



# JUDICIAL RESILIENCE

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JUDICIAL INDEPENDENCE  
IN CENTRAL AMERICA  
ASSESSMENT



**CYRUS R. VANCE CENTER**  
FOR INTERNATIONAL JUSTICE

# JUDICIAL RESILIENCE: JUDICIAL INDEPENDENCE IN CENTRAL AMERICA ASSESSMENT

I.	Introduction .....	1
1.1.	Specific Objectives of the Report.....	1
1.2.	The importance of judicial independence for the protection of the rule of law.....	2
1.3.	Regional context.....	2
II.	Executive Summary: Main findings.....	4
III.	Legal and constitutional framework for judicial independence.....	5
3.1.	Basic constitutional and legal protections.....	5
3.2.	International norms and standards on judicial independence.....	6
IV.	Undue interference by other public authorities in the administration of justice.....	7
4.1.	Influence of political groups through the Executive and Legislative Branches.....	8
4.2.	Budget as a form of pressure .....	10
4.3.	Influence of economic groups.....	12
V.	Internal independence .....	13
5.1.	Judicial civil service matters are used inappropriately.....	14
5.2.	The importance of judicial governance .....	16
VI.	Selection and appointment of judges.....	18
6.1.	Selection processes and evaluation criteria .....	18
6.2.	Transparency and meritocracy .....	21
VII.	Accountability and Open Justice .....	22
7.1.	Good practices.....	22
7.2.	Challenges.....	22
VIII.	Conclusions and recommendations.....	23



## I. Introduction

Judicial independence is a fundamental pillar for consolidating the rule of law and democracy in any society. In Central America, where democratic institutions face significant challenges, and the defense of human rights is especially complex, the independence of the judiciary acquires crucial relevance. This regional report aims to examine and analyze the state of judicial independence in Guatemala, El Salvador, Honduras, Costa Rica, Panama, and the Dominican Republic, to identify both strengths and weaknesses in each of these countries, and to offer recommendations for strengthening this guiding principle throughout the region.

This document was produced by the Central American Federation of Judges for Democracy FECAJUD with the support of the Cyrus R. Vance Center for International Justice.

FECAJUD's [Permanent Observatory](#) regularly updates a series of diagnoses on the different aspects affecting the independence of the judiciary in the various countries of the region, and these reports served as the main input for this analytical compilation.

### 1.1. Specific Objectives of the Report

This report aims to:

- Evaluate the degree of judicial independence in each country mentioned above, identifying factors that positively and negatively affect it.
- Compare the legal and regulatory structures that guarantee judicial independence in the region, highlighting good practices and areas for improvement.
- Analyze external influences that may compromise the autonomy of judges and courts, including political, economic, and social pressure.
- Propose concrete recommendations to strengthen judicial independence in each country, contributing to improving the rule of law in the region.



## 1.2. The importance of judicial independence for the protection of the rule of law

Judicial independence guarantees that judges and courts can make decisions based solely on the law and the principles of justice without undue influence from other branches of government or external actors.<sup>1</sup> This principle is essential for:

- Protecting human rights and fundamental freedoms as it ensures all persons have access to a fair and equitable trial with full due process.<sup>2</sup>
- Maintaining a system of checks and balances to prevent abuse of power and corruption, elements that weaken public confidence in institutions.<sup>3</sup>
- Promoting social and political stability, since an independent judiciary acts as an impartial arbiter in conflicts and controversies, reinforces the legitimacy of the democratic system.
- Judicial independence also impacts the economic sphere of business since legal certainty is a relevant aspect for investors and the development of projects.<sup>4</sup>

Therefore, it is possible to conclude that the independence of the judiciary plays an essential role in all the central aspects that characterize the rule of law, a society that respects the constitutional and legal framework, and a system that prevents and avoids abuses of power.

## 1.3. Regional context

A complex history of conflict, democratic transitions, and socioeconomic challenges mark Central America. Since the end of the internal armed conflicts and dictatorships in the 1990s, the various reports of the truth commissions in the Central American region clearly stated that the judicial system should be profoundly renovated to a democratic model. For this reason, Central America

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<sup>1</sup> Jurisprudence Booklets of the Inter-American Court of Human Rights, 37, 2022, Judicial Independence, page 4: <https://biblioteca.corteidh.or.cr/adjunto/38635>

<sup>2</sup> Oscar Parra Vera, "Judicial Independence in the Jurisprudence of the Inter-American Court of Human Rights. Evolution, debates and dialogues," in Alejandro Saiz Arnaiz (Dir.), Joan Solanes Mullor and Jorge Ernesto Roa Roa (coords.), *Diálogos Judiciales en el Sistema Interamericano de Derechos Humanos*. Valencia, Tirant Lo Blanch, 2017, pp. 485-530. See also: Report of the Special Rapporteur on the independence of judges and lawyers, Ms. Gabriela Knaul, submitted in accordance with Human Rights Council resolution 26/7, A/69/294: <https://www.acnur.org/fileadmin/Documentos/BDL/2014/9757.pdf?view=1>.

<sup>3</sup> The Importance of Judicial Independence and Abiding by Judges' Rulings, Speech at the Hemispheric Summit on Justice and Press Freedom in the Americas, Stephen G. Breyer - Associate Justice of the Supreme Court of the United States, 2002.

<sup>4</sup> El nexo entre la independencia judicial, la corrupción y el crecimiento económico, Marcos Buscaglia, *La Nación*, April 21, 2024: <https://www.lanacion.com.ar/economia/el-nexo-entre-la-independencia-judicial-la-corrupcion-y-el-crecimiento-economico-nid21042024/>



promoted a series of changes to recompose the functioning of the state apparatus and strengthen its institutionality.<sup>5</sup>

Due to these demands, Central American countries promoted and materialized reforms to the criminal justice system aimed at making the procedure transparent and redistributing functions. The changes have consisted of foundational reforms that have transformed the normative and institutional structures of the judiciary. The first country to promote them was Guatemala with the enactment of the Criminal Procedure Code in 1992, followed by Costa Rica (1996), Honduras (1999), Nicaragua (2001), Dominican Republic (2002), Panama and El Salvador (2008).

Despite advances in consolidating democracies in some countries, others face setbacks and threats to the independence of their judicial institutions. The region shares common problems, such as corruption, political interference, and institutional weakness, which threaten the independence of the judiciary.

This report offers a comparative analysis of how these factors influence judicial independence in the countries studied, providing a comprehensive perspective that will allow regional and international actors to understand better the challenges and opportunities for strengthening the rule of law in Central America.

In Guatemala, the institutionality and the foundations of the rule of law are at stake due to the profound crisis faced by the judiciary, free journalism, and the defense of human rights. There is a permanent struggle between those who fight to end corrupt structures and their constant impunity and those who want to perpetuate it.<sup>6</sup> On the other hand, in El Salvador, various measures have been adopted by political sectors to neutralize the justice system so that it cannot contain the arbitrary actions of the other public powers.

Costa Rica is currently facing an increase in citizen insecurity due to drug trafficking, along with a worrisome increase in homicides.<sup>7</sup> Faced with this situation, the Costa Rican judiciary is weakened due to a series of legislative measures, judicial governance policies, and disturbing harassment by the executive branch. In Honduras, transfers of judges and other Judicial civil service instruments are used as a tool of pressure, in addition to the existence of a regulatory framework for Judicial Civil services that the Inter-American Court of Human Rights has analyzed critically.

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<sup>5</sup> *Effects of Corruption on the Justice System in the Northern Triangle*, Gloria Porras, 2022, Wilson Center, Latin America Program.

