

Guatemalan regime using criminal law to persecute judges & prosecutors

Judge Miguel Angel Galvez: "We are spectators of how a country is going down the drain"

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"We return to the issue of instrumentalizing criminal law, making the law a monopoly of a group of people. In this context, justice is a matter of power and not control of power. This is worrying, because it means that we are spectators of how a country is going down the drain"

- Below: Prensa Comunitaria interview with Judge Miguel Angel Galvez

This same regime that persecutes its own judges and lawyers is a staunch "democratic ally" of the US, Canada and the EU, and faithful business partner to global companies, investors and banks.

Miguel Ángel Gálvez: "We are spectators of how a country is going down the drain"

By Javier De León, Prensa Comunitaria, May 18, 2022

<https://www.prensacomunitaria.org/2022/05/miguel-angel-galvez-somos-espectadores-pasivos-de-como-un-pais-se-viene-a-pique/>

On May 6, Judge Miguel Angel Galvez Aguilar, of the High Risk Court B, decided to send to trial nine military and ex-policemen, including high ranking officers and specialists, for the crimes of forced disappearance, crimes against humanity, murder and attempted murder.

One of the most emblematic images of Judge Gálvez Aguilar's work occurred in July 2016 when he sent to trial more than 50 people accused by the International

Commission Against Impunity in Guatemala (CICIG) and the Public Prosecutor's Office, for the 'Cooptación del Estado' (Cooptation of the State) case.



Miguel Ángel Gálvez talks about threats he has received in the last weeks, about judicial independence, the instrumentalization of criminal law and the Diario Militar case.

Photo: Juan Rosales.

"Cooptation of the State"

During that hearing in the courtroom of the Supreme Court of Justice, and behind mountains of files, the judge illustrated the participation of officials of the Patriot Party in a network of corruption that existed at the highest levels of Guatemalan political power.

Gálvez ended up bringing former president Otto Pérez Molina and former vice-president Roxana Baldetti to trial.

In the atmosphere of April 2015, after the denunciations made by the International Commission Against Impunity in Guatemala (CICIG) and the Public Prosecutor's Office, the malaise of a portion of the capital's middle class was palpable, provoked by a climate of corruption that focused on former President Molina, whom the investigations of the CICIG and the MP identified as the head of a criminal structure that was dedicated to tax fraud and looting the State.

Regression of the fight against corruption and impunity

Currently, we are witnessing a stage of regression in the fight against corruption and impunity, that was initiated by the CICIG and the MP.

In this stage, the interests of conservative politicians, military, global businesses and criminal groups converge.

For some academics, the turning point of this regression, was during the government of former President Jimmy Morales, when he expelled the CICIG in December 2016.

During the current government of President Alejandro Giammattei, the persecution against judges, judges and former prosecutors of the Special Prosecutor's Office against Impunity (FECI), and former CICIG employees, intensified.

Exile and criminal prosecution have been one of the responses that Consuelo Porras' Public Prosecutor's Office has implemented against those who work for an end to corruption and impunity.

Diario Militar Case

In his experience of more than 30 years as a judge, Judge Galvez is remembered for having handled several high impact cases such as the murder of businessman Rodrigo Rosenberg, the murder of Salvadoran deputies of Parlacén, La Línea, Aceros de Guatemala, Cooptación del Estado, and most recently the Diario Militar case.

Judge Gálvez was an aspiring attorney general of the Public Prosecutor's Office in 2018, but his career dates back to Quiché, in 1988, when he began his career as a judge. He also has experience in organized crime prosecutions.

Fundación Contra el Terrorismo: "It's Miguel Ángel Gálvez's turn, the FCTG takes over"

On May 6, Ricardo Méndez Ruiz, president of the Foundation Against Terrorism, posted on his Twitter account, "It's Miguel Ángel Gálvez's turn, the FCTG takes over."

In a second tweet, on May 8, he wrote:

"To the prevaricator Miguel Angel Galvez, the FCTG will make him pay for the serious crimes he committed as the head of his judiciary, which he prostituted before the socialist agenda. We will see him imprisoned or exiled, like Virginia Laparra or Erika Aifán. I pledge my word on that".

