

Constitutional Court of the Republic of Guatemala
Guatemala City, November 30, 2023.
Regarding the Amparo 6175-2023

To the Honorable Justices of the Constitutional Court of the Republic of Guatemala:

We, the undersigned, are honored to share this *Amicus Curiae* brief with the Constitutional Court of the Republic of Guatemala. This brief is submitted on behalf of Stephen McFarland, a career U.S. diplomat, and U.S. Ambassador to Guatemala from 2008-2011, by the Rule of Law Impact Lab at Stanford Law School. It is submitted with the intention of respectfully sharing the reasons why we believe that the acts challenged in Amparo 6175-2023 violate international legal norms regarding: (A) the Guatemalan State's obligations related to the democratic principle, the right to vote and not to impose restrictions or exercise undue interference with the right to participate in the conduct of public affairs; (B) the Guatemalan State's obligations to guarantee the independence of the electoral bodies in charge of making decisions on electoral complaints; and (C) the Guatemalan State's obligation to guarantee a fair, autonomous, independent and impartial administration of justice.

We, the undersigned, as individuals and entities committed to the preservation of the Rule of Law, are honored to lend our support and contribution to the laudable work of the Constitutional Court of the Republic of Guatemala in the present case.

Respectfully,

Stephen McFarland
former U.S. Ambassador to Guatemala

Amrit Singh
Executive Director, Stanford Law
School's Rule of Law Impact Lab

Before the
Constitutional Court of the Republic of Guatemala

In the
Amparo 6175-2023

José Javier Gálvez Hernández, Sara Larios Hernández, Gregorio José Saavedra Zepeda, Edgar Gustavo Roberto Lima Muñoz, Ana Raquel Aquino Smith, Andrés Mateo Echeverría Román, Hugo Leonel Rivas Gálvez, Mariana Reyes Solórzano, Andrea María Reyes López, and Javier Urizar Montes de Oca

Vs.

President of the Republic of Guatemala, Minister of Foreign Affairs, Minister of the Interior, Director, General of the National Civil Police, Congress of the Republic of Guatemala, Board of Directors of the Congress of the Republic of Guatemala, Supreme Electoral Tribunal, Attorney General of the Republic, María Consuelo Porras Argueta, Section Prosecutor in charge of the Special Prosecutor's Office against Impunity -FECI- of the Public Prosecutor's Office, José Rafael Curruchiche Cucul, Prosecutors Leonor Eufemia Morales Lazo and Pedro Otto Hernández González and Assistant Prosecutor, Allan Javier Tánchez Castañeda, all from the Special Prosecutor's Office against Impunity - FECI- of the Public Prosecutor's Office, Regional Prosecutor Region Four Northeast Zacapa of the Public Prosecutor's Office, Cinthia Edelmira Monterroso Gómez, and Judge "A" of the Seventh Pluripersonal Court of First Criminal Instance, Narcoactivity and Crimes against the Environment of the Department of Guatemala, Fredy Raúl Orellana Letona.

Presents
Amicus Curiae Brief

On behalf of Stephen McFarland, a career U.S. diplomat and U.S. Ambassador to Guatemala from 2008 to 2011, for the Rule of Law Impact Lab at Stanford Law School.

I.	DECLARATION OF INTEREST	5
II.	FACTS AND PROCEDURAL HISTORY	6
II.1	Context under which the 2023 general elections took place	6
II.2.1	Registration of Movimiento Semilla	6
II.2.2	Expulsion of the International Commission Against Impunity in Guatemala	6
II.2.3	2021 Report of the Inter-American Commission on Human Rights	7
II.2	First Round of Elections.....	7
II.3	Complaints against the victory of Semilla: Provisional Amparo 3731-2023	8
II.4	Criminal Investigation Against Semilla and others	9
II.5	Semilla's response to the various attacks: Amparo Provisional 3985-2023	10
II.6	Second Round of Elections	12
II.7	Precautionary Measures from the Inter-American Commission on Human Rights	12
II.8	Certification of the Second Round of Elections and New Semilla Suspension	13
II.9	Suspension of the Semilla Bench.....	14
II.10	Third Raid on the Premises of the Supreme Electoral Tribunal and Question of Jurisdiction 5602-2023	14
II.11	New FECl Investigations and Amparo 6029-2023	15
II.12	Resolution to Competency Question 5602-2023	16
II.13	Demands for respect of citizens' right to vote: Amparo 6175-2023	17
II.14	Acts of Repression Against Peaceful Protests	17
II.15	Resolution of the Permanent Council of the OAS	18
II.16	Case of the Takeover of the Universidad de San Carlos de Guatemala (USAC): Political Spoils	18
II.17	Irregular Supreme Court Appointments.....	19
III.	INTERNATIONAL NORMS AND STANDARDS	20
a.	Binding nature of international norms in Guatemala.....	20
b.	Guatemala's obligations related to the principle of democracy	20
c.	Guatemalan obligations related to the right to vote and to participate in the conduct of public affairs	21
c.1.	Guatemala's obligation to guarantee respect for the results of authentic elections, ensuring effective access to power	22
c.2.	Guatemala's obligations to guarantee access, under general conditions of equality, to public functions.	23

Unofficial Translation

c.3. Guatemala's obligations not to impose undue restrictions or interference to participate in the conduct of public affairs.....	24
d. Guatemala's obligation to guarantee the independence of the electoral bodies responsible for making decisions on electoral complaints.....	25
e. Guatemala's obligation to ensure the equitable, autonomous, independent and impartial administration of justice.....	27
IV. LEGAL ARGUMENTS	30
a. The systematized and focused criminal prosecution exercised by the MP and endorsed by the Criminal Judge against Semilla, its members and candidates violates Guatemala's obligations to guarantee the democratic principle, the right to vote and not to impose restrictions or exercise undue interference with the right to participate in the conduct of public affairs.....	30
b. The invasion of competences and constant attack on the TSE by the Attorney General and the Criminal Judge violate Guatemala's obligations to guarantee the independence of the electoral bodies in charge of making decisions on electoral complaints.	36
c. The systematized and focused criminal prosecution exercised by the Attorney General of Guatemala and endorsed by the Criminal Judge, against the Semilla political party, its members and candidates violates Guatemala's obligations to guarantee an equitable, autonomous, independent and impartial administration of justice.....	37
V. CONCLUSIONS.....	37

AMICUS CURIAE TO BE PRESENTED IN THE RECORD 6175-2023, in the amparo proceeding filed by José Javier Gálvez Hernández, Sara Larios Hernández, Gregorio José Saavedra Zepeda, Edgar Gustavo Roberto Lima Muñoz, Ana Raquel Aquino Smith, Andrés Mateo Echeverría Román, Hugo Leonel Rivas Gálvez, Mariana Reyes Solórzano, Andrea María Reyes López, and Javier Urizar Montes de Oca, class representative, against: (i) President of the Republic of Guatemala; (ii) Minister of Foreign Affairs; (iii) Minister of the Interior; (iv) Director General of the National Civil Police; (v) Congress of the Republic of Guatemala; (vi) Board of Directors of the Congress of the Republic of Guatemala, (vii) Supreme Electoral Tribunal; (viii) Attorney General of the Republic Head of the Public Ministry, María Consuelo Porrás Argueta; (ix) Section Prosecutor in charge of the Special Prosecution Office against Impunity -FECI- of the Public Ministry, José Rafael Curruchiche Cucul; x) Prosecutors Leonor Eufemia Morales Lazo and Pedro Otto Hernández González and Assistant Prosecutor, Allan Javier Tánchez Castañeda, all from the Special Prosecutor's Office against Impunity -FECI- of the Public Prosecutor's Office; xi) Regional Prosecutor Region Four Northeast Zacapa of the Public Prosecutor's Office, Cinthia Edelmira Monterroso Gómez, and xii) Judge "A" of the Seventh Pluripersonal Court of First Criminal Instance, Drug Trafficking and Crimes against the Environment of the Department of Guatemala, Fredy Raúl Orellana Letona.

Magistrates of the Constitutional Court.

1. This *amicus curiae* brief is filed in the amparo action brought by Guatemalan citizens, requesting the intervention of the Constitutional Court to protect their right to democracy and the rule of law. As such, it addresses profoundly relevant questions about the role of the judiciary in safeguarding the fundamental rights to vote and to be elected, as well as preserving constitutional order.
2. The *amicus curiae*, Stephen McFarland is a recognized and respected career U.S. diplomat who served as U.S. Ambassador to Guatemala from 2008 to 2011. His professional qualifications, which include more than thirty years of diplomatic service in Latin America, make him uniquely qualified to assess the evolution of democracy and the rule of law in Guatemala from a national, regional, and international perspective.
3. This *amicus curiae* brief, submitted on behalf of Ambassador McFarland, respectfully shares with the Court the international standards relevant to assessing the systematic and targeted attacks against the Semilla party, its members, candidates, and voters, as well as the instrumentalization of criminal investigations and prosecutions to undermine independent electoral bodies and serve political ends. The brief argues that, for the reasons described in detail below, these acts violate international legal standards relating to: **(A) the Guatemalan State's obligations related to the democratic principle, the right to vote and not to impose restrictions or exercise undue interference with the right to participate in the conduct of public affairs; (B) the Guatemalan State's obligations to guarantee the independence of the electoral bodies responsible for making decisions on electoral complaints; and (C) the**

Guatemalan State's obligation to ensure a fair, autonomous, independent and impartial administration of justice.

I. DECLARATION OF INTEREST

4. Ambassador McFarland is a retired U.S. diplomat with extensive experience in Guatemala, Central America, and Latin America. He served as U.S. Ambassador to Guatemala from 2008 to 2011, appointed by President George W. Bush as his personal representative, and ratified by President Barack Obama. As ambassador, he strengthened cooperation between the United States and Guatemala in areas of mutual interest, such as the rule of law and the fight against corruption and transnational crime, economic growth, and respect for democracy and human rights. He also expanded the embassy's communication with all sectors of Guatemala, from the right to the left, with people of all ethnicities and all classes, within a framework of mutual respect, dignity, and shared interests. He led U.S. cooperation with the Executive, the Judiciary, Congress, and the Public Prosecutor, among other state institutions, and with the private sector, civil society, and the ancestral authorities of the Indigenous peoples.
5. Ambassador McFarland took careful note of the historical events of 1954, when one of his predecessors, Ambassador John Peurifoy, was a protagonist in the *coup d'état* against the democratically elected government of President Jacobo Arbenz. This *coup* prompted decades of violence and authoritarianism in Guatemala, and convinced thousands of people in other Latin American countries to use violence and armed struggle, rather than democratic mechanisms, to seek change. The dire aftermath of that *coup* was felt not only in Guatemala, but in Central America, the rest of Latin America, and the United States.
6. Ambassador McFarland worked in several Latin American countries that experienced subsequent struggles between democracy and the rule of law, and the authoritarian temptations of the right and left, and corruption, including El Salvador, Peru, Guatemala, Venezuela, Bolivia, Paraguay, Honduras, and Colombia. McFarland was the desk officer for Nicaragua from 1983 to 1985, when the Sandinista regime, taking advantage of the democratic vacuum and the weakness of democratic actors resulting from the Somoza dictatorship, entrenched an authoritarian state that would eventually lose popular support. Then, between 1988 and 1990, he was the political counsel of the U.S. Embassy in El Salvador during the last years of the internal conflict. In 1989, when Alfredo Cristiani, of the ARENA party won the elections, about which there were doubts about his commitment to the rule of law, McFarland supported the U.S. policy of respecting the results of these democratic elections. He witnessed some clashes and bombings; several of his professional contacts, both right and left, were killed, including Héctor Ouelí Colindres who was assassinated in Guatemala in 1990, while demonstrating the regional character of the conflict.
7. McFarland was the Minister Counsel at the U.S. Embassy in Guatemala from 2000 to 2003. He supported Ambassador Bushnell and Ambassador Hamilton in strengthening bilateral

Unofficial Translation

cooperation in the economic field, in cooperation against drug trafficking, and in the reconciliation process. As *Chargé d'Affaires*, he was also the first diplomat to publicly criticize the growing corruption in Guatemala and convinced the State Department to include this issue in the bilateral relationship. He then served as Minister Counsel at the U.S. Embassy in Venezuela between 2003 and 2005, in the years when President Chavez consolidated his control over the entire state, including the judiciary and congress, as well as the private sector and the press. The end of democracy initiated a great social crisis suffered not only by Venezuela, but by all countries that have had to receive the seven million Venezuelan migrants, including half a million who migrated to the United States. After retiring from the foreign service, McFarland was a consultant on anti-corruption and rule of law issues for Millicom in Guatemala from 2018 to 2021. He currently follows and opines on democracy and rule of law in various media outlets.

8. The Rule of Law Impact Lab at Stanford Law School is a non-profit, non-partisan project that aims to study and put law at the service of democracy around the world.

