

# GUATEMALA: STOP CRIMINALIZING DEFENDERS!

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"Let them build a prison for 1,500 people because there will be 1,500 people defending the territory."

Lolita Chávez. Woman human rights defender and member of the Kiché Peoples' Council (Consejo de Pueblos Kiché, CPK)



Rigoberto Juárez Mateo, Coordinator of the Plurinational Government of North Huehuetenango and criminalized human rights defender. Guatemala City, Guatemala, 22 July 2016. © Amnesty International/Anaïs Taracena

A year since the acquittal of seven human rights defenders working on the rights to water and territory in Huehuetenango of baseless charges, **Amnesty International remains concerned about the continued misuse of the justice system to silence and intimidate human rights defenders in Guatemala.** Guidelines established by the Guatemalan First Criminal Court on Drug and Environmental Crime to prevent further similar cases and steps taken by the Guatemalan authorities to curb abuses in individual cases have proved insufficient to prevent the misuse of the justice system against human rights defenders.

In September 2016, Amnesty International published a report, "[We are defending with land with our blood": Defenders of the land, territory and environment in Honduras and Guatemala](https://www.amnesty.org/en/documents/amr01/4562/2016/en/)",<sup>1</sup> highlighting the organization's concerns **about the pattern of criminalization or misuse of the justice system to silence and obstruct the work of individuals, organizations and communities defending human rights in the context of territorial and environmental rights and rights linked to access to land in Guatemala**. This follow-up report, *Guatemala: Stop Criminalizing Defenders!*, examines what steps have been taken to implement recommendations made to the Guatemalan authorities aimed at curbing misuse of the justice system against human rights defenders and ensuring their protection.

Following publication of the 2016 report, Amnesty International delegates visited Guatemala in September 2016 and February 2017 to meet with state officials. The aim was to identify the measures taken to end the criminalization of defenders. Throughout 2016 and 2017, Amnesty International maintained an ongoing dialogue with the authorities, international organizations present in the country and representatives of civil society in order to monitor the situation of human rights defenders, especially defenders of territorial and environmental rights and rights related to access to land.

Based on the information gathered during this period, Amnesty International has noted that the Guatemalan Public Prosecutor's Office is in the process of issuing a General Instruction containing guidelines for all its personnel on the effective investigation of attacks against human rights defenders. After months of reviews, this Instruction has yet to be signed and, therefore, has yet to be implemented. The Public Prosecutor's Office, with the support of international organizations, has also taken the decision to develop a protocol to prevent the criminalization of defenders. However, the organization has not received any information about the consultation process, which should be undertaken with the defenders, or about whether this protocol is already in the process of being approved.

Finally, in 2016 a number of meetings were held, led by the Presidential Commission on Human Rights (COPREDEH), on the development of public policy on the protection of human rights defenders, following a ruling in the case of *Human Rights Defender et al v. Guatemala* by the Inter-American Court of Human Rights.<sup>2</sup> However, there has been no detailed progress on the adoption of such a policy.

## DEFENDING THE LAND, TERRITORY AND ENVIRONMENT

Human rights defenders are people who individually or collectively, some as part of an organization or a movement, take action to defend, protect or promote human rights at the local, national or international level in cities as well as rural areas<sup>3</sup>

Day after day, human rights defenders are attacked for taking part in peaceful protests; for documenting and publicly denouncing human rights abuses and violations; for seeking justice, truth, reparation and non-repetition of those violations; for providing human rights education; and for a host of other activities aimed at fostering respect for and ensuring human rights. In the most extreme cases, human rights defenders have been killed because of their work.

Human rights defenders who focus on defending and promoting environmental and territorial rights and rights linked to access to land include, among others:

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<sup>1</sup> Available at <https://www.amnesty.org/en/documents/amr01/4562/2016/en/>

<sup>2</sup> Inter-American Court of Human Rights, Case of Human rights defender et al v. Guatemala, Judgment of 28 August 2014 (Preliminary objections, merits, reparations and costs), Operative paragraph 14, in accordance with paragraphs 263 and 264.

