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Courageous Guatemalan Jurist Under Fire

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JURIST Guest Columnist Lauren Carasik of Western New England University School of Law says that, as chief justice of the Criminal Chamber of Guatemala's Supreme Court, Cesar Barrientos has played a critical role in rebuilding the nation's democratic institutions by upholding the rule of law and protecting human rights...

Guatemala is a country beset by violence, poverty and near-complete impunity for atrocities committed during a brutal civil war that left over 200,000 dead. Stratified social and economic conditions and a protracted, bloody internal conflict have fostered an understandable lack of confidence in the nation's democratic institutions. To move forward, a functioning judiciary that conforms with both Guatemalan and international law is crucial to rebuilding civil society in Guatemala.

Cesar Barrientos is chief justice of the Criminal Chamber of Guatemala's Supreme Court. In this capacity, he has been steadfast in his determination to restore the rule of law in Guatemala and to adhere to democratic principles both domestically and in the international arena. Due to his unwavering efforts to bring integrity to his role as a jurist and his efforts to modernize the judicial system, Barrientos has been the frequent target of threats and criticism aimed at blunting his effectiveness in constructing an independent judiciary.

It is hard to overestimate the difficulty of reforming a judiciary that long served in the apparatus of a brutally repressive government. His sound legal decisions place Barrientos squarely in the sights of those with a vested interest in preserving immunity and subverting accountability. No consensus guides efforts toward constructing democratic institutions in post-conflict societies. Those determinations are deeply contextual and specific to a particular state and the complex constellation of factors that led to conflict and its aftermath, but several themes recur. Analysts determining the best practices for post-conflict democracy building concur that confidence in the judiciary must be premised on the even administration of the system and the impartial application of the law. Moreover, conforming to international standards generates confidence that a society is moving inexorably towards transparency, accountability and the valorization of democratic ideals.

As a member of the international community, Guatemala is obligated to uphold international legal standards. Guatemala ratified the American Convention on Human Rights in 1978 and accepted the jurisdiction of the Inter-American Court of Human Rights (IACHR) in 1987. Accordingly, Guatemala must submit to the decisions of that tribunal. Barrientos was excoriated for his decision recognizing the international tribunal's jurisdiction and the importance of respecting human rights, and opining that the state is not permitted to obstruct or prevent compliance with the decisions issued by the IACHR. By upholding the IACHR's decision in the case of Bamaca Velasquez v. Guatemala [PDF] and by dismissing efforts to subvert important human rights principles on the pretext of domestic legal precedents or legislation, he incited a firestorm of criticism.

Barrientos further demonstrated respect for two additional decisions of the IACHR, Raxcacho Reyes...
v. Guatemala [PDF] and Fermín Ramírez v. Guatemala [PDF], which found Guatemala in violation of international law related to its imposition of the death penalty. Specifically, the IACHR objected to the mandatory imposition of the death penalty, the addition of new crimes to the list of those punishable by death and the lack of process for considering clemency claims. Subsequent to those rulings, the Supreme Court, under Barrientos, commuted the death penalty in cases in which the prosecutions were premised on violations of procedural and substantive due process rights.

Barrientos has also shepherded domestic legal reforms through the Guatemalan legal system. As part of the implementation of Congressional Decree 21-2009, Barrientos and his colleagues in the Criminal Chamber developed the high-impact courts that preside over cases of serious violations of human rights violations. In implementing this decree in his tenure as chief justice of the Criminal Chamber of the Supreme Court of Justice, Barrientos has presided over a large number of requests to transfer cases to high-impact courts, including cases of serious human rights violations, organized crime (including narcotraffickers, general criminal activity and gangs), white collar crime and crime involving government officials.

Barrientos has balanced his concrete steps to strengthen the judiciary and institute mechanisms of due process that respect the rights of the accused with efforts to ensure that victims are accorded appropriate remedies. These include reparations and other restorative measures aimed at repairing the social fabric badly frayed by widespread violence over a 36 year period, and a focus on the importance in post-conflict societies of preserving historic memory.

Barrientos has been broadly criticized on a number of fronts, but none have been as oft-repeated as the charge that he is doing too much to favor victims of human rights. Those charges lack merit on the substance but, equally important, they obscure the importance of the judiciary implementing procedural safeguards that ensure that even the most disempowered and dispossessed have access to the courts and to justice. Barrientos is also ironically under fire for a lack of judicial independence, a position many advocates view as a transparent effort at undermining his reform efforts that threaten the status quo.

Transitional justice in Guatemala has not been a democratic phenomenon: there have been a handful of prosecutions of low level perpetrators, and only recently did Rios Montt — the de facto president during the most brutal scorched earth policies in the early 1980's — face charges in an open courtroom. Instead, accountability and justice has been pursued by a few tenacious victims and advocates who have persevered in the face of unrelenting threats, wholly inadequate resources, and continual setbacks. Building faith in the democratic institutions requires ensuring that those people have their day before an impartial tribunal.

Those leveling charges against Barrientos for his efforts at upholding the rule of law and protecting rights of those historically disenfranchised must recognize that instilling confidence in the judiciary is inextricably entwined with rebuilding a civil society decimated by decades of internal strife and brutality.

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