II. FACTS AND PROCEDURAL HISTORY

II.1 Context under which the 2023 general elections took place

II.2.1 Registration of Movimiento Semilla

9. Movimiento Semilla, the Guatemalan political party popularly known by the abbreviation "Semilla" was registered before the Supreme Electoral Tribunal of Guatemala (TSE) on July 14, 2017.¹ During the 2019 general elections, Semilla participated for the first time as a registered political organization. It obtained significant representation in the 2019 general elections and achieved the election of 38 candidates to positions in 14 municipal governments, the Congress of the Republic and the Central American Parliament (PARLACEN).²

II.2.2 Expulsion of the International Commission Against Impunity in Guatemala

10. The International Commission Against Impunity in Guatemala ("CICIG") was an international commission created through an agreement signed between the United Nations (UN) and the Government of Guatemala, following the favorable advisory opinion of the Constitutional Court in May 2007.³ The CICIG's mission was subsequently ratified by the Congress of the Republic of Guatemala on August 1, 2007. CICIG was an independent commission supporting

¹ In terms of the electoral legislation in force, every political organization must meet at least the following requirements: (a) 23,000 affiliated persons; (b) party organization in 12 departments; and (c) party organization in 50 municipalities.

² Available online: https://movimientosemilla.gt/wp-content/uploads/2019/07/Julio-2019-BoletIn_Movimiento_Semilla.pdf.pdf

³ Available online: <https://dppa.un.org/en/mission/cicig>

Unofficial Translation

the justice system and other government agencies such as the National Police. CICIG had a significant impact in the fight against impunity and corruption in Guatemala and assisted in relevant cases such as the dismantling of power networks, corruption and money laundering, illicit financing of political parties, extrajudicial executions and torture, influence peddling and judicial corruption, among others.⁴

11. Despite a successful management and recognition by the international community, on August 27, 2017, then President of Guatemala, Jimmy Morales declared Iván Velásquez, Commissioner of CICIG, as *persona non grata* and ordered his expulsion from the country.⁵ This was followed by the departure of CICIG from Guatemala on January 8, 2019,⁶ following the Guatemalan Government's refusal to renew its mandate.

II.2.3 2021 Report of the Inter-American Commission on Human Rights

12. In its 2021 Annual Report, the Inter-American Commission on Human Rights ("IACHR") warned of various setbacks in the fight against impunity and corruption, as well as attacks on judicial independence and the adverse effects caused by the CICIG's departure in 2019.⁷ The IACHR report states that the Guatemalan State carried out various actions aimed at weakening both the fight against corruption and the independence of the bodies responsible for imparting and administering justice in the country.
13. The report also warned about the worsening of attacks and interference against the independence of those bodies that have stood out for their independent and impartial work in this area, such as the Constitutional Court, the Special Prosecutor's Office against Impunity (FECI) under the Public Prosecutor's Office (MP) of the Republic of Guatemala and the courts with criminal jurisdiction in relevant proceedings.

II.2 First Round of Elections

14. On June 25, 2023, the first round of elections was held, according to the call issued by the TSE.⁸ In such elections, Semilla nominated, among others, the following candidates: (a) for the presidential election, César Bernardo Arévalo de León (president) and Karin Larissa Herrera Aguilar (vice-president); and (b) several persons as candidates for the position of

⁴ CICIG. (2019). Cases listed [Memoria histórica]. Available online: <https://www.cicig.org/casos-listado/>

⁵ United Nations News. (2017). Guterres 'shocked' by Guatemala's decision to expel UN anti-corruption official. Available online: <https://news.un.org/en/story/2017/08/563922-guterres-shocked-guatemalas-decision-expel-un-anti-corruption-official>

⁶ BBC Mundo (2019). Guatemalan government orders expulsion of Cicig. BBC News. Available online: <https://www.bbc.com/mundo/noticias-america-latina-46790805>

⁷ IACHR. (2021). Guatemala. In Annual Report of the Inter-American Commission on Human Rights 2021 (pp. 741-813). Washington, D.C. IACHR. Available online: <https://www.oas.org/es/cidh/docs/anual/2021/capitulos/IA2021cap4B.Guatemala-es.pdf>

⁸ Supreme Electoral Tribunal of Guatemala (2023). Decree 1-2023, calling for general elections in Guatemala. Available online: https://www.tse.org.gt/images/Decretos2023/decreto_01-2023.pdf

Unofficial Translation

deputy for the Congress of the Republic. According to the TSE results, Semilla obtained second place with 11.78% of the votes.⁹

15. Of special importance was that the first round of elections had the largest number of international observers in the history of the country.¹⁰ A total of 126 observers from 20 international organizations, including the European Union ("EU"), the Organization of American States ("OAS") and the UN, were present to evaluate the electoral process. The international observers celebrated the organization of the election day, which took place calmly and without major incidents or notorious irregularities. The European Union observers noted that "Guatemalans have demonstrated their firm commitment to democracy and civic values by going to the polls to express their will in an election day well organized by the Supreme Electoral Tribunal".¹¹
16. However, international observers also expressed concern about some irregularities, such as the exclusion of presidential and legislative candidates, the misuse of state resources during the electoral campaign, and restrictions on freedom of expression and freedom of the press. For example, the EU's Electoral Observation Mission warned that the first electoral round was characterized by three key factors.¹² Namely: (a) a context of "*serious deterioration of the rule of law and the independence of the judiciary, as well as severe restrictions on freedom of expression and press freedoms*"; (b) the null vote as the most voted option, demonstrating widespread discontent; and (c) misuse of state resources for the benefit of the political organization Vamos.¹³

II.3 Complaints against the victory of Semilla: Provisional Amparo 3731-2023

17. On June 30, 2023, 9 political parties¹⁴ filed an amparo complaint (registered under case number 3731-2023¹⁵) before the Constitutional Court ("CC") alleging the existence of an

⁹ Prensa Libre (2023). Percentage of votes obtained by presidential candidates during the first round of elections in Guatemala on June 25, 2023 [Graph]. In Statista. Available online: <https://es.statista.com/estadisticas/1396525/resultado-de-las-elecciones-ecuador-por-candidato-abril-2021/>

¹⁰ AGN. (2023). Elections 2023 had the largest number of observers. Available online: <https://agn.gt/elecciones-2023-tuvieron-el-mayor-numero-de-observadores/>

¹¹ European Union Election Observation Mission in Guatemala (2023). Preliminary statement: A well organized election day, in a process marked by the exclusion of candidacies and the null vote. Available online: https://www.eeas.europa.eu/eom-guatemala-2023/una-jornada-electoral-bien-organizada-en-un-proceso-marcado-por-la-exclusi%C3%B3n-de-candidatos-y-el-voto_es?s=410316

¹² European Union Election Observation Mission in Guatemala (2023). Preliminary statement: A well organized election day, in a process marked by the exclusion of candidacies and the null vote. Available online: https://www.eeas.europa.eu/eom-guatemala-2023/una-jornada-electoral-bien-organizada-en-un-proceso-marcado-por-la-exclusi%C3%B3n-de-candidatos-y-el-voto_es?s=410316

¹³ European Union Election Observation Mission in Guatemala (2023). Preliminary statement: A well organized election day, in a process marked by the exclusion of candidacies and the null vote. Available online: https://www.eeas.europa.eu/eom-guatemala-2023/declaraci%C3%B3n-preliminar-de-la-moe-ue-guatemala-2023_es.

¹⁴ Namely, the political organizations: Cambio, Mi Familia, Valor, Podemos, Vamos, CREO, UNE, Cabal and Azul.

¹⁵ File available online: https://www.plazapublica.com.gt/sites/default/files/amparo_3731-2023.pdf

Unofficial Translation

alleged electoral fraud in the first round.¹⁶ Although, according to international observers, the allegations of fraud were focused on isolated cases that would not alter the preferences expressed at the polls, on July 1, 2023, the CC granted the parties a provisional injunction which halted the qualification and officialization of the results by the TSE.¹⁷ The TSE had to suspend the certification and officialization of results until a new scrutiny review hearing had been held and the necessary measures had been taken to guarantee the security of the electoral process.

18. On July 10, 2023, after the recount conducted by the TSE, in which no significant changes to the electoral preferences were detected, the CC declared compliance of the provisional injunction and the TSE was allowed to announce the results and proceed with the second round. It should be noted that since July 2, 2023, the OAS Electoral Observation Mission expressed its concern for the judicialization of the electoral process in Guatemala.¹⁸ The OAS pointed out that the decision of the CC would have been contrary to the electoral legislation in force in the country. Furthermore, it warned that the instrumentalization of justice to challenge legitimate results would put at risk the democratic institutionalism of the country.

II.4 Criminal Investigation Against Semilla and others

19. On July 12, 2023, the Special Prosecutor's Office Against Impunity (FECI) under the Public Prosecutor's Office (MP) of the Republic of Guatemala informed that the Seventh Pluripersonal Court of First Criminal Instance, Drug Trafficking and Crimes against the Environment of the department of Guatemala (the "Criminal Court") ordered the suspension of Semilla's legal personality.¹⁹ The legal effect of the suspension would prevent Semilla from participating in any subsequent political act, especially in the second round of elections scheduled for August 20, 2023. The precautionary measure would also prevent the awarding of offices to Semilla's candidates.

¹⁶ In addition to amparo 3731-2023, the political party Voluntad Oportunidad y Solidaridad (VOS) filed amparo 3724-2023 before the CC in which it sought a recount of the tally sheets of the departments of Guatemala and Central District. The Valor party filed a criminal complaint before the MP for the alleged fraud in the first round of elections. See: Cuevas, D. (2023). Partidos políticos presentan amparo para impedir adjudicación de cargos tras elecciones 2023 en Guatemala. Prensa Libre. Available online: <https://www.prensalibre.com/guatemala/politica/partidos-politicos-presentan-amparo-para-impedir-adjudicacion-de-cargos-tras-elecciones-2023-en-guatemala-breaking/>

¹⁷ Human Rights Watch (2023). Guatemala: Ensure Free and Fair Run-Off Election. Available online: <https://www.hrw.org/news/2023/08/18/guatemala-ensure-free-fair-run-election>

¹⁸ Organization of American States (OAS). (2023). OAS Electoral Observation Mission Expresses its Concern for the Extreme Judicialization of the Electoral Process in Guatemala (Press Release, E-035/23). Available online: https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-035/23

¹⁹ Public Prosecutor's Office of Guatemala (2023). Semilla Corruption Case. [Video]. Available online: <https://www.facebook.com/mpguatemala/videos/caso-corrupci%C3%B3n-semilla/3197344323896235/>

Unofficial Translation

20. For clarity, the following sections provide a chronological summary of the investigation initiated by the FECl, according to the FECl's website:²⁰
- a) On July 14, 2022, a person denounced before the MP that he had allegedly been affiliated to Movimiento Semilla without his consent. The complainant also stated that on May 18, 2022 he had filed the same complaint before the TSE (electoral authority).²¹
 - b) Following the complaint against Semilla, the Public Prosecutor's Office requested an expert opinion from the National Institute of Forensic Sciences of Guatemala ("INACIF"), which allegedly established that the signature and handwriting (name) of the complainant had been forged.
 - c) On March 24, 2023, the FECl took control of the investigation, when it allegedly warned that there was "*...a group of people organized to commit illicit acts and with the capacity to generate impunity*".²²
 - d) FECl carried out several acts of investigation in which it concluded that: (i) approximately 5,000 persons had been affiliated to Movimiento Semilla without their consent; (ii) at least 12 deceased persons had been affiliated to Semilla; and (iii) there were irregularities in Semilla's membership forms.
 - e) On July 13, 2023, the FECl raided (with judicial authorization) the facilities of the Department of Political Organizations of the Registry of Citizens, dependent on the TSE, allegedly with the purpose of obtaining further evidence and elements of proof.
 - f) On July 21, 2023, the FECl again raided (with judicial authorization) the TSE's facilities, as well as the headquarters of Movimiento Semilla to allegedly obtain further evidence and elements of proof.

II.5 Semilla's response to the various attacks: Amparo Provisional 3985-2023

²⁰ Public Prosecutor's Office of Guatemala (2023). Public Prosecutor's Office releases details on the "Corrupción Semilla" case. Available online: <https://www.mp.gob.gt/noticia/ministerio-publico-da-a-conocer-detalles-sobre-el-caso-corrupcion-semilla/>

²¹ According to information provided by FECl, on May 24, 2022, the TSE reportedly informed the complainant that it would not be possible to process the complaint.

