

Guatemala

Judicial System Assessment

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I. Introduction

This document is part of a series of assessments on the situation of the judiciary in Central American countries, which aim to provide specific and updated information on the different countries in the region, make problems visible and generate productive dialogues with the national and international community.

The content, divided into seven parts, summarizes the main structural and normative aspects of the functioning of the judiciary in Guatemala and discusses the complications that are currently present in terms of judicial independence within this jurisdiction. This includes issues such as, the selection and appointment of magistrates and judges, judicial evaluations, promotions within the judicial civil service, disciplinary processes, dismissals, physical and legal security of judicial operators, interference of other branches of government in the administration of justice, cases of corruption and the concentration of administrative and financial powers, amongst others. It also studies the progress that has been made through the adoption of norms and policies aimed at mitigating these issues.

The central idea is to identify which difficulties of governance and independence in the development of jurisdictional functions originate in the design of the institutional and regulatory structures, and which of them are a problem of rule application, legal culture or undue interference by other branches of government in judicial operations.

This assessment is produced by the *Central American Federation of Judges for Democracy FECAJUD* as part of a project to strengthen judicial independence with the *Cyrus R. Vance Center for International Justice* of the New York City Bar Association, with support from the National Endowment for Democracy (NED).

FECAJUD was established in the city of Tegucigalpa, Republic of Honduras on May 1, 2009 as a non-profit legal entity under private law, made up of associations of Central American judges and magistrates with a democratic vocation committed to strengthening the Constitutional Rule of Law, Judicial Independence and respect for Human Rights. The Federation's goals are to contribute to the consolidation of the Democratic Rule of Law and Judicial Independence in the countries of Central America, and fundamentally to contribute to a greater awareness on behalf of judges as guarantors of Human Rights.

The *Cyrus R. Vance Center for International Justice* promotes global justice by engaging legal professionals around the world to support civil society and an ethically active legal profession. It is a non-profit program of the New York City Bar Association that brings together leading law firms and other partners around the world to promote international justice initiatives and provide pro bono legal representation to civil society organizations fighting for social justice.

II. Guatemalan Judiciary

In Guatemala, the Judicial Branch is composed of the Supreme Court of Justice, divided into three Chambers: Criminal, Civil, and *Amparo* and

Antejucio, the Chambers of the Court of Appeals and courts of the same category, the Courts of First Instance and the Peace Courts¹ as follows:



The high courts in Guatemala are divided as follows: a) Supreme Court of Justice, which is made up of 13 magistrates, who are divided between the Criminal Chamber, the Civil Chamber and the *Amparo* and *Antejucio* Chamber; b) Court of Appeals and Courts of Equal Category made up of magistrates of the Criminal Chambers, Civil Chambers, Mixed Departmental Chambers, Family Chambers, Labor and Social Security Chambers, Chambers for Children and Adolescents, Chambers of the Court of Accounts and Conflicts

of Jurisdiction and Administrative Disputes Chambers.

First instance courts are divided into: Criminal Enforcement Courts, Criminal Sentencing Courts, Drug Trafficking and Crimes against the Environment, Criminal Courts of First Instance, Drug Trafficking and Crimes against the Environment, Civil Courts of First Instance, Labor and Social Security Courts, Courts for Children and Adolescents and Adolescents in Conflict with Criminal Law, Courts of First Instance for Accounts



and Courts of First Instance for Economic Coercive Matters.

The lower courts are structured as follows: *Juzgados de Paz Penal, Juzgados de Paz Penal de*

Faltas de Turno, Juzgados de Paz Civil, Juzgados de Paz Móviles, Juzgados de Paz Mixtos and Juzgados de Paz Comunitarios (Penales).

1. Appointment of judges and magistrates

This chapter explains how the magistrates of the Supreme Court of Justice, the Chambers of the Court of Appeals, and the Judges of First Instance and Justices of the Peace are elected or appointed.²

There are two paths of entry to the judicial civil service:

1) Through election by the Congress of the Republic of Guatemala. Magistrates of high

courts: Supreme Court of Justice and Court of Appeals are elected in this way.

2) Through appointment by the Supreme Court of Justice, after passing the competitive examinations established by the Council of the Judicial Civil Service (*Consejo de la Carrera Judicial*), which is the path that corresponds to the judicial civil service judges, who are the judges of first instance and those of lower category.

2. Appointment of Justices to form the Supreme Court of Justice and Appellate Court Chambers

The regular justices of the Supreme Court of Justice, as well as the regular and alternate justices of the Chambers of the Courts of Appeals and other collegiate courts, are elected by the Congress of the Republic from a list, which is made from another list, previously selected by the Nominating Commissions (*Comisiones de Postulación*)³, containing twice as many candidates.

