



# **ATTACKS ON JUDICIAL INDEPENDENCE IN GUATEMALA**

**Report of the Latin American  
Federation of Judges (FLAM) and  
the International Association of  
Judges (IAJ) on their visit to  
Guatemala**

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# EXECUTIVE SUMMARY

This report presents the results of a joint delegation by the Latin American Federation of Judges (FLAM) and the International Association of Judges (IAJ) that visited Guatemala August 9-11, 2022. We organized the visit considering the alarming news we have received about the attacks on judicial independence and the persecution of judges and prosecutors in Guatemala.

During the visit, we held meetings with authorities from the three branches of government and we heard testimony from judges, prosecutors and lawyers who are being criminalized for their carrying out their work.

The delegation was able to verify a pattern of systematic attacks against judges, prosecutors, and former lawyers of the International Commission against Impunity (CICIG) who have worked on cases involving significant corruption and human rights violations committed during the internal armed conflict. We are concerned that criminal law is being misused to criminalize judges and justice operators in retaliation for the work they have carried out independently. We are particularly concerned about judges Yassmin Barrios, Miguel Ángel Gálvez and Carlos Ruano, as well as members of the Guatemalan Association of Judges for Integrity (AGJI), who face ongoing attacks for defending judicial independence.

The lack of action by the Public Prosecutor's Office is striking, having failed to investigate

the individuals and destabilizing actors who are behind the attacks, some of whom have even threatened justice officials and operators publicly on social media without facing any consequences.

The government's failure to comply with security measures granted by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights is also concerning. The measures were granted to protect judges and prosecutors who are at risk. Several justice operators have left the country and sought refuge abroad because of criminalization and the lack of protection provided by the State.

The delegation found that there are not minimum conditions and guarantees for the functioning of an independent judiciary in Guatemala. This situation could generate more impunity and instability in the country. It is important to remember that judges have the responsibility to apply justice in an impartial manner and limit the excesses of political or de facto powers.

This report includes a series of recommendations for Guatemala, including complying with international obligations to guarantee judicial independence and adopting protective measures so that judges and prosecutors can carry out their work without facing undue pressure, threats, and criminalization.

# INTRODUCTION

From August 9 to 11, 2022, a joint delegation by the Latin American Federation of Judges (FLAM) and the International Association of Judges (IAJ) visited Guatemala to verify the state of judicial independence in Guatemala and the ongoing attacks against judges, prosecutors, and other justice operators in the country.

The members of the delegation were: Judge Adriana Orocú, president of FLAM and the Costa Rican Judiciary Association (ACEPTAR); Judge Hermens Darío Lara, member of FLAM and president of the Corporation of Judges and Magistrates of Colombia (CORJUSTICIA); magistrate Walter Barone, president of the Ibero-American group of the IAJ; and Judge Roland Kempfle, IAJ representative and member of the board of directors of the German Association of Magistrates, Judges and Prosecutors (Deutscher Richterbund, DRB).

Members of the joint delegation organized the visit after hearing about the ongoing attacks against justice operators, including judges in Guatemala's High-Risk Courts. We were particularly concerned about the members of the Guatemalan Association of Judges for Integrity (AGJI)<sup>1</sup>, because the association is a member of FLAM and IAJ.

During the visit, we heard firsthand accounts of threats, harassment and obstacles that judges and other justice operators face, as well as the reasons for the threats, the actors behind them, and the limited action taken by the State in response.

The members of this delegation wish to thank the contacted individuals and institutions for their collaboration and the participation of their representatives in the meetings that were convened, particularly given the short timeline. For this reason, we also understand that some authorities were not able to meet with us because their schedule was already full.<sup>2</sup>

In this report we present key findings from our visit to the country and we make recommendations to ensure that judges and other justice operators can carry out their work independently, free from undue pressure and threats. In the first part of the report, we include a section on the broader context of the justice system in Guatemala with relevant information about the development of recent events that allows for a greater understanding of the origins of the current situation.

<sup>1</sup>The AGJI was founded on April 18, 2016, and joined the FLAM on May 31, 2022 in São Paulo, Brazil. According to its stated mission, the association is an independent and honest group of judges and justices of the peace that seeks to promote the democratization and independence of judicial authority, while strengthening the principles of dignity and impartiality. The group also seeks to strengthen the efficient and effective administration of justice through the development of the professional association, including judicial, academic-functional, professional, social, cultural and labor development, in a pluralistic space where judges can function on the national and international level to benefit Guatemalan society.

<sup>2</sup>The president of the Constitutional Court, a judge on the Supreme Court and the president of the Judiciary, as well as one additional judge on the Supreme Court.

# 1. CONTEXT – THE JUSTICE SYSTEM IN GUATEMALA

In recent years, the Inter-American Commission on Human Rights (IACHR) and the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán, has spoken repeatedly about the serious issues facing the judiciary in Guatemala. In 2021, the IACHR highlighted Guatemala in chapter IV.b of its annual report that lists countries that systematically violate human rights in the region in part due to the alarming number of attacks against prosecutors, judges, and other justice operators, as well as other concerning human rights situations in the country.

The IACHR “observed that the criminalization of magistrates, judges, and other independent justice operators, worsened due to, among other reasons, an alleged lack of independence on the part of the Public Prosecutor’s Office, which is said to facilitate the manipulation of criminal law.”<sup>3</sup>

The crisis in Guatemala’s justice system became more severe after the International Commission against Impunity in Guatemala (CICIG) shut down in 2019. The CICIG worked in the country for twelve years (2007-2019)<sup>4</sup> and made significant progress towards strengthening the Guatemalan justice system. The CICIG contributed to trainings for prosecutors and judges, the specialization of the investigations of the Public Prosecutor’s

Office, and the creation of the High-Risk Courts. The international commission also promoted important legal reforms to combat impunity.<sup>5</sup>

The CICIG worked with the Office of the Special Prosecutor against Impunity (FECI) of the Public Prosecutor’s Office and investigated more than 120 cases involving corruption, illegal campaign financing, organized crime, and other serious crimes. High-ranking government officials and powerful business elites that the justice system had never been able to reach were implicated in many of these cases.

