



AMERICAN **BAR** ASSOCIATION

Center for Human Rights

Trial Monitoring of Guatemala v. Abelino Chub

(Guatemala 2019)

August 2019

A stylized illustration in shades of brown and tan. It depicts a hand holding a book, with a plant growing from the top of the book. Below the book, there are three strands of barbed wire. The background is a solid tan color.

TRIALWATCH FAIRNESS REPORT
A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

ABOUT THE AUTHOR: AMERICAN BAR ASSOCIATION CENTER FOR HUMAN RIGHTS¹

With more than 400,000 members, the **American Bar Association** (ABA) is one of the largest voluntary professional membership organizations in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. The **ABA Center for Human Rights** has monitored trials and provided pro bono assistance to at-risk human rights defenders in over 60 countries.

ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

TrialWatch is an initiative of the **Clooney Foundation for Justice** focused on monitoring and responding to trials around the world that pose a high risk of human rights violations. TrialWatch is global in scope and focused on trials targeting journalists, LGBTQ persons, women and girls, religious minorities, and human rights defenders. It works to expose injustice and rally support to secure justice for defendants whose rights have been violated.

¹ The views expressed in this analysis by the American Bar Association's Center for Human Rights have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and therefore should not be construed as representing the policy of the American Bar Association as a whole. Furthermore, nothing in this report should be considered legal advice for specific cases.

EXECUTIVE SUMMARY



ABA Center for Human Rights staff who are members of the TrialWatch Experts Panel assigned this trial a grade of F:

The trial of Mr. Chub entailed a gross violation of international standards that caused significant harm: namely, Mr. Chub's prolonged and arbitrary pretrial detention, which lasted over two years. The grading methodology can be found in the Annex.

In late April 2019, the American Bar Association (ABA) Center for Human Rights² monitored criminal proceedings in Guatemala against indigenous land rights advocate Abelino Chub as part of the Clooney Foundation for Justice's TrialWatch initiative.³ Mr. Chub was charged with burning down trees and fields on a plantation operated by Cobra Investments, a banana and palm company located in the Izabal region of Guatemala. Cobra is a partner company of CXI S.A., which joined the proceedings as a private complainant.⁴ While Mr. Chub was ultimately acquitted and the trial itself was largely compliant with fair trial standards, Mr. Chub's unjustified pretrial detention constituted a gross violation of human rights and there are indicia that his prosecution was motivated by improper considerations.⁵

Mr. Chub languished in prison for over two years prior to trial despite a complete lack of justification for this delay, in contravention of the guarantees established by the International Covenant on Civil and Political Rights and the American Convention on Human Rights. Meanwhile, Mr. Chub was denied his right to judicial review of detention,

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³ The Center would like to thank the Clooney Foundation for Justice for providing funding for the monitoring of Mr. Chub's case and the production of the report. The Center is also grateful to all those who provided valuable information about the trial and helped with the observation mission.

⁴ Pursuant to Guatemala's Criminal Procedure Code, private parties may join in the prosecution of a criminal case as querellante adhesivos, or joint complainants. At trial, the monitor noted that defense counsel referred to CXI S.A. and its partner company Cobra interchangeably. Public reports have listed Cobra as a second complainant. However, the indictment only refers to CXI S.A. and at trial the prosecutor only mentioned CXI S.A.

⁵ Apart from the indictment, the Center did not have access to the case file. As such, all findings that follow are based on the indictment, the monitor's notes, public reports, and communications with defense counsel.

again violating standards established by relevant instruments. As such, his detention can be categorized as prolonged arbitrary detention, a gross human rights violation.

Troublingly, it appears that Mr. Chub's prosecution was based on improper motives; specifically, the goal of obstructing Mr. Chub's advocacy regarding land rights. Immediately before his arrest, Mr. Chub was working on behalf of indigenous communities in Izabal to facilitate dialogue with state and private actors and assist in the reacquisition of land, some of which was claimed by CXI S.A (as mentioned above, the private complainant in the case).

Standards set by the European Court of Human Rights – which the Inter-American system regularly relies on in interpreting the American Convention – establish that the timing of arrest, the political climate, a lack of justification for state action, and the selective targeting of an individual are all indicia of abuse of process. In the present case, Mr. Chub's arrest transpired in concurrence with his representation of indigenous communities fighting for their right to lands in CXI S.A.'s possession; there was a startling dearth of evidence supporting either Mr. Chub's detention or prosecution; and Mr. Chub was singled out for prosecution amongst a group of 40 individuals who allegedly participated in the burning of Cobra's trees and fields. As such, the case raises concerns that Mr. Chub was charged not because of reasonable suspicion that he had committed a crime but to prevent his advocacy on behalf of his community.

BACKGROUND INFORMATION



A. POLITICAL AND LEGAL CONTEXT

Suppression of Human Rights Advocacy

Various organizations and institutions have mapped the repression of human rights defenders in Guatemala. The Office of the High Commissioner of Human Rights, for example, has noted the “shrinking of civic space, particularly for human rights defenders” as well as “a sharp escalation of violence against human rights defenders [and] the misuse of criminal law within the justice system to hinder the[ir] work ...”⁶ The 2017 State Department Country Human Rights Report on Guatemala – which recounts the arrest of Mr. Chub – supports these claims, citing reports that the government and private entities use various tactics to intimidate human rights defenders.⁷ In 2018, a group of UN experts issued an urgent statement raising alarm about the increasing persecution of human rights defenders in Guatemala and the lack of response from/facilitation of said persecution by government entities.⁸

Judicial harassment is markedly prevalent. The Guatemalan Human Rights Defenders Protection Unit (UDEFEQUA) – a non-governmental organization – recorded 391 attacks on human rights defenders in 2018, of which many were instances of judicial harassment (prosecution, arbitrary and illegal detention, etc.).⁹ The Inter-American Commission on Human Rights (IACHR) has likewise documented the criminalization of human rights defenders throughout Latin America, finding that defenders are often subjected to judicial harassment by state bodies as well as by private parties.¹⁰ The Commission has stressed the dire nature of the situation in Guatemala, where “authorities or third parties [have] manipulate[d] the punitive power of the state and its organs of justice in order to harass human rights defenders” and where “human rights defenders [are] subjected to criminal

⁶ Office of the High Commissioner for Human Rights, “Activities of the United Nations High Commissioner for Human Rights in Guatemala”, January 28, 2019, pg. 8. Available at <https://reliefweb.int/sites/reliefweb.int/files/resources/G1901991.pdf>.