There is a procedure based on both the Political Constitution of the Republic of Guatemala and the Law of Nominating Commissions (*Ley de Comisiones de Postulación*), which indicates how the final lists are to be prepared and submitted to the Congress of the Republic of Guatemala, which will elect these judges for a period of 5 years.⁴

The Nominating Committee which forms the final list of 26 candidates for the election of Supreme Court Justices is composed as follows:

- A representative of the President of the country's universities, who chairs it.
- The Deans of the Faculties of Law or Legal Sciences of the country's universities.
- An equivalent number of representatives elected by the General Assembly of the Bar Association and Notaries.
- Equal number of representatives of the Magistrates of the Court of Appeals elected by the Institute of Magistrates (the law does not state that it is from the Institute of Magistrates, but this is how the election is made).⁵

The Nominating Commission which forms the final slate of 270 candidates for the election of Magistrates for Chambers of the Court of Appeals and Courts of Equal Category for the period 2020-2024 is formed as follows:



- A representative of the President of the country's universities, who chairs it.
- The deans of the Faculties of Law or Legal Sciences of the country's universities.
- An equivalent number of representatives elected by the General Assembly of the Bar Association and Notaries.
- Equal number of representatives elected as Supreme Court Justices.⁶

In the case of the appointment of Judges of First Instance and Justices of the Peace there is a procedure established by the Judicial Civil Service Law that establishes the requirements and qualities. Likewise, these requirements are regulated in the Constitution, in addition to submitting to the competitive examination established in each case by the competent body.

In addition to the requirements such as being Guatemalan of origin, being of recognized honorability, being a lawyer and notary, winning the competitive examination established by the Council of the Judicial Civil Service (*Consejo de la Carrera Judicial*), they must complete the studies and training at the School of Judicial Studies (*Escuela de Estudios Judiciales*) and carry out the corresponding practice to be a Justice of the Peace or Judge of Instance.

In the case of the nomination commissions (*Comisiones de Postulación*), since they are composed by different academic, professional and judicial sectors, their purpose is precisely, to guarantee transparency in the election of magistrates that will occupy the high courts of the country. They are also there to guarantee that the magistrates appointed are those with the best profiles or trajectories, serving as a filter so that when the Congress of the Republic of Guatemala carries out the election, it elects magistrates out of a pool of the best possible candidates. Decree number 19-2009 regulates the composition of the nomination commissions and their operation.

The selection process is initiated by the Congress 4 months in advance, calling for the integration of the Nominating Commissions (*Comisiones de Postulación*) in accordance with the requirements contained in Article 4 of the aforementioned decree. The members of such commissions must have university studies since they are integrated by the rectors of the different universities, the deans of the faculties of said universities, as well as by lawyers elected by the assembly of the College of Lawyers and Notaries of Guatemala.

Once the members of the commission have been selected, a profile of the candidates is prepared along with the respective grading table in which experience, human projection and legal contributions are rated. Article 12 of Decree 19-2009 determines that they will be nominated using the parameters of: (i) ethics, which translates into the number of years of professional practice, police, criminal and disciplinary records, amongst others, (ii) academics, which includes university teaching, academic degrees, studies and publications, (iii) professionalism, in compliance with the requirements established in the Constitution for the position to which they aspire and (iv) human projection, which is about the vocation of service and leadership. Likewise, the commission shall prepare a grading table to numerically evaluate the candidates. The commissions have the power to conduct interviews, and the law provides that they must verify compliance with these requirements.

After a public call for nominations, the selection and voting are carried out on the basis of the ranking table, beginning with voting for the highest scores. Such voting will be done publicly, with the commissioners indicating whether they vote for or against a certain candidate and indicating the reason behind their vote, background verification and integration of lists to be forwarded to the Congress of the Republic. The meetings and sessions of the commissions are public and allow unrestricted access to the media and other



observing organizations. Decisions within the commission require the favorable vote of two thirds of the members.

In 2016, the Judicial Civil Service Law was modified in several points. One of these modifications was that the list prepared by the nomination commissions to integrate the Supreme Court of Justice, as well as the Court of Appeals will be preferably integrated by members of the judicial civil service who have exercised the judiciary and

the magistracy, taking into account their speciality. Likewise, it was indicated in this law that the satisfactory professional performance of the judges of first instance and of the magistrates of the Court of Appeals, among others, added to an expression of interest, grants the right to be included in the lists sent by the Judicial Civil Service Council (*Consejo de la Carrera Judicial*).⁷

For more details on this process, see the document published by the Vance Center and FECAJUD.⁸

a) Controversies surrounding the functioning of the nominating committees.

International organizations have mentioned that the postulation commissions have been involved in a series of controversies regarding the actions of some political operators with a high interest in placing in the judiciary people related to them in order to guarantee impunity and maintain control of some jurisdictional bodies.⁹

In 2014, the Special Prosecutor's Office Against Impunity (FECI) explained the way in which political operators in exchange for gifts given to commissioners seeking votes for their candidates for the Court of Appeals and Supreme Court of Justice Chambers related to these groups so that they would integrate the final lists of candidates to be elected by the Congress of the Republic of Guatemala.¹⁰ For the year 2020, in preparation for a new election of candidates to occupy the high magistracies of the country, the Feci initiated an investigation looking to intervene in said process with the sole purpose of influencing those who would have to administer justice during the next 5 years, which is the time they will occupy said magistracies. The Prosecutor's Office remarked on the existence of a network with the purpose of elaborating the lists of candidates for the Court of Appeals and Supreme Court of Justice that were to integrate the final list that was delivered to the Congress of the Republic of Guatemala, establishing

the way in which these criminal networks seek to maintain control of the judiciary.