Two days later, the lawyer of the Foundation against Terrorism, Raul Falla, announced in an interview that he would file a complaint so that Judge Miguel Angel Galvez's immunity be withdrawn, because: "he did not respect legal criteria in his resolution of the so-called "Diario Militar" case".

Prensa Comunitaria spoke with Judge Galvez about some of the latest events.

PC: What is your opinion that the director of a private foundation, the Foundation Against Terrorism, has the capacity to threaten a judge in the country?

MAG: As I have indicated before, I am extremely concerned about the levels this problem has reached. The problem is how the institutions are lending themselves to his game.

That is the problem. For some time now, they have had a lottery issue on their website pages. In that lottery, they put the photo of Juan Francisco Sandoval, and so on, the photo of Gloria (Porras, former judge of the Constitutional Court). If we were to analyze the photos, there are practically only two people left.

The last photo they put was Pablo (Judge Pablo Xitumul, head of the High Risk Court C). The cross has now been placed on Erika (Aifán). We are the only ones left from that lottery: Yassmín (Barrios) and yours truly.

It is evident that there is a consensus, that all the government institutions are lending themselves to each other.

I say this because it is incredible. He (Ricardo Méndez Ruiz, director of the FCT) comes to the hearing, then a smear campaign is unleashed, even getting into a

person's personal life. This lady Bárbara (Bárbara Hernández, Cuban activist and critic of CICIG) starts calling and calling. She has made a lot of calls to me.

PC: Recently?

MAG: Yes, so all of this gives me the impression that all of this is a result of what he started, and that now it is my turn! I remember when he appeared on the Engel List, he gave a press conference. In it, he even thanked the U.S. ambassador for putting him on the list and said that it was a consequence of his commitment to the military and to exposing all the violations in relation to the corruption legal processes.

Then they mention four judge and Juan Francisco (Juan Francisco Sandoval, former head prosecutor of the FECl). That was more or less in July of last year. When Ricardo Mendez Ruiz was included in the Engels List, I understand that Juan Francisco had already gone into exile, for about 15 days. So, that is precisely what Mendez Ruiz was referring to when he said that another one had fallen.

He said: 'I have already removed one'. Then, after Juan Francisco, there was Erika, Pablo, Yassmin and myself. Now, Pablo has also fallen, Erika has fallen, and there are only two left – Yassmin and myself.

All of this gives the impression that the government and State institutions are lending themselves to the guidelines that Ricardo Mendez Ruiz is giving.

PC: We have seen a pattern in recent weeks. The Foundation against Terrorism files a criminal complaint and the Public Prosecutor's Office is active within days, even generating arrest warrants. It happened in the case of Leily Santizo and other female lawyers. Are you afraid that the same thing will happen?

MAG: In my case, it is different. Thus, they had to present a complaint to the court, to force the court to decide if it is worth appointing an investigating judge into my actions. That is the purpose of submitting their case to the Supreme Court of Justice.

PC: In recent days you said that Guatemala is going through difficult times: "but the fact that they dare to threaten a judge after a resolution is even more

worrying because they are attacking not only the integrity of a judge but also the judicial independence, which is a legacy for the whole population".

What does it mean for the population that judicial independence is under attack?

MAG: The problem is not that Ricard Mendez Ruiz is making these declarations - as a citizen, he can make these statements. The problem is that he is threatening people and using the judicial system.

That is the issue. I analyze the issue from the point of view of judicial independence. The problem that is that criminal law is being instrumentalized. Criminal law is practically being made to respond to the interests of certain people. And that is precisely what I believe must be protected, the independence of the Judiciary as an institution of the State.

This weekend I am going to bring it to the attention of the court, because there are articles that regulate both the Criminal Procedural Code and the law of the Judiciary, that when a judge feels limited, feels inhibited, that the judge is being restricted in his or her judicial independence, then the judge has to bring it to the attention of the magistrates, so that they act accordingly to put an end to this limitation of judicial independence.

At least 22 justice operators have gone into exile

PC: At least 22 justice operators have gone into exile. There are former prosecutors in prison. They denounce persecution by power groups. Is it still possible in Guatemala for a judge to exercise his or her functions independently in the midst of pressures of this type?

MAG: That is precisely the fear. That is the problem, to allow such a situation to happen, because it is going to frighten other people. What has to be guaranteed is judicial independence.