<sup>3</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144), 8 March 1999.

■ Indigenous and Afro-descendant people and communities seeking to have their territorial and other rights respected, protected and guaranteed. Territory includes both the ancestral lands where communities have lived and the natural resources found there, which they refer to as “natural assets”. The culture, way of life and world view of these communities is intimately linked to the territory.

■ Individuals and communities, usually *campesinos* (peasant farmers), some of them Indigenous and Afro-descendant, who are demanding that their human rights be respected in the context of individual and collective actions to gain access to land.

■ People and communities demanding respect for and protection of the environment and/or restitution and compensation for environmental damage in the areas where they live.



Rigoberto Juárez, Arturo Pablo, Francisco Juan Pedro, Domingo Baltazar, Ermitaño López, Adalberto Villatoro and Mynor López, criminalized human rights defenders from northern Huhuetenango, during their trial in July 2016, Guatemala City, Guatemala, 6 July 2016 © Amnesty International/Anaïs Taracena

**"It is now clear to us that they want to criminalize the behaviour of ancestral and community leaders, so we are asking our esteemed prosecutors not to criminalize Indigenous communities."<sup>4</sup>**

4 Unofficial translation of Spanish original: "Ya entendimos que se quiere criminalizar la conducta de los líderes ancestrales y comunitarios por lo que le pedimos a los respetables fiscales, que no criminalicemos las comunidades indígenas."

Judge Iris Yassmin Barrios Aguilar, Reasoned Opinion, Judgment of 22 July 2016 in the case of seven defenders of the right to water in Huehuetenango.

The emblematic case of seven defenders of the right to water and territory in Huehuetenango who were criminalized was highlighted in the Amnesty International report *"We are defending the land with our blood": Defenders of the land, territory and environment in Honduras and Guatemala*. However, the report also contains information indicating the possible criminalization of other defenders, as in the case of three members of the La Puya Peaceful Resistance accused of coercion, threats and illegal detention. They were accused of allegedly detaining, threatening and assaulting workers at the Derivadas Progreso VII Mine, known as El Tambor, on 3 May 2012. At the time of writing, an appeal in the case was before the Supreme Court awaiting a decision.

## SEVEN DEFENDERS OF THE RIGHT TO WATER AND TERRITORY CRIMINALIZED

On 6 July 2016, oral hearings began in the public trial of Rigoberto Juárez Mateo, Coordinator of the Plurinational Government of North Huehuetenango; three Indigenous Q'anjob'al men, Arturo Pablo, Francisco Juan Pedro and Domingo Baltazar – the first two from Santa Cruz Barillas and the third from Santa Eulalia; and Sotero Adalberto Villatoro Hernández, Bernardo Ermitaño López and Mynor López, community leaders in Santa Cruz Barillas in the Department of Huehuetenango.

The Public Prosecutor's Office accused the seven human rights defenders of offences including illegal detention, coercion, making threats, incitement to commit a crime and obstructing justice. The offences were allegedly committed in the context of three public demonstrations: one in Santa Cruz Barillas on 22 April 2013, and two in front of the Centre for the Administration of Justice (CAJ) in Santa Eulalia, on 23 January 2014 and 19/20 January 2015. Investigations into the three demonstrations were compiled for the public oral hearings. The Public Prosecutor's Office based its accusations on the role of community leaders, automatically considering them to be the organizers of the demonstrations and, in addition, responsible for any damage caused.<sup>5</sup>

On 22 July 2016, the Guatemalan First Criminal Court on Drug and Environmental Crime acquitted the seven defenders of the charges of illegal detention, making threats and incitement to commit a crime. However, by that date the seven had spent more than a year in pre-trial detention. Two of the judges found the defender Ermitaño López Reyes guilty of obstructing justice in connection with the demonstration on 23 January 2014 and convicted Rigoberto Juárez of coercion of CAJ officials during the demonstration of 19/20 January 2015. Lawyers for the human rights defenders have informed Amnesty International that an appeal against the convictions has been on the list of cases awaiting a hearing to be scheduled since September 2016. At the time of writing, the hearing had yet to take place.

