



CYRUS R. VANCE CENTER  
FOR INTERNATIONAL JUSTICE

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# Observations & recommendations

## Delegation to Guatemala

November 2023

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## **Observations and recommendations from the visit to Guatemala, November 6 and 7, 2023.**

A Cyrus R. Vance Center for International Justice delegation visited Guatemala on November 6 and 7, 2023. The purpose of this visit was to analyze and address the current situation in Guatemala from a legal perspective and to offer recommendations from this group of international law experts to support restoration of public confidence in the Guatemalan judicial system, institutionalization of an independent judiciary, alignment with international democratic standards, and strengthening the rule of law.

The Delegation met with various actors in Guatemala, including civil society groups, lawyers, judges, journalists, and the media. On November 6, the Delegation met with President-elect Bernardo Arévalo to discuss the peaceful and democratic transition of power, the need for a modern anti-corruption framework, and the importance of an independent, effective, and comprehensive justice system.

The Delegation did not seek to intercede on political issues but rather focused on achievable actions and structural changes for the State and the legal community, including civil society and the private sector. References in this document to the "legal community" refer to lawyers from all sectors, including law firms, businesses, civil society organizations, academia, bar associations, and human rights defenders.

### **I. Preliminary observations<sup>1</sup>**

1. The will of the Guatemalan people, as reflected in the electoral results, must be respected. Popularly elected representatives must take office on January 14, 2024, based on historical republican traditions and norms of democratic legitimacy. The instrumentalization of criminal law to alter the will of the people poses a grave attack on democracy. This includes actions taken both during and after the electoral process with the intent of obstructing the functioning of political parties.
2. In light of the continued attacks on electoral results through the political misuse of the Prosecutor General's Office, the Prosecutor General should resign before the new administration takes office to allow for proper restoration of the rule of law. Otherwise, urgent legal measures should be sought to ensure the Prosecutor General's Office resumes compliance with all its obligations under the law.
3. In compliance with the Constitutional Court judgment, Congress must appoint the justices of the Supreme Court of Justice and appeals courts to complete the current constitutional term, which ends in October 2024. These appointments should be based on merit, capacity,

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<sup>1</sup> These remarks were published in a press release dated November 8. The Spanish version is available here: <https://www.vancecenter.org/wp-content/uploads/2023/11/Comunicado-de-Prensa-Delegacion-Guatemala-11.8.23.pdf>



and integrity, with the most qualified candidates selected through reasoned votes in a public and transparent process consistent with international standards.

4. Should the presidential transition process fail to take place, or if it is announced or confirmed that the transition will not occur, it will cause serious harm to Guatemala. This will significantly and unfavorably affect the investment climate and hinder business development in the country, thereby negatively impacting the economic well-being of all Guatemalans. The United States and other countries will immediately impose economic sanctions until democratic order is restored.
5. As democratic actors, government officials and state entities must guarantee freedom of the press and freedom of expression, refrain from criminalizing journalistic activities and ensure that journalists and media organizations can carry out their work without fear.
6. The Constitutional Court must assume its role as guardian of the Constitution and the international principles to which Guatemala has committed. As the highest constitutional authority in the country, its inaction and failure to uphold democracy will carry significant historical consequences.
7. Finally, the Delegation calls upon the Guatemalan legal community, with the support of the international legal community, to undertake all actions necessary to strengthen democracy and the rule of law.

The Delegation concluded its visit with broad concerns about issues of judicial independence, significant restrictions on freedom of expression and the media – including threats of violence against journalists and unjustified arrests and prosecutions of journalists, and serious corruption. Based on these concerns, it made the following observations and recommendations.

## **II. General observations**

8. The current system in Guatemala is unsustainable; under an authoritarian regime and existing apparatus that guarantees impunity, the entire population loses.
9. Efforts to establish Guatemala as a modern country and an attractive destination for investment must occur within an integral framework of institutional strengthening, division of powers, and a collective effort that requires sufficient political will to carry out the necessary reforms.
10. Given Guatemala's polarization, it is necessary for diverse sectors to come together to build a common agenda to address fundamental issues for the country. While disagreements may arise on specifics, this cooperation is important in order to define priority issues and offer a joint vision to guide the efforts of an organized legal and social community.
11. Beginning in January 2024, there are several potential actions within the scope of the executive branch that can lead to important changes in the fight against corruption through modernizing secondary regulations and digital transformation. Prevention as a priority measure is fundamental in order to close spaces that have been used for corruption and



clientelist systems. The region offers several good examples of such efforts that include the participation of organized civil society.