⁷ Bureau of Democracy, Human Rights and Labor, “Guatemala 2017 Human Rights Report”, 2018, pg. 15. Available at <https://www.state.gov/wp-content/uploads/2019/01/Guatemala.pdf>.

⁸ Office of the High Commissioner for Human Rights, “Guatemala: El incremento de ataques contra defensores de los derechos humanos es profundamente preocupante – dicen expertos de la ONU”, August 29, 2018. Available at <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=23435&LangID=S>.

⁹ PBI Guatemala, “Situation of Human Rights Defenders”. Available at <https://pbi-guatemala.org/en/about-pbi-guatemala/guatemalan-human-rights-context/situation-human-rights-defenders>.

¹⁰ IACHR, “Criminalization of Human Rights Defenders”, December 31, 2015, para. 55. Available at <https://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf>.

proceedings for unnecessarily summary or protracted periods of time and ... arrest warrants [are used] as mechanisms of punishment and retaliation”.¹¹

According to UDEFEGUA, this pattern of criminalization “has increased with no effective actions taken by the courts or the public prosecutor’s office to prevent or stop it.”¹² Judicial harassment is facilitated by the fact that criminal charges are often defined in a broad or ambiguous manner, leaving doubt as to the elements necessary to prove disputed acts.¹³ Prolonged pretrial detention based on such charges is a significant problem, with various actors utilizing detention to stifle human rights advocacy.¹⁴ In these situations, the trial is not necessarily of consequence: pretrial detention is the goal in itself. In UDEFEGUA’s words: “judges have only taken actions that prolong the proceedings, order[ing] pre-trial detention – even when the charges do not warrant this – and extending the time the human rights defender spends in jail.”¹⁵

Land Ownership Disputes and Judicial Harassment

The harassment of human rights defenders has been particularly ubiquitous in disputes between business enterprises and indigenous communities over land ownership and the environmental impact of business operations.¹⁶

As documented in *The Guardian*, “Guatemala is one of the world’s least equal and most violent countries, with the largest 2.5% of farms occupying more than 65% of the land.”¹⁷ The longstanding concentration of land and power in the hands of a few was a major driver of the armed conflict that consumed the country for three decades.¹⁸ The state’s failure to implement land reforms outlined in the peace accords has created ongoing discord.¹⁹

¹¹ See IACHR, “Report on Follow-up of Recommendations Issued by the IACHR in Its Report on the Human Rights Situation in Guatemala”, 2018, pgs. 649, 654. Available at <http://www.oas.org/en/iachr/docs/annual/2018/docs/IA2018cap.5GU-en.pdf>.

¹² PBI Guatemala, “Situation of Human Rights Defenders”.

¹³ See IACHR, “Second Report on the Situation of Human Rights Defenders in the Americas”, December 31, 2011, para. 94. Available at <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

¹⁴ See PBI Guatemala, “Situation of Human Rights Defenders”; IACHR, “Report on Follow-up of Recommendations Issued by the IACHR in Its Report on the Human Rights Situation in Guatemala”, 2018, pgs. 644-45, 654-56.

¹⁵ PBI Guatemala, “Situation of Human Rights Defenders”.

¹⁶ See PBI Guatemala, “Situation of Human Rights Defenders”; Office of the High Commissioner for Human Rights, “Guatemala: El incremento de ataques contra defensores de los derechos humanos es profundamente preocupante – dicen expertos de la ONU”, August 29, 2018.

¹⁷ *The Guardian*, “How Guatemala is Sliding into Chaos in the Fight for Land and Water”, August 19, 2018. Available at <https://www.theguardian.com/world/2018/aug/19/guatemala-fight-for-land-water-defenders-lmining-logging- eviction>.

¹⁸ International Legal Assistance Consortium, “Rule of Law Assessment Report: Guatemala”, 2018, pg. 15. Available at <http://www.ilacnet.org/wp-content/uploads/2018/05/Guatemala-Rule-of-Law-Assessment.pdf>.

¹⁹ *Id.* at pg. 83.

During a recent visit to Guatemala, the IACHR documented numerous evictions of indigenous communities at the behest of legal and illegal ventures.²⁰ According to the UN Special Rapporteur on the Rights of Indigenous Peoples, “[a]mong the most serious consequences of the failure to protect indigenous territorial rights are the forced evictions of indigenous communities”.²¹ Following a 2018 mission, the Special Rapporteur reported that private companies were repeatedly forcing indigenous populations to move without giving them “the opportunity to prove their rights over occupied lands.”²² In the Polochic Valley in Izabal – where Mr. Chub previously lived and conducted human rights advocacy – indigenous Q’eqchi communities have objected to perceived land-grabbing by business enterprises.²³

As noted by the IACHR and OHCHR, frivolous criminal cases against land rights advocates are common.²⁴ “Usurpation”, one of the aforementioned broadly worded criminal offenses, is a frequent charge.²⁵ The crime punishes the “unlawful occupation of land, with any purpose” and there is no specification as to the requisite degree of intent.²⁶ The vagueness of usurpation enables the authorities and private parties to prosecute indigenous peoples defending lands that are the subject of legitimate dispute.²⁷ Like Mr. Chub, other prominent land rights defenders have been detained for prolonged periods in connection with their advocacy on behalf of indigenous communities.²⁸ With specific regard to the Izabal Department, where Mr. Chub’s community is located, the

²⁰ IACHR, “Situation of Human Rights in Guatemala”, 2017, pgs. 11-12, 112-122. Available at <http://www.oas.org/en/iachr/reports/pdfs/Guatemala2017-en.pdf>.

²¹ UN Special Rapporteur on the Rights of Indigenous Peoples, “Report on Visit to Guatemala”, U.N. Doc. A/HRC/39/17/Add.3, August 10, 2018, pg. 9. Available at

<http://unsr.vtaulicorpuz.org/site/images/docs/country/2018-guatemala-a-hrc-39-17-add3-en.pdf>.

²² *Id.* at pgs. 9-10.

²³ See Oxfam, “The Fight for Land Rights in Guatemala Goes On”, 2013. Available at <https://blogs.oxfam.org/en/blogs/13-03-04-fight-for-land-rights-polochic-guatemala>; The Guardian, “Guatemala Farmers Losing Their Land to Europe’s Demand for Biofuels”, 2012. Available at <https://www.theguardian.com/global-development/2012/jul/05/guatemala-land-europe-demand-biofuels>.

