

Guatemala Faces Potential Justice Setbacks after 10 Years of Progress

FIDH has published this note to highlight the challenges Guatemala is facing in fighting corruption and impunity and to present recommendations to address them. FIDH calls on the future president-elect to ensure advances in the area of justice in the country and to halt the legislative reforms underway that violate and ignore human rights.

In just a decade, Guatemala has gone from being a paradise for criminals in which a history marked by the absence of justice was tirelessly repeated, to being a regional and global role model in the fight against impunity. The conviction for genocide against General Ríos Montt in 2013¹ and the prosecution of Otto Pérez Molina and Roxana Baldetti for corruption in 2015², have led to decisive changes in the Guatemalan penal system. The management of Prosecutor Claudia Paz and, subsequently, that of Thelma Aldana, have been determining factors for Guatemala to demonstrate to the world in the last decade that the plagues of impunity and corruption could indeed be confronted and bent.

While welcoming this advance, we must not lose sight of the importance of the work of the Commission against Impunity in Guatemala (CICIG - Comisión Contra la Impunidad en Guatemala), which, after 11 years of intense work in the country, constitutes a reference and an example of how the international community can make essential contributions to consolidating local efforts strengthen the rule of law.

1. A decade of progress in the area of justice

Together with the Public Prosecutor's Office (MP = Ministerio Público), CICIG has succeeded in prosecuting 680 persons and has already obtained the conviction of 310 of them, in more than 100 cases presented before the Guatemalan judicial authorities³.

Among those accused and convicted of these cases are some of the highest authorities in the country, highlighting those who previously held the presidency and vice presidency of the Government, ministers, deputy ministers, members of parliament and magistrates, among others. CICIG has also identified more than 60 criminal structures, some of which are linked to drug trafficking and other forms of organized crime known as illicit political-economic networks (RPEI = *redes político-económicas ilícitas*), which had co-opted various public institutions (Property Registry, Ministry of Defence, Guatemalan Social Security Institute, or the country's most important municipalities) and which were related to large national and international companies and political parties.⁴

Beyond the cases in which progress has been made and their relevance, it should be noted that the work of the Commission has sought to strengthen the country's institutional framework, and

¹ Geoff Thale, Jo-Marie Burt and Ana Goerd. 'After the verdict: What the condemnation of Ríos Montt means for Guatemala'. Available at: <https://www.wola.org/es/analisis/despues-del-veredicto-lo-que-la-condena-de-rios-montt-significa-para-guatemala/>

² Information on 'La Línea' available at: <https://www.cicig.org/casos/caso-la-linea>

³ CICIG. *XI Annual Labour Report of the International Commission Against Impunity*. Available at: https://www.cicig.org/wp-content/uploads/2018/11/XI_Informe_Anuar_CICIG_2018.pdf

⁴ Information on cases in which CICIG has intervened: <https://www.cicig.org/casos-listado/>

in this work it has managed to go beyond the criminal justice system. Thus, not only has the Public Prosecutor's Office or the judiciary benefited from support of a different nature, but it has also contributed to the strengthening of such relevant bodies as the Supreme Electoral Tribunal (TSE = Tribunal Supremo Electoral)⁵. Regulatory changes have also been sought that have led to 34 legal reforms, some as important as the Organized Crime Act and the creation of the Highest-Risk Courts⁶.

The CICIG's work has also contributed significantly to the work carried out by national institutions to achieve the effectiveness of human rights. In the first place, for having addressed this subject through its traditional thematic research, such as torture and violence against persons deprived of their liberty or human rights defenders⁷. Secondly, this contribution is also seen as a guarantee of access to justice for the victims of cases and for all citizens, inasmuch as a good number of investigations have been related to criminal acts committed by the administrators of the justice system.⁸ Finally, it is worth highlighting the work that the Commission has carried out on corruption, as it has made it possible to investigate criminal structures that co-opted a large number of public institutions and prevented the population from accessing the most basic services and the rights that these services are intended to guarantee.⁹

2. The Corrupt Pact and the Return to Impunity

The confrontation with the country's most powerful economic, political and social interests, as well as the investigations against the family of President Jimmy Morales and against the ruling party for illegal electoral financing¹⁰ gave rise to what has been called the 'Corrupt Pact'. This generated an articulation of the most conservative sectors allied to the Executive and those that have been negatively affected by the improvements in the functioning of the justice system (military involved in serious crimes during the armed conflict, business, political and religious groups linked to acts of corruption), which seeks to reverse the advances already made and avoid the consolidation of a true rule of law.

