



LAST CHANCE FOR JUSTICE

DANGEROUS SETBACKS FOR HUMAN RIGHTS AND THE FIGHT AGAINST IMPUNITY IN GUATEMALA

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1. INTRODUCTION

The Guatemalan authorities at the highest level have taken a series of steps in the last two years, to stop the progress made during the past decade regarding access to justice. This is putting human rights and the rule of law at risk.

The Guatemalan Congress has pursued a regressive agenda by supporting bills that threaten chances of securing justice for crimes under international law and serious human rights violations committed during the internal armed conflict, as well as for certain acts of corruption, as well as supporting bills that would restrict the rights of association and to defend human rights.

The Executive has also attempted to undermine important progress on justice¹ and has systematically hampered the work of the International Commission against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala, CICIG).² Among the obstacles it has put in the path of the CICIG are the withdrawal of the support provided to it by the National Civil Police and the announcement on 31 August 2018 by the President, surrounded by senior military officers, that the CICIG's mandate would not be renewed after 3 September 2019.³ The government also tried to prevent CICIG officials from entering the country and in January 2019 tried to unilaterally end the Accord which created the CICIG. The Constitutional Court, the highest court in the country, provisionally ruled in favour of several appeals against these decisions and ordered the highest-ranking authorities to allow CICIG to operate. Authorities, however, refused to comply with these orders, endangering the rule of law. Open investigations into these acts are ongoing.

Meanwhile a final decision into the appeals by the Constitutional Court, which is still pending, appears to be the only legal way to enable the CICIG to continue operating in its current form after 3 September. The authorities have stated that they wish to pursue the fight against impunity⁴ without the CICIG.

This backlash is a reaction to the significant progress made since 2007 regarding access to justice in Guatemala, both in cases of crimes under international law committed during the armed conflict advanced by the victims and their families, lawyers and the Special Prosecutor for Human Rights (UN/Honduras), and, more recent cases driven by the CICIG and other prosecutors from the Public Prosecutor's Office. These advances became a symbol of a new era in Guatemala in which justice had begun to be a tangible reality, challenging the pervasive culture of impunity in the country since the internal armed conflict.

In 1996 the signing of the Peace Accords put an end to more than 30 years of armed conflict during which the state security forces were responsible for 93% of the human rights violations committed, which included at least 200,000 killings and enforced disappearances, torture and sexual violence, genocide and the massacres of entire villages.⁵ At the beginning of the 2000s, investigations into these events remained

¹ On 27th May, 2019, the Ministry of the Interior announced its intention to re-assume control of and limit access to the Historical Archive of the National Police (AHPN). This archive contains more than 70 million documents, some of which were key to proving the responsibility of senior officials in human rights violations during the armed conflict. However, in June, the Supreme Court of Justice (CSJ) provisionally ruled in favor of an appeal made by the Human Rights Ombudsperson (PDH), Jordán Rodas, and ordered that security measures be taken for the protection and conservation of the documents in the Historical Archive of the National Police (AHPN). In addition, on 19th June, 2019, the government dissolved the National Commission to Monitor and Support the Strengthening of Justice, which was created at the end of the internal armed conflict. See Acuerdo Gubernativo 97-2019, Diario de Centroamérica n. 44, p. 2, 19th June 2019.

² In August 2017, the government declared Iván Velásquez, the CICIG Commissioner, *persona non grata* and between September and October 2018 he banned him from entering the country and his visa was not renewed. On 18 December 2017, the government also ordered 11 CICIG lawyers and researchers, who had had their visas either revoked or refused, to leave the country within 72 hours. In addition, between 2018 and 2019 the Minister of the Interior withdrew National Civil Police agents and vehicles that had been assigned to the CICIG.

³ *Prensa Libre*, 'En directo: Jimmy Morales no renovará el mandato de la Cicig', [Jimmy Morales will not renew the CICIG's mandate], 31 August 2018, available at www.prensalibre.com/guatemala/politica/en-directo-jimmy-morales-no-renovara-el-mandato-de-cicig/ and EFE, 'Jimmy Morales saca músculo militar para anunciar la salida de la Cicig', [Jimmy Morales brings out military muscle to announce the departure of the CICIG], 31 August 2018, available at www.efe.com/efe/america/politica/jimmy-morales-saca-musculo-militar-para-anunciar-la-salida-de-cicig/20000035-3735763 (Spanish only).

⁴ *Prensa Libre*, 'Gobierno asegura que lucha contra la corrupción y la impunidad', [Government gives assurances that it is fighting corruption and impunity], 11 January 2019, available at www.prensalibre.com/guatemala/politica/gobierno-asegura-que-lucha-contra-la-corrupcion-y-la-impunidad/ and Public Prosecutor's Office, *Comunicado* marking its 25th anniversary, 1 July 2019, available at <https://twitter.com/MPguatemala/status/1145663378603556865> (Spanish only).