²⁴ See IACHR, “Situation of Human Rights in Guatemala”, 2017, pgs. 81, 90-96; IACHR, “Report on Follow-up of Recommendations Issued by the IACHR in Its Report on the Human Rights Situation in Guatemala”, 2018, pg. 642; IACHR, “Second Report on the Situation of Human Rights Defenders in the Americas”, December 31, 2011, para. 94; Office of the High Commissioner for Human Rights, “Activities of the United Nations High Commissioner for Human Rights in Guatemala”, January 28, 2019, pgs. 8-9; PBI Guatemala, “Situation of Human Rights Defenders”.

²⁵ See IACHR, “Situation of Human Rights in Guatemala”, 2017, pg. 93.

²⁶ See IACHR, “Second Report on the Situation of Human Rights Defenders in the Americas”, December 31, 2011, para. 94.

²⁷ *Id.*; International Legal Assistance Consortium, “Rule of Law Assessment Report: Guatemala”, 2018, pg. 83.

²⁸ See Office of the High Commissioner for Human Rights, “Activities of the United Nations High Commissioner for Human Rights in Guatemala”, January 28, 2019, pgs. 8-9; OHCHR, “Guatemala: UN experts concerned indigenous leader convicted in retaliation for opposition to Oxec hydro project”, December 19, 2018. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24031&LangID=E>; Front Line Defenders, “Juan Eduardo Caal Suram”. Available at <https://www.frontlinedefenders.org/en/case/juan-eduardo-caal-suram-arbitrarily-detained>; NACLA, “Guatemala’s New Civil Conflict: The Case of Ramiro Choc”. Available at <https://nacla.org/news/guatemala%E2%80%99s-new-civil-conflict-case-ramiro-choc>.

International Legal Assistance Consortium (ILAC) has reported on the judicial harassment of human rights defenders seeking to protect their land rights.²⁹

The detention and prosecution of Mr. Chub thus mirrors broader patterns of state harassment of indigenous land rights defenders, giving rise to concern that the case might be aimed at shutting down Mr. Chub's defense of indigenous communities' right to access and protect their land.³⁰

Lack of Judicial Independence

With respect to the courtroom, members of international organizations, civil society organizations, and public institutions have raised concerns that the Guatemalan judicial system is "coopted by corrupt structures of power that have historically never been dismantled".³¹ The former UN Special Rapporteur on the Independence of Judges and Lawyers, for example, has highlighted the peddling of political influence in the judicial selection process.³² The ABA Center for Human Rights observed proceedings to select high court judges in 2014 and found that they were marred by significant irregularities.³³

Moreover, according to the Office of the High Commissioner for Human Rights in Guatemala, private parties have reportedly exploited the prosecutor's office and courts, pushing forward criminal cases unsupported by the evidence, including against human rights defenders.³⁴ The aforementioned weakness of judicial institutions makes them

²⁹ International Legal Assistance Consortium, "Rule of Law Assessment Report: Guatemala", 2018, pgs. 81-83. The ABA is a member of the consortium.

³⁰ See Act!onaid, "For Indigenous Leaders in Guatemala, Defending Their Land Can Mean Jail Time", May 7, 2018. Available at <https://www.actionaidusa.org/blog/indigenous-leaders-guatemala/>; Trocaire, "Human Rights Activist Falsely Imprisoned in Guatemala", June 17, 2018. Available at <https://www.trocaire.org/news/human-rights-activist-falsely-imprisoned-guatemala>; Front Line Defenders, "Authorities Detain and Criminalise Indigenous and Land Rights Defender Abelino Chub Caal", February 7, 2019. Available at <https://www.frontlinedefenders.org/en/case/authorities-detain-and-criminalise-indigenous-and-land-rights-defender-abelino-chub-caal>.

³¹ International Legal Assistance Consortium, "Rule of Law Assessment Report: Guatemala", 2018, pgs. 44-45. See also Amnesty International, "Justice Under Pressure", November 7, 2018. Available at <https://www.amnesty.org/en/latest/news/2018/11/guatemala-justice-under-pressure/>; Human Rights Watch, "Running Out the Clock", 2017. Available at https://www.hrw.org/sites/default/files/report_pdf/guatemala1117_web_4.pdf.

³² Leandro Despuy, "Report of the Special Rapporteur on the Independence of Judges and Lawyers", U.N. Doc. A/HRC/11/41/Add.3, 2009, paras. 39-43. Available at <https://undocs.org/A/HRC/11/41/Add.3>.

³³ ABA Center for Human Rights, "Selection of Judges in Guatemala", September 9, 2014. Available at https://www.americanbar.org/content/dam/aba/administrative/human_rights/aba_chr_informe_sobre_evaluacion_final.pdf.

³⁴ See Office of the High Commissioner of Human Rights in Guatemala and Procurador de los Derechos Humanos, "Situación de las personas defensoras de derechos humanos en Guatemala: Entre el compromiso y la adversidad", 2019, paras. 32-33. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/Informe_personas_defensoras.pdf; Georgetown University Law Centre and Open Society Foundations, "Transforming Justice in Guatemala: Strategies and Challenges Investigating Violent Deaths 2011-2014", pgs. 43, 49-53. Available at https://giwps.georgetown.edu/wp-content/uploads/2017/08/Transforming-Justice-in-Guatemala_English.pdf.

vulnerable to such penetration.³⁵ These allegations have been corroborated by the UN Special Rapporteur on the Situation of Human Rights Defenders and the IACHR.³⁶

B. CASE HISTORY

Abelino Chub Caal is an indigenous Q'eqchi leader and human rights defender who advocates for indigenous land rights in Guatemala. Specifically, Mr. Chub has frequently acted as a mediator between the government and indigenous communities fighting for their land rights in the turbulent Polochic Valley.³⁷ Mr. Chub has also assisted with cases before the IACHR.

In early February 2017, Mr. Chub was arrested and detained on suspicion of the offenses of aggravated usurpation, arson, coercion, illicit association, and membership in illicit armed groups.³⁸ The criminal case stemmed from Mr. Chub's alleged involvement in an August 2016 protest. As argued by the prosecution, Mr. Chub incited a group of workers to burn down trees and fields on a palm plantation operated by Cobra Investments, a banana and palm company.³⁹ Charges were subsequently compiled based on a complaint filed by Cobra Investments.⁴⁰ CXI S.A., a partner company of Cobra, served as a private complainant in the case.

