



## **Being a Judge in Guatemala: Interview with Yassmin Barrios**

By Andrea Rodríguez

*Iris Yassmin Barrios Aguilar is the president of the High Risk Court "A", where she has confronted and condemned perpetrators of genocide, narco-trafficking and femicide; dealing with high impact cases from crimes against humanity, violence against women, to forced disappearance and organized crime. This work, together with her team, has led to constant attacks on her by different actors opposed to justice and, on occasions, her life has been in danger. All in all, she is a judge who works every day for the love of justice, as she says, and that each case represents a great responsibility in committing to the need for justice in Guatemala. During the month of January 2022, her court conducted the trial against the five ex-PAC members, accused and convicted of crimes against humanity in the form of sexual violence and domestic slavery against 5 of 36 Achí women who denounced what they experienced in Rabinal, Baja Verapaz, during the war. This sentencing restored hope in justice for many women.*

*Judge Yassmin Barrios was born in Guatemala City. She is a primary school teacher, lawyer, notary public, graduate in legal sciences, master in criminal and constitutional law, doctor of law, and honorary doctor from the government of Norway. She defines justice as giving to each one what is due to him or her, with no discrimination of any kind, and it is this justice that motivates her every day to do her work. In the court she is accompanied by Judge Patricia Isabel Bustamante García and Judge Gervi Leonardo Sical, with whom she has handled important cases such as that of the Ixil genocide, the murder of Monsignor Gerardi, the murder of Myrna Mack, and the sexual slavery of 15 women in Sepur Zarco. In this interview we spoke with the judge to learn about the significance of the Achí women's case, as well as her experiences within a justice system in crisis, and the role of criminal justice in the healing of women.*

### **What does it mean that the court is dedicated to ‘higher risk’?**

Yassmin Barrios: It is of greater risk due to the nature of the crimes, which are the ones that most affect society. It is also of greater risk because there are cases that cannot be heard in the courts of the localities in the interior of the country, for security reasons, threats to judges, prosecutors, witnesses, defense attorneys. So they have had to be transferred to my jurisdiction in order to give them greater security.

### **Speaking of the case of the Achí women and the Sepur Zarco case, why is sexual violence considered a crime against humanity?**

YB: Because the woman's body was used not only as spoils of war, but also to destroy the ethnic group, in this case the Achí ethnic group. It is also important to note that, in this class of crime, arbitrary and violent acts are committed against the non-combatant population. Let us remember that they were women dedicated to their domestic chores and that the husbands were dedicated to agricultural work. They were not participating in any war, but unfortunately they were the object of military assaults and they tried to involve them within that context.

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### ***A judgment awaited for decades***

According to the testimonies of the survivors and witnesses, as well as the expert opinions presented during the trial of the Achí Women Case, the Civil Self-Defense Patrols (PAC) were organized by the army and were part of this armed institution of the State. The patrolmen of Rabinal, Alta Verapaz, in the 1980s, had acted in a systematic and organized manner, first by disappearing or murdering the husbands and relatives of the women, and then raping them and forcing them to cook for them in the military detachment. These facts qualify as crimes against the duties of humanity in their form of sexual violence, and the court also considered that they carried out domestic slavery against the Achí women.

The survivors and plaintiffs in the case are five Achí women, from a group of 36 women, who denounced sexual violence during the war in their community. These 5 women identified 5 perpetrators: Benvenuto Ruiz Aquino, Bernardo Ruiz Aquino, Damián Cuxum Alvarado, Gabriel Cuxum Alvarado, Francisco Cuxum Alvarado. Others had also been identified, but they had already died. The survivors are between 40 and 80 years old.

### **We have all been very surprised how progress was made in the Achí women’s case. Did you think it was important to speed up the process or should these be the ideal times for the trials?**

YB: These must be the ideal times for trials. If you have the opportunity and to hear another process, there are money laundering, drug trafficking, organized crime, extortion, we have cases of various types. But we always try, my colleagues and I, to do it straight. We started and continue as you saw, because I think that's how justice should be, we start a case and we finish it. Then another week comes and we start with another, another type, nature and other people. But this is how it has to be, because it is said that justice must be prompt and served. So we have to walk and take advantage of the time we have. Before, in some cases,

we stayed up working until night, but now, due to the pandemic and everything, it is not feasible. So we are working within the schedule, yes, every day, from Monday to Friday, from dawn to dusk.