⁵ Commission for Historical Clarification, *Memory of Silence: Conclusions and Recommendations*, p. 42, available at: <https://hrdag.org/wp-content/uploads/2013/01/CEHreport-english.pdf>

completely stalled. Prosecutors, judges, and human rights defenders seeking justice in these cases faced a new wave of violence, as did those who tried to expose the links between criminal groups and certain state institutions, public officials and political leaders operating outside the law. For the first time, the state acknowledged that a special investigation unit was needed to deal with new criminal structures – collectively known as the Illegal Groups and Clandestine Security Organizations (Cuerpos Ilegales y Aparatos Clandestinos de Seguridad, CIACS) – that were bolstering impunity. In December 2006, the Guatemalan Congress approved the Accord to create the CICIG, under the auspices of the UN, to support the Public Prosecutor’s Office in CIACS investigations. In the years that followed, significant reforms of the criminal justice system were also approved, including the creation of tribunals and courts of for high-risk cases (tribunales y juzgados de Mayor Riesgo).⁶

The CICIG and the Public Prosecutor’s Office have managed to identify more than 60 criminal structures operating in state institutions at the highest level between 2007 and 2018. In 2015, the then President and his Vice-President were forced to resign and face justice following massive protests after the CICIG and the Public Prosecutor’s Office filed fraud and corruption charges against them.⁷ During these 11 years, more than 100 cases were filed, several of which related to crimes under international law, such as extrajudicial executions, or that affected the exercise of human rights, such as freedom of expression and the press, the right to health or judicial independence. A recently published survey indicated that 70% of the population of Guatemala view favourably the work of CICIG.⁸

At the same time, crimes under international law perpetrated during the armed conflict finally began to come before the courts. These included cases such as the Ixil genocide, the Dos Erres massacre, the burning of the Spanish Embassy, the disappearance of Fernando García and 14-year-old Marco Antonio Molina Theissen and the sexual slavery of the women of Sepur Zarco. In these and other cases, Guatemalan courts convicted and handed down historic sentences to more than 30 members of the police and army, including high-ranking officers, military commissioners and former members of the Civil Self-Defence Patrols (Patrullas de Autodefensa Civil, PAC).⁹

In this document, Amnesty International analyses the impact on human rights in the country of the recent setbacks in the fight against impunity. It highlights the imminent danger that the efforts of more than a decade to guarantee access to justice and the investigative work of the Public Prosecutor’s Office in high-profile cases may be lost. It also underscores the serious threats posed to the independence of prosecutors and judges and to the situation of human rights defenders.

The observations and recommendations contained in this document are based on interviews conducted by the Amnesty International researchers during two visits to Guatemala in May and June 2019, telephone conversations with key individuals and an analysis of documents, reports and other information collected. During the research for the document, Amnesty International conducted more than 30 interviews with people who work or have worked in the Public Prosecutor’s Office or in the CICIG, lawyers, judges, civil society organizations and international organizations. The identities of those who shared their experiences have been withheld for their safety.

2. A POLICY OF IMPUNITY

Amnesty International notes with concern actions by the Executive, the Public Prosecutor’s Office, sections of the judiciary, and Congress that seek to stop prompt, independent and thorough criminal investigations

⁶ Legislative and regulatory reforms were approved to supply the Public Prosecutor’s Office with new tools to investigate, with the support of the CICIG, sophisticated criminal groups. Examples of these reforms are the Law against Organized Crime and its reform, which led to the creation of the Special Methods Unit (UME), permitted the use of wiretapping, and created the figure of an “effective collaborator” in criminal investigations, as well as the establishment of the Criminal Analysis Directorate (DAC) in the Public Prosecutor’s Office. The joint work of the CICIG with FECL, the DAC, and the UME was fundamental for complete investigations to come to light, such as in the case of La Línea. In 2009, the courts and tribunals for “high-risk” cases were created to provide greater security for judges hearing this type of case.

⁷ BBC, ‘Otto Pérez Molina, el hombre que prometió acabar con la corrupción y tuvo que renunciar acusado de fraude’, [Otto Pérez Molina: The man who promised to end corruption and had to resign accused of fraud], 3 September 2015, available at www.bbc.com/mundo/noticias/2015/09/150901_perfil_perez_molina_promesas_bm (Spanish only).

⁸ *Prensa Libre*, ‘Mayoría está a favor de que siga la Cicig’, [Most people support the CICIG], 5 April 2019, available at www.prensalibre.com/tribuna/plus/mayoria-esta-a-favor-de-que-siga-la-cicig/ (Spanish only).

⁹ International Justice Monitor, ‘Guatemala Poised to Adopt Blanket Amnesty for Grave Crimes Cases’, January 2019, available at www.ijmonitor.org/2019/01/guatemala-poised-to-adopt-blanket-amnesty-for-grave-crimes-cases/

being carried out in high-profile cases. In cases of human rights violations, these actions are contrary to Guatemala's duty to investigate human rights violations¹⁰, compromising its international obligations.

