



OPEN LETTER TO THE ATTORNEY GENERAL OF GUATEMALA

RE: CRIMINAL PROCEEDINGS AGAINST HUMAN RIGHTS DEFENDER BERNARDO CAAL

Dear Attorney General,

I am writing to express Amnesty International's concern about the misuse of the criminal law to criminalize the human rights defender Bernardo Caal Xol.

Since 2015, Bernardo Caal has been one of the most visible faces of the peaceful opposition of the Q'eqchi's communities in Santa María Cahabón to the OXEC hydroelectric project. Bernardo Caal has pursued legal actions before the highest courts in the country, which, in 2017, recognized that the right to prior and informed consultation of Indigenous Peoples' regarding this case had been violated.¹

For almost two and a half years, Bernardo Caal has been unjustly deprived of his liberty and held in the preventive detention centre for men in Cobán, Alta Verapaz. Amnesty International believes that Bernardo Caal is being detained solely because of his views and his work in defence of Indigenous Peoples, and today, 16 July 2020, the organization has declared him a prisoner of conscience and will initiate a global campaign demanding his immediate and unconditional release.

Amnesty International has had access to the criminal file and was able to verify that there had been serious irregularities and negligence in the investigation by the Public Prosecutor's Office into alleged acts of violence that occurred on 15 October 2015 against employees of NETZONE SA, an OXEC contractor. These irregularities are consistent with patterns of criminalization targeting those who defend the land, or the environment previously documented by the organization.²

In this case, it is particularly striking that the accusation is based solely on testimonies – even though these contain significant contradictions and inconsistencies – and that the Public Prosecutor's Office has been unable to provide any other evidence to prove Bernardo Caal was present at the time the events took place or to link him to actions that would constitute criminal offences. These actions are a long way from the principles of independence, impartiality and thoroughness that should guide criminal investigations.³

¹ On 4 January 2017, the Supreme Court of Justice issued a final decision in favour of Bernardo Caal's application for an injunction (*amparo*), suspending the licences for the OXEC projects and ordering that consultations take place. On 26 May 2017, the Constitutional Court issued an *amparo* ruling that recognizes the right to free, prior and informed consultation and orders that the consultation be carried out, but does not suspend project operations or construction.

² Amnesty International, "We are defending the land with our blood": Defenders of the land, territory and environment in Honduras and Guatemala, 2016, <https://www.amnesty.org/en/documents/amr01/4562/2016/en/>

³ To prevent criminalization, the Inter-American Commission on Human Rights (IACHR) recommended that: "Justice operators must ensure the correct application of the law and seek the truth of the facts occurred, acting with professionalism, in good faith, with procedural loyalty, considering both the elements to prove the crime and the participation of the accused in the act, as well as those that may exclude or lessen the criminal responsibility of the accused" and "Ensure that the authorities responsible for the investigation of crimes collect the necessary evidence to determine the existence of unlawful conduct prior to imposing precautionary measures or making accusations against defenders." IACHR, *Criminalization of the*



In addition, the Public Prosecutor's Office did not seek to analyse the context in which the events took place or the role played by Bernardo Caal as a defender regarding the Q'eqchi's communities' claims against the OXEC project, despite the fact that these steps are key to preventing the criminalization of defenders. It should be noted that by the time the investigation was restarted in June 2017 and while it was ongoing, the media covered the conflict related to the OXEC project and the legal remedies presented by Bernardo Caal on behalf of the communities.⁴

Amnesty International was also able to confirm that the criminal proceedings against Bernardo Caal were accompanied by violent smear campaigns that sought to discredit his work and foster a negative or violent image of Bernardo Caal, the communities and the protests. As the National Human Rights Institution (Procuraduría de Derechos Humanos) and the Office of the High Commissioner for Human Rights have noted, as a result of these campaigns the preconception that defenders are "criminals" and "opponents of development" may indirectly influence state officials and affect the presumption of innocence in cases of criminalization.⁵

In the current case, the negligence and irregularities highlighted above point to the fact that the investigation by the Public Prosecutor's Office is unfounded and was based solely on negative assumptions about Bernardo Caal as a community leader; this has been identified by Amnesty International as one of the characteristics of criminalization against those who defend the land, territory and the environment in Guatemala.⁶

The irregularities in the aforementioned investigation are having serious and unconscionable consequences for Bernardo Caal's rights to liberty, the presumption of innocence and a fair trial and to defend human rights. Therefore, based on the above and on the recommendations of international experts, we respectfully request:⁷

Work of Human Rights Defenders, 2015, Recommendations 20 and 21,
<http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>

⁴ The IACHR also recommended that: "When applying criminal law, justice operators must... Consider, in face of a complaint, if the defendant has the quality of human rights defender as well as the context of the alleged facts, which will help determine whether the complaint was used as a mechanism to hinder the work of human rights defenders." IACHR, *Criminalization of the Work of Human Rights Defenders*, 2015, Recommendation 19. See also National Human Rights Institution (Procuraduría de Derechos Humanos, PDH) and Office of the High Commissioner for Human Rights (OHCHR), *Report on the Situation of Human Rights Defenders in Guatemala*, 2019, Recommendation g.4.

⁵ PDH and OHCHR, *Report on the situation of human rights defenders in Guatemala*, 2019, paras 23 and 24.

⁶ "Criminal investigations against defenders are often based on negative assumptions about what it means to be a community or Indigenous leader and misguided preconceptions about demonstrations that automatically equate leadership with responsibility for any criminal act that occurs during the protest." Amnesty International, *"We are defending the land with our blood": Defenders of the land, territory and environment in Honduras and Guatemala*, 2016, Conclusions, p. 62.

⁷ For example, the IACHR recommended that states: "Promote appropriate legal actions - with a view to the annulment and revocation of those sentences - in cases where there are human rights defenders with guilty verdicts and it has been verified that they are resolutions punishing those involved for legitimate activities in defense of the rights" and "If appropriate, initiate disciplinary, administrative or criminal proceedings against justice operators who have broken the law by investigating, issuing interim measures, or wrongly condemning human rights defenders." IACHR, *Report on the Criminalization of Human Rights Defenders*, 2015, Recommendations 40 and 42 to prevent criminalization.



1. That procedures be initiated to review whether officials in the Public Prosecutor's Office have acted in accordance with the criminal law and the internal regulations of the Public Prosecutor's Office in this case;
2. That a review be carried out of the investigation in light of the international human rights standards and documents set out in this letter;
3. Finally, in order to provide greater protection to those who defend human rights in the country and avoid further situations like this, we request that the Public Prosecutor's Office adopt an internal protocol to address the criminalization of human rights defenders.

We thank you for your consideration and remain at your disposal to answer any questions you may have.

Sincerely,

Erika Guevara Rosas
Americas Director