²² Public Prosecutor's Office of Guatemala (2019). Agreement Number 59-2019. Creation of the Special Prosecutor's Office Against Impunity (FECl). Disponible en línea: <https://www.mp.gob.gt/transparencia/info/res/source/Articulo%2010:%20Informaci%C3%B3n%20P%C3%BAblica%20de%20Oficio/01%20Estructura%20Org%C3%A1nica%20Funciones%20y%20Marco%20Normativo/ACUERDOS%20%20AREA%20FISCAL/ACUERDO%2059-2019%20FISCALIA%20ESPECIAL%20CONTA%20LA%20IMPUNIDAD%20%20FECl.pdf>

Unofficial Translation

21. Against the resolution of the Criminal Court and the acts of investigation by the FECl, on July 12, 2023, Movimiento Semilla filed an amparo before the CC, which was registered under case number 3985-2023.²³ In its amparo lawsuit, Semilla sought that: (a) the TSE continue with the celebration of the second round of elections; and (b) declare the illegality of the judgment of the Criminal Court, by virtue of which it was intended to suspend the legal personality of the political party. On July 13, 2023, the CC granted an interim injunction that left without effect the suspension of the registration of Movimiento Semilla. Specifically, the CC granted the provisional injunction to Semilla for the following effects:

"[...]VI) On prevention, the requested provisional protection is granted and, to that effect, it is decreed that the resolution of July twelve, two thousand twenty-three issued in an oral hearing of judicial authorization by the Seventh Pluripersonal Judge of First Criminal Instance, Narcoactivity and Crimes against the Environment of the department of Guatemala within the criminal case 01079-2023- 00231, by which -affirms the postulant- the "suspension of the legal personality of the Political Party Movimiento Semilla" was decreed, DOES NOT AFFECT OR SUSPEND the Agreement 1328-2023 of the Supreme Electoral Tribunal, dated July twelfth, two thousand twenty-three, with the purpose of preserving the officialization of results foreseen in said Agreement, so that the second electoral round may be carried out on the date indicated and with the participation of the candidates officialized in the Agreement in mention. VII) The referred decision of the Seventh Judge of First Criminal Instance, Drug Trafficking and Crimes against the Environment of the department of Guatemala has no positive effect in terms of suspending the electoral process at the stage it is at, as well as its subsequent effects; therefore, the Supreme Electoral Tribunal, which is obliged to enforce the principle of alternability in the exercise of power, must proceed accordingly, as provided in Agreement 1328-2023. The foregoing is without prejudice to the powers of criminal prosecution that correspond to the Public Prosecutor's Office and what is regulated in Articles 251 of the Political Constitution of the Republic of Guatemala and 251 of the Electoral and Political Parties Law. [...]"²⁴

22. The CC's resolution allowed Semilla to participate in the second round of the presidential elections, since Guatemalan electoral law prevents political parties from being suspended once the call for elections has been issued and until after the elections have been held.²⁵ However, the effect of the provisional injunction refrained from nullifying the criminal

²³ Available online: https://www.guatevision.com/wp-content/uploads/sites/2/2023/07/001-SECRETARI%CC%81A-GENERAL_3985-2023.pdf

²⁴ *Idem*, pp. 8-9

²⁵ See: Electoral and Political Parties Law. Article 92. Temporary Suspension. The temporary suspension of a political party is appropriate: [...] A party may not be suspended after the call for an election and until the election has been held.

Unofficial Translation

judge's order and allowed the ministerial authority to continue with the investigations initiated against Semilla and others.

23. On August 18, 2023, two days before the second round of elections, the Supreme Court of Justice (CSJ) granted a definitive injunction to Semilla, which left without effect the suspension of its legal personality (during the electoral period). The resolution of the CSJ empowered the TSE to abstain from complying with the precautionary measure of the Criminal Court to prevent Semilla's participation in the second round, until the elections were held.

II.6 Second Round of Elections

24. On August 20, 2023, the second round of elections was held. Semilla's candidates for the presidential elections, César Bernardo Arévalo de León (president) and Karin Larissa Herrera Aguilar (vice-president), obtained most of the votes.²⁶ Movimiento Semilla also obtained a total of 12 seats in the Congress of the Republic, of which 5 were by national list²⁷ and 7 by electoral districts.²⁸

II.7 Precautionary Measures from the Inter-American Commission on Human Rights

25. On August 21, 2023, the IACHR issued resolution 48/2023 granting precautionary measures to Movimiento Semilla's presidential ticket.²⁹ The IACHR considered that the president-elect and his vice-president were in a serious and urgent situation due to the risk of irreparable harm to their rights. The IACHR warned that they have been subjected to stigmatization, harassment, intimidation, and public exposure of their personal information through virtual

²⁶ La República (Peru) (2023). Percentage of votes obtained by the presidential candidates during the second round of elections in Guatemala on August 20, 2023 [Graph]. In Statista. Available online: <https://es.statista.com/estadisticas/1406820/elecciones-presidenciales-de-guatemala-resultados-de-la-segunda-vuelta/>

²⁷ Supreme Electoral Tribunal of Guatemala (2023). Agreements numbers 1361-2023, 1362-2023, 1363-2023, 1364-2023, 1365-2023 and 1371-2023, declaring the validity of the elections of deputies to the Congress of the Republic of Guatemala held on June twenty-fifth, two thousand and twenty-three. Available online at: <https://www.tse.org.gt/images/Acuerdos2023/1361-2023>, <https://www.tse.org.gt/images/Acuerdos2023/1362-2023>, <https://www.tse.org.gt/images/Acuerdos2023/1363-2023>, and <https://www.tse.org.gt/images/Acuerdos2023/1361-2023>.

²⁸ National List: Jonathan Kiril Thomas Menkos Zeissig, Ana Patricia Orantes Thomas, Manfredo Duvalier Castañón González, Alma Luz Guerrero de la Cruz and Byron Alevsky Obregón Castañeda. Central District: Samuel Andrés Pérez Álvarez, Andrea Beatriz Villagrán Antón, Román Wilfredo Castellanos Caal, Laura Fabiola Marroquín Cordón, Raúl Amílcar Barrera Robles, Brenda Marleny Mejía López and Elena Sofía Motta Kolleff. 3. District of Guatemala: José Carlos Sanabria Arias, Ronaldth Iván Ochaeta Aguilar, Mirna Victoria Godoy Palala, Ivana María Luján Padilla, David Mauricio Illescas Sandoval, Andrea María Reyes Zeceña and Luis Antonio Cáceres Gamarro. 4. District of Sacatepéquez: José Diego Toledo Cruz and Mercedes del Rosario Monzón Escobedo. 5. District of Chimaltenango: Raúl Arnulfo Cuá Tumín. 6. District of Quetzaltenango: José Orlando Pérez Marroquín.

²⁹ Inter-American Commission on Human Rights (2023). Precautionary Measures No. 574-23 - Cesar Bernardo Arevalo de Leon and Karin Herrera Aguilar regarding Guatemala. Available online: https://www.oas.org/es/cidh/decisiones/mc/2023/res_48-23_mc_574-23%20_gt_es.pdf

Unofficial Translation

platforms, as well as threats that include the existence of at least two plans to attempt against their lives and integrity.

26. The IACHR requested the Guatemalan State to adopt the necessary measures to guarantee the life, personal integrity, and safety of the Semilla presidential candidate, as well as to protect his right to freedom of expression and association. Finally, the IACHR warned that the granting of precautionary measures does not constitute a prejudgment on an eventual petition before the Inter-American system alleging violations of the rights protected in the American Convention or other applicable instruments.

II.8 Certification of the Second Round of Elections and New Semilla Suspension

27. On August 28, 2023, the TSE declared: (a) the validity of the presidential election and (b) César Bernardo Arévalo de León as president of the republic and Karin Larissa Herrera Aguilar as vice president of the republic.³⁰ Likewise, the TSE ordered to issue the respective credentials in favor of Semilla's elected officials and to communicate the result to various authorities.³¹
28. On August 28, 2023, the National Registry of Citizens, in compliance with the order of the Criminal Court, determined to provisionally suspension the registration of Semilla's legal personality, considering that such precautionary measure would be appropriate since the electoral period was over.³² That is to say, the reasoning of the Criminal Court was based on the fact that the precautionary measure issued on July 12, 2023, would have been judicially stopped in terms of article 92 of the Electoral Law, which prevents the suspension of a political organization during the electoral period (after the call for elections and until its celebration).³³ Therefore, the Criminal Court would have determined that with the certification of the second round, the electoral period would have concluded and with it, any impediment that stopped the first suspension order.³⁴

³⁰ Supreme Electoral Tribunal of Guatemala (2023). Acuerdo número 1659-2023, que declara la validez de la elección presidencial realizada el veinte de agosto de dos mil veintitrés. Available online: <https://www.tse.org.gt/images/Acuerdos2023/1659-2023>

³¹ *Idem*.

³² Boche, E. (2023). Electoral tribunal suspends Movimiento Semilla, the party that won the elections in Guatemala. El País. Available online: <https://elpais.com/internacional/2023-08-29/el-tribunal-electoral-suspende-al-movimiento-semilla-el-partido-que-gano-las-elecciones-en-guatemala.html>

³³ See: Electoral and Political Parties Law. Article 92. Temporary Suspension. The temporary suspension of a political party is appropriate: [...] A party may not be suspended after the call for an election and until the election has been held.

³⁴ It is worth noting that, when resolving the provisional injunction 3985-2023, the CC determined the following, in relation to the order of the Criminal Court: "[...] In these terms, in view of the imperative need to preserve the effective realization of the purposes of the electoral process, which is still open, since the second election provided for in Article 201 of the Electoral and Political Parties Law has not yet been held, being that the decision issued in the criminal order, which is linked as to the effects of the claimed act, threatens to enervate the continuity and development of the electoral process, as established by the Constitution and the Constitutional law that regulates electoral matters, this Court considers that, from the facts related by the applicant political organization, as well as

Unofficial Translation

II.9 Suspension of the Semilla Bench

29. On August 30, 2023, the Guatemalan Congress dismantled Semilla's bench and considered its members as "independent" or non-party members.³⁵ It should be noted that there is a similar case, regarding the cancellation of the legal personality of the organization called Unidad del Cambio Nacional ("UCN") for violation of Guatemala's electoral rules.³⁶ On January 18, 2023, the TSE announced that the cancellation of the personality of the UCN was definitive. However, despite this, the Congress did not dismantle the bench of such organization, so that as of the date of filing of this brief, the UCN maintains its character as a bench and is integrated by 12 deputies, despite having lost its legal personality.³⁷
30. On August 28, 2023, Movimiento Semilla filed an appeal for annulment before the TSE, which was registered under file number 4513-2023. On September 3, 2023, the TSE again suspended the criminal judge's order against Semilla. The TSE argued that the electoral period (according to the calendar) would conclude until October 30, 2023, so the suspension of the Criminal Court would still be ineffective. This implied the reconstitution of Semilla's bench and brought as a response from the MP the request before the Congress of the Republic for the withdrawal of the immunity of the TSE's magistrates.

II.10 Third Raid on the Premises of the Supreme Electoral Tribunal and Question of Jurisdiction 5602-2023

31. On September 12, 2023, the FECI carried out a third raid (with judicial authorization) at TSE facilities to allegedly investigate possible irregularities in the 2023 general elections.³⁸ The FECI manipulated several boxes with votes for no apparent reason. The raids lasted for two

based on the analysis made to the writ of amparo, in the present case the circumstances that merit the granting of the interim protection concur and the assumptions regulated in article 28 *ibidem* are met, therefore, the provisional amparo is granted. This, due to the fact that the danger denounced in amparo comes from the decision of the Seventh Pluripersonal Judge of First Criminal Instance, Drug Trafficking and Crimes against the Environment of the department of Guatemala, within the criminal case 01079-2023-00231 by which, according to the applicant, the "suspension of the legal personality of the Political Party Movimiento Semilla" was decreed, with the effects that will be specified in the operative part of the present resolution, which are directed, as considered and established by this Court in the order of July 1, two thousand twenty-three, dictated in file 3731-2023, to guarantee the second round of the electoral process and that the alternation in the exercise of power is carried out on the date foreseen in the Political Constitution of the Republic, and that it emanates from an electoral process that guarantees the democratic will of the citizens, extremes that under no circumstance shall be questioned or modified. [...]", pp. 6-7.

³⁵ Pérez, S. (2023). Guatemala: Congress disowns president-elect's party and declares deputies independent. Associated Press (AP). Available online: <https://apnews.com/world-news/general-news-095a65fd874b26a15a32d47c1bba3f9f>

³⁶ La Hora (2023). TSE clarifies that the cancellation of the UCN remains firm Available online: <https://lahora.gt/nacionales/engelberth-blanco/2023/01/18/tse-aclara-que-la-cancelacion-de-la-ucn-se-mantiene-firme/>

³⁷ Available online: https://www.congreso.gob.gt/perfil_bloques/4

³⁸ Pérez, S. (2023) Guatemala: Prosecutor's office raids electoral headquarters. Associated Press. Available online: <https://apnews.com/world-news/general-news-4b1430746fb63412c6b98a75f8e86cdc>

Unofficial Translation

days in the Center of Operations of the Electoral Process (COPE), location where the minutes and other records related to the 2023 electoral process are located.