Since its creation, the support of CICIG has gone beyond providing training. This body, the first of its kind in the region, has enhanced the capacities of a number of units in the Public Prosecutor's Office, such as the Special Prosecutor for Corruption (Fiscalía contra la Corrupción, FECl), introducing an innovative methodology, and worked directly with them on extremely complicated cases. In order to do this, the CICIG provided a range of human, technical and logistical resources to strengthen evidence gathering and analysis to bring charges against those in parallel power structures in Guatemala that had previously acted with impunity.

However, since 2018 this joint work by the FECl and the CICIG has been systematically hampered by the government. According to the information received by Amnesty International, collaboration between the FECl and the National Civil Police ended when the Minister of the Interior changed in January 2018. Access to information from certain databases under the control the Ministry of the Interior was restricted and the ability of the FECl to carry out prompt operations and arrests was limited. Amnesty International urges the authorities to resume this collaboration, which is crucial for successful criminal investigations, and recalls that the UN Rapporteur on the independence of judges and lawyers, Gabriela Knaul, has stated that: "especially where the police service is independent of the prosecution service, effective measures must be taken to guarantee that prosecutors and the police cooperate in an appropriate manner in order to obtain the best and most fair outcome".¹¹

Amnesty International is also concerned at the lack of a clear and timely plan by the Public Prosecutor's Office to ensure that the process of strengthening its capacities, initiated with the CICIG, continues. This puts at risk the capacity of the FECl and other prosecutors to continue carrying out efficient and thorough investigations. It is also worrying that personnel in certain key units of the Public Prosecutor's Office, such as the Criminal Analysis Department or the Special Methods Unit, who had been specially selected and trained to collect and analyse information that could be used as evidence in proceedings against major criminal networks, have been transferred, dismissed or have resigned.

In addition, the departure of the CICIG, should this take place, would also result in the immediate loss of its significant technical and human resources (140 people are involved in investigations and litigation alone) that have until now provided support in cases dealt with jointly by the Public Prosecutor's Office and the CICIG. The FECl has only approximately 46 prosecutors and assistants to do this work.

Attorney General Consuelo Porras told Amnesty International that 10 new investigators will be allocated to support the FECl. Other sources have expressed doubts about the timely completion of the recruitment processes to ensure that there is an adequate handover of skills so that new staff in the FECl can be fully operational before September; at the time of writing, and some four months after the process began, the 10 investigators had yet to join the team in order to receive training from the CICIG. In addition, at least 18 prosecutor posts in the FECl had been vacant for several months. Although the Attorney General also referred to the future recruitment of 20 analysts, it is worrying that once again this would be personnel who are not familiar with the work methodology of the CICIG and the FECl and that the retention of national and international experts that have been working with the CICIG is not being prioritized. The UN Rapporteur on the independence of judges and lawyers has referred to the need to take into consideration the specialization of prosecutors in dealing with new forms of crime, noting that "specialization constitutes an important aspect of the training of prosecutors, who should also be provided with the adequate human and technical resources to properly investigate crimes, when they have the mandate to do so."

Amnesty International is aware of further concerns, in addition to the lack of timely recruitment of specialized personnel, just over two months before the expiry of the CICIG's mandate.¹² These include serious doubts about the real willingness of the Public Prosecutor's Office to continue strengthening its capabilities and pursue the fight against impunity taken forward with the support of CICIG. Experts interviewed by Amnesty

¹⁰ Due to its ratification of international treaties, like the International Covenant on Civil and Political Rights and the American Convention on Human Rights, Guatemala is obliged to guarantee the Human Rights of all people on its territory. From this duty derives the obligation to prevent, investigate, and punish all human rights violations, and ensure, additionally, the restoration, if possible, of the violated right, and where appropriate, reparations for the damages caused due to the human rights violation. See Inter-American Court of Human Rights. Velásquez Rodríguez Vs. Honduras Case. Fondo, sentence of July 29th, 1988, par. 166.

¹¹ UN, Report of the Special Rapporteur on the independence of judges and lawyers (A/HRC/20/19) 7 June 2012, para. 43.

¹² According to information received by Amnesty International, since December 2018 there has been no response to several proposals submitted by the CICIG to the Public Prosecutor's Office to strengthen it. In addition, it is worth noting that by 25 June 2019, no new agreement had been approved by the Public Prosecutor's Office to maintain the FECl.

International agreed that it would take at least two more years to ensure that this successful model of joint working was fully integrated and taken on board by the Public Prosecutor's Office.