To this end, actions were taken against the institutions and individuals who have been involved in the fight against corruption and impunity. Thus, in addition to the continuous media attacks, there has been a constant filing of complaints against the staff of the Special Prosecutor against Impunity (FECI = Fiscalía Especial contra la Impunidad) and its director, Juan Francisco Sandoval¹¹. Equally constant have been the security incidents generated by the system of protection of judges and magistrates of the judiciary, and the harassment against the Human Rights Procurator, Jordán Rodas¹².

⁵ The CICIG developed a process to strengthen and transfer capacities to the TSE for the auditing and oversight of party finances. Information available at: <https://www.cicig.org/articles/transferecia-de-capacidades-al-tse/>

⁶ CICIG. XI Annual Labour Report of the International Commission Against Impunity

⁷ In this sense, the cases 'Extrajudicial executions and torture', 'Polo chic', 'Alaska', 'Cleopatra', 'Víctor Gálvez', 'Information on the matter available at: <https://www.cicig.org/casos-listado/>

⁸ Genesis Cases, Impunity Office, Judge Carol Flores, Judge Jisela Reinoso, Judge Erick Gustavo Santiago De León, Former Magistrate Gustavo Mendizábal, Former Prosecutor Carlos De León, Former Magistrate Blanca Stalling, Magistrate Eddy Giovanni Orellana Donis and Manipulation of Justice.

⁹ The clearest example is the conviction in the 'IGSS/Pisa' case, which involved convictions for the death of people who did not receive adequate treatment because of irregular purchases of health services. 'The deaths caused by IGSS fraud. Soy 502, 20/5/2015. Available at: <https://www.soy502.com/articulo/muertes-ocasiono-fraude-igss>

¹⁰ Botín Cases in the Property Registry and illegal electoral financing FCN-Nación

¹¹ From 2014 to July 2018, twenty-one (21) legal actions were identified against FECI personnel. 'Twenty-one complaints and injunctions have been filed against FECI prosecutors'. *La Hora*, 5/10/2018. Available at: <https://lahora.gt/veintiun-denuncias-y-amparos-han-sido-interpuestas-contra-fiscales-de-feci/>

¹² 'Judges denounce threats to judicial independence before the IACHR. *El Periódico*, 10/5/2019'. Available at: <https://elperiodico.com.gt/nacion/2019/05/10/jueces-denuncian-ante-la-cidh-amenazas-a-la-independencia-judicial/>; and 'DPLF condemns attacks and intimidation against Guatemalan Human Rights Ombudsman Jordán Rodas', January 2018, available at: <http://www.dplf.org/es/news/dplf-condena-ataques-e-intimidaciones-contra-el-procurador-de-los-derechos-humanos-de-guatemala>

Attacks against the CICIG became especially evident from August 2017 when the President declared the Commissioner, Iván Velázquez, *persona non grata*¹³. From that moment on, in addition to the anti-CICIG lobby, which sought to subtract financial resources from the institution, the following actions were taken¹⁴, different authorities were limiting the support they were offering to their work. Thus, the National Civil Police, on several occasions, withdrew its personnel assigned to investigative and security work for the Commission¹⁵, and the Ministry of Foreign Affairs, not only refused to allow the Commissioner to enter the country, but on 18 December 2018 expelled eleven (11) members of the Commission from Guatemala, after denying them the corresponding courtesy visas and disregarding the orders of the highest judicial authorities by not allowing them to return¹⁶.

