corresponding to 1946 also refers to the issuance of the Governmental Agreement of January 11, as a regulation of effective drugs and medications to be used by Health and Social Assistance agencies. Also, the October 23 Regulation of the same year for the use and sale of streptomycin and the creation of an Advisory Committee integrated by the Minister, the branch Undersecretary and the Directors General of Public Health and Social Assistance. (Arevalo, 1947: 205).

A year after the aforementioned drug regulation, authorities faced problems to control the pharmaceuticals trade. In this regard, Decree 370 issued by Congress on April 24, 1947 noted in its first recital that an enormous amount of medicinal products had entered the country, whose effectiveness was not properly verified and many of them were banned in their country of origin and were only manufactured for export.²

In that sense, this decree reformed article 59 of the 1887 Health Code stating that: *The products included in the previous article can only be sold or supplied to the public by licensed establishments that have met the requirements specified by this code and its regulations.*³

² AGCA , Public Health Documentary Fund, Circular letter No. 35 sent by Dr. G.E. Moran N. officer in charge of the General Directorate of Social Assistance , 12.05.1947, 24108, DSC04241.

³ AGCA , Public Health Documentary Fund, Circular letter No. 35 sent by Dr. G.E. Moran N. officer in charge of the General Directorate of Social Assistance , 12.05.1947, 24108, DSC04241.

7. Human rights and bioethics [pages 159-64]

7.1. Background on human experiments

Research on humans is as old as medicine itself, but the turning point in the history of human experimentation occurred when French physiologist Claude Bernard published the book *An Introduction to the Study of Experimental Medicine* in 1865 (Bioética y debate, 2011).

It was during World War II that mass human experiments by German doctors of Nazi ideology showed the world a practice that was the subject of unanimous disapproval. Experiments on prisoners of war held in concentration camps are one of the darkest episodes in medical history.

The disapproval of such practices was very strong during the Nuremberg Trials, the first International Court of Justice for the victims of the atrocities committed during the war, especially in Germany.

The experiments conducted by Dr. Josef Mengele with Jewish prisoners received unanimous condemnation at the Nuremberg Trials. From this verdict, the Nuremberg Code was drafted to uphold ethical standards for future human experiments. The Code reflects the feelings of some doctors and the court that approved it as an ethical standard.

Experiments on humans in Guatemala during 1947 and 1948 are a clear example of ethical misconduct on the part of people responsible, who essentially ignored the regulations already approved in that context.

7.2 The Nuremberg Code

The Nuremberg Code is considered the main regulation of ethical standards regarding human experimentation. It was the result of the Nuremberg Trials deliberations at the end of World War II.

Specifically, the Code responds to the discussions and arguments for which Nazi hierarchy and doctors were prosecuted for the inhuman treatment of prisoners in concentration camps. For example medical experiments conducted by Dr. Josef Mengele.⁴

This code was published on August 20, 1947, following the conclusion of the Nuremberg Trials (between August 1945 and October 1946). In April 1947, Dr. Leo Alexander submitted six points defining legitimate medical research to the Council for War Crimes. The verdict adopted these points and added four more. These ten points constitute the Nuremberg

⁴ <http://www.colegiomedico.cl/Default.aspx?tabid=241>

Code.

1. The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved, as to enable him to make an understanding and enlightened decision. This latter element requires that, before the acceptance of an affirmative decision by the experimental subject, there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person, which may possibly come from his participation in the experiment. The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.
2. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.
3. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study, that the anticipated results will justify the performance of the experiment.
4. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.
5. No experiment should be conducted, where there is an a priori reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects.
6. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.
7. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.
8. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.
9. During the course of the experiment, the human subject should be at liberty to bring the experiment to an end, if he has reached the physical or mental state, where continuation of the experiment seemed to him to be impossible.
10. During the course of the experiment, the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgement required of him, that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

7.3 Crimes against humanity

The definition of a crime against humanity under the Rome Statute of the International Criminal Court includes (...) the conduct classified as murder, extermination, deportation or forcible displacement, imprisonment, torture, rape, enforced prostitution, forced sterilization, persecution for political, religious, ideological, racial, ethnic or other reasons specifically defined, forced disappearance, abduction or any inhumane acts causing great suffering or injury to mental or physical health of the person who suffers, provided that such conduct is committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack. (Rome Statute of the International Criminal Court, Ch. 7).