At the initial pretrial hearing, a court in Carchá, Alta Verapaz upheld Mr. Chub's detention.⁴¹ According to the defense, during a subsequent hearing held before the Puerto Barrios First Instance Criminal Court on February 13, 2017, counsel argued that the prosecution had mistakenly connected Mr. Chub to violence on Murcielago farm, which neighbors the Cobra plantation and is run by CXI S.A, rather than Cobra Investments.⁴² The court reportedly agreed and dismissed the charges of coercion, illicit association, and membership in illicit armed groups, retaining only the charges of arson and usurpation.⁴³ The Puerto Barrios court also reviewed Mr. Chub's detention and ruled that he should

³⁵ See Georgetown University Law Centre and Open Society Foundations, "Transforming Justice in Guatemala: Strategies and Challenges Investigating Violent Deaths 2011-2014", pgs. 47, 52; International Legal Assistance Consortium, "Rule of Law Assessment Report: Guatemala", 2018, pgs. 26, 44.

³⁶ IACHR, "Criminalization of Human Rights Defenders", December 31, 2015, paras. 69-71 (citing *inter alia* to a report prepared jointly by the RFK Center for Human Rights and the ABA Center for Human Rights, which examined case files in a number of frivolous claims against land rights defenders).

³⁷ Trocaire, "Human Rights Activist Falsely Imprisoned in Guatemala", June 17, 2018.

³⁸ Business & Human Rights Resource Center, "Abelino Chub Caal (Fundación Guillermo Toriello)", June 2, 2017. Available at <https://www.business-humanrights.org/en/Abelino%20Chuub%20Caal>; Act!onaid, "For Indigenous Leaders in Guatemala, Defending Their Land Can Mean Jail Time", May 7, 2018; Bureau of Democracy, Human Rights and Labor, "Guatemala 2017 Human Rights Report", 2018.

³⁹ Monitor's Notes.

⁴⁰ See Act!onaid, "For Indigenous Leaders in Guatemala, Defending Their Land Can Mean Jail Time", May 7, 2018.

⁴¹ See Front Line Defenders, "Authorities Detain and Criminalise Indigenous and Land Rights Defender Abelino Chub Caal".

⁴² Defense Counsel, "Abelino Chub Case Report", January 20, 2018 (on file).

⁴³ Id. See also Front Line Defenders, "Authorities Detain and Criminalise Indigenous and Land Rights Defender Abelino Chub Caal".

remain in custody, giving the prosecution three months to bring an indictment.⁴⁴ On June 13, 2017, the office of the municipal prosecutor of Morales, Guatemala submitted the first official indictment, charging Mr. Chub with arson and aggravated usurpation.

During a July 3 hearing⁴⁵ before the Puerto Barrios Court to review the indictment, the prosecution requested provisional closure of the case to carry out further investigations.⁴⁶ Defense counsel argued that there was insufficient evidence connecting Mr. Chub with the alleged crimes and that the case should be dismissed or, at the very least, provisionally closed.⁴⁷ CXI S.A., however, intervened to oppose the defense petition.⁴⁸ The court sided with CXI S.A., rejecting the defense motion with respect to the termination of charges, upholding Mr. Chub's detention, and ordering that the case go ahead.⁴⁹ At this point, the state requested that the case be transferred to the High Risk Court in Guatemala City, a special court established to adjudicate cases concerning organized crime.⁵⁰

CXI S.A. appealed the February 13, 2017 decision dropping the charges of coercion, illicit association, and membership in illicit armed groups.⁵¹ The Izabal appellate court ruled partially in CXI S.A.'s favor. Accordingly, the new indictment submitted to the High Risk Court on February 28, 2018 added the charge of illicit association to aggravated usurpation and arson. On May 8, 2018, the High Risk Court held an initial hearing on the case against Mr. Chub, upholding his detention.⁵²

The trial began on April 22, 2019 before High Risk Court A in Guatemala City. By this time, Mr. Chub had been in detention for over two years, first in Puerto Barrios prison in Izabal and later in Guatemala City's Zone 18 prison. On April 26, 2019, Mr. Chub was acquitted.

⁴⁴ Defense Counsel, "Abelino Chub Case Report", January 20, 2018 (on file).

⁴⁵ According to the defense, the second hearing on detention before the Puerto Barrios court took place on July 3, 2017. Front Line Defenders has stated that the hearing date was June 5, 2017.

⁴⁶ Defense Counsel, "Abelino Chub Case Report", January 20, 2018 (on file). See also Front Line Defenders, "Authorities Detain and Criminalise Indigenous and Land Rights Defender Abelino Chub Caal"; Bureau of Democracy, Human Rights and Labor, "Guatemala 2017 Human Rights Report", 2018, pg. 15.

⁴⁷ Defense Counsel, "Abelino Chub Case Report", January 20, 2018 (on file).

⁴⁸ Id.

⁴⁹ Id. See also Front Line Defenders, "Authorities Detain and Criminalise Indigenous and Land Rights Defender Abelino Chub Caal".

⁵⁰ Defense Counsel, "Abelino Chub Case Report", January 20, 2018 (on file).

⁵¹ Id.

⁵² See Front Line Defenders, "Authorities Detain and Criminalise Indigenous and Land Rights Defender Abelino Chub Caal".

METHODOLOGY



A. THE MONITORING PHASE

As part of the Clooney Foundation for Justice's TrialWatch initiative, the ABA Center for Human Rights deployed a monitor from the region to the trial before High Risk Court A in Guatemala City. The monitor was fluent in Spanish and able to understand the proceedings. Prior to the trial, the Center conducted background research and consulted with country experts.

In advance of the proceedings, the Center notified the court of the observation. The monitor did not experience any impediments in entering the courtroom and was present for the entirety of the trial, which lasted from April 22 to April 26, 2019.

The monitor used the TrialWatch App to record and track what transpired in court and the degree to which the defendant's fair trial rights were respected. The monitor's TrialWatch App responses and notes were shared with CHR staff, the members of the TrialWatch Experts Panel responsible for evaluating the fairness of the trial.

