

Criminalization of Justice Operators in Guatemala as a strategy to secure impunity

DECEMBER 2022



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

**NEW YORK
CITY BAR**



Table of Contents

List of Abbreviations and Acronyms.....	3
Executive Summary	4
Authors	6
Acknowledgements.....	7
1 Introduction.....	8
2 International standards	10
3 Analysis of the current situation	13
Context	13
Number of Complaints.....	20
Categories of complaints.....	25
Disciplinary proceedings before the judiciary	25
Proceedings before the Bar Association	26
Procesos penales.....	27
Removal of immunity requests	32
Reasons for complaint.....	34
Temporality of complaints, types of cases, and complainants	37
Due process	45
Criminalization strategy in the broad sense.....	47
4 Conclusions.....	53
5 Recommendations	56
6 Methodology.....	58
Annex. The Duties of Guatemala under International Law for the Protection of Judges, Prosecutors and Lawyers	59
Main Sources of Applicable International Norms.....	60
Protections Afforded to Judges, Prosecutors and Lawyers.....	66
Measures Impacting the Judiciary, Prosecutors, and practicing lawyers.	79



List of Abbreviations and Acronyms

AMERICAN CONVENTION	American Convention on Human Rights
CICIG	International Commission against Impunity in Guatemala
COMMITTEE	Human Rights Committee
COVENANT	International Covenant on Civil and Political Rights
FECI	Special Prosecutor's Office against Impunity
IACHR	Inter-American Commission on Human Rights
ILAC	International Legal Assistance Consortium



Executive Summary

The criminalization of justice operators has been used as a strategy to secure impunity in Guatemala. While not all justice operators are criminalized, there is a pattern of attacks to criminalize independent judges and prosecutors who undertake relevant high-level cases against government actors and other power groups. The tools and strategies used to abuse the mechanisms that the legislation contemplates, analyzed in this report, demonstrate a common strategy.

This report shows that international standards established to provide guarantees to judges during disciplinary proceedings and prevent their abuse have not been respected and ensured in Guatemala. There is a clear violation of the United Nations Basic Principles on the Independence of the Judiciary and the standards established by the Inter-American Human Rights System.

After the departure of the International Commission against Impunity in Guatemala (CICIG) in 2019, the investigations of the Special Prosecutor's Office against Impunity (FECI) were hindered and the dismissal of its chief further weakened the work of the office. Judges and prosecutors dealing with high-impact cases were also targeted through actions ranging from discrediting campaigns and harassment through social media, to administrative and criminal complaints.

In most cases, the current complainants against judges and prosecutors are those individuals investigated and prosecuted in corruption cases by those who are now persecuted. Justice operators carried out these investigations in abundance to their legal functions and powers, and these precise acts are the source and reason behind the current complaints and cases.

There are several clear patterns concerning the organizations and individuals who regularly and systematically initiate judicial or disciplinary proceedings against judges and prosecutors. These organizations are engaged in the intimidation of justice operators who work in corruption and human rights cases, in some cases involving military members. The temporality of these complaints is another alarming factor since they all coincide and intensify with the departure of CICIG, and the takeover of the Public Prosecutor's Office and the High Courts.

Even though targeting the persecuted justice operators lacks substantial grounds, the authorities do not hesitate to lift immunities, impose arbitrary arrest orders, and conduct proceedings in violation of the minimum rules of due process. This is evident by analyzing the grounds for the complaints behind these processes and cases. The authorities, which should protect the



integrity and independence of the administration of justice, process the requests of these organizations and individuals with suspicious effectiveness.

It is important to stress that the criminalization and persecution of judges and prosecutors in recent years have led to the arrest, transfer, removal, and prominent exile of more than 25 people. In addition, it has spread to other sectors, including social leaders, human rights defenders, and the independent press. The number of complaints against each of the most relevant justice operators in the fight against corruption is highly suspicious and demonstrates a strategy of using any option to eliminate the involvement of that judge or prosecutor in proceedings and investigations and the country.

The IACHR expressed its concern over recent acts of criminalization and persecution against judges, prosecutors, and former members of CICIG. Moreover, many international organizations, civil society organizations, and foreign governments such as the United States and the European Union have expressed emphatic and alarming statements about the same facts.

Key recommendations:

- The Public Prosecutor's Office and the other Guatemala authorities must analyze and dismiss the allegations against judges, prosecutors, and other justice operators based on spurious or political reasons lacking real means of conviction.
- Any proceedings against justice operators must be conducted promptly and in due process, ensuring compliance with the principles of transparency, access to information, publicity, and the due defense of accused persons.
- The Guatemalan authorities must analyze and take appropriate measures against persons who publicly threaten justice operators recurrently and systematically, activating the judiciary to wage a judicial war against them.
- The Inter-American System of Human Rights and the System for the Protection of Human Rights of the United Nations must respond effectively to requests to protect criminalized persons.

The report “Criminalization of Justice Operators in Guatemala as a strategy to secure impunity” is based on an analysis of documents, interviews, and questionnaires conducted with workers and former justice operators in Guatemala. The project was implemented between 2021 and 2022 by the Cyrus R. Vance for International Justice of the New York City Bar Association (Vance Center) and the International Legal Assistance Consortium (ILAC).

The report was made possible thanks to funding from the International Legal Assistance Consortium and the National Endowment for Democracy. .



Authors

Jaime Chávez Alor is Latin America Policy Director at the *Cyrus R. Vance Center for International Justice* of the New York City Bar Association and coordinates the Lawyers Council for Civil and Economic Rights of the Americas, as well as other legal policy initiatives for Latin America. Before the Vance Center, Jaime served in the three branches of the Mexican federal government. He served as head of the Ethics, Public Integrity, and Conflict of Interest Prevention Unit in the Ministry of Public Administration and the Office of International Affairs and Attachés of the Office of the Attorney General. Before that, he was senior advisor to the Mexican senate and advisor to the Chief Minister of the Supreme Court of Justice. Jaime earned his Law degree from the Escuela Libre de Derecho in Mexico City and an LL.M from Columbia University in New York City.

María Cristina Martínez Armas is a consultant for the *Cyrus R. Vance Center for International Justice* and international arbitration tribunals. She previously worked in dispute resolution teams for Bogota, Houston, Paris and New York firms. She also served as an advisor to the Attorney General of Colombia on international law matters. She is an attorney from Pontificia Javeriana University with an LL.M in international legal studies from New York University.



Acknowledgements

Special thanks to the international firm *King & Spalding* for investigating the international standards in Chapter VI and their detailed explanation. ILAC and Vance Center specifically thank Viren Mascarenhas, Douglass Cassel, Erin Collins, and Camilla Akbari.

The Vance Center is also grateful for technical support for this report from the International National Legal Assistance Consortium, of which the Vance Center is a member.

Gratitude is also expressed to the courageous people who have been victims of a criminalization strategy and persecution in Guatemala.



1 Introduction

In every State governed by the rule of law, there are mechanisms to investigate, discipline, and sanction judges and prosecutors who breach the law and whose conduct does not conform to the parameters established for prosecution and justice. However, this must be carried out under the strictest international standards that guarantee the rights of due process and the parameters to prevent these mechanisms from becoming a means of criminalization.

The misuse of mechanisms and tools of investigation, judicialization, and sanction available in the domestic legislation of a State, to alter the disposition of persons who adjudicate and thus prevent judicial decisions from arising out of an independent exercise of their functions is not only a violation of international norms and standards, but it directly and seriously attacks the rule of law.

If judges and prosecutors are constantly threatened with disciplinary, judicial, and administrative processes because of the exercise of their functions and the effects of the decisions they issue, the independence with which they work is jeopardized. Activating these mechanisms as a method of coercion constitutes a form of undue interference in the administration of justice because independent exercise is curtailed. Without independent justice, there are no peaceful tools to address abuses of power, illegal actions by the various branches of public power, disputes between individuals, or to settle matters of public impact; in other words, there is no legal certainty.

This situation violates the exercise of civil, political, economic, and social rights, as well as efforts of international cooperation to generate and promote development in countries of the region. Without certainty and legal security, efforts such as those undertaken by the US government to encourage investment will not be fruitful. Corruption, serious human rights violations, and migration will continue to be a reality.

The persecution of judicial operators through legal proceedings impacts the rights and freedoms of these judges and violates citizens' rights to access justice, due process, and judicial guarantees enshrined in international standards. In addition, confidence in the whole apparatus of adjudication is weakened.

As will be explained in more detail below, Guatemala is experiencing a setback in justice, as the efforts and achievements made by local authorities such as the Public Prosecutor's Office and the Courts and Tribunals (particularly High Risk Courts¹) with direct assistance of the International

¹ System of Courts and Courts created in 2009 by Decree No. 21-2009, Criminal Jurisdiction Law in higher risk proceedings, with the aim of adopting measures for those proceedings that present a



Commission against Impunity in Guatemala (“CICIG”), have been substantially weakened by direct attacks against all those who investigated and prosecuted both individuals and networks of corruption and violence.

While some of these attacks have taken place through discrediting campaigns, public or private threats, the monitoring, surveillance or espionage of the office premises of judicial operators, others have been channeled through the mechanisms and tools contained in Guatemalan law to investigate, prosecute, and sanction judges, prosecutors, and lawyers. This is a case of abuse, using proceedings in an indiscriminate fashion and with bad faith to obtain, at best, the removal of public officers and, at worst, imprisonment or exile for the mere act of fulfilling their functions entrusted by law to pursue cases of violence or corruption at a high level in the country.

This strategy has proved successful in that, through multiple complaints and with the consent of the same investigation and trial entities, such as the Supreme Court of Justice and the Public Prosecutor’s Office, they have managed to threaten some of the operators to the point of exile to protect their physical integrity or liberty or have achieved prison measures against others.

This project is part of the efforts of international organizations to strengthen independence in Guatemalan justice. This document aims, first, to clearly determine the international rules and standards to protect judicial independence and establish safeguards for judicial operators. Secondly, through information gathered from judges, prosecutors, and other persons in Guatemala on these complaints and proceedings against them, to make visible the flagrant violation of the guarantees established at the international level and to demonstrate the generalized strategy for this criminalization.

The first part of this document contains a summary of the rules and standards of international law that set forth the parameters for the protection of judicial independence. The full explanation and development of the standards are contained in the annex to this document. Based on these universal and regional principles, a series of safeguards for judges, prosecutors, and lawyers are identified, and certain measures and acts that affect this judicial independence and could result in an internationally wrongful act are flagged.

This normative framework is then applied to the events taking place in recent years in Guatemala to determine whether the State is acting under the obligations acquired.

greater risk to the security of judges, magistrates, prosecutors and assistants to the justice system. The law provides for a series of extraordinary security measures for proceedings relating to higher-risk crimes such as genocide, forced disappearance, torture, organized crime, money laundering, among others.



2 International standards

This is a summary of the safeguards of international human rights law for judges and prosecutors in Guatemala, in the face of arbitrary disciplinary proceedings, administrative removals, political trials, criminal proceedings, challenges, and complaints to bar associations, as well as guarantees for the independence of practicing lawyers, even when acting in the capacity of human rights defenders. The full analysis is available in the Annex to this document.

International law enshrines such safeguards and guarantees, inter alia, because of the imperiousness of the independence of judges, prosecutors, and lawyers in practice, for the rule of law in a democracy and the protection of fundamental rights. The main warranties are as follows:

- (i) International law recognizes that the independence of judges, prosecutors and practicing lawyers is central to the rule of law in a democracy and indispensable for protecting fundamental rights.
- (ii) The American Convention on Human Rights and the International Covenant on Civil and Political Rights, as authoritatively interpreted in light of related international instruments, are the main sources of international law safeguards for the independence of the judiciary in Guatemala.
- (iii) The independence of the judiciary includes freedom both from external interference and from internal interference by the judicial hierarchy outside lawful channels of appellate review.
- (iv) Judges and prosecutors have rights to freedoms of speech², assembly and association, within limits appropriate to the nature of their office. They are entitled to exercise those rights and to form associations. The permissible extent of their freedom of expression should be determined in the circumstances of each case.
- (v) Judges and prosecutors must be free to carry out their duties on the basis of the facts and the law without being subjected to improper

² For further information on freedom of speech of justice operators see *Derecho a la Libertad de Expresión de Personas que Imparten Justicia; Protección Internacional – Alcances y Límites*, Cyrus R. Vance Center for International Justice, Lawyers Council for Civil and Economic Rights, New York City Bar, Septiembre 2022: <https://www.vancecenter.org/wp-content/uploads/2022/09/Derecho-a-la-Libertad-de-Expresion-de-personas-que-imparten-justicia.pdf>



influences, inducements, pressures, threats, or interferences, direct or indirect, or to any inappropriate or unwarranted interference.

- (vi) Judges and prosecutors may be subject to disciplinary sanctions, suspension, or removal from office only for persistent inability to carry out their functions, frequent intemperance, intentional bad conduct in their office, conduct that discredits the office, or significant violation of judicial ethics.
- (vii) The grounds for discipline or removal must be defined in advance by law with sufficient clarity and foreseeability to satisfy the principle of legality. Disciplinary and removal decisions must be transparent, with the reasoning that specifies the applicable norms, the relevant misconduct, the reasons why the misconduct violated the norms, and why any sanction is proportionate to the misconduct.
- (viii) Judges and prosecutors may be administratively terminated only by reason of expiration of their originally prescribed term of office or upon the occurrence of previously stated, objective conditions (such as publication of the results of a competitive examination).
- (ix) In all events, judges and prosecutors may be removed or sanctioned only by procedures which comply with due process of law and allow for independent review of the decision.
- (x) Any sanction of a judge or prosecutor must be proportional to the nature of the misconduct.
- (xi) States have a duty not to conduct, tolerate, acquiesce in or support recusals, referrals to bar associations, or criminal proceedings which do not have a proper basis in law, or which are brought in bad faith.
- (xii) States have a duty to refrain from “disguised sanctions” against judges and lawyers. These are actions purportedly brought for administrative or other reasons, but which are in fact intended to interfere with the independence of a judge, of a category of judges, or of the judiciary as a whole.
- (xiii) States must ensure the existence of an independent legal profession. Practicing lawyers are entitled to exercise their professional responsibilities without being subjected to threats, intimidation, retaliation or improper pressures of any kind.



- (xiv) Practicing lawyers may be disbarred or professionally sanctioned only on the basis of previously stated grounds; in accord with principles of legality, necessity, and proportionality; and pursuant to due process of law, including the right to secure independent review of any action affecting their rights.
- (xv) Lawyers acting as human rights defenders are further entitled to all the rights recognized by international instruments and jurisprudence on the rights of human rights defenders.



3 Analysis of the current situation

Context

Before evaluating specific cases of complaints and judicial proceedings against judges and prosecutors, it is important to understand Guatemala's justice environment today. The context in which this strategy of criminalization and prosecution of judicial operators, prosecutors and lawyers is developed in Guatemala is directly related to the departure of the International Commission against Impunity in Guatemala (“CICIG”) in 2019.

While some form of criminalization or harassment of justice operators always existed from the work they do, the institutions responsible for administering justice had never been used by criminal structures to harass and prosecute persons who deliver justice at all levels and prosecutors. In addition, media or social networks were not used to criminalize the work of justice operators as is currently the case. This phenomenon occurs as a retaliation of the governments in place, who took control of both the Supreme Court of Justice, the Public Prosecutor’s Office and the Constitutional Court, in order to guarantee impunity for acts of corruption because the co-optation of such institutions may carry out no complaint or investigation.³

In Guatemala, an internal armed conflict took place for more than 36 years, ending with the Peace Accords signing in 1996. The implementation of these Peace Agreements was hampered by various causes such as the weakness of State institutions, the increase in violence and the political passivity of the State in the face of events. In addition, corruption has been one of the constant and strong problems in the attempts to reduce violence and in the development of the country in general. The perception of impunity in the face of corrupt and violent acts is widespread and significant and includes the highest spheres of public power in the country, as well as the business sector and political parties.

This perception of impunity was supported by the inactivity of criminal justice, including judges and prosecutors, whose appointment and exercise was directly influenced by individuals or power structures that were not investigated or prosecuted for their acts of corruption.

³ Daniella Burgi-Palomino and Lisa Haugaard, Latin America Working Group Education Fund; Ana Maria Méndez Dardon, Washington Office on Latin America; Ursula Indacochea, Due Process of Law Foundation; Corie Welch, Guatemala Human Rights Commission/USA, When the Dominoes Fall: Co-optation of the Justice System in Guatemala, October 2022: <https://www.wola.org/analysis/when-dominoes-fall-justice-system-guatemala/>



After the signing of the Peace Accords, there was no solid investigation into corruption issues and there were no mechanisms or laws to prosecute criminal structures or criminal acts. For example, it was not until 2002 that the Law on Money Laundering or Other Assets was issued in Guatemala, and likewise the Law against Organized Crime was only passed in 2006. These two laws are part of the tools used in conjunction with CICIG for prosecuting criminal structures embedded in the State in conjunction with the Special Prosecutor's Office against Impunity.

The government of President Alfonso Portillo, who served in office from 2000 to 2004, requested the United Nations to set up a joint commission for the investigation of clandestine and illegal security schemes that violated the human rights of citizens in Guatemala. This was the beginning of an era of strengthening public institutions, combating corruption and impunity, and of best practices in the operation of the judiciary.

In 2006, the Government of Guatemala signed an agreement with the United Nations establishing CICIG, with a favorable advisory opinion from the Constitutional Court and the approval of Congress. To carry out its constitutive functions, CICIG had objectives such as the investigation of illegal security bodies and clandestine schemes that committed crimes in violation of human rights, identifying their structures, activities, sources of financing and modality of operation. To this end, collaboration with the Guatemalan authorities was necessary to disarticulate such apparatuses, to judicialize and sanction their members. One of the important components of CICIG was capacity building in the investigative body to shape lasting ability at the institutional level and prevent a new wave of impunity and violence.

During the period of CICIG's operation in Guatemala, the objectives were met through the following lines of work: administrative and judicial corruption, drug trafficking, money laundering, crimes involving high power and the illicit financing of political campaigns.

Among the relevant cases that marked the route of work, are the cases Pavon-Infiernito⁴, Portillo⁵, Rosenberg⁶, and from there other cases were discovered that had as common denominator the existence of criminal structures embedded in the State, that would otherwise not been investigated without the accompaniment of a commission such as the CICIG.

⁴ Pavon-Infiernito Case, CICIG: <https://www.cicig.org/casos/caso-pavon-infiernito/> See also: Infiernito Case: Sociologist to report on torture, Prensa Libre (February 11, 2019): <https://www.prensalibre.com/guatemala/justicia/caso-infiernito-sociologo-rendira-un-informe-relacionado-a-las-torturas/>

⁵ Portillo Case, Communication of the Attorney's Office of NY, CICIG, May 22, 2014: <https://www.cicig.org/noticias-2014/caso-portillo-comunicado-de-fiscalia-de-ny/>

⁶ Guatemala: "Rosenberg ordered his death," BBC News, January 12, 2010: https://www.bbc.com/mundo/america_latina/2010/01/100112_1838_guatemala_rosenberg_gz



The CICIG then worked from 2007 to 2019 with the Office of the Public Prosecutor, strengthening the Special Prosecutor against Impunity (“FECI”), and investigating multiple cases of national interest.⁷ Among the cases investigated and worked out, the local authorities in the company of CICIG found a strong complicity of the private sector and criminal groups with different branches of public power for acts of corruption, including judges, magistrates, congress members, police, among others. Several entrepreneurs were prosecuted for tax evasion, defrauding the State by significant figures.⁸ For this reason, some businessmen and officials spoke out against the work of CICIG and FECI. Some of the most important cases were those known as “*La Línea*”⁹ and “*State Cooptation*”¹⁰, which involved then-President Otto Pérez Molina and Vice-President Roxana Baldetti, who exercised their positions between 2012 and 2015, being part of a network that obtained benefits from the collection of illegal commissions. This is relevant since, as discussed below, most of the prosecuted and criminalized judicial operators are related to the FECI and the high risk courts that heard these cases of national interest. The results of the “*Construction and Corruption*” cases, in which multiple officials and entrepreneurs were investigated and prosecuted, are also highlighted, “*Illegal Financing to the FCN*” on electoral financing in relation to former President Jimmy Morales and the prominent case of “*Parallel Commissions 2020*” which uncovered a system of corruption and

⁷ Call, Charles T. *International Anti-Impunity Missions in Guatemala and Honduras: What lessons for El Salvador?* Center for Latin American and Latino Studies, American University, June 2019. Available at: <https://www.american.edu/centers/latin-american-latino-studies/upload/international-anti-impunity-missions-in-guatemala-and-honduras-what-lessons-for-el-salvador-rev4.pdf>

⁸ Attacks on judicial independence, Report of the mission of judges of the Latin American Federation of Magistrates and the International Union of Magistrates, October 2022, page 9: <https://docs.google.com/viewerng/viewer?url=https://agji-gt.org/~agjigtor/wp-content/uploads/2022/10/Informe-de-mision-a-Guatemala-FLAM-y-UIM-octubre-2022.pdf>

⁹ The investigation began following allegations of a network of corruption between importers and customs officials who adulterated the documentation of containers entering the country to pay less tariffs and fees. For information from CICIG on the case: <https://www.cicig.org/casos/caso-la-linea/> See also: The fight against impunity: Assessing the level of cooperation with the International Commission against Impunity in Guatemala, December 2019, page 27: <https://www.wola.org/wp-content/uploads/2020/07/Impunidad-GT-ESP-7.10.pdf>, *The Mafia plot that made a people unworthy and brought down a government*, El País, September 4, 2015: https://elpais.com/internacional/2015/09/04/actualidad/1441333144_960360.html and “*The Line*”: What, how and why of the corruption scandal that toppled the President of Guatemala, BBC, May 8, 2015: https://www.bbc.com/mundo/noticias/2015/05/150507_guatemala_corrupcion_escandalo_vice-presidenta_baldetti_jp

¹⁰ A case of money laundering involving several companies since the Partido Patriota’s election campaign, and which coopted the state through the appointment of ministers and other high-level officials belonging to the network to divert public funds and carry out other acts of corruption. For information from CICIG on the case: <https://www.cicig.org/casos/caso-cooptacion-del-estado/> See also: The fight against impunity: Assessing the level of cooperation with the International Commission against Impunity in Guatemala, December 2019, page 29: <https://www.wola.org/wp-content/uploads/2020/07/Impunidad-GT-ESP-7.10.pdf>, Guatemala puts ex-President Pérez Molina in the dock for corruption, Swiss Info, January 17, 2022: https://www.swissinfo.ch/spa/guatemala-corrupcion_guatemala-sienta-en-el-banquillo-al-expresidente-perez-molina-por-corrupcion/47269336



undue interference in the nomination and selection of Supreme Court justices, the Court of Appeals and the Electoral Tribunal.