<sup>6</sup> *Thinking about judicial independence in Guatemala*, Leonel González Postigo, 2022, AGJI Blog: <https://agji-gt.org/~agjiqtor/pensar-la-independencia-judicial-en-guatemala/>

<sup>7</sup> As security crisis worsens, Costa Rica struggles, Beatriz Vincent and Sam Woolston, February 20, 2024: <https://insightcrime.org/es/noticias/agrava-crisis-seguridad-costa-rica-lucha/>



In this context, the Dominican Republic and Panama emerge as jurisdictions where judges do not experience the degree of persecution of other neighbor countries and where good practices are adopted to strengthen the independence of the judiciary. However, it is important to understand that although there are no scenarios of criminalization or excessive and undue interventions by other public authorities in these jurisdictions, judicial independence is also affected by measures related to the Judicial Civil service, to budget assignments that determine the capacity to administer justice efficiently and quickly, and to gender and diversity issues.

## **II. Executive Summary: Main findings**

- The constitutional protection of judicial independence is essential for its defense in the domestic legal context, which must be developed into clear and objective legislation on Judicial Civil service matters and the functioning of the judiciary.
- International and regional norms and standards establish mechanisms to guarantee greater independence and integrity of the judiciary.
- The Executive and Legislative branches of the countries analyzed carry out undue interference with varying degrees of impact on the administration of justice. Normally, this occurs when the justice system hinders government agendas or legislative agendas through rulings based on law. This point is particularly acute in Guatemala, where there is evidence of a generalized criminalization strategy against independent judges.
- These public authorities also use budget decisions to exert pressure on judges' decisions. In many cases, the constitutional mandate of budget allocation is not complied with. In others, resources are not available for the modernization of the judiciary, only to cover operating expenses.
- Private actors such as economic and other power groups also exert undue influence and inappropriate interventions in the administration of justice in Central America. Sometimes, this is done through physical and digital attacks, persecution, criminalization, or influence over the judiciary to disrupt efforts against impunity. In Guatemala, these power groups have co-opted multiple public institutions that hinder the defense of judges' rights.
- Within the judiciary, independence is also affected by the mismanagement of aspects of the Judicial Civil service, such as evaluations, transfers, and disciplinary processes, among others. In El Salvador and Honduras, inappropriate use of transfers is made that do not respond to the needs of the service but to arbitrary criteria.
- Judicial governance is essential for deconcentrating powers within the judiciary, alleviating the administrative burden on justice operators, and democratizing processes within the judiciary. Several countries analyzed do not have an independent judicial governance body, and others do not assign sufficient relevant functions.



- International law also contains rules relating to the processes for forming the judiciary to guarantee mechanisms based on merit, integrity, and experience.
- Honduras made some recent and positive changes to its regulations regarding the composition of high courts. Guatemala is going through a crucial moment due to the process being carried out by the Postulation Commissions for the nomination and subsequent selection by the Legislature of magistrates of the Courts of Appeals and the Supreme Court of Justice. This process has been delayed for years due to multiple previous corruption cases that demonstrated this mechanism's weaknesses, generating a serious institutional imbalance.
- Open Justice practices are important to ensure citizen oversight, transparency, and accountability, increasing the judiciary's legitimacy.
- Finally, diversity within the judiciary also affects this legitimacy, the quality of justice, and the degree of independence.

### **III. Legal and constitutional framework for judicial independence**

#### **3.1. Basic constitutional and legal protections**

The constitutions of Costa Rica and Guatemala establish fundamental safeguards to guarantee judicial independence. In Costa Rica, the 1949 Constitution enshrines the independence of the judiciary in Article 154, ensuring that judges are subject only to the Constitution and the law and safeguarding their stability in office, which means that they cannot be arbitrarily removed. In addition, the Costa Rican Constitution grants the Judicial Branch financial and administrative autonomy, strengthening, in theory, its ability to operate without interference from other branches of government.

For its part, the 1985 Constitution of Guatemala, in Article 203, establishes that the jurisdictional function is exercised with absolute independence and that magistrates and judges are irremovable, guaranteeing that their decisions are based exclusively on the law. Likewise, Article 205 prohibits any interference in judicial decisions, reinforcing the principle of independence by ensuring that judges are not subject to external pressure or influence.

In the Dominican Republic, judicial independence is protected at the constitutional level in Article 151, highlighting the criteria of stability that prevents arbitrary removals from office.<sup>8</sup>

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<sup>8</sup> Constitution of the Dominican Republic: Article 151.- *Independence of the Judiciary. The judges of the Judicial Branch are independent, impartial, responsible and irremovable and are subject to the Constitution and the laws. They may not be removed, separated, suspended, transferred or retired, except for any of the established causes and with the guarantees provided by law.*



These constitutions reflect a commitment to the principle of separation of powers, fundamental to the rule of law and the protection of human rights.

These constitutional precepts are regularly developed by legislation on the functioning of the judiciary and Judicial civil service statutes. In the case of Costa Rica, this is the Ley Orgánica del Poder Judicial, and in Guatemala, it is the Ley del Organismo Judicial. The Judicial civil service is usually found in a separate instrument since it contains the rules for internal functioning. For example, in Panama, the Judicial civil service is regulated by the Constitution and Law 53 of 2015, establishing the Judicial civil service Regime. This regime seeks to guarantee the judiciary's independence, stability, and professionalization by regulating the entry, promotion, tenure, and retirement processes of judges and magistrates. The Judicial civil service Council supervises and administers the Judicial civil service, ensuring that appointments and promotions are made based on merit and competence. In addition, periodic performance evaluations and continuous training mechanisms are implemented to strengthen the quality of judicial service.

### **3.2. International norms and standards on judicial independence**

International human rights law systems<sup>9</sup> have established various norms and standards to protect the independence of the judiciary and establish them as necessary conditions for the fulfillment of States' human rights commitments, particularly those related to access to independent justice, the right to due process, and all judicial guarantees and protections.<sup>10</sup>

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*(1) The law shall establish the regime of responsibility and accountability of judges and officials of the Judicial Branch. Service in the Judicial Branch is incompatible with any other public or private function, except teaching. Its members shall not be eligible for any public elective office, nor may they participate in partisan political activity;*

*2) The mandatory retirement age for judges of the Supreme Court of Justice is seventy-five years. For other judges, officials and employees of the Judicial Branch it shall be established in accordance with the law governing the matter.*

<sup>9</sup> Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from 26 August to 6 September 1985, and confirmed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, <https://www.ohchr.org/es/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

<sup>10</sup> Articles 8 and 25 of the American Convention on Human Rights, and Article 14 of the International Covenant on Civil and Political Rights. The Inter-American Commission and Court of Human Rights have established extensive jurisprudence in this regard. The jurisprudence, standards and interpretation are available in the following compilations:

- Inter-American Commission on Human Rights. Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas. December 2013. OEA/Ser.L/V/II. Doc.44
- IACHR Court: Jurisprudence Booklet of the Inter-American Court of Human Rights No. 12: Due Process, Inter-American Court of Human Rights (IACHR Court), 2017.
- IACHR Court: Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No. 13: Protección Judicial, Inter-American Court of Human Rights (Corte IDH), 2018.