32. On September 13, 2023, the TSE filed a question of competence against the Criminal Court that ordered the search of its facilities. The question of competence was filed before the CC and registered under case number 5602-2023. The TSE's claim was that the CC should delimit the competence of the criminal judge and rule on whether said judicial authority has the power to suspend or cancel a political organization constituted in terms of the Electoral and Political Parties Law.³⁹

II.11 New FECl Investigations and Amparo 6029-2023

33. On September 27, 2023 the FECl announced a new criminal investigation related to the 2023 electoral process. FECl requested the lifting of the pre-trial immunities of the TSE magistrates for alleged crimes related to the acquisition of the service for the transmission of preliminary results. On September 29, the MP raided (without a court order) the TSE headquarters and seized original documents of several electoral records without presenting a court order authorizing the actions.⁴⁰
34. The TSE denounced this action as an act of obstruction to the electoral process and on September 29, 2023, filed for an injunction before the CC. The CC admitted the claim and assigned case number 6029-2023. The CC sent the amparo to the CSJ for its resolution. The TSE also filed amparo 6030-2023 before the CC against the acts of the Criminal Court. The CC admitted this proceeding and ordered its referral to the Third Chamber of the Court of Appeals for Criminal, Drug Trafficking and Environmental Crimes, constituted as an Amparo Court. Finally, the magistrates of the TSE filed an amparo action against the acts of the Criminal Court. The CC admitted the lawsuit, assigned it file number 6042-2023 and ordered it to be sent to the Eighth Court of First Criminal Instance, Drug Trafficking and Crimes against the Environment of the department of Guatemala, constituted as a Court of Amparo for its substantiation.⁴¹
35. As previously stated, the Public Prosecutor's Office requested the withdrawal of the preliminary immunities against the 8 (alternate and regular) members of the TSE for alleged irregularities in the purchase of equipment for the computation of votes (Transmission of Preliminary Results).⁴² At the request of the MP, on November 10, 2023, the CSJ admitted the request for processing, so that on the same date, the magistrates of the TSE filed four

³⁹ See: pp. 2 of the Question of Jurisdiction.

⁴⁰ Prensa Comunitaria, TSE fails to obtain the support of the Constitutional Court, break-ins at the TSE, Corte de Constitucionalidad, Corte Suprema de Justicia, Democracia, Elections 2023, electoral process, Tribunal Supremo Electoral, dated September 30, 2023, available at: <https://prensacomunitaria.org/2023/09/tse-no-logra-el-apoyo-de-la-corte-de-constitucionalidad/>

⁴¹ Constitutional Court, Comunicado COM-018-2023, available at: https://x.com/CC_Guatemala/status/1708181191650660646?s=20.

⁴² *Supra*, II.[*] New FECl and Amparo Investigations 6029-2023

Unofficial Translation

amparos before the CC. In the constitutional claims, the TSE magistrates sought to stop the process of withdrawal of their right to pre-trial initiated by the Public Prosecutor's Office. On November 21, 2023, the CC granted a provisional injunction only to the presiding magistrate of the TSE and 3 alternate magistrates.⁴³ In said resolution, the CC also refrained from stopping the request for impeachment against the remaining 4 magistrates.

II.12 Resolution to Competency Question 5602-2023

36. On October 5, 2023, the CC resolved the competence question 5602-2023 filed by the TSE. In its judgment, the CC determined the existence of a concurrent sanctioning power for the suspension of political organizations between the TSE in administrative-electoral matters and the criminal courts since there were some hypotheses of offenses contemplated by the Law Against Organized Crime.⁴⁴ It should be noted that the crimes contemplated in this law refer to crimes related to drugs or drug activity, money laundering, human trafficking, financing of terrorism, crimes committed by public servants, murder, kidnapping, fraud and smuggling or related to arms and ammunition.⁴⁵ The CC recognized that political parties have special constitutional protection, without this meaning that they are exempt from criminal law. The CC also established that the suspension of the registration of a political party is a precautionary measure that must be applied with strict reasonableness and proportionality.
37. Specifically, the CC resolved that: (a) the MP and the ordinary jurisdictional bodies may request or decree the provisional suspension of the registration of a political organization, but they must do so in accordance with the parameters established by the CC and in the normative assumptions set forth in the Law Against Organized Crime; (b) in case the provisional suspension is decreed, it must be temporary and must be determined according to the different stages of the electoral process; and (c) if the proceedings in criminal matters do not result in the forcefulness that the measure needs to be decreed or to continue to be

⁴³ Prensa Libre (2023). *CC ampara a Blanca Alfaro y tres magistrados suplentes y frena antejuicio solicitado por el MP*. Available online: <https://www.prensalibre.com/guatemala/justicia/cc-ampara-a-blanca-alfaro-y-tres-magistrados-suplentes-y-frena-antejuicio-solicitado-por-el-mp-breaking/>

⁴⁴ See: Question of Jurisdiction, "[...] In turn, the Public Prosecutor's Office and the Jurisdictional Bodies are urged, when requesting or applying the provisional precautionary measure regulated in Article 82 of the Law against Organized Crime for the suspension of political organizations, to take as a basis the provisions of the Constitution and the Electoral and Political Parties Law, to the effect that these are always provided in a legal and factually justified manner. Each organ acts under its strict responsibility for the adoption of requests or precautionary measures involving political organizations, without prejudice to the powers of investigation, prosecution and accusations that correspond to the Public Prosecutor's Office and the criminal judges, to judge the cases in which illicit acts have been committed, sanction the responsible parties and impose the corresponding penalties, and to timely inform the Supreme Electoral Tribunal about serious evidence that may have an impact on the electoral organizations. [...]", pp. 49.

⁴⁵ See: Law Against Organized Crime. Article 82. Provisional suspension of registrations of legal persons. The registrations of legal persons, their patents, permits and licenses that have been legally issued, may be provisionally suspended with judicial authorization during the substantiation of the criminal proceeding, when they have been used to commit in any way an illicit act of those established in this Law.

Unofficial Translation

applied, the MP or the ordinary jurisdictional body must transfer it to the competence of the TSE.

II.13 Demands for respect of citizens' right to vote: Amparo 6175-2023

38. On October 6, 2023, a group of citizens filed before the CC a writ of amparo with the purpose of "*guaranteeing the effective and timely inauguration, and exercise of their positions by the officials elected by universal suffrage*".⁴⁶ The CC admitted the lawsuit and granted the provisional protection to the plaintiffs. The effects of the provisional injunction are, among others: (a) to order the denounced authorities to preserve the democratic regime of the State and ensure the peaceful transition of power; (b) to order the MP to exercise its investigative powers in a diligent manner; (c) to guarantee that all persons (individuals and legal entities) involved in the proceedings are guaranteed a hearing; and (d) to take actions in the framework of public demonstrations to guarantee the rights of the citizens, without being affected by the exercise of the right to demonstrate.

II.14 Acts of Repression Against Peaceful Protests

39. Throughout the last few months and because of the actions of the MP and, in general, of the Government of Guatemala in relation to the general elections of 2023, different citizen organizations and ancestral communities have carried out a series of peaceful protests in the country. As a result of the protest actions, protests, strikes and blockades have been carried out in various departments of Guatemala, and on some occasions, the seizure of facilities such as communication routes. Against the blockades, the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations ("CACIF")⁴⁷ filed an amparo before the CC, which was registered under case number 1322-2023. On October 11, 2023, the CC granted a provisional injunction to CACIF.⁴⁸ In said resolution, the CC characterized the massive protests observed in the country as an abuse of the rights of assembly and demonstration and authorized the use of force in the case of violations of legally protected rights such as freedom of transit, health, and labor.⁴⁹⁵⁰
40. However, non-governmental organizations have pointed out that the CC's judgment is aimed at demobilizing people who peacefully protested against the actions of the MP, with actions that may involve the initiation of investigations against those who "abuse" the right to

⁴⁶ See: amparo petition, pp. 12

⁴⁷ According to its website, CACIF is "*the organization that brings together trade associations that work to build a better country based on productivity and citizen participation*". Available online: <https://cacif.org.gt/quienes-somos/>

⁴⁸ La Hora (2023). The CC agrees with Porras and the Executive must release blockades. Available online: <https://lahora.gt/nacionales/engelberth-blanco/2023/10/11/la-cc-le-da-la-razon-a-porras-y-el-ejecutivo-debe-liberar-bloqueos/>

⁴⁹ Free Press (2023). CC orders to remove blockades immediately and reestablish free locomotion using public force if necessary. Available online: <https://www.prensalibre.com/guatemala/justicia/cc-ordena-retirar-bloqueos-inmediatamente-y-restablecer-la-libre-locomocion-utilizando-la-fuerza-publica-si-es-necesario-breaking/>

⁵⁰ Available online: https://twitter.com/CC_Guatemala/status/1712266418639577597

Unofficial Translation

demonstrate and the use of public force in a series of unclear assumptions such as the alleged existence of supposed violent acts.⁵¹ In response to the CC resolution, on November 27, 2023, a new national strike was carried out by ancestral organizations and communities.⁵² The day of protest extended throughout the country, despite the threat to use force in terms of the provisional injunction granted to CACIF.

II.15 Resolution of the Permanent Council of the OAS

41. At the extraordinary session held on November 12, 2023, the OAS Permanent Council approved a resolution on the situation in Guatemala.⁵³ In its resolution, the OAS expressed grave concern "at the continuing post-electoral actions, partisan disputes, excessive judicialization of the electoral process and ongoing litigation that negatively impact the presidential transition in Guatemala; the continued acts of the Public Prosecutor's Office to intimidate electoral authorities, including through raids on offices of the Supreme Electoral Tribunal (TSE) and attempts to remove the immunity of TSE officials; as well as allegations of intimidation against members of the Movimiento Semilla and their families;...".
42. The resolution also makes a "...call on all institutions of the State of Guatemala, including the Executive, Judicial and Legislative Branches, as well as the Public Ministry, in accordance with their constitutional responsibilities, to stop or prevent, as appropriate, all acts of intimidation against electoral officials, the Movimiento Semilla party, and those who have been elected, and to respect the integrity of the electoral material" and denounces "attempts by the Public Ministry to discredit and impede a peaceful transition of power, which undermine the democratic process and Guatemala's commitments under the Inter-American Democratic Charter."⁵⁴

II.16 Case of the Takeover of the Universidad de San Carlos de Guatemala (USAC): Political Spoils

43. On November 16, 2023, the MP, through the Office of the Prosecutor for Crimes against the Nation's Cultural Heritage ("FDPCN") conducted 31 raids, inspections and searches in connection with the investigation for the takeover of USAC. During the raids, 27 arrest

⁵¹ Community Press (2023). Historic day of peaceful protests lead the territories. Available online: <https://www.rudagt.org/temas/jornada-historica-de-protestas-pacificas-lideran-los-territorios>

⁵² *Ibid.*

⁵³ Permanent Council of the Organization of American States, Recent Developments Affecting the Rule of Law and the Democratic Presidential Transition in Guatemala, EA/Ser.G CP/RES.1236 (2468/23) dated November 15, 2023.

⁵⁴ Permanent Council of the Organization of American States, Recent Developments Affecting the Rule of Law and the Democratic Presidential Transition in Guatemala, EA/Ser.G CP/RES.1236 (2468/23) dated November 15, 2023.

Unofficial Translation

warrants were executed against persons allegedly linked to the seizure of USAC.⁵⁵ On the same date, the FDPCN announced in a press conference the case it called "Caso Toma de la USAC: Botín Político" (USAC Takeover Case: Political Spoils). The detainees were accused by the MP of several crimes such as aggravated usurpation, illicit association, and aggravated damages. Among the people charged are former USAC officials, student leaders and people linked to Movimiento Semilla.

44. The main line of argument of the investigation is that, through publications on social networks and signs of support to those who protested, leaders of Movimiento Semilla and, in particular, the president and vice-president-elect would have participated in the takeover of the USAC.⁵⁶ Thus, the Public Prosecutor's Office requested the Congress to withdraw the immunity of Guatemala's presidential ticket and other persons, due to the possible commission of the crimes of continuous depredation of cultural property, illicit association and influence peddling. According to the investigation of the MP, the presidential binomial would have participated in the seizure of the USAC, as well as having used the protest as a platform for the electoral campaign of 2023.
45. In response to the new accusations by the Public Prosecutor's Office, on November 16, 2023, the OAS General Secretariat strongly condemned the presentation of the request for impeachment proceedings, stating "The General Secretariat of the Organization of American States (OAS) strongly condemns the presentation of impeachment proceedings made today by the Public Prosecutor's Office of Guatemala, which includes the President-elect of the country, Bernardo Arévalo, the Vice President-elect, Karin Herrera, as well as several members of the political parties Semilla, VOS and Winaq".⁵⁷ The OAS qualified these actions as part of a political persecution by the Public Prosecutor's Office, "These decisions of the Public Prosecutor's Office constitute actions of a political nature that distort the electoral process and may affect the outcome of the same, which is absolutely inappropriate and unacceptable for a democratic political system. In this sense, the Public Prosecutor's Office, as a State institution, is in violation of the provisions of the Inter-American Democratic Charter in its Articles 2, 3 and 4."

