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Guatemala: Inconsistent ruling by the Constitutional Court rejects extraditions sought by Spain

On 12 December the Guatemalan Constitutional Court decided to uphold the appeal lodged by retired General Ángel Aníbal Guevara Rodríguez and Pedro García Arredondo against judicial rulings by lower Guatemalan courts ordering them to be remanded in custody. They had been detained as the result of an extradition request concerning them and five others, including former President Efraín Ríos Montt, submitted by Spain in the context of an investigation being carried out in Madrid into certain breaches of international law committed in Guatemala between 1978 and 1986.

In allowing the appeal the Constitutional Court based its decision on a series of erroneous statements concerning the scope of jurisdiction of the Spanish courts to carry out investigations into breaches of international law committed in Guatemala.

The Constitutional Court ruling places emphasis on various provisions of the Guatemalan Constitution and the 1895 Extradition Treaty between the two countries, which [it argued] had been disregarded when ordering the arrest of Guevara Rodríguez and García Arredondo, and, in particular, on what it considers to be the absence of jurisdiction on the part of Spain to investigate those responsible for atrocious crimes committed in Guatemala in the period specified. The judgment also seems to suggest that the crimes in question, which were committed by State officials or others acting with their tolerance or acquiescence, constitute political offences and adds – in what is a political rather than a legal statement – that the Spanish judiciary should have refrained from investigating the events in question because Spain, through its Head of Government, was a guarantor of the Agreement on a Firm and Lasting Peace (1996) which put an end to the armed conflict.

Spain's exercise of universal jurisdiction in cases of serious breaches of human rights complies with international treaty-based law as well as international custom.¹ All States are permitted, and in some cases are obliged, to exercise their own jurisdiction in relation to certain crimes that hold particular importance for the international community, even when they have not been committed on their territory or by or against their own nationals. For example, during the past year alone, Argentina, Korea, Panama, Senegal and Uruguay, among others, have adopted legislation allowing their domestic courts to exercise universal jurisdiction to varying degrees.

The ruling also fails to mention various provisions of conventions to which Guatemala is a party, such as the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which establish that States have a duty to grant extradition in the case of crimes against international law. Similarly, international treaty-based law and international custom categorically refuse to allow crimes against international law such as those committed in Guatemala to be deemed political and thus, as the Constitutional Court ruling would seem to imply, subject to amnesties or other forms of pardon.

Despite the above, the Constitutional Court, on refusing to grant the extraditions sought by Spain, stated – nevertheless – that its refusal to do so entailed the obligation, under international law, to try those suspected of the crimes in question in Guatemala. Amnesty International, while welcoming this assertion, since it is in strict compliance with Guatemala’s international obligations, remains concerned at the slow progress made since legal proceedings were opened in the domestic courts in 2000. Such proceedings have - so far - not helped at all to uncover the truth about what happened or to bring those responsible to justice. Furthermore, those who have been courageous enough to participate in them – in particular, court officials, lawyers, surviving victims and witnesses – have had to suffer frequent intimidation and threats of various kinds, some of them with fatal consequences.

Amnesty International therefore believes the Constitutional Court ruling to be just one more contribution to what is now almost insurmountable impunity prevailing in Guatemala. It is a perfect demonstration of why there is a need for an increasing number of States to exercise universal jurisdiction.

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