The principal norms of international law that reinforce the independence of the judiciary are found in fundamental human rights instruments and specific declarations on judicial independence. The International Covenant on Civil and Political Rights (ICCPR), Article 14, establishes the right to a fair trial and guarantees the independence of the courts as an essential part of this right. In addition, the American Convention on Human Rights (ACHR), in Article 8, protects the right to due process, implying an independent and impartial judiciary is needed. Complementing these treaties, the Basic Principles on the Independence of the Judiciary, adopted by the UN in 1985, provide clear guidelines to ensure that judges can perform their functions without undue pressure, influence, inducements, or threats, thus strengthening the international framework that supports the autonomy of the judiciary. These international instruments establish universal standards and serve as a benchmark for assessing the compliance of national judicial systems with the principles of independence and protection of fundamental rights.

The Inter-American Court of Human Rights (IACHR) has issued several key decisions that strengthen judicial independence in the region, underscoring its importance for protecting human rights and the rule of law. In the case of *Constitutional Tribunal v. Peru* (2001), the IACHR determined that the arbitrary removal of judges violates judicial independence, ordering the reinstatement of unconstitutionally removed judges. Also, in the case of *Apitz Barbera et al. v. Venezuela* (2008), the Court reaffirmed that judges must enjoy guarantees that allow them to perform their duties without fear of reprisals, declaring the removal of judges without due process as a violation of the American Convention on Human Rights. Likewise, in the case of *Camba Campos et al. v. Ecuador* (2013), the IACHR Court addressed the internal independence of judges, establishing that political powers should not interfere in the judicial function and that judicial decisions should be based exclusively on law and not on external pressures. These decisions have not only established binding precedents for member states but have also consolidated a robust jurisprudential framework for the protection of judicial independence throughout Latin America.

#### **IV. Undue interference by other public authorities in the administration of justice.**

The external or institutional dimension of the independence of the judiciary refers to its autonomy from other branches of government and state authorities, as well as to the conditions of the judiciary as a public entity.<sup>11</sup> Under different constitutional schemes, there is regular collaboration between the judiciary and other branches of government, for example, in the appointment of high courts in those jurisdictions where the executive or legislative branches have a stake or in securing

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<sup>11</sup> Inter-American Commission on Human Rights. Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas. December 2013. OEA/Ser.L/V/II. Doc.44, paragraph 26.



the budget for the functioning of the judiciary. Therefore, this external phase refers to undue interference by other branches of government or power groups to prevail over interests other than the impartial administration of justice.<sup>12</sup>

#### **4.1. Influence of political groups through the Executive and Legislative Branches**

Guatemala faces an alarming frontal attack of criminalization directed against judges, judges, and prosecutors by different public institutions and private actors.<sup>13</sup> This phenomenon is manifested through a series of disciplinary processes, administrative complaints, and criminal prosecutions aimed at removing, neutralizing, or attacking those judicial officials committed to the independence of the judiciary and the fight against corruption.<sup>14</sup> The persecuted justice operators belonged to the extinct International Commission against Impunity in Guatemala CICIG, to the Special Prosecutor's Office against Impunity FECL, as well as to high-risk courts that fiercely fought corruption and impunity in cases of serious crimes or crimes against humanity, as in the case of former General Ríos Montt, who died unpunished after the annulment of a trial that found him guilty of genocide.<sup>15</sup>

The report entitled *The Criminalization of Justice Operators in Guatemala - A Strategy to Ensure Impunity* published by the Vance Center in 2022, demonstrates how all justice practitioners who are in exile or prison have in common the work of defending human rights and fighting corruption, how all claimants in those unsubstantiated criminal cases have in common being involved as investigated or accused in criminal proceedings themselves, and how criminal law became the modus operandi to manipulate the administration of justice in the country.

Thus, dozens of judges and prosecutors have been forced to go into exile to protect their lives, their freedom, and their integrity, as well as the rights of their families. This has allowed the co-optation of a large part of the judicial system and is a significant setback in the fight against corruption and impunity, as has been reported by many civil society organizations.<sup>16</sup> The setbacks have been

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<sup>12</sup> Skaar, Elin. *Judicial Independence and human rights in Latin America*, Palgrave Macmillan, New York, 2011, p.21.

<sup>13</sup> Chapter IV.b of the Annual Human Rights Report of the Inter-American Commission on Human Rights, 2022 and 2023. See also: *The criminalization of justice operators in Guatemala - strategy to ensure impunity*, December 2022: <https://www.vancecenter.org/wp-content/uploads/2022/12/La-criminalizacion-de-personas-operadoras-de-justicia-en-Guatemala.pdf>

<sup>14</sup> *The criminalization of justice operators in Guatemala - a strategy to ensure impunity*, Vance Center for International Justice, December 2022: <https://www.vancecenter.org/wp-content/uploads/2022/12/La-criminalizacion-de-personas-operadoras-de-justicia-en-Guatemala.pdf>

<sup>15</sup> FECAJUD, Vance Center Guatemala. 2024. *Diagnosis on the judicial system in Central America and the Caribbean*. Available at: <https://fecajud.org/guatemala/>

<sup>16</sup> *When the Dominoes Fall: Co-optation of the Justice System in Guatemala*, WOLA, 2022: <https://www.wola.org/analysis/when-dominoes-fall-justice-system-guatemala/>



observed since the departure of CICIG and through the weakening of evidence and processes carried out in high-risk courts.

Such an attack strategy compromises the integrity and autonomy of the judicial system and undermines public confidence in legal institutions. The systematic criminalization of key actors represents a serious challenge to the rule of law and governance, generating an environment prone to impunity and the weakening of justice mechanisms. This situation requires urgent attention, especially at the international level, to safeguard judicial independence and respect the fundamental principles of due process and justice.

In Costa Rica, once Mr. Rodrigo Chaves assumed the Presidency of the Republic in May 2022, he generated increasing tension and persecution towards the Judiciary. His administration has undermined judicial independence through attacks on the judiciary and unfounded questioning of the impartiality of the judicial system, especially on occasions when he disagrees with judicial criteria regarding the declaration of illegality of government acts or criminal investigations. In 2024, an injunction issued by a judge suspended an executive decree on import tariffs of rice. The President reacted by questioning judicial independence and suggested that there were political motivations behind the judicial decision.<sup>17</sup> Judicial associations came out in defense of the independence of the judiciary. In addition, Chaves has been repeatedly condemned by the Constitutional Chamber for attacks on the press<sup>18</sup> and faces more than 30 open criminal cases.<sup>19</sup> In this environment of confrontation and distrust, he has negatively affected the stability of the judiciary through weekly press conferences.

In the Dominican Republic, magistrate Ana Lee Florimón of the *Segundo Juzgado de la Instrucción del Distrito Nacional* denounced harassment of her and her family by Public Prosecutor's Office members to exert pressure on the case known as 'Operación Calamar.' This resulted in the Attorney General's intervention, who requested an investigation into the matter.<sup>20</sup>

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<sup>17</sup> Costa Rican judges defend judicial independence after criticism from President Chaves, crc891, April 5, 2024: <https://crc891.com/nacionales/jueces-de-costa-rica-defienden-independencia-judicial-tras-criticas-del-presidente-chaves/>

<sup>18</sup> Press freedom in Costa Rica: a model under attack <https://www.dw.com/es/libertad-de-prensa-en-costa-rica-un-modelo-en-am%C3%A9rica-latina-bajo-ataque-presidencial/a-66400834>

<sup>19</sup>Rodrigo Chaves approaches the halfway point of his term in office with 37 criminal cases for 11 possible crimes <https://semanariouniversidad.com/pais/rodrigo-chaves-se-acerca-a-la-mitad-de-su-mandato-con-37-causas-penales-por-11-posibles-delitos/>

<sup>20</sup> Carlos Lara, Más vale prevenir que lamentar, El Nuevo Diario, March 6, 2024: <https://elnuevodiario.com.do/mas-vale-prevenir-que-lamentar/>



These interferences demonstrate the structural weaknesses of the institutions. The judiciary should not be exposed to the arbitrary actions of public authorities, and for this, the legal frameworks must provide different levels of defense and protection.