These acts are called crimes against humanity. In Spanish, *crímenes de lesa humanidad*. *Leso* means wronged, hurt, offended: hence a crime against humanity allude to a crime which by its nature is abhorrent, offensive, hurts, and insults humanity as a whole.

In the context of the above definition, it is pertinent to note that during the experiments with humans during 1947- 1948 in Guatemala, a crime against humanity may have been committed by threatening the health and lives of hundreds of Guatemalan citizens, the majority of whom were never informed of the risks to which they were being exposed by inoculation and infection with sexually transmitted diseases, some of which were fatal such as syphilis.

We must add to this that in the case of patients in the Asylum for the Alienated, later called the Neuropsychiatric Hospital, the experiments proceeded with more knowledge of the limitations of the patients, since most suffered from mental illness that did not allow doctors to obtain their consent or be informed of the practices conducted on their bodies and their health.

If to this context we add the fact of the disclosure to the medical world of the newly created Nuremberg Code which defined the ethical standards for human experiments approved by the Nuremberg Court whose president was an American judge, that practice is contradictory. This implies that while Nazi doctors were on trial for conducting practices with prisoners of war in concentration camps, their American colleagues were doing the same thing in a country with little development in the field of medicine, with consent of American and Guatemalan authorities. We should also not forget what they did in their own territory with African Americans in Tuskegee, Alabama, between 1932 and 1972, where the experiment consisted on observing the process and evolution of untreated syphilis in Terre Haute in 1944.

8. Final Considerations [pages 164-66]

- After studying the documents in the referred files, we have been able to verify the information provided in the last months of 2010, when public statements about the unethical acts conducted with patients used as experimental subjects with venereal diseases by American doctors in cooperation with doctors and officials from the Guatemala Ministry of Health were issued.
- The analysis of the situation facing the government of Guatemala at the time of the experiments, evidences the traditional weakness in the country's institutions that should have not only ensured the defense of sovereignty but also the human rights of its people.
- According to the available information, we can conclude that experiments with syphilis, gonorrhea and chancroid were conducted with 1,160 Guatemalan men and women accessed through the agencies mentioned in this report.
- Based on the information reviewed, there is no document proving that the persons subjected to inoculations and other experimental methods were informed and consulted on these experiments. This is even more serious in the case of patients in the Neuropsychiatric hospital, who were clearly used by taking advantage of their condition.
- Importantly, the ability of deliberation of the population groups that were subject to inoculation and infection (the mentally ill, prisoners, prostitutes) was extremely limited. That is, the exercise of their rights was determined to some extent by the authorities in charge. There was a level of subjection and vulnerability. Soldiers involved had a different condition but still they were vulnerable: they obeyed orders without the possibility of questioning, refuting or evading them.
- Detailed records of patients allow us to determine that many of them were exposed to venereal diseases in a cruel and inhumane way causing severe damage to their bodies and even death, in the case of syphilis.
- The consent of the Guatemalan authorities can be seen rather as a routine matter in light of the ambition of expansionism and occupation in US foreign policy after the war and at the beginning of the Cold War.
- These experiments on human beings represent a clear violation of the fundamental rights to health, life and protection, especially the rights of the mentally ill.
- It is evident that people responsible for these experiments took advantage of the conditions and vulnerability of these groups to carry out these practices which were a crime against humanity and a clear violation of the Nuremberg Code.
- In the national context, the right to the self-determination of nations was also violated; that is, a violation to the sovereignty of a country by a foreign power, the United States. This follows from the fact that the U.S. Public Health Service (USPHS), the public agency of the US government where the physicians responsible for the experiments worked, did not act on its own but by government order and politics.