**In Guatemala, what do you see as the importance of prosecuting crimes of sexual violence against women during the armed conflict?**

YB: It is important not only because it is a historical event that concerns the Guatemalan people, but also because although the events were perpetrated some three decades ago, the effects are still being felt in Guatemalan society. There has been a breakdown of the social fabric. So today we see that there is also an intense onslaught against women, and sexual violations, and we can find the roots of this also in those periods that are, unfortunately, part of our history. So that leads all of us, within our area of expertise, to try to overcome, to not only restore credibility to the people of Guatemala, but also try to heal those wounds, and to achieve a better harmony between the different elements that make up a society, to be able to live in peace, among other things.

**Do you think criminal justice is part of that healing?**

YB: Yes, it is contributing. To some small extent, but it is contributing to that healing, because the victims are being given the opportunity to explain what happened to them. It is a process of catharsis, but there is also healing in that process when they can publicly tell what happened to them, and with courage, as has happened in the case of these women. It also helps them to heal their own emotional wounds, to know that they are being recognised and that what they say is true, in court. It also serves as an example for other women, so that if at any time they are subjected to rape they can report it.

**What similarities do you find in the trials of sexual violence, violence against women, and femicide that you have presided over?**

YB: The physical and psychological violence exerted against them. There is always violence, whether in the past or in the present, there always is. It manifests itself in two forms, physical and psychological. Also another question that is fundamental: the traumas, the consequences that remain as a result of these violations are traumas that are difficult to overcome and that require therapeutic treatment.

**What expectations do you see for the future of women now that the case of the Achí women has been decided?**

YB: Well, I think that this case will serve as a basis for other cases. I imagine that there will be other similar cases, so that women, little by little, becoming empowered, assuming their rights, assuming their responsibilities and taking the necessary spaces to be able to act.

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***Generating precedence for other countries***

Precedence is a widely used term in the field of law. It means that the rulings issued by a tribunal, or court, can be taken as an example at a legal level through custom. For example, in Guatemala, the courts can take as a basis judgments that have been issued in Mexico,

Colombia or other Latin American countries on the same, or similar, issues. In the same way, the cases that have been tried in Guatemala can be used as a precedence in other countries.

**Has the relevance of judging these crimes of sexual violence and crimes against humanity also generated precedents for other countries?**

YB: Fortunately, yes, they have been taken into account and we appreciate this with great modesty and humility. Our rulings have served other countries that have taken them as an example and also as precedence for their own countries.

**Do you know of any cases, from other countries, where your sentences have been taken into account as an example?**

YB: I have been told that it has been taken into account in Colombia now, when they are in this peace process, especially in the struggle of women so that their cases do not go unpunished. I am not able to say, specifically, what lawsuit, or what process, but I understand that the case of Sepur Zarco has served as a way forward for other women in Latin America to empower themselves.

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***The risks of carrying out justice in Guatemala***

The fact of facing so many types of perpetrators has meant different types of attacks against Judge Yassmin, some against her life. This has also shown what powerful actors, past and present, are willing to do in order not to be sentenced for their actions.

The attacks have also been mixed through with patriarchal visions, as the judge is seen as 'disqualified' for being a woman in the decision-making space. In other cases, the ways to avoid justice have been through using administrative processes, such as recusals, where the accused object to Judge Yassmin Barrios taking their case.

**Have you feared that there will be actions that prevent justice in the cases you handle?**

YB: Well, not at this time.

**Have you identified attempts to obstruct justice in the case of the Achí women?**

YB: No, we didn't identify anything thank God. We worked just as you saw us, directly in the courtroom and no, thank God we didn't have any problems, as far as I know.

**And in other cases have you felt those obstacles?**

YB: At some moments in different situations, yes, there are moments that have been critical, and they have passed into history.

**When there are these intentions, do you identify from whom they come?**

YB: In some cases, for example in the genocide case, it was found out when it was the Constitutional Court, at that time, that ordered the annulment of the sentence, to give you an example. So each case has its own specific situations, its individualities, its context. In the case of some Zetas that we tried, about 10 years ago, in order to pass the sentence they had

to come to take care of us with a tank, because there were threats that they were going to blow up our building, things like that. In the genocide case, perhaps the biggest thing that happened were the constant attacks on me, the constant attack for being a woman, etc., and diverting the case to other aspects, but well, those are things that happen. On the other hand, in the Gerardi case, it was when they threw bombs at my house. So there have been different cases, in some where, unfortunately, they have tried to kill me, but thank God I'm here, but in this case, no.

**There have been recent attempts...**

YB: Not at the moment, thank God.