B. THE ASSESSMENT PHASE

To evaluate the trial's fairness and arrive at a grade, CHR experts reviewed responses to the standardized questionnaire (collected via the CFJ TrialWatch App) as well as notes taken during the proceedings. CHR experts found that although Mr. Chub was ultimately acquitted due to the lack of sufficient evidence, severe pretrial abuses occurred, including the unreasonable length of Mr. Chub's detention and the denial of Mr. Chub's right to judicial review of said measure. As such, Mr. Chub's detention was arbitrary and – stretching over two years – prolonged, rendering it a gross violation of human rights. Meanwhile, CHR experts identified several indicia that Mr. Chub's prosecution was motivated by improper considerations: namely, the goal of impeding Mr. Chub's advocacy on behalf of indigenous communities fighting for their land rights.



A. APPLICABLE LAW

This report draws upon the International Covenant on Civil and Political Rights (ICCPR);⁵³ jurisprudence from the United Nations Human Rights Committee (HRC), tasked with monitoring implementation of the ICCPR; the American Convention on Human Rights;⁵⁴ jurisprudence from the Inter-American Court of Human Rights (I/A Ct. H.R.), tasked with interpreting and enforcing the American Convention; reports and jurisprudence from the Inter-American Commission on Human Rights (IACHR), which monitors the human rights situation in the Americas, including compliance with the American Convention; and jurisprudence from the European Court of Human Rights (ECtHR), which Inter-American bodies have deemed relevant for interpreting the American Convention.⁵⁵ Guatemala acceded to the ICCPR in 1992 and the American Convention in 1978. Lastly, the report draws upon relevant provisions in the Guatemalan criminal and criminal procedure codes.

B. INVESTIGATION AND PRETRIAL STAGE VIOLATIONS

In the investigation and pretrial stage of the case against Mr. Chub, violations were committed that compromised the fairness of the proceedings.

Unlawful Detention and Violation of the Presumption of Innocence

Mr. Chub's two-year pretrial detention was unlawful under both the ICCPR and American Convention. Article 9(3) of the ICCPR states that "anyone arrested or detained on a criminal charge ... shall be entitled to trial within a reasonable time or to release." The HRC has interpreted this provision to mean that individuals held in detention prior to trial must be tried as quickly as possible.⁵⁶ The calculus as to what constitutes a "reasonable time" between arrest and the start of trial entails consideration of factors such as the "complexity of the case, the conduct of the accused during the proceeding and the manner in which the matter was dealt with by the executive and judicial authorities."⁵⁷ In *Sextus v. Trinidad and Tobago*, for example, the HRC found a violation of Article 9(3) where the accused had been detained for 22 months before trial despite the straightforward nature

⁵³ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171 [hereinafter "ICCPR"].

⁵⁴ American Convention on Human Rights, Nov. 22, 1969, adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica [hereinafter American Convention].

⁵⁵ See I/A Ct. H.R., Case of Yvon Neptune v. Haiti, Merits, Reparations, and Costs, Judgment of May 6, 2008, Series C No. 180, ¶ 107; I/A Ct. H.R., Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 21, 2007, Series C No. 170, ¶ 91.

⁵⁶ Human Rights Committee, "General Comment No. 35", U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 37.

⁵⁷ *Id.*

of the evidence.⁵⁸ Similarly, in *Teesdale v. Trinidad and Tobago*, the Committee found a violation where the accused was detained for 14 months prior to trial, pointing to the comparably short duration of the investigation.⁵⁹ The presumption of innocence can also be breached in such situations due to pretrial detention's functional transformation into a punitive measure.⁶⁰

Article 7(5) of the American Convention mirrors Article 9(3), stating that "any person detained ... shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings." Like the Human Rights Committee, the Inter-American system takes into account case complexity, the behavior of the judicial authorities, and the conduct of the interested party.⁶¹ When individuals are incarcerated "beyond the limits strictly necessary to ensure" the fulfillment of detention objectives, the presumption of innocence may be violated.⁶² As stated by the Inter-American Commission, "the guarantee of presumption of innocence becomes increasingly empty and ultimately a mockery when pretrial imprisonment is prolonged unreasonably, since presumption notwithstanding, the severe penalty of deprivation of liberty which is legally reserved for those who have been convicted, is being visited upon someone who is, until and if convicted by the courts, innocent."⁶³

As demonstrated by the evidence put forth at trial, Mr. Chub's case was not complex and the investigation limited. The prosecution's presentation in court – to be discussed in more detail below – consisted of eyewitness statements and a single report on a flyover of the fields that Mr. Chub supposedly burned. Factors that might complicate a case - such as extensive documentary evidence, co-defendants, or intricate legal arguments - were non-existent. Moreover, looking to the "conduct of the accused", Mr. Chub took no steps that could be construed as causing the delay. Mr. Chub filed only a handful of petitions/appeals, primarily relating to his detention: according to the defense, less than ten before the start of the trial. Nonetheless, Mr. Chub was held in pretrial detention for over two years. Given the simplicity of the case and Mr. Chub's blamelessness with respect to the lag, this amount of time constitutes unreasonable delay, rendering Mr.

⁵⁸ Human Rights Committee, *Sextus v. Trinidad and Tobago*, U.N. Doc. CCPR/C/72/D/818/1998, July 16, 2001, para. 7.2.

⁵⁹ Human Rights Committee, *Teesdale v. Trinidad and Tobago*, U.N. Doc. CCPR/C/74/D/677/1996, April 1, 2002, para. 9.3.

⁶⁰ See Human Rights Committee, *Cagas v. Philippines*, U.N. Doc. CCPR/C/73/D/788/1997, October 23, 2001, para. 7.3.

⁶¹ IACHR, *Case of Jorge A. Gimenez v. Argentina*, Case No. 11.245, March 1, 1996, ¶103; I/A Ct. H.R., *Case of Acosta Calderon v. Ecuador*, Merits, Reparations, and Costs, Judgment of June 24, 2005, Series C No. 129, ¶105; I/A Ct. H.R., *Case of Tibi v. Ecuador*, Merits, Reparations, and Costs, Judgment of September 7, 2004, Series C No. 114, ¶175. The factors considered in determining violations of Article 7(5) and Article 8(1) - right to trial within a reasonable time - are functionally the same.

