

Judicial independence is democracy's immune system

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Dall'Anese—loved by some, loathed by others—believes many of the problems currently plaguing Guatemala could be solved by appropriately enforcing justice.

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Is the Guatemalan justice system in a state of "bad health"? Undoubtedly it's bad, things must change. I hope the Supreme Court of Justice will take timely action to promote the need for justice system reform. The justice system must be highly independent, strong vis-à-vis the legislative branch and the executive branch, and committed to the law. It is democracy's immune system

Guatemala has all the ingredients needed for change. The justice problem is worsened by the fact that every five years judges are changed. It is necessary to create a disciplinary system that enables the removal of judges who act in breach of the law.

How can change be achieved when it goes against the interests of some individuals?

We should not tar all judges with the same brush—most comply with the law and demonstrate bravery. A career system needs to be introduced into the Judiciary along with permanent tenures so that judges cannot be stripped of their jobs unless there are valid, legally-founded reasons to do so. They also need security for them and their families, a decent wage and a pension plan. Judges must be sure that if they rule in accordance with the law, they will hold onto their jobs—such judges will not be corruptible.

And yes, there are interests, because politicians, for example, are able to name Supreme Court judges and appellate court judges. There is no career system in the Judiciary. Guatemalans deserve judges who serve within a career system and a healthy, independent

and democratic justice system. CICIG presents draft laws; if the members of Congress choose not to pass them, then that is their decision. We bring suspects and evidence before the courts; if the judges don't accept the legal actions, then that is their problem. We present thematic reports proposing public policies; if they are ignored, then that is the decision of Guatemalans.

How is CICIG fairing at present? We are at a critical stage. We are striving to consolidate the rule of law, strengthen institutions, raise awareness that the rule of law can be built and destroyed on a daily basis—it can be strengthened or left to wilt every day. We need Guatemalans to understand that changes are ongoing. Progress is being seen, such as the trial of former President Ríos Montt. Even though CICIG is not involved in the case, it must be recognized that the decades-long call for justice of NGOs and many Guatemalans is finally being answered. This has been made possible thanks to the efforts undertaken by Attorney General Claudia Paz to lead the institution in the right direction. Furthermore, one must understand that the trial is being held in a court for high-risk matters, which was something unthinkable two years ago. The court owes itself to a CICIG-backed amendment made to the legal system.

How do you interpret the criticism received by the Attorney General? When such negative comments are directed at Attorney General Claudia Paz, it is a sign that things are being done well. To people on the outside, it is an alien concept, but when a public prosecutors' office is the subject of insults and lies, it is because it is doing its job well. When the Attorney General is personally attacked, it is because there is conclusive evidence. When evidence, charges and procedures are attacked, maybe the defense counsel is within its right to do so. However, when people are attacked to strike fear into them and discredit or disparage them, it is a sign that work is being done well.

What is happening with the emblematic Portillo case? The perfect investigation was conducted, with audits and a clearly mapped out money trail. However, ultimately, the judges came along and decided he was not responsible for public funds. So what is the problem? CICIG was created at a time when people said proper investigations were lacking and both the police force and the public prosecutors' office were not functioning as they should. Maybe they were right, but something was missed out: there were judges not doing their job properly. I like to draw a comparison between this and the human body's immune system, which is exposed to bacteria and viruses every day. If the immune system is working well, the body will enjoy the same fate. In a democracy, judges are the immune system, and if the immune system doesn't duly conduct its functions, democracy will fail.

Will the case be resolved? I don't know if it will progress or not. We filed a remedy that is being deliberated over at an appeals court. Equally, the stance of CICIG changed: we filed an appeal based on procedural and substantive issues. The procedural issues will be ruled on first, and if our appeal were to be accepted on such grounds, the trial would be annulled and repeated. If a reason of substance were to be admitted, the ruling would be changed from an acquittal to a conviction. On March 20, we withdrew the part of the appeal concerning procedure, for a number of reasons. Firstly, if the trial were repeated, Guatemala would be bled dry. Secondly, if the trial were repeated, CICIG may not be here

to see it through to the end and, finally, the crime carries a sentence of 3 to 10 years and Portillo has already spend 3 years in prison. All we ask now is that the court considers two possibilities: either convict or acquit him.

Is there sufficient evidence to convict him? There is more than enough evidence. There are audits that have been confiscated, including a forensic audit. The aim here is to prevent confiscated evidence from being left in the same place, as was demanded by the judges. Such evidence is either lost or altered, but it still continues to be evidence. The verifications were made by MP officials and, as they are State officials, they say they should not be allowed to contribute to resolving the case.

I wonder what would happen if a public official were to be killed, how would the case be solved? Medical examiners are hired by the State, does that mean all murderers will be acquitted because the medical expert and the victim are both State employees? That ruling is a testament to judicial cynicism, but there is sufficient evidence to convict.

To go back to the need for change, who is most responsible? The system must be reformed. It has to be the Congress. But the judicial branch must have the desire to be independent in order to strengthen itself. For example, when CICIG, at a forum, says judges must be irremovable, they come out and immediately say: "Guatemala isn't ready". By doing so, they bury the issue. I ask myself, when will it be ready? I believe Guatemala is ready to change its justice system.

Is it the groups of power who are unprepared for change? Yes, clearly; I won't say who, because the grounds are not clear-cut. No one is going to say: "I don't want change, because I want to continue to benefit from the eternal impunity by conducting illegal business without anyone punishing me." No one says it! There are always arguments such as: "Guatemala isn't ready", "it's not the time", "such changes require democratic maturity" or "we don't have the necessary conditions". An independent justice system is necessary; it is the immune system for democracy, the white blood cells. We have seen how our high-impact cases progress in Switzerland, Austria and Spain, whereas in Guatemala, there is a photo of Giammattei...and one sole judge doesn't recognize the fact, but the rest of us can all see him. Then these three held important positions in Guatemala, two are now remanded in custody in Switzerland and Austria, respectively, and the other is subject to a precautionary measure in Spain. These measures were based on the same evidence under which Giammattei was allowed to go free in Guatemala. Do these three European countries have lackluster case law and Guatemala an appropriate system? Or do these three "healthy" countries have strong democracies and Guatemala is the country with a "sick" justice system?