Although the Agreement establishing CICIG was renewed by the Parties on five occasions, for two years each, President Jimmy Morales, who served between 2016 and 2020, decided not to renew it on August 31, 2018¹¹. At that time, he launched a campaign of discredit toward this commission alleging violation of national sovereignty and the imposition of left-wing ideologies in the national judicial environment. This campaign of disrepute was carried out across several fronts, including organizations such as the *Fundación contra el Terrorismo* and business coalitions such as the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Entities (CACIF for its acronym in Spanish), as well as the use of false accounts in social networks and other strategies that were investigated and analyzed by CICIG itself.¹² The former President Morales alleged abuses committed by this international body by mentioning those investigated and accused in corruption proceedings or their relatives, qualifying them as victims, attempting to disinform the population and informing that it would request the United Nations to assume accountability on the Commission's actions in Guatemala.¹³

When Jimmy Morales was a presidential candidate, he publicly defended the work of the CICIG, making statements during his speeches in support of its work. When he assumed power and at the beginning of his government in the year 2016, he maintained his position of support, even appearing press conferences in the Public Prosecutor's Office when FECCI and CICIG informed the public of the revelation of an important, judicialized case. Following the disclosure of a corruption case involving the son and brother of then-President Morales, his speech was transformed and distanced himself from the CICIG and the FECCI and later denounced alleged abuses committed by the commission.¹⁴

¹¹ Inter-American Commission on Human Rights (IACHR), *Guatemala: IACHR expresses its concern at Guatemala's decision not to renew the mandate of the International Commission against Impunity in Guatemala (CICIG)*, September 4, 2018. Available at:

<https://www.refworld.org/es/docid/5ba11a674.html>

¹² Report: *Bots, Netcenters and Combating Impunity, The Case of Guatemala*, CICIG, May 2019:

https://www.cicig.org/wp-content/uploads/2018/05/Informe_bots_y_netcenters_2019.pdf See

also: *Guatemala plunges into the abyss of impunity*, El País, August 6, 2022:

<https://elpais.com/internacional/2022-08-06/guatemala-se-hunde-en-el-abismo-de-la-impunidad.html>

¹³ *Morales orders to report the CICIG for violating the laws and taking account*, by Spanish News Agency (January 7, 2019) <https://www.elpais.cr/2019/01/07/morales-ordena-denunciar-a-la-cicig-por-violar-las-leves-y-que-rinda-cuentas/>

¹⁴ Son and brother of Jimmy Morales connected to fraud case, *Prensa Libre*, January 18, 2017: <https://www.prensalibre.com/guatemala/justicia/capturan-a-samuel-morales-hermano-del-presidente/>



This resulted in a significant setback in the fight against corruption, violence and impunity.¹⁵ Once the agreement with the CICIG was finalized, the Constitutional Court was coopted, the chief of the FECCI ousted and replaced, and attacks on high risk judges increased.¹⁶ This substantially weakened the capacity of these guardian institutions to deal with impunity for corruption crimes and serious human rights violations. In this regard, the IACHR has emphasized that:

“... During 2021, information was received on the criminalization and prosecution of judges, prosecutors, former prosecutors, and magistrates as a form of harassment, due to the work of investigation or trial of criminal structures linked to political and economic power, emblematic cases of serious human rights violations during the armed conflict, or because they supported the work of the International Commission against Impunity (CICIG) in the country.”¹⁷

After the departure of CICIG, relevant decisions have been issued in the framework of criminal proceedings that undo the advances made by high risk judges and prosecutors of the FECCI. A number of cases have been dismissed, some have lost important collaborators, no indictments have been made and several identified as perpetrators or collaborators have benefited.¹⁸

¹⁵ Washington Office on Latin America (WOLA), *The Facts: CICIG's Legacy in the Fight Against Corruption*, August 27, 2019. Available at: <https://www.wola.org/es/analisis/los-hechos-el-legado-de-la-cicig-en-la-lucha-contra-la-corrupcion-en-guatemala/>

¹⁶ Blitzer, Johnathan, *The exile of Guatemala's anti-corruption efforts*, The New Yorker, April 29, 2022: <https://www.newyorker.com/news/dispatch/the-exile-of-guatemalas-anti-corruption-efforts> See also: *The prosecutor against impunity in Guatemala*, Los Angeles Times, July 24, 2021: <https://www.latimes.com/espanol/internacional/articulo/2021-07-24/destituyen-a-fiscal-contra-la-impunidad-de-guatemala> and José Luis Sanz, *the Attorney General of Guatemala conceals more than President Giammattei*, The Washington Post, February 22, 2022: <https://www.washingtonpost.com/es/post-opinion/2022/02/22/giammattei-consuelo-porras-fiscal-guatemala-sobornos-exilio/>

¹⁷ Press RELEASE 203/21, *IACHR expresses concern over actions that weaken judicial independence in Guatemala*, August 6, 2021: <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/203.asp>

¹⁸ These include: i) The case of former ambassador Julio Ligorra for giving money to an election campaign (FECCI requests Interpol to deactivate the red alert against former ambassador Julio Ligorra, linked to the case of Construction and Corruption, Prensa Libre, May 3, 2022: <https://www.prensalibre.com/guatemala/justicia/la-feci-solicita-a-la-interpol-que-desactive-la-alerta-roja-contra-exembajador-julio-ligorria-vinculado-al-caso-construccion-y-corrupcion-breaking/>), ii) The Plazas Fantasma Case (entrepreneurs and FECCI prosecutor, Curruchiche, included in the U.S. Engel List, Prensa Comunitaria, July 15, 2022: <https://www.prensacomunitaria.org/2022/07/empresarios-y-fiscal-de-la-feci-curruchiche-destacan-en-la-lista-engel-de-ee-uu/>) See also: Caja de Pagos and Plazas Fantasma: FECCI seeks to cancel agreement with former deputy Edgar Cristiani as effective collaborator, Prensa Libre, June 21, 2022: <https://www.prensalibre.com/guatemala/justicia/casos-caja-de-pago-y-plazas-fantasma-feci-pide-anular-convenio-con-exdiputado-edgar-cristiani-como-colaborador-eficaz-breaking/>) and, iii) the case against Judge Blanca Stalling, who was reported to have pressured Judge Carlos Ruano in the IGSS Pisa-Chiquimula case in which the son of Judge Otto Molina Stalling (Blanca Stalling: After a court ruling in her favor, a judge removed from her post at the CSJ asks to be reinstated, Prensa Libre, July 8, 2022:



Once the Agreement for the operation of CICIG was finalized in 2019¹⁹, the joint strategy had as its central objective to pursue judicial operators who would continue the work of CICIG by disarticulating criminal structures of violence and corruption, and thus return to an era of impunity.²⁰ This pattern of persecution became more acute, according to the data presented below, with the arrival of Consuelo Porras at the Public Prosecutor's Office on May 17, 2018.²¹

After the departure of CICIG in September 2019, Attorney General Consuelo Porras carried out a series of actions to weaken the Special Prosecutor against Impunity. One of these actions was the transfer of a related investigation to the Guatemalan Social Security Institute that would involve the President.²² According to the Attorney General, the reason was that the request for information by the prosecution to the President of the Republic was not made “cordially”. For that reason, she decided to transfer the investigation to another prosecutor's office.²³

This persecution is not new, for even since 2019, when ILAC produced the Rule of Law “A Window of Opportunity: Support to the Rule of Law in Guatemala”²⁴, different judicial operators and human rights defenders in Guatemala expressed their concern about the threats they were receiving every time their work became visible.

The cases of *comisiones paralelas* of 2014 and 2020²⁵, judicialized by the courts of Guatemala, demonstrate how the political and private sectors try,

<https://www.prensalibre.com/guatemala/justicia/blanca-stalling-tras-fallo-judicial-a-su-favor-exmagistrada-pide-ser-reinstalada-en-la-csj-breaking/>

¹⁹ Porras, Gloria. *Effects of Corruption on the Justice System in the Northern Triangle*, Wilson Center Latin American Program, February 2022. See “A Window of Opportunity: Support to the Rule of Law in Guatemala”, ILAC Assessment Report on the Rule of Law, March 2020, p. 18.

²⁰ Inter-American Commission on Human Rights (IACHR), the *IACHR expresses concern about measures adopted that may weaken the fight against impunity and corruption in Guatemala*. Organization of American States, January 10, 2019. Available at:

<https://www.oas.org/es/cidh/prensa/comunicados/2019/007.asp>

²¹ European Parliament, *Guatemala: Deterioration of the rule of law and harassment of activists and journalists*. European Parliament, 7 April 2022. Available in:

<https://www.europarl.europa.eu/news/es/press-room/20220401IPR26539/guatemala-deterioro-del-estado-de-derecho-y-acoso-a-activistas-y-periodistas>

²² Daniella Burgi-Palomino and Lisa Haugaard, Latin America Working Group Education Fund; Ana Maria Méndez Dardon, Washington Office on Latin America; Ursula Indacochea, Due Process of Law Foundation; Corie Welch, Guatemala Human Rights Commission/USA, *When the Dominoes Fall: Co-optation of the Justice System in Guatemala*, October 2022, Page 5:

<https://www.wola.org/analysis/when-dominoes-fall-justice-system-guatemala/>

²³ MP of Consuelo Porras: FECl should have asked the presidency for information in a cordial manner, La Hora.gt, September 14, 2020 <https://lahora.gt/nacionales/larana/2020/09/14/mp-de-consuelo-porras-feci-debio-pedir-informacion-a-la-presidencia-de-forma-cordial/>

²⁴ ILAC, *ILAC Assessment Report on the Rule of Law in Guatemala: A Window of Opportunity*, March 2020. Available at: <https://ilacnet.org/publications/a-window-of-opportunity-support-to-the-rule-of-law-in-guatemala/>

²⁵ *Parallel Commissions: Mechanisms for Co-optation of Justice*, Myrna Mack Foundation (May 2020):

https://myrnack.org.gt/images/stories/fmm/archivos/informes/2020/Informe_Comisiones_Paralelas.pdf



and often succeed, to directly influence the system of administration of justice to avoid investigations and prosecutions of their illegal actions. They do this by manipulating the nomination commissions whose task is to assist the legislature in the formation of the Supreme Court of Justice and the Court of Appeals. Therefore, the judicial operators who leave this scheme of influence and who at some point worked to combat this phenomenon of illegality are persecuted and criminalized.

An example of the foregoing, which is part of the mission of the Consuelo Porras administration to weaken the Special Prosecutor against Impunity, was the delay in authorizing the FECI, to submit requests for immunity removal against the Supreme Court justices linked in the *comisiones paralelas 2020*, who should be investigated for their participation in events that made possible the manipulation of the process of electing judges of high courts.²⁶

The strategy of persecution also became notorious against the Constitutional Court on an account of the decisions taken in the period from 2016 to 2021, some of them related to support for CICIG and FECI²⁷, human rights cases, energy projects that operated in the illegality and violation of the consultation of indigenous peoples²⁸, amnesties²⁹, illegal appointments³⁰, among others.

Although the problem of criminalization is the most visible and alarming today³¹, it is relevant to understand that it originates in the normative and practical problems of how justice in Guatemala organizes and operates. The shortcomings of the nomination commission system, such as the role of law faculties and the creation of law faculties exclusively to influence the process,

²⁶ Consuelo Porras still does not endorse 10 immunities removals against magistrates: Soy 502, June 1, 2021 <https://www.soy502.com/articulo/consuelo-porras-retrasa-presentaci%C3%B3n-de-10-antejuicios-contra-magistrados-5313>

²⁷ Cumes, William, *Ivan Velasquez remains, according to final Amparo*. Prensa Libre, August 29, 2017 <https://www.prensalibre.com/guatemala/justicia/cc-suspende-en-definitiva-expulsion-de-ivan-velasquez/>

²⁸ Aguilar, DENIS, *CACIF makes statement on mine Fenix and criticizes the CC*. La Hora, June 24, 2019 <https://lahora.gt/nacionales/daguilar/2020/06/24/cacif-se-pronuncia-por-mina-fenix-y-critica-a-la-cc/>

²⁹ Association of Relatives of Detainees and Disappeared Persons of Guatemala (FAMDEGUA), Association for the Integral Development of Victims of Violence in the Verapaces Maya Achi (ADIVIMA), Law Firm of Human Rights (BJDH), Center for Legal Action in Human Rights (CALDH), Center for Justice and International Law (CEJIL), Myrna Mack Foundation, Institute of Comparative Studies in Criminal Sciences of Guatemala (ICCPG), Pedro Chitay (Chitay Nech Case, Unit for the Protection of Women Human Rights Defenders - Guatemala (UDEFEGUA), Network of Non-Violence Against Women (REDNOVI) and Representatives in the case of Gudiel Alvarez et al. (Diario Militar), *the infeasibility of amnesty is hope for Guatemala*. CEJIL, February 12, 2021 <https://cejil.org/comunicado-de-prensa/la-inviabilidad-de-la-amnistia-es-esperanza-para-guatemala/>

³⁰ Hernandez Mayen, Manuel, *CC grants amparo to the MP and orders Congress to elect CSJ judges and qualified appeals*. Prensa Libre, 6 May 2020. <https://www.prensalibre.com/guatemala/justicia/cc-otorga-amparo-al-mp-y-ordena-al-congreso-a-elegir-magistrados-de-csj-y-apelaciones/>

³¹ Blitzer, Johnathan, *The exile of Guatemala's anti-corruption efforts*, The New Yorker, April 29, 2022: <https://www.newyorker.com/news/dispatch/the-exile-of-guatemalas-anti-corruption-efforts>



have been denounced on many occasions. as well as several defects in the rules on the functioning of the commissions, such as the discretion of their members, the lack of transparency at some stages and the way candidates are qualified.³² However, the problem is not limited to the conformation of the high courts, but extends, for example, to the selection of judges .³³ In addition, because of the problems that arose in the election and appointment of new high risk judges of the Supreme Court of Justice and the Court of Appeals, there is a delay of more than three years in the election of new judges. The high courts that make up this judiciary have then not alternated, which aggravates the situation of all those investigated and judicialized because they have no guarantees and face a judiciary that operates outside the mandates of the Constitution and the law.

Attacks on the judiciary not only affect judicial operators in safeguarding their human rights³⁴, it restricts the general public's right to access justice since they would not find themselves before an independent judiciary but rather one coerced into its action by threats.³⁵

Below, information that illustrates a generalized situation of criminalization of justice operators will be presented. This report is not intended to expose each and every case currently being developed in Guatemala, but to analyze some of the emblematic cases.

Number of Complaints

One of the elements that clearly allows to establish a generalized strategy of persecution against persons who operate justice who have worked on cases that touch particular interests, and which materializes in the criminalization of them, is the number of processes, complaints, etc., that have been filed

³² Accompaniment of the Lawyers Council for Civil and Economic Rights To Guatemala for the process of appointing judges to the Supreme Court Of Justice And the Court of Appeals, July 2019: <https://www.vancecenter.org/wp-content/uploads/2020/05/Acompañamiento-del-Lawyers-Council-a-Guatemala-para-el-proceso-de-nombramiento-de-Magistrados.-Julio-2019.pdf> See also: Attacks and criminalization of justice operators in Guatemala as part of the strategy to dismantle the fight against corruption and impunity, Contribution to the Fourth Cycle of the Universal Periodic Review of the United Nations Human Rights Council Session No. 42 on Guatemala, July 2022: https://www.vancecenter.org/wp-content/uploads/2022/09/UPR_Ciclo4_Informe_completo_criminalizacion_Operadores_Justicia_Guatemala-19.9.2022.pdf

³³ Canel, Oscar. *CSJ does not elect a substitute for Aifán and chooses to extend the call*. La Hora, May 4, 2022 <https://lahora.gt/nacionales/oscar-canel/2022/05/04/csj-no-elige-a-sustituto-de-aifan-y-opta-por-ampliar-convocatoria/>

³⁴ Voz de América, *Judges and Magistrates of Guatemala denounce the lack of guarantees for the delivery of justice*. Voz de América, 23 March 2022. Available at: <https://www.vozdeamerica.com/a/jueces-y-magistrados-de-guatemala-se-pronuncian-ante-falta-de-garantias-/6498236.html>

³⁵ CEJIL, DPLF, Robert F. Kennedy Human Rights, WOLA, AJWS, LAWG, acting together Jotay Guatemala, Be Just, FJDEE, GHRC, International Platform Against Impunity, International Protection Mesoamerica. *International Organizations We reject the criminalization of Judge Pablo Xitumul and denounce the persecution of justice operators in Guatemala*. Washington Office on Latin America (WOLA), February 9, 2022. Available at: <https://www.wola.org/es/2022/02/juez-xitumul-persecucion-guatemala/>



(and they continue to be submitted) against key people who act as prosecutors, judges, and human rights defenders. It is possible to observe how numerous complaints are initiated against the same operator to increase the possibilities of prosecution and sanction.

It should be emphasized that complaints against persons who operate justice seek the removal of them from specific cases, by arguing that the accused have submitted complaints against them, so that the cases can be handled by other prosecutors or judges, with whom they have agreements in order to be able to solve their legal situation and guarantee impunity.³⁶

As clear examples, the former head of the FECCI Juan Francisco Sandoval³⁷ accumulates more than 75 cases between criminal, administrative and disciplinary complaints. As will be explained below, the number of complaints began to increase with the departure of CICIG from Guatemala and as Prosecutor Sandoval made progress in the investigations of the cases under his responsibility.

The former High Risk Judge D, Erika Aifan,³⁸ accumulates more than 100 cases between administrative complaints, applications for immunity removal,

³⁶ Daniella Burgi-Palomino and Lisa Haugaard, Latin America Working Group Education Fund; Ana María Méndez Dardon, Washington Office on Latin America; Ursula Indacochea, Due Process of Law Foundation; Corie Welch, Guatemala Human Rights Commission/USA, *When the Dominoes Fall: Co-optation of the Justice System in Guatemala*, October 2022, Page 6:

<https://www.wola.org/analysis/when-dominoes-fall-justice-system-guatemala/>

³⁷ He served as FECCI prosecutor, also acting as head of this division. During his administration, more than 250 people including former presidents, congressmen, businessmen and ministers were investigated and prosecuted for corruption crimes. He was dismissed on 23 July 2021 by Attorney General Consuelo Porras and is currently in exile. Four months after his removal, four arrest warrants were issued against him. See: Vega, Pavel Gerado. *There are 47 charges against Juan Francisco Sandoval. This is the list of those who denounce him*. Plaza Pública, October 13, 2020. Available at: <https://www.plazapublica.com.gt/content/hay-47-acusaciones-contra-juan-francisco-sandoval-esta-es-la-lista-de-los-que-lo-denuncian>

³⁸ She served as a judge of the First Court of Criminal, Drug trafficking and Offences Against the Environment, the head of the Higher Risk Court “D” of the Guatemalan Judicial Branch just before she went into exile in the United States. Because of her specific jurisdiction as a judge, she worked on large cases of corruption and organized crime. See: National Writing, *the best-known cases Erika Aifan had in charge*. RCN News, March 3, 2022. <https://crnnoticias.com/los-casos-mas-conocidos-que-erika-aifan-tuvo-a-su-cargo/>, CEJIL, DPLF, Robert F. Kennedy Human Rights, WOLA, AJWS, LAWG, Acting Together Jotay Guatemala, Be Just, FJDEE, GHRC, International Platform Against Impunity, Mesoamerican International Protection, Lawyers Without Borders Canada, Justice Foundation. *International organizations demand publicity and announce observation of judge Erika Aifan's deposition hearing before the investigating judge*. Center for Justice and International Law (CEJIL), March 3, 2022. Available at:

<https://cejil.org/en/press-releases/international-organizations-demand-publicity-and-announce-observation-of-judge-erika-aifans-deposition-hearing-before-the-investigating-judge/>, Canel, Oscar, *New Yorker's article annoys Porras: Announces research*. La Hora, May 5, 2022. <https://lahora.gt/nacionales/oscar-canel/2022/05/05/el-articulo-del-new-yorker-molesta-a-porras-anuncia-investigaciones/>, Foundation for Due Process (DPLF), DPLF presents Amicus Curiae in the *amparo* process initiated against the decision of the Supreme Court of Justice to admit to processing the petition for immunity removal against Judge Erika Aifan Davila in Guatemala, September 16, 2020. Available at: <https://dplf.org/es/recursos/amicus-curiae-amparo-erika-aifan-guatemala>



among others. Former Judge Gloria Porras³⁹ has more than 50 complaints against her and she was unable to take possession of her re-election as a judge of the Constitutional Court because of the multiple complaints and proceedings initiated by the *Fundación contra el Terrorismo*.⁴⁰

With the current process in progress, by November 2022, former Judge Miguel Angel Galvez⁴¹ completes 4 applications for removal of his immunity.

Different former FECCI prosecutors have at least four complaints under investigation, to which they do not have access, because the Public Prosecutor's Office argues confidentiality. Based on these allegations, arrest warrants or subpoenas have been issued to obtain their first deposition. Prosecutors and

³⁹ Gloria Porras was re-elected as a judge of the Constitutional Court but was unable to take office on account of complaints filed against her by the *Fundación contra el Terrorismo*. There are more than 50 complaints against her. Some of the allegations are related to the content of her decisions while serving as a judge. See: Stream, Lorraine. Gloria Porras: "I am concerned about how in Guatemala they are using laws to achieve avian goals." *El País*, 13 April 2021.

<https://elpais.com/internacional/2021-04-14/gloria-porras-me-preocupa-como-en-guatemala-están-utilizando-las-leyes-para-alcanzar-objetivos-aviesos.html>. Office of the United Nations High Commissioner for Human Rights (OHCHR), 19 November 2020. OHCHR <https://www.ohchr.org/es/2020/11/guatemala-attacks-against-constitutional-court-and-delays-appointment-judges-high-courts>,

As a result of the multiple threats she went into exile since April 2021. See: Sanz, Jose Luis. I will return to Guatemala. *El Faro*, 19 April 2021

<https://elfaro.net/es/202104/centroamerica/0000025421--ldquo-regresare-a-guatemala-rdquo-> The *Fundación contra el Terrorismo* has filed criminal complaints and requests for immunity removal against other judges of the Constitutional Court Bonerge Mejía, Francisco de Mata, Neftali Aldana and Maria Cristina Fernandez. See: IACHR expresses concern over immunity removal proceedings against four judges and magistrates of the Constitutional Court of Guatemala, June 30, 2020: <https://www.oas.org/es/cidh/prensa/comunicados/2020/156.asp>, Human Rights Watch. Guatemala: Congress's attack on judicial independence. Human Rights Watch, November 17, 2020. Available at: <https://www.hrw.org/es/news/2020/11/17/guatemala-ataque-del-congreso-la-independencia-judicial>

⁴⁰ "Why on the Court or Not, I Swore to Protect the Constitution," *El Faro* (April 20, 2022), <https://elfaro.net/en/202104/centroamerica/25423/>"Ya Whether in court or not, I swore to protect the Constitution" .htm

⁴¹ He served as a Judge at Higher Risk "B". Some of the most emblematic cases of his career include those related to Otto Pérez Molina, Efraín Ríos Montt and powerful entrepreneurs. Judge Galvez ordered an investigation against Méndez Ruiz of the *Fundación contra el Terrorismo* for filtering information, to which Attorney Porras responded by transferring the case to another unit other than the FECCI. See: Roman, Julio and Edwin Pitan, Judge, orders Ricardo Méndez Ruiz to investigate by leaking a document from the case of Alejandro Sinibaldi. *Prensa Libre*, 8 September 2020. Available at: <https://www.prensalibre.com/guatemala/justicia/juez-ordena-investigar-a-ricardo-mendez-ruiz-por-filtracion-de-documento-del-caso-de-alejandro-sinibaldi/> After receiving multiple threats, including several from the *Fundación contra el Terrorismo*, this organization denounced him for alleged misuse of pre-trial detention after linking nine former members of the military and police force to the *Diario Militar* case. The Supreme Court of Justice processed the application, being completely exposed to the lifting of immunity and the subsequent criminal proceedings that would contravene his rights as an individual and his independence as a judge.

On May 17, 2022, Judge Galvez filed a brief with the Supreme Court of Justice detailing the threats and attacks to which he has been subjected, requesting protection. He has not received a response from any entities. See: Toledo, Fabiola. Three U.S. organizations. The U.S. asks the CANG to protect Judge Galvez. *La Hora*, May 17, 2022. Available at: <https://lahora.gt/nacionales/fabiola-toledo/2022/05/17/tres-organizaciones-de-ee-uu-solicitan-al-cang-protoger-al-juez-galvez/> Judge Galvez submitted his resignation on November 15th, 2022, amid threats, intimidation acts and an immunity removal process plagued with irregularities. He went into exile to protect his freedom.



former prosecutors that were consulted affirm that this is a revenge for the work they did against corruption in Guatemala.

In 2019, Impunity Watch reported more than 33 criminal complaints filed between 2015 and 2018 against judges with high-risk jurisdiction. The most denounced judges are Erika Aifán, Pablo Xitumul, Miguel Angel Galvez and Silvia de Leon. With regard to the immunity removal proceedings, the same organization reported at least 22 applications against high risk judges between 2016 and 2019.⁴²

On December 17, 2020, the Unit for the Protection of Human Rights Defenders of Guatemala (UDEFEFUGA) expressed its concern at the increase in attacks against human rights defenders, organizations, and communities in the period January to December 15, 2020, a total of 1.004 cases of aggression were documented and recorded. Of the total of 1.004 cases of aggression, 33.66% (338) were against female human rights defenders, 52.87% (530) against male human rights defenders and 13.54% (136) against groups, organizations and/or communities. UDEFEFUGA lamented 15 murders of human rights defenders, as well as 22 assassination attempts and denounced a criminalization strategy, with a total of 313 acts recorded.⁴³

It must be noted that because of the investigations that the Public Prosecutor's Office has under confidentiality, it is not possible to ensure the exact number of criminal investigations against the various justice operators, information that is also unknown to the judges and prosecutors themselves in Guatemala, some of whom have submitted information requests to the authorities in order to obtain the number and nature of the complaints without receiving complete answers.

In addition, the large number of complaints are a part of the strategy to complicate the management and attention given to the cases. Addressing each of the allegations in these cases, following up the procedural stages, fulfilling the requirements and other procedural acts of a case takes time. Multiplying this by 100 results in an excessive burden of matters for which a full-time legal team is required and for which justice operators have no time or financial resources.

These complaints collide with the awards and expressions of recognition that several of these people have received from international bodies for their activity and their fight against corruption and impunity. For example, Judge Erika Aifán received the French and German Human Rights and Rule of Law

⁴² Impunity Watch. (2019). Judges at highest risk: Threats to judicial independence in Guatemala. Impunity Watch. Available

in: https://static.wixstatic.com/ugd/f3f989_6c2bdfa1fbfa47dobfab77ca76d1638a.pdf

⁴³ UDEFEFUGA. Comunicado 17 de diciembre de 2020, la consolidación autoritaria y el aumento de agresiones contra personas, organizaciones y comunidades defensoras de derechos humanos. <https://udefegua.org/comunicados/la-consolidaci%C3%B3n-autoritaria-y-el-aumento-de-agresiones-contra-personas-organizaciones-y>



award in 2021. That same year she was recognized as a Woman of Courage by the U.S. State Department for her fight against corruption in her country. The same award was presented to Judge Yassmin Barrios in 2014 and in 2016 to Thelma Aldana, who served as President of the Supreme Court of Justice and Attorney General. Juan Francisco Sandoval was also honored by the United States Department of State in the category of International Anti-Corruption Champions. Judge Barrios has also received the Human Rights Award in 2013 from the General Council of Spanish Lawyers and the Civil Courage Award from the Train Foundation in 2015. Judge Miguel Angel Galvez received the Institutional Integrity Award from the Judicial Branch in 2016, And Claudia Paz y Paz received multiple awards such as the Judith Lee Stronach Human Rights Prize in 2013 and was even considered for the Nobel Peace Prize this year.

Other judges such as Pablo Xitumul de Paz⁴⁴, Iris Yassmin Barrios Aguilar⁴⁵, Claudia Escobar⁴⁶, as well as Attorney General Claudia Paz y Paz⁴⁷, Thelma Aldana⁴⁸ and other prosecutors such as Andrei Gonzalez⁴⁹, Carlos Antonio

⁴⁴ Xitumul served as president in the court that convicted Vice-President Roxana Baldetti, in the case of the military involved in the disappearance of Marco Antonio Molina Theissen, in the “Agua Magica”, the Ixil Genocide and Dos Erres case.

The Supreme Court of Justice lifted his immunity on account of a traffic incident, and removed him from his functions on February 9, 2022. See: Garcia-Sayan, Diego. UN Special Rapporteur on the Independence of Judges and Lawyers, 13 February 2022. Available at:

<https://twitter.com/UNIndepJudges/status/1493016852397629442>, See CEJIL, DPLF, Robert F. Kennedy Human Rights, WOLA, AJWS, LAWG, Jotay Guatemala, Be Just, FJDEE, GHRC, International Platform Against Impunity, International Protection Mesoamerica, International Organizations We reject the criminalization of Judge Pablo Xitumul and denounce the persecution of justice operators in Guatemala, February 9, 2022. Available at:

<https://www.wola.org/es/2022/02/juez-xitumul-persecucion-guatemala/>

⁴⁵ She serves as President of the High Risk court from where she has brought judicial proceedings against members of the military corps such as the murder of Monsignor Juan Gerardi, the murder of an anthropologist, and sexual crimes committed against indigenous women on the Sepur Zarco farm and against Achi women. In addition, she acted as a judge in the case of the ex-president Efraín Ríos Montt, for the genocide of the Mayan Ixil indigenous people.