⁶² I/A Ct. H.R., *Case of Barreto Leiva v. Venezuela*, Merits, Reparations, and Costs, Judgment of November 17, 2009, Series C No. 206, ¶121; I/A Ct. H.R., *Case of Bayarri v. Argentina*, Merits, Reparations, and Costs, Judgment of October 30, 2008, Series C No. 187, ¶ 69.

⁶³ IACHR, *Case of Jorge A. Gimenez v. Argentina*, Case No. 11.245, March 1, 1996, ¶ 80.

Chub's detention unlawful. The length of Mr. Chub's detention correspondingly violates his right to presumption of innocence.

Right to Be Tried Without Undue Delay

The right of detainees to be tried within a reasonable time frame overlaps with the right to be tried without undue delay: Mr. Chub's rights were violated in both instances. Under the ICCPR, Article 9(3) is complemented by Article 14(3)(c), which entitles a defendant to trial without undue delay. As stated by the HRC, "if someone suspected of a crime and detained on the basis of article 9 of the Covenant is charged with an offence but not brought to trial, the prohibitions of unduly delaying trials" as provided for by Article 9(3) and Article 14(3)(c) may be doubly breached.⁶⁴ In *Evans v. Trinidad and Tobago*, for example, the Committee found that where the Accused had been held for two years and three months before trial, the State had "equally" violated Article 9(3) and Article 14(3)(c).⁶⁵

Under the American Convention, Article 7(5) is complemented by Article 8(1), which provides for the right to trial "within a reasonable time." Like the HRC, the Inter-American system considers the same factors in analyzing violations of the two articles, with the distinction that Article 7(5) covers only the period of pretrial detention, whereas Article 8(1) extends from the arrest to the conclusion of the trial.⁶⁶ Moreover, as Article 7(5) specifically concerns the Accused's right to personal liberty, requirements for compliance are more stringent than under Article 8(1).

In Mr. Chub's case, given the simplicity of the evidence and the fact that Mr. Chub was not responsible for delays in the commencement of trial, there was no justification for the two years plus between Mr. Chub's arrest and his acquittal. This unreasonably prolonged period thus contravenes Article 8(1) of the American Convention and Article 14(3)(c) of the ICCPR.

Right to Judicial Review

Mr. Chub's right to judicial review of his two-year pretrial detention was violated. Due to the gravity of deprivation of liberty, Article 9(4) of the ICCPR mandates that a detained individual "be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." This provision not only requires that a defendant be brought before a court soon after being detained, but also necessitates continuous review of the

⁶⁴ Human Rights Committee, "General Comment No. 32", U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 61.

⁶⁵ Human Rights Committee, *Evans v. Trinidad and Tobago*, U.N. Doc. CCPR/C/77/D/908/2000, May 5, 2003, para. 7.3.

⁶⁶ IACHR, *Case of Jorge A. Gimenez v. Argentina*, Case No. 11.245, March 1, 1996, ¶103.

legitimacy of custody, described by the HRC as “periodic” review over the course of the time that a defendant is held in pretrial detention.⁶⁷

Article 7(6) of the American Convention mirrors Article 9(4) in setting forth the state’s obligation to undertake scrupulous review of pretrial detention. Courts are duty bound to engage in such “rigorous[] examin[ation]” on a regular basis so as to ensure that pretrial detention remains necessary.⁶⁸ In *Yvon Neptune v. Haiti*, for example, the Inter-American Court found that the judge’s failure to assess whether the purpose of pretrial detention subsisted violated the right to judicial review.⁶⁹

Judgments from the European Court on Human Rights, which the Inter-American Court regularly references when interpreting provisions of the American Convention, have expanded on the appropriate timeframe for judicial review. The European Court, for example, has deemed one-month lulls between review acceptable, emphasizing the need for “short intervals.”⁷⁰

The time between different courts’ evaluation of Mr. Chub’s detention, however, cannot be described as “short”. Over the course of his two years in prison, Mr. Chub’s detention was reviewed four times:⁷¹ before the Alta Verapaz court shortly after his arrest; before the Puerto Barrios court on February 13, 2017;⁷² before the Puerto Barrios court on July 3, 2017; and finally, before the High Risk Court in Guatemala City on May 8, 2018.⁷³ While the near six month interval between the February 13, 2017 review and the July 3, 2017 review pushes the bounds of the “short intervals” requirement, the 10 plus months between the July 3, 2017 and May 8, 2018 reviews and the subsequent near year between May 8, 2018 and the start of the trial in late April 2019 clearly fail to meet the “periodic” review standard articulated by the HRC and Inter-American system and developed by the ECtHR. As stated by the HRC, “the decision to keep a person in any

⁶⁷ Human Rights Committee, “General Comment No. 35”, U.N. Doc. CCPR/C/GC/35, December 16, 2014, paras. 12, 38. See also Office of the High Commissioner for Human Rights, United Nations Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, December 9, 1998, Principles 11, 32, 39.

⁶⁸ I/A Ct. H.R., Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 21, 2007, Series C No. 170, ¶¶107, 117; IACHR, Case of Jorge, José, and Dante Peirano Basso v. Uruguay, Case No. 12.553, August 6, 2009, ¶104.

⁶⁹ I/A Ct. H.R., Case of Yvon Neptune v. Haiti, Merits, Reparations, and Costs, Judgment of May 6, 2008, Series C No. 180, ¶¶ 108, 110-111.

⁷⁰ Eur. Ct. H.R., Assenov v. Bulgaria, App. No. 24760/94, 1998, ¶162; Eur. Ct. H.R., Bezicheri v. Italy, App. No. 11400/85, 1989, ¶¶10–11, 20–21.

⁷¹ The judicial review dates listed above have been confirmed by defense counsel.

⁷² According to the defense, counsel submitted petitions for review of Mr. Chub’s detention to the Puerto Barrios court in March and April 2017, both of which were denied. The defense then appealed the denial of the petitions to the Izabal appellate court, which ruled against the defense.