In November 2016, the authorities closed the investigation into the participation of Rigoberto Juárez, an Indigenous leader and human rights defender, in the demonstration of 23 January 2014. There are between eight and 20 arrest warrants outstanding against other human rights defenders linked to the demonstrations on 23 January 2014 and 19/20 January 2015. Human rights defenders and Indigenous leaders Domingo Baltazar and Rigoberto Juárez are under investigation regarding a demonstration that took place on 9 December 2013 in Santa Eulalia. The hearing in this case was due to start in April 2017, however it was cancelled in early 2017 and a new date for the hearing had not been set at the time of writing.

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<sup>5</sup> Amnesty International, Guatemala: Siete defensores de derechos humanos bajo juicio por reivindicar los derechos indígenas en el territorio Q'anjob'al, 13 July 2016, Index: AMR 34/4438/2016. /



Office of the Public Prosecutor at the Centre for the Administration of Justice (CAJ) in Santa Eulalia, Huehuetenango, Guatemala, 3 July 2016.

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## THE JUSTICE SYSTEM SHOULD NOT BE USED TO CRIMINALIZE HUMAN RIGHTS DEFENDERS

The decision by the Guatemalan First Criminal Court on Drug and Environmental Crime on 22 July to acquit the seven defenders of the right to water and territory of the charges of illegal detention, making threats and incitement to commit a crime, as well as the Reasoned Opinion of Judge Iris Yassmin Barrios Aguilar support Amnesty International's findings regarding the frequent use of the justice system to silence and obstruct human rights defenders working to ensure territorial and environmental rights and rights linked to access to land in Guatemala. A number of guidelines emerged from judgment that the Guatemalan authorities should take into account in order to take steps to end criminalization. They include:

### CRIMINAL PROCEEDINGS ARE BEING USED TO CRIMINALIZE HUMAN RIGHTS DEFENDERS

The Court considered that judicial proceedings were being used to criminalize the actions of the Indigenous leaders and those in the community who took a leading role in defending their rights. It recalled that the law should not be an instrument of power and domination, but an instrument for the effective dispensation of justice and for regulating human behaviour so that people are able to settle their differences and live in peace. The Court also emphasized that resorting to criminal law should be the final recourse, used to address only those problems that require society's greatest attention.

**"This case should encourage those responsible for the administration of justice to reflect on the importance of the application of the law and the role judges, prosecutors and lawyers, must play in the community, in order to ensure that our actions contribute to the resolution of conflicts that occur in society, based on the fundamental legal principles, such as**

**justice and equity, and thereby avoiding confrontations and unnecessary criminal proceedings, such as those to which the accused were subjected."<sup>6</sup>**

Guatemalan First Criminal Court on Drug and Environmental Crime, Judgment of 22 July 2016

Justice sector personnel must respect the rights of assembly, public protest and freedom of expression and thought.

**"Those who administer justice have a duty to tell the truth and do the right thing. We have a double obligation not only as citizens but also because the nature of the work we do means that if we fail in that duty, we harm the entire Justice System of our country. I think that we as judges must not allow ourselves to be used."<sup>7</sup>**

Judge Iris Yassmin Barrios Aguilar. Reasoned Opinion, Judgment of 22 July 2016

#### ACCUSED AND DETAINED WITHOUT EVIDENCE

The judges expressed their concern at charges being filed by the Public Prosecutor's Office despite a lack of evidence or for actions that do not constitute a crime.

**"In times of crisis, there is a temptation to suppress constitutional and procedural guarantees. However, it is the duty of judges to ensure that these fundamental principles are respected and applied in legal proceedings."<sup>8</sup>**

Guatemalan First Criminal Court on Drug and Environmental Crime, Judgment of 22 July 2016

Likewise, the presiding judge highlighted the importance of safeguarding the principle that people must not be detained arbitrarily, without a basis in law or in the absence of evidence.