After the President declared in August 2018 that the agreement with the CICIG would not be renewed and that its mandate would end one year later, in January 2019 and unilaterally, the Ministry of Foreign Affairs informed the United Nations that within 24 hours the work of CICIG would end. Although this action did not lead to an early end to the work of the mission, it did involve the temporary departure of a substantial part of its staff from the country¹⁷.

3. Reforms for impunity, authoritarianism and restriction of rights and freedoms

The "Corrupt Pact" has not only operated through the indicated actions, but has also intervened in the election of high positions in the justice system and relevant institutions that have been strongly questioned.¹⁸, and has promoted legislative initiatives that implied a notable regulatory setback and the generation of new limitations in the effectiveness of human rights. Among the most recent regulatory initiatives that demonstrate this attempt to move backwards legislatively, the following three stand out.

3. 1. To silence and control independent civil society

Initiative 5257 seeks to amend the Non-Governmental Organizations for Development Act.¹⁹. The adoption of this law seeks to weaken and silence organized civil society, which has been a fundamental ally in strengthening the justice system and one of the most critical voices against the actions of the "Corrupt Pact" and the authoritarian responses of the Government in this framework.

Approval of this initiative would pose a serious risk to the freedom of expression and association, as it would generate a significant number of unnecessary controls and requirements (involving financial resources) for the registration and operation of NGOs in Guatemala. Also, in addition to denying the express recognition of human rights organizations in

¹³ 'President Jimmy Morales declares Iván Velázquez *persona non grata* and orders his expulsion'. *Prensa Libre*, 27/9/2017. Available at: <https://www.prensalibre.com/guatemala/politica/jimmy-morales-declara-non-grato-a-ivan-velasquez/>

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The anti-CICIG lobby managed to freeze 5 million dollars that the U.S. administration had granted. "CICIG: U.S. Embassy Confirms Release of Funds". *La Hora*, 24/9/2018. Available at: <https://lahora.gt/cicig-embajada-de-ee-uu-confirma-liberacion-de-fondos/>

¹⁵ In July 2018, 20 police officers were recalled, and in January 2019, all personnel assigned to the mission were recalled. Information available at: <https://www.cicig.org/articles/transferecia-de-capacidades-al-tse>: <https://www.cicig.org/comunicados-2018-c/retiran-a-20-agentes-de-la-pnc-asignados-a-la-cicig/> and <http://www.onunoticias.mx/la-policia-asignada-a-la-cicig-en-guatemala-se-retira/>

¹⁶ 'Guatemalan Government Retains CICIG Official'. *La Jornada*, 6/1/2019. Available at: <https://www.jornada.com.mx/ultimas/2019/01/06/en-guatemala-retiene-gobierno-de-morales-a-funcionario-de-la-cicig-9291.html>

¹⁷ 'Guterres "strongly rejects" Guatemala's decision to terminate the CICIG agreement'. UN News, 7/1/2019. Available at: <https://news.un.org/es/story/2019/01/1449022>

¹⁸ Among others, the elections of the Attorney General, Consuelo Porras and the Comptroller General of Accounts have been highly questioned, whose steps they have taken or, at least, some of their actions have been understood as contrary to the processes of progress in the fight against corruption and impunity.

¹⁹ Decree No. 02-2003 Non-Governmental Organizations for Development Act

the closed typologies of organizations that it establishes²⁰, with its approval, the Government would enjoy powers for the arbitrary and permanent suspension of NGO activities based on concepts as broad as 'public order,' and opening the door to criminalization processes against the defenders who make them up²¹.

3.2. Ensuring impunity for criminals

For its part, **Initiative 5357** seeks to reform the National Reconciliation Act (LRN = Reconciliación Nacional),²² from which amnesty was granted for political and common crimes related to politicians committed as part of the internal armed conflict, and allows criminal prosecution of those responsible for the most serious crimes. This Act made it possible to secure, during the last decade, at least fourteen (14) convictions against military and other members of the state security forces for forced disappearances, massacres, torture, sexual violence, genocide and crimes against humanity.