Amnesty International is concerned that given the constant attacks on prosecutors (see Section 3), this limiting of FECCI's investigative capabilities and resources – including those necessary to guarantee the participation in trials of experts from outside the country – poses a real threat to the viability of more than 70 joint cases that are currently open. If resources and measures to remedy these shortcomings are not immediately put in place, a significant number of cases could go unpunished. In addition, these limitations put a serious question mark over the ability to investigate new cases of a similar size and complexity to those worked on in conjunction with the CICIG since 2007. Amnesty International is therefore calling on the Guatemalan authorities to examine extending the mandate of the CICIG or, failing that, to create a mechanism that has sufficient resources to guarantee the real transfer of capacities to the Public Prosecutor's Office and the continuity of the current investigations.

“Lack of resources, a heavy workload and inadequate physical conditions of work have been often reported as major challenges to effective performance by prosecutors.”¹³

UN Special Rapporteur on the independence of judges and lawyers

Amnesty International has also received information that the practices of certain judges are impeding criminal proceedings. This jeopardizes the chances that justice will be delivered promptly in cases of human rights violations during the armed conflict and in more recent cases presented by the FECCI and the CICIG. For example, one common practice is to admit appeals by the defence and allow proceedings that are manifestly inappropriate in order to hinder and delay the process. This practice, also known in Guatemala as “vexatious litigation” (*litigio malicioso*), is exacerbated by undue delays in the higher courts in resolving such appeals.¹⁴ According to the Inter-American Court of Human Rights “it is the duty of judges to direct criminal proceedings in such a way as to avoid undue delays and nuisances that lead to impunity, thus frustrating the due judicial protection of human rights.”¹⁵

The Guatemalan Congress has also sought to undermine the achievements of the last decade. Since 2017 it has supported legislative proposals that promote impunity.¹⁶ Amnesty International and other international organizations have condemned Bill 5377, which seeks to grant an amnesty to those accused and those convicted of crimes under international law and human rights violations perpetrated during the armed conflict. If this law were passed, ongoing investigations would be suspended, depriving thousands of victims of their human right to know the truth and obtain justice and reparation for the crimes they and their families suffered. This would be a violation of Guatemala's international obligations not to allow these grave crimes to go unpunished¹⁷ and would allow those found guilty of such crimes to be released within 24 hours of the approval of the law.¹⁸ In March 2019, the Inter-American Court of Human Rights ordered that this Bill be withdrawn; to date the Guatemalan authorities have not done so.¹⁹

“The dream of justice and human rights is crumbling and a wall of impunity is being erected once again.”

Lawyer

¹³ UN, Report of the Special Rapporteur on the independence of judges and lawyers (A/HRC/20/19, 7 June 2012, para. 79.

¹⁴ Human Rights Watch, *Running out the Clock: How Guatemala's Courts Could Doom the Fight against Impunity*, November 2017, available at www.hrw.org/sites/default/files/report_pdf/guatemala1117_web_4.pdf

¹⁵ Inter-American Court of Human Rights, *Case of the Landaeta Mejías Brothers et al. v. Venezuela*, (Preliminary objections, merits, reparations and costs), Judgment of 27 August 2014, Series C No. 281, para. 218.

¹⁶ In September 2017, Congress passed reforms to the criminal code regarding the crime of illegal campaign financing, and the commutation of sentences, which sought to benefit those facing criminal charges in cases of corruption. These reforms were derogated the next day due to pressure from social movements. In 2018, bills 5466 and 5474 were also proposed in congress. These bills contravene international standards surrounding pre-trial detention, and would lead to the release of those convicted in cases of corruption and crimes committed during the internal armed conflict.

¹⁷ See for example, *Case Barrios Altos v. Peru*, Judgment (merits), 14 March 2001, Series C No. 75, para. 41; *Case of Gelman v. Uruguay*, (Merits and Reparations), 24 February 2011, Series C No. 221, paras. 195 and seq.

¹⁸ Amnesty International, ‘Guatemala: Legislative initiatives seriously threaten human rights’, 12 February 2019, available at www.amnesty.org/en/latest/news/2019/02/guatemala-legislative-initiatives-seriously-threaten-human-rights/

¹⁹ Inter-American Court of Human Rights, *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal, Case of Molina Theissen and 12 other Guatemalan's Cases v. Guatemala*, Provisional Measures and Monitoring Compliance with Judgment, Order of the Inter-American Court of Human Rights of 12 March 2019, operative para. 2.

3. ATTACKS ON THE INDEPENDENCE OF PROSECUTORS AND JUDGES

Amnesty International has received credible and consistent statements from prosecutors and judges working in a high-risk context about the pressures threatening their capacity to carry out their duties independently and impartially. Those who have brought cases related to the internal armed conflict or criminal networks exposed by the Public Prosecutor's Office and the CICIG have been the particular targets of attacks by certain sectors who are threatened by the unprecedented advances in the area of justice and are determined to guarantee their impunity at all costs. According to the Office of the High Commissioner for Human Rights in Guatemala, attacks have increased since November 2018, shortly after the government announced that it would not extend the CICIG's mandate.²⁰

“States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.”

