Thursday 7 April 2022

P9_TA(2022)0124

The situation of the rule of law and human rights in the Republic of Guatemala

European Parliament resolution of 7 April 2022 on the situation of the rule of law and human rights in the Republic of Guatemala (2022/2621(RSP))

(2022/C 434/11)

The European Parliament,

— having regard to its previous resolutions on Guatemala, and in particular that of 14 March 2019 on the situation of human rights in Guatemala ([1]),

— having regard to the statements by the Spokesperson of the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy (VP/HR) on the rule of law situation in Guatemala of 11 February 2022, and on the deterioration of the rule of law in Guatemala of 23 March 2022,

— having regard to the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other ([2]), and in particular the human rights clause therein,

— having regard to the European Union Guidelines on Human Rights Defenders,

— having regard to the report of the UN High Commissioner for Human Rights of 28 February 2022 on the situation of human rights in Guatemala,

— having regard to the statement attributable to the Spokesperson for the UN Secretary-General of 11 February 2022 on Guatemala,

— having regard to the statement of the Inter-American Commission on Human Rights (IACHR) of 22 February 2022 expressing concern over new violations of judicial independence in Guatemala, and that of the IACHR and UN Special Rapporteur on the independence of judges and lawyers of 9 March 2022 urging Guatemala to guarantee independence and impartiality in the appointment of the country's new attorney general,

— having regard to the Universal Declaration of Human Rights and to the UN human rights conventions and the optional protocols thereto,

— having regard to the UN Covenant on Civil and Political Rights of 1966,

— having regard to the Constitution of Guatemala,

— having regard to Rules 144(5) and 132(4) of its Rules of Procedure,

A. whereas Guatemala is an important and like-minded partner of the EU, as demonstrated by the country's key role in regional integration in Central America through its *pro tempore* presidency of the Central American Regional Integration System, the growth of EU-Guatemala trade cooperation, the country's solidarity with Ukraine and Europe and its strong condemnation of the Russian invasion of Ukraine, and its active role in international forums, as well as the constructive dialogue with the Embassy of Guatemala in Brussels in the context of the European Parliament's Delegation for relations with the countries of Central America;

B. whereas in 2019, the government of the Republic of Guatemala unilaterally decided to terminate the mandate of the International Commission Against Impunity in Guatemala (CICIG), which had operated for 12 years in the country; whereas during the period when the authorities collaborated with the CICIG, Guatemala demonstrated continuous progress in prosecuting human rights and corruption cases;

([1]) OJ C 23, 21.1.2021, p. 92.
([2]) OJ L 346, 15.12.2012, p. 3.

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C. whereas since then, Guatemala has suffered a continuous process of institutional co-optation and the dismantling of the rule of law, the systematic obstruction and harassment of the legitimate work of judges and prosecutors, smear campaigns, arrests and intimidation of justice operators, in particular those from the CICIG, the Human Rights Prosecutor's Office, and the Special Prosecutor's Office against Impunity (FECI), and an intensification and increase of aggressions against, as well as the criminalisation of, civil society organisations and human rights defenders;

D. whereas prosecutors of corruption and organised crime involving high-ranking state officials and business owners have been criminalised in numerous criminal proceedings by means of complaints before the Judicial Disciplinary Board and preliminary trials promoted by the Public Ministry of Guatemala in order to arrest them or withdraw their judicial immunity; whereas the proliferation of these legal proceedings against independent judges, prosecutors and lawyers and the lack of prompt and efficient response and protection measures are alarming;

E. whereas threats, harassment and the risk of arbitrary detention have led to more than 20 judges announcing their exile from Guatemala to protect their safety and physical and psychological integrity, and to avoid reprisals from the authorities of the Guatemalan state; whereas the cases of judge Erika Aifán, former attorneys general Claudia Paz and Thelma Aldana, and Juan Francisco Sandoval, who led the FECI, are just a few examples of harassment against judicial operators in Guatemala;