**"when there is no evidence, we must not impose arbitrary measures; we must not unlawfully detain people because this will result in a loss of confidence in the Justice System. The Public Prosecutor's Office must file charges, but they must be supported on evidence; people must not be detained where there is no evidence against them"<sup>9</sup>**

Judge Iris Yassmin Barrios Aguilar, Reasoned Opinion, Judgment of 22 July 2016

#### PROTEST AND PEACEFUL ASSEMBLY ARE RIGHTS, NOT CRIMES

Everyone has the rights to peaceful protest, assembly and association. These rights are recognized in international human rights law, as well as in the Guatemalan Constitution.

**"the simple fact that people gather to demonstrate is not in itself a criminal offence; it is a civic activity that has been exercised by different sectors of the population at different times. In addition, the presence of a demonstration is not in itself a reason for fear and panic, as has been falsely suggested. It is part of people's expression and exercise of democracy."<sup>10</sup>**

Guatemalan First Criminal Court on Drug and Environmental Crime, Judgment of 22 July 2016

According to the judgment, the fact that a person took part in a demonstration or belongs to an organization is not

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6 Unofficial translation of Spanish original: "El presente caso, debe llamar a la reflexión a los operadores de Justicia, sobre la importancia de la aplicación de la ley y el rol que Jueces, Fiscales y Abogados, deben y debemos jugar dentro de la comunidad, para contribuir con nuestras acciones a resolver los conflictos que se dan dentro de la sociedad, solventándonos en base a los principios fundamentales del Derecho, como lo son la Justicia y la equidad, para evitar de esta forma confrontaciones y procedimientos penales innecesarios, como ocurrió con los acusados."

7 Unofficial translation of Spanish original: "Quienes administramos Justicia, estamos llamados a decir la verdad, hacer las cosas bien porque tenemos doble obligación no solo como ciudadanos, sino que por el trabajo que desempeñamos, porque si no le estamos haciendo mal a todo el Sistema de Justicia de nuestro país. Creo que a nosotros como jueces no nos deben instrumentalizar"

8 Unofficial translation of Spanish original: "Es en los momentos de crisis, cuando se produce la tentación de abolir las garantías constitucionales y procesales, sin embargo, es deber de los Jueces el respeto y aplicación de estos principios fundamentales en el juzgamiento de las personas"

9 Unofficial translation of Spanish original: "cuando no hay pruebas no podemos ser arbitrarios, no podemos detener ilegalmente a las personas, porque se pierda la confianza en el Sistema de Justicia. El Ministerio Público, debe de presentar las acusaciones pero sostenidas sobre pruebas, porque no se vale que a una persona la detengan si no existen pruebas".

10 Unofficial translation of Spanish original: "el simple hecho que las personas se reúnan para manifestar, no constituye por sí un delito, es una actividad ciudadana, que hemos visto que se ha ejercitado por diferentes sectores de la población, en diferentes momentos. Además la sola presencia de personas que manifiestan en sí misma, no es motivo para causar temor o

grounds for accusing them of a crime.

**"The judges observe with deep concern, that there is an attempt to criminalize actions permitted under the Constitution of Guatemala, such as the rights of association, of freedom of expression and thought, and to protest peacefully against situations which are harmful to the community and therefore not accepted."<sup>11</sup>**

Guatemalan First Criminal Court on Drug and Environmental Crime, Judgment of 22 July 2016

#### BEING AN INDIGENOUS LEADER IS NOT A CRIME

According to the judgment, the Assembly is the highest authority in Indigenous communities. Representatives, ancestral or community leaders have an obligation to obey the orders of the Assembly and are answerable to the Assembly. Indigenous leaders carry out community work without remuneration. They can mediate with other authorities and peoples and they have an obligation to solve problems no matter how long it takes. And this is precisely their role in the context of projects involving the exploration and exploitation of natural resources that are planned, devised or implemented for their territory.