⁷³ Front Line Defenders, “Authorities Detain and Criminalise Indigenous and Land Rights Defender Abelino Chub Caal”. As previously mentioned, according to the defense, the second hearing on detention before the Puerto Barrios court took place on July 3, 2017. Front Line Defenders has stated that the hearing date was June 5, 2017. In any event, the difference in dates does not bear on whether the intervals between judicial review were unlawfully lengthy.

form of detention is arbitrary if it is not subject to periodic re-evaluation of the justification for continuing the detention.”⁷⁴

Gross Violation of Human Rights

While there is no bright line definition of what constitutes a gross human rights violation, it is generally agreed that prolonged arbitrary detention falls in this category.⁷⁵ With respect to Mr. Chub, he was held in pretrial detention for over two years despite the simplicity of his case. This period exceeded the limits of reasonableness, rendering the detention unlawfully prolonged. Moreover, Mr. Chub’s right to substantive, periodic judicial review was violated, reflecting the arbitrariness of the decision to keep him in prison. As such, Mr. Chub’s pretrial detention can be considered a gross human rights violation.

C. VIOLATIONS AT TRIAL

Right to Presumption of Innocence

Mr. Chub was confined in a metal cage for the five days of trial, violating his right to the presumption of innocence - guaranteed by both the ICCPR and the American Convention.⁷⁶ Under the ICCPR, the presumption can be breached through conduct suggesting that the accused is guilty. The Human Rights Committee, for example, has stated that “defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.”⁷⁷ If a defendant is caged, the state must present some justification for this confinement.⁷⁸ In the present case, there was no explanation of the necessity of caging Mr. Chub.⁷⁹ Mr. Chub’s presentation to the court in a metal cage thus contravened his right to the presumption of innocence.

⁷⁴ Human Rights Committee, “General Comment No. 35”, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 12.

⁷⁵ See International Commission of Jurists, “The Right to a Remedy and Reparation for Gross Human Rights Violations”, Practitioners Guide No 2, 2019, pg. xii. Available at <https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf>; Geneva Academy, “What amounts to ‘a serious violation of international human rights law’?”, August 2014, pgs. 5, 12-16. Available at https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/Briefing%206%20What%20is%20a%20serious%20violation%20of%20human%20rights%20law_Academy%20Briefing%20No%206.pdf.

⁷⁶ ICCPR, Article 14(2); American Convention, Article 8(2).

⁷⁷ Human Rights Committee, “General Comment No. 32”, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 30.

⁷⁸ See Human Rights Committee, *Selyun v. Belarus*, U.N. Doc. CCPR/C/115/D/2289/2013, December 9, 2015, para. 7.5; Human Rights Committee, *Mikhail Pustovoit v. Ukraine*, U.N. Doc. CCPR/C/110/D/1405/2005, May 12, 2014, para. 9.3.

⁷⁹ Caging defendants is standard practice at High Risk Court A.

D. OTHER FAIRNESS CONCERNS

Abuse of Process

The case against Mr. Chub raises concerns about whether the prosecution was based on improper considerations: in other words, whether the case constituted an abuse of process.

Although the ICCPR proscribes improperly motivated prosecutions,⁸⁰ the HRC has yet to establish clear criteria for assessing such situations. Meanwhile, the American Convention and the European Convention on Human Rights (ECHR) contain specific provisions relating to improper motive. Article 18 of the ECHR states: “The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.” Similarly, under Article 30 of the American Convention, “[t]he restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.” Thus far, the Inter-American Court has almost exclusively analyzed improper state action in the context of other Articles, such as Article 8 on the right to a fair trial⁸¹ and Article 24 on the right to equal protection of the law.⁸² As such, the European Court’s jurisprudence on Article 18 and indicia of improper motive is valuable.

In evaluating whether there has been an abuse of process, the European Court has found circumstantial evidence - including the political climate, the timing of the proceedings, and inadequate justification for state action – to be probative.⁸³ The seemingly selective targeting of a specific individual can also support the inference of improper motive.⁸⁴

The European Court has further held that political motive need not be the sole purpose for the prosecution, but the predominant one: in other words, a prosecution that does

⁸⁰ See ICCPR, Art. 14(1); Human Rights Committee, *Khadzhiyev and Muradova v. Turkmenistan*, U.N. Doc. CCPR/C/122/D/2252/2013, 2018, para. 7.7; Human Rights Committee, *Nasheed v. Maldives*, U.N. Doc. CCPR/C/122/D/2851/2016, 2018, para. 8.7.

⁸¹ I/A Ct. H.R., *Case of Granier et al. (Radio Caracas Television) v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 22 June 2015, Series C No. 293, ¶¶ 184-99; I/A Ct. H.R., *Case of Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, Preliminary Objection, Merits, Reparations and Costs, Judgment of 23 August 2013, Series C No. 266, ¶¶ 173-179; I/A Ct. H.R., *Case of Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 28 August 2013, Series C No. 268, ¶¶ 210-19.

⁸² I/A Ct. H.R., *Case of Norin Catriman et al*, Merits, Reparations, and Costs, Judgment of 29 May 2014, Series C No. 279, ¶¶ 222-230.

⁸³ See Eur. Ct. H.R., *Merabishvili v. Georgia*, App. No. 72508/13, 2017, ¶¶ 312-317, 352; Eur. Ct. H.R., *Selahattin Demirtas v. Turkey (No. 2)*, App. No. 14305/17, 2018, ¶¶ 263-267, 273; Eur. Ct. H.R., *Navalnyy v. Russia*, App. No. 29580/12, 2018, ¶¶ 168-170.

⁸⁴ Eur. Ct. H.R., *Navalnyy v. Russia*, App. No. 29580/12, 2018, ¶¶ 168-170.

possess a legitimate aim can be rendered unlawful due to ulterior motive.⁸⁵ In analyzing cases involving potential political aims, the ECtHR has emphasized that efforts to undermine democracy and the rule of law should be subjected to heightened scrutiny.⁸⁶ Given the guideposts set forth by the ECtHR, there are significant indicia that the prosecution of Mr. Chub stemmed from improper motivations, in violation of international law and consistent with the aforementioned patterns of state harassment of indigenous land rights defenders.

Circumstantial Evidence

Circumstantial evidence of the type deemed probative by the ECtHR suggests that Mr. Chub was prosecuted due to his advocacy on indigenous land rights.

Political Climate and Timing

As discussed throughout this report, indigenous land rights defenders in Guatemala are frequently harassed by both private parties and state actors. Mr. Chub's prosecution falls in line with this pattern, particularly given the circumstances surrounding his arrest. At the time, Mr. Chub was working with the Guillermo Toriello Foundation, which had tasked him with representing indigenous communities in dialogue regarding land rights as well as with assisting such communities in regaining their land: some of the disputed lands were claimed by CXI S.A, the private complainant in the case.