## 4.2. Budget as a form of pressure

In several Central American countries, political powers have used control of the budget allocated to the judiciary as a pressure tool, thus compromising its independence. Insufficient allocation of financial resources or withholding and delaying the delivery of approved funds are common tactics governments use to influence the performance of judges and the administration of justice. For example, in Guatemala, there have been cases where Congress has deliberately delayed the judicial budget's approval and distribution, hindering the courts' efficient functioning and limiting their ability to address sensitive cases involving influential political actors.<sup>21</sup>

Similarly, in El Salvador, the Executive has proposed significant cuts to the judiciary's budget, generating tensions and accusations of political interference, especially when the judiciary was investigating corruption cases linked to government officials. These practices weaken the operational capacity of the courts, affecting the efficiency and quality of judicial services. They also condition judicial independence by creating an environment where judges may feel pressured to make decisions aligned with political interests to secure the resources necessary for their functioning. This financial dependence undermines judicial autonomy and jeopardizes the principle of separation of powers, which is essential for maintaining the rule of law in the region.

In Costa Rica, there has been evidence of the impact of the implementation of Law 9635 on Strengthening Public Finances (*Fortalecimiento de finanzas públicas*), which has had significant implications for the functioning of the judiciary and the working conditions of judicial servants through historic and severe budget cuts that have weakened their performance, to the point of operational insufficiency of the new jurisdiction specializing in organized crime, due to staff shortages and the impossibility of appointments.

This legislation, accompanied by other regulations such as Law 10159 Public Employment Framework (*Ley del Empleo Público*), introduced salary structure and working conditions reforms and raised concerns about its impact on the retention of talent within the judiciary.<sup>22</sup> Salary

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<sup>21</sup> OJ and MP would receive less budget than requested for 2023, these programs will be affected, Prensa Libre, 2022: <https://www.prensalibre.com/guatemala/justicia/oj-y-mp-recibirian-menos-presupuesto-de-lo-que-solicitaron-para-2023-estos-programas-se-veran-afectados/>

<sup>22</sup> FECAJUD, Vance Center. 2024. Costa Rica. Diagnosis of the judicial system in Central America and the Caribbean. Available at: <https://fecajud.org/costa-rica/>



increases have been frozen for eight years, and it is expected that this situation will not change in the next 15 years, according to an actuarial projection made by an expert expert.

Due to these regulations, there has been a significant number of resignations among the judicial personnel, with almost 900 registered as such, not counting the impossibility of continuing appointments (which are also a limitation of positions, without statistics). The recent laws have generated an environment that has led to the said sum of officials leaving their positions, exacerbating the crisis in the judicial system and affecting its ability to operate effectively without being able to be replaced and generating a vacuum not only quantitatively but also in terms of experience. What is even more serious is that it has been detected as one of the causes of salary impoverishment and increase in corruption, especially of prosecutors and judicial police, who are part of the Judiciary, involved in drug gangs after their departure.<sup>23</sup>

In the Dominican Republic, Article 3 of Law 194-04 of Independence and Budgetary Autonomy states that the budget of the Judicial Branch and the Public Prosecutor's Office cannot be less than 4.10% of the National Budget and that this amount must be assigned 65% to the Judicial Branch and 35% to the Attorney General's Office. The Council of the Judicial Power, following Article 8 of Law No. 28-11 of the Judicial Power, has the administrative attribution to prepare for the approval of the Executive Power a proposal of the annual budget corresponding to the Judicial Power. However, it has repeatedly failed to comply with the percentage of budget allocation required by law.<sup>24</sup>

Some judiciaries in Latin America operate with very low budgets, in many cases less than 1% of the national budget. Also, it is common for legal systems to contemplate that the judicial budget proposal emanates from the Executive and is subject to approval by the Legislature. International standards indicate that the powers of the other branches of government should not be used as a threat or pressure. This affects the quality of service, hinders citizens' access to justice, and affects the retention of talent in judicial matters.<sup>25</sup> As mentioned, the scarcity of resources increases the risk of corruption in the judiciary, both in its jurisdictional sphere and in administrative tasks.

There is no exact formula for calculating an adequate budget to suit the needs of all jurisdictions. Factors such as the state of development of the legal system, the population size, the number of judges per capita, and the administrative division of the territory serve to formulate a correct budgetary policy. Some international authorities, such as the United Nations Special Rapporteur on

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<sup>23</sup> 132% increase in resignations threatens stability in the Judicial Branch  
<https://semanariouniversidad.com/pais/aumento-del-132-en-renuncias-amenaza-estabilidad-en-poder-judicial/>

<sup>24</sup> General State Budget: <https://gestiontransparentepanama.mef.gob.pa/PresupuestoGeneral>

<sup>25</sup> IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc.66, December 31, 2011, para. 381: <https://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>



the Independence of Judges and Lawyers, recommend norms that guarantee, at a minimum, a fixed percentage of the national budget, gross domestic product, or current income, as in the case of Honduras.<sup>26</sup> However, this formula is also criticized, pointing out that there would be incentives not to exceed this minimum in the future and that the transparency of the consultative processes for constructing the judiciary's budget could be affected. It is also relevant to note that the judiciary's budget should be prioritized even in the context of economic restrictions.<sup>27</sup>

### **4.3. Influence of economic groups**

In Guatemala and El Salvador, the influence of powerful economic groups over the administration of justice has been a recurring concern as these actors seek to protect their interests and maintain their political and economic influence. In Guatemala, economic elites have been accused of using their financial power to influence judicial decisions, especially in cases related to corruption, protection of their businesses, and impunity for human rights violations. For example, in the fight against corruption, it has been documented how certain business groups have pressured judges to stop or divert investigations involving them, using their capacity to finance political campaigns and control over the media to exert indirect pressure on the judiciary.

In addition, organized business chambers have publicly and strongly supported the Attorney General's administration in Guatemala.<sup>28</sup> This despite having been pointed out as an anti-democratic and corrupting actor by foreign governments and international organizations<sup>29</sup>, by selectively persecuting independent judges, as well as prosecutors and other justice operators.<sup>30</sup> Business executives exert influence in the justice system through operators who do not act independently, who respond to the particular interests of these businessmen and organized criminal groups, such as, among others, non-governmental organizations, which under the form, for example, of foundations, are constituted as complainants and plaintiffs for this selective persecution, in collusion with the Public Ministry, and the biased support of judges and magistrates, who respond to these illegitimate interests.

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<sup>26</sup> United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41, 24 March 2009, para. 37.

<sup>27</sup> Beijing Declaration on Principles Relating to the Independence of the Judiciary in the LAWASIA Region.