PC: In the last few months, the Public Prosecutor's Office (MP) has increasingly filed complaints against former CICIG leaders, former FECl prosecutors and also against judges. You have several complaints, what is your situation?

MAG: I have complaints from years ago. How is it possible that we who are judges, how is it possible that we have complaints filed against: I have open complaints from 6, 7, 8 years ago. That is inconceivable.

Just from the Diario Militar case itself, from May of last year, I believe I have three complaints ... with Hilda (Hilda Pineda), who was with the Human Rights Prosecutor's Office.

PC: Do you have the number of complaints and who has filed them?

MAG: Ricardo Méndez Ruíz. In other words, when we talk about this man, we are practically talking about the Foundation Against Terrorism, about Immortal Guatemala. All of them are military. He has presented all of them and most of the complaints that I have are from him.

I have a complaint together with Erika. I have complaints with Juan Francisco. There are a lot of complaints that are being processed. Now we are trying to find out which ones are currently being investigated.

PC: Despite so many adversities, what makes you persist in your work?

MAG: As a Guatemalan, I sincerely love my country. I would not want to leave the country. How is it possible and how can a country remove its good people? Can you imagine what will happen to the country? In what conditions will it remain? What legacy will we give to our children, to the youth?

Unfortunately, the most visible thing that stands out right now is the Judiciary and the Public Ministry.

There are a lot of people who have had to leave because of these same conditions: human rights defenders, who are precisely defending human rights; lawyers who have worked with us have been threatened and have left; and so on and so forth. There are people in Washington, there are people in Mexico, there are people in Costa Rica and there are some outside the American continent.

So that you realize the repression is not with one person but with all people, all groups that do not agree with them.

Diario Militar case

I remember a conversation with Héctor Rosada, who has passed away and may he rest in peace. He once said that in Guatemala, with two words, one can become an internal enemy, and that is what is happening.

What I have said is Diario Militar!

In the past, what they did was to kill a lot of intellectuals. Now what they are doing is that they are forcing out of the country people who exercise their functions, exercise their duties with commitment, with rectitude, but especially with probity.

PC: Last week, you sent to trial nine military and ex-policemen for the crimes of forced disappearance, crimes against humanity, murder and attempted murder. Your ruling also found sufficient evidence indicating that the accused belonged to a structure, under the protection of the State, which operated a system of forced disappearance against dissidents between 1983 and 1985.

Now people no longer disappear, but we have witnessed a strategy of the justice system being use by the government, military and paramilitary agents, to criminally prosecute or push into exile those they consider to be political enemies.

Do you find any continuity between the physical disappearances of the past and this kind of social disappearance that we observe today?

MAG: Of course. The issue of forced disappearance is one that, as one analyzes it, makes a lot of sense. The criminal law related to the crime of forced disappearances came into force when human rights were discussed in Mexico. In Guatemala, where forced disappearances were practiced, the criminal offense of forced disappearance came into effect in 1996.

Civil death

Here what is happening today is practically the first step of the civil death of the person. Civil death - that the person is forced to leave their country.

The system of forced disappearances is even to make people understand that the person never existed. In the case of forced exile, the person will never be able to come home. It is practically like forgetting the person existed their home country.

Take the case of Juan Francisco, who at a certain point had to leave. Then the case of Pablito is another special case, because he is the one who issued the arrest warrants in the CREOMPAZ case. Then the case of Erika who tried to resist as much as possible. And where is Erika? She is gone.

And so on and so forth. We see a pattern that is constantly repeating itself. It is an evident pattern, one that can only be carried out with the acquiescence of the State.

In the Diario Militar case, practically speaking, the State has taken over, and is complying with and carrying out what Ricardo Mendez Ruiz is saying.

PC: When you speak of civilian death, how do you understand the civilian death of a person?

MAG: The problem is that sometimes the integrity, the reputation of a person is damaged. That is the damage, the civil damage, the civil death, which reaches a moment in which there is no room for that person anywhere. Damaging you professionally.

PC: Why do you think it is important for a country like Guatemala to know, through judicial processes such as the Diario Militar, what happened in the past?

MAG: You cannot consolidate the rule of law if you don't find a way to recognize everything what has happened.