According to the legislation, the commissioners would have to vote impartially and objectively for the best qualified candidates according to the grading table previously established by them. In the election of magistrates for the 2019-2024 period, an investigation pointing out collusion of 15 commissioners voting for the same candidates from a pre-established list made by political operators was presented, attempting for the election of the candidates to be a mere simulation as they already knew beforehand which candidates they should vote for and include in the final list.

FECI added that, to add more votes in favor of the agreed list, law schools of recently created universities proliferated, in order to have more commissioners in the different nomination commissions and thus have the greatest control and vote for the largest number of candidates that these criminal networks were interested in.¹¹

To date, there are court cases of Parallel Commissions 2014 and 2020 (*Comisiones Paralelas*) in which the Public Prosecutor's Office has presented evidence of conduct to allegedly manipulate the election of these high court judges.



In addition, at that moment it was pointed out that this network received candidates seeking to become magistrates of the Supreme Electoral Tribunal (*Tribunal Supremo Electoral*), thus showing that these operators seek to occupy the most important positions not only in the justice sector but also in different institutions.¹²

The Public Prosecutor's Office filed before the Constitutional Court a constitutional action of amparo against the Congress of the Republic of Guatemala due to the real threat on the election process of magistrates of both the Court of Appeals and the Supreme Court of Justice. The Constitutional Court granted such amparo indicating that the election of magistrates must be carried out as indicated in the Constitution with persons with capacity and suitability, therefore, those professionals whose suitability and honorability are compromised should be excluded from the election process.¹³

In view of this investigation, an attempt was made to remove the natural judge of said judicial case from the jurisdictional control. The purpose was not achieved, and arrest warrants were issued against those involved, for attempting to obstruct the investigation of the Parallel Commissions 2020 process.¹⁴

The Constitutional Court issued an order that was not timely executed by the Congress of the Republic, and the finished list of aspirants identified in the FECl investigation were still included in the final list.

The *amparo* ruling issued by the Constitutional Court on May 5, 2020, in case 1169-2020, established that the Congress of the Republic must exclude candidates whose suitability and honorability are compromised. In addition, it granted a term of 10 days to the Public Prosecutor's Office to submit in physical and electronic form a detailed report on the investigation carried out on

the possible manipulation and influence within the framework of the process of selection of candidates by the nomination commissions. The Congress of the Republic was ordered to deliver a copy of said report to the deputies as well as the information sent by the nomination commissions, within 24 hours of receiving the report from the Public Prosecutor's Office. After receiving the information, the deputies would have 20 days to analyze it and, finally, upon expiration of this term, they would have to call a plenary session to elect the magistrates of the Supreme Court of Justice and Chambers of the Court of Appeals and Courts of Equal Category.¹⁵ The enforcement of the judgement was achieved in 2023, for the appointed magistrates to complete the period until October 2024, and begin the appointment process taking place this year for the 2024-2029 period.

Derived from the exposure of these groups, which according to the information presented by FECl made visible a possible intervention in the elaboration of the final lists of candidates to be appointed as magistrates to occupy the positions in both courts, now the prosecutors and judges involved in these processes are persecuted and criminalized by the Public Prosecutor's Office. The purpose of this criminalization phenomenon is to neutralize the investigations and to hinder those public officials that can further these cases.

The main purpose of having institutional mechanisms such as nomination commissions is to avoid excessive discretion for the legislature to exert political influence in the composition of the high courts. The law, in fact, contains several tools that promote transparency including unrestricted access to meetings for the media, publication of lists, public calls for applications, objective selection process based on scores elaborated in accordance with the profile.

However, the margin of discretion in the actions of the members of the nominating commissions is



enormous and this has generated the previously mentioned questions. Likewise, the fact that each commission establishes individual rules of operation, through the creation of the profile, the design of the ranking table and others, generates inconsistencies between one nomination process and another.¹⁶ Currently, reforms to the Law on Nominating Commissions (*Ley de Comisiones de Postulación*) are on the table, including the incorporation of a mechanism for objections, modifying the role of the universities and the time available to the commissions to carry out the evaluations and verification of requirements.¹⁷

These points of controversy were summarized by civil society organizations in the joint contribution they submitted to the Universal Periodic Review of the United Nations Human Rights Council,¹⁸ showing how this is one of the ways in which political actors and corruption networks co-opt judicial institutions in the country.¹⁹

As of April 2024, the new process for the formation of the Nomination Commissions for the subsequent

selection of the persons nominated to form the Courts of Appeals and the Supreme Court of Justice began.²⁰

President Bernardo Arévalo has asked the OAS for an Observation Mission to monitor the regularity and transparency of this process.²¹ In addition, international human rights organizations and judicial associations asked the IACHR, in the context of the recent on-site visit to Guatemala in July 2024, to urge the State of Guatemala, specifically the Constitutional Court, to safeguard an independent and transparent process for the appointment of members of the Supreme Court of Justice and Courts of Appeals.²²