<sup>28</sup> Government of Guatemala criminally denounces prosecutor Porras, DW, March 1, 2024: "Arévalo won the elections with the promise to fight corruption affecting the country, which set off alarm bells for the political-business elite that controlled Guatemala." <https://www.dw.com/es/gobierno-de-guatemala-denuncia-penalmente-a-la-fiscal-porras/a-68412591>

<sup>29</sup> ORGANIZED CRIME AND CORRUPTION REPORTING PROJECT, María Consuelo Porras: The Corrupt Character of the Year 2023: "Porras has protected a right-wing political elite, who made their fortune through widespread corruption and ties to drug cartels. These influential officials and businessmen have been implicated in large-scale drug trafficking, human trafficking and soliciting bribes from foreign companies." <https://www.occrp.org/es/poy/2023/>

<sup>30</sup> Inter-American Commission on Human Rights, Annual Report 2023, Chapter IV.b Guatemala, paragraph 106. [https://www.oas.org/es/cidh/docs/anual/2023/capitulos/IA2023\\_Cap\\_4B\\_Guatemala\\_SPA.PDF](https://www.oas.org/es/cidh/docs/anual/2023/capitulos/IA2023_Cap_4B_Guatemala_SPA.PDF)



The influence of business sectors on criminal prosecution decisions in Guatemala is evident, and the impact of this on judicial independence is also evident.<sup>31</sup> If judges act independently, they are persecuted and criminalized, even exiled. There are known cases of business people offering money to judges to obtain favorable rulings. There are processes initiated against businessmen, especially those involved in corruption cases (fraud, rigging in the election of courts, and illicit electoral financing, among others), who, through operators, make monetary offers to judges to obtain a resolution in a certain sense, apart from threats, harassment, spurious complaints, both disciplinary and criminal.<sup>32</sup>

In El Salvador, the influence of large economic conglomerates is also manifested in the selection and appointment of judges, where these groups seek to place magistrates aligned with their interests, compromising the impartiality and autonomy of judicial decisions. This pressure is intensified in cases related to labor disputes, economic regulations, and state concessions, where judicial decisions can directly impact the economic benefits of these elites. The intervention of these groups erodes public confidence in the judicial system, compromising its ability to act as a fair and impartial arbiter, and thus weakening the very essence of the rule of law.

## V. Internal independence

The internal component of judicial independence refers specifically to the conditions under which judges dispense justice independently and impartially by the law and its authoritative interpretation. This regularly takes the form of guarantees of a Judicial civil service, which prevents arbitrary functioning of the judiciary.<sup>33</sup>

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<sup>31</sup> JOSÉ LUIS SANZ, Guatemala's Attorney General covers up not only for President Giammattei: "When Alejandro Giammattei came to power that year, backed by the same economic and military sectors that protected Morales, civil society and human rights organizations immediately denounced that he would aim to finish the job and stifle any hint of independence in the justice system. Last year also the Constitutional Court ended up being co-opted and Porras no longer finds limits. The complicity of the private sector, articulated in the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), an employers' organization as oblivious to changes in government as it is to corruption, has been essential in the rearrangement.

<https://www.washingtonpost.com/es/post-opinion/2022/02/22/giammattei-consuelo-porras-fiscal-guatemala-sobornos-exilio/>

<sup>32</sup> Human Rights Watch, World Report 2024, Guatemala: "For years, investigations have shown that some businessmen have colluded with corrupt officials to co-opt the courts and that money linked to corruption and organized crime has been used to finance electoral campaigns."

<https://www.hrw.org/es/world-report/2024/country-chapters/guatemala>

<sup>33</sup> Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from 26 August to 6 September 1985, and confirmed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, <https://www.ohchr.org/es/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.





## 5.1. Judicial civil service matters are used inappropriately.

The permanence of the Judicial civil service and the conditions for the retirement of judges are essential aspects of the conditions for serving as a judge. This certainty of permanence in the judiciary and the retirement age results in confidence in a system that allows for a dignified retirement. This has a direct impact on independent justice. Principle 18 of the Basic Principles on the Independence of the Judiciary states, "*Judges may only be suspended or removed from office for incapacity or conduct that disqualifies them from continuing to perform their functions.*" The Inter-American Court has repeated that judges must have a right to tenure and "enhanced guarantees" of stability.<sup>34</sup>

FECAJUD published a report on international standards for evaluating judges, indicating norms and judicial decisions that would be useful for strengthening evaluation systems and their impact on promotions and the quality of justice.<sup>35</sup>

In Costa Rica, on July 1, 2024, the *Corte Plena* adopted an agreement that obliges applicants for judicial positions to accept transfers to any place in the country and changes in schedules or working hours as part of the "employer's powers of direction", weakening the guarantee of stability in the judiciary, in addition to the citizen's fundamental right to the principle of natural judge. In response, ACOJUD denounced this policy's lack of technical basis, arguing that it weakens the Judicial civil service and does not respect international standards of judicial independence, especially regarding stability and irremovability.

In addition, the association has demanded immediate actions to protect the judiciary after attacks by criminal organizations, such as the gun attack on a judge or other threats to judges. In a letter addressed to the *Corte Plena*, the Executive Branch, and the Legislative Assembly, it requested coordinated and effective measures to guarantee the security of judges. It also asked the permanent activation of the *Comisión de Seguridad Institucional* with the active participation of the judiciary, stressing the need to maintain judicial independence and comply with the recommendations of the IACHR and the OECD.<sup>36</sup>

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<sup>34</sup> Inter-American Commission on Human Rights. Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas. December 2013. OEA/Ser.L/V/II. Doc.44, paragraph 184

<sup>35</sup> International Standards for the Evaluation of Judges, FECAJUD: <https://fecajud.org/wp-content/uploads/2023/10/Estandares-evaluacion-jueces-spanish.pdf>

<sup>36</sup> Acojud demands action to protect judges after shooting attack by criminal organizations <https://delfino.cr/2024/03/acojud-exige-acciones-para-protoger-a-jueces-tras-ataque-a-balazos-de-organizaciones-criminales>





In El Salvador, the strategic use of transfers and other administrative measures has been instrumentalized to undermine judicial independence, evidencing a growing influence of the executive and legislative branches in the Judicial civil service. Moving judges to undesirable or less relevant positions, along with the imposition of arbitrary sanctions and limitations, is used to intimidate and control judges who adopt decisions that contradict the interests of the political powers.<sup>37</sup> This intervention not only compromises the judiciary's autonomy but also generates a climate of insecurity that affects the impartiality and effectiveness of the justice system. The pressure and control exerted on the judiciary, through mechanisms such as forced transfers and other coercive measures, undermine the ability of judges to act with independence and balance, thus eroding the fundamental principles of the rule of law and justice.

Civil society organizations in the Dominican Republic denounce the use of transfers within the judiciary in a non-transparent manner.<sup>38</sup>

As mentioned above, in Honduras, the Judicial civil service Law of 1980 and its Regulations of 1987 are still in force. It should be recalled that this law was strongly criticized by the Inter-American Court of Human Rights in the judgment of the case of *López Lone et al. v. the Republic of Honduras*, indicating that the rights of judges were not guaranteed in the framework of disciplinary proceedings that took place after the 2009 coup d'état.<sup>39</sup> The Inter-American Court ruled on the latter case in April 2024, condemning the State of Honduras for the arbitrary dismissal of the judges of the Constitutional Chamber.<sup>40</sup> Seventeen unfounded dismissals and transfer cases were reported in the last months of 2023. Also, following an *on-site* visit by the Inter-American Commission on Human Rights, a thematic hearing was held, resulting in a series of

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<sup>37</sup> El Salvador. *"Existe algo en común en los jueces del país: el miedo"*, Resumen Latinoamericano, July 14, 2022: <https://www.resumenlatinoamericano.org/2022/07/14/el-salvador-existe-algo-en-comun-en-los-jueces-del-pais-el-miedo/>

<sup>38</sup> ADOCCO denounces president of the Judiciary to transfer judges from La Vega to SD in violation of the regulations of the Judicial Scale, Proceso, March 18, 2024: <https://proceso.com.do/2024/03/18/adocco-denuncia-presidente-poder-judicial-pretende-trasladar-jueces-desde-la-vega-a-sd-en-violacion-al-reglamento-de-escalafon-judicial/>

<sup>39</sup> Inter-American Court of Human Rights, Judgment of October 5, 2015, Preliminary objection, merits, reparations and costs, Paragraph 264, "The Court considers that this regulatory design affected the foreseeability of the sanction because it allowed the removal of a judge for breach of any of the duties or incompatibilities of his or her position when the judge understood that it was a serious breach and thus granted excessive discretion to the body responsible for applying the sanction. This Court considers that a certain degree of indeterminacy does not generate, per se, a violation of the Convention, that is to say, the fact that a rule grants some type of discretion is not incompatible with the degree of foreseeability required, as long as the scope of the discretion and the manner in which it is to be exercised is indicated with sufficient clarity in order to provide adequate protection against arbitrary interference. Consequently, the Court considers that the disciplinary rules applicable to the cases of the alleged victims granted excessive discretion to the judge in establishing the sanction of dismissal"; [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_302\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_302_esp.pdf).