**"the actions of the accused aimed to seek a solution to a community problem, which does not constitute a crime...as community authorities, they came to that location to mediate, to seek a solution to the problem...Requesting to be heard and trying to talk to solve a problem is not incitement to commit a crime, and to deal with it as such was mistaken."<sup>12</sup>**

Guatemalan First Criminal Court on Drug and Environmental Crime, Judgment of 22 July 2016

#### THE INDICTMENT AND ARREST OF INDIGENOUS LEADERS HAS AN IMPACT ON THEIR FAMILIES AND COMMUNITY

Charging human rights defenders, subjecting them to pre-trial detention and legal proceedings and sentencing them, in the absence of any evidence against them and on the basis of false allegations or actions that do not constitute a criminal offence, has a negative impact not only on the rights of the person who is criminalized, but also on those of their families and communities.

**"there are women, wives, daughters, entire families who have been suffering. It is not acceptable to accuse without proof. There must be proper investigations and if evidence is presented, then we will convict, as we have done on other occasions, but in this case it is our duty to acquit."<sup>13</sup>**

Judge Iris Yassmin Barrios Aguilar, Reasoned Opinion, Judgment of 22 July 2016

Although the judgment does not refer to the differential impact of criminalization on women defenders, this can be seen both as regards women who have been subjected to unfounded legal proceedings as well as those who, faced with the criminalization of their colleagues, have come forward to demand rights be respected.

Women human rights defenders working on territorial and environmental rights and rights linked to access to land who are criminalized through baseless prosecutions have to deal with the judicial process, which involves investing time and resources in travelling to comply with the legal requirements, in finding and paying lawyers etc. This is a further burden on top of the work, time and resources they devote to defending human rights, to their organizing work in the community and to the family care responsibilities that many shoulder.

Women human rights defenders working on territorial and environmental rights and rights linked to access to land whose colleagues have been criminalized in unfounded prosecutions, have to take on the additional work of acting

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pánico, como falsamente, se ha hecho creer. Es parte del desenvolvimiento y ejercicio democrático del pueblo."

11 Unofficial translation of Spanish original: "Los jueces observamos con profunda preocupación, que se esté tratando de criminalizar conductas permitidas por la propia Constitución Política de la República, como son el derecho a la asociación, a la libre expresión del pensamiento y a protestar en forma pacífica en contra de aquellas circunstancias que no sean aceptadas, por perjudicar a la comunidad."

12 Unofficial translation of Spanish original: "el actuar de los acusados fue encaminado a buscar solución a un problema comunitario, lo cual no es constitutivo de delito (...) en calidad de autoridades comunitarias, se presentaron al lugar a mediar, para buscar una solución al problema (...) El solicitar ser escuchados y tratar de dialogar para resolver un problema, no es una instigación a delinquir, como equivocadamente se ha manejado."

13 Unofficial translation of Spanish original: "hay mujeres, hay esposas, hay hijas, hay toda una familia que ha estado sufriendo. No es correcto, acusar sin pruebas: hay que investigar bien y si nos presentan las pruebas entonces si vamos a condenar, como lo hemos hecho en otras ocasiones, pero en este caso nuestro deber es absolver."

as spokespersons and undertaking activities and advocacy on behalf of their criminalized colleagues.

Criminalization helps reinforce the cycle of violence against human rights defenders and those around them, by creating an atmosphere in which the defence of human rights, and by extension defenders themselves, are stigmatized or considered "criminal". The fact that society views defenders as criminals in turn facilitates attacks against them, their families and their communities. It creates an environment that is hostile to the defence of human rights and engenders fear that has a chilling effect on those who want to defend rights.

