



Attacks and criminalization of justice operators in Guatemala as part of the strategy to dismantle the fight against corruption and impunity

This report is a contribution to the fourth cycle of the Universal Periodic Review of Guatemala. It is presented by Protection International Mesoamerica, the Center for Justice and International Law (CEJIL), Cyrus R. Vance Center for International Justice, Due Process of Law Foundation (DPLF), Guatemala Human Rights Commission, Impunity Watch, Latin America Working Group Education Fund, Washington Office on Latin America (WOLA), International Platform Against Impunity (PICI), ACTuando Juntas Jotay Program, and Robert F. Kennedy Human Rights (RFKHR).¹ It provides information on **the criminalization of justice operators (judges and prosecutors) by powerful groups in Guatemala and State authorities as a strategy to dismantle the advances in the fight against corruption and impunity** that had been achieved through the joint work of the Special Prosecutor's Office against Impunity (FECI) and the International Commission against Impunity in Guatemala (CICIG), an *ad hoc* body of the United Nations.

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Context

1. The criminalization of justice operators has an impact on human rights, specifically the guarantees of judicial independence in accordance with the obligations of the State of Guatemala established in Article 14 of the International Covenant on Civil and Political Rights. The document has been prepared based on the review and monitoring of the legal norms, policies and practices implemented or omitted by the State of Guatemala in relation to its obligation to respect and guarantee this right, as well as based on the experience of the organizations that present it, justice operators, and the victims and members of civil society with whom these organizations work, in addition to the monitoring of the implementation of the recommendations made in the framework of the third cycle of the Universal Periodic Review of Guatemala.
2. During the last four years, the State of Guatemala has put the integrity and life of judges at risk and affected their autonomy to exercise their jurisdictional function without pressure and with guaranteed tenure.² This harassment prevents judges from acting freely,³ which means that the right of access to impartial and effective justice for the entire Guatemalan population is being restricted.
3. The criminalization of judges violates the 21 recommendations on defenders⁴ and the five recommendations on combating impunity⁵ accepted by Guatemala in the UPR of 2017 and violates the commitment to provide judges with all the necessary means to adequately fulfill their mission in their fight against crime, particularly in its new forms.⁶
4. According to international standards, judges and prosecutors are considered human rights defenders and are among the most exposed to attacks and threats due to the essential work they carry out as guarantors of access to justice for citizens and due process Rights.⁷ These premises have not been fulfilled, as judges and prosecutors have been persecuted through criminal and administrative processes that have not been public. The complaints are registered in such a way that it cannot be established who is being investigated. There is a permanent threat against them and unfounded complaints are processed.⁸ Justice operators involved in cases of great social interest or affecting the interests of powerful politicians are particularly vulnerable to acts against them.⁹
5. The three branches of the State, in collusion with economic groups, agreed and implemented a strategy to: a) terminate CICIG's mandate, and b) attack, discredit and criminalize justice operators (judges and prosecutors) who were in charge of cases of grand corruption and serious human rights violations, with the aim of weakening the processes, causing their closure, and thus guaranteeing impunity.¹⁰ CICIG was created in 2006 with the aim of dismantling criminal structures embedded in the State and since then it has enjoyed great national and international support;¹¹ therefore, recommendations of the UPR in previous cycles¹² are aimed at guaranteeing support for this entity. All of them were not complied with by Guatemala, as the agreement was terminated before CICIG completed its mission in September 2019.
6. On August 31, 2018,¹³ President Jimmy Morales announced the non-renewal of CICIG's mandate at a press conference surrounded by military personnel. That same day, the

government circulated military vehicles in front of CICIG offices and diplomatic headquarters. In 2019, an election year, the priority of the power groups was to promote the departure of CICIG, which took place on 2 September of that year and marked the detriment of democracy and the justice system.¹⁴ With this, four recommendations of the 2017 UPR on CICIG were not complied with.¹⁵