The CICIG and the Feci identified more than 70 complex criminal structures, filed charges against more than 1540 people, and obtained more than 400 convictions. As of July 2019, more than 660 people were still linked to ongoing corruption cases.<sup>6</sup>

*La Línea Case* is one of the most emblematic of these cases. In the case, former President Otto Pérez Molina and former Vice President Roxana Baldetti were accused as leaders in a customs tax fraud scheme.<sup>7</sup> Another relevant case involved illegal campaign financing for the FCN-Nación party; five powerful businessmen were accused of illegally financing the electoral campaign of former President Jimmy Morales (2016-2020).<sup>8</sup>

<sup>3</sup>IACHR. Annual Report 2021. Chapter IV.b Guatemala, paragraph 66.

<sup>4</sup>In 2006, the government of Guatemala signed an agreement with the Secretary General of the United Nations to install the International Commission against Impunity in Guatemala (CICIG) to support investigations into criminal organizations with the characteristics of illegal and clandestine security apparatuses (CIACS).

<sup>5</sup>The legal reforms promoted by the CICIG include a law on weapons and munitions, the jurisdiction of the High Risk Courts, regulations for witness protection, a law to strengthen criminal prosecutions, reforms to the law against organized crime, a law to regulate the services provided by private security firms, a law on asset recovery or seizure, and a law against corruption. Closing report, CICIG, 2019, pages 73-76.

<sup>6</sup>Closing report, CICIG, 2019, page 51.

<sup>7</sup>No-Ficción, Caso La Línea, available in Spanish at: <https://www.no-ficcion.com/casos/caso-la-linea>.

<sup>8</sup>No-Ficción, Caso Financiamiento Electoral Ilícito FCN-Nación (Fases I, II y III), available in Spanish at: <https://www.no-ficcion.com/casos/caso-financiamiento-electoral-ilicito-fcn-nacion>

The investigations also extended to the judiciary. In 2018, the Parallel Commissions Case went public, revealing secret negotiations and political agreements set up to ensure the election of certain judges to the Supreme Court and the Court of Appeals in 2014.<sup>9</sup> Members of nominating commissions, politicians, lawyers, and justice officials participated in these negotiations.<sup>10</sup> This problematic process was repeated five years later as noted in the Parallel Commissions 2020 Case. Once again, secret negotiations took place to ensure the election of certain judges to the Supreme Court and the Court of Appeals for the 2019-2024 period<sup>11</sup>, providing evidence of the manipulation of election processes for the high courts.

In contrast, during the mandates of former attorneys general Claudia Paz y Paz (2010-2014) and Thelma Aldana (2014-2018), the Public Prosecutor's Office advanced in investigating and prosecuting important transitional justice cases, such as the Ixil genocide case<sup>12</sup> and other cases of serious human rights violations that occurred during the internal armed conflict.

This progress, however, led to a backlash by the government, Congress, and other actors trying to stop the work of the CICIG and the FECI. In 2017, former Guatemalan

President Jimmy Morales, declared the head of the CICIG, Commissioner Iván Velásquez, persona non-grata and tried to expel him from the country.<sup>13</sup> In 2018 Morales unilaterally terminated the cooperation agreement with the United Nations that had established and defined the work of the CICIG.<sup>14</sup> Both actions, however, were suspended by Constitutional Court rulings at the time.<sup>15</sup> The court resolutions allowed the CICIG to continue operating in the country until the agreement expired in September 2019. Since then, the power groups affected by CICIG investigations have been trying to co-opt institutions within the justice system. In 2018 President Jimmy Morales appointed María Consuelo Porras as attorney general for the 2018- 2022 term. Porras was later re-appointed by President Alejandro Giammattei for the 2022-2026 term.<sup>16</sup>

The attorney general fired the head of the FECI, prosecutor Juan Francisco Sandoval,<sup>17</sup> and has since removed more than 20 FECI prosecutors in charge of CICIG cases<sup>18</sup>, naming replacements whose ability and impartiality has been seriously questioned. Furthermore, she has made major personnel changes in other prosecutor's offices, seriously affecting the investigations in cases involving corruption and organized crime. In 2021, the United States government placed

<sup>9</sup>CICIG, Comunicado 023: Caso Comisiones paralelas, 27 February 2018, available in Spanish at: [https://www.cicig.org/comunicados-2018-c/com\\_023\\_20180227/](https://www.cicig.org/comunicados-2018-c/com_023_20180227/).

<sup>10</sup>This case was one of the cases assigned to Judge Erika Aifán, who decided to send it to trial. See: Emisoras Unidas, Envían a juicio al abogado Roberto López Villatoro, 4 December 2018, available in Spanish at: <https://emisorasunidas.com/2018/12/04/juicio-roberto-lopez-villatoro/>.

<sup>11</sup>No-Ficción, Comisiones Paralelas 2020, 13 July 2021, available in Spanish at: <https://www.no-ficcion.com/project/comisiones-paralelas-2020>.