<sup>40</sup> Case of Gutiérrez Navas et al. v. Honduras, Merits, Reparations and Costs, November 29, 2023, paragraph 103: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_514\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_514_esp.pdf).



recommendations from the Commissioners to the State of Honduras. Judicial associations report new cases of transfers in 2024.

## **5.2. The importance of judicial governance**

Strong and independent judicial governance institutions are essential to avoid the concentration of power in the courts and tribunals, thus ensuring a balanced, efficient, and democratic judicial system. These institutions, such as judicial councils or commissions, play a crucial role in the administration and oversight of the judiciary, ensuring that the processes of selection, appointment, and discipline of judges are conducted transparently and merit-based. By preventing power from being concentrated in a few hands, they promote internal accountability and avoid abuse of power, which is essential to maintaining public confidence in the judiciary. In addition, these institutions contribute to judicial independence by protecting judges from external political and economic pressures and ensuring that judicial decisions are made impartially and in accordance with the law. Well-structured judicial governance also facilitates the implementation of necessary judicial reforms, promotes innovation in the administration of justice, and improves the efficiency of the courts, ensuring that the judicial system responds to the needs of society in a fair and timely manner.

In the design of the Central American Judicial Powers, the Supreme Courts retain the function of conducting and controlling the general policies of the institution. This means that in addition to jurisdictional intervention in the resolution of procedural appeals, the magistrates of the highest courts are responsible for a set of powers relating to budget management, the appointment of judges, the disciplinary regime, staff training, and political representation of the body, among other important powers.

The absence of robust judicial governance institutions in Guatemala has contributed significantly to the fragility of the judicial system and the concentration of power in the hands of a small group of magistrates and judges. The lack of an independent judicial council, which effectively oversees judges' selection, appointment, and disciplinary processes, has allowed political and economic actors to influence the administration of justice, undermining impartiality and transparency in the judicial system. This institutional shortcoming has also hindered the implementation of reforms needed to improve efficiency and fairness in the courts, perpetuating problems such as corruption, inefficiency and lack of access to justice. In addition, the concentration of power in the high courts, without an effective internal accountability mechanism, has generated an environment where judicial decisions can be manipulated to serve private interests instead of protecting the rule of law and the fundamental rights of citizens. In this context, creating and strengthening an autonomous and effective judicial governance institution is crucial to guarantee the judiciary's independence and restore public confidence in justice in Guatemala.



In Panama, another concentration of power is evident in the *Secretaría Administrativa* of the Supreme Court of Justice, composed of a large number of entities: Directorate of Internal Auditing, Directorate of Information Technology, Directorate of the Judicial School, Office for the Prevention of Conduct Contrary to Judicial Ethics, directorates, departments, sections, and units.

In 2017, a commission dedicated to the deconcentration of functions of the Supreme Court of Costa Rica was created, and it produced a report that identified more than 80 administrative and financial powers of this body, some of which should be transferred to the Judiciary Council and invest resources in strengthening this technical body. On this aspect, the State of the Judiciary Report stated that:

*"Using the metaphor used in the Third Report, the Court acted in its various simultaneous roles as board of directors, executive director and manager during the response of the Judiciary to the unprecedented pandemic shock, in addition to assuming performance evaluation functions. The micro-management performed by this body was articulated in the more than five hundred decisions adopted in this area. Only a minority of measures were taken by the Superior Council, a body created in the nineties of the last century in order to decongest the work of the Supreme Court of Justice".<sup>41</sup>*

The administrative apparatus of the Costa Rican Judicial Branch also has a large number of bodies: the General Secretariat of the Court, four Directorates, five Technical Secretariats, the National Commission for the Improvement of the Administration of Justice, the Personnel Council, the Administrative Councils, the Quality Management Center, the Internal Control Office, Judicial Inspection, and the Comptroller of Services. As if this were not enough, the Supreme Court of Costa Rica retains the function of appointments in the Judicial Branch for both principal and alternate magistrates and in positions of coordination of courts and institutional commissions. This includes the Judicial Auditor, the Chief of the Judicial Inspection, the Attorney General, the Chief of the Judicial Police, the magistrates of the Supreme Electoral Tribunal, and the Executive Directorate itself. It has been noted that currently, 32% of the matters handled by the Court are budgetary and administrative matters, and another 25% are related to appointments.

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<sup>41</sup> IV State of Justice Report, June 2022, page 48: [https://d1qqtien6gys07.cloudfront.net/wp-content/uploads/2022/07/Informe\\_estado\\_justicia\\_completo\\_2022.pdf](https://d1qqtien6gys07.cloudfront.net/wp-content/uploads/2022/07/Informe_estado_justicia_completo_2022.pdf)



In 2022, the Asociación Guatemalteca de Jueces por la Integridad made a comparative analysis of the Judiciary Councils in the region, highlighting democratic and functional norms and practices that reduce the power of the Supreme Courts and allow for a more efficient operation.<sup>42</sup>

## **VI. Selection and appointment of judges**

### **6.1. Selection processes and evaluation criteria**

In Guatemala, the positions of the Appeals Chamber and the Supreme Court are appointed through Postulation Commissions in which a plural group of the legal community participates, including representatives of the Bar Association, the academy, and the judiciary.<sup>43</sup> These commissions must compile a list of candidates composed of twice the number of vacancies available and send it to the Legislature for it to appoint the persons to occupy the judgeships.<sup>44</sup> This process has some positive elements that aim to ensure integrity and transparency; however, the application of the rules has been complex. This process has been completely weakened, generating negative incentives for some legal community members to manipulate the process's different stages according to their political and economic interests and to appoint magistrates who allow impunity in specific cases.<sup>45</sup> By way of example, the Law of Comisiones de Postulación establishes the participation of the deans of the law schools, and what has happened is that law schools are founded that only exist on paper and have no students or curriculum.<sup>46</sup>

In the election of courts, there is knowledge of the interference of economic power groups in the selection processes of magistrates through influence in the Postulation Commissions and in the legislative body.<sup>47</sup> Businessmen who act through operators, negotiating with those interested in occupying the high courts, offering to ensure their selection, and thus obtain biased and complacent

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<sup>42</sup> Comparative analysis of the Councils of the Judiciary: a comparative review of Argentina, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico and Panama, 2022: <https://agji-gt.org/~agjigtor/analisis-comparativo-sobre-los-consejos-de-la-judicatura/>

<sup>43</sup> Constitution of the Republic of Guatemala, Articles 215 and 217. See: Law of Nominating Commissions, Decree 19-2009.

<sup>44</sup> Law on Nominating Commissions, Decree 19-2009.