Misuse of criminal law

7. The arrival of Attorney General Consuelo Porras to the Attorney General (MP) on May 17, 2018 accelerated¹⁶ the deterioration of judicial independence, as a result of the implementation of a policy of attacks and criminal prosecution against justice operators (judges, magistrates and prosecutors) who have been in charge of investigations and criminal proceedings in cases of grand corruption and transitional Justice.¹⁷ The Attorney General's Office has made an alliance in the majority of cases with those prosecuted for corruption and with the Foundation Against Terrorism (FCT), which has become a plaintiff.¹⁸
8. The system of High Risk Courts, created in 2009 through a law,¹⁹ has been under attack since these courts were created to hear the most high-impact cases related to serious human rights violations, corruption or dangerousness. The majority of corruption cases and cases against members of the military accused of crimes against humanity are processed in these courts. By their nature, these judges must follow specific selection processes that guarantee their suitability. These requirements have not been guaranteed in the last two years.²⁰
9. Actors close to those accused of corruption and war crimes, such as the Fundación Contra el Terrorismo (an NGO aimed at protecting military personnel accused of human rights violations and those accused of corruption) and the Attorney General's Office have filed dozens of criminal complaints, administrative complaints and *antejuicios* (requests to lift immunity) against high-risk judges Erika Aifán,²¹ Pablo Xitumul²² and Miguel Ángel Gálvez,²³ and former Constitutional Court judges Gloria Porras, Bonerge Mejía, Francisco de Mata, Neftalí Aldana and María Cristina Fernández.²⁴
10. The Foundation Against Terrorism (FCT), directed by Ricardo Méndez Ruiz, Moisés Galindo and Raúl Falla, is a civil society organization that has become a legal and political arm of judicial harassment²⁵ to the operators of Justice.²⁶ As a sign of their influence, their legal actions are processed quickly, they win *amparos* immediately,²⁷ they have threatened the Human Rights Ombudsman²⁸ and prosecutors denounced that in a hearing they were assaulted by Méndez Ruiz and Falla.²⁹ Byron Lima, a deceased ex-military officer who was condemned for the extrajudicial execution of Bishop Juan Gerardi, and the lawyer and military officer Moisés Galindo - on trial in a corruption case - are linked to this Foundation.³⁰ Méndez Ruiz was declared a human rights violator by human rights ombudsman Jorge de León Duque in 2013.³¹ In 2020, Judge Miguel Ángel Gálvez ordered Méndez Ruiz to be investigated for leaking information³² and Attorney General Porras took that case away from the FECCI when it was still headed by Juan Francisco Sandoval.

11. On 21 June 2021,³³ Erika Aifán, Miguel Ángel Gálvez, Pablo Xitumul and Yasmín Barrios, judges at greatest risk who have been granted precautionary measures by the Inter-American Commission on Human Rights (IACHR) went to the Attorney General's Office to request the dismissal of at least³⁴ 40 complaints against them as unfounded, including some complaints filed since 2012. They argued that instead of protecting those who enjoy precautionary measures, the State has dedicated itself to persecuting them. Attorney General Consuelo Porras publicly stated that she must investigate all the complaints before dismissing them, thus keeping investigations open against judges who enjoy the right of pre-trial in contravention of the law.³⁵ They also denounced the following of cars without license plates, harassment by drones in the headquarters of the courts, among other acts of intimidation;³⁶ these complaints were filed by the Attorney General's Office.
12. The Supreme Court of Justice stripped Judge Pablo Xitumul of his immunity for a vehicular traffic incident and removed him from his duties on February 9, 2022.³⁷ Among other cases, Xitumul was president of the court that convicted former vice-president Roxana Baldetti and also four members of the military accused of the forced disappearance of young Marco Antonio Molina Theissen,³⁸ a crime for which the State of Guatemala was sentenced by the Inter-American Court of Human Rights.
13. In 2022, the Attorney General's Office filed at least four requests for the withdrawal of pre-trial proceedings against Judge Erika Aifán, two of them questioning rulings issued in relation to jurisdiction in high-impact cases. The Attorney General's Office made public that it had at least 29 complaints against Aifán.³⁹ One of them,⁴⁰ presented by the Institute of Magistrates of the Courts of Appeals of the Judiciary, was processed by the Supreme Court of Justice and the magistrate Roaldo Chávez, secretary of the Board of Directors of the complainant entity, was appointed as investigator. Since she would not have guarantees in Guatemala to face a trial, Judge Aifán had to leave the country and resigned from her post.⁴¹ Judge Aifán was hearing important cases initiated by CICIG and FECCI against businessmen, magistrates of the Court of Appeals and the Supreme Court of Justice, politicians and lawyers accused of manipulating court elections, among others.⁴²
14. The former judge of the Constitutional Court Gloria Porras is currently facing more than 50 complaints⁴³ and preliminary trials. While she was a magistrate, the Supreme Court of Justice processed lawsuits against her for her rulings, undermining judicial Independence.⁴⁴ After being re-elected as a magistrate, as a result of complaints and appeals by the Foundation Against Terrorism (FCT), the Constitutional Court prevented her from taking office, ordering a re-run of the election in which she had been elected by the University of San Carlos. For fear of her life, she went into exile in April 2021.⁴⁵
15. A strategy of legal and media harassment was unleashed against the Constitutional Court (2016-2021) for important resolutions. They were attacked for supporting decisions of the FECCI, the CICIG (such as stopping the expulsion of Commissioner Iván Velásquez⁴⁶), for cases of human rights violations, suspension of mining and hydroelectric projects that operated illegally without consultation or prior consent of indigenous peoples⁴⁷, stopping amnesty laws,⁴⁸ illegal appointments,⁴⁹ and guidelines for electing courts in a suitable manner,⁵⁰ among others.