In July 2024, the members of the different Commissions, Supreme Court of Justice and Courts of Appeals have begun.²³ The greater diversity observed in the current process is highlighted, by including some suitable profiles such as a Maya Mam indigenous lawyer within the Commission that nominates candidates for the Supreme Court of Justice.²⁴

b) Non-compliance with requirements to be a judge and magistrate

All judges must be of Guatemalan origin, of recognized honorability, recognize fully their rights as citizens and be active lawyers.²⁵

Judges of the Court of Appeals or collegiate courts of the same category, in addition to the above, must be over thirty-five years of age, have been a judge of first instance or have practiced law for more than five years.²⁶

Finally, judges of the Supreme Court of Justice, in addition to the basic requirements to be judges, must be over forty years of age and have served a full term as a judge of the Court of Appeals or collegiate courts of the same category, or have practiced law for more than ten years.²⁷

An important point within these requirements is that of recognized honorability, since it is most questioned. According to international organizations, serious accusations that some judges and magistrates are being linked to criminal networks should be considered when presenting their paperwork, indicating that some candidates do not meet this requirement of recognized honorability because of rulings in favor of criminal groups of which they are a part of.²⁸

Some university law schools involved in the appointment process include candidates who do not meet the legal requirements, including falsifying degrees. For example, in May 2021, the Da Vinci University of Guatemala dismissed an official accused of issuing false academic certifications to



two people selected to serve on the Supreme Electoral Tribunal (*Tribunal Supremo Electoral*).²⁹

In fact, in 2020, the Congress appointed five members to the Supreme Electoral Tribunal for the period 2020-2026 in the framework of a process characterized by organizations as lacking transparency³⁰, as investigations were undertaken to determine the involvement of individuals who served as commissioners for the election of magistrates' period 2019-2024.³¹

International organizations have questioned the mechanism, asking if the commissioners who will choose the final nominees for magistrates are involved in acts of corruption, how can they be

expected to choose the most honorable, probity or best profile.³²

The constitutional norms of the Republic establish a series of requirements that must be fulfilled to be eligible for public positions or jobs, both the Political Constitution of the Republic and the Electoral and Political Parties Law, among other legal bodies, have stipulated the positions that must comply with the requirement "of recognized honorability". Some of these positions are: Magistrates of the Constitutional Court, Magistrates of the Supreme Court of Justice, Magistrates of the Court of Appeals, Comptroller General of Accounts, Attorney General and Head of the Public Ministry, Attorney General of the Nation, Human Rights Attorney, among others.³³

c) Renewal periods affected by irregularities

The judges of the Supreme Court of Justice, the Chambers of the Courts of Appeals and other collegiate courts of the same category, and the Judges of First Instance serve for five years, with the possibility of reelection and reappointment, respectively.

By the year 2019 the new Supreme Court of Justice and the Court of Appeals Chambers should have been formed, which should have served the period 2019-2024,³⁴ but only until November 2023, the Congress undertook the appointment procedures to complete the period until October 2024.

26 regular and alternate magistrates of the Supreme Court of Justice, as well as 225 of the Appellate Chambers should have been elected in 2019, but because of legal actions related to the nomination process by the Postulation Commissions, this process was delayed.

This point was highlighted with alarm by Rapporteur Diego García-Sayán, indicating that Congress has

made no effort to advance the process of integration of the Supreme Court of Justice and the Appellate Chambers. He also categorized the weaknesses in the selection process of judges and magistrates as a crisis in the appointment model.³⁵

In October 2022, the magistrates ordered the extension of their positions until the appointment of their successors.³⁶ Human Rights Watch indicated, in its Annual Report, that Congress continues to fail to comply with the Constitutional Court's 2020 ruling on the appointment of high court judges.³⁷

In the month of November 2023 justices of the Supreme Court of Justice were elected. They were to hold office until October 2024, to complete the constitutional term that began in 2019.

Some of the appointed appeared on the list sent to the Congress of the Republic by the Postulation Commission, later becoming the investigation in the Parallel Commissions 2020 case.³⁸



d) Irregularities in the appointment of Constitutional Court magistrates

The five judges of the Constitutional Court are appointed by the plenary of the Supreme Court of Justice, the plenary of the Congress of the Republic, the President in Council of Ministers, the Superior University Council of the Universidad de San Carlos de Guatemala and the Assembly of the Guatemalan Bar Association, respectively.

Several organizations have established that different criterion was used in the election of each magistrate by each institution. In the case of the College of Lawyers and Notaries of Guatemala, it did not verify the background or ethics of some of its candidates because some of them had been accused of corruption or influence peddling, factors that would make them ineligible for these positions.³⁹

The election that received the most attacks from interest groups, was the one made by the Superior University Council of the University of San Carlos of Guatemala who appointed Gloria Porras who could not be sworn on March 13, 2021 due to 2 appeals filed against her appointment, one of them by an organization pointed out by the U.S. State Department for attacking both justice operators