UN Guidelines on the Role of Prosecutors (para. 4)

On 1 June 2019, the Prosecutors' Association of the Public Prosecutor's Office denounced the systematic attacks on the Head of the FECl, Juan Francisco Sandoval, and other prosecutors committed to the quest for justice and asked that the Guatemalan authorities ensure that they could carry out investigations impartially and objectively.²¹ However, to date, the situation has not improved.

Prosecutors from the Public Prosecutor's Office, particularly those working on emblematic cases in the fight against impunity, are frequently the targets of intimidation, surveillance and threats. They are also subjected to smear campaigns on social media²² and in the media aimed at discrediting their work. Such practices create additional risks for their safety and constitute a form of pressure and intimidation that affects their independence and impartiality. Concerns for the physical integrity of prosecutors in the Public Prosecutor's Office are compounded by the inability of the institution to meet the increasing need for protection.²³ According to information received by Amnesty International, the security department of the Public Prosecutor's Office is increasingly unable to grant prosecutors all the security measures that their situation requires. In some cases aspects of the security provided to prosecutors facing high levels of risk have even been withdrawn and have not been replaced.

In addition, criminal allegations and complaints to the Supervisor General of the Public Prosecutor's Office are often made against prosecutors by people accused in criminal proceedings or linked to them. For example, there are about 80 lawsuits against the 64-person FECl team. The Head of FECl, Juan Francisco Sandoval, alone is the subject of 20 legal proceedings. While it is important that there are accountability mechanisms, Amnesty International has documented how in Guatemala the criminal justice system has been misused to harass those who defend human rights and justice. Some of those working in the justice system have been complicit in this misuse and have allowed proceedings to go forward on the basis of unfounded criminal complaints without taking into account the context in which these complaints were made. In the case of prosecutors, this type of complaint is used to exert pressure, intimidate or in reprisal against those responsible for bringing the charges. Rather than being filed, these complaints can remain open for years, creating anxiety and sapping the energies of those who find themselves obliged to organize their own defence while continuing to work on extremely complex cases.

²⁰ UN High Commissioner for Human Rights (OHCHR) and the National Human Rights Institution (Procuraduría de los Derechos Humanos, PDH), *Situación de las personas defensoras de derechos humanos en Guatemala: entre el compromiso y la adversidad* [Situation of human rights defenders in Guatemala: between commitment and adversity], May 2019, para. 74, available at www.oacnudh.org.gt/index.php/sala-de-prensa/noticias-y-comunicados/200-informe-situacion-de-las-personas-defensoras-de-derechos-humanos-en-guatemala (Spanish only).

²¹ The communiqué was reproduced by Guatevisión, 'Asociación de Fiscales pide protección para Jefe de la FECl, Juan Francisco Sandoval' [Prosecutors' Association requests protection for Head of the FECl, Juan Francisco Sandoval] 1 June 2019, www.guatevision.com/noticias/nacional/asociacion-de-fiscales-pide-proteccion-para-jefe-de-la-feci-juan-francisco-sandoval/ (Spanish only).

²² This phenomenon is amplified by the use of bots and netcenters by groups seeking to ensure their impunity. See CICIG, *Informe Bots, netcenters, y combate a la impunidad* (Report: Bots, netcenters and the fight against impunity), May 2019, available at www.cicig.org/cicig/informes_cicig/informes-tematicos/bots-netcenters-y-el-combate-a-la-impunidad/ (Spanish only).

²³ During the preparation of this document, it was reported, for example, that the Head of the Electoral Crimes Unit of the Public Prosecutor's Office was forced to leave the country one week after the first round of elections because of threats. See *ConCriterio*, 'Óscar Schaad, y su familia dejan Guatemala por amenazas' [Óscar Schaad and his family leave Guatemala because of threats], 12 June 2019, available at <http://concritorio.gt/oscar-schaad-y-su-familia-dejan-guatemala-por-amenazas/> (Spanish only).

“Sometimes I feel like I’m going to end up in prison before the accused”

A prosecutor working for the FECl

Amnesty International is concerned at the attacks on the independence and impartiality of prosecutors. These attacks threaten the quality and outcomes of investigations and could also result in investigations stalling or remaining dormant for years, as happened in the past. Amnesty International urges Guatemala to fulfil its obligation to guarantee the personal security of prosecutors and to take all necessary measures to ensure that they can continue to carry out their work without undue external or internal pressure, in line with the UN Guidelines on the Role of Prosecutors.²⁴

Amnesty International also reiterates its concerns about the situation of judges who have played a fundamental role in delivering justice in emblematic cases over the past decade. Several preside in courts and tribunals for high-risk cases. These were created in 2009 in Guatemala City to address to increased security needs in this type of case. However, this system is being undermined. Amnesty International has received information that judges of questionable independence and who lack experience have been appointed to these courts and that Congress may repeal the Accord that created the tribunals and courts for high-risk cases.

