



President of the Republic of Guatemala
His Excellency Jimmy Morales
Palacio Nacional de Guatemala
Ciudad de Guatemala
Guatemala

16 October 2018

Your Excellency,

Guatemala - Threats to the Independence of the Judiciary and the Rule of Law

The Law Society of England & Wales is the professional body representing more than 180,000 solicitors in England and Wales. It aims to promote and support solicitors while upholding the rule of law, legal independence, ethical values, and the principle of justice for all around the world.

The Bar Council of England & Wales represents over 16,000 barristers in England and Wales. It promotes fair access to justice for all, as well as the Bar's specialist advocacy and advisory services and the highest standards of ethics, equality and diversity across the profession. The Bar Council is committed to upholding the rule of law both domestically and internationally and speaks out whenever and wherever rule of law crises occur. Many of its members are advocates in human rights and constitutional cases in the UK and around the world.

The Law Society of Northern Ireland is a professional body established by Royal Charter and invested with statutory functions to regulate responsibly and in the public interest the solicitor's profession in Northern Ireland and to represent solicitors' interests. The Society represents over 2,200 solicitors working in approximately 495 firms and practitioners working in the public sector and in business.

The Law Society of Scotland is the professional body representing over 11,000 solicitors in Scotland. As well as supporting the profession and the public that we serve, we believe we have a responsibility to play a wider role in the world. To that end, we aim to contribute to a free and fair society at home and abroad, where the rule of law is upheld and where human rights are protected.

The Bar of Ireland is the representative body for the barristers' profession in Ireland and is governed by the Constitution of the Bar of Ireland. Its role is: (i) to consider, report upon and make representations as it considers necessary in all matters affecting the profession, (ii) to play a key role in the conduct and arrangement of the business of the profession, (iii) to control and regulate the

The professional body for solicitors

professional conduct of the members of the Bar, and (iv) to secure and protect the interests of the profession.

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland, with almost 12,000 members. The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

We are very concerned about recent developments in Guatemala that threaten the independence of the judiciary, the fight against corruption, and the rule of law. The actions taken against the Commission against Corruption and Impunity in Guatemala (CICIG) and its Commissioner highlight a significant deterioration of the situation in Guatemala and proposed legal reforms can be construed as a direct interference with the independence of the Constitutional Court and Supreme Court.

In relation to the CICIG, on 27 August 2017, its Commissioner Mr Iván Velásquez was declared *persona non grata* and ordered to immediately leave the country. On the same day, the Constitutional Court provisionally granted a measure (*recurso de amparo*) to allow the Commissioner to stay in the country, which was subsequently confirmed by that same Court.

On 31 August 2018, the Guatemalan Government informed the UN Secretary General Antonio Guterres that it would not request an extension of the CICIG's mandate, which expires in September 2019. Guatemala has previously extended the CICIG's mandate five times and this decision not to renew the mandate is of grave concern to us given the progress made by the CICIG in the fight against corruption. Equally concerning is the order – issued on 4 September 2018 - to prevent Mr. Velásquez from re-entering Guatemala after travelling to the United States. We are very alarmed that the announcement of the CICIG's expulsion was made in the presence of military officials and that military jeeps surrounded the CICIG's headquarters. Your Excellency's statement that Mr. Velásquez is "*a person who attacks order and public security*" does not reassure us that a negotiated solution to this impasse is being considered or pursued. We regard the recent support for Mr. Velásquez, expressed by the UN Secretary General in a letter to your Excellency, as a positive development. However, the appointment of a deputy Commissioner should not prevent the Commissioner from being able to carry out his functions freely in Guatemala.

In our view, since the CICIG began its activities in 2007 with the support from the United Nations, it has been instrumental in tackling corruption and strengthening the rule of law in Guatemala, successfully obtaining indictments and convictions on corruption and drug-related charges. We believe that the statements made against the CICIG and its Commissioner, at the highest level of government, are intended to prevent both from carrying out their duties.

With regard to the independence of the judiciary, we note with disquiet that judicial measures and other actions have been taken against the judges who voted in favour of the interim measure granting leave to remain to the CICIG's Commissioner. As an example, on 29 August 2017, an application was made against those judges, accusing them of breaching their professional duties (*prevaricato*) by organisations that we understand are well-known for bringing cases against legal professionals involved in the fight against corruption in Guatemala. This seems to be part of a campaign to discredit and judicially harass judges of the Constitutional Court. Twenty applications have been made against judges of that Court, as well as against judges of the Supreme Court of Justice in Guatemala. The applications made against the latter are most likely a consequence of the Supreme Court's admission of applications that challenge corruption at the highest levels of government.

With regard to the proposed legal reforms, Law (*Ley*) 5300 would amend the Law on Applications (*Ley en Materia de Antejuicio - Decreto 85-2002*). This is the law that regulates applications made

against Constitutional Court judges and would give Congress the sole authority over such applications. This would pose a serious threat to the independence of the judiciary, because the legislature would effectively have the power to remove judges. We understand that further reforms regarding the removal of immunity of the President and Constitutional Court judges have also been proposed. These measures would mean that the Supreme Court, which currently decides on such matters, would no longer have jurisdiction.

If these law reforms come into effect, this would severely restrict the judicial independence of the Constitutional Court and Supreme Court in Guatemala and undermine further the rule of law in the country. It would also mean that applications could be made against judges of these Courts to remove them from office on political grounds. Together with the actions taken against CIGIG and its Commissioner, as well as lawyers and human rights defenders who are fighting corruption and human rights violations in Guatemala, these law reforms represent a grave deterioration of the separation of powers and democracy in the country.

The requirement for the independence of the judiciary is established under international and regional treaties that are binding on Guatemala, as well as in international instruments promulgated by the United Nations and the Organisation of American States, of which Guatemala is a member.

Guatemala acceded to the **International Covenant on Civil and Political Rights** on 5 May 1992.

Article 14.1: All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

UN Basic Principles on the Independence of the Judiciary, endorsed by United Nations General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

Guatemala ratified the **American Convention on Human Rights** on 27 April 1978.

Article 8. Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in

the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

The **Inter-American Democratic Charter**, adopted by the General Assembly of the Organisation of American States on 11 September 2001

Article 3: Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.

In support of the independence of the judiciary in Guatemala and the need to respect the separation of powers, as well as the activities of the CIGIG and lawyers and human rights defenders in Guatemala, the Law Society respectfully urges the relevant authorities:

- 1) to end the judicial harassment and other measures taken against judges of the Constitutional Court and other courts in the country;
- 2) to refrain from making public statements that reflect negatively on individual judges or put into question decisions made by the Constitutional Court or other courts;
- 3) to follow international standards regarding the suspension, re-assignment and removal of judges in any disciplinary or other proceedings brought;
- 4) to respect the independence of the judiciary and to ensure that other members of the legal profession, such as prosecutors and lawyers, can carry out their professional duties without hindrance and improper interference; and
- 5) to renew the CIGIG's mandate and to allow its Commissioner to continue carrying out his functions without interference.

The Law Society will continue to monitor the situation of the CIGIG and its staff, as well as the Constitutional Court and its judges, other courts, and members of the legal profession and human rights defenders in Guatemala.

Yours sincerely,



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