<sup>12</sup>Guatemala Human Rights Commission/USA (GHRC), Commemorating the Genocide Sentence; Guatemala's New Attorney General, 10 May 2014, available at: <https://ghrcusa.wordpress.com/2014/05/10/commemorating-the-genocide-sentence-guatemalas-new-attorney-general/>

<sup>13</sup>Prensa Libre, Presidente Jimmy Morales declara "non grato" a Iván Velásquez y ordena su expulsión, 27 August 2017, available in Spanish at: <https://www.prensalibre.com/guatemala/politica/jimmy-morales-declara-non-grato-a-ivan-velasquez/>.

<sup>14</sup>Deutsche Welle (DW), "Golpe técnico de Estado": Guatemala contra el mundo, 9 January 2019, available in Spanish at: <https://www.dw.com/es/golpe-t%C3%A9cnico-de-estado-guatemala-contra-el-mundo/a-47016774>.

<sup>15</sup>DW, Guatemala: Corte Constitucional suspende la salida anticipada de Cicig, 9 January 2019, available at: <https://www.dw.com/es/guatemala-corte-constitucional-suspende-la-salida-anticipada-de-cicig/a-4701824>.

<sup>16</sup>Prensa Libre, Presidente Alejandro Giammattei elige a Consuelo Porras como fiscal general por cuatro años más, 16 May 2022, available in Spanish at: <https://www.prensalibre.com/guatemala/politica/presidente-alejandro-giammattei-elige-a-consuelo-porras-como-fiscal-general-por-cuatro-anos-mas-breaking/>.

<sup>17</sup>CNN, Remueven al fiscal anticorrupción de Guatemala Juan Francisco Sandoval, 23 July 2021, available in Spanish at: <https://cnnespanol.cnn.com/2021/07/23/remueven-fiscal-anticorrupcion-juan-francisco-sandoval-guatemala-orix/>.

<sup>18</sup>Con Criterio, 10 fiscales desplazados de la FECI desde que surgieron indicios de corrupción sobre Giammattei, 16 February 2022, available in Spanish at: <https://concritorio.gt/10-fiscales-desplazados-de-la-feci-desde-que-surgieron-indicios-de-corrupcion-sobre-giammattei/>.



her on the Engel List of Corrupt and Undemocratic Actors in Central America,<sup>19</sup> and the 2022 Engel List included the current head of the FECI, Rafael Curruchiche, and other justice officials.<sup>20</sup>

Additionally, Guatemala's Congress has spent more than three years without electing judges to serve on the Supreme Court and the Court of Appeals for the 2019-2024 term. The election process was suspended twice due to influence peddling scandals and technical deficiencies in evaluating the candidates. The Constitutional Court suspended the process following the announcement of the Parallel Commissions 2020 Case. The court ordered Congress carry out the election by voice vote and remove any candidates whose honorability had been compromised.<sup>21</sup> Congress, however, has refused to comply with the ruling, which means that the judges previously elected to the Supreme Court and the Court of Appeals have continued in their roles indefinitely.<sup>22</sup>

During our visit to Guatemala, we repeatedly heard that the institutions in the justice system have been co-opted and that those who supported the work of the CICIG and the fight against corruption face systematic persecution. In the following sections we present our observations and the serious damage to justice operators, the independence of the judiciary, and the rule of law.

## 2. VIOLATION OF JUDICIAL INDEPENDENCE

The delegation received information on cases of criminalization against judges, prosecutors, and lawyers who worked with the CICIG; cases of criminalization against judges and prosecutors in charge of transitional justice processes; and cases of criminalization against individuals that have denounced corruption.

As a result of this undue persecution, 24 justice operators have been forced into exile, eight former prosecutors from the FECI are facing criminal proceedings in Guatemala and two prosecutors are in prison. An antejuicio proceeding has been filed against Judge Miguel Ángel Gálvez of High Risk Court B. Judge Galvez has presided over important proceedings in cases of corruption, organized crime, and transitional justice.

### a. Criminalization and improper use of criminal law

The way criminal law is being misused to retaliate against justice officials and operators because of their rulings and prosecutorial work is extremely concerning. The delegation identified the

<sup>19</sup>United States Department of State, Estados Unidos anuncia medidas contra siete funcionarios centroamericanos por socavar la democracia y obstaculizar investigaciones de actos de corrupción, 20 September 2021, available in Spanish at: <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/>.

<sup>20</sup>United States Department of State, Section 353 Corrupt and Undemocratic Actors Report, available at: <https://www.state.gov/reports/section-353-corrupt-and-undemocratic-actors-report-2022/>.

<sup>21</sup>Prensa Libre, CC otorga amparo al MP y ordena al Congreso a elegir magistrados de CSJ y Apelaciones idóneos, 6 May 2020, available in Spanish at: <https://www.prensalibre.com/guatemala/justicia/cc-otorga-amparo-al-mp-y-ordena-al-congreso-a-elegir-magistrados-de-csj-y-apelaciones/>.