II.17 Irregular Supreme Court Appointments

46. Parallel to the new attacks of the MP against Movimiento Semilla, its presidential ticket and other persons, on November 15, 2023, the Guatemalan Congress appointed 13 new

⁵⁵ On November 22, 2023, 17 of the accused appeared before a criminal court for their first statement hearing. The judge ordered 12 of the accused to be remanded in custody, among them Marcela Blanco, former leader of Movimiento Semilla.

⁵⁶ Prensa Libre (2023). MP will request to remove the immunity of Bernardo Arévalo, Karin Herrera and other officials for the case of the Usac takeover. Prensa Libre. Available online: <https://www.prensalibre.com/guatemala/elecciones-generales-guatemala-2023/mp-solicitará-retirarles-la-inmunidad-a-bernardo-arevalo-a-karin-herrera-y-otros-funcionarios-por-caso-de-toma-de-la-usac-breaking/>

⁵⁷ Organization of American States (2023). Press Release C-077/23. Available online: https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-077/23

Unofficial Translation

magistrates for the CSJ, based on a list, qualified by some experts as irregular.⁵⁸ The Congress had been omitting to make the appointments since 2019, the year in which the term of office of the previous magistrates (2014-2019) expired. Of the new appointments, at least 3 magistrates had been investigated for alleged wrongdoings such as influence peddling. Manuel Duarte Barrera, a person sanctioned by the US State Department for undermining democratic processes or institutions and abuse of authority, was also appointed as magistrate of the CSJ.⁵⁹

III. INTERNATIONAL NORMS AND STANDARDS

a. Binding nature of international norms in Guatemala

47. Article 46 of the Guatemalan Constitution establishes that human rights treaties take precedence over domestic law⁶⁰. In the same sense, the Constitutional Court of Guatemala established in case No. 1822-2011 that human rights treaties take precedence over the Constitution.

b. Guatemala's obligations related to the principle of democracy

48. Article 1 of the Inter-American Democratic Charter⁶¹ establishes that "The peoples of the Americas have the right to democracy and their governments have the obligation to promote and defend it". Article 2 of the Charter states that " The effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the member states of the Organization of American States. Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.." Finally, Article 3 of the Charter establishes that " Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, **access to and the exercise of power in accordance with the rule of law**, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.."

⁵⁸ Human Rights Watch (2023). *Guatemala: Renewed Attacks Against Democracy*. Available online: <https://www.hrw.org/news/2023/11/21/guatemala-renewed-attacks-against-democracy>

⁵⁹ OpenSanctions (n.d.). US NTEEA-353-a06c3b9a853783cfbf9fa35436a655cfed88d8a6. Available online: <https://www.opensanctions.org/entities/us-nteea-353-a06c3b9a853783cfbf9fa35436a655cfed88d8a6/>

⁶⁰ Political Constitution of the Republic of Guatemala (Reformed by Legislative Agreement No. 18-93 of November 17, 1993) - Article 46.- *Preeminence of International Law. The general principle is established that in matters of human rights, treaties and conventions accepted and ratified by Guatemala, have preeminence over domestic law.*

⁶¹ Guatemala adopted the Inter-American Democratic Charter (IDC) on September 11, 2001 and ratified the instrument on May 5, 2003.

Unofficial Translation

49. These rights are recognized and regulated in instruments such as the American Declaration of the Rights and Duties of Man⁶² and the Universal Declaration of Human Rights⁶³, as well as in international treaties to which Guatemala is a party such as the American Convention on Human Rights⁶⁴ and the International Covenant on Civil and Political Rights⁶⁵, through the so-called political rights. The Inter-American Commission on Human Rights has reiterated in various reports that "Political rights, understood as those that recognize and protect the right and duty of all citizens to participate in the political life of their country, are essentially rights that favor the strengthening of democracy and political pluralism".⁶⁶ It has also pointed out that there is a "direct relationship between the exercise of political rights and the concept of democracy as a form of organization of the State"⁶⁷.
- c. Guatemalan obligations related to the right to vote and to participate in the conduct of public affairs
50. Article 20 of the American Declaration of the Rights and Duties of Man establishes that every person having legal capacity has the **right to take part in the government of their country**, directly or through his representatives, and to participate in popular elections, which shall be by secret ballot, genuine, periodic and free.
51. For its part, Article 23 of the American Convention on Human Rights establishes the political rights of all citizens, including the right "to **take part in the conduct of public affairs, directly** or through freely chosen representatives" and "to vote and to **be elected** at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors".
52. Article 21 of the Universal Declaration of Human Rights states that "Everyone has the **right to take part in the government of his country**, directly or through freely chosen representatives. Everyone has the **right of equal access to public service in his country**. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

⁶² Guatemala adopted the American Declaration of the Rights and Duties of Man on May 2, 1948 and ratified it on May 14, 1948.

⁶³ Guatemala signed the Universal Declaration of Human Rights on November 22, 1969 and ratified it on April 27, 1978.

⁶⁴ Guatemala adopted the American Convention on Human Rights on May 22, 1969. Guatemala subsequently ratified the Convention on May 25, 1978.

⁶⁵ Guatemala signed the International Covenant on Civil and Political Rights on October 22, 1968 and ratified it on August 19, 1992.

⁶⁶ IACHR (2009). Report "Democracy and Human Rights in Venezuela". OEA/Ser.L/V/II. Doc. 54 30, December 2009, at <https://www.acnur.org/fileadmin/Documentos/BDL/2016/10498.pdf>.

⁶⁷ IACHR. Second Report on the Situation of Human Rights in Peru, 2000. Chapter IV, paragraph 1, at <https://www.corteidh.or.cr/tablas/10913.pdf>

Unofficial Translation

53. For its part, Article 25 of the International Covenant on Civil and Political Rights states that "All citizens shall enjoy, without any of the distinctions mentioned in article 2, and without unreasonable restrictions, the following rights and opportunities: (a) **To take part in the conduct of public affairs, directly** or through freely chosen representatives; (b) To vote and to **be elected at** genuine periodic **elections which shall be** by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) **To have access, on general terms of equality, to public service in his country.**"
54. The articles described above explicitly establish the right to be elected on equal terms and without undue restrictions.
55. The right to be elected is also included in Article 136 of the Political Constitution of the Republic of Guatemala, which states that "The rights and duties of citizens are:... **b) To elect and be elected;**...".
- c.1. Guatemala's obligation to guarantee respect for the results of authentic elections, ensuring effective access to power
56. According to Article 2 of the American Convention on Human Rights, all states must "adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to **give effect to those rights and freedoms.**
57. Similarly, Article 2 of the International Covenant on Civil and Political Rights establishes that States undertake to "take the necessary steps, in accordance with their constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to **give effect to the rights recognized in the present Covenant which are** not already guaranteed by legislative or other provisions".
58. The Inter-American Court of Human Rights has stated that "The Inter-American Democratic Charter refers to the right of peoples to democracy, as well as emphasizes the importance in a representative democracy of the permanent participation of the citizenry within the framework of the legal and constitutional order in force, and points out as one of the constitutive elements of representative democracy the access to power and its exercise subject to the rule of law".⁶⁸
59. In relation to the right to be elected, established in Articles 23 of the American Convention on Human Rights and 25 of the International Covenant on Civil and Political Rights, the Inter-American Court of Human Rights has repeatedly stated that "political participation through the exercise of the right to be elected implies that citizens may run as candidates under conditions of equality and that they **may occupy the public offices** subject to election if they

⁶⁸ I/A Court H.R., Case of Petro Urrego v. Colombia (Preliminary Objections, Merits, Reparations and Costs) Judgment of August 6, 2008. Paragraph 92 at https://www.corteidh.or.cr/docs/casos/articulos/seriec_406_esp.pdf

manage to obtain the number of votes necessary to do so".⁶⁹ In this sense, the Human Rights Committee has pointed out that the results of genuine elections, in which the citizens participate in the administration of public affairs through freely elected representatives, must be respected and implemented.⁷⁰

60. Thus, the Inter-American Court of Human Rights, in the Manuel Cepeda case, has highlighted the importance of guaranteeing **real access to power for elected persons**. "The Court considers that the Convention protects the essential elements of democracy, among which is "access to power and its exercise subject to the rule of law". Among other political rights, Article 23 of the American Convention on Human Rights protects the right to be elected, which assumes that the holder of the rights has the real opportunity to exercise them, for which effective measures must be adopted to guarantee the necessary conditions for their full exercise."⁷¹

c.2. Guatemala's obligations to guarantee access, under general conditions of equality, to public functions.

61. Article 25 of the International Covenant on Civil and Political Rights imposes the obligation not to distinguish or discriminate against persons in access to public service in their country on the grounds of race, color, sex, language, religion, **political** or other **opinion**, national or social origin, property, birth or other status. In interpreting the obligations set forth in Article 25 of the Covenant, the Human Rights Committee, in its General Comment number 25 established that "It is of particular importance to **ensure that individuals are not discriminated against in the exercise of their rights** under article 25 (c) on any of the grounds specified in article 2, paragraph 1."⁷²
62. The principle of non-discrimination is also established in the Inter-American Human Rights System and specifically the Inter-American Court of Human Rights has repeatedly stated that "it is indispensable for the State to generate optimal conditions and mechanisms so that political rights can be exercised effectively, respecting the principle of equality and **non-discrimination**".²⁷

⁶⁹ I/A Court H.R., Case of Castañeda Gutman v. United Mexican States, Judgment of August 6, 2008, Paragraph 100, Paragraph 148 at https://www.corteidh.or.cr/docs/supervisiones/casta%C3%B1eda_28_08_13.pdf.

⁷⁰ General Comment No. 25 "The right to participate in public affairs, the right to vote and the right of equal access to public service." Of July 12, 1996. Paragraph 19 states that "...Persons entitled to vote should be free to vote for any candidate and for or against any proposal submitted to referendum or plebiscite, and to support or oppose the government, without undue influence or coercion of any kind which might distort or inhibit the free expression of the will of the electors...."

⁷¹ I/A Court H.R., Case of Manuel Cepeda v. Colombia, Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010, para. 172. At https://www.corteidh.or.cr/docs/casos/articulos/seriec_213_esp.pdf.

⁷² General Comment No. 25 "The right to participate in public affairs, the right to vote and the right of equal access to public service." Of July 12, 1996. Paragraph 23. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=sp&TreatyID=8&DocTypeID=11

Unofficial Translation

63. The Inter-American Court of Human Rights has established that "...the right to have access to public functions under general conditions of equality protects access to a direct form of participation in the design, development and execution of state policies through public functions. It is understood that these **general conditions of equality refer both to access to public service by popular election and by appointment or designation.**"⁷³

c.3. Guatemala's obligations not to impose undue restrictions or interference to participate in the conduct of public affairs

64. Article 25 of the International Covenant on Civil and Political Rights also clearly establishes the negative obligation not to impose undue restrictions on participating in the conduct of public affairs, voting and being elected at genuine periodic elections by universal and equal suffrage and by secret ballot guaranteeing the free expression of the will of the electors.

65. The UN Human Rights Committee, the body created to monitor the implementation of the ICCPR, determines what is to be understood by "undue restrictions", especially through the views it expresses in the "concluding observations" addressed to certain countries and for individual cases. According to General Comment number 25 on the right to participate in public affairs and the right to vote (1996), "**Any conditions imposed on the exercise of the rights protected by Article 25 must be based on objective and reasonable criteria.**"⁷⁴

66. In the same sense, Article 30 of the American Convention on Human Rights establishes that "The restrictions permitted, in accordance with this convention, on the enjoyment and exercise of the rights and freedoms recognized herein, may not be applied except in accordance with laws enacted for **reasons of general interest and for the purpose for which they were established**".