For example, in the Sepur Zarco case, I remember an old woman, who did not know how to read or write. She said more or less this:

"In Guatemala there can never be peace, because if the State disappeared my husband and I do not find him, my husband is going to become earth and that earth, the air is going to lift it, and to the extent that it lifts it, it is because it is

going to be asking for justice to be done and that is why justice will never be achieved".

This was said by a woman who can neither read nor write but who understands the whole context that has happened and that truth has to be known, it is the least that a person can demand.

PC: Many understand transitional and restorative justice as a useless exercise, some even vengeful. Why is this type of justice important?

MAG: In times of war, one problem is that there are people who have nothing to do with it. If two neighbors are fighting, but there is a neighbor in the middle, how can one justify that, to get to the neighbor that I want to harm, I destroy everything that is in the middle?

The problem that arises here are the abuses committed by the parties with the people who were not in contention.

PC: Do you feel persecuted?

MAG: I remember last year, when this Diario Militar case began, both the Public Prosecutor's Office and the lawyer acting as plaintiff in this process (from the PDH)), said they were being persecuted and that cars without license plates were arriving at the Human Rights Ombudsman's Office.

This type of conduct is happening with me, now. After the hearing when I ordered those people to be tried in the Diario Militar case, I filed a complaint about the problems that were occurring with me. Within a month, my complaint was dismissed.

There is supposed to be an investigation by the Public Ministry - the least they can do. Yet, my complaint was dismissed. With certain criminal complaints, the Public Ministry acts with great efficiency. With other types of complaints, like these that I am referring to, practically more than a year has gone by nothing has been done.

PC: How do you foresee the justice situation in Guatemala in the next five years?

MAG: It is quite complicated. I am going on 23, 24 years of being a judge. I have a lot of experience, and there has never been a situation like the one we are currently experiencing.

It is quite worrisome, because one of the concerns as a judge is to guarantee the rights of all parties involved in a proceeding and to guarantee, as much as possible, why a certain resolution was reached.

These days, how is it possible that a person makes an attempt against the integrity of judicial operators and against judicial independence, and you ask yourself if anything has been done? Has the President of the court spoken in relation to how the judicial independence is being attacked?

For the Public Prosecutor's Office, when there are crimes, it is not a choice whether it wants to initiate investigations, it is an obligation to initiate the corresponding investigations.

Unfortunately, we are getting farther and farther away from the rule of law. And I reiterate, this is where we return to the issue of instrumentalizing criminal law. Practically making the law a monopoly of a group of people.

In this context, justice is a matter of power and not control of power. This is worrying, because it means that we are spectators of how a country is going down the drain.

Background

Washington Post article

Guatemalan atrocities on trial in “Military Diary” case. Will former US gov’t officials & military testify as to what role the US played?

<https://mailchi.mp/rightsaction/guatemalan-atrocities-on-trial-in-military-diary-case>

The New Yorker article

Exposing endemic corruption of Guatemalan judiciary and government, staunch ‘democratic ally’ of US, Canada and “international community”

<https://mailchi.mp/rightsaction/new-yorker-article-exposes-corruption-of-guatemalan-judiciary>

Washington Post article

ICE War Crimes Center pursuing Guatemalan war criminals hiding in the U.S. that participated in the Chixoy Dam / Rio Negro massacres in Rabinal region

<https://mailchi.mp/rightsaction/ice-war-crimes-center-pursuing-guatemalan-war-criminals>

Rights Action archives

- **Genocide trial against U.S.-backed dictator General Rios Montt:** <https://rightsaction.org/genocide-archives>
- **Other war crimes and crimes against humanity trials:** <https://rightsaction.org/other-war-crimes-trials-archives>

More information

- FAMDEGUA, Asociación Familiares de Detenidos-Desaparecidos de Guatemala, famdegua@gmail.com, <https://www.facebook.com/FAMDEGUAG/>, <https://twitter.com/FamdeguaG>
- Verdad y Justicia en Guatemala, <https://www.facebook.com/VerdadJusticiaG>, <https://twitter.com/VerdadJusticiaG/>
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- GHRC (Guatemalan Human Rights Commission): www.ghrc-usa.org, <https://twitter.com/GHRCUSA>
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