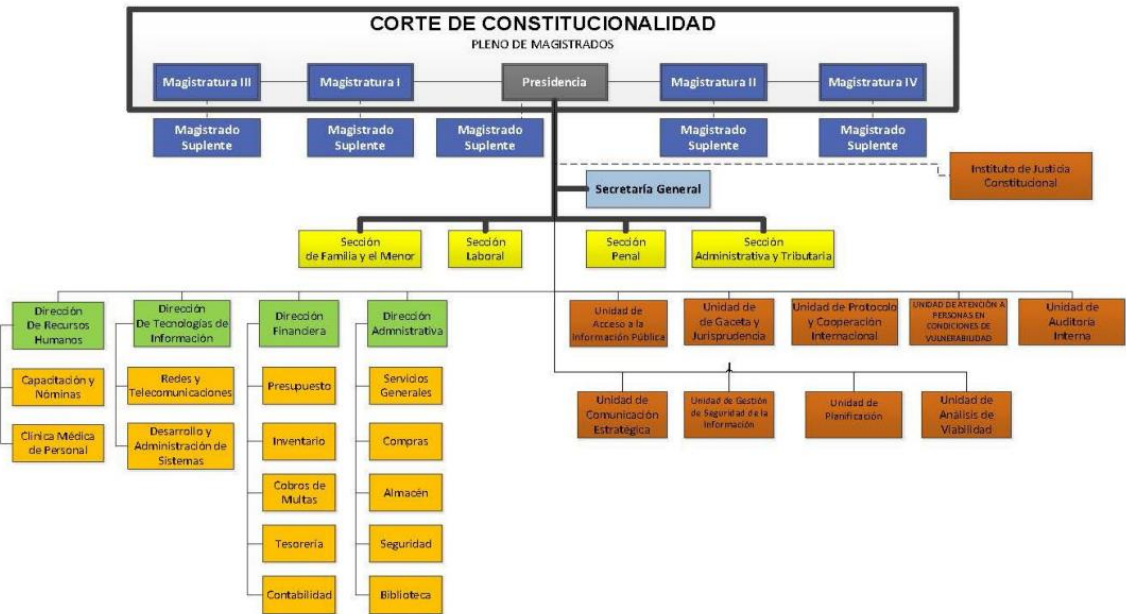
and civil society and journalists and also for interfering in judicial independence, civil society and journalists and also for interfering in the judicial independence.⁴⁰

On March 29, 2022, the Constitutional Court issued a final judgment in the related amparo actions, annulling the appointment of Gloria Porras as magistrate of the Constitutional Court and ordered the Superior University Council of the University of San Carlos de Guatemala, to carry out a new call for the appointment of a new magistrate.⁴¹

In the words of the WOLA organization:

"The current magistrates were appointed in 2021 through processes that, in some cases, were not impartial or independent. The appointment process was not based on merit ... and candidates with credible links to corruption were allowed to participate."⁴²

In order to fulfill its mandate, the Constitutional Court has an organizational structure divided into two main areas, which are presented below:



III. Concentration of powers in the Supreme Court

The Supreme Court of Justice is the highest body responsible for the administration of the Judicial Branch. It is assisted by the Judicial Civil Service Council (*Consejo de la Carrera Judicial*), eight Secretariats, four Directorates, six Managers, nine Units and six Service Centers.

Before the reforms to the Judicial Civil Service Law made by the Congress of the Republic of Guatemala in February 2022, the Judicial Civil Service Council (*Consejo de la Carrera Judicial*) enjoyed functional independence in all matters related to the admission, permanence and promotion, promotions, transfers, training, among other things, of judges and magistrates as long as there is no legal cause for sanction or dismissal.⁴³

Several civil society organizations have pointed out that concentrating these administrative functions in the Supreme Court puts at risk the independence with which judicial officials operate since they do not have an independent and technical body that

prevents arbitrary dismissals or influences internal or external to the judiciary.

Now due to these reforms, in the first place, the way in which the Judicial Civil Service Council is integrated has been modified, in addition to the fact that only the magistrate, who at that moment is presiding the Judicial Organism (*Organismo Judicial*), and the Supreme Court of Justice will preside over it, in the same way, in the decision making process, the president has double vote in case of a tie in any vote. The most worrisome thing is that it removes the control of the Council over the Judiciary regarding promotions, exchanges, transfers or dismissals of judges and magistrates, concentrating now all this power to the magistrates of the Supreme Court of Justice.

Therefore, with these reforms, what has been achieved is that the Judicial Branch no longer has its previous counterweight in the selection of the most suitable judges or magistrates, nor in the case that



a judicial official has any sanction or dismissal procedure. It is no longer the Council of the Judicial Civil Service, who within Judiciary was the one who performed this function independently, who decides administratively on these processes, now this power has been given to the Supreme Court of Justice who is at the center of the entire operation of this institution because now it controls both the jurisdictional function as well as the administrative one so that with these reforms the Supreme Court of Justice has direct interference in these

administrative decisions and this could affect judicial independence.⁴⁴

There have been reports of numerous transfers of judges of first instance, carried out arbitrarily, without the guarantees set forth in the law. Local and regional judicial associations have issued statements and even filed a writ of amparo before the Constitutional Court, emphasizing how these actions go against the principle of the irremovability of judges according to international law.⁴⁵

IV. Security of judicial operators

3. Physical security

In 2016, there was a restructuring of the Institutional Security Directorate of the Judicial Branch, which depends on the Presidency of the Judicial Branch and the Supreme Court of Justice; this unit defines the guidelines, instructions, manuals, operating policies. The unit's mission is to direct, guide, coordinate and evaluate the processes and procedures leading to the protection of the President of the Judicial Branch and the Supreme Court of Justice, the Magistrates of the Supreme Court of Justice, Magistrates of the Court of Appeals and other Collegiate Courts, first instance and peace judges, as well as to guarantee the security of the infrastructure of the Judicial Branch throughout the national territory.⁴⁶

The "*Procedures Manual of the Institutional Security Directorate*" of the Judicial Branch regulates the processes that must be followed in order to provide effective security to judicial operators. The manual must be reviewed at least once a year and must also be updated when necessary, to include, modify or eliminate procedures. This manual is specifically addressed to the Institutional Security Directorate of the Judicial Branch and all its personnel.