67. The Inter-American Court of Human Rights, in its Advisory Opinion OC-6/86 of May 9, 1986, interpreting Article 30 of the American Convention on Human Rights, stated that: "In effect, **the protection of human rights, especially the civil and political rights set forth in the Convention, is based on the affirmation of the existence of certain inviolable attributes of the human person that cannot be legitimately undermined by the exercise of public power.** These are individual spheres that the State cannot violate or can only penetrate to a limited extent. Thus, in the protection of human rights, the **notion of restricting the exercise of state power** is necessarily included."⁷⁵ "Therefore, the protection of human rights requires that **state acts that fundamentally affect them are not left to the discretion of the public power, but are surrounded by a set of guarantees aimed at ensuring that the inviolable attributes**

⁷³I/A Court H.R., Case of Castañeda Gutman v. United Mexican States, Judgment of August 6, 2008, para. 150, para. 148 at https://www.corteidh.or.cr/docs/supervisiones/casta%C3%B1eda_28_08_13.pdf

⁷⁴General Comment No. 25 "The right to participate in public affairs, the right to vote and the right of equal access to public service." Of July 12, 1996. Paragraph 4. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=sp&TreatyID=8&DocTypeID=11

⁷⁵I/A Court H.R. Advisory Opinion requested by the Government of the Oriental Republic of Uruguay OC-6/86 dated May 9, 1986, paragraph 21 at https://www.corteidh.or.cr/docs/opiniones/seriea_06_esp.pdf.

of the person are not violated, among which, perhaps the most relevant must be that the limitations are established by a law adopted by the Legislature, in accordance with the provisions of the Constitution." ⁷⁶ The Court goes on to describe these characteristics as the principle of legality, which is consubstantial with the idea and development of law in the democratic world.⁷⁷

68. Although these restrictions refer to restrictions established in legislation, it should be noted that the restrictions prohibited by Article 25 of the International Covenant on Civil and Political Rights also include **undue interference**.

69. In Chapter IV.B Venezuela, of its 2017 Annual Report, the Inter-American Commission on Human Rights⁷⁸ established that the alteration of the constitutional order that seriously affects the democratic order constitutes a serious violation of the fundamental elements and institutions of representative democracy provided for in the Inter-American Democratic Charter, which are essential means for the realization of human rights. In this report, the Commission details that there is a deterioration in the democratic institutionality and human rights situation in Venezuela that is rooted in the interference of the Executive Branch in the other branches of government (paragraph 13). It follows that **any undue interference by the Executive Branch in the alteration of the constitutional order that seriously affects the democratic order constitutes a serious violation of the fundamental elements and institutions of representative democracy provided for in the Inter-American Democratic Charter**.

d. Guatemala's obligation to guarantee the independence of the electoral bodies responsible for making decisions on electoral complaints.

70. In its Report 8/91, in case 10.80, the Inter-American Commission on Human Rights established that "The Commission must point out in this respect that it is the power of the State to determine the nature and modalities that should be assumed by both the electoral bodies and those in charge of adopting decisions regarding complaints filed in electoral matters, as **long as such bodies, in themselves and in relation to the system in which they operate, guarantee the exercise of political rights through the independence and impartiality with which they perform their functions**".⁷⁹

⁷⁶ I/A Court H.R. Advisory Opinion requested by the Government of the Oriental Republic of Uruguay OC-6/86 dated May 9, 1986, para. 22 at https://www.corteidh.or.cr/docs/opiniones/seriea_06_esp.pdf.

⁷⁷ I/A Court H.R. Advisory Opinion requested by the Government of the Oriental Republic of Uruguay OC-6/86 dated May 9, 1986, paragraph 23 at https://www.corteidh.or.cr/docs/opiniones/seriea_06_esp.pdf.

⁷⁸ IACHR. Annual Report 2017, Chapter IV.B Venezuela, para. 7, at <https://www.oas.org/es/cidh/docs/anual/2017/docs/IA2017cap.4bVE-es.pdf>

⁷⁹ IACHR. Report No. 8/91, Case 10.180, Mexico, February 22, 1991, para. 51, at <http://www.cidh.org/annualrep/90.91sp/mexico10180.htm>.

Unofficial Translation

71. In 2018, the United Nations Human Rights Council, in its resolution 39/11,⁸⁰ requested the Office of the United Nations High Commissioner to issue the Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs.⁸¹ These guidelines establish a series of minimum obligations that must be fulfilled to guarantee political-electoral rights, among which are the obligation to train, register voters, inform, and guarantee access and participation in electoral processes, supervise compliance by political parties and voters, among others. It establishes in its Recommendation 30 that "States should establish an effective legal framework for the exercise of electoral rights, in particular with respect to the electoral system and electoral dispute resolution mechanisms, in accordance with their international human rights obligations and through a non-discriminatory, transparent, participatory and gender-sensitive process."
72. More specifically, observation 20 of General Comment 25 of the United Nations Human Rights Committee on Participation in Public Affairs and the Right to Vote⁸² states that "An independent electoral board should be established to oversee the electoral process and ensure that it is conducted fairly and impartially and in accordance with legal provisions consistent with the Covenant".
73. In the same vein, in its concluding observations on the third periodic report of Tajikistan⁸³ and on the fifth periodic report of Cameroon,⁸⁴ the United Nations Human Rights Committee has pointed out the obligation of states to guarantee the full independence of the electoral authorities.
74. In accordance with the foregoing, in order to achieve the effectiveness of political-electoral rights, the main requirement that an electoral authority must have is that of independence.

⁸⁰ United Nations Human Rights Council, 2016. Resolution 33/22. *Equal participation in public and political life*, A/HRC/RES/33/22, at. <https://www.refworld.org/es/pdfid/587603564.pdf>

⁸¹ Office of the United Nations High Commissioner. Guidelines for States on the effective implementation of the right to participate in public life, https://www.ohchr.org/sites/default/files/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web_SP.pdf

⁸² United Nations Human Rights Committee (1996). General Comment No. 25: Participation in Public Affairs and the Right to Vote, Fifty-seventh Session, HRI/GEN/1/Rev.7 at 194 (1996), Comment 20, at <http://hrlibrary.umn.edu/hrcommittee/Sgencom25.html>

⁸³ United Nations Human Rights Committee (2019). Concluding observations on the Third Periodic Report of Tajikistan, CCPR/C/TJK/CO/3, August 22, 2019, para. 55, at. <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhstnmpISeIbm%2BRnI3Df%2BMS62Ddwef9ujHXzqtW1VP52gDwO3I661HhKqCb3C3u87Jwy0YUoSanyTURV6HVUVqDVedvROLLHTGZKeafOpwMfWq>.

⁸⁴ United Nations Human Rights Committee (2017). Concluding observations on the Fifth Periodic Report of Cameroon, CCPR/C/CMR/CO/5, 2017, para. 44, at. <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsoE0hhB%2FObfneRA6ucrf7cLa1irsOsauNp2Ikz6wXQ8%2BhGNomqrVydPd7liWikHh15dYAk52BcRZZpSe5Pe1zuKR6kXIBcm%2B3x1aEww1kqde>

Unofficial Translation

- e. Guatemala's obligation to ensure the equitable, autonomous, independent and impartial administration of justice

75. Both Article 8 of the American Convention on Human Rights⁸⁵ and Article 14 of the International Covenant on Civil and Political Rights⁸⁶ establish the right to an independent and impartial justice system. Within the scope of criminal justice are the actions of various authorities, including, importantly, prosecutors or agents of the Public Prosecutor's Office. International standards applicable to prosecutors establish that the **fair, independent, autonomous, independent and impartial administration of justice** requires that prosecutors perform their functions in accordance with their professional duties.⁸⁷
76. The Inter-American Court of Human Rights has stated that "that all organs exercising functions of a materially jurisdictional nature, whether criminal or not, have the duty to adopt fair decisions based on full respect for the guarantees of due process established in Article 8 of the American Convention."⁸⁸
77. Specifically, in relation to prosecutors, the Inter-American Court of Human Rights has established that "the principle of legality of the public function, which governs the actions of officials of the Public Prosecutor's Office, requires that their work in the exercise of their

⁸⁵ American Convention on Human Rights, 1969. General Secretariat of the Organization of American States. Article 8. Judicial Guarantees - "*Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any criminal accusation made against him, or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. 2. Every person accused of a crime has the right to be presumed innocent until his guilt has been legally established. During the process, every person has the right, in full equality, to the following minimum guarantees:...*" at <https://www.corteidh.or.cr/tablas/17229a.pdf>

⁸⁶ International Covenant on Civil and Political Rights (1966). Office of the United Nations High Commissioner for Human Rights. Article 14. - All persons shall be equal before the courts and tribunals. Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge against him or of his rights and obligations in a suit at law. The press and the public may be excluded from all or part of a trial for considerations of morals, public order or national security in a democratic society, or when the interest of the private life of the parties so requires, or, to the extent strictly necessary in the opinion of the court, when the special circumstances of the case might prejudice the interests of justice; But all judgments in criminal or contentious matters shall be public, except in cases where the interests of minors require otherwise, or in proceedings concerning matrimonial disputes or the guardianship of minors. 2. Every person accused of a crime has the right to be presumed innocent until proved guilty according to law. 3. During the proceedings, everyone charged with a criminal offence shall be entitled to the following minimum guarantees, in full equality:..." at <https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁸⁷ *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul. UN Document A/HRC/20/19, June 7, 2012, Paragraph 82 and 86; *Status and Role of Prosecutors, Guide by the United Nations Commission on Crime Prevention and Criminal Justice* and the International Association of Prosecutors, 2014 (currently available in English only, in its original: *Status and Role of Prosecutors, A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide* - (hereinafter *Guide to the Status and Role of Prosecutors*), pages 17-18. At https://www.unodc.org/documents/justice-and-prison-reform/14-07304_ebook.pdf

⁸⁸ I/A Court H.R., Case of López Mendoza v. Venezuela. Case of López Mendoza v. Venezuela (Merits, Reparations and Costs). Judgment of June 23, 2005. Paragraph 111, at https://corteidh.or.cr/docs/casos/articulos/seriec_233_esp.pdf.

duties be carried out on normative bases defined in the Constitution and the laws. Thus, **prosecutors must ensure the correct application of the law and the search for the truth of the facts that occurred, acting with professionalism, good faith and procedural loyalty.**"⁸⁹

78. According to the *United Nations Guidelines on the Role of Prosecutors (Guidelines on the Role of Prosecutors)*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990: "The Guidelines [...], formulated to assist Member States in their role of ensuring and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings should be respected and taken into account by governments within the framework of their national laws and practices and should be brought to the attention of prosecutors and others such as judges, lawyers and members of the executive and legislative branches, and the general public."⁹⁰ It is important to note that the Inter-American Human Rights System has referred to the *Guidelines on the Role of Prosecutors* as authority when addressing the role and obligations of the Public Prosecutor's Office in criminal proceedings.⁹¹ These *Guidelines on the Role of Prosecutors* state that agents of the Public Prosecutor's Office: "[...]shall perform their duties **impartially**, firmly and promptly, respect and protect human dignity and uphold human rights, thereby contributing to ensuring due process and the proper functioning of the criminal justice system".⁹²
79. These obligations are reiterated in the *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* adopted by the International Association of Prosecutors (*IDA Standards*).⁹³ The United Nations Commission on Crime Prevention and Criminal Justice endorsed these *Standards* recognizing that they are complementary to the *Guidelines on the Role of Prosecutors* and inviting Member States to take them into consideration, along with the *Guidelines*, in the review and development of their own national standards relating to the role of prosecutors.⁹⁴

⁸⁹ I/A Court H.R., *Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009, para. 165. https://www.corteidh.or.cr/docs/casos/articulos/seriec_193_esp.pdf

⁹⁰ *Guidelines on the Role of Prosecutors*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August-7 September 1990, Final Recital (*Guidelines on the Role of Prosecutors*). https://www.unodc.org/documents/justice-and-prison-reform/14-07304_ebook.pdf

⁹¹ Inter-American Commission on Human Rights: "Guarantees for the Independence of Justice Operators: Toward Strengthening Access to Justice and the Rule of Law in the Americas," December 5, 2013, paras. 42 and 60; "Fifth Report on the Situation of Human Rights in Guatemala," April 6, 2001, para. 16; "La Ley y los Sistemas de Protección Aplicables a la Violencia contra las Mujeres en Ciudad Juárez", 2002, para. 137; Inter-American Rapporteur on Women's Rights: "Acceso a la Justicia para las Mujeres Víctimas de Violencia en las Américas", para. 53.

⁹² *Guidelines on the Role of Prosecutors*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August-7 September 1990, Final Recital (*Guidelines on the Role of Prosecutors*). Paragraph 12. At https://www.unodc.org/documents/justice-and-prison-reform/14-07304_ebook.pdf.