Despite the security measures put in place, several judges are reporting not only that they are being intimidated, threatened and followed, but that they, like prosecutors, are the targets of smear campaigns on social media and stigmatizing statements by the authorities at the highest level who have described their work as “judicial terror” (“terror judicial”).²⁵ In addition, judges have had to defend themselves against continuous criminal complaints and disciplinary and other procedures resulting from the misuse of the criminal justice system and disciplinary mechanisms to harass and punish judges for their decisions and sentencing. It should be noted that two female judges and one male judge sitting in the Constitutional Court have also faced processes aimed at removing their immunity because of rulings issued in favour of continuing the fight against impunity.²⁶ Amnesty International is particularly concerned at the intimidatory and chilling effect of these kinds of criminal proceedings and stigmatization on the country’s judiciary. It calls on the Guatemalan authorities to guarantee the independence of all judges and to refrain from making statements that may interfere with their work and from allowing baseless appeals or proceedings to be pursued.

4. HUMAN RIGHTS DEFENDERS AT RISK

Amnesty International believes that the setbacks in the fight against impunity in Guatemala outlined above increase the risks faced by human rights defenders, who have played a key role in the progress made by the justice system. Almost two decades after supporting the creation of the CICIG to address the inability of the state to investigate Illegal Groups and Clandestine Security Organizations (CIACS), human rights defenders are continuing to raise their voices for justice. They are speaking out, in public and before the courts, and denouncing actions by the government and Congress and other sectors opposed to the rule of law and the fight against impunity.

The information obtained and analysed by Amnesty International in May and June 2019 indicates that there has been a deterioration in the situation of human rights defenders and freedom of expression in the country. In addition to the continuous threats, intimidation and stigmatizing statements published in the media and on social media that seek to discredit their work, in 2018 the Unit for the Protection of Defenders of Human Rights (Unidad de Protección a Defensoras y Defensores de Derechos Humanos, UDEFEGUA) recorded an increase in killings, with a record number of 26 human rights defenders killed and 18

²⁴ Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990, available at www.ohchr.org/en/ProfessionalInterest/Pages/RoleOfProsecutors.aspx

²⁵ In a press conference on 31 August 2018, the President referred to the judicial function as “selective criminal prosecution”, “judicial terror in Guatemala”, “selective justice to intimidate and terrorize citizens” and a “manipulation of justice. “ [“persecución penal selectiva”, “terror judicial en Guatemala”, “justicia selectiva para intimidar y aterrorizar a la ciudadanía”, “manipulación de la justicia”. See <https://www.youtube.com/watch?v=ME7Q4CryO5o> (Spanish only).

²⁶ *Prensa Libre*, ‘CSJ rechaza el antejuicio de la PGN contra tres magistrados de la CC’ [CSJ rejects case against three CC magistrates in preliminary hearing], 30 April 2019, available at www.prensalibre.com/guatemala/justicia/csj-rechaza-el-antejuicio-de-jorge-luis-donado-contra-magistrados-constitucionales/ (Spanish only).

attempted killings.²⁷ This wave of killings, which particularly targeted defenders of the land, territory and the environment,²⁸ coincided with a period in which state authorities issued stigmatizing statements against these movements. Despite a protocol adopted in May 2018 by the Public Prosecutor's Office to guide the investigation of such attacks, almost all of these killings, like most attacks against human rights defenders, remain unpunished, creating an environment in which such actions are more likely to be repeated.²⁹ Amnesty International reminds the Guatemalan authorities that they have an obligation to ensure a safe environment for the defence of human rights, including by refraining from issuing statements that stigmatize or delegitimize those who promote human rights.

The risks faced by those who defend human rights have been exacerbated by the closing down of spaces for dialogue between state authorities and civil society, which were crucial for coordinating their protection – such the Unit for the Analysis of Attacks against Human Rights Defenders³⁰ which ceased operations in 2018 after 10 years – and by the fact that the process for developing a public policy for the protection of defenders has stalled.³¹

In addition, the Guatemalan authorities have not succeeded in stopping the misuse of criminal law to harass human rights defenders and, as a result, several defenders have had criminal proceedings open against them for years. Amnesty International has interviewed a number of defenders who live with the permanent threat that these proceedings will be reactivated hanging over them, creating anxiety and stress and hindering their work in defence of human rights.