In order to establish whether a Judicial Branch official is eligible for the assignment of a security scheme, the petition must be based on a real risk analysis, in which it is established that the evaluated official faces a risk either due to judicial proceedings or other reasons that originate the risk assessment.

Despite the fact that some judges have security schemes assigned to them, due to the judicial processes they handle, they are not exempt from some type of intimidation, such is the case of the former highest risk judge, Miguel Ángel Gálvez Aguilar, who denounced the constant persecution by vehicles without license plates.⁴⁷

Only 8 months before, the same **Miguel Angel Galvez, together with Erika Aifan, Yassmin Barrios, Pablo Xitumul**, also high risk judges presented themselves to the Public Prosecutor's Office, in order to obtain information on complaints they filed for threats, persecution and surveillance by possible members of the State security forces, to which the institution in charge of the investigation has not submitted results. Nonetheless, to date, there are no news suggesting that they have been informed



of the reasons why the complaints filed by them have been archived.⁴⁸

At the beginning of 2020 there were news of an alleged plan by former presidential candidate against prosecutors, but to this date, there has been no known progress in the investigation.⁴⁹

In the preceding paragraphs we have listed some of the recent events, but they are not out of place with other situations that denote the existence of a

serious risk to the security of justice operators, both physically and psychologically.

Among the most serious events is the murder of Erick Cáceres Rodríguez, judge of the civil and social welfare branch of the municipality of San Benito, department of El Petén, in 2011,⁵⁰ and the direct attack suffered in October 2020 by Waldo Josué Alvizures Ruano, who was a judge of first criminal instance, drug trafficking and crimes against the environment of the same municipality in the department of El Petén.⁵¹

4. Legal certainty

Both judges and magistrates in Guatemala enjoy some type of immunity, which guarantees that before being subject to trial they must exhaust the pre-trial process, which is a constitutional guarantee. A judge cannot be prosecuted without having exhausted this procedure, which is regulated in the Preliminary Trial Law (*Ley en Materia de Antejudicio*). Once the procedure has been exhausted and only if there is a declaration by a competent authority, which gives rise to the formation of a case against a judge, proceedings may be initiated against him/her. It is important to point out that this immunity granted to judges is inherent to the position they hold, inalienable and non-renounceable and thus, will last as long as they are in their positions.⁵²

Even when this constitutional guarantee becomes a tool of judges' irremovability, the risk is constant,

permanent and potentialized for judges who have sentenced organized crime structures, due to the complaints filed against them by the same accused or convicted, in a judicial system questioned by its lack of independence.

International organizations have observed the lack of protection by the Supreme Court of Justice, which does not reject "*in limine*" such complaints for being illegitimate or spurious.⁵³ Likewise, they have observed and pointed out the baseless persecution against justice operators who judge corruption cases, forcing them to go into exile.⁵⁴ Leaving the criminal prosecution and the administration of justice in the hands of criminal structures.⁵⁵

The government of President Bernardo Arévalo presented a proposal to reform the Public Prosecutor's Office in May 2024.⁵⁶

a) Harassment of judicial operators through complaints

Article 60 of the Judicial Branch Law establishes a series of guarantees so that judges can perform their duties with complete freedom. Additionally, the Supreme Court of Justice has the obligation to address the harassment and bullying of officials.

In recent months, the legal framework has been used as a tool for the harassment and bullying of justice operators in Guatemala. Both criminal and administrative complaints have no serious basis, but they do generate emotional and procedural wear for them. The harassment is not exclusive to judges



and magistrates, but extends to prosecutors, independent journalists, civil society and lawyers who were part of the CICIG.

The attacks against justice operators stands out, amongst other relevant cases being those of the most high risk judges, Erika Lorena Aifán Dávila, Miguel Ángel Gálvez Aguilar and the suspended judge Pablo Xitumul de Paz, who continue to suffer media and legal attacks, derived from the proceedings they were in charge of against businessmen, public officials and military.

As a consequence of the application of impartial justice, several requests for the exhaustion of pre-trial proceedings have been filed against aforementioned judges, and intimidation and threats through social networks.⁵⁷

Likewise, by virtue of resolutions issued by Judge Miguel Ángel Gálvez Aguilar, in transitional justice cases, attacks against him increased. An example of this are the pre-trials against him.⁵⁸ This request for impeachment was admitted for processing by the Supreme Court of Justice in June 2022.⁵⁹ The Inter-American Court of Human Rights issued provisional measures (obligatory for the State) in the case of Gudiel Álvarez and Others ("Diario Militar") v. Guatemala for the following reasons:

1. Require the State of Guatemala to [...] adopt, immediately and individually, the necessary measures to effectively protect the rights to life and personal integrity of Judge Miguel Ángel Gálvez Aguilar, head of the High Risk Court B of the Judiciary of Guatemala, as well as his family, and to guarantee the judicial independence of Judge Gálvez Aguilar.