⁴⁶ Claudia Escobar, who served as Judge of the Court of Appeals, left Guatemala in 2015 because of the pressure she received in the case against then-President of Congress, Gudy Rivera, convicted of influence peddling. The Supreme Court threatened to prosecute her for the crime of sedition. *Washington, the capital of Guatemalan justice in exile*, El País, August 15, 2021:

<https://elpais.com/internacional/2021-08-16/washington-la-capital-de-la-justicia-guatemalteca-en-el-exilio.html>

⁴⁷ Claudia Paz y Paz acted as Attorney General and processed the trial against Efraín Ríos Montt and is now in exile in Costa Rica. *Washington, the capital of Guatemalan justice in exile*, El País, August 15, 2021: <https://elpais.com/internacional/2021-08-16/washington-la-capital-de-la-justicia-guatemalteca-en-el-exilio.html>

⁴⁸ Thelma Aldana left Guatemala on 2018 after resigning as Attorney General and after a few days, two arrest warrants were issued against her for corruption cases she was investigating.

Washington, the capital of Guatemalan justice in exile, El País, August 15, 2021:

<https://elpais.com/internacional/2021-08-16/washington-la-capital-de-la-justicia-guatemalteca-en-el-exilio.html>

⁴⁹ Andrei Gonzalez served as FECCI prosecutor and left Guatemala in 2019. He was investigating an illegal campaign financing scheme of the Partido Unidad Nacional de la Esperanza involving the First Lady of Guatemala. Blitzer, Johnathan, *The exile of Guatemala’s anti-corruption efforts*, The New Yorker, April 29, 2022: <https://www.newyorker.com/news/dispatch/the-exile-of-guatemalas-anti-corruption-efforts> See also: *The count of departures of FECCI prosecutors: Four*



Videz⁵⁰, Rudy Herrera ⁵¹ have been criminalized. Former Human Rights Attorney Jordan Rodas has also been the subject of multiple complaints and prosecutions for his work in defending human rights, as will be explained below.

Categories of complaints

Disciplinary proceedings before the judiciary

Although there is evidence of the abuse of disciplinary proceedings against judicial operators to increase the number of complaints and diversify the nature of complaints to obtain more elements of discredit against them, this has not been the most used mechanism. Persons involved in criminalization strategies have found more efficient methods in criminal matters that have more drastic consequences such as exile or capture.

The adjudicating bodies in disciplinary matters have not cooperated to achieve the criminalization strategy in the same way other investigation and sanction bodies have done. For example, the prosecutor Cinthia Monterroso filed an administrative complaint against Judge Erika Aifán before the Judicial Disciplinary Board of the Judiciary based on the same facts as those contained in a criminal complaint also filed by her. This complaint was not admitted to since the General Supervision of Courts and the Judicial Discipline Board determined the absence of the administrative failure.

Similarly, an administrative complaint that was filed by the Deputy Inspector of the National Civil Police José Cuxaj against the presiding judge of the High Risk Court Group C Pablo Xitumul was dismissed by the Disciplinary Board of the Judicial Branch and confirmed by the Council Of the Judicial Career, ordering the case to close.⁵² In spite of this, a criminal complaint for the same events led the Public Prosecutor's Office to request the immunity removal to

in exile, Soy 502, February 21, 2022: <https://www.soy502.com/articulo/recuento-salidas-fiscales-feci-5313>

⁵⁰ Carlos Antonio Videz was acting as prosecutor of the FECCI, and was present in the interrogation of the so-called witness A, a person who testified in a corruption case involving President Alejandro Giammattei for the collection of monies with former Communications Minister José Luis Benito for his election campaign. Guatemala: *MP No for Prosecution of Attorney General's Office Against Impunity*, E&N, February 23, 2022:

<https://www.estrategiaynegocios.net/lasclavesdeldia/guatemala-mp-no-para-en-persecucion-de-degentes-de-la-fiscalia-contra-EXEN1512060>

⁵¹ Rudy Manolo Herrera was a FECCI prosecutor and left Guatemala in February 2022. The case of comisiones paralelas 2020 was being investigated, among other cases, and an arrest warrant was issued for that investigation. Blitzer, Johnathan, *The exile of Guatemala's anti-corruption efforts*, *The New Yorker*, April 29, 2022: <https://www.newyorker.com/news/dispatch/the-exile-of-guatemalas-anti-corruption-efforts>

⁵² Resolution of the Judicial Career Council favors Judge Pablo Xitumul, Nelton Rivera Prensa Comunitaria, July 19, 2022 <https://www.prensacomunitaria.org/2022/07/resolucion-de-consejo-de-la-carrera-judicial-favorece-a-juez-pablo-xitumul/>



proceed criminally against Judge Xitumul. The Supreme Court granted the application and separated Judge Xitumul from his post.⁵³

Proceedings before the Bar Association

The Court of Honor is a disciplinary body of the Guatemalan Bar and Notaries Association, which is responsible for hearing complaints against its members, instructing the beginning of investigations, issuing decisions and imposing sanctions where appropriate.

The Supervision of Courts unit, within the Judicial Branch, is responsible for investigating administrative complaints against justice operators, including judges and magistrates. Likewise, in the Public Prosecutor's Office there is a similar unit called General Supervision, which is also responsible for administrative complaints lodged against personnel of that institution, including assistants and prosecutors.

Although judges and prosecutors are lawyers, the regulation of their professional conduct is governed by special legislation. For example, in the case of persons who adjudicate, the law of the judicial career sets forth the specific rules on professional conduct. Thus, by law, no complaints should be brought against judicial officials before the Bar and Notaries Association. However, complaints and claims before the Bar and Notaries Association have been a tool used to generate conflicts between the parties and the judge to disable specific judges from hearing cases through disqualification.

Certain proceedings before the Court of the Bar and Notaries Association have been open since 2012, without providing adequate information or attending to the petitions filed to close the cases. Some of the irregularities that characterize these processes will be explained later, but unjustified delay and lack of guarantees for due process are some of the main ones, which certainly violate domestic and international rules on the matter.

Erika Aifán has explained her experience as a judge having received complaints before the Court of Honor of the Bar Association through two separate disciplinary proceedings. One commenced in 2012 and is still unresolved. This complaint was submitted by the lawyer José Adolfo Cambara Oliveros, defender in the case of the Sacaja Massacre⁵⁴, trying to use

⁵³ See: Garcia-Sayan, Diego. UN Special Rapporteur on the Independence of Judges and Lawyers, 13 February 2022. Available at: <https://twitter.com/UNIndepJudges/status/1493016852397629442>, See CEJIL, DPLF, Robert F. Kennedy Human Rights, WOLA, AJWS, LAWG, Jotay Guatemala, Be Just, FJDEE, GHRC, International Platform Against Impunity, International Protection Mesoamerica, International Organizations We reject the criminalization of Judge Pablo Xitumul and denounce the persecution of justice operators in Guatemala, february 9, 2022. Available at: <https://www.wola.org/es/2022/02/juez-xitumul-persecucion-guatemala/>

⁵⁴ *Guayo Cano sentenced to 372 years in prison for the Salcaja massacre*, Prensa Libre, December 4, 2018: <https://www.prensalibre.com/guatemala/justicia/sentencia-banda-guayo-masacre-de-policias-salcaja/>



the complaint to challenge Judge Aifán. The Human Rights Attorney and the Assembly of Presidents of Professional Colleges of Guatemala recommended that the Court of Honor refrain from processing the complaint.

Attorney Juan Carlos Godínez, now indicted for his participation in the co-optation of courts in the *comisiones paralelas* case, also filed a challenge against Judge Aifán.

The other complaint was initiated by Moisés Galindo of the *Fundación contra el Terrorismo*, complainants for which further details will be presented in section E of this chapter.

In April 2014, a sanction was imposed by the Court of Honor of the Guatemalan Bar Association against Yassmin Barrios, Chair of the High Risk Criminal Court Group “A”. Her active associate's card was suspended for one year, preventing her from practicing as a lawyer and undertaking her tasks as chair of the tribunal.⁵⁵

This sanction was imposed as a result of the complaint filed by lawyer Moisés Galindo (member of the *Fundación contra el Terrorismo* and prosecuted in two cases by FECI), who defended the former defender of Rios Montt and who accused the judge of violating the Code of Professional Ethics in the trial against the member of the military.⁵⁶ This sanction was revoked by an appeal lodged by the judge before the Assembly of the Association of Professionals, that rendered void the sanction issued by the Court of Honor of the Association of Lawyers and Notaries of Guatemala.⁵⁷

Procesos penales

One of the most used tools in the judicial war against persons who operate justice and legal professionals is criminal prosecution assisted by the Public Prosecutor's Office. As mentioned above, since the beginning of the administration of Attorney General Consuelo Porras, there has been an increase in criminalization.

The theory of law states that criminal law should be the last resort to obtain protection of rights and interests⁵⁸, however, in Guatemala there has been an

⁵⁵ CANG Honour Court suspends Yazzmin Barrios, Prensa Libre, April 4, 2014: <https://www.prensalibre.com/guatemala/justicia/suspension-temporal-tribunal-de-honor-cang-yassmin-barrios-0-1114088773-html/>

⁵⁶ Guatemalan judge who condemned Rios Montt appeals for a one-year suspension. La Vanguardia April 9, 2014 <https://www.lavanguardia.com/vida/20140409/54405616750/jueza-guatemalteca-que-condeno-a-rios-montt-apela-suspension-de-un-ano.html>

⁵⁷ Assembly of Professional Colleges revokes sanction to Yassmin Barrios. Soy 502, April 30, 2014 <https://www.soy502.com/articulo/asamblea-de-colegios-profesionales-revoca-sancion-yassmin-barrios>

⁵⁸ Inter-American Court, *Kímel v. Argentina*, Judgment of May 2, 2008, merits, reparations and costs, paragraph 77, https://www.corteidh.or.cr/docs/casos/articulos/seriec_177_esp.pdf: “Taking into account the considerations formulated so far concerning the due protection of freedom of expression, the reasonable conciliation of the requirements for the protection of that



abuse of complaints.⁵⁹ Unfavorable judicial decisions are addressed with complaints against judges rather than the appeals and challenged contemplated by law.

Multiple international organizations expressed their concern at the criminalization and persecution undertaken against justice operators, specifically against high risk judges and prosecutors who belong to or belonged to the FECCI, who investigated cases of high impact in conjunction with CICIG. Although these attacks originate from criminal structures that were affected by the investigations and proceedings, it is far more alarming that this criminalization is being endorsed by both the Public Prosecutor's Office and the Judicial Branch, which these criminal groups currently co-opt.⁶⁰

From the information obtained for this report, a list of the most common crimes for which judges and prosecutors are reported was made:

1. Abuse of authority
2. Failure to comply with duties
3. Conspiracy
4. Influence peddling
5. Illegal association
6. Obstruction of justice
7. Crime simulation
8. Disclosure of Confidential Information
9. Usurpation of functions
10. Public incitement
11. Activities against the security of the nation
12. Spread of disease

*right, on the one hand, and of honor for the other, and the principle of minimum criminal intervention characteristic of a democratic society, the use of criminal means must correspond to the need to protect fundamental legal goods against conduct involving serious injury to such goods, and are related to the extent of the inferred damage. The criminalization of conduct must be clear and precise, as determined by the jurisprudence of this Tribunal in its examination of Article 9 of the American Convention.” See also: Eduardo Ferrer Mac-Gregor, *The Seven Main Jurisprudence Lines of the Inter-American Court of Human Rights Applicable to Criminal Justice*: <https://www.corteidh.or.cr/tablas/r32981.pdf>*

⁵⁹ IACHR expresses concern over new affections on judicial independence in Guatemala, OAS, February 22, 2022:

<https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/037.asp>, UN Rapporteur: *Criminalization of judges at greatest risk is alarming*, La Hora, June 30, 2021:

<https://lahora.gt/nacionales/larana/2021/06/30/relator-de-la-onu-es-preocupante-la-criminalizacion-de-los-jueces-de-mayor-riesgo/>, See also: *Guatemala: We reject attacks and criminalization of Judge Miguel Angel Galvez*, CEJIL, June 23, 2022:

<https://cejil.org/comunicado-de-prensa/guatemala-rechazamos-ataques-y-criminalizacion-del-juez-miguel-angel-galvez/>, *International Organizations We reject the criminalization of Judge Pablo Xitumul and denounce the persecution of justice operators in Guatemala*, WOLA, February 10, 2022: <https://www.wola.org/es/2022/02/juez-xitumul-persecucion-guatemala/>

⁶⁰ International Organizations We reject the criminalization of Judge Pablo Xitumul and denounce the persecution of justice operators in Guatemala. Wola, 10 February 2022

<https://www.wola.org/es/2022/02/juez-xitumul-persecucion-guatemala/>



13. Illegal detentions
14. Defeating the due course of justice
15. Resolutions Violating the Constitution
16. Forgery

In one of the most striking cases, a complaint was filed against Judge Yassmin Barrios by the *Fundación contra el Terrorismo* for money laundering, having received a prize that included a cash amount.⁶¹ Although the possibility of receiving a cash prize may be questioned, it is far from constituting the conduct and the type of transactions with resources that is, internationally, prevented and sanctioned by money laundering crimes. Clearly, it is a matter of filing a complaint for a serious crime in order to generate fear.

In the face of these crimes, which, under a logical and technical review, do not fit into the conduct reported, it is clear that what is sought is to intimidate and violate the independence of judges in cases they work in and in which they have to issue critical decisions, at the same time weakening their reputation and the perception of the general public.⁶²

The fact that the crimes investigated, consistently, are those of abuse of authority, failure to comply with duties and resolutions violating the Constitution, evidences that the free exercise of judicial functions by judicial operators who work in cases that upset and break old structures and dynamics of corruption is being undermined.⁶³ The former United Nations Special Rapporteur for the Independence of Judges and Lawyers, Diego García Sayán, has publicly stressed that these criminal allegations are unfounded and that they are a method of cutting criminal investigations for serious corruption cases.⁶⁴

⁶¹ “The sentence (for genocide) was in 2013 and I still perceive its effects,” says Judge Barrios,” Nomad, August 20, 2020: <https://nomada.gt/pais/entender-la-politica/la-sentencia-por-genocidio-fue-en-2013-y-todavia-sigo-percibiendo-sus-efectos-afirma-jueza-barrios/>

⁶² *Guatemala: International Organizations calling for an end to criminalization of women justice officials and human rights defenders*, Amnesty, June 9, 2021:

<https://www.amnesty.org/es/latest/news/2021/06/guatemala-demandamos-cese-criminalizacion-contra-funcionarios-justicia-2/>, See also: New York City Bar Association, Statement of the New York City Bar Condemning the Continued Harassment and Criminalization of Justice Operators in Guatemala, May 24, 2022,

http://documents.nycbar.org/files/Guatemala_Statement_5.23.22_Espanol.pdf (Date accessed May 27, 2022), U.S. Concern for Integrity of Guatemalan Judicial System (January) 16, 2022),

<https://www.state.gov/u-s-concern-for-integrity-of-guatemalan-judicial-system/>, Guatemala: Statement by the Spokesperson on the rule of law situation (February 11, 2022),

https://www.eeas.europa.eu/eeas/guatemala-statement-spokesperson-rule-law-situation_en
⁶³ *Lawyer who goes after FECCI now files for immunity removal against judges*, La Hora, June 22, 2021: <https://lahora.gt/nacionales/jeanelly/2021/06/22/abogado-que-va-tras-feci-ahora-presenta-antejuicio-contra-jueces/>

⁶⁴ Diego García Sayán, *Judge Aifán and Attacks on Justice*, El País, January 20, 2022, <https://elpais.com/opinion/2022-01-21/la-jueza-aifan-y-los-ataques-a-la-justicia.html>



One of the events that fostered the increase in criminalization against justice operators in recent times, is the unveiling of the *Comisiones Paralelas 2020* case that provided evidence of the interaction between judges seeking to be elected or re-elected in the chambers of the Court of Appeals and the Supreme Court of Justice, and the political operator Gustavo Alejos as explained later in section D.

This political operator likewise met with commissioners legally entrusted to form the final lists of candidates in a mental health clinic where he was allegedly convalescent for an alleged medical condition, which occurred while he was in preventive custody.⁶⁵ In addition to the visits of magistrates and commissioners, he also received a visit from members of the Congress of the Republic of Guatemala who would be the voters of the lists to be submitted by the nominating commission.⁶⁶

Another case that motivated the potential criminalization of people who operate justice is the information that the FECCI had received about bribes President Alejandro Giammattei would have received himself.

These events highlight the deterioration of the institutional framework and the rule of law, where those who report, investigate or judge acts of corruption or impunity are subjected to persecution and criminalization for the performance of their functions.⁶⁷

One of the most upsetting cases is that of former FECCI Prosecutor Siomara Sosa and her defending lawyer, Leily Santizo, a former CICIG lawyer. Both lawyers were arrested after the Public Prosecutor's Office charged them with collusion and obstruction of justice.⁶⁸ Lawyers Leily Santizo from CICIG and Siomara Sosa from FECCI carried out investigations against politicians, business people, and drug traffickers.⁶⁹

⁶⁵ *Comisiones Paralelas: Justice Cooptation Mechanisms*, Myrna Mack Foundation, Guatemala, May 2020:

https://myrnack.org.gt/images/stories/fimm/archivos/informes/2020/Informe_Comisiones_Paralelas.pdf

⁶⁶ Accompaniment of the Lawyers Council for Civil and Economic Rights to Guatemala for the process of appointing judges to the Supreme Court of Justice and the Court of Appeal, 2019 <https://bit.ly/VCLCGuateS>; See more in "A Window of Opportunity: Support for the Rule of Law in Guatemala," ILAC Assessment Report on the Rule of Law, March 2020, page 18.

⁶⁷ Why does Guatemala persecute Judges and Prosecutors? Los Angeles Times, February 18, 2022 <https://www.latimes.com/espanol/internacional/articulo/2022-02-18/ap-explica-por-que-guatemala-persigue-a-jueces-y-fiscales>

⁶⁸ *The war against independent judges and prosecutors fighting corruption in Guatemala*, Guatemala (February 21, 2022), <https://elpais.com/internacional/2022-02-21/la-guerra-contralos-jueces-y-fiscales-independientes-que-luchan-contrala-corrupcion-en-guatemala.html> See also EU, US caution Guatemala over prosecution of lawyers, judges, ABC News, (February 11, 2022), <https://abcnews.go.com/International/wireStory/eu-us-caution-guatemala-persecution-lawyers-judges-82836714>

⁶⁹ EU, US caution Guatemala over prosecution of lawyers, judges, ABC news (February 11, 2022), <https://abcnews.go.com/International/wireStory/eu-us-caution-guatemala-persecution-lawyers-judges-82836714>



Other members of the FECCI investigation team, such as Willy Roberto Racanac Lopez, Aliss Noemi Moran Mejia and Paola Mischelle Escobar Quinonez, prosecution assistants, were arrested on the alleged abuse of authority in *comisiones paralelas* case 2020.

Virginia Laparra Rivas, former FECCI chief in Quetzaltenango, was arrested on February 23, 2022 and prosecuted on March 3 for alleged abuse of power and usurpation of functions.⁷⁰ The complaints against Laparra followed her claims before the Judicial Discipline Board against several judges and magistrates in 2019 for corruption within the judiciary. In fact, one of the judges reported by Laparra, Lester Castellanos, and who was effectively sanctioned by the Board for leaking confidential information from one of the major corruption cases, was the one who reported the prosecutor together with the *Fundación contra el Terrorismo*.⁷¹

Prosecutor Eduardo Pantaleon was arrested for alleged acts of obstruction of justice and failure to perform duties. This prosecutor has worked on multiple high-profile corruption cases such as the *Libramiento de Chimaltenango* and those involving bribery committed by members of the judiciary and Jimmy Morales's government.⁷²

The most recent case is that of prosecutor Samari Carolina Gómez Díaz, who worked in the FECCI and was arrested on July 30, 2022, for allegedly disclosing confidential information to the journalist and director of the media “El Periódico”, José Rubén Zamora Marroquín. This case displays the same trends as the others, being another fabrication of the Public Prosecutor’s Office, to imprison Zamora Marroquin for his strong criticism of the administration of Alejandro Giammattei.⁷³

⁷⁰ Daniella Burgi-Palomino and Lisa Haugaard, Latin America Working Group Education Fund; Ana Maria Méndez Dardon, Washington Office on Latin America; Ursula Indacochea, Due Process of Law Foundation; Corie Welch, Guatemala Human Rights Commission/USA, *When the Dominoes Fall: Co-optation of the Justice System in Guatemala*, October 2022:

<https://www.wola.org/analysis/when-dominoes-fall-justice-system-guatemala/>

⁷¹ *Top corruption persecutor held in jail as Guatemalan elite bids to purge foes*, The Guardian, September 1, 2022: <https://www.theguardian.com/world/2022/sep/01/guatemala-prosecutor-jailed-virginia-laparra-corruption>

⁷² *Pantaleon after his capture by the MP of Porras “Here I am facing consequences”*, Fabiola Toledo, La Hora.GT, May 5, 2022: <https://lahora.gt/nacionales/fabiola-toledo/2022/05/05/pantaleon-tras-su-captura-por-el-mp-de-porras-aca-estoy-dando-la-cara/>

⁷³ *Award-winning anti-corruption journalist calls on Inter-American Commission on Human Rights to release him from illegal imprisonment in Guatemala*, Cyrus R. Vance Center for International Justice, New York City Bar Association, press release, September 28, 2022: <https://www.nycbar.org/media-listing/media/detail/award-winning-anti-corruption-journalist-asks-inter-american-commission-on-human-rights-to-free-him-from-illegal-imprisonment-in-guatemala> See also witch hunting continues: The arrest of Samari Gomez. Kristhal Figueroa. Rudagt.org, 2 August 2022 <https://rudagt.org/la-caceria-de-brujas-continua-la-detencion-de-samari-gomez/>



Removal of immunity requests

Both judges and the person holding the office as Human Rights Attorney have a legal protection in the form of a procedural immunity, precisely preventing the possibility of spurious complaints for the performance of their duties. In order to withdraw this procedural immunity, it is necessary to carry out a pre-trial process through which the Supreme Court determines if the immunity is lifted in order to commence criminal proceedings.

While the Supreme Court should be the first guarantor of judicial independence for those who deliver justice, it has recently been an ally in criminalizing judges.⁷⁴

The proceedings arising from the requests for immunity removal are unfounded and biased⁷⁵, as pointed out by Judge Erika Aifán in her September 21, 2021 request for protection before the IACHR. In fact, before being co-opted, the Constitutional Court granted provisional *amparo* in favor of Judge Erika Aifán following a petition for unmeritorious immunity removal filed by the Magistrates Institute of the Court of Appeal.⁷⁶ The IACHR has made numerous statements on how the requests for immunity removal have been used in Guatemala to challenge the trial or legal criterion of judicial operators, as was evident in the requests for immunity removal

⁷⁴ “In the face of attacks on the judicial independence of individuals in particular, it would be expected that it would be the institution and the country’s high courts that would assume the role of condemning these attacks and strengthening the judiciary as an institution, Given the gravity that these attacks can have on one of the pillars of the State. Whether publicly or privately, depending on the circumstances and form of attacks on judicial independence, the judiciary’s institutions should be the first to support and support judges who are victims of these attacks. The reality, however, is that there are no conditions for accompaniment for various reasons, including the lack of independence and impartiality of the persons on the councils of the judiciary, because they do not have a direct experience of the situation faced by judges. or for lack of identification of risk situations.” Attacks on those who impart justice: Institutional weakness and lack of guarantees for judicial independence in Colombia, Guatemala and Mexico, Discussion Paper I of the Judges as Peacebuilders Project, page 30: <http://ilacnet.org/wp-content/uploads/2022/05/Independencia-judicial-en-Colombia-Guatemala-y-Mexico.pdf>. See also: Persons who deliver justice as anti-corruption actors in Colombia, Guatemala and Mexico, Discussion Paper II of the Judges as Peacebuilders Project, ILAC Discussion Paper, 2022: <http://ilacnet.org/wp-content/uploads/2022/05/Esfuerzos-contra-la-corrupcion-en-Colombia-Guatemala-y-Mexico.pdf>

⁷⁵ *Due Process Foundation (DPLF)*. *DPLF presents Amicus Curiae in the amparo process initiated against the decision of the Supreme Court of Justice to admit to processing the application for immunity removal against Judge Erika Aifan Davila in Guatemala*. (september 16, 2020). DPLF. Available at: <https://dplf.org/es/resources/amicus-curiae-amparo-erika-aifan-guatemala>. See also: The War Against Independent Judges and Prosecutors Fighting Corruption in Guatemala, El Pais, February 21, 2022: <https://elpais.com/internacional/2022-02-21/la-guerra-contra-los-jueces-y-fiscales-independientes-que-luchan-contra-la-corrupcion-en-guatemala.html>, Mendoza, Michelle. *Erika Aifan, a high-profile judge from Guatemala, resigns and flees the U.S. The US after reporting death threats*. CNN, March 23, 2022: <https://cnnespanol.cnn.com/2022/03/23/jueza-erika-aifan-renuncia-huye-eeuu-amenazas-muerte-orix/>

⁷⁶ Petition for complaints of violations of the American Convention on Human Rights, Erika Lorena Aifán Avila (petitioner) v. Republic of Guatemala, September 7, 2021: <https://www.vancecenter.org/wp-content/uploads/2021/09/Peticion-de-fondo-CIDH-Jueza-Erika-Aifan.-Septiembre-2021.pdf>



against judges of the Constitutional Court because of the meaning and content of their judicial decisions.⁷⁷

Similarly, the request for immunity removal filed by a member of the National Civil Police against Judge Pablo Xitumul, for a confusing transit incident - which could constitute an infraction or fault that should be sanctioned with a fine -, was processed with unusual agility by the Supreme Court of Justice.⁷⁸ During the immunity removal proceedings, Judge Xitumul was widely discredited through social networks, by users clearly identified as members of the *Fundación contra el Terrorismo*.

