

Web article: Guatemala: Attacks against judges and human rights defenders must cease

Conclusions of the Conference on Judicial Independence, Guatemala City, 18-19 June 2018

June 22 2018

The International Commission of Jurists (ICJ) is deeply concerned about the increase in the abuse of disciplinary measures against independent and impartial judges and about crimes committed against human rights defenders. These attacks are putting the rule of law at risk in Guatemala. The ICJ therefore urges the Inter-American Commission on Human Rights, the Subcommittee on Human Rights of the European Parliament and the UN Special Rapporteur on the Independence of Judges and Lawyers to carry out visits to the country so as to verify the situation.

Judges facing malicious disciplinary proceedings

From 18-19 June 2018, the ICJ hosted a conference on the independence of judges with participants from different Central American judges' associations. The conference was able to verify that impartial and honourable judges face on-going disciplinary actions that seek to have them recused from trials or have them removed from office on account of their judicial decisions.

Judges are facing the malicious use of the judicial disciplinary system by groups or persons who disapprove of judicial rulings in high-impact cases.

The meeting was an opportunity for different justice sector institutions and judges, victims of attacks, to analyse fundamental concepts and international standards on the judiciary. The conference concluded, the judicial career system must guarantee that a higher judicial authority can only sanction judges for legally established reasons as set down by international standards.

There was a full agenda of discussions with the participation of the Association of Guatemala Judges for Integrity (AGJI), the President of the Supreme Electoral Tribunal, the Supervisor General of Courts, judges from the Penal Chamber of the Supreme Court, the Commissioner of the International Commission against Impunity in Guatemala (CICIG) and the plenary of the Council of the Judicial Career.

The conference examined attacks against judges and their impact, case by case, in the light of international standards. The conference concluded that judges including Ericka Aifán, Yassmín Barrios, Miguel Ángel Gálvez, Carlos Ruano and Pablo Xitumul are facing disciplinary measures because they have acted independently and impartially. The spurious complaints presented against them before the judicial disciplinary system or other State institutions should be excluded "*in limine*".

Transparent appointment process is essential for Guatemalan judicial disciplinary bodies

According to the Law on the Judicial Career, the Council of the Judicial Career plays an important role in the defence of judicial independence and the application of the disciplinary regime, based on international standards. This Council should ensure that a Disciplinary Board, when carrying out a

disciplinary hearing and determining any sanction, is not subjected to “undue limitations in the exercise of its functions”.¹

The Council of the Judicial Career was constituted in late 2017. The Disciplinary Boards and the General Supervisory Body of the Courts are in the process of being constituted.

The 22 June deadline has now passed for receiving challenges or objections related to the list of candidates for the competitive examination for the post of General Supervisor of Courts, Executive Secretary of the Council of the Judicial Career and other posts related to the evaluation of judges’ professional performance, training and disciplinary measures. The ICJ considers that these appointments are crucial to guarantee the independent and impartial functioning of the Council of the Judicial Career.

Attacks against human rights defenders and regressive bills in Parliament to grant wide-ranging amnesty for gross human rights violations

The ICJ also deeply regrets that seven human rights defenders were assassinated in the last weeks. These acts constitute attacks against the freedom of association of the Peasant Development Committee (*Comité de Desarrollo Campesino, CODECA*) and the Peasant Committee of the Highlands (*Comité Campesino del Altiplano, CCDA*) and against the work of human rights defenders; and place at risk the right to freedom of expression, one of the pillars of a democracy.

In parallel with these attacks, there are attempts in Congress to reform the Law on National Reconciliation to grant immunity by approving a general amnesty for international crimes and gross violations of human rights committed in the past during the internal armed conflict. The Congress also plans to adopt reforms to the law regulating non-governmental organizations (NGOs) to restrict their humanitarian and human rights work.