12. It is essential to strengthen civil society organizations, coalitions, and others to raise the political cost of decisions by Congress, such as the election of representatives of other branches of government. This includes redoubling efforts for the participation and oversight of the legal community and civil society of processes before the Nominating Commissions, including elections to Courts. This is especially relevant for the Supreme Court and Court of Appeals appointment process pending before Congress, as well as the new process that will begin in February 2024 for the period starting in October 2024.
13. The national and international legal community must continue highlighting the illegal actions of actors who make fundamental decisions based on political or personal interests beyond the law. The Constitutional Court must act in accordance with the law and the international treaties to which Guatemala is a party. The lack of decisions, as the Court has consistently refrained from ruling on issues of critical importance, and the far-fetched interpretations offered to provide an outlet for spurious interests, are apparent and each member of the Court bears responsibility for them.
14. National actors, such as the Bar Association and law schools, must reorient their purpose and assume their responsibility within the Guatemalan context. The legal community is responsible for demanding and contributing to a culture of legality and unrestricted adherence to the law; it is not just another actor in a clientelist system.
15. There is a window of opportunity for the executive branch to resume or refocus efforts necessary to exercise and guarantee civil, economic, and social rights. This includes the agencies under the Ministry of the Interior and others related to human rights and supporting human rights defenders.
16. This window of opportunity also applies to issues such as implementing reforms to the penitentiary system, to guarantee compliance with standards for incarcerated persons.

### **III. Independence of the justice system**

17. The degradation of the justice system in Guatemala, with higher courts co-opted by extra-legal interests, makes it unfeasible to obtain justice via traditional legal efforts. The Delegation views with great concern the constant reinforcement of the absence of any legal avenues for justice, including the ongoing lack of action by the Constitutional Court.
18. The instrumentalization of the Public Prosecutor's Office as a tool for persecution has helped erode the rule of law. The office's current lack of legitimacy seriously affects democracy and legal certainty. Renewing the Public Prosecutor's Office is the best way to reestablish its intended constitutional function.
19. The Delegation urges every public prosecutor and official in the Public Prosecutor's Office to stand firm and remain loyal to the ethical and legal principles that govern their profession and public duty. The Delegation urges all prosecutors to exercise their responsibilities with



integrity and not to allow themselves to be used as instruments of political persecution and criminalization.

20. The Delegation deplores the criminalization and arbitrary detention of actors involved in the fight against corruption, including justice operators and members of the press. Ongoing criminal investigations based on indeterminate legal concepts have been overused to criminalize the functions of other prosecutors, judges, lawyers, and journalists. Guatemala will ultimately have to answer at the international level for its clear violations of the rights established in international treaties to a fair trial and due process, as well as the excessive use of pretrial detention.
21. The Delegation remains concerned by the exile of more than 40 justice operators who worked on cases of corruption and serious human rights violations. The Delegation calls upon Guatemala to comply with its obligation to protect and guarantee a fair trial, personal liberty, and judicial, prosecutorial, and legal independence, and to adopt all necessary measures for the safe return of these justice operators.
22. The Delegation rejects the criminal investigation against Claudia González, a former CICIG representative and lawyer currently representing more than 16 justice operators facing criminal proceedings in retaliation for their fight against corruption, and rejects her unjustified deprivation of liberty. The Delegation also rejects the criminalization of the lawyers of imprisoned journalist José Rubén Zamora Marroquín, and other lawyers who have defended actors involved in the fight against corruption. This criminalization represents a serious setback for the independence of lawyers. The legal community must act as the first line of defense and guarantor of lawyers' independence, denouncing these attacks nationally and internationally and establishing mechanisms to defend against criminalization of lawyers in retaliation for the mere exercise of their profession.
23. The Delegation urges the Government of Guatemala to reach an amicable solution in the cases pending before the Inter-American Commission on Human Rights, including that of former judge Erika Aifán and the petition of 13 other justice operators.

The Delegation sees in this amicable agreement the potential for construction of parameters on the following points:

- a. Respect for judicial independence, specifically judicial immunity.
- b. Decriminalization of judicial and prosecutorial criteria.
- c. Limits to exercising the power of criminal action of the Public Prosecutor's Office.
- d. Compliance with recommendations regarding defense of judicial independence by the Human Rights Ombudsman of Guatemala.
- e. Delimitation of disciplinary proceedings against judges, prosecutors, and lawyers.
- f. Compliance with the United Nations principles on independence of lawyers.
- g. Reparations, including measures of non-repetition, in cases of violation of the independence of justice operators.



24. The Delegation sees a window of opportunity in the change of the Executive branch to initiate efforts to strengthen judicial independence, which is necessary for any democracy. The legal community should support efforts by the new administration to reform and build an efficient, independent, and integral justice system.
25. In order to strengthen judicial independence, the Delegation calls on the entire legal community to prepare and contribute to a transparent, public selection process for the high courts in 2024, including citizen participation. The delegation sees in the next election of judges a unique opportunity to address issues that historically have been relegated to the sidelines or have received insufficient attention, such as:
- a. The legal community and civil society should monitor the quality and independence of the persons elected to the Nominating Commissions, paying particular attention to conflicts of interest.
  - b. The call for applications must establish a preference criterion for persons who are members of the judicial civil service.
  - c. Establishing a detailed profile commensurate with the importance of the jurisdictional function, which will act as a pre-filtering method to intake a more manageable number of requests.
  - d. The grading grid should reflect the evaluation criteria relevant to the position of senior judge, being as specific and clear as possible.
  - e. Establishing a mechanism to receive and analyze the information submitted by civil society, which may assist the Nominating Committees in verifying the integrity of the participants.
  - f. Conduct interviews with finalists to allow for a complete evaluation of their profiles.
  - g. Maximize the transparency of the process by enabling access to the information provided by candidates, the commissioners' actions to know each candidate's analysis, and the ratings given by each commissioner to the people they have evaluated.
  - h. The subgroups carrying out this evaluation must be formed randomly, taking into account the representation of the Commission, and the files to be reviewed should also be assigned randomly.
26. The Delegation noted the absence of policies to protect justice operators from actors who, through social networks, harass, leak official confidential information, predict criminal prosecutions, and publish monitoring and surveillance targeting judges and prosecutors. The legal community must take concrete actions to prevent and penalize these harassment, intimidation, and disinformation campaigns.