<sup>22</sup>República.gt, Inicia cuarto año sin renovar Cortes de Justicia en Guatemala, 11 October 2022, available in Spanish at: <https://republica.gt/seguridad-y-justicia/inicia-cuarto-ano-sin-renovar-cortes-de-justicia-en-guatemala-2022101118570>.

following patterns of criminalization:

- **Filing of false and malicious complaints.** The legal complaints are usually based on a disagreement with the individual's rulings or actions during criminal proceedings. Accusations are filed against a judge or prosecutor, even though the rulings and actions in question have been confirmed by the appeals court of the Supreme Court. Judges are criminalized for their judicial rulings, and prosecutors for their actions as prosecutors. The complaints are filed by individuals involved in corruptions cases and/or transitional justice cases, and the Foundation against Terrorism, even though the latter has no direct participation in the complaint process<sup>23</sup>.
- **Improper use of *antejuicio* proceedings.** We received information about multiple *antejuicio* proceedings that have been filed against judges in the High Risk Courts, in particular Miguel Ángel Gálvez, Pablo Xitumul, Yassmin Barrios, and Erika Aifán. We are concerned that the Supreme Court has accepted these *antejuicio* requests without analyzing the content of the complaint or the legitimacy of the complainants. The court's lack of judgement and protection measures leaves judges in an extremely vulnerable position.
- **Discretionary appointments of investigators in charge of *antejuicio*.** It is concerning that the Supreme

Court lacks a public and transparent mechanism for selecting and appointing the judges/magistrates who will be in charge of *antejuicio* investigations. The selection process is supposedly an automated lottery among judges in the appeals courts, but it is worth noting that in the cases of judges Erika Aifán, Pablo Xitumul and Miguel Ángel Gálvez, the Supreme Court has appointed magistrates from the Second Court of Appeals. Magistrate Roaldo Isaías Chávez Pérez, for example, was named as an investigator in the *antejuicio* proceedings against Erika Aifán for the "Parallel Commissions 2020" case,<sup>24</sup> even though he had a conflict of interest because he was secretary of the board of directors of the Institute of Judges of the Judiciary Appeals Court (IMCAOJ), the same entity that filed the criminal complaint against Aifán.<sup>25</sup>

In another example, Magistrate Roaldo Isaías Chávez Pérez's brother, Luis Adolfo Chávez Pérez, was a congressional representative for the now defunct Renewed Democratic Liberty party (Líder) and he was sentenced to three years in prison for influence peddling, a case that was investigated by the CICIG.<sup>26</sup> Yet the magistrate was appointed as an investigator in *antejuicio* proceedings against Judge Miguel Ángel Gálvez<sup>27</sup>.

<sup>23</sup>The following section describes the role of the Foundation against Terrorism in more detail.

<sup>24</sup>Prensa Libre, Designan a nuevo juez pesquisador para conocer *antejuicio* presentado contra jueza Ericka Aifán, 9 October 2021, available in Spanish at: <https://www.prensalibre.com/guatemala/justicia/designan-a-nuevo-juez-pesquisador-para-conocer-antejuicio-presentado-contra-jueza-ericka-aifan-breaking/>

<sup>25</sup>The 2020 complaint against former judge Erika Aifán was filed by Wilber Castellanos, president of the Institute of Judges of the Judiciary Appeals Court (IMCAOJ), and judge Roaldo Isaías Chávez was the secretary of the Institute from 2021-2022. See: La Hora, Pesquisador de juez Gálvez será el mismo que conoció *antejuicio* de Aifán, 6 July 2022, available in Spanish at: <https://lahora.gt/nacionales/oscar-canel/2022/07/06/pesquisador-de-juez-galvez-sera-el-mismo-que-conocio-antejuicio-de-aifan/>.

<sup>26</sup>CICIG, Comunicado 038: Condenan a exdiputado Luis Chávez, 22 May 2017, available in Spanish at: <https://www.cicig.org/comunicados-2017-c/condenan-a-exdiputado-luis-chavez/>.

<sup>27</sup>Prensa Comunitaria, Juez Gálvez recusa a magistrado Roaldo Chávez por vínculos con la Fundación contra el Terrorismo, 27 September 2022, available in Spanish at: <https://www.prensacomunitaria.org/2022/09/juez-galvez-recusa-a-magistrado-roaldo-chavez-por-vinculos-con-la-fundacion-contra-el-terrorismo/>.



- **Arbitrary detention and abuse of pre-trial detention.** Former prosecutor of the FECl of Quetzaltenango, Virginia Laparra, has been imprisoned in deplorable conditions for more than eight months. Our delegation considered aspects of the process to be arbitrary and observed the abuse of pretrial detention. Former prosecutor Laparra is being persecuted for having filed administrative complaints against a criminal court judge in Quetzaltenango, Lesther Castellanos.<sup>28</sup>

We also received information about expropriation requests that have been filed against judges and prosecutors. The requests seek to deprive them of their property and personal savings earned through many years of work.

These acts of criminalization are not just isolated events but appear to be part of a well-coordinated strategy carried out by certain public officials and representatives of different sectors seeking to obstruct justice and act with complete impunity.<sup>29</sup> This criminalization leads to the institutional weakening of the justice system. The intent is to maintain a justice system that is docile and controlled by political power. The strategy of criminalization also seeks to ensure prosecutors are obedient and scared. That is to say, the cases of criminalization against judges in the High-Risk Courts and former prosecutors of the FECl seek to intimidate all other judges and prosecutors.

According to annual reports, attacks on human rights defenders and justice operators increased during the government of Otto

Pérez Molina (2012-2015) and decreased considerably in 2015 and 2016 after his resignation. In 2017, however, the number of attacks increased once again when former President Jimmy Morales began to promote the expulsion of the CICIG.<sup>30</sup> Since then, the number of attacks against public officials and justice operators has remained steady.

According to representatives of the Unit for the Protection of Human Rights Defenders (UDEFEQUA), from January to July of this year alone, there were 589 reported attacks against human rights defenders, of which 272 were attacks against judges, prosecutors, and others justice operators.

The delegation are particularly concerned that colleagues from the Guatemalan Association of Judges for Integrity (AGJI) face constant attacks and smear campaigns because of the work they do to defend judicial independence. In March of this year, former Judge Erika Aifán resigned from the High-Risk Court because of false accusations, threats, and undue pressure against her, and because she considered the measures taken to protect her life and her integrity insufficient. Facing imminent criminalization, she did not believe it would be possible to defend herself with a guarantee of due process. The former judge also served as president of the AGJI. Since resigning, she has lived in exile in the United States.