F. whereas article 203 of the Constitution of Guatemala stresses that the judiciary function must be exercised exclusively by the Supreme Court of Justice and other tribunals stipulated by law; whereas there is a lack of progress in electing judges to the vacant seats in the Supreme Court and Court of Appeals; whereas this year, the president and Congress will appoint three key figures: the attorney general, the human rights ombudsperson, and the controller general;

G. whereas in May 2022, the new attorney general of the Republic of Guatemala will be elected; whereas the Constitution of Guatemala stipulates that the appointment of the attorney general is made through a nominating commission which is composed of the president of the Supreme Court, law school deans, bar association members, and members of civil society; whereas in September 2021, the Attorney General of the Republic of Guatemala and candidate for re-election, María Consuelo Porras, as well as the Secretary General of the Public Prosecutor's Office, Angel Pineda, were included by the US State Department on the Engel List as corrupt and undemocratic actors obstructing the criminal prosecution of corruption cases; whereas the attorney general has a fundamental role in guaranteeing the rule of law, the protection and defence of human rights and the fight against corruption and impunity;

H. whereas the Inter-American Commission on Human Rights and the UN Special Rapporteur on the independence of judges and magistrates have made several recommendations to carry out a constitutional reform regarding the procedures for the election of the attorney general and judges of the high courts of the country in line with international standards of independence and impartiality;

I. whereas the Government of Guatemala has made efforts to implement policies promoting transparency, the fight against corruption and the fight against impunity through the creation of the Presidential Committee against Corruption and the Presidential Committee for Peace and Human Rights, which should come up with concrete results;

J. whereas according to Transparency International, Guatemala dropped 59 positions in the Corruption Perceptions Index over the last 10 years, from 91st (2010) to 150th out of 180 countries;

K. whereas Decree 4-202, known as the NGO Law, which entered into force in February 2022, seeks to restrict the activities of NGOs, tightening government supervision and opening the door for the abolition of NGOs which do not comply with administrative requirements;

L. whereas violence and extortion by powerful criminal organisations remain serious problems in Guatemala and whereas gang-related violence is an important factor prompting people to leave the country;

M. whereas in 2021, the Office of the UN High Commissioner for Human Rights (OHCHR) documented 103 attacks against human rights defenders and six killings, as well as 33 attacks against journalists; whereas environmental and land defenders, indigenous people and communities and women rights defenders face serious threats; whereas the OHCHR highlights the increase in the misuse of criminal law by state and non-state actors against human rights defenders and journalists to penalise them or impede the legitimate exercise of their work;

N. whereas indigenous peoples continue to face multiple forms of discrimination and economic and social inequalities; whereas there is a need to strengthen the relationship of trust between public institutions and indigenous peoples through the implementation of measures for the protection and realisation of their rights including the right to free, prior, and informed consent;

O. whereas gender-based and sexual violence against women and girls are widespread and deeply rooted issues; whereas on 8 March 2022, the Guatemalan Congress approved Decree 18-2022, the so-called Law for the Protection of Life and the Family', which criminalises abortion in all circumstances, with prison sentences of between 5 and 25 years, and prohibits gender diversity and sex education in schools; whereas after multiple protests at national and international level, the President expressed his intention to veto the decree and on 15 March 2022, the Guatemalan Congress voted to shelve the controversial law;

P. whereas Guatemala has one of the highest inequality rates and some of the worst poverty, malnutrition and maternal and child mortality rates in the region; whereas Guatemala ranks sixth for chronic malnutrition in the world;

Q. whereas the EU remains one of Guatemala's main cooperation partners, with EUR 152 million allocated under the Development Cooperation Instrument programming period (2014-2020) focusing on food security, the fight against corruption, peace and security, and competitiveness;

R. whereas Aura Lolita Chávez, an indigenous environmental defender from Guatemala and European Parliament Sakharov Prize finalist in 2017, left her country after serious attacks, death threats and defamation, and faces various judicial processes if she returns to Guatemala; whereas her legal and physical safety should be ensured if she decides to return;