<sup>45</sup> See more in: Judicial Nominations in Guatemala Pockets of Resistance in a Closing Space, ILAC's Policy Brief, 2019, pp. 3-4; Lawyers Council for Civil and Economic Rights' Accompaniment to Guatemala for the Supreme Court of Justice and Court of Appeals Magistrate Appointment Process, 2019 <https://bit.ly/VCLCGuateS>; See more in "A Window of Opportunity: Supporting the Rule of Law in Guatemala," ILAC Rule of Law Assessment Report, March 2020, page 18.

<sup>46</sup> Guatemala's Justice System: Evaluating Capacity Building and Judicial Independence, WOLA, Myrna Mack Foundation, June 19, page 38.

<sup>47</sup> Flaws in the selection and appointment process of high courts in Guatemala, Contribution to the Fourth Cycle of the Universal Periodic Review of the United Nations Human Rights Council 42nd Session on Guatemala July 2022: [https://www.dplf.org/sites/default/files/upr\\_guatemala\\_2022\\_cycle\\_4\\_flaws\\_in\\_the\\_selection\\_and\\_appointment\\_processes\\_of\\_high\\_courts.pdf](https://www.dplf.org/sites/default/files/upr_guatemala_2022_cycle_4_flaws_in_the_selection_and_appointment_processes_of_high_courts.pdf)



courts. In fact, for this reason, criminal proceedings were initiated under the cause known as parallel commissions, which, instead of seeking an objective investigation, the Public Prosecutor's Office has blocked the prosecution of the same, seeking to dismiss the complaints in this regard<sup>48</sup> Apart from the integration of the nominating commissions, they also seek to influence its formation, They also seek to influence their conformation, financing groups of lawyers, to obtain biased commissioners that favor their interests, seeking the election of those nominees that respond to their pretensions and ensure impunity in the high courts at the time of being subjected to the justice system.<sup>49</sup>

The Vance Center published a recent document explaining in detail the process of appointing judges to Guatemala's highest courts, highlighting the relevance of international oversight this year in the process that is taking place.<sup>50</sup>

As in the case of Guatemala, El Salvador will also renew the composition of the high courts shortly. This year, the Legislative Assembly will elect one-third of the Supreme Court of Justice magistrates. It is relevant to note that civil society organizations have identified political affinity with the current government of several candidates for the positions of magistrates and judges.<sup>51</sup>

The Executive and Legislative powers in El Salvador illegally removed more than a third of the judiciary through the arbitrary and unfounded modification of retirement rules, forcing judicial operators over 60 years of age to retire or enter a provisional regime, drastically affecting the stability that the Judicial civil service guaranteed. They also made changes in the composition of the high courts, including the Constitutional Chamber, and in the Attorney General's Office in an unconstitutional manner.<sup>52</sup>

These measures are used strategically to enable and consolidate the Executive's security policy. By displacing magistrates who might oppose its policies or who have demonstrated a tendency to apply independent judicial criteria, the Executive and the Legislature can establish firmer control over the judicial apparatus. This tactic allows the government to implement its security agenda more

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<sup>48</sup> 2020 Parallel Commissions Case: Tennis King, his sister and a magistrate acquitted, Prensa Libre, September 5, 2023: <https://www.prensalibre.com/guatemala/justicia/caso-comisiones-paralelas-2020-absuelven-al-rey-del-tenis-su-hermana-y-a-un-magistrado/>

<sup>49</sup> Postulation commissions continue politicizing justice in Guatemala, El Faro, May 9, 2024: <https://elfaro.net/es/202405/columnas/27384/las-comisiones-de-postulacion-siguen-politizando-la-justicia-en-guatemala>

<sup>50</sup> Appointment process of the Supreme Court of Justice and Court of Appeals of Guatemala: Background, problems and recommendations: <https://www.vancecenter.org/wp-content/uploads/2024/04/Nombramiento-Cortes-Guatemala-Vance-Center-y-FECAJUD-14.pdf>

<sup>51</sup> CNJ defines list with 70 candidates for Supreme Court magistrates, La Prensa Gráfica, April 29, 2024: <https://www.laprensagrafica.com/elsalvador/CNJ-define-listado-con-70-candidatos-a-magistrados-de-la-Corte-Suprema-de-Justicia-20240429-0081.html>

<sup>52</sup> FECAJUD, Vance Center. 2024. El Salvador. Diagnosis of the judicial system in Central America and the Caribbean. P. 10. Available at: <https://fecajud.org/el-salvador/>



easily without facing significant judicial obstacles. By reconfiguring the judiciary in a way that aligns with its security objectives, the Executive facilitates the adoption of drastic and controversial measures, such as expansive detention policies and tougher sentencing, without the constraints that an autonomous judiciary could impose. This situation not only weakens the separation of powers but also compromises the integrity of the judicial system by serving as an instrument that supports government policies rather than ensuring respect for fundamental rights and due process.

In the Dominican Republic, the *Consejo Nacional de la Magistratura* is in charge, according to Article 179 of the Constitution, of the appointment of magistrates of the Supreme Court of Justice. This body is composed of the President of the Republic, the person presiding over the Senate, a senator of a political party different from that of the President, the President of the Chamber of Deputies, a deputy belonging to a political party different from that of the President, the person presiding over the Supreme Court, a magistrate of the Supreme Court and the Attorney General of the Republic. Three-quarters of the Court must be composed of persons from the Judicial civil service, and the remaining quarter must come from the legal profession, academia, or the Public Prosecutor's Office.<sup>53</sup> The influence of political parties and other public institutions in the selection and appointment of high court magistrates has been denounced,<sup>54</sup> particularly of the Presidents of the Republic, in the process carried out by the National Council of the Magistracy.<sup>55</sup>

The Consejo de Gabinete and the Legislature intervened to form the Supreme Court in Panama. There is no pre-established objective process and no evaluation of the merits of the candidates, which is open to public scrutiny and guarantees appropriate appointments to the highest court.<sup>56</sup>

In Honduras, the appointment of the magistrates of the Supreme Court of Justice follows a process through the Nominating Board (*Juntas Nominadoras*), which appoints 45 candidates who meet the requirements of law and are not covered by the respective disqualifications so that from this list the National Congress of the Republic proceeds to the election of the 15 magistrates requiring the favorable vote of two-thirds of its deputies. Its conformation responds to the election made by the National Congress of the Republic through its representatives, benches, and number of votes reached. This process is contemplated in Article 311 of the Constitution.<sup>57</sup>

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<sup>53</sup> FECAJUD, Vance Center, Dominican Republic, Diagnosis of the judicial system in Central America and the Caribbean:

<sup>54</sup> On independent judges and trips to Mars, Today (April 2, 2019): <https://hoy.com.do/sobre-jueces-independientes-y-viajes-a-marte/>

<sup>55</sup> Robert Placencia Álvarez, Judicial independence, obstacles and proposals, 9 Acento, November 9, 2019: <https://acento.com.do/opinion/independencia-judicial-obstaculos-y-propuestas-8725934.html>

<sup>56</sup> Justice in Panama: between crisis and pending reforms, Due Process Foundation Blog, April 26, 2016: [https://dplfblog.com/2016/04/26/justice-in-panama-between-crisis-and-pending-reforms/#\\_ftn1](https://dplfblog.com/2016/04/26/justice-in-panama-between-crisis-and-pending-reforms/#_ftn1)

<sup>57</sup> Political Constitution, ARTICLE 311.