**"Recalling that the mission of the judiciary is to contribute through its decisions to the restoration of the social fabric and to help create mechanisms that enable Guatemalan society to live in peace."<sup>14</sup>**

Guatemalan First Criminal Court on Drug and Environmental Crime, Judgment of 22 July 2016



A woman greets Ermitaño López, a criminalized human rights defender from northern Huehuetenango, during his trial in July 2016, Guatemala City, Guatemala, 6 July 2016. © Amnesty International/Anaïs Taracena

## CONCLUSIONS

The hostile environment faced by the defenders working on rights related to land, territory and the environment in Guatemala continues to cause concern. This group of defenders has been object of statements by state officials and others that foster stigma, seek to discredit their work and portray them as enemies of the state. Such statements vilifying defenders increase the risks they face still further and encourage attacks on them. At the same time, defenders are criminalized through the misuse of the justice system. Criminal investigations against defenders are often based on negative assumptions about what it means to be a community or Indigenous leader, on biased views about demonstrations and on the belief that there is an automatic correlation between leadership and responsibility

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<sup>14</sup> Unofficial translation of Spanish original: "Recordando que la misión del Organismo Judicial es contribuir a través de sus resoluciones, a restablecer el tejido social y ayudar a crear los mecanismos para que la sociedad guatemalteca pueda vivir en paz."



for any criminal act committed during a protest.

The authorities responsible for ensuring and delivering justice have been part of multiple baseless criminal proceedings intended to discourage, intimidate, harass and disrupt social mobilization. The misuse of the justice system increases the stigma and vilification human rights defenders face and encourages a view of defenders as enemies of the state.

**The decision of the Guatemalan First Criminal Court on Drug and Environmental Crime, delivered on 22 July 2016, in which seven Huehuetenango human rights defenders were acquitted set an important precedent that must signal a change of direction regarding the misuse of the justice system to silence and intimidate human rights defenders.**

The justice system in Guatemala must ensure – in accordance with international law – the presumption of innocence and due process. It must stop using criminal proceedings as a way to discourage, intimidate, harass and disrupt social mobilization. The authorities have an obligation to take effective measures to end the criminalization of human rights defenders and prevent the misuse of the justice system to harass or silence them for their legitimate work.

## RECOMMENDATIONS

Amnesty International urges the Guatemala's Public Prosecutor's Office to:

- take all necessary measures to prevent the misuse of the justice system to intimidate, harass and discredit defenders working on the rights to land, territory and the environment;
- refrain from filing criminal charges against human rights defenders based solely on the exercise of their human rights;
- issue without delay directives or guidelines for officials responsible for criminal investigations informing them of who is a human rights defender and what their work entails;
- provide constant and continuing training for public officials in the institution on the international framework for the right to defend human rights;
- initiate prompt, thorough and impartial investigations into all attacks, threats and assaults, including the misuse of the criminal justice system, against defenders working on territorial and the environmental rights and the right related to access to land, and bring to justice all those suspected of being materially or intellectually responsible;
- adopt and publish the general instruction, developed in conjunction with human rights organizations in Guatemala, for the investigation of crimes against human rights defenders;
- impose disciplinary sanctions on officials who misuse the justice system to criminalize human rights defenders, and initiate investigations when such actions could constitute a criminal offence.

Amnesty International urges the Guatemalan government to:

- recognize publicly, at the highest levels both nationally and locally, the legitimate work of people defending human rights related to land, territory and the environment;
- initiate a country-wide public campaign recognizing of the work of defenders and ensure it is widely disseminated;
- promote and disseminate widely the United Nations Declaration on Human Rights Defenders;
- develop and implement public policies for the protection of human rights defenders in accordance with the criteria established by the Inter-American Court of Human Rights in its judgment in the case of *Human rights defender at al v. Guatemala* of 28 August 2014.

Finally, Amnesty International urges state authorities of Guatemala in general to:

- refrain from using language that stigmatizes, attacks, disparages or discriminates against human rights defenders, including describing them as: "terrorists", "the enemy", "opponents" "drug traffickers" or "criminals".