ICJ urges monitoring visits from regional and international human rights mechanisms

The rule of law in Guatemala is at serious risk and the ICJ calls upon public officials to make every effort to ensure a return to the principle of legality as the basis for the functioning of the State. This requires that domestic and international law, standards and principles, and international custom, should all be respected, as recognized by the Guatemalan Constitution and in the *Vienna Convention on the Law of Treaties*, ratified by Guatemala.

The ICJ therefore reiterates its request that the Inter-American Commission on Human Rights, the Subcommittee on Human Rights of the European Parliament and the UN Special Rapporteur on the Independence of Judges and Lawyers to carry out visits to the country so as to verify the situation

Background Information

International standards on judicial disciplinary systems

¹ I/A Court H.R. *Case of Apitz Barbera et al. («First Court of Administrative Disputes») v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008, Serie C No. para. 55. Cited in the above report Para 196, p. 79

The ICJ recalls that according to international standards the decision of a judge can only be questioned or be the object of an appeal in situations regulated by law. Moreover, every judicial system prohibits malicious litigation.

International standards establish that judges in carrying out their functions must do so free of any influence and with complete impartiality; free of extraneous influence, inducements, pressures, threat or interference, direct or indirect, from any quarter or any reason.

The Bangalore Principles on Judicial Conduct state “a competent, independent and impartial judiciary is [...] essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law”. The Principles also state that judges are responsible for their conduct before institutions established to maintain judicial standards while affirming that these institutions (in the case of Guatemala the Council of the Judicial Career) **must be independent and impartial**.

The ICJ considers that judges should face disciplinary actions when they are implicated in corrupt practices, lack impartiality, show undisciplined behaviour, such as alcohol consumption and other similar behaviour, and they should be sanctioned according to the disciplinary code or by the penal system (if the acts constitute crimes).

Obviously in these cases, the accusations should be duly proven and based on the standards of judicial conduct previously established by law and the judge should have the right to a defence based on the due process of law. If a judge is sanctioned for these kinds of illegal acts, judicial independence is not affected.

International resolutions and reports urging Guatemalan government to uphold independence of judiciary

The role of judges as human rights defenders was emphasized in the *Resolution on human rights defenders in Guatemala*, adopted by the European Parliament on 16 February 2017 (2017/2565 RSP). It states that human rights defenders working on cases involving corruption and transitional justice, **including judges** “are facing intimidation and trumped-up legal complaints”.²

The resolution also notes “Iván Velásquez, Director of the internationally recognised International Commission against Impunity in Guatemala (CICIG), is also facing charges and is subject to an on-going smear campaign”. Also the resolution recognizes that “emblematic cases in the field of transitional justice are moving forward, such as those involving Molina Theissen and CREOMPAZ or those on corruption in the La Línea and Cooperacha cases, among others”.³

The ICJ recalls that as part of their duties, judges promote recognition and respect for human rights, within the framework of judicial authority. For that reason, the State and the Supreme Court must assume a much more active role in the defence of judges who act impartially, as in the case of Judges Ericka Aifán, Yassmín Barrios and the others mentioned above. The ICJ considers that this above-mentioned resolution must be respected and implemented in its entirety by the Guatemalan authorities.

² European Parliament. P8_TA (2017) 0045 *Guatemala, notably the situation of human rights defenders* (2017/2565 (RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0045+0+DOC+XML+V0//EN&language=EN>

³ Section L of the above cited resolution.

Furthermore the State of Guatemala must implement the report “*Guarantees for the Independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*” published in 2013 by the Inter-American Commission on Human Rights which recognizes that “the independence of any body or organ that performs jurisdictional functions is a condition *sine qua non* for the observance of the standards of due process as a human right. The lack of such independence affects exercise of the right of access to justice and creates mistrust and even fear of the courts, which discourages those who would otherwise turn to the courts for justice.”⁴

⁴ “Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas” OAS/Ser. L/V/11 Doc. 44, 5 Dec. 2014. P. 13, available at: <https://www.oas.org/es/cidh/defensores/docs/pdf/justice-operators-2013.pdf>