⁹³ *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*, adopted by the International Association of Prosecutors, April 23, 1999 (*IDA Standards*). At [https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards-\(1\)/IAP_Standards_Oktober-2018_Spanish.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards-(1)/IAP_Standards_Oktober-2018_Spanish.pdf.aspx)

⁹⁴ Resolution 17/2 on *Strengthening the rule of law through enhancing the integrity and capacity of prosecution services* of the United Nations Commission on Crime Prevention and Criminal Justice, (17th Session, Vienna, 14-18

Unofficial Translation

80. Both the *Guidelines on the Role of Prosecutors* and the *IDA Rules* give prosecutors a particularly active role in criminal proceedings, their work being of a transcendental nature in the initial phase of criminal proceedings. Thus, their main tasks include the initiation of proceedings and their participation in them, as well as the investigation of crimes and the supervision of the legality of those investigations.⁹⁵ All of these international instruments are unanimous in requiring that agents of the Public Prosecutor's Office perform these functions with **impartiality, objectivity and promptness**.⁹⁶
81. The requirement of impartiality and objectivity is repeated repeatedly throughout the rules applicable to the agents of the Public Prosecutor's Office as a fundamental guarantee and rule of professional conduct that must be present in each and every aspect of their functions and duties.⁹⁷
82. In addition, international standards strictly require that prosecutors **initiate or continue criminal proceedings only when the case is well founded on evidence obtained in an impartial investigation and considered reasonably reliable and admissible**, prosecuting the case without going beyond what is indicated by the evidence.⁹⁸ In the absence of such evidence, prosecuting officers should not proceed with the prosecution.⁹⁹ The *Guidelines on the Role of Prosecutors* succinctly summarize the international standards by stating that "Prosecutors shall not initiate or continue a prosecution, or shall make every effort to discontinue a prosecution, where an impartial investigation shows that the charge is unfounded".¹⁰⁰
83. According to numeral 12 of the *Guidelines on the Role of Prosecutors*, "Prosecutors, in accordance with the law, shall perform their functions impartially, firmly and promptly, respect and protect human dignity and uphold human rights, thereby contributing to ensuring due process and the proper functioning of the criminal justice system."¹⁰¹
84. Section 13 of these Guidelines states that "In the performance of their duties, prosecutors shall: a) Carry out their functions impartially and **avoid political**, social, religious, racial, cultural, sexual or other forms of **discrimination**;"¹⁰²

April 2008). At https://www.iap-association.org/getattachment/Spanish/Resources-Documents/IAP-Standards/UN-Resolution/RESOLUCION_ONU_2008.pdf.aspx

⁹⁵ Idem, para. 11; *Report of the Special Rapporteur*, para. 35, supra note 27.

⁹⁶ *Guidelines on the Role of Prosecutors*, paras. 12 and 13, supra note 30; *IAF Standards*, paras. 1.e, 3.a, 4.1, 4.2.a, supra note 33; *Report of the Special Rapporteur*, paras. 25, 35, 47 and 49, supra note 27.

⁹⁷ Idem.

⁹⁸ *Guidelines on the Role of Prosecutors*, para. 14, supra note 30; *IAF Standards*, para. 4.2.d, supra note 33; United Nations Convention against Corruption (2003). Para. 150. https://www.unodc.org/pdf/corruption/publications_unodc_convention-s.pdf

⁹⁹ Idem.

¹⁰⁰ *Guidelines on the Role of Prosecutors*, para. 14, supra note 30.

¹⁰¹ *Guidelines on the Role of Prosecutors*, paragraph 12, supra note 30.

¹⁰² *Guidelines on the Role of Prosecutors*, paragraph 13.

Unofficial Translation

85. In the case of Guatemala, these duties are contained in both the Constitution and the Organic Law of the Public Prosecutor's Office. Article 154 of the Political Constitution of the Republic of Guatemala establishes that "Officials are depositaries of authority, legally responsible for their official conduct, subject to the law and never superior to it. Public officials and employees are at the service of the State and not of any political party. The public function may not be delegated, except in the cases indicated by law, and may not be exercised without first taking an oath of loyalty to the Constitution."
86. **Article 1 of the Organic Law of the Public Prosecutor's Office establishes that** "The Public Prosecutor's Office is an institution with autonomous functions, promotes the criminal prosecution and directs the investigation of crimes of public action; in addition to ensuring strict compliance with the laws of the country. In the exercise of this function, the Public Prosecutor's Office **will pursue the realization of justice, and will act with objectivity, impartiality and with adherence to the principle of legality, under the** terms established by law." Article 47 of this law establishes that "In the exercise of their functions prosecutors shall be subject only to the Political Constitution of the Republic of Guatemala, the International Treaties and Conventions, the law and the instructions issued by their hierarchical superior, under the terms established by this law."
87. Based on the facts and international norms set forth above, the legal arguments asserted before the Constitutional Court are set forth below:

IV. LEGAL ARGUMENTS

- a. The systematized and focused criminal prosecution exercised by the MP and endorsed by the Criminal Judge against Semilla, its members and candidates violates Guatemala's obligations to guarantee the democratic principle, the right to vote and not to impose restrictions or exercise undue interference with the right to participate in the conduct of public affairs.

Genuine elections

88. On June 25, 2023, first round elections were held in Guatemala. As recounted in the facts of this brief, 126 observers from 20 international organizations, including the European Union ("EU"), the Organization of American States ("OAS") and the UN, endorsed the legality of the elections. Likewise, the TSE confirmed the legality of this election on July 10, 2023¹⁰³. On August 20, 2023, the second round of elections was held. Semilla's candidates for the presidential elections, César Bernardo Arévalo de León (president) and Karin Larissa Herrera

¹⁰³ Prensa Libre (2023). Percentage of votes obtained by presidential candidates during the first round of elections in Guatemala on June 25, 2023 [Graph]. In Statista. Available online: <https://es.statista.com/estadisticas/1396525/resultado-de-las-elecciones-ecuador-por-candidato-abril-2021/>

Unofficial Translation

Aguilar (vice-president), obtained the majority of the votes.¹⁰⁴ The Movimiento Semilla also obtained a total of 12 seats in the Congress of the Republic, of which 5 were by national list¹⁰⁵ and 7 by electoral districts.¹⁰⁶ On August 28, 2023, the TSE declared: (a) the validity of the presidential election and (b) César Bernardo Arévalo de León as president of the republic and Karin Larissa Herrera Aguilar as vice-president of the republic.¹⁰⁷ Likewise, the TSE ordered to issue the respective credentials in favor of Semilla's elected officials and to communicate the result to several authorities.¹⁰⁸

89. According to Article 121 of the Electoral and Political Parties Law "The Supreme Electoral Tribunal is the highest authority in electoral matters". For its part, Article 125, paragraph c of this law states that the TSE's attributions and obligations are "To call and organize the electoral processes defining within the parameters established in this Law, the date of the call and of the elections; to **declare the result and validity of the elections** or, if applicable, the partial or total nullity of the same; and to adjudicate the positions of popular election, notifying the citizens of the declaration of their election;..." From where it follows that the qualification by the TSE and its verification by the international observers evidences the existence of authentic elections in Guatemala in which the citizens exercised their right to vote and the Semilla candidates exercised their right to be elected, both rights established in Articles 23 of the American Convention on Human Rights and 25 of the International Covenant on Civil and Political Rights.
90. The Inter-American Court of Human Rights has repeatedly stated that "political participation through the exercise of the right to be elected presupposes that citizens can run as candidates under conditions of equality and that they **can occupy the public offices subject**

¹⁰⁴ La República (Peru) (2023). Percentage of votes obtained by presidential candidates during the second round of elections in Guatemala on August 20, 2023 [Graph]. In Statista. Available online: <https://es.statista.com/estadisticas/1406820/elecciones-presidenciales-de-guatemala-resultados-de-la-segunda-vuelta/>

¹⁰⁵ Supreme Electoral Tribunal of Guatemala (2023). Agreements numbers 1361-2023, 1362-2023, 1363-2023, 1364-2023, 1365-2023 and 1371-2023, declaring the validity of the elections of deputies to the Congress of the Republic of Guatemala held on June twenty-fifth, two thousand and twenty-three. Available online: <https://www.tse.org.gt/images/Acuerdos2023/1361-2023>, <https://www.tse.org.gt/images/Acuerdos2023/1362-2023>, <https://www.tse.org.gt/images/Acuerdos2023/1363-2023>, <https://www.tse.org.gt/images/Acuerdos2023/1364-2023>, <https://www.tse.org.gt/images/Acuerdos2023/1365-2023> and <https://www.tse.org.gt/images/Acuerdos2023/1371-2023>

¹⁰⁶ National List: Jonathan Kiril Thomas Menkos Zeissig, Ana Patricia Orantes Thomas, Manfredo Duvalier Castañón González, Alma Luz Guerrero de la Cruz and Byron Alevsky Obregón Castañeda. Central District: Samuel Andrés Pérez Álvarez, Andrea Beatriz Villagrán Antón, Román Wilfredo Castellanos Caal, Laura Fabiola Marroquín Cordón, Raúl Amílcar Barrera Robles, Brenda Marleny Mejía López and Elena Sofía Motta Kolleff. District of Guatemala: José Carlos Sanabria Arias, Ronaldth Iván Ochaeta Aguilar, Mirna Victoria Godoy Palala, Ivana María Luján Padilla, David Mauricio Illescas Sandoval, Andrea María Reyes Zeceña and Luis Antonio Cáceres Gamarro. 4. District of Sacatepéquez: José Diego Toledo Cruz and Mercedes del Rosario Monzón Escobedo. 5. District of Chimaltenango: Raúl Arnulfo Cuá Tumín. 6. District of Quetzaltenango: José Orlando Pérez Marroquín.

¹⁰⁷ Supreme Electoral Tribunal of Guatemala (2023). Acuerdo número 1659-2023, que declara la validez de la elección presidencial realizada el veinte de agosto de dos mil veintitrés. Available online: <https://www.tse.org.gt/images/Acuerdos2023/1659-2023>

¹⁰⁸ *Idem*.

to election if they manage to obtain the number of votes necessary to do so".¹⁰⁹ In this sense, the Human Rights Committee has pointed out that **the results of genuine elections, in which the citizenry participates in the administration of public affairs through freely elected representatives, must be respected and implemented.**¹¹⁰ It follows that it is the obligation of the Guatemalan State to respect these authentic elections and to guarantee the effective access to power of the elected candidates.

91. This effective access to power establishes as a negative obligation not to impose undue restrictions and interference. Thus, Article 25 of the International Covenant on Civil and Political Rights states textually that "All citizens shall enjoy, without any of the distinctions mentioned in article 2, and **without undue restrictions**, the following rights and opportunities: (a) **To take part in the conduct of public affairs, directly** or through freely chosen representatives; (b) To vote and to **be elected at genuine periodic elections which shall be** by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) **To have access, on general terms of equality, to public service in his country.**".

Undue interference

92. However, in a context of systematic attacks on independent justice operators and the use of the criminal justice system to criminalize judges, prosecutors and lawyers who work independently and objectively, Semilla, its elected members, the TSE and its voters have been subjected to various institutional attacks that qualify as undue interference.
93. As described in the facts of this brief, there have been multiple institutional attacks by the Public Prosecutor's Office (MP). On July 12, 2023, the FECI under the MP reported that the Criminal Court ordered the suspension of Semilla's legal personality.¹¹¹ The legal effect of the suspension would prevent Semilla from participating in any subsequent political acts, and the awarding of positions to Semilla candidates. Although multiple judicial appeals have been filed against this measure, the attacks continue and the suspension of the party remains in force, generating serious threats to the takeover. Based on this suspension, on

¹⁰⁹ I/A Court H.R., Case of Castañeda Gutman v. United Mexican States, Judgment of August 6, 2008, para. 100, para. 148 at https://www.corteidh.or.cr/docs/supervisiones/casta%C3%B1eda_28_08_13.pdf

¹¹⁰ General Comment No. 25 "The right to participate in public affairs, the right to vote and the right of equal access to public service." Of July 12, 1996. Paragraph 19 states that "...Persons entitled to vote should be free to vote for any candidate and for or against any proposal submitted to referendum or plebiscite, and to support or oppose the government, without undue influence or coercion of any kind which might distort or inhibit the free expression of the will of the electors...."