2. Require [...] that the State adapt the security measures and scheme assigned to Judge Miguel Ángel Gálvez Aguilar, head of the High Risk Court B of the Guatemalan Judicial Branch, as well as his family nucleus. Said security scheme should be adopted by mutual agreement and in coordination with the beneficiary, and should avoid being provided by officials belonging to the public

institutions to which the persons prosecuted by the aforementioned judge belonged.⁶⁰

As a consequence of the pre-trial proceeding admitted against him and the multiple irregularities that characterized it⁶¹, Judge Galvez was forced to resign his position and leave the country to protect his freedom and physical integrity.⁶² In this regard, the United Nations Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, stated that criminal law is being used to attack public servants who protect human rights and fight against impunity.⁶³ As already indicated, judges are not the only ones who suffer from such attacks, prosecutors and defense lawyers also suffer intimidation and attacks by these groups.

To date, more than 24 justice operators are in exile, all judges, magistrates and prosecutors who performed their functions by law. An event that demonstrates the attack of criminal groups to remain under the mantle of impunity in Guatemala.⁶⁴

Another case in which the use of the judicial system to pressure uncomfortable judicial operators is evident is the case of Judge Wendy Coloma, who hears cases related to repression against peaceful marches and against magistrates of the Supreme Electoral Tribunal.⁶⁵

The Annual Human Rights Report of the IACHR highlights the case of Judge Carlos Ruano, who was forced to resign from his position as Vocal Judge of the Ninth Criminal Sentencing Court due to the harassment and criminalization against him when he denounced acts of undue interference on the part of high court judge.⁶⁶

These are some of the cases documenting the permanent harassment of justice operators, which explain the weakening of the rule of law. This has been echoed by international organizations that



have expressed their concern about what is happening in Guatemala.

In addition, Article 251 of the Constitution states that: "The Public Prosecutor's Office is an auxiliary institution of the public administration and the courts with autonomous functions, whose main purpose is to ensure strict compliance with the laws of the country. Its organization and operation shall be governed by its organic law. The head of the Public Prosecutor's Office shall be the Attorney General and shall be responsible for the exercise of public criminal action. [...]" The Center for Justice and International Law (CEJIL), the Washington Office on Latin America (WOLA), among others, have made clear in their pronouncements how the Public Prosecutor's Office and the Judiciary are used to persecute justice operators committed to justice.⁶⁷

The U.S. government also called on the Government of Guatemala to respect the human rights of justice operators, as well as to guarantee fair trials and ensure the personal safety and fair and transparent treatment of all justice operators.⁶⁸ In fact, in November 2022, a group of U.S. Congressmen introduced a draft resolution urging the U.S. government to strengthen anti-corruption and pro-democracy efforts in Guatemala.⁶⁹

Like international human rights organizations, the Inter-American Commission on Human Rights reminded the State of Guatemala of its obligation to protect justice operators from attacks, acts of intimidation, threats and harassment, and to investigate and effectively punish those who commit violations of these rights. If States do not guarantee the security of their justice operators against all kinds of external pressures, judicial activity can be seriously affected, obstructing access to justice.⁷⁰ The executive secretary of this organization has also warned about the persecution of judges and prosecutors in Guatemala, diagnosing

a systematic violation of human rights in the country.⁷¹

*"These acts of persecution by State institutions, including the Prosecutor's Office, clearly contravene a number of fundamental principles and norms of international law, including the United Nations Basic Principles on the Independence of the Judiciary. First, UN Basic Principle No. 1 states that the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or legislation of the country. By prosecuting judicial actors for their involvement in major corruption cases, making use of criminal jurisdiction tools and procedures, the State fails to guarantee judicial independence in accordance with the UN Basic Principles. Furthermore, the State's acts of persecution violate Articles 203, 251 and 268 of the Guatemalan Constitution. On the other hand, the State has failed to adhere to UN Basic Principle 17, which requires that complaints made against a judge in his or her professional capacity be handled expeditiously and fairly under an appropriate procedure. Allegations of judicial and prosecutorial misconduct against judicial operators prosecuting and adjudicating corruption cases made by defense attorneys representing the accused persons in such cases are not resolved through expeditious and fair proceedings. On the contrary, the allegations are subject to proceedings under reserve that suffer from numerous irregularities."*⁷²

The same IACHR has included Guatemala in Chapter IV.b of its Annual Human Rights Report, for the third consecutive year, due to the criminalization of justice operators and the abuse of the pre-trial procedure.⁷³ The most updated report includes a list of justice operators deprived of liberty in 2023 as well as those cases in which the pre-trial procedure was used to harass judges to the point of exile.