This initiative aims to extend amnesty to all crimes committed during the conflict²³, including genocide and crimes against humanity (including crimes against humanity and war crimes) and other crimes as serious as torture and enforced disappearance, which is expressly prohibited by article 8 of the Act. The impunity proposed by the initiative is evidence of the intention to grant amnesty to the convicted military personnel, to dismiss the proceedings initiated and to avoid the investigation of other crimes committed by them.²⁴ This intention is made explicit by indicating in its explanatory statement that at the time of writing there was only one convicted guerrilla and 120 accused soldiers.

The initiative violates article 2 of the Constitution, since it denies the thousands of surviving victims access to justice and contravenes Article 149 of the same text, which states that Guatemala 'shall regulate its relations with other states, in accordance with international principles, rules and practices for the purpose of contributing to the maintenance of peace and freedom, respect for, and defence of, human rights'. Likewise, at the level of international law, it is contrary to the Geneva Conventions²⁵ which, according to article 46 of the Constitution, take precedence over domestic law.

3.3. Harden the criminalization of women who have abortions and curb sex education

Initiative 5272, identified as the Life and Family Protection Act²⁶, seeks to address '[...] currents of thought and practices inconsistent with Christian morality, as well as models of conduct and coexistence other than the natural order of marriage and the family, which represent a threat to the moral equilibrium of our society and therefore a danger to peace and harmonious coexistence of the vast majority of Guatemalans [...]'.²⁷

²⁰ Proposed reforms of Articles 7, 10 and 16 of the NGO Act.

²¹ Through the proposed reform of Articles 1 and 16 of the NGO Act

²² Decree Number 145-96 of the Congress of the Republic,

²³ Although the repeal of Articles 2 and 4 of the LRN entails the repeal of amnesty for perpetrators, accomplices and accessories of political crimes and common crimes related to politicians, the reform of article 1 orders respect for the rights acquired by amnesties previously decreed, and the reform of article 5 establishes that amnesty extends to all crimes defined in the Criminal Code and other legal bodies in force as of December 27, 1996. For its part, the reform of article 11 establishes that the criminal responsibility decreed in this law operates with full rights with respect to all and in front of all and as a consequence of this imperative the possibility of prosecution is eliminated..

²⁴ Article 5 of the LRN

²⁵ Guatemala ratified the Geneva Conventions since 1954 and with them common Article 3, which makes the rules of war applicable to internal armed conflicts.

²⁶ Initiative 5272 was brought before the commission on legislation and constitutional of the Congress of the Republic on 27 April 2017 where it received a favourable opinion in May 2018, and was presented for its first reading in August of the same year.

²⁷ It contravenes Article 5 of the Constitution, which refers to freedom of action. Everyone has the right to do what the law does not prohibit; no one shall obey orders that are not based on law and issued pursuant to it. Nor may they be persecuted or harassed for their opinions or for acts that do not infringe them; and Article 36 of the constitution states the right to religious freedom. Everyone has the right to practise his religion or belief in public and in private, through teaching, worship and observance, without any limitations other than public order and respect for the dignity of the hierarchy and the adherents of other faiths'.

The initiative not only seeks to impose moral and religious values on Guatemalan society, but also proposes the criminalization and stiffening of penalties for women, girls and adolescents who have abortions, whether spontaneously or deliberately. In Guatemala, abortion is severely restricted by law and is permitted only in cases where the pregnant woman's life is in danger. According to a Guttmacher Institute study, "each year, however, more than one-third of the 180,000 Guatemalans facing an unintended pregnancy seek an abortion, often risking their health by resorting to inadequately trained providers"²⁸. Thus, the existing legal framework is a frontal attack on the right to life, dignity, health, non-discrimination, education, etc.²⁹, to control one's own body, to independence³⁰, freedom, work and participation in the public and political, social and cultural life of women and girls.

Initiative 5272 seeks to dissuade and stigmatize even more women who want or must resort to abortion since it foresees that sentences that were initially contemplated between 1 and 3 years, would be hardened with sanctions of up to 25 years in prison and is contrary to the international obligations of the State of Guatemala. It also includes new forms of criminalization which, due to their ambiguity, could include actions related to the provision of health information by medical, health or private personnel, characterizing it as the promotion of abortion. These provisions seek to further hinder and limit women's and girls' access to abortion. The prohibition on providing information on abortion services is contrary to the sexual and reproductive health rights of women and girls and constitutes a flagrant violation of women's human rights³¹.