16. Judge Miguel Ángel Gálvez has received constant threats to his life.⁵¹ On May 16, 2022, the Foundation against Terrorism (FCT) denounced him⁵² for making improper use of pre-trial detention after he tried nine soldiers in the Diario Militar case,⁵³ in which the State of Guatemala has been condemned by the Inter-American Court of Human Rights. The Supreme Court of Justice processed this complaint and this violates his judicial independence because he could be deprived of immunity for exercising his jurisdictional function.⁵⁴ Judge Galvez has been in charge of cases against former president Otto Pérez Molina, dictator Efraín Ríos Montt and powerful businessmen.

Unjustified Delays in Supreme Court and Court of Appeals Elections

17. In October 2019, new magistrates of the Supreme Court of Justice and the Court of Appeals should have been elected, however, Congress has not complied with the election.⁵⁵ The Constitutional Court ordered⁵⁶ to elect candidates under the requirements of suitability due to an injunction filed on 24 February 2020⁵⁷ by the Special Prosecutor's Office against Impunity (FECI), still in charge of Juan Francisco Sandoval, after the case "Parallel Commissions 2020"⁵⁸ was made public, which revealed a structure of influence peddling in the elections. The refusal of Congress to elect violates the principles of alternability and respect for constitutional control, since despite the existence of a sentence, the non-compliance of this has no consequences.
18. As part of the "Parallel Commissions" case, FECI requested the impeachment of 10 of the 13 Supreme Court justices on June 8, 2021,⁵⁹ including president Silvia Patricia Valdés, who in 2022 chaired the Postulation Commission for the election of the attorney general and was one of the main promoters of the re-election of Consuelo Porras.⁶⁰ The same accused magistrates decided to maintain their own immunity, as they have done with several deputies, rejecting impeachment proceedings against them for corruption cases.⁶¹
19. In recommendations of the 2017 UPR⁶², the need to continue with the reform of the justice system, ensure the separation of administrative and judicial functions of the Supreme Court of Justice and provide protection to judges in trials for crimes against humanity were stressed; four of them were not accepted by Guatemala. On the contrary, the Congress stopped the discussion of constitutional reforms and even promoted⁶³ a regressive agenda.⁶⁴

Harassment and violation of privacy and integrity

20. The following patterns of attacks against justice operators have been documented:⁶⁵ threats to their freedom, life and physical and emotional integrity, as well as harassment and intimidation,⁶⁶ attacks on social networks that include the theft of private accounts on different social networks and espionaje,⁶⁷ the publication of personal, stolen or falsified information, the publication of surveillance⁶⁸ documented in videos and photographs of

them and their families, of confidential information held by the MP,⁶⁹ online defamation and hate speech.⁷⁰

21. On February 12, 2022, as part of a campaign of intimidation, several Twitter accounts published a video in which high-risk judges and members of the Guatemalan Association of Judges for Integrity (AGJI) were leaving the U.S. Embassy in Guatemala.⁷¹ The vice-president of the AGJI, Judge Carlos Ruano, has been the target of attacks because he denounced former judge Blanca Stalling, who was in prison for influence peddling.⁷² Judge Aifán and Judge Gálvez are also part of the AGJI, which is also the target of harassment⁷³ which undermines the right of judges to participate in trade groups that is recognised in the Statute of the Ibero-American Judge.
22. On 17 May 2022, Judge Miguel Ángel Gálvez sent a request for support for his judicial independence to the Supreme Court of Justice in which he refers to a series of intimidations.⁷⁴ At the time of writing, he had not received any response. In this way the CSJ violates its commitment to uphold judicial independence.⁷⁵
23. President Alejandro Giammattei has promoted the delegitimization of justice operators. He publicly criticised prosecutor Juan Francisco Sandoval on 2 June 2021,⁷⁶ almost a month before he was dismissed, and also used derogatory terms about the Engel List, which is drawn up by the United States when sanctioning people accused of corruption. He mentioned that he would draw up the "buzzard list,"⁷⁷ which was interpreted as a threat to opponents.⁷⁸
24. Méndez Ruiz has put the case of Judge Aifán as an example for other judges and justice operators on the Facebook page of the Foundation Against Terrorism (FCT), and in this way threatens the rest of justice operators.⁷⁹
25. Finally, the Constitutional Court granted an injunction to the Foundation Against Terrorism (FCT) to prevent judges from running for attorney general, which violates the right of judges to participate in these processes and jeopardizes the legitimacy of the process.⁸⁰