The persecution of justice operators in Guatemala as a strategy to ensure impunity is explained in detail in a report recently published by the Vance Center with the support of the International Legal Consortium, which identifies a series of patterns in the number of complaints against judges, the motives for these complaints, the times at which



they are filed, the complainants and the specific officials being prosecuted.⁷⁴ This report also reports on the multiple irregularities and violations of international norms and standards that occur in the context of these processes and complaints. Also, multiple civil society organizations presented a summary document, which includes evidence and recommendations for the Universal Periodic Review of the Human Rights Council.⁷⁵ Finally, it is relevant to mention that a special commission of the Latin American Federation of Magistrates and the International Union of Magistrates visited Guatemala in August 2022 and noted the proliferation of false and unfounded complaints against judges, the instrumentalization of pre-trial proceedings, and the abusive use of pretrial detention in proceedings against justice operators. The report resulting from the visit also amply demonstrates how threats, acts of harassment and

smear campaigns are used to complement criminalization.⁷⁶

Recently, during the on-site visit of the Inter-American Commission on Human Rights to Guatemala, various international organizations and judicial associations reiterated their alarm and concern over the deterioration of the human rights situation due to the criminal prosecution of journalists, judges, and human rights defenders. They explicitly called for the establishment of a special mechanism, such as a commission of experts, to examine the problem of criminalization. They also requested an urgent and strong call to the State of Guatemala, addressed to the Public Prosecutor's Office, to cease the arbitrary persecution of persons, and to the Constitutional Court to guarantee a transparent and independent process for the selection and appointment of magistrates of high courts.⁷⁷

V. Interference in the administration of justice

The process of the change of government between Alejandro Giammattei and Bernardo Arévalo was undermined by various attempts of political groups and corruption networks to prevent the inauguration at all costs, including judicial maneuvers.

"In 2023, the Inter-American Commission noted a series of undue interferences in the electoral process, mainly as a consequence of the abusive exercise of the Public Prosecutor's Office, which, in turn, has jeopardized the constitutional order and the principle of separation of public powers.

These interferences consisted of restrictions to the effective participation of individuals and political

parties, the suspension of the announcement of the results of the first round for more than two weeks, the suspension of the registration of the Semilla Movement as a legal entity, the search of its headquarters and attempts to prevent its members from holding public office; searches of the Supreme Electoral Tribunal, as well as requests for impeachment processed against its members, confiscation of the ballot boxes of the first round of the election by the MP, among others, as analyzed in this section."⁷⁸



VI. Corruption in the judicial system

It is well known that, in 2019 the, then, President of the Republic, Jimmy Morales Cabrera, did not extend the mandate of the International Commission Against Impunity in Guatemala, putting an end to the body, that for 12 years assisted the Public Prosecutor's Office in its struggle to dismantle criminal structures and clandestine security bodies embedded in the State.

The work carried out, jointly, by the Public Prosecutor's Office and the International Commission Against Impunity in Guatemala, led to the dismantling of criminal corruption structures in which different sectors were involved.

The investigations revealed how these criminal networks functioned, operating within the State, but with a pattern of action involving individuals outside the State's administrative organization.

The persecution against lawyers, prosecutors, judges, journalists and civil society is a stagnation in the fight against impunity and corruption. Organizations consider the unjustified transfers, dismissals and resignation of the prosecutors who handled the biggest corruption cases in the country

as an effort to maintain impunity.⁷⁹ Civil society organizations refer to a co-optation of the judicial system by political, economic and military actors who need a system of impunity to advance their interests.⁸⁰

Organizations are concerned that the proceedings against judicial officials who enjoy the right of impeachment are being arbitrarily shelved so that they will not be investigated.⁸¹

Finally, it is important to note that the U.S. State Department has included sitting justices in the list of anti-democratic and corrupt actors, preventing access to visas for that country.⁸²

Transparency International reported an alarming setback in the corruption index, being one of the countries with the worst results in the continent.⁸³ The media and research centers have concluded that as long as the situation of the Public Prosecutor's Office, as the head of investigation and criminal prosecution, remains unchanged, progress in the fight against corruption and impunity will continue to stagnate.⁸⁴

VII. Support for justice providers

Despite these attacks suffered by justice operators in the country, national and international organizations have highlighted in recent years that those people who, despite media attacks, threats and persecution, have not given up the fight against corruption.

Today, given the lack of interest of the state to strengthen the justice sector in the fight against corruption, the outlook is discouraging due to the criminalization directed against justice operators.

The Judicial Organism does not fulfill its function of defending the management of impartial, independent judges who are subject to the laws of the country.

The direct consequence is that corruption and impunity continue to take root in the country.

Several of Guatemala's justice operators who have been forced into exile after threats, intimidation and criminal proceedings against them, have been



decorated by multiple organizations and associations as well as foreign governments for their contribution to the fight against corruption and impunity.⁸⁵

It is imperative to strengthen the independent judiciary in the fight against impunity in the country. In 2023, presidential, congressional and mayoral elections were to be held, and therefore there are expectations on the part of citizens and state

entities regarding the strengthening or weakening of judicial independence.⁸⁶

Human Rights Watch denounced, in its Annual Report, that the weakening of the rule of law is evident and is not only perceived through attacks on judicial independence but also on freedom of the press, human rights defenders, criminal investigation and minorities.⁸⁷



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