## 6.2. Transparency and meritocracy

International standards state that persons aspiring to judicial positions must be of integrity and suitability and have the appropriate legal training. In addition, the methods for selecting judicial personnel must guarantee that persons are not appointed for improper motives.<sup>58</sup> The Inter-American Commission on Human Rights (IACHR) has stated that the appointment process should be done on equal terms and without discrimination. The selection should be made based on merit and ability and should be made in a public and transparent process.<sup>59</sup> The Inter-American human rights system has concluded that if certain basic parameters are transgressed, the selection and appointment mechanism has a high degree of discretion that affects suitability.<sup>60</sup> This excessive discretion is present, especially in political processes that include considerations unrelated to the merit of the individuals and the appointments, which are the product of political compromises.

Additionally, some internal judicial policies have raised concerns about their impact on judicial independence. The Costa Rican Association of the Judiciary (ACOJUD) has taken a series of actions before high levels of judicial government regarding issues such as the methodology used for the selection of judges, pointing out that in certain stages of the process, there is no transparency, suitable profiles are discarded, and there is a lack of citizen participation.

In its 2023 Annual Human Rights Report, the IACHR noted the absence of clear and objective criteria in the selection and appointment of judges in Costa Rica and the lack of mechanisms for citizen participation in the process.<sup>61</sup>

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<sup>58</sup> Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from 26 August to 6 September 1985, and confirmed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, <https://www.ohchr.org/es/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

<sup>59</sup> Inter-American Commission on Human Rights. Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas. December 2013. OEA/Ser.L/V/II. Doc.44, paragraph 26

<sup>60</sup> Inter-American Commission on Human Rights. Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas. December 2013. OEA/Ser.L/V/II. Doc.44, paragraph 56

<sup>61</sup> Inter-American Commission on Human Rights, Annual Human Rights Report 2023, Chapter IV.a: [https://www.oas.org/es/cidh/docs/anual/2023/capitulos/IA2023\\_Cap\\_4A\\_SPA.PDF](https://www.oas.org/es/cidh/docs/anual/2023/capitulos/IA2023_Cap_4A_SPA.PDF)



## VII. Accountability and Open Justice

### 7.1. Good practices

Costa Rica stands out in the region for implementing good practices that help prevent corruption in the judiciary and promote open and accessible justice for all. One of the main strategies has been to strengthen internal control and transparency in the administration of justice by implementing regular audits and rigorous disciplinary oversight mechanisms. Costa Rica's Consejo Superior de la Judicatura plays a key role in overseeing the conduct of judges and judicial officials, ensuring that any acts of corruption or misconduct are properly investigated and sanctioned. In addition, Costa Rica has made progress in promoting open justice through information technologies facilitating public access to judicial resolutions, statistics, and other relevant data through online platforms. These initiatives strengthen transparency and accountability and empower citizens by providing them with tools to monitor the judicial system's performance. These best practices have been instrumental in maintaining public confidence in Costa Rica's judiciary and ensuring that justice is delivered impartially and effectively without undue interference or corruption.

Gender equality in the judiciary is also a relevant aspect that increases this body's legitimacy in the citizens' eyes. The Judicial Branch of the Dominican Republic has a Gender Equality Commission in charge of monitoring and reporting on compliance with the actions approved within the framework of the Gender Equality Policy of the Dominican Judicial Branch, the commitments assumed through ratification by the Dominican State of international instruments, as well as by the Judicial Branch at the national and international level.<sup>62</sup> It also has gender sub-commissions in each Judicial Department and the first observatory of Justice and Gender. In 2023, the Judicial Branch was recognized with the Gold Seal Equal DR.<sup>63</sup>

### 7.2. Challenges

In Guatemala, there is no equitable representation of marginalized communities in the judiciary since, for example, indigenous groups do not have equal access to the judiciary, a group that represents 43% of the people in Guatemala.<sup>64</sup> There is also no evidence of visibility or

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<sup>62</sup> Observatory of Justice and Gender, Commission for Gender Equality: <https://observatoriojusticiaygenero.poderjudicial.gob.do/observatorio/comision.aspx>

<sup>63</sup> Judicial Branch of the DR obtains "Sello Igualando RD" in the Gold category, El Nacional, August 2, 2023: <https://elnacional.com.do/poder-judicial-de-rd-obtiene-sello-igualando-rd-en-la-categoria-oro/>

<sup>64</sup> Judicial diversity: a tool to increase access to justice in Colombia, ILAC Discussion Paper, Discussion Paper III of the project.

Judges as Peacemakers, ILAC, Vance Center for International Justice, International Association of Women Judges: <http://ilacnet.org/wp-content/uploads/2022/05/La-diversidad-judicial.pdf>





representation of LGBTIQ+ persons. As for the presence of women in the judiciary, this is closer to reaching parity, with approximately 45%, although with the respective difficulties to exercise the judiciary, when labeled by possible professional incompatibility in relation to the role of mother, wife, and "head of the household", due to the persistence of prevailing social machismo and micro machismo. This is influenced, among other reasons, by the lack of access to higher education, especially in rural areas, and the situation is aggravated in the case of women from indigenous groups. The public perception is the lack of trust in the justice system, which is not applied equally, giving privileged treatment to those who belong to groups of economic and political power and organized crime, among others. Still, there are independent judges, who act in a probative manner, despite the adversity of the system.

In the case of Costa Rica, the IACHR also highlighted the insufficient adoption of measures to promote the participation of women as a challenge to compliance with international standards guaranteeing judicial independence.<sup>65</sup>

### **VIII. Conclusions and recommendations**

Judicial independence in Central America faces significant challenges due to the interference of public authorities and private actors. In several countries in the region, such as Guatemala and El Salvador, there are worrying levels of political and economic intervention that compromise the impartiality of the judiciary. The criminalization of judges and prosecutors, the manipulation of the selection and appointment processes of magistrates, and the improper use of transfers and administrative sanctions are mechanisms used to undermine judicial autonomy. Despite these challenges, some countries, such as Costa Rica, Panama, and the Dominican Republic, have adopted good practices that strengthen judicial independence. However, they still face problems related to Judicial civil services, budget, and diversity in the judiciary.

Specific recommendations:

- Strengthening judicial autonomy: It is crucial to implement and reinforce legal and administrative mechanisms that protect the independence of judges and magistrates, including irremovability in their positions and transparency in the selection and appointment processes.

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<sup>65</sup> Inter-American Commission on Human Rights, Annual Human Rights Report 2023, Chapter IV.a: [https://www.oas.org/es/cidh/docs/anual/2023/capitulos/IA2023\\_Cap\\_4A\\_SPA.PDF](https://www.oas.org/es/cidh/docs/anual/2023/capitulos/IA2023_Cap_4A_SPA.PDF)



- Combat political and economic interference: Robust safeguards must be established against the undue influence of political and economic actors in the administration of justice. This includes ensuring adequate and regular budget allocation without conditionalities that affect judicial decision-making.
- Promoting open justice: Promote transparency and accountability in the judicial system through information technologies and implementing open justice practices that allow citizen oversight and strengthen public confidence in institutions.
- Strengthen anti-corruption mechanisms: Ensuring integrity in the judicial function is key to increasing the legitimacy of the work of judges. Ensuring the existence of ethical and integrity obligations through public policies is the task of the judiciaries in the region.
- Diversity in the judiciary: It is essential to promote inclusion policies that ensure the equitable representation of women and marginalized groups within the judicial system, increasing the legitimacy and quality of justice delivered.
- Strengthen international protection: Central American countries need to strengthen their commitment to international human rights standards, ensuring the conformity of their judicial systems with the principles of independence and protection of fundamental rights.