It is also very important to highlight the cases of High Risk Court Judge Miguel Ángel Gálvez and Judge Iris Yassmin Barrios Aguilar, currently presiding over the High Risk Sentencing Court. Because of the cases they have heard in both the investigative and trial

<sup>28</sup>La Lista, La principal fiscal anticorrupción de Guatemala es encarcelada, mientras la élite se crece, 1 September 2022, available in Spanish at: <https://la-lista.com/the-guardian/2022/09/01/la-principal-fiscal-anticorrupcion-de-guatemala-es-encarcelada-mientras-la-elite-se-crece>.

<sup>29</sup>In 2008, as the CICIG started operating, an estimated 97% of reported crimes in Guatemala remained in impunity. From 2011-2017, that percentage had already gone down to 92%-94%. See: CICIG, Sistema Integrado de Justicia, Presentation 2019, slide 5, available in Spanish at: [https://www.cicig.org/wp-content/uploads/2019/06/Presentacion\\_GIZ\\_SIJ\\_2019.pdf](https://www.cicig.org/wp-content/uploads/2019/06/Presentacion_GIZ_SIJ_2019.pdf).

<sup>30</sup>El País, La crisis en Guatemala se debe a haber arrinconado a las mafias, 5 September 2018, available in Spanish at: [https://elpais.com/internacional/2018/09/05/actualidad/1536173002\\_162721.html](https://elpais.com/internacional/2018/09/05/actualidad/1536173002_162721.html).

"The recently announced president of the AGJI, @aifan\_erika flees preemptively, facing an arrest warrant against her. It reminds me of a song that more or less goes, "of the 9 that were left, one fled, as long as they give me 8." @carlos\_ruano



11:40 · 21 mar. 22 · Twitter for iPhone

(Links to article about Judge Erika Aifán assuming the presidency of the AGJI with an circle around her in the picture.)

phases, and because of the high profile of those involved in these cases, the two judges have become targets of numerous attacks, threats, and campaigns to discredit them. Both are currently at imminent risk of criminalization. The judges' independent and comprehensive work has positioned them as symbols against impunity and many criminals are uncomfortable with their continued presence in the judiciary.

Judge Carlos Giovanni Ruano is in a similar situation. He is under threat because he filed a complaint against Supreme Court Magistrate Blanca Aida Stalling in 2017. According to the information we received, the complaint stated that the magistrate had summoned Judge Ruano to her office to present information in the case against her son Otto Fernando Molina Stalling (implicated in the IGSS-PISA case<sup>31</sup>) and to advocate for him, since Judge Ruano was scheduled to preside over the hearings. Judge Ruano took the precaution of recording the conversation with Judge Stalling in order to provide proof that he was summoned to the meeting and that he did not compromise his work or accept her proposal.<sup>32</sup> As a result of the complaint filed by Judge Ruano, Magistrate Stalling was prosecuted for influence peddling.

On June 29, 2022, the case against Magistrate Stalling was dismissed. Since then, the harassing messages to Judge Ruano have intensified. Additionally, Blanca Stalling requested and obtained her reinstatement as a magistrate.<sup>33</sup> This is an objective sign of danger given the potential subordination of the judiciary to the Supreme Court.

According to the cases presented to the delegation, in addition the High Risk Court judges, other groups have been or are being attacked for carrying out their work, including:

- Independent journalists and critics of government actions
- Community leaders, activists, and human rights defenders
- Defense lawyers, especially Indigenous lawyers who also face other forms of discrimination because of their ethnicity and/or because they are women

<sup>31</sup>In this case, the investigation centered on the Guatemalan Social Security Institute (IGSS) contracts with the company Droguería Pisa de Guatemala to provide kidney dialysis for high-risk patients, despite the fact that it had been declared in court that the company lacked the needed infrastructure. Authorities investigated the possible payment of a bribe in exchange for the contract. According to estimates, as a result of the service provided by the company, more than 50 people died and another 150 experienced worsening illness.

<sup>32</sup>La Hora, AUDIO: el día que Stalling fue a pedirle al juez por la medida de su hijo, 13 July 2022, available in Spanish at: <https://lahora.gt/nacionales/oscar-canel/2022/07/13/audio-el-dia-que-stalling-fue-a-pedirle-al-juez-por-la-medida-de-su-hijo/>.

<sup>33</sup>La Hora, OJ reinstalará a Stalling; recibirá salarios dejados de percibir, 15 September 2022, available in Spanish at: <https://lahora.gt/nacionales/engelberth-blanco/2022/09/15/oj-reinstalara-a-stalling-recibira-salarios-dejados-de-percibir/>.

Dr Blanca Stalling, as a person of the law, you cannot allow Carlos Ruano to remain in impunity after the hell you and your family went through thanks to him. You have the moral obligation, in addition to the legal obligation, to press charges against this servile judge.



This judge who has been bought off by foreign interests MUST face justice

- Prosecutors and former prosecutors who are or were in charge cases involving significant corruption or serious human rights violations, including two former attorneys general, Thelma Aldana and Claudia Paz y Paz.
- Former magistrates of the Constitutional Court
- Human Rights Ombudsman Jordán Rodas Andrade (who was still in office at the time of our visit).

In the next section we describe other forms of attack and harassment in more detail.