In the latter half of 2016 Mr. Chub participated in mediation talks at Murcielago farm, which neighbors the Cobra plantation and is operated by CXI S.A. As mentioned above, Mr. Chub was initially charged in connection with violence allegedly perpetrated during an eviction at the farm.⁸⁷ The defense successfully argued, however, that Mr. Chub had no role in any violence that occurred.⁸⁸ Thereafter, the prosecution and CXI S.A. directed their focus to Mr. Chub's alleged involvement in the burning of trees and fields on a plantation owned by CXI S.A.'s partner company, Cobra Investments. Given that Mr. Chub had undertaken land rights advocacy in the Cobra/CXI S.A. area of operations soon before his arrest and that he was falsely charged with a crime related to said advocacy, the circumstances surrounding his prosecution for aggravated usurpation on the Cobra plantation are suspect.

Lack of Justification for State Action

The dearth of justification for the case against Mr. Chub was apparent from the outset of the proceedings. As mentioned above, the evidence was so lacking that the prosecution

⁸⁵ Eur. Ct. H.R., *Merabishvili v. Georgia*, App. No. 72508/13, 2017, ¶ 303-305.

⁸⁶ See Eur. Ct. H.R., *Navalnyy v. Russia*, App. No. 29580/12, 2018, ¶ 173-175; Eur. Ct. H.R., *Selahattin Demirtas v. Turkey (No. 2)*, App. No. 14305/17, 2018, ¶ 272.

⁸⁷ Defense Counsel, "Abelino Chub Case Report", January 20, 2018 (on file).

⁸⁸ This finding was not affected by the Izabal appellate court's decision that added the charge of illicit association to the charges against Mr. Chub.

requested that the case be provisionally closed. Notably, CXI S.A., partner to Cobra Investments, intervened to push the case forward.

Meanwhile, the evidence presented at trial was grossly insufficient, further indicating that an extralegal motive might be at play. During the trial in late April 2019, 10 witnesses for the prosecution testified. These witnesses were employees of the aforementioned Murcielago farm, located next to the palm crop plantation owned by Cobra Investments. The workers' statements were rife with inconsistencies. On April 22nd, for example, Aroldo Chic testified that he saw Mr. Chub lead a group in burning down the trees and fields. According to Mr. Chic, Mr. Chub had his face covered and was carrying a machete. Meanwhile, the supervisor at the farm stated that Mr. Chub was holding rocks. Another worker testified that Mr. Chub did not have his face covered. All witnesses said that they were able to identify Mr. Chub amongst a group of 40 individuals despite being approximately 50 meters away from the tumult.

The prosecution's presentation of documentary evidence further demonstrated the flimsiness of the case. As part of the investigation, the prosecution conducted a flight over Cobra lands. At trial, the prosecution introduced pictures of the plantation that were taken during this flight. The aerial mission, however, was conducted in October 2016, two months after the alleged offense took place, and it was unclear how the pictures connected Mr. Chub to the crime. Moreover, the two investigators who participated in the flight - Mr. Edwin Gonzalez and Mr. Erick Robledo - were unable to explain how they had recognized the land from above, what crops they were photographing, and the height at which the photographs were taken. Notably, they testified that they had taken off from an airfield owned by "El Monte", an alleged business partner of CXI S.A, and that the manager of CXI S.A. had provided them with the maps and GPS coordinates of the site where they were meant to take pictures. The inability of the witnesses to link the photographs of the alleged property destruction to the actions of the defendant suggests that there were other motives behind Mr. Chub's prosecution.

The Targeting of Mr. Chub

As mentioned above, selective focus on a particular individual can serve as circumstantial evidence of improper motive. Despite the prosecution's allegations that approximately 40 individuals burned down the trees and fields, no others were prosecuted for the crime. Instead, Mr. Chub, a prominent advocate for indigenous land rights, was singled out for prosecution.

Democratic Values

Lastly, as established by the ECtHR, the prosecution of Mr. Chub should be afforded heightened attention due to the possibility that the improper motive at hand was the suppression of advancement of the rule of law. As discussed throughout this report, Mr. Chub was advocating on behalf of a marginalized community that has historically been

denied equal protection of the law with regard to land rights. Any effort to stymie such activism for the purpose of securing financial profits should have been carefully and promptly scrutinized by the courts.

CONCLUSION AND GRADE



Mr. Chub's trial raises serious concerns about the abuse of pretrial detention, including violations of the right to a trial without undue delay and the presumption of innocence. The seemingly improper predicate for the bringing of the charges is likewise troubling. Despite the generally fair proceedings at trial and Mr. Chub's ultimate acquittal, the damage done by Mr. Chub's prolonged, arbitrary detention cannot be understated. The imposition of such a measure serves to chill advocacy, particularly given the case's demonstration of the apparent power of outside interests in what should be independent, objective investigations and prosecutions.

GRADE:

F



GRADING METHODOLOGY

Experts should assign a grade of A, B, C, D, or F to the trial reflecting their view of whether and the extent to which the trial complied with relevant international human rights law, taking into account, *inter alia*:

- The severity of the violation(s) that occurred;
- Whether the violation(s) affected the outcome of the trial;
- Whether the charges were brought in whole or in part for improper motives, including political motives, economic motives, discrimination, such as on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,”⁸⁹ and retaliation for human rights advocacy (even if the defendant was ultimately acquitted);
- The extent of the harm related to the charges (including but not limited to whether the defendant was unjustly convicted and, if so, the sentence imposed; whether the defendant was kept in unjustified pretrial detention, even if the defendant was ultimately acquitted at trial; whether the defendant was mistreated in connection with the charges or trial; and/or the extent to which the defendant’s reputation was harmed by virtue of the bringing of charges); and
- The compatibility of the law and procedure pursuant to which the defendant was prosecuted with international human rights law.

Grading Levels

- A: A trial that, based on the monitoring, appeared to comply with international standards.
- B: A trial that appeared to generally comply with relevant human rights standards excepting minor violations, and where the violation(s) had no effect on the outcome and did not result in significant harm.
- C: A trial that did not meet international standards, but where the violation(s) had no effect on the outcome and did not result in significant harm.
- D: A trial characterized by one or more violations of international standards that affected the outcome and/or resulted in significant harm.
- F: A trial that entailed a gross violation of international standards that affected the outcome and/or resulted in significant harm.

⁸⁹ ICCPR, Art. 26.