

21 March 2019

Subject: A call for action to stop Guatemala's legislative initiatives to amend the National Reconciliation Law (N.5377) and the Law on Non-Governmental Organisations for Development (N. 5257).

Your Excellency Foreign Ministers of the European Union Member States,

As international human rights organisations, we write to express our profound concern about the recent developments in Guatemala that could gravely impact the human rights situation and rule of law in the country. We remain alarmed by the possible passage of the proposed amendment to the National Reconciliation Law or “Amnesty Law” (N.5377) by the Guatemalan Congress and the serious consequences it would have on peace and stability in the region. Equally distressing is the upcoming threat faced by Civil Society Organisations in exercising their rights in light of proposed amendments to the Law on Non-Governmental NGOs for Development (N.5257). Finally, we are also worried about the Guatemalan Government's insistence to terminate the mandate of the International Commission against Impunity in Guatemala (CICIG) before September 2019 and to obstruct its work in various forms. Given this context, it is in the interest of the EU and its Member States, as well as the international community at large, to ensure that the Guatemalan authorities respect the rule of law, and to firmly support the efforts of the Guatemalan people in tackling corruption and impunity.

Reforms to the National Reconciliation Law have so far passed the second debate in the Guatemalan Congress. If approved, the reforms would grant broad amnesty to all perpetrators of serious human rights violations and would free, within 24 hours, all those convicted of international crimes committed during Guatemala's internal armed conflict from 1960 to 1996. The authors of massacres, widespread torture and sexual violence would be immediately freed from prison. The “Amnesty Law” will terminate ongoing investigations and prosecutions of crimes committed during this period and will preclude future investigations. In addition, the law mandates legal sanctions against any judge or prison official who refuses to implement the reforms, thus punishing those that decide to uphold international law.

As noted by several UN experts, “amnesties, statutes of limitations and mechanisms that exclude responsibility are incompatible with crimes that represent serious violations of human rights such as torture, summary executions, forced disappearances and genocide, among others. Failure to investigate and prosecute such violations constitutes a serious breach of international human rights law”. On 13 March 2019, in the context of the Molina Theissen case, the Inter-American Court of Human Rights ordered Guatemala to halt the legislative reform, noting that it would run contrary to Guatemala's international obligations. As such, the proposed reforms are both unconstitutional and contrary to international law.

The “Amnesty Law” would seriously affect victims' rights to justice, truth, reparation and guarantees of non-repetition. It could lead to reprisals and attacks against victims, judges, prosecutors, lawyers, plaintiffs, witnesses, experts and others involved in human rights trials, putting their own safety and that of their families at risk. Victims' organisations have already reported – and denounced – threats they have received. This worrying trend is likely to increase. The reforms will thwart Guatemala's remarkable achievements in the pursuit of justice. Guatemala was the first country where a national court held a trial of a former Head of State on charges of genocide. Through the cases of Sepur Zarco, Molina Theissen, and Dos Erres, Guatemala showcased how a country can resiliently work towards overcoming a legacy of war and impunity

and contribute to the prevention of future crimes. These trials not only restored the dignity to victims and their families, but helped restore faith in the Guatemalan justice system. This “Amnesty Law” sets a dangerous precedent, and more importantly constitutes an affront to the victims, an infringement to their rights and a risk to their security. In this sense, on 12 March 2019, the Inter-American Court of Human Rights issued an order requiring the Guatemalan State to interrupt the legislative process for the approval of the National Reconciliation Bill and to archive it in order to ensure the right to judicial remedy of the victims of 14 cases being dealt with by the Court.

The situation is particularly alarming amidst the rising tensions ahead of the 2019 electoral campaigns. In recent months, high-level Guatemalan government officials have repeatedly defied the Constitutional Court’s rulings. A case in point is the Morales administration’s unilateral decision to immediately terminate CICIG’s mandate despite the strong rejection from the UN Secretary General. Without political and financial support, CICIG will only be further weakened and its staff and judges exposed, leading to a more fragile justice system. In addition, there has been an alarming increase in cases of intimidation and threats against magistrates and judges. The vibrant Guatemalan civil society, which has been defending human rights for years, is under the threat of excessive restrictions in practicing its freedom of expression and peaceful gathering now that the Guatemalan Congress is close to adopt the Law on NGOs and Development.

At this critical moment, we should continue to speak up against Guatemala’s legislative initiatives. We should not allow impunity to prevail over justice. It is our collective responsibility to preserve the rights of communities, organisations and individuals promoting human rights, and victims and their relentless efforts over the years to attain justice. Their immense suffering cannot go in vain. Perpetrators of attack should be held accountable as this is very important to ensure the non-recurrence of the atrocities or instability.

We welcome that Governments, including the G13, sent clear signals that impunity is unacceptable. We also welcome the recent Resolution adopted by the European Parliament in which it expressed strong support to the work of CICIG; urged the Guatemalan authorities to immediately ensure independence of the judiciary and guarantee freedom of the press and the media; and called on the Guatemalan Congress not to approve the proposed amendments of the National Reconciliation Law and the NGO Law.

This international pressure combined with national efforts led to the postponement of the vote on the “Amnesty Law,” but the struggle is not over. The session might still be rescheduled anytime, and that is why we cannot lose the momentum. We therefore urge the EU and its Member States to:

- Emphasise to the Guatemalan legislature and state their concern about any amnesty for international crimes, as well as any attempt to shield perpetrators of human rights violations from justice.
- Take a firm stance in the defence of the rule of law and human rights in Guatemala.
- Publicly call on the Guatemalan legislature to refrain from approving the amendments to the National Reconciliation Law (N.5377) and the Law on NGOs for Development (N.5257).
- Maintain political and financial support to the CICIG, the Guatemalan people and civil society in their fight against corruption and impunity.
- Convey to the Government of Guatemala that it must ensure the security of all human rights defenders, and in this moment particularly those victims, witnesses, experts, and human

rights organisations who work to uphold human rights and the rule of law in the country. The Government must also ensure the security of lawyers and state prosecutors who have investigated, prosecuted and sanctioned the crimes committed during the internal armed conflict.

Sincerely,

1. Both ENDS
2. Center for Justice and International Law (CIJIL)
3. EU-LAT Network
4. Free Press Unlimited (FPU)
5. Guatemala Human Rights Commission-USA (GHRC-USA)
6. Humanistisch Instituut voor Ontwikkelingssamenwerking (HIVOS)
7. Impunity Watch
8. International Platform Against Impunity
9. Peace Brigades International (PBI)
10. REDRESS
11. Serge Berten Comité
12. TRIAL International
13. World Organisation Against Torture (OMCT)