It should be noted that Pablo Xitumul served as President of the high risk court Group C, which issued a conviction against former vice-president Ingrid Roxana Baldetti Elias in the case known as *Agua Mágica*. At the end of the trial, the immunity was lifted and the judge was removed from office until he resolved his legal situation as explained above.⁷⁹

The *Fundación contra el Terrorismo*'s request for immunity removal against Judge Miguel Ángel Gálvez for its decision to bring nine former members of the army and police to trial in the *Diario Militar* case was swiftly admitted by the Supreme Court of Justice.⁸⁰ The threats, the attacks and the precise request for immunity removal coincide exactly with the moment when the judge issued an unfavorable decision against members of the public security forces.

This criminalization and persecution are clearly directed against independent judges and magistrates, where proceedings have been processed rapidly and without evidentiary support.⁸¹

Contrary to this, the immunity removal requests filed by the FECCI, in the context of the *Comisiones Paralelas 2020* case against the magistrates of the

⁷⁷ IACHR, *Iachr Expresses Concern Over immunity removal proceedings against Four Magistrates of the Constitutional Court of Guatemala*, June 30, 2020:

<https://www.oas.org/es/cidh/prensa/comunicados/2020/156.asp>

⁷⁸ CEJIL, DPLF, Robert F. Kennedy Human Rights, WOLA, AJWS, LAWG, acting together Jotay Guatemala, Be Just, FJDEE, GHRC, International Platform Against Impunity, International Protection Mesoamerica. *International Organizations We reject the criminalization of Judge Pablo Xitumul and denounce the persecution of justice operators in Guatemala*. Washington Office on Latin America (WOLA), February 9, 2022. Available at:

<https://www.wola.org/es/2022/02/juez-xitumul-persecucion-guatemala/>

⁷⁹ Pablo Xitumul is suspended from the High Risk Court C while clarifying his legal situation, the Supreme Court of Justice decides. *Prensa Libre*, March 22, 2022

<https://www.prensalibre.com/guatemala/justicia/pablo-xitumul-es-suspendido-del-juzgado-de-mayor-riesgo-c-mientras-dilucida-su-situacion-juridica-resuelve-la-corte-suprema-de-justicia-breaking/>

⁸⁰ Request for immunity removal 111-2022 filed by the *Fundación contra el Terrorismo* of Guatemala with the purpose of removing the immunity of the Judge of First Instance Criminal, Drug trafficking and Offences against the Environment of Higher Risk "B" Miguel Angel Galvez.

⁸¹ Attacks on judicial independence, Report of the mission of judges of the Latin American Federation of Magistrates and the International Union of Magistrates, October 2022, page 6:

<https://docs.google.com/viewerng/viewer?url=https://agji-gt.org/~agjigtorg/wp-content/uploads/2022/10/Informe-de-mision-a-Guatemala-FLAM-y-UIM-octubre-2022.pdf>



high courts for corrupt practices were rejected *in limine* by the Supreme Court of Justice, showing self-protection in the face of serious reports.⁸²

Reasons for complaint

As mentioned above, the substance of many complaints and claims relies on the disagreement with the contents of a resolution that is not in the interests of one of the parties, which in itself presents a criminalization of judicial criteria and reasoning. Moreover, the judicial war becomes more evident in the absence of a factual and legal basis for the complaints and the grounds and facts alleged in the submissions filed by the complainants.

In Guatemala, complaint mechanisms are used to harass and persecute judges and prosecutors in charge of corruption cases. The mechanism consists of the fabrication of cases with such elements that, under normal conditions, would prevent the facts from being investigated or judicialized. But, as independent justice operators, the testimony of an indicted person in a case of great corruption is sufficient so that the immunity removal proceedings can be processed (in the case of judges), or the arrest ordered (in the case of prosecution personnel). The aim is to weaken investigations into large corruption cases and sanction those in charge of running such investigations.⁸³

In this sense, many of the complaints filed are related to the acts performed in pursuance to the activity as prosecutor or judge of the persons reported. To mention a few, the allegations were motivated by:

- Receiving an international award
- Completion of search foreseen with the proper legal authorizations
- Lack of objectivity
- Meetings with international actors
- Posting a tweet in the Twitter platform
- Procedural Resolutions
- Transit matters

One of the cases that generated the most complaints and claims of abuse of authority was that of *Comisiones Paralelas 2020*. Judge Aifán had jurisdiction to adjudicate this case and the prosecutor in charge of the investigation was Juan Francisco Sandoval, both in exile today following the attacks they received for their work in this type of case. As an example of the alleged facts that give rise to the complaints, the Institute of Magistrates of

⁸² Comisiones Paralelas: The Self-Protection of a Corrupt CSJ. Sofia Menchu, No Ficción, November 17, 2021 <https://www.no-ficcion.com/project/comisiones-paralelas-csj-corrupta>

⁸³ UN condemns persecution of anti-corruption judges and prosecutors in Guatemala. Swissinfo.CH, March 24, 2022: https://www.swissinfo.ch/spa/guatemala-justicia_la-onu-denuncia-persecuci%C3%B3n-a-jueces-y-fiscales-anticorruptici%C3%B3n-en-guatemala/47461612



the Court of Appeals alleges that Erika Aifán authorized illegal proceedings against candidates for the positions in the Court of Appeals and the Supreme Court of Justice, all of whom were investigated in the wake of this scandal.⁸⁴ In other words, the grounds for complaint arose exclusively from the exercise of her jurisdictional functions.

In this case of *Comisiones Paralelas*, several individuals from the political and private sectors directly and unduly influenced⁸⁵ the Nomination Commissions, both in their own formation as commissions and in the task of nominating and appointing judges of the Supreme Court of Justice, the Court of Appeals, as well as the Constitutional Court. FECCI investigations in collaboration with CICIG revealed an undue influence of individuals such as Gustavo Alejos in the election of several judges using the work of commissioners such as Silvia Patricia Valdes Quezada, José Felipe Baquix Baquix, Manuel Reginaldo Duarte Barrera, Vitalina Orellana and Orellana, Nery Oswaldo Medina Méndez, Sergio Amadeo Pineda Castaneda, José Antonio Pineda Barales and Silvia Veronica Garcia Molina, judges and magistrates of the Supreme Court of Justice, as well as Ranulfo Rafael Rojas Cetina, judge of the Supreme Electoral Tribunal and Nester Mauricio Vasquez Pimental, judge of the Constitutional Court. A specific example of this dynamic of corruption in the formation of the High Courts is that of former Judge Mynor Moto, who has been investigated for conspiracy to obstruct justice and breach of legal duties. There is evidence of meetings between Moto and the individuals involved in the *Comisiones Paralelas 2020 case*.⁸⁶

It is worth noting that Judge Moto himself is also one of the complainants who filed a request to remove Judge Aifán's immunity. Moto alleged that Judge Aifán ordered the arrest when he had a right to immunity.⁸⁷ By filing

⁸⁴ Petition for complaints of violations of the American Convention on Human Rights, Erika Lorena Aifán Avila (petitioner) v. Republic of Guatemala, September 7, 2021:

<https://www.vancecenter.org/wp-content/uploads/2021/09/Peticion-de-fondo-CIDH-Jueza-Erika-Aifan.-Septiembre-2021.pdf>

⁸⁵ *Comisiones Paralelas Case 2020, FECCI requests the withdrawal of immunity of 10 judges from CSJ, TSE and CC*, Prensa Libre (June 8, 2021),

<https://www.prensalibre.com/guatemala/justicia/caso-comisiones-paralelas-2020-fecci-solicita-retiro-de-inmunidad-de-10-magistrados-de-csj-tse-y-cc-breaking/>. See also: *Comisiones Paralelas: Mechanisms for the Co-optation of Justice*, Myrna Mack Foundation, Guatemala, May 2020:

https://myrnmack.org.gt/images/stories/fimm/archivos/informes/2020/Informe_Comisiones_Paralelas.pdf

, Accompaniment of the Lawyers Council for Civil and Economic Rights to Guatemala for the process of appointing judges to the Supreme Court of Justice and the Court of Appeals, 2019 <https://bit.ly/VCLCGuateS>; See more in “A Window of Opportunity: Support for the Rule of Law in Guatemala,” ILAC Assessment Report on the Rule of Law, March 2020, page 18.

⁸⁶ Mynor Moto seeks control of the case *Comisiones Paralelas 2020*, Soy 502, January 20, 2021:

<https://www.soy502.com/articulo/mynor-moto-intenta-obtener-control-caso-comisiones-paralelas-5313>. See also: Case of Mynor Moto will no longer be under the jurisdiction high risk court D and is transferred to an ordinary, Prensa Libre, July 14, 2022:

<https://www.prensalibre.com/guatemala/justicia/caso-de-mynor-moto-ya-no-lo-conocera-juzgado-de-mayor-riesgo-d-y-es-trasladado-a-uno-ordinario-breaking/>

⁸⁷ File 18-2021.



an application for *amparo* requesting the annulment of the arrest warrant, the Second Division of High-Risk Court suspended the immunity removal proceedings and confirmed the validity of the arrest warrant. However, the Supreme Court later processed this request even though it was clear that Mr. Moto was not a first-instance judge nor a judge of the Constitutional Court at the time the arrest warrant was issued.

Following the FECCI's findings, the Constitutional Court intervened to suspend the nomination and appointment proceedings until sufficient guarantees were established for the nomination, election and appointment of independent judges and magistrates unrelated to unlawful agreements with the other branches of public power, the private and political sectors.⁸⁸ This has led to a serious delay in the formation and renewal of the High Courts in Guatemala.

Juan Francisco Sandoval and Erika Aifán⁸⁹ have not been the only justice operators persecuted for their work in the case of *Comisiones Paralelas*, Rudy Antonio Herrera Lemus Agente, case prosecutor, had to go into exile in the United States because of the persecution he suffered and because there was an arrest warrant against him. Similarly, Aliss Noemí Morán, Willy Racanac, and Paola Mischelle Escobar were subject to arrest warrants against them for allegedly coercing an indicted individual to become an effective collaborator in the trial.⁹⁰

Another of the cases in which both operators worked was the investigation of acts of corruption of persons close to President Alejandro Giammattei's circle related to 122 million quetzales found in a house in Antigua, Guatemala.⁹¹

Likewise, the *Fenix* case involving the businessman connected to real estate and agrochemical businesses, Gustavo Herrera, for the alleged coordination of a network that defrauded 50 million dollars from public resources of the Guatemalan Social Security Institute.⁹² Gustavo Herrera has also been noted for his influence on the election of judges and magistrates.

Also, the case mentioned above about illegal electoral financing involves the Frente de Convergencia Nacional, a conservative political party that includes

⁸⁸ *Cc states in amparo granted to the MP that the election of magistrates must be carried out in accordance with the constitution*, author: Simon Antonio Ramon, Prensa Comunitaria (May 7 2020) <https://prensacomunitaria.medium.com/cc-se%C3%B1ala-en-amparo-otorgado-al-mp-que-la-elecci%C3%B3n-de-magistrados-debe-realizarse-conforme-a-la-4a3da18c7426>

⁸⁹ *This judge is one of the last U.S. allies in the Guatemala corruption fight. Politicians keep trying to sideline her*, The Washington Post (February 19, 2022):

<https://www.washingtonpost.com/world/2022/02/19/guatemala-corruption-erika-aifan/>

⁹⁰ FECCI's prosecution assistant is linked to criminal proceedings. Outlook, March 13, 2022 <https://www.perspectiva.gt/noticias/ligan-a-proceso-penal-a-auxiliar-fiscal-de-feci/>

⁹¹ File 01073-2016-00359

⁹² *Phoenix Case: Money Laundering with IGSS Funds*, Statement 019, CICIG, April 12, 2019: <https://www.cicig.org/casos/caso-fenix/>, See also: *Phoenix Case: A Plot of Corruption and Money Laundering*, Press Libre, January 30, 2021: <https://www.prensalibre.com/pl-plus/guatemala/justicia/caso-fenix-una-trama-de-corrupcion-y-lavado-de-dinero/>



members of Guatemala's economic elite, who allegedly contributed funds to President Morales's campaign without declaring these donations.⁹³ President Morales was to be the subject of investigation in this case, but he joined the Central American Parliament (PARLACEN), a multilateral, regional cooperation body that emerged from the peace processes in the 1980s, to obtain immunity after his presidential term.

One of the cases that generated the most reactions in 2022 is the case of *Diario Militar*, in charge of High-Risk Judge “B” of the first instance Criminal, Drug trafficking and Offences against the Environment of the Department of Guatemala, Miguel Ángel Gálvez. It examines serious human rights violations perpetrated by former members of the army and police, including the murder and disappearance of more than 195 persons. In May 2022, the judge decided to bring nine of these officials to trial, which triggered strong criticism, attacks, and threats from some social and political sectors.⁹⁴ In particular, the *Fundación contra el Terrorismo* posted a threat to Judge Galvez on its Twitter account, followed by an application for immunity removal that the Supreme Court of Justice immediately processed. Judge Gálvez submitted his resignation on November 15th, 2022, and went into exile.

Temporality of complaints, types of cases, and complainants

While most of the recent complaints coincide with when the campaign of discredit against CICIG began to take effect, there is evidence of several complaints regarding events that occurred years ago, including some since 2012.

For example, in the case of Juan Francisco Sandoval, it is clear that the highest number of complaints were submitted in 2019 and 2020. In the case of Judge Erika Aifán, the largest number of complaints, and those that motivated her departure, occurred in 2020 and 2021. There are then notable temporal coincidences between the departure of the CICIG in 2019, the

⁹³ Illegal Electoral Financing FCN-Nation Case (Phase 1), Communication 061, CICIG, August 25, 2017: <https://www.cicig.org/casos/financiamiento-electoral-ilicito-caso-fcn-nacion-fase-1/>. See also: Case of Illicit Financing FCN-Nation: In public hearing, defense discredits testimony from effective collaborators, Prensa Libre, May 23, 2019:

<https://www.prensalibre.com/guatemala/justicia/caso-financiamiento-ilicito-fcn-nacion-en-vista-publica-defensa-desacredita-testimonio-de-colaboradoras-eficaces/>

⁹⁴ *Judge Galvez Receives Threats for Resolution in Diario Militar* “Threats Against Judicial Independence”, Regina Pérez, Prensa Comunitaria, (May 9, 2022)

<https://www.prensacomunitaria.org/2022/05/juez-galvez-recibe-amenazas-por-resolucion-en-diario-militar-atentan-contra-la-independencia-judicial/>



arrival of Consuelo Porras at the Public Prosecutor's Office in 2018⁹⁵ and the judicial decisions taken in these cases of national interest mentioned in the previous section regarding increases in criminal complaints and requests for immunity removal that began to be processed by the Supreme Court.

Since taking office as Attorney General Consuelo Porras in 2018, she initiated a campaign to weaken the FECCI, an entity that undertook the investigations involving officials of the governments of Jimmy Morales and Alejandro Giammattei.⁹⁶

For these actions, Consuelo Porras has been singled out and criticized at both the national and international levels for protecting corrupt politicians, as well as blocking investigations involving acts of corruption.⁹⁷ Some events that confirm this attitude are the dismissal of Mr. Sandoval, who served as FECCI chief, and the instructions imparted to prosecute former and current FECCI prosecutors, criminalizing and revenging against those who investigated cases of great corruption.⁹⁸

The system of courts and tribunals of high risk was established in 2009⁹⁹ and increased the visibility of the judicial operators who worked in the most serious cases of human rights violations and corruption, which correlatively increased the vulnerability of the operators.¹⁰⁰ Judges with high-risk jurisdiction usually have to adjudicate corruption cases that the FECCI investigates. The largest number of complaints and proceedings are submitted against Erika Aifán, former high-risk judge, and Juan Francisco

⁹⁵ *Who is Consuelo Porras, the general fiscal polemic of Guatemala that the U.S. claims to be a "corrupt actor,"* BBC Mundo, May 18, 2022: <https://www.bbc.com/mundo/noticias-america-latina-61471743>

⁹⁶ *Attacks and criminalization of justice operators in Guatemala as part of the strategy for dismantling the fight against corruption and impunity*, Contribution to the Fourth Cycle of the Universal Periodic Review of the United Nations Human Rights Council Session No. 42 on Guatemala, July 2022: https://www.vancecenter.org/wp-content/uploads/2022/09/UPR_Ciclo4_Informe_completo_criminalizacion_Operadores_Justicia_Guatemala-19.9.2022.pdf

⁹⁷ In September 2021, the United States included Consuelo Porras on the list of anti-democratic and corrupt actors under Section 353 of the United States-Northern Triangle Reinforced Commitment Act by interfering in the investigation of acts of corruption. In addition, in May 2022, she was appointed pursuant to section 7031(c) of the Department of State, Foreign Operations, and Related Programs Approvals Act of 2022, being totally excluded from the faculty of entering the United States because of her involvement in significant acts of corruption: <https://www.state.gov/designacion-de-la-fiscal-general-maria-consuelo-porras-argueta-de-porres-por-participar-en-hechos-significativos-de-corrupcion-y-consideracion-de-otras-designaciones/>

⁹⁸ *Who is Consuelo Porras, the polemic Attorney General of Guatemala that the US claims to be a corrupt actor,* BBC News, May 18, 2022 <https://www.bbc.com/mundo/noticias-america-latina-61471743>

⁹⁹ Congress of the Republic of Guatemala Decree No. 21- 2009 National Center for Judicial Analysis and Documentation (Cenadoj). Available in:

https://oig.cepal.org/sites/default/files/2009_gtm_d21.pdf

¹⁰⁰ Office of the United Nations High Commissioner for Human Rights. *Human Rights Defenders: Protecting the Right to Defend Human Rights*. Fact Sheet No. 29. Available at:

<https://www.ohchr.org/Documents/Publications/FactSheet29sp.pdf>



Sandoval of the FECCI, who coincided in multiple cases of national interest such as *Comisiones Paralelas*.

On the other hand, out of the 66 complaints the Public Prosecutor has against prosecutors, 39 are against prosecutors from the FECCI.¹⁰¹ Therefore, the FECCI prosecutors and judges with high-risk jurisdiction are the main objectives of the criminalization strategy. This is insofar as they are the officials who imposed the greatest obstacles on corruption structures and networks and to impunity for human rights violations by the police and army members.

As noted in a previous section, complaints against the FECCI prosecutors have been filed by persons indicted in various proceedings, and the reports refer to the unconformity of the persons affected by the work of the prosecutors. These unconformities are related to the way in which investigative proceedings were undertaken: searches with judicial authorization, reception of testimony of possible individuals involved, conclusion of agreements of effective collaboration – even if a judge has approved them with jurisdiction to do so – among others. These complaints of non-conformity would not be successful in an impartial justice system because they lack grounds for, but contrary to being dismissed, the simple submission of complaints provokes consequences ranging from the departure of prosecutors to criminal prosecution and exile. As has happened in the cases of Juan Francisco Sandoval Alfaro, Eva Siomara Sosa Pérez, Samari Carolina Gomez Diaz, Lilian Virginia Laparra Rivas, Aliss Noemi Moran Mejia, Paola Mishelle Escobar Quinonez, Willy Roberto Racanac Lopez, Rudy Manolo Herrera Lemus, to name a few.¹⁰²

Another particularly targeted group is that of former judges of the Constitutional Court. On this point, the IACHR issued a press release expressing its concern at the appeal lodged on December 26, 2018, by the Public Prosecutor's Office against three judges of the Court to remove their immunity to proceed with criminal proceedings due to the issuance of alleged arbitrary and illegal decisions.¹⁰³

The Congress of the Republic also reported these judges in July 2019. The reason was the granting of *amparo* protection in favor of the victims of the

¹⁰¹ "In the same communication, the MP reported that during 2019 and 2020, 66 complaints had been filed against officials of the institution. In that period, almost half (30) are against the head of the FECCI, according to the document to which Plaza Pública had access. In 2019, there were 8 of them and in 2020 there were 22 others. Three more FECCI prosecutors accumulate nine complaints in these two years. In total, the members of this prosecution are the target of at least 39 of those 66 that the MP indicated": There are 47 indictments against Juan Francisco Sandoval. This is the list of those who denounce him, Plaza Pública, October 13, 2020: <https://www.plazapublica.com.gt/content/hay-47-acusaciones-contra-juan-francisco-sandoval-esta-es-la-lista-de-los-que-lo-denuncian>

¹⁰² Of six former FECCI detainees, only one was linked to proceedings as requested by the MP. La Hora.gt, March 12, 2022 <https://lahora.gt/nacionales/la-hora/2022/03/12/de-seis-ex-feci-detenedos-solo-una-fue-ligada-a-proceso-como-pidio-el-mp/>

¹⁰³ IACHR, Press release 7/19 of January 10, 2019.



internal armed conflict against a draft of legal reforms that sought to amend the National Reconciliation Law, extinguishing criminal responsibility for crimes committed by perpetrators, accomplices or cover-up of events related to crimes against humanity.¹⁰⁴

Nor can it be put aside that the former Guatemalan Human Rights Attorney, Jordan Rodas, has been constantly attacked, and for this reason, the IACHR also granted interim measures to him and his family, considering that his life and integrity are at risk. Certain social and political sectors criticize him for supporting CICIG in his work as Attorney, threatening budget cuts to his office to a point where they would have impeded the development of his functions.¹⁰⁵

On the other hand, patterns in common complainants are evident. The *Fundación contra el Terrorismo*, an organization on which details will be presented below, clearly leads the submission of complaints and proceedings initiated, as well as several individuals who are part of it or are close to it, such as Ricardo Rafael Méndez Ruiz¹⁰⁶ and Moisés Galindo.¹⁰⁷ Likewise, it can be observed that the complainants or their relatives regularly are simultaneously connected to investigations, trials and in some cases even convictions from proceedings that these judicial operators processed, such as Sandra Torres, Igor Bitkov, Gustavo Alejos, Dennis Herrera and Sergio Roberto Lopez Villatoro.