**Speaking of the attacks you have suffered, and we have witnessed that they have been of all kinds, in the current context, are there actions against you to stop you carrying out your work as a judge?**

YB: Yes, there are cases in which they constantly file challenges, recusals. It is possible that they do not want me to try the case, but they are procedural actions that the law allows. So, simply, when they are not true, I do not accept them and continue.

**Is there any administrative or legal process that you are experiencing, against you, for your role as a judge?**

YB: At the moment, there have been challenges and, a while ago, I voided one where I said that I do not accept the recusal.

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*Justice in Guatemala: a state of crisis*

**A few months ago we saw the removal of the prosecutor, Hilda Pineda, from the prosecution of human rights crimes. Has this affected in any way the cases that the court has handled on the internal armed conflict?**

YB: Honestly, the case only comes to us, but we don't know the interior aspects of the handling of the prosecution. We do not find out about that because it is an independent entity, only the evidence and the debate, we do not get to find out more than what is happening.

**We are also seeing a series of actions, for example the preliminary hearing against Judge Ericka Aifán, what do you think about these situations?**

YB: That judicial independence must be respected, that judicial processes must be respected. I have always publicly expressed my support for Dr. Ericka Aifán, she is a prominent professional and this type of preliminary hearing should not be used against her, or against any other judge. Judicial independence must be respected.

**How do these actions affect judicial independence?**

YB: We are going through a process of weakening of the justice system, and preliminary hearings should not be used as mechanisms to attack judges. The preliminary hearing has a

different nature, it is for something else, so it should not be used as a tool to attack honest and independent judges.

**How would you describe justice in Guatemala today?**

YB: We are going through a crisis, they are trying to weaken the justice system, but I think we are going to move forward. We have to move forward because justice is an indispensable pillar in every country. It is indispensable for social, political and economic development. Without justice a country cannot walk, so it is an important pillar and it has to be respected.

**In that sense, what gives you hope?**

YB: The work we carry out every day.

**How have you felt that the pandemic has affected the processes here in court?**

YB: To talk about the work that we have done, the truth is that both my colleagues, my work team, and I, have done everything possible to carry forward the debates in the midst of the pandemic. Honestly, it is something we have done in the midst of difficult circumstances, you could see it with this case, but we continue. Sometimes they say to me, 'why don't you allow witnesses to testify from their homes?'. No, I tell them, because I don't know if they are being threatened. So we receive them here, but yes, with all the security measures. Every day everything is cleaned, we use the mask, every so often everything is disinfected, we have the gel. It is an sacrifice that we have made, not only myself, but also my fellow judges and the entire work team. But we have abided by the people of Guatemala, and we have turned up in the midst of these circumstances. We have been working since June 2020, because when the pandemic started in March, we were in debate, but it should be remembered that there was a time when everything closed. When we got back to work it was hard. Aside from debates, we have attended the review of pretrial detentions, people who request the review, so we have also complied with that.

Judge Yassmin Barrios must continue working on the drafting of the sentence in the case of the Achí women. She points to several stacks of papers on a couch and explains that it's all part of the decision. This was delivered to the lawyers on Monday, February 1, and consists of 419 pages. This historic sentence contains all the details of the trial, a process that lasted 20 days, and that made it possible to hear and do justice for sexual violence as a weapon of war against women.

**We know that you are a very busy person, but what do you like to do in your spare time?**

YB: Many things, I like to listen to music, I like to read books other than law ones, beautiful literature, themes of self-improvement, history, poetry. I also like, when I have the opportunity, to go for a walk. Maybe it's little things, going to Antigua, little things like that, spending time with people.

### **What are you currently reading?**

YB: [Laughs] I am currently reviewing each of the statements of each of the experts and witnesses, what you see there (she says pointing to the several piles of paper on the couch) are from the process, but I do have several books pending. There is one that I really like called *El mundo de Sofía* (Sofie's World), which is a book about philosophy. I'm trying to read it again, because I read it a while ago, and it's very nice, very nice. So I'm trying again because sometimes, honestly, I don't have time anymore, and sometimes when I get home I have to do the chores and other things, and rest a bit because the eyes are what wears you out the most.

*The eyes are also the only thing that can be seen on people's faces in this context of a pandemic, and the judge shows a lot of courage and strength with her eyes. At the end of the interview, she says goodbye and is grateful for the possibility of communicating with the population, from her office, where the work does not stop. Without a doubt, this is the work that will go down in history, for the justice that many women have found when their cases reach the hands of Judge Yassmin Barrios.*

*Translated by Kevin O'Dell*