Instead of taking measures to ensure that Guatemala is a safe space for the defence of human rights, members of the Guatemalan Congress have pushed for the approval of Bill 5257, which could lead to the arbitrary closure of civil society organizations and further criminalization by imposing criminal sanctions on human rights defenders who belong to them.³²

Amnesty International is deeply concerned about the growing hostility towards those who defend human rights, including journalists who have covered human rights violations and corruption cases, as part of the current backlash against the fight against impunity.³³ The ending of the CICIG mandate, coupled with the deliberate weakening of the institutions pursuing justice and human rights³⁴, encourages criminal structures to continue violating the law with complete impunity and fosters a climate in which human rights defenders are more likely to suffer attacks and reprisals because of their work. The danger is particularly great for those who continue to demand justice in cases initiated by the CICIG after 3 September and those who defend the land, territory and environment in the country's interior. Amnesty International therefore calls on all Guatemalan authorities to publicly recognize the work of human rights defenders and ensure that they can continue to carry out this work free from attacks of any kind.

²⁷ UDEFEGUA, *Informe sobre situación de personas, comunidades y organizaciones defensoras de derechos humanos, enero-diciembre 2018*, [Report on the situation of individuals, communities and organizations defending human rights, January-December 2018], available at <https://drive.google.com/file/d/1GJHcxJiysq6oBIYOgrMgdK9F3v0Vj2Z6/view> (Spanish only).

²⁸ Amnesty International, 'Guatemala: Seven human rights defenders killed in four weeks', 11 June 2019, available at www.amnesty.org/en/latest/news/2018/06/guatemala-seven-human-rights-defenders-killed-in-four-weeks/

²⁹ Public Prosecutor's Office, General Instruction 5-2018, Protocol for the Investigation of Crimes Committed against Human Rights Defenders, available at www.cejil.org/sites/default/files/2018_05_30_gt_aprobacion_instruccion_general.pdf (Spanish only).

³⁰ The Unit was created in 2008 to analyse the context, the patterns of attacks against human rights defenders and observers and to agree on rapid response measures for their protection.

³¹ OHCHR and the National Human Rights Institution, *Situation of human rights defenders in Guatemala: between commitment and adversity*, May 2019, pp. 37-38; Amnesty International, *Americas: The situation of state protection mechanisms for human rights defenders*, 3 October 2018, available at www.amnesty.org/en/documents/amr01/8912/2018/en/

³² Amnesty International has expressed concern that Bill 5257 poses a threat to the rights to freedom of expression, association and the right to defend human rights in Guatemala. See Amnesty International, 'Guatemala: Legislative initiatives seriously threaten human rights', 12 February 2019, available at www.amnesty.org/en/latest/news/2019/02/guatemala-legislative-initiatives-seriously-threaten-human-rights/ and Urgent Action, 'Guatemala: NGOs and human rights defenders at risk', 26 February 2019, available at www.amnesty.org/en/documents/amr34/9933/2019/en/

Discussions in Congress have progressed so that now all that remains for Bill 5257 to pass into law is for it be approved following a third and final reading and for each of the articles be voted on.

³³ Inter-American Commission on Human Rights and OHCHR, 'Guatemala: Freedom of expression and the media's role are crucial to guaranteeing free and transparent elections this June 16', 12 June 2019, available at www.oas.org/en/iachr/expression/showarticle.asp?artID=1142&IID= and OHCHR and the National Human Rights Institution, *Situation of human rights defenders in Guatemala: between commitment and adversity*, May 2019, p. 30 (Spanish only).

³⁴ Amnesty International also received information about different actions, including criminal proceedings, aimed at undermining the work of the ombudsperson or their removal from office, in retaliation for their continuing work in the fight against impunity.

5. CONCLUSIONS AND RECOMMENDATIONS

Justice is hanging by a thread in Guatemala. Efforts over more than a decade to strengthen the criminal justice system and access to justice – efforts which resulted in emblematic proceedings against high-ranking state officials in Guatemala accused of serious human rights violations during the armed conflict and against members of powerful criminal structures acting with the complicity of public institutions and officials – are at imminent risk of disappearing.

The Guatemalan authorities at the highest level have indicated that they will continue the fight against impunity after the end of CICIG's mandate on 3 September 2019, but Amnesty International's research has shown that the recent actions of the government, the Public Prosecutor's Office, sections of the judiciary and Congress are aimed at limiting and impeding prompt, independent and thorough criminal investigations. This situation is exacerbated by constant attacks on the independence and impartiality of prosecutors and judges who have dealt with emblematic cases. More than one of these cases could result in impunity as a result of the measures described in this report that undermine Guatemala's international obligation to investigate human rights violations, the rule of law and the confidence of the population in the justice system. Amnesty International condemns the intentional weakening of the institutions of justice and is gravely concerned at the increased risks this poses for those who continue to speak out in defence of justice and human rights in the country.

Amnesty International urgently calls on the Guatemalan authorities to put an end to the backlash against the fight against impunity. It urges the authorities to implement the following recommendations aimed at ensuring the proper functioning of the justice system and capable of guaranteeing human rights. Amnesty International also urges the international community to support these processes.