## b. Harassment and threats against public officials and justice operators

In addition to criminalization, other forms of attack are also used to intimidate, threaten, and coerce judges and prosecutors. Among these other forms of attack, we identified the following:

- **Death threats, threats of assault, or threats of criminal prosecution.** The threats usually directly target the judges or justice operators, but sometimes extend to family or friends as well. The threats are disseminated in the media or as part of smear campaigns.
- **Surveillance and monitoring** by armed individuals and/or vehicles with tinted windows and no identifying information.
- **Leaks involving confidential information** from investigations or proceedings. The information is published through anonymous social media accounts or on the internet.
- **Assassinations.** In 2017, a judge was assassinated in the eastern state of Izabal and another judge was assassinated in the northern state of Peten in 2020. Judge Iris Yassmin Barrios survived an attack in 2001, when a bomb was launched into her house. In recent years, dozens of journalists, and human rights defenders<sup>34</sup> have been murdered.

<sup>34</sup>According to a report by UDEFEGUA, "The situation of people, organizations and communities defending human rights in Guatemala, 2021", 11 human rights defenders (8 men and 3 women) were murdered in 2021. According to the 2020 report "Common Country Analysis, Key Statistics (United Nations), 14 human rights defenders were murdered between January and September in 2020.

c. Smear campaigns and attacks on social media

During our visit, we were able to verify systematic harassment on social media that involves spreading offensive and threatening messages with the intent of sowing fear and emotional upheaval. The published messages seek to damage the dignity, honor, and professional reputation of justice officials and operators. Defamation campaigns are spread on Twitter, Facebook and other social networks controlled by groups that seek impunity. The following messages illustrate the level of aggression on social media.

The messages are sometimes published on personal accounts, but there are also companies, or “netcenters” as they are called in Guatemala, dedicated to posting and disseminating the messages.

The most concerning part, however, is that the authorities do not investigate the individuals behind these accounts that are publishing confidential information on criminal case proceedings and the actions of the Public Prosecutor’s Office, and/or posting public threats against judges and prosecutors.

Ericka [sic] Aifán has fallen, unlike the honorable Judge Miguel Ángel Gálvez. Stop playing the victim, hommie, it didn’t work for Aifán. You will be subjected to the rule of law.



With this card, I almost have Bingo.





### 3. ACTORS DESTABILIZING THE JUSTICE SYSTEM

During our visit, we also received information about the actors behind the criminalization of and attacks on judges and justice operators. There are actors both within and outside of the state apparatus that seem to coordinate actions to obstruct justice and attack administrators and justice operators that have worked on cases involving corruption and transitional justice.

#### a. Internal actors within the justice system

Attorney General María Consuelo Porras was often mentioned in our meetings as one of the actors in the destabilization of the justice system. Several interviewees noted that since she took office in 2018, the fight against corruption and impunity has been weakened in the Public Prosecutor's Office. Attorney General Consuelo Porras fired the head of the FECl, Juan Francisco Sandoval, and has fired more than 20 other prosecutors who were in charge of key offices, such as the Office of the Special Prosecutor for Human Rights, which is in charge of investigating transitional justice cases.<sup>35</sup>

There is a widespread perception that the attorney general has embarked on a policy of criminalization and retaliation against former FECl prosecutors, former CICIG officials and independent judges. Examples of this include the arrest warrants against the former head of the FECl, Juan Francisco Sandoval, who is living in exile in the United States; the criminal proceedings against eight former FECl prosecutors; and the arrests of former prosecutors Virginia Laparra and Samari Gómez. In addition, the attorney general requested *antejuicios* against judges Erika Aifán and Pablo Xitumul. The current attorney general was appointed in 2018 by former President Jimmy Morales and re-appointed in 2022 by President Alejandro Giammattei for a second term.

The Supreme Court was also mentioned as an actor in the destabilization of the justice system. According to reports we received, the current Supreme Court was elected for the 2014-2019 term in a problematic process, yet the term has been extended for more than three years because Congress has repeatedly refused to elect magistrates to the Supreme Court and the Court of Appeals for the 2019-2024 term. Congress is reluctant to comply with the Constitutional Court resolution ordering Congress to elect candidates that are not linked to the “Parallel Commissions 2020” case and ordering Congress to hold a voice vote.

The term extension for the current Supreme Court and Court of Appeals has weakened the justice system and undermined the credibility of the judicial branch. According to the information we received, the current magistrates and judges have rejected almost all the requests for *antejuicio* proceedings against congressional representatives and public officials accused of corruption, while they have accepted the requests for *antejuicio* proceedings against independent judges, like the High-Risk Court judges.

<sup>35</sup>Human Rights Watch, Guatemala: Fiscal general despidió arbitrariamente a fiscales, 14 July 2022, available in Spanish at: <https://www.hrw.org/es/news/2022/07/14/guatemala-fiscal-general-despidio-arbitrariamente-fiscales>.

La Hora, Siguen los despidos en el MP: Porras destituye a 3 fiscales de trayectoria, 30 June 2022, available in Spanish at: <https://lahora.gt/nacionales/oscar-canel/2022/06/30/siguen-los-despidos-en-el-mp-porras-destituye-a-3-fiscales-de-trayectoria/>.

The Supreme Court has even heard and rejected *antejuicio* requests against their own members. In June 2021, the FECI filed a request for an *antejuicio* proceeding against eight magistrates on the Supreme Court, a magistrate on the Constitutional Court, a magistrate on the Supreme Electoral Tribunal, and 13 magistrates from the Court of Appeals for having negotiated candidacies for the high courts in the “Parallel Commissions 2020” case. Rather than recusing themselves from the hearings, the Supreme Court rejected the *antejuicio* requests in *limine*.<sup>36</sup>

We recently learned that Supreme Court Magistrate Blanca Stalling was reinstated after the criminal case against her for influence peddling was closed. This decision has been highly criticized by many sectors of society for numerous reasons, including the fact that the evidence against her exists, that the period of the current court ended in 2019, and that she will receive compensation totaling more than five million quetzals (about US\$641,000).