It also seeks to limit comprehensive education by prohibiting sex education and censoring discussion on forms of sexuality other than heterosexuality. It prohibits marriage or legal union between persons of the same sex, and even seeks to punish any public official who expresses an opinion different from that regulated within it.

The initiative was accompanied by the Association of Evangelical Shepherds and was presented by deputies (members of parliament) linked to the most conservative religious sectors and acts of corruption³². Having received a favourable opinion, it was, however, not approved due to a lack of quorum but it is expected that it will be presented again before the Plenum of the Congress of the Republic, and would require a favourable vote from 80 deputies for it to be approved. For now, these initiatives are not garnering the necessary majorities to be approved by Congress.

Conclusions

The achievements made in the area of justice in Guatemala are at serious risk, so that not only can we limit or avoid the consolidation of the progress that has been made in this area, but we can even regress to the point where the country returns to the situation of almost absolute impunity that it has traditionally known. The systematic attack on persons and institutions that have participated in different ways in the strengthening of the rule of law has been combined with other actions aimed at generating an adverse regulatory framework for this work and for the defence and effective exercise of human rights.

Faced with this situation, the proper functioning of public administration, access to justice for victims of the armed conflict and those currently facing different forms of crime, as well as the

²⁸ Guttmacher Intitute, Unintended Pregnancy and Unsafe Abortion in Guatemala, 2006, <https://www.guttmacher.org/sites/default/files/pdfs/pubs/GuatemalaUPIAsp.pdf>

²⁹ These rights are protected by Articles 1, 2, 10 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

³⁰ Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 3 August 2011, A/66/254, para. 21 [<https://undocs.org/es/A/66/2>]

³¹ According to the Committee on Economic, Social and Cultural Rights (CESCR), 'the imposition of restrictions on the right of individuals to have access to information on sexual and reproductive health violates [the] duty [of States] to respect human rights', E/C.12/GC/22, op. cit. para. 41.

³² It was introduced by Deputy Anibal Rojas Espino, member of the VIVA party that openly supports an evangelical Christian vision, and by Deputy Christian Boussinot who has been prosecuted for acts of corruption within the Congress of the Republic.

exercise of rights by traditionally discriminated sectors of the population may be seriously affected.

Recommendations

Faced with this situation and the premature end of CICIG's work in the country, we demand that the presidential candidates maintain a position aimed at guaranteeing the progress made in the justice system and opposing reforms that violate human rights. As such, we urge the candidates to commit to:

1. Ensuring, in accordance with their duties, that the high-impact cases that are being processed are developed in a manner consistent with due process guarantees and that the officials in charge respond to the needs of suitability, independence and integrity.
2. Ensuring the safety of the administrators of the justice system and that they are not arbitrarily dismissed or removed from their positions in retaliation for their work.
3. Providing continuity to the processes of strengthening the institutions of the justice system, making it possible to support efforts to investigate acts that have traditionally enjoyed impunity and to punish those responsible.
4. Ensuring that when the CICIG leaves, the Public Prosecutor and the other entities in charge of the cases receive a transfer of skills and personnel that will allow them to carry out their work with the same skills offered by the CICIG.
5. Taking the necessary measures to ensure that the highest authorities of the justice system and other relevant bodies for progress in the fight against corruption (Comptroller General of the Nation, TSE Magistrates, etc.), are appointed according to criteria of suitability, independence and integrity.
6. Strengthening the mechanisms to provide transparency in public contracting and the actions of the different public instances, especially those in which corruption plots have already been demonstrated.
7. Continuing to strengthen the controls to prevent illegal electoral financing and strengthen the institutions that allow criminal prosecution.
8. Refusing to approve the aforementioned standards and other similar ones that might arise and to promote those that would consolidate the progress achieved in the area of human rights and take on new and greater challenges in the area of justice.