1. Is concerned about the deterioration of the rule of law in Guatemala and the legal actions initiated by the Supreme Court of Justice and the prosecutor general against independent judges, lawyers and prosecutors who investigate or prosecute criminal structures with ties to high-ranking state officials and business owners;

2. Condemns the criminalisation and detention of, and the discrediting media campaigns, threats and acts of harassment against, judicial operators involved in prosecuting corruption cases and combating impunity, as well as those against human rights defenders and journalists; urges the Guatemalan authorities to put an end to these actions and to uphold the rule of law and full respect for the independence of power branches as key elements in the fight against impunity and corruption;

3. Calls on the Guatemalan authorities to conduct immediate, thorough and impartial investigations into the threats, acts of harassment and stigmatisation campaigns against justice officials and civil society actors, in order to identify those responsible and bring them before competent, independent and impartial tribunals;

4. Calls on the Guatemalan authorities to urgently take the necessary measures to ensure the safety and integrity of judges, prosecutors, lawyers — including former CICIG lawyers — and human rights defenders, and of those being detained, and to safeguard their right to due process; urges the authorities to secure the safe return of those forced to leave the country out of fear for their safety;

5. Recalls the indispensability of enhanced and effective dialogue channels in the framework of Guatemalan institutions in order to promote democratic values, the rule of law and respect for human rights;

6. Reaffirms that the process of selection and appointment of judges must be transparent and participatory and that candidates should be selected on the basis of their merits and proven track records on respect for human rights, in compliance with international standards and the Constitution of Guatemala; calls on the Guatemalan authorities, in this sense, to guarantee the fair election of judges, in particular regarding the election of the prosecutor general and the human rights ombudsperson;

7. Stresses that the adoption of restrictive legislation such as the NGO Law can contribute to the dismantling of the protection system for human rights defenders, reinforcing impunity; calls for these laws to be repealed;

8. Urges the Government of Guatemala to take the necessary measures to strengthen legislation and policies to protect human rights defenders, including environmental defenders and journalists, and to develop a public policy for the protection of human rights defenders in line with a 2014 ruling of the Inter-American Court of Human Rights and the commitment made by Guatemala itself before the UN Human Rights Council in 2018; recommends that the Government of Guatemala ratify the Escazú Agreement;

9. Welcomes the creation by the Guatemalan authorities of the Presidential Committee against Corruption and the Presidential Committee for Peace and Human Rights, as core pillars of the Government's national plan for innovation and development, and with a view to implementing policies promoting transparency, the fight against corruption and the fight against impunity; urge theses committees to deliver concrete results;

10. Encourages the Government of Guatemala to further cooperate with all the UN and regional human rights mechanisms in order to advance the promotion and protection of human rights in the country; recommends that the Government of Guatemala renew the mandate of the OHCHR in Guatemala for a reasonable period of time;

11. Welcomes the action taken by the embassies of the EU Member States and the Delegation of the EU to Guatemala with regard to protection measures for human rights defenders; calls on the Commission to substantially expand and more actively implement protection measures, including broadening the observation of hearings of criminalised human rights defenders, particularly environmental and women human rights defenders by, among other things, increasing its support to independent civil society organisations;

12. Calls for the EU and its Member States to use the mechanisms laid down in the Association and Political Dialogue and Cooperation Agreements to strongly encourage Guatemala to carry out an ambitious human rights agenda and to fight impunity with a view to improving the human rights situation in the country;

13. Instructs its President to forward this resolution to the Council, the Commission, the European External Action Service, the EU Special Representative for Human Rights, the governments and parliaments of the Member States, the Organization of American States, the Euro-Latin American Parliamentary Assembly, the President, Government and Parliament of the Republic of Guatemala, the Central American Secretariat for Economic Integration and the Central American Parliament.