To all authorities of the State of Guatemala

- Review extending the mandate of the CICIG or, failing that, create a mechanism to guarantee the real transfer of capacities to the Public Prosecutor's Office in order to facilitate continuity in current open investigations and provide adequate resources to enable it to fulfil its functions.
- Protect and publicly recognize the legitimate work of human rights defenders and refrain from making statements that stigmatize them and misusing the justice system to intimidate and harass them.
- Guarantee the independence of the judiciary and of prosecutors and refrain from any action or statement that may unduly interfere with the exercise of their duties.
- Ensure that the processes to select and appoint judges, known as "Nomination Committees" ("*Comisiones de postulación*"), are based on the suitability, merits and independence of the candidates for the office and at all times ensure transparency and the participation of civil society in these processes.

To the Attorney General and the Head of the Public Prosecutor's Office:

- Take all necessary measures to ensure that crimes under international law and human rights violations are investigated promptly, effectively and thoroughly. In particular, facilitate the continuation of investigations surrounding the internal armed conflict and the years following the conflict, as well as various cases of corruption, in order to prevent ongoing impunity in these cases.
- Ensure that prosecutors, including prosecutors who have worked with CICIG, have the necessary human, technical and material resources to carry out prompt, thorough and independent investigations.
- Adopt appropriate measures to continue strengthening the investigative capacities of the Public Prosecutor's Office, valuing staff specialization, avoiding unjustified transfers and ensuring the full transfer and assimilation of the technical capabilities and methodology developed with the support of the CICIG.

- Ensure that prosecutors enjoy independence and autonomy, in particular by strengthening the security department of the Public Prosecutor's Office so that it can respond to all staff protection needs.
- Guarantee the immediate implementation of General Instruction 5-2018 regarding the prompt, effective and thorough investigation of all attacks, threats and assaults against human rights defenders, including against those working in the justice system.
- Identify criminal proceedings opened against human rights defenders and people working in the justice system for which there is no basis and either close these cases, or request that the judges hearing the cases close them, on the grounds that they are unfounded. Amnesty International urges the Public Prosecutor's Office to adopt and implement an internal protocol to guide the actions of prosecutors regarding misuse of criminal law against human rights defenders.
- Initiate administrative, disciplinary or criminal proceedings, as appropriate, to deal with allegations of misuse of the justice system to harass and intimidate human rights defenders, prosecutors and judges.

To the judiciary:

- Guarantee the security and independence of all judges, especially those responsible for high-profile cases relating to corruption and human rights abuses.
- Ensure that the system of tribunals and courts for high-risk cases is maintained and strengthened by the appointment of suitable judges.

To the Executive:

- When putting forward state annual budget proposals, allocate sufficient resources for the institutions of the justice system, in particular to the Public Prosecutor's Office, in order to help strengthen them and ensure they are able to function properly.
- To the Ministry of the Interior, ensure effective collaboration with all prosecutors in the Public Prosecutor's Office in order to ensure that investigations are conducted properly.
- Adopt and implement a public policy for the protection of human rights defenders, in accordance with the criteria established by the Inter-American Court of Human Rights in its decision in the *Case of Human Rights Defender et al. v. Guatemala*.³⁵

To the Guatemalan Congress

- Refrain from approving bills or repealing agreements that would have the effect of hindering access to justice and the fight against impunity or that could imply setbacks for respect for human rights in the country, such as the Bill 5377 and Bill 5257.
- When voting for the state annual budget, allocate sufficient resources to the institutions of the justice system, in particular the Public Prosecutor's Office in order to help strengthen them and ensure their proper functioning.

To the international community:

- Promote the realization of human rights and the continuing fight against impunity in Guatemala by issuing public statements and attending judicial hearings in high-profile cases as observers.
- To the cooperating countries, continue to support the strengthening of civil society organizations and movements on issues of social accountability, advancing the fight against impunity and investigations into human rights violations.

³⁵ Inter-American Court of Human Rights, *Case of Human Rights Defender et al v. Guatemala*, (Preliminary objections, merits, reparations and costs), Judgment of 28 August 2014, Series C No. 283, para. 263.

- To countries that have guidelines for the protection of human rights defenders, ensure these are implemented, in particular through public statements about the legitimacy of the work of defenders.
- To the cooperating countries, support the strengthening of the institutions of the justice system in Guatemala in order to guarantee access to justice and more effective criminal investigations, taking into consideration the good practices and international standards referred to in this document.

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A LAST CHANCE FOR JUSTICE

DANGEROUS SETBACKS FOR HUMAN RIGHTS AND THE FIGHT AGAINST IMPUNITY IN GUATEMALA

The Guatemalan authorities at the highest level have adopted a series of measures since August 2017 -- including ending the mandate of the International Commission against Impunity (CICIG) -- that are in imminent danger of undermining the efforts over more than a decade to strengthen the criminal justice system and ensure access to justice in the country. As a result of these serious setbacks, dozens of cases of human rights violations and corruption could remain unpunished and human rights defenders are more exposed to attacks because of their work.