

INTERNATIONAL COMMISSION OF JURISTS

JUSTICE IN GUATEMALA: THE LONG ROAD AHEAD

EXECUTIVE SUMMARY

For several years, the International Commission of Jurists (ICJ) has followed with concern the situation of the administration of justice in Guatemala, in particular its independence, the high level of impunity and attacks against judges, prosecutors and human rights defenders, as well as the lack of access to justice and recognition of indigenous law. Apart from its regular research and monitoring of the country, the ICJ undertook two visits in the course of 2005 in order to analyse these topics. After the visits, the ICJ found that, despite the efforts of the current Government, the administration of justice and the rule of law remain extremely weak in the country.

Guatemala has not recovered from the institutional weakening that resulted from almost four decades of internal armed conflict. The institutional strengthening foreseen by the Peace Accords has been partial; despite numerous steps in the right direction, such as the abandonment of human rights violations as State policy and a considerable reduction in the size of the Armed Forces, serious shortcomings remain with regard to the active protection of human rights by the Judiciary and the investigation and trial of past human rights violations.

Throughout this report the ICJ presents and analyses serious structural and practical shortcomings in the administration of justice, which entail violations of the right to a fair trial. The procedures to appoint, evaluate and remove judges and magistrates, as well as the lack of security of tenure and the conditions of service, do not guarantee their independence and impartiality. The ICJ formulates a number of recommendations on these issues, among them the need for a constitutional reform, in order to guarantee the independence of the judiciary as a whole and of individual judges and magistrates.

The rise in the number of attacks against judges, prosecutors and human rights defenders and the absence of thorough investigations on these crimes, are a manifestation of the level of impunity with which clandestine groups continue to operate in Guatemala. The ICJ deplores that the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations was not established and urges the Government to undertake concrete efforts to investigate and dismantle those groups.

The ICJ also witnessed serious weaknesses at the Office of the Prosecutor General (*Ministerio Público - MP*), both in terms of resources as well as staff, which prevent that institution from effectively carrying out its functions. Its absence from certain parts of the country, insufficient training on oral proceedings and the lack of a transparent disciplinary regime are some of the challenges faced by Guatemala in order to strengthen this essential institution.

The ICJ also analysed the current draft law on military justice, which would grant automatic jurisdiction to military courts for all crimes committed by current and former members of the armed forces. The ICJ maintains that this draft law would run counter to Guatemala's obligations under international law and must be amended so that military courts can only try military personnel for crimes which are of a strict military nature.

The abuse of the *amparo* with delaying purposes renders this crucial safeguard into a mechanism for impunity, particularly in cases of human rights violations. The ICJ believes that the draft law currently in Congress would introduce important changes in order to prevent abuses of this safeguard. However, the draft law should be modified to include the provisions elaborated by the Commission for the Strengthening of the Justice Sector, in particular the provisions related to the grounds for *in limine* denial of the *amparo*.

The frequent attacks against human rights defenders, as well as the utilisation of the criminal justice system with a view to restrict social protests and mediate in local conflicts, are serious threats to the rule of law in Guatemala. The ICJ verified that whilst most attacks against human rights defenders are not investigated, the Office of the Prosecutor General quickly advances proceedings against social leaders and groups that demand respect for their rights.

Finally, the ICJ is concerned that vast sectors of the population, mainly the poor, have no access to justice. The Government's efforts should be multiplied to guarantee that all inhabitants have effective access to justice wherever they are. Furthermore, indigenous peoples in Guatemala have the right to establish their own tribunals by virtue of ILO Agreement 169, to which Guatemala is a party. However, the Guatemalan authorities have not taken every measure to respect this right. The ICJ thus recommends that the necessary legal reforms be taken in order to recognise the applicability of indigenous law.