#### **IV. Transparency and integrity**

27. The Delegation reiterates the existence of a window of opportunity for the executive branch to address weaknesses in mechanisms for detecting acts of corruption and warning systems, as well as the current lack of preventive policies in the public and private sectors and the absence of clarity in various areas.



28. The Delegation calls on the legal community to propose the regulations and public policies necessary for actions to prevent, investigate and punish corruption. Among the points identified, reiterating the results of the most recent [Anti-Corruption Assessment for Latin America](#) conducted by the Vance Center's Lawyers Council, are the following recommendations:

- a. Promote the modernization of regulations regarding public ethics and integrity to prevent conflicts of interest, external activities and post-employment obligations.
- b. Promote initiatives to create public declarations of interests for public officials in the three branches of government and other autonomous bodies.
- c. Promote the implementation of digital tools and technology to prevent corruption in the public sector.
- d. Promote a legal framework for preventing corruption in private sector companies, with incentives for compliance and verification following international standards.
- e. Promote legislation and regulations for the protection of whistleblowers, as well as the establishment of mechanisms to encourage the reporting of acts of corruption.
- f. Promote institutional strengthening of agencies in charge of fighting corruption, including allocating sufficient financial and human resources, training personnel, and use of technology and tools.
- g. Undertake initiatives to strengthen institutions to protect against political interference, including, if necessary, modifying appointment processes.
- h. Promote coordination mechanisms among anti-corruption authorities to more efficiently prevent, combat, investigate, and penalize corruption.
- i. Promote mechanisms to encourage participation of civil society in designing and implementing anti-corruption public policies.
- j. Support CSOs' efforts to monitor and participate in the appointment process for anti-corruption authorities, as well as the independent functioning of these organizations.
- k. Promote legislation and regulations to establish beneficial ownership registries per international standards and best practices.

## V. Civic Space

29. The Delegation found that Civil Society Organizations (CSOs) face restrictions and barriers that prevent their effective operations. These restrictions are related to the lack of clarity in regulating the NGO Law and the failure of the Registry of Legal Entities to clarify how to fulfill their obligations as legal entities. This has also functioned as a mechanism of pressure and intimidation that has limited anti-impunity efforts.

30. The change of administration in the Executive branch also offers a window of opportunity to work closely with CSOs to address these problems and present a way to conduct reviews of organizations that have acted as instruments for criminalizing anti-corruption actors.



31. The legal community must support and create specific efforts to strengthen civic space so that it does not restrict the legitimate work of CSOs or subject them to unjustified government controls and checks, thus infringing on freedom of association.

## **VI. Freedom of the press**

32. The Delegation calls on the government of Guatemala to comply fully with the precautionary measures that the Inter-American Commission on Human Rights granted to award-winning journalist José Rubén Zamora and the staff of elPeriódico.
33. The Delegation deplores the Guatemalan government's rejection of repeated requests for an on-site visit by the Inter-American Commission on Human Rights to verify the conditions of detained journalist José Rubén Zamora Marroquín; and recommends that it proactively invite the Commission, indicating a date and time for the visit. International lawyers and jurists could offer to act as neutral observers to accompany such visits.
34. The Delegation finds that the argument for keeping journalist José Rubén Zamora Marroquín in preventive detention is no longer applicable. The obsolete argument is based on an employment relationship between Mr. Zamora and employees of elPeriódico as a presumption of Mr. Zamora's power to influence witnesses. In light of this, it urges the Guatemalan government to provide a substitute measure for pretrial detention.
35. The Delegation condemns the criminalization of six elPeriódico columnists as a clear example of political persecution that violates freedom of expression.
36. The Delegation calls on the legal community to maximize its involvement in defending press freedom. The existence of freedom of speech and of the press offer clear evidence of the level of the rule of law and the advancement of democracy. The legal community can support efforts by organizations that monitor cases of criminalization to improve the quality of their comprehensive documentation of attacks on press freedom and collaborate with international organizations to publicly condemn criminalization and seek sanctions or corrective measures.

## **VII. Follow-up**

The *Cyrus R. Vance Center for International Justice*, through its various programs, including the *Lawyers Council for Civil and Economic Rights*, reiterates its willingness to support efforts to implement these recommendations, particularly those necessary to modernize and strengthen the justice system and anti-corruption efforts. In addition, the Vance Center will continue efforts to denounce at the international level violations of human rights standards, including judicial independence and freedom of the press.



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