The work of the Public Prosecutor's Office, with the complicity of the High Courts today, in these investigations and proceedings results in strong coincidences with the complaints made by individuals accused of corruption, as well as the *Fundación contra el Terrorismo*.¹⁰⁸ The latter is a non-governmental organization characterized by its work in criminalizing multiple justice operators and defending military personnel accused of serious human rights violations.¹⁰⁹ It is directed by Ricardo Méndez Ruiz,

¹⁰⁴ Guatemala: Congress denounces constitutional judges. Associated Press, July 24, 2019 <https://es-us.noticias.yahoo.com/guatemala-congreso-denuncia-magistrados-constitucionales-225719416.html>

¹⁰⁵ IACHR, *press release, IACHR grants interim measure in favor of the Guatemalan Human Rights Attorney* (November 3, 2017):

<https://www.oas.org/es/cidh/prensa/comunicados/2017/174.asp>

¹⁰⁶ Héctor Silva Avalos, *Who is Ricardo Méndez Ruiz, the Guatemalan businessman behind the arrests of journalists and anti-corruption prosecutors*, August 20, 2022:

<https://www.infobae.com/america/america-latina/2022/08/20/quien-es-ricardo-mendez-ruiz-el-empresario-guatemalteco-que-esta-detras-de-los-arrestos-de-periodistas-y-fiscales-anticorrupcion/>

¹⁰⁷ Moisés Galindo, the lawyer of the military, the newspaper, October 7, 2017:

<https://elperiodico.com.gt/nacionales/2017/10/07/mois-es-galindo-el-abogado-de-los-militares/>

¹⁰⁸ European Parliament. *Guatemala: Deterioration of the rule of law and harassment of activists and journalists*. European Parliament, 7 April 2022. Available in:

<https://www.europarl.europa.eu/news/es/press-room/20220401IPR26539/guatemala-deterioro-del-estado-de-derecho-y-acoso-a-activistas-y-periodistas>

¹⁰⁹ *Attacks and criminalization of justice operators in Guatemala as part of the strategy for dismantling the fight against corruption and impunity*, Contribution to the Fourth Cycle of the Universal Periodic Review of the United Nations Human Rights Council Session No. 42 on



Moises Galindo and Raul Falla. This organization's participation in the criminalization strategy has been evident because in the face of a delayed and inefficient justice system, its complaints and actions are resolved quickly, and they are granted immediate *amparo* protection.¹¹⁰ Its members publish threats without limitation¹¹¹ as they have done with Judge Galvez and Judge Aifán¹¹² and attack officials¹¹³. These acts do not receive any reaction from the authorities. Raul Falla Ovalle and Ricardo Méndez were included in the July 2021 "Report to Congress on foreign persons who knowingly participated in actions that undermine democratic processes or institutions, significant corruption or obstruction of such corruption in El Salvador, Guatemala and Honduras".¹¹⁴ Méndez Ruiz was declared a human rights violator by human rights attorney Jorge de Leon Duque in 2013.¹¹⁵

This organization is also related to Byron Lima, a former member of the military corps convicted of the unlawful execution of Bishop Juan Gerardi. Moisés Galindo himself is investigated for corruption.¹¹⁶ Essentially, in

Guatemala, July 2022: https://www.vancecenter.org/wp-content/uploads/2022/09/UPR_Ciclo4_Informe_completo_criminalizacion_Operadores_Justicia_Guatemala-19.9.2022.pdf

¹¹⁰ Estrada, Javier. *Tackle against independent judges: They will not be eligible for Attorney General*. Quorum, March 2, 2022. Available at: <https://quorum.gt/poderes/zancadilla-contra-jueces-independientes-no-podran-optar-a-fiscal-general/>

¹¹¹ El Matutino GT. *Raul Falla issues a strong threat to @jordanrodas*, 7 May 2022. "We will see him imprisoned or exiled". A lawyer from the Fundación contra el Terrorismo spoke with the PDH at the hearing of Virginia Laparra, former head of the FECI in Quetzaltenango. Twitter. Available at: <https://twitter.com/elmatutinogt/status/1534222619733635077>

¹¹² Méndez Ruiz, Ricardo. "Judges, see in Erika Aifan's mirror. No embassy prize will save them from prison if they violate the law. And with regard to exile, remember that the Democrats are not going to be eternal in power. The time will come when prevaricators will have nowhere to flee.", march 27, 2022. Facebook. Available in:

<https://www.facebook.com/548074263/videos/340450608036359/>; See also: <https://www.facebook.com/548074263/videos/993368731566025/>; [https://www.facebook.com/mendezruizricardo/posts/pfbid02UY25jMseqjTjmoEnXeRseD5Nxsdw5Yt3FX71UFqwCbFiUTVvFovAsEzCwB3yLMvl?cft_o\[AZVn9ShFRn55Zvf5H37jf9njT2Gmoa6PN0fy1bPX_VsCdY534YGdE4gvowjflh5PkUaio scopmrRd1R8iKi9hedDtqPzNAqt_uLNP6W8kfKd1p_9fwNwWJxYL31Gz1C8JfKeLH3ykvv6j3Vdrrb5V_wpICyB2Tlus64rwwd_o_A2LQ&tn=%2CO%2CP-y-R](https://www.facebook.com/mendezruizricardo/posts/pfbid02UY25jMseqjTjmoEnXeRseD5Nxsdw5Yt3FX71UFqwCbFiUTVvFovAsEzCwB3yLMvl?cft_o[AZVn9ShFRn55Zvf5H37jf9njT2Gmoa6PN0fy1bPX_VsCdY534YGdE4gvowjflh5PkUaio scopmrRd1R8iKi9hedDtqPzNAqt_uLNP6W8kfKd1p_9fwNwWJxYL31Gz1C8JfKeLH3ykvv6j3Vdrrb5V_wpICyB2Tlus64rwwd_o_A2LQ&tn=%2CO%2CP-y-R)

¹¹³ Associated Press. *Guatemala: Former CICIG and FECI workers report aggression*. Associated Press, February 18, 2022. Available at: <https://apnews.com/article/noticias-11b7677f01011b5761daaeof48d39193>

¹¹⁴ "Raul Amilcar Falla Ovalle, a lawyer for the NGO Fundación contra el Terrorismo (FCT), attempted to delay or obstruct criminal proceedings against former military officials who had committed violence, harassment or intimidation against governmental and non-governmental corruption investigators." Press Release, U.S. Embassy in Guatemala, Report on 353 Corrupt and Undemocratic Actors (July 1, 2021), <https://gt.usembassy.gov/353-corrupt-and-undemocratic-actors-report/> See also: Department of State, *Section 353 Report to Congress on Corrupt and Anti-Democratic Actors, July 1, 2021*, Ricardo Rafael Méndez Ruiz Valdez and Raul Amilcar Falla Ovalle on the Guatemala List, <https://www.state.gov/seccion-353-informe-sobre-actores-corrupos-y-antidemocraticos/>

¹¹⁵ Gamazo, Carolina. *PDH sanctions Méndez Ruiz for an "insidious and aggressive" speech and requests investigation from the MP*. Plaza Pública, August 27, 2013: <https://www.plazapublica.com.gt/content/pdh-sanciona-mendez-ruiz-por-discurso-insidioso-y-agresivo-y-solicita-investigacion-al-mp>

¹¹⁶ *The Diario Militar trial shows military structure to disappear Guatemalans*, Prensa Comunitaria, May 5, 2022, in <https://www.prensacomunitaria.org/2022/05/en-el-juicio-del-diario-militar-se-evidencia-estructura-militar-para-desaparecer-a-guatemaltecos/>: "Byron Disrael Lima Estrada and his son Byron Lima Oliva, also a military man, were charged with the



Guatemala, serious human rights violations and acts of corruption cannot be investigated and prosecuted as the *Fundación contra el Terrorismo* determines, with the consent of the Public Prosecutor's Office and the judiciary on duty, the scope of the fight against impunity.¹¹⁷

In addition to filing criminal complaints or requests for immunity removal, the *Fundación contra el Terrorismo* has threatened and criminalized, through social networks, justice operators who do not work pursuant to their interests. The publications are made by Ricardo Méndez Ruiz and Raul Falla Ovalle, with the concurrence of the Public Prosecutor's Office.¹¹⁸ The tweets they publish through their Twitter social network accounts include the phrase "they will take charge," referring to the direct link in the quest for criminalization cases. An example of this is the case of Judge Miguel Ángel Gálvez, of whom they expressed that he would end up in prison or a fugitive, while he was called a judge that failed to abide by legal duties. They often publish information that the Public Prosecutor's Office has under confidentiality or information that has not been published by official means.

Although the threats constitute attacks on judicial independence, the Supreme Court of Justice, which should monitor it, has not made any determination.¹¹⁹

The same mechanism is used against Virginia Laparra, Leily Santizo, Siomara Sosa, Eduardo Pantaleon, Juan Francisco Sandoval, Thelma Aldana, Erika Aifán, among others. They act with total impunity because the Court of Honor of the Guatemalan Bar and Notaries Association refrains from action against

murder in April 1998 of Monsignor Juan Gerardi, director of the Interdiocesan project for the recovery of historical memory in Guatemala, REMHI, both soldiers involved in criminal acts of various kinds. Lima Oliva was appointed to finance the Fundación contra el terrorismo, known as fundaterror, directed by Ricardo Méndez Ruiz, Lima Oliva was murdered in prison."

¹¹⁷ Guatemala: Attorney General's Reappointment Threatens Rights, Human Rights Watch, May 19, 2022: <https://www.hrw.org/news/2022/05/19/guatemala-attorney-generals-reappointment-threatens-rights>, See also: *Judge who gave arrest warrant against Zamora linked to the Fundación contra el Terrorismo*, Chronicle, July 30, 2022: <https://cronica.com.gt/juez-que-dio-orden-de-captura-contra-zamora-vinculado-a-fundacion-contra-el-terrorismo/>, Pérez, Regina. (March 1, 2022). Cases against former and current prosecutors stagnate and prolong provisional imprisonment. Prensa Comunitaria. <https://www.prensacomunitaria.org/2022/03/casos-contra-exfiscales-y-fiscales-se-estancan-y-prolongan-prision-provisional/>, Vega, Pavel Gerado. There are 47 charges against Juan Francisco Sandoval. This is the list of those who denounce it. Plaza Pública, October 13, 2020: <https://www.plazapublica.com.gt/content/hay-47-acusaciones-contra-juan-francisco-sandoval-esta-es-la-lista-de-los-que-lo-denuncian>, Estrada, Javier. Ditch against Independent Judges: They will not be eligible for Attorney General. Quorum, March 2, 2022: <https://quorum.gt/poderes/zancadilla-contra-jueces-independientes-no-podran-optar-a-fiscal-general/>,

¹¹⁸ Judge Miguel Angel Galvez tries not to lose immunity and presents arguments before judges of the CC, Prensa Libre, September 19, 2022:

<https://www.prensalibre.com/guatemala/justicia/juez-miguel-angel-galvez-intenta-no-perder-inmunidad-y-expone-alegatos-ante-magistrados-de-la-cc/>

¹¹⁹ Héctor Silva Avalos, shoot against Galvez: The campaign to remove the Guatemalan judge who placed genocidal and corrupt people in the dock, Infobae, October 2, 2022:

<https://www.infobae.com/america/america-latina/2022/10/02/disparen-contra-galvez-la-campana-para-destituir-al-juez-guatemalteco-que-sento-en-el-banquillo-a-genocidas-y-corruptos/>



the threats made through the publications.¹²⁰ The Bar Association claims that no one has filed a complaint on this matter.¹²¹

Lawyer Otto Rolando Gomez is a complainant in several applications for immunity removal against Judge Erika Aifán, Judges Pablo Xitumul, Miguel Ángel Gálvez and more than six against Attorney Augusto Jordan Rodas. He was the defender of Haroldo Mendoza in the *Cancerbero* case investigated for seizing land extensions and Los Amates, of Anabella de Leon in the *Botín Registro de Propiedad* case and Marvin Montiel alias “El Taquero”, precisely because of the death of Byron Lima in prison.

In the case of Pablo Xitumul, apart from the *Fundación contra el Terrorismo* and others mentioned, he was also reported by the relatives of some members of the army who were prosecuted for human rights violations.

Another of the relevant complainants is the Magistrates Institute of the Court of Appeals of the Judicial Branch, whose members were investigated for acts of corruption before the courts under the jurisdiction of Judge Erika Aifán.

It is important to reiterate the coincidence of the arrival of Consuelo Porras at the Public Prosecutor’s Office, sharpening of the criminalization strategy and the willingness of the Public Prosecutor to carry out these unfounded investigations in addition to arbitrary decisions such as the dismissal of Juan Francisco Sandoval and the transfer of some cases outside the jurisdiction of the FECCI. Many international organizations have made statements against these acts¹²², and even the US Department of State declared that the removal of Juan Francisco Sandoval reflected a pattern of conduct that indicates a lack of commitment to the rule of law and judicial independence, and that they lost confidence in their work and their intent to fight corruption.¹²³ Attorney Porras replaced Sandoval with Rafael Curruchiche¹²⁴, questioned for

¹²⁰ Tweets intimidate and exhibit the power and influences of the Fundaterror. Newspaper, 6 October 2022 <https://elperiodico.com.gt/sociedad/local/2022/10/06/los-tuits-que-intimidan-y-exhiben-el-poder-e-influencias-de-la-fundaterror-1/>

¹²¹ *Tweets that intimidate and exhibit the power and influences of Fundaterror*, the newspaper, October 6, 2022: <https://elperiodico.com.gt/sociedad/local/2022/10/06/los-tuits-que-intimidan-y-exhiben-el-poder-e-influencias-de-la-fundaterror-1/>

¹²² Press release, Guatemala: *International organizations reject the dismissal of prosecutor Juan Francisco Sandoval*, July 24, 2021. Accessible at: <https://cejil.org/comunicado-de-prensa/guatemala-organizaciones-internacionales-We-reject-the-dismissal-of-the-prosecutor-juan-francisco-sandoval/>.

¹²³ *United States Announces Measures Against Seven Central American Officials for Undercutting Democracy and hinder Investigations of Corruption*, September 21, 2021: <https://www.state.gov/translations/spanish/estados-unidos-anuncia-medidas-contra-siete-funcionarios-centroamericanos-por-socavar-la-democracia-y-obstaculizar-investigaciones-de-actos-de-corrupcion/>

¹²⁴ *Rafael Curruchiche, from questioning his honorability to include it in the Engels list*, Soy 502, July 20, 2022: <https://www.soy502.com/articulo/quien-rafael-curruchiche-jefe-feci-lista-engels-100931>. See also: Guatemala taps controversial prosecution to replace fierce graft-fighter, Reuters, August 3, 2021: <https://www.reuters.com/world/americas/guatemala-taps-controversial-prosecutor-replace-fired-graft-fighter-2021-08-04/>, Julia Aikman Cifuentes and Adriana Beltran Assault on Guatemala’s Justice System Intensifies With Expulsion of Anti-Corruption Prosecutor,



mismanagement while working in the electoral prosecutor's office. In September 2021, the United States included Consuelo Porras on the list of anti-democratic and corrupt actors under Section 353 of the United States-Northern Triangle Reinforced Commitment Act for interfering in the investigation of acts of corruption. Moreover, President Alejandro Giammattei has stated that Attorney General Consuelo Porras is his friend, raising suspicions about the lack of independence that should occur between the executive branch and the investigative and judicialization bodies such as the Public Prosecutor's Office.¹²⁵

In fact, several of the judicial operators persecuted by the Guatemalan authorities have interim measures granted by the IACHR because of the risk to which they are exposed by the nature of the cases in which they work.¹²⁶ The IACHR pointed out that the proceedings before them are of such impact and importance also because of the profile of those investigated or accused, which, in addition to the undue interference of other State powers and social actors in Guatemala, significantly exposes judges and prosecutors.¹²⁷

The IACHR has made statements on the specific risk these judicial operators face not only through press releases and resolutions granting interim measures but also through its reports on the human rights situation in Guatemala. In this report, the IACHR noted that these judicial operators are the object of threats and attacks that include harassment, assaults, and threats against them on account of their work as judges and prosecutors.¹²⁸ Therefore, it has ordered the State of Guatemala to adopt all necessary measures to protect the rights to life and personal integrity and the guarantees for the performance of their duties as judges without being threatened, harassment or intimidation in the exercise of their functions.¹²⁹ This has been the case of Erika Aifan¹³⁰, Miguel Angel Galvez, José Francisco

WOLA, August 18, 2021: <https://www.wola.org/analysis/ousting-anti-corruption-prosecutor-guatemala/>

¹²⁵ Giammattei refers to the Attorney General as his great friend. Soy 502, July 9, 2020 <https://www.soy502.com/articulo/giammattei-lucha-contra-corrupcion-ha-sido-compromiso-100931>

¹²⁶ Erika Aifan, precautionary measure no. 682-18, 23 October 2019, Resolution 55/2019. Miguel Angel Galvez Resolution 351 of 2016 and 366 of 2016, Pablo Xitumul, Iris Yassmin Barrios Aguilar, Resolution 125 of 2013. IACHR. Thelma Esperanza Aldana Hernandez y Familia Regarding Guatemala (MC-497-16), Resolution 40/2016 of 22 July. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC497-16-ES.pdf> IACHR Gloria Patricia Porras Escobar and Family on Guatemala (MC-431-17), Resolution 34/2017 of 29 August. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/34-17MC431-17-GU.pdf>

¹²⁷ Press Release, Organization of American States, *IACHR Awards Precautionary Measures to Protect Justice Operators in Guatemala* (October 28, 2019), https://www.oas.org/en/iachr/media_center/PReleases/2019/276.asp; See *Erika Lorena Aifan v. Guatemala*, Precautionary Measures, Resolution 55/2019, Inter-American Communication, Precautionary Measure No. 682-18 (October 23, 2019), <https://www.oas.org/es/cidh/decisiones/pdf/2019/55-19MC682-18-GU.pdf>.

¹²⁸ IACHR, *Situation of Human Rights in Guatemala* (2017), para. 199.

¹²⁹ Erika Aifán, precautionary measure no. 682-18, 23 October 2019, Resolution 55/2019.

¹³⁰ Erika Aifán, precautionary measure no. 682-18, 23 October 2019, Resolution 55/2019.



de Mata Vela, Bonerge Amilcar Mejia Orellana, José Mynor Pan Uen and Maria Cristina Fernandez.¹³¹

Due process

Besides from the clear patterns of criminalization of judicial operators of cases of national interest who are dedicated to the disarticulation and judicialization of large cases of corruption and human rights violations, the temporary coincidence with the campaign of discredit and subsequent exit of the CICIG, the coincidence in complainants who were affected by a decision of said operators, there are countless irregularities in these processes that are also in violation of international norms and standards.

When filing a complaint and analyzing whether the facts could constitute a crime, the investigation should be conducted to gather evidence, information about the accused individuals so that they provide means of investigation and can defend themselves against the accusations being made. This will determine whether, with the elements of investigation, there is the possibility that the person has participated in the commission of a crime, and thus an investigating judge must issue a summons to obtain an initial deposition or arrest warrant.

At present, the criminal justice operators cannot identify whether there is a complaint against them because the authorities automatically safeguard the information with unfounded judicial confidentiality.¹³² The objective is to curtail a defense that cannot be exercised from the very outset, to prohibit access to the case and access to the evidence. With this, arrest orders are processed, without carrying out an objective and impartial investigation, in contravention of the rules of due process.

In the case of complaints against current and former FECCI prosecutors, the digital case control system does not record the name of the person accused. It is only reflected if the reported individual is FECCI staff, which clearly violates the right of defense of prosecutors. Without access to the files, prosecutors cannot defend themselves because they are unaware of their charges, and thus access to the case is void. Breach of due process is further aggravated by deliberately delaying hearings to detained individuals and hindering access to case files.¹³³

First, it should be stressed that the accurate scope of all these complaints cannot be identified due to the concealment of information by different authorities, particularly the Public Prosecutor's Office. Not even the judicial operators under process themselves are aware of all the complaints and

¹³¹ 25 October 2019, resolution 56/2019.

¹³² Information obtained from interviews and consultations with a group of judges.

¹³³ Information obtained from interviews and consultations with a group of prosecutors.



proceedings against them. Also, judicial proceedings are conducted without confidentiality without any justification, making it difficult for defense lawyers or civil society organizations to safeguard their procedural rights.

Virginia Laparra, one of the anti-corruption prosecutors, has been denied due process to the extent that hearings on her case have been postponed at least six times for various reasons. In the meantime, she remains in pre-trial detention and cannot be assisted due to confidentiality.¹³⁴

Cases are not resolved in a timely manner as required by the international standard, especially in the case of persons who operate justice. As mentioned earlier, some cases started in 2012, and lasting a decade. In many cases, the people who operate justice must submit written memorials or request hearings in the cases against them to move forward and achieve dismissal. Judge Erika Aifán has listed to the IACHR each casefile in which the legal period for the authorities to determine the existence of the crime in the case of criminal complaints was ignored. The State of Guatemala then violates Basic Principle 17 of the United Nations, which requires that statements made against a judge in their professional capacity be dealt with expeditiously and fairly within the framework of an appropriate procedure.¹³⁵

On 21 June 2021, several judges appeared before the Public Prosecutor's Office, requesting the dismissal of more than 40 complaints against them, explaining their lack of substance and the various irregularities identified in the proceedings.¹³⁶ To date, these persons have not had a response to that request.¹³⁷ On the other hand, the requests and complaints made by the actors mentioned above are characterized by a procedural agility that is far from even being the average speed at which the other judiciary issues are resolved. In many cases, decisions have been taken within a few days. Moreover,

¹³⁴ Virginia Laparra, former chief of the FECCI of Quetzaltenango, linked to criminal proceedings Prensa Libre (March 3, 2022), <https://www.prensalibre.com/guatemala/justicia/ligan-a-proceso-a-virginia-laparra-exjefa-de-la-feci-de-quetzaltenango-breaking/>

¹³⁵ United Nations, Basic Principles on the Independence of the Judiciary, Principle 17: "A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge."

¹³⁶ Deutsche Welle. Guatemala: High-risk judges report harassment. Deutsche Welle, 22 June 2021. Available at: <https://www.dw.com/es/guatemala-jueces-de-alto-riesgo-denuncian-hostigamiento/a-57987604> See also: Roman, Julio. High Risk Judges ask the MP to dismiss allegations against them that are unfounded and spurious. Prensa Libre, June 21, 2021. Available at: <https://www.prensalibre.com/guatemala/justicia/jueces-de-mayor-riesgo-piden-al-mp-que-desestime-denuncias-en-su-contra-pues-consideran-que-son-infundadas-y-espurias-breaking/>

¹³⁷ Press release 07-21 AGJI. On the petition presented by Judges Erika Aifán, Yassmin Barrios and Judges Pablo Xitumul and Miguel Angel Galvez, to the Attorney General and Head of Public Prosecutions, July 21, 2021: <https://agji-gt.org/~agjigtor/comunicado-07-21-agji-ante-la-peticion-presentada-por-las-juezas-erika-aifan-yassmin-barrios-y-los-jueces-pablo-xitumul-y-miguel-angel-galvez-a-la-fiscal-general-y-jefa-del-ministerio-publico/>, and Judges denounce harassment and ask to close cases against them, Emisoras Unidas, July 21, 2021, <https://emisorasunidas.com/2021/06/21/jueces-hostigamiento-cerrar-casos-denuncias/> (Consulted on, 27 May 2022)



requests for protection from these justice operators seeking protection and guarantees through *amparos* and other legal tools are arbitrarily rejected.¹³⁸

Finally, many of these cases are plagued by procedural irregularities. A very clear example is the trial of Judge Erika Aifán, in which the Supreme Court assigned as inquiring judge a person who is part of the complainant entity, that is, the secretary of the Board of Directors of the Institute of Magistrates of the Courts of Appeals. That precise entity was under investigation in the case of *Comisiones Paralelas*. The inquiring judge is in charge of advancing the investigation and holding a hearing to determine the application's success.¹³⁹

Additionally, in the request for immunity removal promoted by the Mynor Moto, Judge Aifán challenged two Supreme Court justices to the extent that they had submitted opinions on the case. However, this challenge was rejected by the Court.¹⁴⁰ They even fined Judge Aifán for filing the challenge.¹⁴¹ Interestingly, the Court itself admitted these challenges later when Judge Aifán filed another challenge against three other judges.¹⁴²

Criminalization strategy in the broad sense

These requests for immunity removal and subsequent judicial proceedings coincide with campaigns of discredit and threats on social networks and other media.¹⁴³ They generate, among all methods of pressure and coercion, an act of systematic persecution.¹⁴⁴ This type of attacks on social networks and using media for campaigns of disrepute were detailed by Judge Erika Aifán in her petition presented to the IACHR in September 2021, which includes statements on networks such as:

“The Aifán, the worshiper of the satanic communist globalist press, who has NO credibility whatsoever. Also sacked by the disgusting and corrupt

¹³⁸ Petition for violations of the American Convention on Human Rights, Erika Lorena Aifán Avila (petitioner) v. Republic of Guatemala, September 7, 2021: <https://www.vancecenter.org/wp-content/uploads/2021/09/Peticion-de-fondo-CIDH-Jueza-Erika-Aifan-Septiembre-2021.pdf>

¹³⁹ Due Process Foundation (DPLF). *DPLF presents Amicus Curiae in the amparo process initiated against the decision of the Supreme Court of Justice to admit the petition for a immunity removal against Judge Erika Aifán Davila in Guatemala*. (september 16, 2020). DPLF. Available at: <https://dplf.org/es/recursos/amicus-curiae-amparo-erika-aifan-guatemala>

¹⁴⁰ Silvia Patricia Valdés and Manuel Duarte have an open road to decide on the request for the withdrawal of immunity raised by Moto against Aifan, *Prensa Libre*, May 19, 2021.

¹⁴¹ *CSJ rejects challenges and fines of Judge Aifán*, *El Periódico*, May 19, 2021.

¹⁴² Lourdes Arana, *CSJ accepts the excuse of Valdés and Duarte of deciding on the immunity removal against Aifán*, *ON JULY 22, 2021*.

¹⁴³ Attacks on judicial independence, Report of the mission of judges of the Latin American Federation of Magistrates and the International Union of Magistrates, October 2022, page 9:

<https://docs.google.com/viewerng/viewer?url=https://agji-gt.org/~agjigtor/wp-content/uploads/2022/10/Informe-de-mision-a-Guatemala-FLAM-y-UIM-octubre-2022.pdf>

¹⁴⁴ Sara Solorzano, we cannot work under the threat of death, exile, from prison: Judge Haroldo Vasquez. *Prensa Libre*, June 1, 2022 <https://www.prensalibre.com/guatemala/justicia/no-podemos-trabajar-bajo-amenaza-de-muerte-de-exilio-de-la-carcel-juez-haroldo-vasquez/>



*gringo government” (sic), or “judicial hitwoman (...) has committed a great deal of flagrant crimes (...) that the Attorney General expects to arrest her”, O “Commander General @DrGiamattei The Brigade of Special Forces we await on your command to disappear the new subversive guerrilla that hides behind feci and high risk judges If I go forward, follow me, If I stop, press me, If I go back, kill me. KAIBIL!”.*¹⁴⁵

As stated in previous paragraphs, in recent years, the excessive use of criminal law and disciplinary complaints against persons in the system of procuring and imparting justice constitutes a pattern to intimidate those who worked on high-impact processes in the country.

The systematic pattern requires the acquiescence of the Public Prosecutor's Office. As has been repeatedly pointed out, a simple, unfounded or fallacy complaint is enough to act against independent justice operators.¹⁴⁶ In addition to the already addressed intimidation and harassment in social networks and media. The public strategy seeks to change the narrative so that the population believes that these individuals actually committed the facts reported and thus the persecution against them is justified.

The abuse of disciplinary, administrative, and judicial processes is also accompanied by other tactics such as tracking using cars without license plate, harassment with drones at court premises, and other acts.¹⁴⁷ Judges such as Erika Aifán have exposed these alarming persecutions seeking the security measures provided by Guatemalan law, specifically requesting security measures and risk analysis from the Division of Protection of Persons and Security of the National Civil Police, to the Deputy Minister of Security of the Ministry of the Interior and the Director General of the National Civil

¹⁴⁵ Petition for violations of the American Convention on Human Rights, Erika Lorena Aifan Avila (petitioner) v. Republic of Guatemala, September 7, 2021: <https://www.vancecenter.org/wp-content/uploads/2021/09/Peticion-de-fondo-CIDH-Jueza-Erika-Aifan-Septiembre-2021.pdf>

¹⁴⁶ Daniella Burgi-Palomino and Lisa Haugaard, Latin America Working Group Education Fund; Ana Maria Méndez Dardon, Washington Office on Latin America; Ursula Indacochea, Due Process of Law Foundation; Corie Welch, Guatemala Human Rights Commission/USA, When the Dominoes Fall: Co-optation of the Justice System in Guatemala, October 2022, Page 6: <https://www.wola.org/analysis/when-dominoes-fall-justice-system-guatemala/>

¹⁴⁷ Gonzalez, Ana. *CSJ brings proceedings against Judge Erika Aifán*. República GT, 2 July 2020. Available at: <https://republica.gt/guatemala/2020-7-3-15-15-55-csj-da-tramite-al-antejuicio-contrala-jueza-erika-aifan> See also: Human Rights Procurator, Convergence for Human Rights, Impunity Watch, Center for Justice and International Law (CEJIL), International Platform against Impunity, Foundation for Justice and the Democratic Rule of Law (FJED), Foundation for Due Process (DPLF), Lawyers Without Borders Canada (ASFC), American Jewish World Service, Washington Office for Latin American Affairs (WOLA), Robert F. Kennedy Human Rights, Protection International Mesoamerica, Guatemalan Human Rights Commission. *Guatemala: Justice officials and organizations alert the IACHR to the deterioration of judicial independence and the rule of law in the country*. CEJIL, October 29, 2021. Available at: <https://cejil.org/comunicado-de-prensa/guatemala-funcionarios-de-justicia-y-organizaciones-alertan-a-la-cidh-sobre-el-deterioro-de-la-independencia-judicial-y-el-estado-de-derecho-en-el-pais/#:~:text=Comunicado%20de%20Prensa->



Police. Furthermore, she has requested a security scheme on many occasions from the Directorate of Institutional Security of the Judicial Branch.¹⁴⁸

Indeed, the attacks also attempt to disrupt the power of judges' associations. On February 12, 2022, several Twitter accounts published a video showing High-Risk Judges and several members of the Guatemalan Association of Judges for Integrity AGJI leave the U.S. Embassy, condemning any alliances and accusing judges of being guerrilla members.¹⁴⁹ In this regard, Judge Ruano has also been the target of harassment and threats in the case of Judge Blanca Stalling explained in the context chapter.¹⁵⁰ On October 27, the *Fundación contra el Terrorismo* announced the filing of a request for immunity removal proceedings against Judge Ruano in this case.

