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Justice in Central America Faces Tough Enemy: Lack of Judicial Independence

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Central America is a region historically battered by authoritarianism, corruption, and violence, a context in which, where justice is concerned, the enemy—lack of judicial independence—has been monumental and so far mostly unbeaten.


Thus ended the political strife that caused hundreds of thousands of casualties, destroyed economies, and ideologically tore nations—and even families—apart. Besides ushering in the much-needed peace processes, the regional peace plan laid the groundwork for what it described as the strengthening of democracy in each country and for Central American integration.

But the historic violence was not completely banished—since political persecution and human rights violations were not uprooted in some countries—and a new breed developed: that of organized crime—coupled with corruption.

In general, Central Americans have little or no trust in their countries’ judiciary, a sector they consider permeated by corruption including organized crime—more precisely, drug trafficking—and political influence, as polls and other studies usually show.

Government authorities, heads of supreme courts, and security officials usually respond to peoples’ and international organizations’ demands for action, promising to tackle the problem and, at best, applying measures that prove to be nothing but cosmetic.

Even though it is not the case with all judges and other judiciary members, the increasing phenomenon shows a concern-causing outlook, especially for national, regional, and international organizations closely monitoring the regional situation but focusing on individual countries, as well.

Study finds widespread lack of independence

One such entity is the Washington-based Due Process of Law Foundation (DPLF), which contends that decades of reforms and international cooperation have not yielded the results needed regarding the quality of judicial administration in this region.

In a document it drew up last year titled "Judicial independence in Central America: problems and proposals," DPLF states, "Even after several decades of judicial reforms and international assistance for judiciaries, judicial independence, transparency, and more in general, the quality of the administration of justice in Central America still leave much to be desired."
"A variety of initiatives have been undertaken, and a lot of money has been invested—without tangible results. This indicates that it is necessary to think out of the box as regards approaches to improve judicial independence in Central America," the document pointed out.

Based on its own research as well as direct contact with judges, legal experts, and civil-society organizations, it mentioned, among other problems found, that "Central American judiciaries are poorly evaluated by the general public, as well as by subject matter experts."

"The bad reputation of the judiciary is rooted in recent history: corruption scandals, the meddling of political and economic actors with judges and the overtly political appointments of judges—who moreover often lack the necessary expertise—have led to a serious decline of respect for the judiciary," said DPLF. "A worrying side-effect of this phenomenon is that there is a lack of capacity among Central American judges. Because the institution is not held in high regard, typically only those not hired by law firms or enterprises, apply to the judiciary. This is even the case for Supreme Court judges. Since the quality of a judicial system depends greatly on its human resources (i.e. its judges), this is a significant problem."

Another lingering problem is posed by what DPLF described as "external actors" interfering in the system, an intervention that "is done in a more subtle or sophisticated way than in decades past."

In this respect, the appointment of high-level justices is one of the instruments used by political actors to preserve control of the judiciary, since "the procedures allow for appointments based on political considerations rather than on the merits of the candidates," said the report.

"This has far-reaching consequences in the case of appointments to the Supreme Court," because "the lack of quality and independence in the Supreme Court has considerable impact on the entire judiciary," the study further warned. "A similar situation applies to the appointments of lower judges ... a lack of procedures and norms allow for arbitrary appointment decisions, which results in that the better candidates decline to submit themselves to these types of processes."

Throughout Central America, a system is needed for the random distribution of cases, replacing the present assignment of cases to judges, a mechanism that, says the foundation "opens the doors to undue interference."

Thus, a random distribution system "needs to be installed in the entire judicial system of each country," said the report.

"There need to be clearer norms regarding conflicts of interests and what to do when such cases arise. Effective mechanisms to recuse judges need to be installed, as well as the possibility to appeal these decisions," the report also pointed out.

**Judge in Ríos Montt trial decries political and military influence**

Attending a meeting of Central American and Spanish judges last year in El Salvador was Guatemala Judge Miguel Ángel Gálvez, who prosecuted former Guatemalan military dictator Efraín Ríos Montt (1982-1983) for the genocide of 1,771 members of the Ixil indigenous people ([NotiCen, April 4, 2013](https://noticenewsactuales.org/noticenewsactuales/1459815848.0.html) and [June 13, 2013](https://noticenewsactuales.org/noticenewsactuales/1468189312.0.html)).

Ríos Montt’s régime carried out a "scorched-earth" policy against hundreds of indigenous communities, which he considered supporters of the former guerrilla organization Unidad
Revolucionaria Nacional Guatemalteca (URNG), then engaged with the Guatemalan Army in the 30-year war, a conflict that claimed at least 200,000 lives.

Ríos Montt reached power through a military coup that toppled Gen. Romeo Lucas (1978-1982), and three months later he dissolved the military junta he was heading and proclaimed himself president.

A graduate—just as were several other Latin American dictators, including Bolivia’s Hugo Banzer (1971-1978, 1997-2001) and Argentina’s Jorge Rafael Videla (1976-1981)—of the School of the Americas (SOA), Ríos Montt was later toppled in a military coup, this time staged by Gen. Oscar Mejía Víctores (1983-1986), his defense minister and the Army’s chief.

Ríos Montt, 88, was sentenced last year to 80 years in prison, but the Corte de Constitucionalidad (CC)—Guatemala’s top judicial authority—annulled the sentence, alleging procedure flaws, allowing for the former dictator to be tried again in January of next year (NotiCen, Jan. 23, 2014, and May 29, 2014).

Judge Gálvez said the CC ruling was an example of the extent of political—and, in this specific case, military—pressure on the judiciary.

But the system is also influenced by organized crime.

Costa Rica judge charged with influence peddling

A case in point, this year, is that of a judge in Costa Rica's eastern Caribbean port city of Limón. Judge Rosa Elena Gamboa was arrested on May 16 by Organismo de Investigación Judicial (OIJ) officers for influence peddling and alleged links to drug trafficking.

Gamboa is accused of receiving some 20 million colones (approximately US$40,000) for releasing a jailed drug trafficker and also of pressuring two judges—in one case to ignore charges against a friend accused of reckless driving and in the other to release a man arrested for possession of 40 kg of cocaine.

Two weeks after the judge’s arrest, the heads of the judiciary, executive, and legislative branches were meeting at the unicameral Asamblea Legislativa to address the issue of narco penetration in the judiciary within a dialog for "Coordination of the three branches of power against drug trafficking."

After the meeting, Corte Suprema de Justicia (CSJ) president Zarella Villanueva told NotiCen, "There are situations that warn us, but I think the institution [CSJ] has strengths and has been working on this."

"We already have work underway with a focus on specific areas we have to improve," such as "personnel selection, discipline," the judge added. "I value the institution’s capability to analyze itself, to criticize itself, and to propose improvements."

"We’ve been working on this since 2011, with a project that has foreign cooperation," and is aimed, among other issues, at "reviewing the disciplinary system … reinforcing personnel selection mechanisms … and improving training," Villanueva said.