Recommendations

26. Urge the State to adopt measures that guarantee stability of tenure for justice operators, as well as adequate conditions of service and protection from external pressures that may affect the independent exercise of their work.
27. Recommend that the State comply with the effective implementation of the protection measures granted to justice operators by international human rights protection bodies.

28. Remind the State, particularly the Attorney General's Office, of its obligation to investigate effectively and without delay the complaints filed by justice operators for attacks and threats against them and to identify the patterns of harassment that seek to affect judicial independence.
29. Remind the State of its duty to guarantee the independence of justice operators, refraining from misusing criminal and administrative law as a strategy to remove them from judicial proceedings and as a tool for retaliation.
30. Urge the Congress of the Republic, as part of the State of Guatemala, to proceed immediately to elect magistrates of the Supreme Court of Justice and Courts of Appeals under the criteria of suitability ordered by the Constitutional Court,⁸¹ so as not to continue affecting the principle of judicial alternation and independence.
31. Establish, within the framework of the United Nations system, a body to document the attacks on judicial independence and the processes of criminalization of justice operators that have been carried out as a result of the departure of CICIG in 2019.
32. Insist that the Attorney General's Office dismiss unfounded complaints against justice operators whose motive is to criminalize the judicial function and that prosecutors refrain from processing clearly inappropriate actions.

References

¹ **Protection International Mesoamerica (PI)** is an international, non-profit NGO that facilitates the formulation of strategies and the use of security and protection management tools for people and groups that defend human rights. Based in Brussels, it has a presence in Asia, Africa and the Americas where it has two regional offices: one for Mesoamerica in Guatemala and another for South America in Colombia. The **Center for Justice and International Law (CEJIL)** is an organization of human rights defenders that works to reduce inequality and violence by strengthening democracies, protecting and promoting human rights and combating impunity in the Americas. They have been working for more than 30 years throughout the Americas and represent more than 10,000 victims of human rights violations. The **Cyrus R. Vance Center for International Justice** promotes global justice by engaging legal professionals around the world to support civil society and an ethically active legal profession. It is a non-profit

program of the New York City Bar Association that brings together leading law firms and other partners around the world to promote international justice initiatives and provide pro bono legal representation to civil society organizations fighting for social justice. **Due Process of Law Foundation (DPLF)** is a regional human rights organization with a mandate to promote the rule of law and the protection of human rights in Latin America. Through its judicial independence program, DPLF promotes the strengthening of the region's justice systems and their autonomy. **Guatemala Human Rights Commission (GHRC)** is a grassroots, non-profit, solidarity-based organization dedicated to promoting human rights in Guatemala and supporting communities and activists facing threats and violence. GHRC documents and denounces abuses, raises international awareness, and promotes policies that foster peace and justice. Impunity Watch is an international human rights organization that promotes transitional justice and the strengthening of the rule of law in countries with violent pasts. It works in partnership with victims' organizations and civil society to fight impunity and prevent atrocities. **Latin America Working Group Education Fund (LAWGEF)** is a Washington, D.C.-based nongovernmental organization that advocates on U.S. policy toward Latin America and the Caribbean and on issues of human rights and social, environmental, economic, and peace justice. The **Washington Office on Latin America (WOLA)** is a leading research and advocacy organization promoting human rights in the Americas. Its vision is to achieve a continent in which public policies protect human rights and recognize human dignity, and where justice prevails over violence. **Plataforma Internacional Contra la Impunidad (PICI)** is a strategic alliance of European and Central American non-governmental organizations that promotes international attention and action towards structural causes and effects of impunity in different areas of Central America in support of actors vulnerable to impunity. The **ACTuando Juntas Jotay Programme** is the joint initiative in Guatemala of four European ecumenical organisations: Norwegian Church Aid, Act Church of Sweden, Bread for the World and the Lutheran World Federation. It seeks to contribute to the construction of an inclusive and sustainable society that respects and guarantees human rights. **Robert F. Kennedy Human Rights (RFKHR)** was founded in 1968 following the assassination of then Attorney General Robert F. Kennedy. The organization seeks to continue his legacy by promoting respect for human rights and civic space in collaboration with local organizations in different regions of the world, including Latin America.

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