Arbitrary removals such as that of Juan Francisco Sandoval, in which there are no reasons or proceedings in direct violation of the Organic Law of the Public Prosecutor's Office, are also part of the strategy. Recently, several international organizations reported with concern that Attorney General Consuelo Porras arbitrarily dismissed eight career prosecutors and 11 public prosecutor's office workers.¹⁵¹

Together, these acts and omissions violate the individual rights to life, integrity, due process of law, protection and judicial independence of judicial operators.¹⁵² In addition, the strength of the rule of law in Guatemala and the guarantees for access to justice for the citizens are also at risk. In particular, Articles 8 and 21.5 in relation to Articles 1.1 and 2 of the American Convention on Human Rights.

The systematic criminalization of judges, high-risk judges, and prosecutors who investigated cases of corruption or crimes committed in the internal armed conflict leads to the weakening of institutions. Also, the personal harm to those who suffer these attacks, ranging from criminal prosecution and possible imprisonment, transfers to other prosecutors' offices or courts in distant areas, which can be an indirect dismissal. Ultimately, as the lives and

¹⁴⁸ Complaints of 12 September 2018 and 28 November 2019.

¹⁴⁹ Undefeated prosecutor. BEWARE here with the security of @usembassyguate personnel with security cameras you can identify the vehicle plate you recorded.. This is serious! (february 12, 2022). Twitter. Available in: <https://twitter.com/fiscaln victo/status/1492502411491086340?s=21&t=RgipZ517TKnKHjy8oCFV-Q>

¹⁵⁰ Monsoon. Keneth (august 16, 2018). He fears for his safety: judge who denounced Blanca Stalling. Prensa Libre. Available at: <https://www.prensalibre.com/guatemala/justicia/juez-que-denuncio-a-la-magistrada-stalling-estoy-sorprendido/>

¹⁵¹ Press release "We condemn the arbitrary dismissal of prosecutors and the weakening of the Public Prosecutor's Office in Guatemala", Foundation for Due Process, Impunity Watch, CEJIL, et al. July 11, 2022.

¹⁵² *Attacks and criminalization of justice operators in Guatemala as part of the strategy for dismantling the fight against corruption and impunity*, Contribution to the Fourth Cycle of the Universal Periodic Review of the United Nations Human Rights Council Session No. 42 on Guatemala, July 2022: https://www.vancecenter.org/wp-content/uploads/2022/09/UPR_Ciclo4_Informe_completo_criminalizacion_Operadores_Justicia_Guatemala-19.9.2022.pdf



safety of persons who operate justice are threatened, exile is the last alternative, such as that taken by some 24 people in exile in different countries for fear of reprisals against them.¹⁵³

The IACHR¹⁵⁴, numerous international organizations and civil society organizations¹⁵⁵, as well as several governments¹⁵⁶, have expressed their views on this strategy of persecution, which has implications for the rule of law in the region.

In the end, this strategy results in the exile or arrest of the judicial operators against whom it is directed.

Gender

Within the criminalization strategy, for every complaint, there are commonly simultaneous attacks on social networks and other media to intimidate and generate discussion around the people denounced. The gender and diversity component has played an important role in these strategies.

In Guatemala, in addition to this harassment and persecution resulting from unfounded allegations brought against justice operators, the attack on social networks plays a very significant role as the line between freedom of expression and publications that damage dignity and provoke hatred is exceeded.

The publications that focus mainly on women in charge of high-impact cases could constitute crimes related to gender-based violence. The Public Prosecutor's Office of Consuelo Porras refrains from acting against these publications, which are clear violations of the human rights of those who suffer them.

¹⁵³ Judge Erika Aifán leaves Guatemala due to threats from political and criminal networks, El País (March 21, 2022), <https://elpais.com/internacional/2022-03-21/la-jueza-erika-aifan-deja-guatemala-debido-a-las-amenazas-de-redes-politicas-y-criminales.html> See also: This judge is one of the last U.S. allies in the Guatemala corruption fight. Politicians keep trying to sideline her, Washington Post (February 19, 2022), <https://www.washingtonpost.com/world/2022/02/19/guatemala-corruption-erika-aifan/>; Aifán From exile: "My life was at risk in Guatemala", El Faro (March 21, 2022), Aifán, From exile: "My life was at risk in Guatemala" - ElFaro.net (accessed May 27, 2022). See also: The former prosecutor of Guatemala "urges rescue of the state of the mafia". Newsroom Infobae, 21 September 2022 <https://www.infobae.com/america/agencias/2022/09/21/la-exfiscal-de-guatemala-insta-a-rescatar-al-estado-de-la-mafia/>

¹⁵⁴ *Press Release of the Inter-American Commission on Human Rights, IACHR expresses concern over new affections on judicial independence in Guatemala* (February 22, 2022) <http://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/037.asp>,

¹⁵⁵ Statement by the New York City Bar Association Condemning the Continuing Harassment and Criminalization of Justice Operators in Guatemala, New York City Bar Association, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/harassment-and-criminalization-of-justice-operators-in-guatemala>

¹⁵⁶ U.S. Concern for Integrity of Guatemalan Judicial System (January 16, 2022), <https://www.state.gov/u-s-concern-for-integrity-of-guatemalan-judicial-system/>, See also: *Guatemala: Statement by the Spokesperson on the rule of law situation* (February 11, 2022), https://www.eeas.europa.eu/eeas/guatemala-statement-spokesperson-rule-law-situation_en,



On February 18, 2022, the collectivity of lawyers conformed by Flor de Maria Galvez and Claudia Gonzalez, lawyers defending Leily Santizo and Siomara Sosa appeared before the Public Prosecutor's Office denouncing gender violence on the part of Ricardo Méndez Ruiz and Raúl Falla of the *Fundación contra el Terrorismo*. Lawyers read a statement entitled “*Enough Misogynistic Violence Against Those who have fought Corruption*” in which they stated that: “*We have seen how the Fundación contra el Terrorismo has for several years been engaged in defaming and campaigning against various justice operators, including against people in civil society, especially women. This type of effort seeks to intimidate, instill fear, undermine the reputation of individuals and also silence those who have worked against corruption and impunity*”.¹⁵⁷

Other former prosecutors who have experienced gender-based violence derived from social media publications against them are Paola Escobar and Aliss Moran. They have suffered the consequences of being part of the Comisiones Paralelas 2020 case investigation team.

Not only were they arrested, and more than a month passed without being heard by a judge, who later judge excused himself from the case because he was linked to *comisiones paralelas*, but the *netcenters* focused on stigmatizing and criminalizing them, condemning them and exposing them publicly.¹⁵⁸

In his recent report on the participation of women in the administration of justice, the Special Rapporteur on the independence of judges and lawyers described how judges and prosecutors in different jurisdictions were victims of threats, sexual harassment, and other forms of violence. In fact, it highlights Guatemala as a jurisdiction in which judges are the object of attacks on account of the cases they serve in their public functions and the decisions they make in them by referring to the multiple attacks against Judge Erika Aifán.¹⁵⁹ Further, the Rapporteur refers to the obstacles women face in exercising their rights in the judicial system and the delay in including a gender perspective in criminal proceedings and matters.¹⁶⁰

¹⁵⁷ Ana Alfaro, *Feminist Lawyers Denouncing Misogynistic Violence Against Leily Santizo and Siomara Sosa*, Ruda, February 21, 2022: <https://rudagt.org/abogadas-feministas-denuncian-violencia-misogina-contra-leily-santizo-y-siomara-sosa/>

¹⁵⁸ Two prosecutors remain in prison because the judge excused himself. Prensa Comunitaria 22 February 2022 <https://www.prensacomunitaria.org/2022/02/dos-exfiscales-de-la-feci-siguen-presas-porque-el-juez-se-excuso/>

¹⁵⁹ Report of the Special Rapporteur on the independence of judges and lawyers, Diego Garcia-Sayan, Participation of women in the administration of justice, A/76/142, 25 July 2021: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/196/64/PDF/N2119664.pdf?OpenElement>

¹⁶⁰ Interim report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, A/66/289, 10 August 2011: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/449/74/PDF/N1144974.pdf?OpenElement>



In a previous ILAC discussion paper, testimony was collected from judges and prosecutors who receive greater threats and attacks on social networks, including homophobic statements based on alleged sexual orientation.¹⁶¹

¹⁶¹ “Attacks against those who impart justice: Institutional weakness and lack of guarantees for judicial independence in Colombia, Guatemala and Mexico”
<https://ilacnet.org/publications/reporte-de-discusion-ataques-contra-quienes-imparten-justicia-independencia-judicial-en-colombia-guatemala-y-mexico/>



4 Conclusions

The actions of the Guatemalan authorities are violations of the norms and standards of international law summarized in chapter VI and explained further in the Annex to this document, and could be considered international wrongful acts by an international body.

More than individual and isolated acts, these actions constitute a strategy of criminalization and persecution against Guatemalan judiciary operators. This tactic is being rolled out to perpetuate the country's old schemes of corruption and impunity, significantly weakening the capacity to investigate and prosecute illegal acts. Former Prosecutor Thelma Aldana has indicated that these events imply a setback of at least eight years in the capacities acquired by the Public Prosecutor's Office to investigate large cases of corruption and human rights violations.¹⁶²

This pattern of criminalization against justice operators, which increased in recent years, constitutes the rearrangement of the criminal structures that maintained the power over different institutions of the State. They recovered lost spaces in the fight against corruption led by CICIG, in support of FECCI, and judicialized by High-Risk Courts.

Apart from affecting the human rights of individuals, such as the right to integrity and freedom, as well as the independent development of their judicial functions, several guarantees, such as non-arbitrary removal and promotion under objective and transparent conditions, are violated. These acts specifically breach the judicial independence enshrined in Article 8.1 of the American Convention and the judicial protection established in Article 25 of the Convention. These acts are also contrary to article 2 of the International Covenant on Civil and Political Rights, especially considering the interpretation by the Human Rights Committee and the recommendations issued by the Special Rapporteur for the Independence of Judges and Lawyers.

Per the jurisprudence of the IACHR, the State would violate its obligation to guarantee judicial independence and the rights of judges when it enables and allows these so-called “disguised proceedings” that have no purpose other than to intimidate, harass and interfere in some way with the administration of justice. These rights are fundamental to the prosecutors, judges, and all persons seeking access to impartial and independent justice.

¹⁶² Quimy de Leon, Andina Ayala, Andrea Rodriguez, Thelma Aldana: “*Consuelo Porras is ending the institutionalism of the Public Prosecutor’s Office, is receding eight years of good administrations*”, Ruda, October 18, 2021: <https://rudagt.org/thelma-aldana-consuelo-porras-esta-acabando-con-la-institucionalidad-del-ministerio-publico-esta-retrocediendo-ocho-anos-de-buenas-administraciones/#>



As part of the criminalization strategy, criminal complaints are sealed and placed under confidential status, thus violating the prosecution's right of defense. In addition, access to the case files is prohibited, preventing the knowledge of the evidence in the case. Cases cannot be defended from unknown accusations and artificially manufactured evidence.

The IACHR and the Special Rapporteur have released statements against sanctions imposed on judges because of mere disagreement with the content of their decisions since procedural remedies are available within the legal systems for this purpose. It is not feasible to resort to methods of persecution to alter the contents of decisions.

The criminalization of judicial operators for working in cases involving the most serious crimes committed by army and police forces, as well as powerful corruption structures, aggravates the conduct of the State of Guatemala because it compromises not only the independent exercise of the judiciary but also freedom, life and integrity of these individuals by increasing their exposure and vulnerability.

Complainant patterns demonstrate the lack of evidence and substance for these complaints and proceedings. The number of complaints reveals this action's systematicity, generality, and abuse. They also illustrate the lack of institutional protection toward judicial operators and the ineffectiveness of any protocol or measure to prevent these attacks.

Guatemala is in breach of the 21 recommendations regarding human rights defenders and the 5 recommendations issued on combating impunity made by the Human Rights Council and accepted by the State following the 2017 Universal Periodic Review.¹⁶³ Moreover, the State of Guatemala breaches the interim measures issued by the IACHR and provisional measures granted by the Inter-American Court mentioned above.

The breach becomes even more apparent, considering judges are protected by the same guarantees outlined in international law for human rights defenders.¹⁶⁴ The obvious prevalence of using criminal proceedings, over and above administrative and disciplinary proceedings, to prosecute and coerce the actions of judges is dangerous. Through criminal prosecution, the freedom and personal integrity of judicial operators are directly undermined to obtain impunity for crimes committed by members of military forces and major corruption scandals.

¹⁶³ A/HRC/37/9, para. 111.40, 111.42, 111.43, 111.45, 111.48, 111.49, 111.50, 111.52, 111.54, 111.55, 111.56, 111.57, 111.58, 111.59, 111.60, 111.61, 111.62, 111.63, 111.64, 111.65, 111.67, and A/HRC/37/9, para. 111.69, 111.74, 111.75, 111.76 and 111.77.

¹⁶⁴ Inter-American Commission on Human Rights (IACHR). (June 2, 2022). Annual Report 2021, Guatemala Chapter IV.B. IACHR. Available in: <https://www.oas.org/es/cidh/docs/anual/2021/capitulos/IA2021cap4B.Guatemala-es.pdf>



More than 25 former officials are in exile, protecting their freedom and integrity. Many others are being investigated and prosecuted in Guatemala, some under pre-trial detention and facing proceedings undermined by irregularities and under unsubstantiated confidentiality.

The criminalization of justice operators has also increased the persecution of journalists and human rights defenders.

Despite the statements of the international community, including foreign governments and international organizations, the Guatemalan authorities continue their daily strategy that weakens judicial independence and the rule of law.



5 Recommendations

- 1 The Public Prosecutor's Office and the other Guatemalan authorities must analyze and dismiss the allegations against judges, prosecutors, and other persons operating in the justice system who were brought for spurious or political reasons and that lack real means of conviction.
- 2 Any proceedings against justice operators must be conducted promptly and in due process, ensuring compliance with the principles of transparency, access to information, publicity, and the due defense of accused persons.
- 3 The Guatemalan Ombudsperson must actively denounce the constant criminalization and persecution of justice operators.
- 4 The State must adopt measures to protect justice operators from attacks, intimidation, and persecution by initiating appropriate investigations. The relevant authorities should legislate to establish an obligation to develop a protocol for protecting justice operators and their families against attacks on judicial independence, which sets forth the responsibilities of each authority and provides for a scalable system according to risk levels, based on objective analysis and criteria. The legislation should consider providing adequate budgetary resources to implement this protocol.
- 5 The Guatemalan authorities must analyze and take appropriate measures against persons who recurrently, systematically, and publicly threaten justice operators and activate the system of administration of justice to wage a judicial war against them.
- 6 The State should adopt measures to guarantee the independence and autonomy of the institutions that make up the justice sector, avoiding any interference by the executive and legislative bodies to ensure the impartiality of its judicial and fiscal officials. This includes the review of the nomination, selection and appointment processes for judges and magistrates of the high courts, in which the influence of different sectors that endangers their independence has been observed.



- 7 The international community must analyze and evaluate economic and technical cooperation with the Public Prosecutor's Office and other institutions involved in the criminalization strategy.
- 8 The international community must continue to make the situation of criminalization visible in Guatemala and support the efforts of civil society in Guatemala, especially that which serves as the first line of defense of criminalized justice operators.
- 9 The Inter-American System of Human Rights and the System for the Protection of Human Rights of the United Nations organizations must respond effectively to the requests for the protection of criminalized persons.



6 Methodology

This report is a qualitative analysis. The report is based on information collected through investigations of public documents, information from the Public Prosecutor's Office and the judiciary, and questionnaires to operators and former operators of the justice system in Guatemala and human rights defenders. The Vance Center created a questionnaire containing specific questions the authors wished to cover in the research.

Current and former justice system operators completed the information collected through the questionnaire designed for this purpose



Annex. The Duties of Guatemala under International Law for the Protection of Judges, Prosecutors and Lawyers

This analysis summarizes the safeguards of international human rights law for judges¹⁶⁵ and prosecutors in Guatemala, in the face of arbitrary disciplinary proceedings, administrative removals, immunity removal and political trials, criminal proceedings, challenges, and complaints to bar associations; as well as guarantees for the independence of practicing lawyers, even when acting in the capacity of human rights defenders. International law enshrines such safeguards and guarantees, *inter alia*, because of the need of the independence of judges, prosecutors and lawyers in practice, for the rule of law in a democracy and for the protection of fundamental rights.

Multiple guarantees derive from judicial independence: [i] to an adequate appointment process, [ii] to tenure and [iii] to the guarantee against external pressures.¹⁶⁶ This analysis summarizes the second and third guarantees – security in office, and freedom of pressure. It does not cover the subject of judicial selection.

In addition to judicial independence, this analysis summarizes the related safeguards, guaranteed by international law for prosecutors and lawyers in practice.

This annex is organized as follows. Part II describes the main sources of relevant international standards. Part III presents an overview of the safeguards granted to judges, prosecutors, and lawyers in practice. Part IV specifies specific guarantees for judges and prosecutors; and Part V specifies more general guarantees for judges, prosecutors, and practicing lawyers.

¹⁶⁵ The terms “judges” and “judges” have different meanings in different legal systems. This analysis uses the word “judge” to include judges and any person exercising the adjudication function by a State. See *Colindres Schonenberg v. El Salvador*, Judgment of February 4, 2019, ¶ 67.

¹⁶⁶ *Rich v. Argentina*, Judgment of September 2, 2019, ¶ 52. Accordingly, Human Rights Committee, General Comment 32, *Article 14. The right to a fair trial and equality before the courts*, UN Doc. CCPR/C/GC/32, 23 August 2007 (“General Comment 32”). Unless otherwise indicated, all the judgments cited in this analysis are of the Inter-American Court of Human Rights.



Main Sources of Applicable International Norms

The main sources of applicable international law are two treaties to which Guatemala is a State Party: the American Convention on Human Rights (“**American Convention**” or “**Convention**”), ratified by Guatemala in 1978, and the International Covenant on Civil and Political Rights (“**Covenant**”), acceded to by Guatemala in 1992. Because the American Convention is judicially enforceable against Guatemala before the Inter-American Court of Human Rights, and the norms of the Convention and Covenant are compatible (indeed, nearly identical), this memo focuses on the norms and jurisprudence of the American Convention, while also noting those of the Covenant.

In addition to these two treaties, international law principles and soft law mechanisms confirm the duty of States to protect the independence not only of the judiciary but also of practicing lawyers, including lawyers acting as human rights defenders. While these are not per se binding, they carry significant persuasive value and are regularly used by the Inter-American Court to interpret the obligations of States Parties under the American Convention.

The American Convention

The American Convention imposes two general obligations on States Parties: to “respect” human rights, and to “ensure” their free and full exercise by all persons under the State’s jurisdiction, without discrimination. (Article 1.1.) To “respect” human rights, a State must not by its own acts or omissions violate rights.

To “ensure” the enjoyment of rights, a State must exercise due diligence to prevent violations, including violations by private actors, and investigate, punish and remediate violations when they occur.¹⁶⁷ These are obligations of means, not results. So long as States take reasonable measures to ensure the enjoyment of rights, they are not held responsible merely because the measures do not succeed.¹⁶⁸

The American Convention does not directly impose obligations on non-State actors.¹⁶⁹ However, as noted, it reaches them indirectly, by obligating States to exercise due diligence to protect rights from infringement by non-State actors.

¹⁶⁷ *Velasquez Rodríguez v. Honduras*, Judgment, July 29, 1988, ¶¶ 166, 174; *Supreme Court of Justice v. Ecuador*, Judgment, Aug. 23, 2013, ¶ 183; *Villaseñor Velarde v. Guatemala*, Judgment, Feb. 5, 2019, ¶ 115 (where harassment appears related to a judge’s judicial actions, the State should undertake an exhaustive search for those whose interests may have been affected, exploring all investigative leads in order to identify those responsible).

¹⁶⁸ *E.g.*, *Velasquez Rodríguez v. Honduras*, Judgment, July 29, 1988, ¶ 175.

¹⁶⁹ *Id.* ¶ 172.



In addition to Article 1.1 of the Convention, Article 2 requires States to adopt or maintain “such legislative or other measures as may be necessary to give effect to those rights or freedoms.” Mere enactment of laws does not suffice; the laws must also be implemented and applied in such a way as to be effective in practice.¹⁷⁰

Several Convention articles protect against abusive actions targeting judges and prosecutors. Article 8.1 provides for the independence of judges and for “due guarantees” in any determination of rights, including the rights of judges and prosecutors.¹⁷¹ Article 8.2 provides specific procedural rights in criminal proceedings, which the Inter-American Court applies to disciplinary proceedings against judges and prosecutors.¹⁷² Article 9 establishes the principle of legality, barring conviction for acts or omissions not made criminal by law at the time of commission. As interpreted by the Inter-American Court, the principle of legality requires a reasonable degree of precision and foreseeability in the grounds for discipline of judges and prosecutors.¹⁷³

Convention Articles 13, 15 and 17, respectively, protect freedoms of expression, assembly and association, including – within limits – the exercise of those freedoms by judges and prosecutors.¹⁷⁴ Article 23.1.c protects the right, under general conditions of equality, to access and remain in public service – including service as judges and prosecutors.¹⁷⁵ Relatedly, at least for prosecutors, Article 26 protects the right to employment stability as part of the right to work.¹⁷⁶ Finally, Article 25.1 guarantees the right to judicial protection by means of effective judicial recourse against violations of rights – including the rights of judges and prosecutors under the Convention.¹⁷⁷

In interpreting these Convention rights, the Inter-American Court considers other international instruments concerning the independence of judges and prosecutors.¹⁷⁸ These include principally, among others:

- United Nations Basic Principles on the Independence of the Judiciary,¹⁷⁹

¹⁷⁰ *Id.* ¶ 167.

¹⁷¹ *Villaseñor Velarde v. Guatemala*, Judgment, Feb. 5, 2019, ¶ 120 (judges); *Casa Nina v. Peru*, Judgment, Nov. 24, 2020, ¶ 72 (prosecutors).

¹⁷² *E.g.*, *Urrutia Laubreaux v. Chile*, Judgment, Aug. 27, 2020, ¶ 102.

¹⁷³ *E.g.*, *id.* ¶¶ 129-35.

¹⁷⁴ *E.g.*, *López Loné v. Honduras*, Judgment, Oct. 5, 2015, ¶¶ 166-68.

¹⁷⁵ *E.g.*, *id.* ¶¶ 193-94 (judges); *Reverón Trujillo v. Venezuela*, Judgment, June 30, 2009, ¶¶ 140-141 (provisional judges); *Casa Nina v. Peru*, Judgment, Nov. 24, 2020, ¶ 99 (prosecutors).

¹⁷⁶ *Casa Nina v. Peru*, Judgment, Nov. 24, 2020, ¶ 109.

¹⁷⁷ *E.g.*, *Cordero Bernal v. Peru*, Judgment, Feb. 16, 2021, ¶ 100.

¹⁷⁸ *E.g.*, *Urrutia Laubreaux v. Chile*, Judgment, Aug. 27, 2020, ¶ 83 (Basic Principles and Principles of Bangalore).

¹⁷⁹ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985;



- Bangalore Principles on Judicial Conduct,¹⁸⁰
- Statute of the Iberoamerican Judge,¹⁸¹ and
- United Nations Guidelines on the Role of Prosecutors.¹⁸²

Likewise, in interpreting Convention rights, the Inter-American Court often takes into account the jurisprudence of other international human rights bodies.¹⁸³ These include:

- The European Court of Human Rights,¹⁸⁴
- The African Commission and Court of Human and Peoples' Rights,¹⁸⁵
- The General Comments and case law of the United Nations Human Rights Committee,¹⁸⁶ under the International Covenant on Civil and Political Rights, and
- Reports of the United Nations Human Rights Council's Special Rapporteur on the Independence of Judges and Lawyers.¹⁸⁷

In weighing the protection of judges and prosecutors in light of the independence of the judiciary, the Inter-American Court relies on these other sources to reinforce and provide greater precision to the rights set forth in the Convention. The Court interprets the entire body of instruments on judicial independence as mutually consistent.

Finally, the Inter-American Court has adopted a jurisprudential rule of “control of conventionality,” by which it requires national courts, such as those of Guatemala, to apply the norms of the American Convention as interpreted by the Inter-American Court.¹⁸⁸

accessible at

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>.

¹⁸⁰ Bangalore Principles of Judicial Conduct, drafted at “the second meeting of the Judicial Group on Strengthening Judicial Integrity, held in 2001 in Bangalore, India, at which the chief justices recognized the need for universally acceptable standards of judicial integrity.” See Resolution 2006/23 of the United Nations Economic and Social Council, which “[i]nvit[ed] Member States . . . to take into consideration [said] Principles.” See Resolution 2006/23, available at https://www.unodc.org/documents/CCPCJ/Crime_Resolutions/2000-2009/2006/ECOSOC/Resolution_2006-23.pdf.