¹¹¹ Public Prosecutor's Office of Guatemala (2023). Semilla Corruption Case. [Video]. Available online: <https://www.facebook.com/mpguatemala/videos/caso-corrupci%C3%B3n-semilla/3197344323896235/>

Unofficial Translation

August 30, 2023, the Guatemalan Congress disintegrated Semilla's bench and considered its members as "independent" or non-party members.¹¹²

94. In addition to these direct attacks against Semilla, personal attacks against the elected candidates have been identified. On August 21, 2023, the IACHR issued resolution 48/2023 in which it granted precautionary measures to the presidential ticket of the Semilla Movement.¹¹³ "The Commission is particularly concerned given the nature and seriousness of what has been reported, and therefore considers that there is a particularly serious situation and an aggravation of the situation initially reported, including knowledge of, at least, **a plan to attempt against the life of the proposed beneficiary or the presidential candidate. These events are particularly serious insofar as they could be associated to the profile of the proposed beneficiaries within the electoral context.** In any case, the Commission understands that they would continuously seek to intimidate them within the framework of their political activities."¹¹⁴
95. These attacks have also been directed against the TSE. On July 13, 2023, the FECI raided (with judicial authorization) the facilities of the Department of Political Organizations of the Registry of Citizens, which depends on the TSE, with the alleged purpose of obtaining further evidence and elements of proof for the investigation against Semilla. On July 21, 2023, the FECI again raided (with judicial authorization) the TSE facilities, as well as the headquarters of the Semilla Movement, with the alleged purpose of obtaining further evidence and elements of proof. On September 12, 2023, FECI carried out a third raid (with judicial authorization) in TSE facilities to allegedly investigate possible irregularities in the 2023 general elections.¹¹⁵ FECI manipulated several boxes with votes for no apparent reason. The raids lasted two days in the Center of Operations of the Electoral Process (COPE), location where the minutes and other records related to the 2023 electoral process are located. Later, on September 27, 2023, the FECI announced a new criminal investigation related to the 2023 electoral process. The FECI requested the lifting of the immunities of the TSE magistrates for alleged crimes related to the acquisition of the service for the transmission of preliminary results. Finally, on September 29, the MP raided (without a court order) the TSE headquarters and seized original documents of several electoral records without presenting a court order authorizing the actions.

¹¹² Pérez, S. (2023). Guatemala: Congress disowns president-elect's party and declares deputies independent. Associated Press (AP). Available online: <https://apnews.com/world-news/general-news-095a65fd874b26a15a32d47c1bba3f9f>

¹¹³ Inter-American Commission on Human Rights (2023). Precautionary Measures No. 574-23 - Cesar Bernardo Arevalo de Leon and Karin Herrera Aguilar regarding Guatemala. Available online: https://www.oas.org/es/cidh/decisiones/mc/2023/res_48-23_mc_574-23%20_gt_es.pdf

¹¹⁴ Inter-American Commission on Human Rights (2023). Precautionary Measures No. 574-23 - Cesar Bernardo Arevalo de Leon and Karin Herrera Aguilar regarding Guatemala. Available online: https://www.oas.org/es/cidh/decisiones/mc/2023/res_48-23_mc_574-23%20_gt_es.pdf paragraph 70.

¹¹⁵ Pérez, S. (2023) Guatemala: Prosecutor's office raids electoral headquarters. Associated Press. Available online: <https://apnews.com/world-news/general-news-4b1430746fb63412c6b98a75f8e86cdc>

Unofficial Translation

96. These ongoing attacks have been documented by the Organization of American States itself. In the extraordinary session held last November 12, 2023, the Permanent Council of the OAS expressed grave concern "over the continued post-electoral actions, partisan disputes, excessive judicialization of the electoral process and ongoing litigation that negatively impact the presidential transition in Guatemala; the continued acts of the Public Ministry to intimidate the electoral authorities, including through raids on offices of the Supreme Electoral Tribunal (TSE) and attempts to remove the immunity of TSE officials; as well as allegations of intimidation against members of the Semilla Movement and their families;..".¹¹⁶ Further on, in session dated November 29, 2023, the Executive Secretary of the Inter-American Commission on Human Rights stated that "The Inter-American Commission reiterates its call to the State of Guatemala to cease the interference actions of the Public Ministry that threaten the democratic order and the sovereign will of the population, and in this way comply with the international obligations emanating from the American Convention on Human Rights and the Inter-American Democratic Charter."¹¹⁷
97. In addition to these attacks, several criminal investigations have been initiated against the Universidad de San Carlos de Guatemala for its links with Semilla. The main line of argument of the investigation is that, through publications in social networks and signs of support to those who protested, leaders of Movimiento Semilla and, in particular, the president and vice-president-elect have participated in the takeover of USAC.¹¹⁸ The Public Prosecutor's Office requested the Congress to withdraw the immunity of Guatemala's presidential binomial-elect and other persons, due to the possible commission of the crimes of continuous depredation of cultural property, illicit association and influence peddling. According to the investigation of the MP, the presidential binomial would have participated in the seizure of the USAC, as well as having used the protest as a platform for the electoral campaign of 2023.
98. Finally, these attacks include orders for the use of force against the rights of assembly and demonstration of protests led by voters, among which are several ancestral communities.
119120

Undue restrictions

¹¹⁶ Permanent Council of the Organization of American States, Recent Developments Affecting the Rule of Law and the Democratic Presidential Transition in Guatemala, EA/Ser.G CP/RES.1236 (2468/23) dated November 15, 2023.

¹¹⁷ Inter-American Commission on Human Rights, Regular Session of the Permanent Council dated November 29, 2023, accessible at: <https://x.com/TaniaReneaum/status/1729897988187672696?s=20>

¹¹⁸ Prensa Libre (2023). MP will request the withdrawal of immunity from prosecution of Bernardo Arévalo, Karin Herrera and other officials for the case of the Usac takeover. Prensa Libre. Available online: <https://www.prensalibre.com/guatemala/elecciones-generales-guatemala-2023/mp-solicitar-retirar-la-inmunidad-a-bernardo-arevalo-a-karin-herrera-y-otros-funcionarios-por-caso-de-toma-de-la-usac-breaking/>

¹¹⁹ Free Press (2023). CC orders to remove blockades immediately and reestablish free locomotion using public force if necessary. Available online: <https://www.prensalibre.com/guatemala/justicia/cc-ordena-retirar-bloqueos-inmediatamente-y-restablecer-la-libre-locomocion-utilizando-la-fuerza-publica-si-es-necesario-breaking/>

¹²⁰ Available online: https://twitter.com/CC_Guatemala/status/1712266418639577597

99. As mentioned above, Article 25 of the Covenant establishes the prohibition of imposing undue restrictions. Although both international norms and the Guatemalan Constitution itself provide for the imposition of certain restrictions on political rights, there are also limitations to the imposition of these restrictions. Thus, according to General Comment number 25 on the right to participate in public affairs and the right to vote (1996), **"Any conditions imposed on the exercise of the rights protected by Article 25 must be based on objective and reasonable criteria."**¹²¹
100. In the same sense, Article 30 of the American Convention on Human Rights establishes that "The restrictions permitted, in accordance with this convention, on the enjoyment and exercise of the rights and freedoms recognized herein, may not be applied except in accordance with laws enacted for **reasons of general interest and for the purpose for which they were established**".
101. Echoing these obligations, Article 223 of the Political Constitution of the Republic of Guatemala establishes that the State must guarantee "the free formation and functioning of political organizations and they **shall only have the limitations determined by this Constitution and the law.** ..." The law enacted by the Congress of Guatemala to regulate matters related to electoral matters is the Electoral and Political Parties Law. Article 1 of this law establishes that "The present law regulates what is related to the exercise of political rights; the rights and obligations that correspond to the authorities, the electoral bodies, the political organizations, and what refers to the exercise of the suffrage and the electoral process." In accordance with the foregoing, the Electoral and Political Parties Law is the law that may establish restrictions to the rights to vote and be elected.
102. However, as related in paragraphs 26 and 27 of this document, the sanction of suspension of the Semilla party was not imposed based on the Electoral Law but based on the Law Against Organized Crime whose objective is "the creation of a legal instrument to pursue, prosecute and eradicate organized crime."¹²² In none of the articles of this law is there any mention of electoral matters or political electoral rights, from which it follows that the purpose of any restriction established in this law has no relation whatsoever with electoral matters.
103. For these reasons, it is considered that a restriction based on the Law Against Organized Crime does not comply with the requirements established in Article 30 of the American Convention on Human Rights and constitutes an undue restriction.

¹²¹ General Comment No. 25 "The right to participate in public affairs, the right to vote and the right of equal access to public service." Of July 12, 1996. Paragraph 4.

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

¹²² See: Law Against Organized Crime, Second Recital: "That organized crime is a scourge that has currently placed the inhabitants of the Republic in a state of defenselessness, due to its organizational operation, which makes it necessary to create a legal instrument to pursue, prosecute and eradicate organized crime".

Unofficial Translation

104. Now, regardless of the validity of the use of the Law Against Organized Crime to establish restrictions to the right to vote and to participate in public affairs, sanctioning the Semilla political party with the suspension of its incorporation is evidently disproportionate and unreasonable. It is important to point out that the suspension of the Semilla party was carried out based on a precautionary measure decreed without the existence of a final judicial determination regarding the merits of the case that complied with the due judicial guarantees. Thus, without prior trial, a measure was issued whose consequence could be the deprivation of the right to vote of the Guatemalan voting population and the deprivation of the right to be elected of Semilla's candidates, which results in an evidently disproportionate and unreasonable sanction. Although the criminal sanction obeys the interests of the population to deter criminal conduct, in this case organized crime, this sanction cannot violate the general interest of guaranteeing the right to vote and affect persons who are not involved in the alleged crime, such as voters or elected candidates. For these reasons, it is considered that the imposition of this sanction violates the provisions of Articles 23 of the American Convention on Human Rights and 25 of the International Covenant on Civil and Political Rights.
- b. The invasion of competences and constant attack on the TSE by the Attorney General and the Criminal Judge violate Guatemala's obligations to guarantee the independence of the electoral bodies in charge of making decisions on electoral complaints.
105. As stated in paragraph 91 of this document, the FECI has carried out several acts through which it has raided the TSE facilities, broken the chain of custody of the electoral ballots and requested the lifting of the pre-trial proceedings against the TSE magistrates. These actions of the FECI, which depends on the Public Prosecutor's Office, are an invasion of the TSE's spheres of power. The TSE itself asserted before this CC a question of competence against the criminal court that ordered the search of its facilities as an invasion of legal spheres. These continuous and focused interferences suggest a direct attack on the independence of the TSE, which violates Guatemala's obligations to guarantee the independence of the electoral authorities as a necessary condition for the exercise of political-electoral rights established in Articles 23 of the American Convention on Human Rights and 25 of the International Covenant on Civil and Political Rights.
106. It is evident that the interference against the TSE undermines the independence of this body by allowing the MP to interfere in the TSE's own functions, violating Guatemala's international obligations to guarantee the existence of independent electoral bodies, as well as those related to the democratic principle, the right to vote and the right to participate in the management of public affairs through authentic periodic elections of its citizens.

Unofficial Translation

- c. The systematized and focused criminal prosecution exercised by the Attorney General of Guatemala and endorsed by the Criminal Judge, against the Semilla political party, its members and candidates violates Guatemala's obligations to guarantee an equitable, autonomous, independent and impartial administration of justice.
107. The actions of the MP in the systematic and targeted criminal prosecution against the Semilla political party, its members and its voters violate the obligations to ensure the fair, autonomous, independent and impartial administration of justice, as established in Article 8 of the American Convention on Human Rights and Article 14 of the International Covenant on Civil and Political Rights. These international standards and the principles of law established in the Constitution and the Organic Law of the Public Prosecutor's Office of Guatemala require that prosecutors and other agents of the Public Prosecutor's Office act with impartiality, objectivity and adherence to legality. The actions of the Attorney General, by systematically targeting a political party and its members, suggest a lack of impartiality and objectivity. This conduct is contrary to the United Nations Guidelines on the Role of Prosecutors and the Standards of Professional Responsibility of Prosecutors, which call for impartiality and non-discrimination.
108. It is noteworthy that this lack of independence, impartiality and objectivity has been denounced and rescued by the Inter-American Commission on Human Rights, "the IACHR received information on the intensification of criminalization and stigmatization against magistrates, magistrates, judges and other independent justice operators in the country, among other reasons, due to an apparent **lack of independence of the Public Prosecutor's Office, which would facilitate the manipulation of criminal law against them**".¹²³

V. CONCLUSIONS

109. From the foregoing considerations it is concluded that the acts under consideration violate Guatemala's international obligations to guarantee the democratic principle, the right to vote and to participate in the conduct of public affairs through authentic periodic elections, carried out by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the electors; Guatemala's obligations to guarantee access, on general terms of equality, to public service; Guatemala's obligations not to impose undue restrictions on participation in the conduct of public affairs; Guatemala's obligations to guarantee a fair, autonomous, independent and impartial administration of justice; and Guatemala's obligations to guarantee access to and the exercise of power subject to the rule of law.
110. We submit to the consideration of this Constitutional Court the arguments set forth herein, in the hope that they will support its praiseworthy work in the present case and, if

¹²³ Inter-American Commission on Human Rights, Annual Report, Chapter IV.B, Guatemala, paragraph 3.

Unofficial Translation

appropriate, resolve to recognize the violation of the political rights of the plaintiffs, the Semilla party and its members, declare the provisional suspension of Semilla as contrary to Guatemala's international and constitutional obligations, and adopt measures to restore the rights of Semilla's members, thus guaranteeing respect for democracy and the rule of law in Guatemala.

November 30, 2023.

Stephen McFarland
former U.S. Ambassador to
Guatemala

Amrit Singh
Executive Director, Rule of Law Impact
Lab, Stanford Law School