## b. External actors

External actors whose actions are contributing to the weakening of the justice system include the Association of Military Veterans of Guatemala (AVEMILGUA), the Pro-Patria League, Immortal Guatemala, and the Foundation against Terrorism. The latter has filed numerous complaints against prosecutors, judges, magistrates, and other justice operators, and repeatedly uses social

media to threaten and intimidate justice officials.

The Foundation against Terrorism is mostly made up of former members of the military and their relatives.<sup>37</sup> Several of their members have been sanctioned by the United States government, precisely for obstructing justice.<sup>38</sup> In recent years, the Foundation has gained a lot of influence and has contributed significantly to the destabilization of the judiciary. The Foundation not only seeks to obstruct justice, but also perversely uses criminal law to criminalize prosecutors and independent judges.

Lastly, we also received information about the role of business elites involved in corruption cases that have a vested interest in criminalizing justice operators for revenge. For example, the CICIG and the FECI discovered how a group of businessmen contributed more than 1 million dollars to the accounts of the FCN-Nación political party that led Jimmy Morales to the presidency. Likewise, the CICIG and the FECI revealed the “Construction and Corruption” case that sought accountability for the overvaluation of public construction projects and bribes paid by construction companies to public officials.<sup>39</sup> Several of these businessmen have a vested interest in weakening and controlling the justice system to maintain their privileges<sup>40</sup>.

<sup>36</sup>No-Ficción, Comisiones paralelas: la autoprotección de una CSJ corrupta, 17 November 2021, available in Spanish at: <https://www.no-ficcion.com/project/comisiones-paralelas-csj-corrupta>.

<sup>37</sup>In the document of incorporation (escritura constitutiva), dated July 5, 2013, the following people are named as members of the Foundation against Terrorism: Ricardo Rafael Méndez-Ruiz Valdés; Oscar German Platero Trabanino; Mario Efraín Avalos Mejía; Carlos Leopoldo Alvarado Palomo; Raúl Amílcar Falla Ovalle; Edgar Danilo Ruiz Morales; and Luis Estrada Valenzuela. See: Guatemala: El haz y el envés de la impunidad y el miedo. Las estrategias militar-empresarial-gubernamental contra la Justicia y la Resistencia, Guatemala, 2014, page 97, available in Spanish at: [www.albedrio.org/htm/documentos/GuatemalaImpunidadMiedo.pdf](http://www.albedrio.org/htm/documentos/GuatemalaImpunidadMiedo.pdf).

<sup>38</sup>United States Department of State, Section 353 Corrupt and Undemocratic Actors Report, available at: <https://www.state.gov/reports/section-353-corrupt-and-undemocratic-actors-report/>.

<sup>39</sup>No-Ficción, El punto final de las élites contra la CICIG, 25 February 2021, available in Spanish at: <https://www.no-ficcion.com/project/punto-final-elites-cicig>.

<sup>40</sup>See numerous cases of illegal campaign financing at: <https://www.cicig.org/casos/>.



## 4. GOVERNMENT RESPONSE

### a. Failure to comply with international protection measures

It is concerning that the State of Guatemala does not fully comply with the precautionary measures granted by the IACHR in favor of judges and prosecutors who are at risk. These measures not only seek to protect the personal integrity of justice officials and their families, but also include actions to ensure respect for their judicial independence and to prevent them from being persecuted because of their rulings or the decisions they make in the exercise of their role.

It is also concerning that the State does not comply with the recommendations of the international human rights organizations in relation to judicial independence and the autonomy of the Public Prosecutor's Office. Reports by the United Nations Human Rights Office (OHCHR) on the human rights situation in Guatemala have included important recommendations on judicial independence, the fight against impunity, the election of magistrates, and transitional justice.

The State, however, usually limited itself to sending general information to international human rights organisms through official channels, without appropriately implementing the recommendations and without guaranteeing the independence of the judiciary.

### b. Lack of action by the Public Prosecutor's Office

The lack of action by the Public Prosecutor's Office in investigating the threats and attacks

against judges and justice operators is also concerning. In the meeting we had with the Office of the Special Prosecutor for Crimes against Justice Operators, we asked about the status of investigations related to the threats and attacks against Judge Miguel Ángel Gálvez, one of the best-known cases in the country. They told us that there was no ongoing investigation, that they did not have knowledge of the crimes, and that they could not act because the judge had not filed a formal complaint about the threats.

It is concerning that the Public Prosecutor's Office does not act *ex officio* in these cases, especially since the threats clearly seek to obstruct justice and attack judicial independence. Rather than acting *ex officio*, the investigators wait for judges to denounce the crimes, despite the fact that the threats and attacks are public knowledge because they are published in the press and posted on social media.

### c. Loss of guarantees to ensure the independence of the judiciary

During our visit we were able to verify that there are insufficient guarantees for the functioning of the judiciary in an impartial and independent manner because the State does not guarantee protection for judges and justice operators who are facing attacks and undue pressure from outside individuals and groups. The State institutions are not fully complying with their responsibility to protect the independence of judges. On the contrary, we see that, in some cases, these institutions have left judges in extremely vulnerable situations.

## 5. THE EFFECTS ON VICTIMS AND THE RULE OF LAW

The acts of criminalization and systematic attacks posted on social media are causing deep harm to both those who are directly affected and their families. They often have to defend themselves against multiple malicious complaints and debunk the lies spread on social media in order to defend their honor and their work.