¹⁸¹ Statute of the Iberoamerican Judge, Canary Islands, 2001. Document issued by the General Council of the Spanish Judiciary. Iberoamerican Summit of Presidents of Supreme Courts and Tribunals of Justice, held in Santa Cruz of Tenerife, Canary Islands, Spain, on May 23, 24, and 25, 2001.

¹⁸² Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 Aug. to 7 Sept. 1990, cited in *Casa Nina v. Peru*, Judgment, Nov. 24, 2020, ¶ 73.

¹⁸³ *E.g.*, *Casa Nina v. Perú*, Judgment, Nov. 24, 2020, ¶¶ 74-77.

¹⁸⁴ *Id.* ¶ 76.

¹⁸⁵ *Id.* ¶ 77.

¹⁸⁶ *E.g.*, *Urrutia Laubreaux v. Chile*, Judgment, Aug. 27, 2020, ¶ 108.

¹⁸⁷ *E.g.*, *Cordero Bernal v. Peru*, Judgment, Feb. 16, 2021, ¶ 76, note 84 (citing Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul. UN Doc. A/HRC/26/32, Apr. 28, 2014, ¶¶ 84, 87).

¹⁸⁸ *E.g.*, *Urrutia Laubreaux v. Chile*, Judgment, Aug. 27, 2020, ¶ 93.



The Covenant

The relevant provisions of the Covenant are largely parallel, albeit not identical, to those of the American Convention. States Parties to the Covenant are required to respect and to ensure rights, and to adopt or maintain such legislative or other measures as may be necessary to give them effect.¹⁸⁹ States must take positive measures to ensure judicial independence and to guarantee freedom from political influence, by constitutional or statutory provisions.¹⁹⁰ There must be a “fair hearing” before an independent judge in any determination of rights and obligations in a criminal case or suit at law.¹⁹¹ Additional rights apply in criminal proceedings.¹⁹² The principle of legality is guaranteed,¹⁹³ as are the freedoms of expression, assembly and association,¹⁹⁴ and the right of access to public service under general conditions of equality.¹⁹⁵

There is also a right to an effective and enforceable remedy. Although the remedy may be judicial, administrative or legislative, States undertake to “develop the possibilities of judicial remedy.”¹⁹⁶ To the extent that the Covenant right to judicial remedy is less demanding than the right under the American Convention, Guatemala must still comply with the higher standard of the Convention.

The Covenant is administered by the Human Rights Committee (or the “**Committee**”). The Committee’s main sources of jurisprudence are its General Comments,¹⁹⁷ its Concluding Observations on periodic State reports,¹⁹⁸ and its Views on individual complaints filed against those States, like Guatemala,¹⁹⁹ which accept the individual complaints procedure.²⁰⁰

The UN Human Rights Committee’s Interpretation of the Covenant

The Committee is the body of independent experts responsible for monitoring implementation and for uniform interpretation of the Covenant. States

¹⁸⁹ Articles 2.1 and 2.2.

¹⁹⁰ General Comment no. 32.

¹⁹¹ Article 14.1.

¹⁹² Article 14.2-14.7.

¹⁹³ Article 15.

¹⁹⁴ Articles 19, 21 and 22.

¹⁹⁵ Article 25.c.

¹⁹⁶ Article 2.3.

¹⁹⁷ Covenant Article 40.4; *see*

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11

¹⁹⁸ Covenant Article 40.4; *see*

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=5.

¹⁹⁹ Guatemala acceded to the Optional Protocol, which allows individual complaints under the Covenant, in 2000.

²⁰⁰ First Optional Protocol (1966), Articles 1 and 2.



parties to the Covenant submit regular reports to the Committee detailing their implementation practice, to which the Committee responds with Concluding Observations. The Committee issues General Comments to guide State reporting under the Covenant. In addition, for States like Guatemala which accept the complaints jurisdiction, the Committee publishes Views on complaints regarding alleged breaches of a State's Covenant obligations.

Committee General Comments, Views and Concluding Observations clarify the meaning and scope of the Covenant. Thus, where Guatemala's practice is inconsistent with the Committee's interpretation of the Covenant, Guatemala has not fully complied with its Treaty obligations. The following sections incorporate the Committee's jurisprudence to highlight a State's Covenant obligations.

Reports of the UN Special Rapporteur on the independence of judges and lawyers

In 1994, given the increasing number of attacks on the independence of judges, lawyers, and court officials, including the weakening safeguards for the judiciary and lawyers as well as the gravity and frequency of human rights violations, the Commission on Human Rights appointed a Special Rapporteur on the independence of judges and lawyers.²⁰¹ Over time, that mandate was assumed by the Human Rights Council (with UN General Assembly Resolution 60/251), and continues to be extended since that time. The Special Rapporteur is responsible for issuing general reports regarding, *inter alia*, disciplinary measures taken against judges,²⁰² and the rights to freedom of expression, association and peaceful assembly by judges and prosecutors,²⁰³ and also country-specific reporting. The Special Rapporteur's reports provide additional clarity regarding international standards for protecting the judiciary and human rights defenders.

As explained above, the Inter-American Court often takes into account these Reports when interpreting the obligations of States Parties pursuant to the American Convention.²⁰⁴ Therefore, the following sections also draw on the Special Rapporteur's Reports.

²⁰¹ Commission on Human Rights, Report on the Fiftieth Session, Mar. 4, 1994.

²⁰² General Assembly Resolution on the Independence of judges and lawyers, July 17, 2020, UN Doc. A/75/172.

²⁰³ Report of the Special Rapporteur on the independence of judges and lawyers, Apr. 29, 2019, UN Doc. A/HRC/41/48.

²⁰⁴ *E.g., Cordero Bernal v. Peru*, Judgment, Feb. 16, 2021, ¶ 76, note 84, citing Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul. UN Doc. A/HRC/26/32, Apr. 28, 2014, ¶¶ 84, 87.



United Nations Resolutions Protecting the independence of lawyers

The United Nations has adopted resolutions which provide safeguards for the independence of practicing lawyers in general, and of lawyers acting as human rights defenders in particular. The Basic Principles on the Role of Lawyers, adopted in 1990, set forth the basic framework that should be respected and taken into account by Governments to ensure an independent and well-functioning legal profession. The Basic Principles provide guidelines regarding the access to lawyers and legal services, special safeguards in criminal justice matters, freedom of expression and association, and the importance of a professional code of conduct.²⁰⁵ They affirm that “[l]awyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice,” and that disciplinary proceedings against lawyers shall be impartial, subject to independent review, and conducted in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession.²⁰⁶

When lawyers act as human rights defenders, they benefit from additional UN norms. On December 9, 1998, the United Nations General Assembly adopted Resolution 53/144 concerning the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms.²⁰⁷ Consistent with that declaration, the Human Rights Council subsequently adopted its own resolutions affirming the need to protect human rights defenders. On March 24, 2016, the Human Rights Council adopted Resolution 31/32 on protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights.²⁰⁸ That declaration affirmed that States’ domestic law and administrative provisions should be applied in a way that “enable[s] the work of human rights defenders, including by avoiding any criminalization or stigmatization of the legitimate role and important activities ... of human rights defenders and the communities of which they are a part or on whose behalf they work...”²⁰⁹ The Human Rights Council further called upon states “to combat impunity by investigating and

²⁰⁵ See Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990, available at <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.

²⁰⁶ *Id.* Articles 27-29.

²⁰⁷ General Assembly Resolution No. 53/144, Fifty-third session, Agenda item 110(b), UN Doc. A/RES/53/144, Mar. 8, 1999.

²⁰⁸ Human Rights Council, Resolution No. 31/32, UN Doc. A/HRC/RES/31/32, Apr. 20, 2016.

²⁰⁹ *Id.* Preamble at 2.



pursuing accountability for all attacks and threats by State and non-State actors against [human rights defenders]...”²¹⁰

On December 18, 2019, the General Assembly adopted Resolution No. 74.146 which implemented the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms through providing a safe and enabling environment for human rights defenders and ensuring their protection.²¹¹ Not only did that resolution affirm the importance of human rights defenders’ work,²¹² but it expressed grave concern that “measures, such as laws regulating civil society organizations, are in some instances misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law.”²¹³ The General Assembly “[u]rge[d] States to promote a safe and enabling environment” and to adopt and implement comprehensive legislation and administrative measures to ensure that “human rights defenders can operate free from hindrance, reprisals and insecurity, ensuring, among other things, the right to take part in the conduct of public affairs and in cultural life, the freedom to seek, receive and impart information and equal access to justice, including to an effective remedy.”²¹⁴

While such resolutions do not themselves create binding obligations on Guatemala, they articulate the combined effect of existing rights under the legally binding norms of the American Convention and the Covenant.²¹⁵

Protections Afforded to Judges, Prosecutors and Lawyers

A State’s treaty obligations and general principles of international law give rise to certain rights and protections that should be afforded to: (A) judges and the judiciary; (B) prosecutors; and (C) practicing lawyers.

Protections Afforded to Judges and The Judiciary

The independence of the judiciary is widely recognized as a central aspect of the rule of law, a principal goal of the separation of powers in a democracy,

²¹⁰ *Id.* ¶ 6. On the obligation to protect human rights defenders from the actions of non-State actors, see <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/475/01/PDF/N1047501.pdf?OpenElement> ¶¶ 30-41.

²¹¹ General Assembly Resolution No. 74/146, UN Doc. A/RES/74/146, Jan 8, 2020, available at <https://undocs.org/en/A/RES/74/146>.

²¹² *Id.* ¶ 16 (The General Assembly “[u]nderlin[ed] the legitimate and valuable role of human rights defenders in mediation efforts and in supporting victims in accessing effective remedies for violations and abuses of their human rights, including economic, social and cultural rights, including for members of impoverished communities and communities in vulnerable situations and for those belonging to minorities and indigenous peoples”)

²¹³ *Id.* Preamble at 3.

²¹⁴ *Id.* ¶ 4.

²¹⁵ *Escaleras Mejía v. Honduras*, Judgment, Sept. 26, 2018, ¶¶ 57-61.



and a basic pillar of the guarantees of due process of law. It is indispensable for the protection of fundamental rights.²¹⁶ So, too, is the independence of lawyers. As the Human Rights Council has affirmed, an independent legal profession is integral to the judicial system and is a prerequisite for the protection of human rights and the rule of law.²¹⁷

Recognition of this overriding importance of judicial independence undergirds numerous judgments of the Inter-American Court and jurisprudence of the UN Human Rights Committee defending judges and prosecutors from arbitrary actions against them, whether disciplinary in nature,²¹⁸ administrative terminations,²¹⁹ impeachments,²²⁰ or otherwise.²²¹ Unlike other public officials, judges have “reinforced guarantees” to protect the necessary independence of the judiciary, which is “essential for the exercise of the judicial function.”²²² In proceedings against judges, fair trial guarantees and the right to judicial protection are interpreted in light of the imperative of judicial independence.²²³

There are three main aspects of judicial independence: an adequate selection process for judges, their security in maintaining their judicial posts, and their freedom from external pressures.²²⁴ (As explained above, this memorandum addresses the second and third aspects – security of tenure and freedom from pressures. It does not address judicial selection, which is outside the scope of the requested advice.)

Article 8.1 of the American Convention does not expressly grant judges the right to judicial independence. Instead, it grants every litigant the right to a hearing before an independent court.²²⁵ However, under Article 1.1 of the Convention, States have a duty to “ensure” the right of litigants to be heard by an independent court. When the State fails to take reasonable measures to

²¹⁶ *Villaseñor Velarde v. Guatemala*, Judgment, Feb. 5, 2019, ¶ 75.

²¹⁷ Human Rights Council, Resolution No. 44/9, UN Doc. A/HRC/RES/44/9, July 23, 2020, Preamble at 1.

²¹⁸ *E.g.*, *Apitz Barbera v. Venezuela*, Judgment, Aug. 5, 2008; *Reverón Trujillo v. Venezuela*, Judgment, June 30, 2009; *López Loné v. Honduras*, Judgment, Oct. 5, 2015; *Rico v. Argentina*, Judgment, Sept. 2, 2019; *Urrutia Laubreaux v. Chile*, Judgment, Aug. 27, 2020; *Cordero Bernal v. Peru*, Judgment, Feb. 16, 2021.

²¹⁹ *E.g.*, *Chocrón Chocrón v. Venezuela*, Judgment, July 1, 2011; *Colindres Schonenberg v. El Salvador*, Judgment, Feb. 4, 2019; *Martínez Esquivia v. Colombia*, Judgment, Oct. 6, 2020; *Casa Nina v. Peru*, Judgment, Nov. 24, 2020.

²²⁰ *Constitutional Court v. Peru*, Judgment, Jan. 31, 2001, ¶ 75; *Supreme Court of Justice v. Ecuador*, Judgment, Aug. 23, 2013; *Constitutional Court v. Ecuador*, Judgment, Aug. 28, 2013.

²²¹ *Véase Apitz Barbera v. Venezuela*, Judgment, Aug. 5, 2008, ¶ 136 (criticizing criminal proceeding against a judge for engaging in a “common practice” not considered illegal in Venezuela).

²²² *Reverón Trujillo v. Venezuela*, Judgment, June 30, 2009, ¶ 67.

²²³ *Colindres Schonenberg v. El Salvador*, Judgment, Feb. 4, 2019, ¶ 68.

²²⁴ *Rico v. Argentina*, Judgment, Sept. 2, 2019, ¶ 52. Accord, Human Rights Committee, General Comment 32.

²²⁵ Article 8.1 provides: “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”



ensure judicial independence – for example, by arbitrarily dismissing a judge – the Inter-American Court finds a violation of Article 8.1, even if no litigant was prejudiced by the violation.²²⁶ In effect, the combination of Articles 8.1 and 1.1 extends the right of judicial independence not only to litigants, but also to judges. Moreover, the Inter-American Court has held that arbitrary dismissal of judges violates Article 8.1 in conjunction with Article 23.1.c, which guarantees their right, under general conditions of equality, to access and remain in public office.²²⁷

The American Convention does not define the meaning of judicial independence. To define it, the Court looks to more specific instruments as a means to interpret Article 8.1.²²⁸ A leading example is the UN Basic Principles on the Independence of the Judiciary.²²⁹ It provides that judges shall decide cases impartially on the basis of the facts and the law “without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”²³⁰ It further prohibits “any inappropriate or unwarranted interference with the judicial process...”²³¹

In general terms, then, judicial independence means that judges shall not be subjected to improper influences, inducements, pressures, threats or interferences, direct or indirect, or to any inappropriate or unwarranted interference.²³²

The Inter-American Court recognizes that judicial independence has both an external and an internal dimension. Not only must the judicial branch be shielded from undue restrictions by external organs, such as the executive or legislative branches,²³³ individual judges must also be protected from undue pressures exerted by higher judicial authorities (outside lawful channels of appellate review).²³⁴ Moreover, where there is an apparent pattern of threats and pressures against the judiciary or a judge, even if not all individual acts of

²²⁶ *Colindres Schonenberg v. El Salvador*, Judgment, Feb. 4, 2019, ¶ 100.

²²⁷ *Constitutional Court v. Ecuador*, Judgment, Aug. 28, 2013, ¶ 199.

²²⁸ *E.g.*, *Villaseñor Velarde v. Guatemala*, Judgment, Feb. 5, 2019, ¶ 44 (citing UN Basic Principles on the Independence of the Judiciary).

²²⁹ *See* 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 at Milan from 26 Aug. to 6 Sept. 1985 and endorsed by General Assembly resolutions 40/32 of 29 Nov. 1985 and 40/146 of 13 Dec. 1985, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx#:~:text=The%20judiciary%20shall%20decide%20matters,quarter%20or%20for%20any%20reason.>

²³⁰ Principle 2.

²³¹ Principle 4, which states in full: “There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.”

²³² The Bangalore Principles, note 16 above, similarly provide that a judge shall exercise the judicial function independently, “free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.” Application 1.1.

²³³ *E.g.*, *Colindres Schonenberg v. El Salvador*, Judgment, Feb. 4, 2019.

²³⁴ *Cordero Bernal v. Peru*, Judgment, Feb. 16, 2021, ¶ 71.



intimidation merit investigation, the pattern should be investigated as a whole.²³⁵

Under the Covenant, the basic elements of fair trial – including trial before an independent judge – are non-derogable rights. They may not be suspended even in cases of national emergency.²³⁶

In addition to barring threats and pressures, the UN Basic Principles provide positive guarantees. Judges have rights, within limits, to freedom of expression, belief, association and assembly.²³⁷ Any interference with judges, including disciplinary measures, must be provided for by law, serve a legitimate aim, and conform to the strict tests of necessity and proportionality.²³⁸ For example, in *López Lone et al. v. Honduras*, the Inter-American Court recognized that freedom of expression had to be guaranteed even when the information and ideas shared by the judges were considered objectionable by the State.²³⁹ In that case, judges had made statements regarding their opinion on the *coup d'état*. The Inter-American Court recognized that these opinions “are of great public interest and have the highest level of protection under the American Convention,” and therefore the judges who expressed them could not be sanctioned, since “legitimate protection of the principles of judicial independence and impartiality cannot be premised on the notion that a judge must remain silent on public issues.”²⁴⁰ Further, even where penalties are warranted, such penalties must be proportional. In part this is because, as the Special Rapporteur on the independence of judges and lawyers found, imposing unduly harsh penalties may create a “chilling effect” on the judiciary, and discourage them from participating in debates on legislative reforms affecting the judiciary and its independence in the future.²⁴¹

Judicial terms of office, independence, security, adequate remuneration, conditions of service, pensions and age of retirement must also be “adequately secured by law.”²⁴² Judges must have “guaranteed tenure” until a mandatory retirement age or the expiry of their term of office.²⁴³ Their

²³⁵ *Villaseñor Velarde v. Guatemala*, Judgment, Feb. 5, 2019, ¶ 116.

²³⁶ UN Human Rights Committee, General Comment 29, *States of Emergency*, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, ¶ 16: “Safeguards related to derogation, as embodied in article 4 of the Covenant, are based on the principles of legality and the rule of law inherent in the Covenant as a whole. As certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency.”

²³⁷ Principles 8 and 9.

²³⁸ See Report of the Special Rapporteur on the independence of judges and lawyers, Apr. 29, 2019, UN Doc. A/HRC/41/48, ¶¶ 37-39.

²³⁹ See *id.* ¶ 44 (discussing *López Lone et al. v. Honduras*).

²⁴⁰ *Id.*

²⁴¹ *Id.* ¶ 46.

²⁴² UN Basic Principles, Principle 11.

²⁴³ *Id.* Principle 12.



promotion should be based on “objective factors, in particular ability, integrity and experience.”²⁴⁴ They should also “enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.”²⁴⁵

Under the Basic Principles, judges may be subject to “suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties,”²⁴⁶ in accordance with “established standards of judicial conduct.”²⁴⁷ Of critical importance, judges may not be removed or sanctioned for errors committed in good faith or for disagreeing with a particular interpretation of the law.²⁴⁸ Similarly, under Article 14 of the Statute of the Iberoamerican Judge, judges can be suspended or separated only for reasons of “physical or mental handicap, negative evaluation of their professional duty in the cases where the law so provides, or criminal or disciplinary responsibility, by the bodies legally established through procedures that guarantee the respect of due process.”²⁴⁹

Finally, disciplinary, suspension or removal proceedings must provide for a fair hearing and independent review.²⁵⁰ The Inter-American Court considers that the guarantees of Article 8 of the Convention apply not only to judicial proceedings, but also to any proceeding in which an action by the State can affect rights.²⁵¹

In evaluating whether a State violates judicial independence, the Inter-American Court considers not only international law but also national law. The Court does not serve as a “fourth instance” of judicial review of national court decisions; nor does it review the weighing of evidence by national authorities. However, it analyses the compatibility of internal processes with the American Convention, finding violations when national judicial resolutions are “manifestly arbitrary.”²⁵²

²⁴⁴ *Id.* Principle 13.

²⁴⁵ *Id.* Principle 16.

²⁴⁶ *Id.* Principle 18.

²⁴⁷ *Id.* Principle 19.

²⁴⁸ *Cordero Bernal v. Peru*, Judgment, Feb. 16, 2021, ¶ 76, note 84 (citing Human Rights Council: Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, UN Doc. A/HRC/26/32, Apr. 28, 2014, ¶¶ 84, 87). Criminal charges may nonetheless be brought against judges in many countries, including Guatemala, for *prevaricato*, an intentional disregard of the law. However, *prevaricato* requires proof that the judge has not acted in good faith. A case challenging a criminal conviction for *prevaricato* has reportedly been found admissible and is now pending before the UN Human Rights Committee. *Garzón v. Spain*, as reported in *Garzón v. Spain: UNHRC declares the case admissible*, Feb. 6, 2020, available at <https://www.rightsinpractice.org/new-blog/2020/2/6/garzn-v-spain-case-before-unhrc-declared-admissible>.

²⁴⁹ Report of the Special Rapporteur on the independence of judges and lawyers, 28 Apr. 2014, UN Doc. A/HRC/26/32. In interpreting the standards for judicial independence required under the American Convention, the Inter-American Court has referenced the Statute of the Iberoamerican Judge. *E.g.*, *Urutia Laubreaux v. Chile*, Judgment, Aug. 27, 2020, ¶¶ 107, 110, 131.

²⁵⁰ Principles 17 and 20.

²⁵¹ *Constitutional Court v. Peru*, Judgment, Jan. 31, 2001, ¶ 69.

²⁵² *Cordero Bernal v. Peru*, Judgment, Feb. 16, 2021, ¶ 18.



Protections Afforded to Prosecutors

The Inter-American Court has held that the guarantees of adequate selection, security of tenure, and freedom from external pressures apply not only to judges but also to prosecutors. Otherwise, the independence and objectivity of investigations and of positions taken by prosecutors before judges could be at risk. If prosecutors were not assured security of tenure, or could be vulnerable to retaliation for their decisions, the right to be heard by an independent tribunal, guaranteed by Article 8.1 of the American Convention, would be violated.²⁵³

In reaching this interpretation, the Court takes account of the UN Guidelines on the Role of Prosecutors, which provide that prosecutors may exercise their functions “without intimidation, hindrance, harassment, improper interference or unjustified risk of or unjustified exposure to civil, penal or other liability.”²⁵⁴ Indeed, as the Special Rapporteur found, “[p]rosecutors are the essential agents of the administration of justice, and as such should respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system. Prosecutors also play a key role in protecting society from a culture of impunity and function as gatekeepers to the judiciary.”²⁵⁵

Protections Afforded to Lawyers

Practicing lawyers, too, have rights to be free from harassment and to exercise their professional rights and duties under the United Nations Basic Principles on the Role of Lawyers.²⁵⁶ In accordance with Articles 16 and 18 of the Basic Principles, as well as Article 14 of the Covenant, States should take measures to prevent the harassment of lawyers as well as attempts to impede or interfere on improper grounds with their defense of clients. In cases and matters where lawyers defend human rights, they also qualify as human rights defenders,²⁵⁷ and are accordingly entitled to promote and protect human rights under the United Nations Declaration on Human Rights Defenders.²⁵⁸ In addition, they have the same human rights as other persons,

²⁵³ *Casa Nina v. Peru*, Judgment, Nov. 24, 2020, ¶ 72 (citing *Valencia Hinojosa et al. v. Ecuador. Preliminary Determinations, Merits, Reparations and Costs*, Judgment, Nov. 29, 2016, Series C No. 327, ¶¶ 110, 119); *Martínez Esquivia v. Colombia*, Judgment, Oct. 6, 2020, ¶¶ 88-95.

²⁵⁴ *Casa Nina v. Peru*, Judgment, Nov. 24, 2020, ¶ 73 (citing UN Guidelines on the Role of Prosecutors, ¶ 4).

²⁵⁵ Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/20/19, ¶ 93.

²⁵⁶ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27 to Sept. 7, 1990, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>.

²⁵⁷ *Gómez Virula v. Guatemala*, Judgment, Nov. 21, 2019, ¶ 129.

²⁵⁸ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by General Assembly resolution 53/144 of 9 December 1998, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>.



under the American Convention and the Covenant, to freedoms of speech, assembly, and association, and rights to due process, the principle of legality, and judicial protection.

Protections for Judges and Prosecutors

Grounds for Disciplinary Sanctions

In view of the importance of judicial independence, judges may be removed, before the expiration of their terms or before previously stated conditions are realized, only for serious disciplinary violations or proven incompetence.²⁵⁹ Criteria for suspension or removal of judges must be provided in advance of any conduct subject to such discipline,²⁶⁰ must be “objective and reasonable,”²⁶¹ and must be applied without discrimination.²⁶² The Inter-American Court has cited with approval the view of the UN Special Rapporteur for the Independence of Judges and Lawyers that judges may be subject to disciplinary sanctions, suspension or removal from office, only for persistent inability to carry out their functions, frequent intemperance, intentional bad conduct in the judicial office, conduct which discredits the office, or significant violation of judicial ethics.²⁶³

Even so, the Inter-American Court and the UN Special Rapporteur warn that disciplinary grounds stated in such general terms as bringing “discredit” to the judicial office or ignoring judicial “ethics” run the risk of undermining judicial independence.²⁶⁴ In analyzing sanctions based on such general terms, the Inter-American Court applies the principle of legality under article 9 of the Convention to disciplinary proceedings. However, the scope of the principle of legality varies with the subject matter; the degree of precision required in a disciplinary proceeding can differ from that required in a criminal proceeding.²⁶⁵

In the absence of clear criteria in the norm to guide the adjudication of sanctions, the Court requires the reasoning by which sanctions are imposed to be especially clear in stating the facts of alleged misconduct or incompetence, identifying the particular norms violated, and explaining the

²⁵⁹ *Cordero Bernal v. Peru*, Judgment, Feb. 16, 2021, ¶¶ 72, 75.