According to the information we received, about 24 former prosecutors and judges have been forced into exile due to criminalization and systematic attacks. This includes former Constitutional Court judges, former Court of Appeals Judge Claudia Escobar, former High Risk Court Judge Erika Aifán, former Attorneys General Thelma Aldana and Claudia Paz y Paz, former FECI prosecutor Juan Francisco Sandoval, six other FECI prosecutors, three chief prosecutors, among others.

Most of the individuals living in exile are in the United States. In many cases, their living situation is not the most suitable due to language barriers, work limitations, and the high cost of living. Furthermore, they have been separated from their families.

According to the people we met with who have been directly affected, however, the biggest concern is that there is no guarantee in Guatemala to the right to defense and to an impartial and fair proceeding. Some of their cases have even been put on hold, limiting their right to defense.

The abuses committed in certain cases are

concerning, including the cases of former FECI prosecutor Virginia Laparra, former FECI prosecutor Siomara Sosa, and former CICIG lawyer Leily Santizo. Virginia Laparra, for example, has been in pre-trial detention for more than eight months. Siomara Sosa appeared before a judge on numerous occasions to give herself up to the authorities, and yet she was arrested, and raids were carried out at her workplace and her mother's house (an 80-year-old woman without any knowledge of the case). In both cases, the hearings have been repeatedly delayed, prolonging their time in prison.

It is worth noting that Judge Geisler Smaile Pérez Domínguez, of the Third Criminal Court, is in charge of both cases. The FECI filed an *antejuicio* against Judge Pérez Domínguez in relation to the "Parallel Commissions" case and he was also included in the United States government's Engel List for undermining justice and democracy.<sup>41</sup> The same judge presided over hearings in cases against assistant prosecutors Paola Mishelle Escobar, Alis Morán and Willy López Racanac.

Our delegation also learned about the situation of former prosecutors in pre-trial detention in the Mariscal Zavala military prison. Five former prosecutors and CICIG officials were held at the same time in an isolated room in deplorable conditions, while former public officials and businessmen accused of corruption detained in the same prison enjoy certain privileges.<sup>42</sup>

<sup>41</sup>United States Department of State, Section 353 Corrupt and Undemocratic Actors Report, available at: <https://www.state.gov/reports/section-353-corrupt-and-undemocratic-actors-report-2022/>.

<sup>42</sup>Agencia Ocote, No ver la luz, El caso de Virginia Laparra, 31 May 2022, available in Spanish at: <https://www.agenciaocote.com/blog/2022/05/31/no-ver-la-luz-el-caso-de-virginia-laparra/>.

The effects of criminalization are extensive, also generating anxiety and affecting the families of those who have been criminalized. Individuals who have been criminalized are aware that their work, their freedom, and their lives are at stake. Beyond the personal impact, these individuals are concerned about the serious damage caused to the justice system and democracy in the country.

## CONCLUSIONS

During our visit, our delegation was able to verify the systematic attacks against judges, prosecutors, and former CICIG officials that worked on significant corruption cases and cases involving human rights violations that occurred during the internal armed conflict. Criminal law is being misused to criminalize judges and justice operators in retaliation for the work they carried out in an independent manner.

We are particularly concerned about the attacks against Judge Yassmin Barrios, Judge Miguel Ángel Gálvez, and Judge Carlos Ruano, as well as the ongoing attacks against members of the Guatemalan Association of Judges for Integrity (AGJI) defending judicial independence.

The inaction of the Public Prosecutor's Office is worth noting, as the institution has failed to investigate the actors that are destabilizing the justice system, using attacks against judges and prosecutors, and even making public threats against judges and justice operators.

Our delegation is concerned about the State's consistent failure to comply with international regulations and standards regarding reinforced guarantees to ensure judicial independence and protection from removal, as well as the lack of effective implementation of precautionary measures ordered by the Inter-American Human Rights System in favor of judges and prosecutors. Several justice operators have had to leave the country and seek refuge abroad, due to criminalization and the lack of protection provided by the State.

The members of the delegation consider that there are no minimum guarantees for the exercise of judicial independence in Guatemala right now. This lack of guarantees could generate more impunity and instability in the country. It is important to remember that the judiciary has the responsibility to guarantee impartial justice and limit the excesses of political or *de facto* powers.

## RECOMENDACIONES

To the people of Guatemala: Build awareness about the serious issues facing the justice system and provide support for impartial and independent judges.

To the Supreme Court: Comply with the duty to defend the external and internal independence of the judicial system, and provide institutional support to judges, guaranteeing their time in the role and adopting measures so that they can provide justice free from undue pressure, threats, and attacks.

To Guatemalan judges: Continue to strengthen judicial associations as a tool for the defense and protection of judicial independence.

To the Public Prosecutor's Office: Stop the persecution and criminalization of judges and prosecutors and act ex officio against those responsible for the attacks against justice officials and operators. The Public Prosecutor's Office must investigate the participation of members of the Foundation against Terrorism and other similar organizations in attacks against administrators and justice operators.

To Guatemalan Congress: Act as soon as possible to name the next judges to the Supreme Court and the Court of Appeals. The process has already been delayed for more than three years, causing serious damage to the justice system.

We urge the three branches of government to guarantee the independence of the judiciary, and to effectively comply with protection measures ordered by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights in favor of judges and other justice operators who are at risk. These measures guarantee their personal integrity and the objective conditions needed to provide justice free from undue pressure and spurious criminalization proceedings.

Lastly, we call on international human rights organizations and the international community to ensure that Guatemala complies with international obligations, democratic principles, and respect for judicial independence.

# **ATTACKS ON JUDICIAL INDEPENDENCE IN GUATEMALA**