²⁶⁰ *Urrutia Laubreaux v. Chile*, Judgment, Aug. 27, 2020, ¶ 85; UN Basic Principle 19.

²⁶¹ *Chocorón Chocron v. Venezuela*, Judgment, July 1, 2011, ¶ 135.

²⁶² *Id.*

²⁶³ *Cordero Bernal v. Perú*, Judgment, Feb. 16, 2021, ¶ 76, citing Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul. UN Doc. A/HRC/26/32, Apr. 28, 2014, ¶¶ 84, 87.

²⁶⁴ *Id.* See also Inter-American Commission on Human Rights, Communication No. 127/21, *IACHR Refers Case on Peru to the Inter-American Court*, May 19, 2021 (discussing *Cajahuanca Vásquez v. Peru*, Case 13.256 (the judge “incurred in acts that, without being a crime, compromise the dignity of the position of President of the Superior Court, demeaning in the public opinion”).

²⁶⁵ *Urrutia Laubreaux v. Chile*, Judgment, Aug. 27, 2020, ¶ 129.



reasons why the facts violate the norms.²⁶⁶ Any resulting sanctions must not only be justified, but proportional to the misconduct.²⁶⁷

The Human Rights Committee's jurisprudence similarly affirms the importance of clear procedures for disciplinary action against judges. It has found that States should establish clear procedures and objective criteria for the "suspension and dismissal of the members of the judiciary and for disciplinary sanctions against them" in order to safeguard the independence of the judiciary.²⁶⁸ Unreasonable and arbitrary dismissal procedures may infringe on judges' right of access to public service in their country and thus constitute an attack on the independence of the judiciary in violation of Articles 25(c) and 14.(1) of the Convention.²⁶⁹ This is because when judges face retribution for unfavorable judgments against private parties or State actors, judicial independence is undermined.²⁷⁰

The Inter-American Court is also prepared to consider whether dismissals of judges are based, not on the legal grounds asserted to justify them, but in reality, on political or other extraneous grounds. Even though the actions of public officials are generally assumed to be lawful and in good faith, this

²⁶⁶ *Cordero Bernal v. Peru*, Judgment, Feb. 16, 2021, ¶¶ 78, 84;

²⁶⁷ *Id.* ¶ 82. See also Inter-American Commission on Human Rights, Communication No. 127/21, *IACHR Refers Case on Peru to the Inter-American Court*, May 19, 2021 (discussing *Cajahuauca Vásquez v. Peru*, Case 13.256 (disproportionate sanction of a judge)).

²⁶⁸ *Gabriel Osío Zamora v. Venezuela*, HRC, Communication No. 2203/2012, UN Doc. CCPR/C/121/D/2203/2012, Feb. 1, 2018, ¶ 9.2 (noting that the lack of guaranteed tenure for provisional judges in Venezuela, and in particular the lack guarantees protecting them from discretionary removal, violated Article 14.(2) of the Covenant).

²⁶⁹ Human Rights Committee, General Comment No. 32.: *Right to equality before courts and tribunals and to a fair trial (article 14)*, U.N. Doc. CCPR/C/GC/32 (2007), ¶ 64 ("Judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law."); see also *Soratha Bandaranayake v. Sri Lanka*, Communication No. 1376/2005, UN Doc. CCPR/C/93/D/1376/2005, July 24, 2008, ¶ 7.3 (concluding a judicial dismissal procedure to be both arbitrary and unreasonable in violation of Article 25(c) based on a failure to provide the dismissed judge with all documentation necessary to ensure that he had a fair hearing, and in particular, the failure to inform him of the reasoning behind the Committee of Inquiry's guilty verdict, which formed the basis of his dismissal); *Pastukhov v. Belarus*, Communication No. 814/1998, UN Doc. CCPR/C/78/D/814/1998, Aug. 5, 2003, ¶ 7.3 (finding that a judge's dismissal by the executive branch several years before the expiry of the term for which he had been appointed, in combination with a lack of available and effective judicial protections to contest his dismissal, amounted to a violation of Article 25(c)); *Adrien Mundy Busyo et al. v. Democratic Republic of the Congo*, Communication No. 933/2000, U.N. Doc. CCPR/C/78/D/933/2000 (2003), July 31, 2003, ¶ 5.2 (finding the dismissal of a group of judges to constitute a violation of Articles 14.(1) and 25(c) because it did not conform with the established legal procedures and safeguards which they were entitled in their capacity as judges and there were insufficient circumstances to justify a derogation from State Party's obligations under the Article 14 of the Covenant).

²⁷⁰ *Vladislav Kovalev et al. v. Belarus*, HRC Communication No. 2120/2011, UN Doc. CCPR/C/106/D/2120/2011, Nov. 27, 2012, ¶¶ 3.4, 11.7 (finding that an "atmosphere of fear" and "situation of intimidation surrounding the trial" indicated "pressure exercised on the court" in violation of Article 14.(1) of the Covenant).



presumption can be rebutted by evidence proving that dismissals were politically motivated.²⁷¹

The Court's readiness to look beyond the purported reasons for sanctions of judges to the real reasons is consistent with a separate category denounced by the UN Special Rapporteur as "disguised sanctions."²⁷² These measures are not and do not purport to be lawful sanctions for judicial misconduct. They involve other actions, which may range from moving a judge to a small office or remote location; to administrative uncertainty regarding a judge's financial compensation or length of tenure; to serious and continuous threats.²⁷³ Whatever their particular form, they are intended to intimidate, harass or otherwise interfere with judicial independence.²⁷⁴ They may be directed at individual judges, categories of judges (such as constitutional court judges), or the judiciary as a whole.²⁷⁵ "Judges who deal with cases that have high political or social impact (*e.g.*, anti-corruption, organized crime, human rights violations perpetrated by State officials) are particularly exposed to these sanctions."²⁷⁶ Where the requisite intent is shown, disguised sanctions are plainly inconsistent with a State's duty to ensure judicial independence.

In view of the important functions of prosecutors in the administration of justice, the Inter-American Court has held that they enjoy protections equivalent to those of judges against discipline or removal. Their independence from political pressures, from improper hindrance of their functions, and from retaliation, "demands a guarantee of stability and a fixed term in the position."²⁷⁷ Accordingly, "in an equivalent application of the mechanisms of protection acknowledged for judges," any removals of prosecutors "(i) ... must obey exclusively to the causes permitted, either through a proceeding that complies with the right to a fair trial or because the condition or time period for which the position was appointed has expired; [and] (ii) ... prosecutors may only be removed for grave disciplinary offenses or incapacity."²⁷⁸

Impeachment by Legislative Bodies

The guarantees of the American Convention apply to all organs of a State, including the legislature.²⁷⁹ The due process protections of Article 8 of the

²⁷¹ *Constitutional Court v. Ecuador*, Judgment, Aug. 28, 2013, ¶¶ 210, 219; *Supreme Court of Justice v. Ecuador*, Judgment, Aug. 23, 2013, ¶ 177.

²⁷² Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/175/72, July 17, 2020, ¶¶ 53-71.

²⁷³ *Id.* ¶¶ 53, 57, 59.

²⁷⁴ *Id.* ¶ 56.

²⁷⁵ *Id.* ¶ 59.

²⁷⁶ *Id.*

²⁷⁷ *Martínez Esquivia v. Colombia*, Judgment, Oct. 6, 2020, ¶ 96; *accord, Casa Nina v. Peru*, Judgment, Nov. 24, 2020, ¶¶ 80, 83.

²⁷⁸ *Id.*

²⁷⁹ *Constitutional Court v. Peru*, Judgment, Jan. 31, 2001, ¶ 68.



Convention apply, not only in judicial proceedings, but in any proceeding by which persons must defend themselves from State actions affecting their rights under the Convention.²⁸⁰ A legislative process of impeachment must not only respect due process of law, but must also be conducted in a manner that is independent and impartial.²⁸¹

The Inter-American Court has found that impeachments by legislatures violated the Convention rights of constitutional court judges in Perú,²⁸² constitutional court judges in Ecuador,²⁸³ and Supreme Court judges in Ecuador.²⁸⁴ In the latter two cases, the Court recognized that the legislature's ostensible legal grounds for impeachment or removal were in fact politically motivated, thus rebutting the ordinary presumption of good faith, and violating the Convention.²⁸⁵

While the Court has not yet had occasion to address impeachment of prosecutors, the same principles would apply, in view of the Court's jurisprudence that prosecutors enjoy "protections equivalent to those of judges against discipline or removal."²⁸⁶

Administrative Terminations

Judges and prosecutors are sometimes terminated, not for disciplinary reasons, but administratively because their appointments have limited terms, or are provisional pending certain events. Even so, until their terms expire by set terms or by previously set conditions, temporary judges and prosecutors have equal rights to remain in office as their permanent counterparts, except, of course, they have no right to remain permanently.²⁸⁷ They have the right to remain in office under general conditions of equality.²⁸⁸ To be terminated, certain conditions must be met. They may be terminated for previously stated reasons, such as when their appointment term expires, or when previously stated conditions for their removal materialize (such as publication of the results of a competitive examination).²⁸⁹

However, the previously stated conditions for termination must be clear.²⁹⁰ A condition such as the "necessities of good service" is too vague and is not sufficiently foreseeable.²⁹¹ So, too, a ground for termination such as

²⁸⁰ *Id.* ¶ 69.

²⁸¹ *Id.* ¶ 84.

²⁸² *Id.*

²⁸³ *Constitutional Court v. Ecuador*, Judgment, Aug. 28, 2013.

²⁸⁴ *Supreme Court of Justice v. Ecuador*, Judgment, Aug. 23, 2013.

²⁸⁵ *Constitutional Court v. Ecuador*, Judgment, Aug. 28, 2013, ¶¶ 210, 219; *Supreme Court of Justice v. Ecuador*, Judgment, Aug. 23, 2013, ¶ 177.

²⁸⁶ *Martínez Esquivia v. Colombia*, Judgment, Oct. 6, 2020, ¶ 96.

²⁸⁷ *Chocerón Chocron v. Venezuela*, Judgment, July 1, 2011, ¶¶ 104, 105.

²⁸⁸ *Martínez Esquivia v. Colombia*, Judgment, Oct. 6, 2020, ¶¶ 115, 117.

²⁸⁹ *Id.* ¶ 99.

²⁹⁰ *Id.* ¶ 103.

²⁹¹ *Id.* ¶¶ 109, 110.



unspecified “observations” is not clear enough.²⁹² In addition, Article 8.1 of the American Convention requires that an administrative termination be done by a body authorized by law to do so,²⁹³ and by a previously established procedure.²⁹⁴ Finally, in order not to be arbitrary, the termination must be duly reasoned, indicating the facts, reasons and applicable norms.²⁹⁵ (These considerations are paralleled in Committee jurisprudence regarding disciplinary measures against judges discussed above.)

Due Process for Discipline or Removal

The due process standards for dismissals or removals of judges and prosecutors must be analyzed in light of the standards for judicial independence.²⁹⁶ Accordingly, the standard of reasoning required for discipline of a judge is even higher than that for other disciplinary proceedings.²⁹⁷ Whether for disciplinary dismissals or for administrative terminations, the procedure utilized must satisfy due process of law and must allow an effective recourse to challenge the termination.²⁹⁸ Likewise, “all proceedings against prosecutors must be according to fair procedures that guarantee objectivity and impartiality according to the Constitution or law, given that free dismissal of prosecutors promotes an objective doubt regarding the actual possibility to perform their duties without the fear of retaliation.”²⁹⁹

Due process of law, in addition to the procedural rights set forth in article 8 of the American Convention,³⁰⁰ includes the totality of procedural requirements that should be observed in order to enable a person adequately to defend herself against a State action affecting her rights.³⁰¹ These include, in particular, the right to a hearing, a defense, an adversary process, and the legal recourses to implement them.³⁰² Depending on the nature and scope of the issues in the case, the guarantees of Article 8.2 apply on a case-by-case basis.³⁰³ In all cases the judge must be advised of the conduct for which she is being disciplined.³⁰⁴ An effective recourse against termination must meet the

²⁹² *Chocrón Chocron v. Venezuela*, Judgment, July 1, 2011, ¶¶ 116, 121, 122.

²⁹³ *Colindres Schonenberg v. El Salvador*, Judgment, Feb. 4, 2019, ¶ 87.

²⁹⁴ *Id.* ¶ 90.

²⁹⁵ *Martínez Esquivia v. Colombia*, Judgment, Oct. 6, 2020, ¶¶ 106, 107.

²⁹⁶ *López Loné v. Honduras*, Judgment, Oct. 5, 2015, ¶ 190.

²⁹⁷ *Id.* ¶ 267.

²⁹⁸ *Id.* ¶¶ 96, 140, 146; *Colindres Schonenberg v. El Salvador*, Judgment, Feb. 4, 2019, ¶¶ 69, 110; *Chocrón Chocron v. Venezuela*, Judgment, July 1, 2011, ¶ 99.

²⁹⁹ *Martínez Esquivia v. Colombia*, Judgment, Oct. 6, 2020, ¶ 96.

³⁰⁰ *Chocrón Chocron v. Venezuela*, Judgment, July 1, 2011, ¶ 115.

³⁰¹ *Rico v. Argentina*, Judgment, Sept. 2, 2019, ¶ 49.

³⁰² *Cordero Bernal v. Perú*, Judgment, Feb. 16, 2021, ¶ 73.

³⁰³ *Urrutia Laubreaux v. Chile*, Judgment, Aug. 27, 2020, ¶ 102.

³⁰⁴ *Id.* ¶ 113.



requirements of Article 25.1 of the Convention,³⁰⁵ namely that they be simple and prompt, or otherwise effective, and allow for full review.³⁰⁶

The disciplinary body must be impartial.³⁰⁷ However, it need not consist exclusively of members of the judiciary. It may include practicing lawyers as well as members of the legislature. Political trials of judges are not *per se* contrary to the American Convention, so long as the procedural guarantees of Article 8 are respected, and there are criteria which limit the discretion of the adjudicators, with a view to safeguarding the independence of the judiciary.³⁰⁸ For example, the Inter-American Court upheld the disciplinary dismissal of a judge, and his disqualification for future judicial service, decided by a disciplinary tribunal which included members of the legislative branch, all of whom were lawyers, as a minority of the tribunal; where the permissible grounds for discipline were stated in advance and were exclusive, clear and objective; and where the accused judge had the right to a lawyer and to present a defense.³⁰⁹

Rights of Judges and Prosecutors to Freedom of Expression

Special considerations apply when discipline is based on the exercise of freedom of expression. Judges are entitled to freedom of expression, assembly and association. These freedoms, “taken as a whole, make the democratic process possible.”³¹⁰ Freedom of expression, “particularly in matters of public interest, ‘is a cornerstone of the very existence of a democratic society.’”³¹¹ Freedom of assembly “is a basic right in a democratic society and should not be interpreted restrictively.”³¹² The freedom to associate with other persons protects associations of judges as well as persons who occupy leadership positions in such associations.³¹³

However, because of the nature of the judicial office, the exercise of these rights by judges may be subject to limits not applicable to other persons or officials.³¹⁴ Whether a particular expression merits protection must be analyzed in the context of each concrete case, taking into account the content and circumstances of the statement.³¹⁵

³⁰⁵ *Choerón Chocron v. Venezuela*, Judgment, July 1, 2011, ¶ 127.

³⁰⁶ See Inter-American Commission on Human Rights, Communication No. 127/21, *IACHR Refers Case on Peru to the Inter-American Court*, May 19, 2021, discussing *Cajahuanca Vásquez v. Peru*, Case 13.256.

³⁰⁷ *Urrutia Laubreaux v. Chile*, Judgment, Aug. 27, 2020, ¶ 118.

³⁰⁸ *Rico v. Argentina*, Judgment, Sept. 2, 2019, ¶ 57.

³⁰⁹ *Id.* ¶¶ 61-66.

³¹⁰ *López Loné v. Honduras*, Judgment, Oct. 5, 2015, ¶ 160.

³¹¹ *Id.* ¶ 165.

³¹² *Id.* ¶ 167.

³¹³ *Id.* ¶¶ 185-86.

³¹⁴ *Urrutia Laubreaux v. Chile*, Judgment, Aug. 27, 2020 ¶ 82.

³¹⁵ *Id.* ¶ 84.



For example, a judge who criticizes the judiciary in a privately submitted academic paper is less likely to discredit the judiciary than one who proclaims a public denunciation.³¹⁶ A general critique may be less sanctionable than criticism of the decision in a particular case.³¹⁷ In any event, to prohibit judges from criticizing their superiors in the judiciary, or to require judges to obtain authorization from superior judges prior to expressing criticism, bespeaks a “hierarchical” model which violates the internal dimension of judicial independence.³¹⁸

In addition, there is a regional consensus in the Americas on the necessity of restricting the participation of judges in partisan political activities. However, that restriction should not be broadly interpreted.³¹⁹ There are exceptions; for example, judges should be able to defend democracy by denouncing *coup d’etats*.³²⁰

Not only judges but also prosecutors, within limits, have rights of freedom expression. The UN Guidelines on the Role of Prosecutors acknowledge that “prosecutors, like other citizens, are “entitled to freedom of expression, belief, association and assembly.”³²¹ While prosecutors should conduct themselves “in accordance with the law and the recognized standards and ethics of their profession,” they are not precluded from joining or forming local, national or international organizations, or other professional associations that represent their interests or promote their professional training.³²² These protections ensure that disciplinary measures are not imposed on prosecutors indirectly through their membership in certain associations.

Abusive Recusals of Judges

In general, motions to recuse judges are part of the ordinary functioning of the judiciary and cannot be considered as acts of intimidation.³²³ As stated by the United Nations Human Rights Committee, “[w]here the grounds for disqualification of a judge are laid down by law, it is incumbent upon the court to consider ex officio these grounds and to replace members of the court falling under the disqualification criteria. A trial flawed by the participation of a judge who, under domestic statutes, should have been disqualified cannot

³¹⁶ *Id.* ¶ 89.

³¹⁷ *Id.* ¶ 89.

³¹⁸ *Id.* ¶ 138.

³¹⁹ *López Loné v. Honduras*, Judgment, Oct. 5, 2015 ¶ 172.

³²⁰ *Id.* ¶ 174.

³²¹ See Report of the Special Rapporteur on the independence of judges and lawyers, Apr. 29, 2019, UN Doc. A/HRC/41/48, at 5.

³²² *Id.* See also Statute of the Iberoamerican Judge, Arts. 3 and 36, recognizing the “legitimate right to the freedom of expression and information” and the right to form professional associations “apart from exceptions established by the Constitution or legislation of each country.”

³²³ *Villaseñor Velarde v. Guatemala*, Judgment, Feb. 5, 2019, ¶ 85.



normally be considered to be fair or impartial within the meaning of Article 14” of the Covenant.³²⁴

However, as Judge Pazmiño recently cautioned in a concurring Inter-American Court opinion, not directly addressing recusals but broad enough to cover them, the Court should remain alert for cases in which there is an appearance of legality, but which upon full analysis of the context and evidence, show a clear motivation and components of censorship which violate the principle of equality.³²⁵

A State’s responsibility for an abusive recusal depends in part on who requests the recusal. If the requesting party is a State agent, such as a prosecutor, the recusal request must be consistent with the State duty under Article 1.1 of the American Convention to “respect” human rights. It meets that responsibility only if it is made on lawful grounds and in good faith.³²⁶ Proof of bad faith, on the other hand, may show that the recusal request violates the Convention.³²⁷

In contrast, if the recusal motion is made by a non-State actor, such as a private attorney, the State meets its duty to “ensure” protection of human rights unless the State acquiesced in, tolerated, or even encouraged a recusal request lacking legal grounds or made in bad faith, or the State failed to act with due diligence to prevent or respond to the abusive request.³²⁸

Measures Impacting the Judiciary, Prosecutors, and practicing lawyers.

Unwarranted Criminal Proceedings and Investigations

Criminal proceedings against a judge, prosecutor or practicing lawyer, if brought by a State prosecutor or investigating judge, are subject to the State’s duty to respect human rights in its own actions. While State actions are presumed to be lawful and in good faith, that presumption can be rebutted by evidence proving that a criminal charge or prosecution is politically motivated.³²⁹

³²⁴ *Karttunen v. Finland*, Communication No. 387/1989, UN Doc. CCPR/C/46/D/387/1989 (Nov. 5, 1992), ¶ 7.2.

³²⁵ *Urrutia Laubreaux v. Chile*, Judgment, Aug. 27, 2020, Concurring Opinion of Juez Pazmiño, ¶ 9.

³²⁶ *Cf. Constitutional Court v. Ecuador*, Judgment, Aug. 28, 2013, ¶¶ 210, 219; *Supreme Court of Justice v. Ecuador*, Judgment, Aug. 23, 2013, ¶ 177.

³²⁷ *Id.*

³²⁸ *See Velasquez Rodríguez v. Honduras*, Judgment, July 29, 1988, ¶¶ 172-173.

³²⁹ *Constitutional Court v. Ecuador*, Judgment, Aug. 28, 2013, ¶¶ 210, 219; *Supreme Court of Justice v. Ecuador*, Judgment, Aug. 23, 2013, ¶ 177.



States may not interfere in the private life of lawyers, including, *inter alia*, improper searches of their domicile or workplace.³³⁰ This is true whether or not the raid or search is conducted by authorities with or without a court order.³³¹ Similarly, States should not intercept human rights defenders' correspondence, telephone and electronic communications.³³²

States also have an obligation to avoid using domestic criminal legislation in a way that harasses or punishes human rights defenders. For example, as the Inter-American Commission on Human Rights observed in its Report on the Situation of Human Rights Defenders in Peru and in Case No. 11.658 *Luis Antonio Galindo Cardenas and family v Peru*, States should not use legislation aimed at defending against terrorism to prevent lawyers defending individuals accused of terrorism from carrying out their professional duties.³³³ Such measures are inconsistent with States' duty to protect everyone who engages in the defense of human rights from "any ... pressure or other arbitrary action."³³⁴

Even where measures taken against judges, prosecutors or practicing lawyers are undertaken by non-State actors, the State may nonetheless be responsible. For example, where judges, prosecutors or lawyers receive death threats, the relevant State authority bears responsibility to investigate these acts and to provide protection as necessary. Where such measures are not undertaken, the State may be in breach of its international obligations.³³⁵

The Human Rights Committee has emphasized that judges should not be held criminally liable for issuing "unjust judgments."³³⁶ The Special Rapporteur has similarly stated that judges must enjoy some degree of immunity from criminal liability in order to safeguard judicial independence, although

³³⁰ Second report on the Situation of Human Rights Defenders in the Americas, Inter American Commission on Human Rights, OEA/Ser.L/V/II, Doc. 66, Dec. 31, 2011, ¶¶ 65-67, available at <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

³³¹ *Id.* ¶¶ 68-69.

³³² *Id.* ¶ 70.

³³³ Inter American Commission on Human Rights, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II, Doc. 49/15, Dec. 31, 2015, ¶¶ 153-155, available at <http://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf>.

³³⁴ Article 12.2 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, March 1999, available at:

[http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.res.53.144.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.res.53.144.en); see also Second report on the Situation of Human Rights Defenders in the Americas, Inter American Commission on Human Rights, OEA/Ser.L/V/II, Doc. 66, Dec. 31, 2011, ¶ 77, available at

<http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>; Inter American Commission on Human Rights, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II, Doc. 49/15, Dec. 31, 2015, ¶¶ 14-15, 43, available at <http://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf>.

³³⁵ *Villaseñor Velarde v. Guatemala*, Judgment, Feb. 5, 2019, ¶ 102.

³³⁶ Human Rights Committee, Concluding Observations on the Report Submitted by the Democratic People's Republic of Korea Under Article 40 of the Covenant, U.N. Doc. CCPR/CO/72/PRK (2001), ¶ 8.



“immunity should never be applied to cases of serious crime, including accusations of corruption.”³³⁷

The Universal Charter of the Judge, approved by the International Association of Judges, also confirms that criminal action against a judge, including arrest, should only be permitted under circumstances which ensure that their independence cannot be influenced.³³⁸

Abusive Complaints to Bar Associations

Much the same can be said of complaints to bar associations as was said in regard to recusal requests in Part III.F above. Ordinarily, complaints to bar associations for breach of rules governing professional conduct are part of the ordinary and proper functioning of a system of justice. However, requests made with no basis in rules of professional conduct, or made in bad faith, violate the State’s duty to “respect” human rights if they are made by a State agent,³³⁹ or the State’s duty to “ensure” human rights, if the complaint is made by a private actor with the State’s acquiescence, tolerance, support, or lack of due diligence to prevent or respond to an abusive referral.³⁴⁰

Under the Covenant, the right to a fair hearing under Article 14 is violated when an abusive complaint against a lawyer results in disbarment.³⁴¹ Generally, disbarment should be imposed only in the “most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer.”³⁴²

³³⁷ Report of the Special Rapporteur on the independence of judges and lawyers, Apr. 28, 2014, UN Doc. A/HRC/26/32, ¶ 52.

³³⁸ Adopted by the IAJ Central Council in Taiwan on November 17, 1999, updated November 14, 2017, Article 7-2.

³³⁹ Cf. *Constitutional Court v. Ecuador*, Judgment, Nov. 28, 2013, ¶¶ 210 and 219; *Supreme Court of Justice v. Ecuador*, Judgment, Aug. 23, 2013, ¶ 177.

³⁴⁰ See *Velasquez Rodríguez v. Honduras*, Judgment, July 29, 1988, ¶¶ 172 and 173.

³⁴¹ See *Sannikov v. Belarus*, Communication No. 2212/2012, UN Doc. CCPR/C/122/D/2212/2012 (Apr. 6, 2018), ¶ 6.7. (noting that the complainant’s lawyer was disbarred after complaining about the “horrendous” conditions in which his client was held in violation of Article 14.b.3 and 14.1).

³⁴² Report of the Special Rapporteur on the independence of judges and lawyers, Sept. 5, 2018, UN Doc. A/73/365, ¶¶ 73, 115.