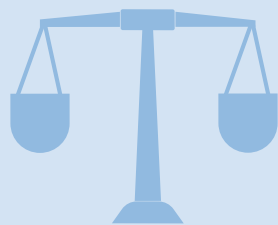




**Above the Law:**  
**The Public Prosecutor's  
Office in Guatemala**



**OCTOBER 2024**

This report was prepared by the Rule of Law Impact Lab at Stanford Law School and the Cyrus R. Vance Center for International Justice.

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# Executive Summary And Recommendations

As the premier law enforcement body in a democracy, the Public Prosecutor's Office (Ministerio Público, MP) plays a critical role in protecting the rule of law. However, in recent years, the MP in Guatemala has been the subject of numerous findings by official international sources that it has systematically undermined the rule of law. These sources include the Inter-American Commission on Human Rights (IACHR), the Organization of American States (OAS), the United Nations, the European Union, and the governments of Albania, Armenia, Bosnia and Herzegovina, Canada, France, Georgia, Germany, Iceland, Lichtenstein, North Macedonia, Norway, Montenegro, the Republic of Moldova, Serbia, Sweden, Switzerland, Ukraine, the United Kingdom, and the United States.

This report compiles official international findings that the MP in Guatemala, under its current leadership, engaged in serious misconduct and the abuse of power. The findings include allegations that the MP has obstructed corruption investigations, used criminal law as a tool to persecute justice operators, journalists, and human rights defenders, and attempted to subvert democracy.<sup>1</sup> The gravity of the situation recently led the Inter-American Commission to recommend an independent review of the MP's functioning and impact on human rights, taking into account the widely publicized allegations of lack of objectivity.<sup>2</sup>

The MP has consistently denied “the existence of a practice of criminalization, arguing that it

has a legal mandate to investigate all complaints it receives, without distinction of the person denounced, his or her position or profession.”<sup>3</sup> It insists that it “objectively applies the Guatemalan Constitution and laws.”<sup>4</sup> The head of the MP has filed legal challenges against various authorities, including President Bernardo Arévalo, warning of an alleged “systematic conspiracy” whose ultimate goal is “to take control of the Public Prosecutor's Office and alter its functional autonomy and independence.”<sup>5</sup>

As documented in this report, the public record of official allegations of the MP's misconduct is too vast to be ignored. For example, in its 2021 report, the Inter-American Commission on Human Rights cited “troubling information about systematic actions by the Attorney General that call into question her obligation to combat impunity in the country. These include the arbitrary dismissal of the head of FECl [Special Prosecutor's Office Against Impunity], patterns of use and manipulation of criminal law to criminalize independent justice operators and . . . a series of actions that represent a severe setback in the fight against corruption and impunity in Guatemala.”<sup>6</sup>

In December 2023, the Commission issued a resolution alerting OAS member states and the international community to “an imminent rupture of the constitutional order due to the abuse of power and the instrumentalization of the constitutional function of investigating crimes by the Public Ministry with the purpose of invalidating

the integrity and results of the electoral process and preventing the inauguration of the elected authorities in accordance with the will of the people expressed in the general elections.”<sup>7</sup> The same month, an OAS Permanent Council resolution expressed “grave concerns over actions taken by the Public Prosecutor’s Office (MP) and the Supreme Court of Justice in Guatemala on November 16, 2023, including the opening of new unfounded investigations, the issuance of search and approval of arrest warrants, the requests to withdraw immunity of democratically-elected officials and political leaders, and the filing of pre-trial proceedings against President-Elect Bernardo Arévalo, Vice President-Elect Karin Herrera as well as several members of the opposition, actions which are inappropriate and contrary to democratic principles.”<sup>8</sup> The OAS General Secretariat issued a statement condemning “the attempted coup d’état by the Public Prosecutor’s Office of Guatemala.”<sup>9</sup>

In August 2024, six United Nations Special Rapporteurs issued an urgent statement about the inhumane conditions under which renowned journalist and president of media outlet *El Periódico*, José Rubén Zamora Marroquín, has been detained on grounds of alleged money laundering. They expressed concern that “the charges against him are connected to his work as an investigative and anti-corruption journalist and that such tactics create a chilling effect on other journalists in the country, preventing them from exercising their right to report freely and without fear of reprisals.”<sup>10</sup> The UN Working Group on Arbitrary Detention held that Zamora’s detention was unlawful, and highlighted “widespread concern within the international community about the criminalization and

protection of judges, prosecutors, journalists (including the case of Mr. Zamora) and human rights defenders, in the context of the fight against corruption in Guatemala.”<sup>11</sup>

The European Union and the governments of Albania, Armenia, Bosnia and Herzegovina, Canada, France, Georgia, Germany, Iceland, Lichtenstein, North Macedonia, Norway, Montenegro, the Republic of Moldova, Serbia, Sweden, Switzerland, Ukraine, the United Kingdom, and the United States have issued sanctions against the Attorney General for corruption and attempts to subvert democracy.<sup>12</sup>

These allegations raise serious concerns about the MP’s possible violation of Guatemala’s international obligations under the American Convention on Human Rights, the International Covenant on Civil and Political Rights, the Inter-American Convention against Corruption, and the United Nations Convention against Corruption.<sup>13</sup>

Guatemalan law, however, does not provide an independent and impartial mechanism for holding the Attorney General accountable, as required under international law.<sup>14</sup> The only means of holding the Attorney General accountable is removal by the President for “duly established just cause,”<sup>15</sup> which, following a 2016 reform, requires a final conviction for the commission of an intentional crime during the exercise of the Attorney General’s functions.<sup>16</sup> This legal framework makes it practically impossible to remove the Attorney General because the MP is the entity in charge of criminal investigation and prosecution. Any criminal investigation against the Attorney General would have to be initiated by the institution which he/she heads and either

by personnel who are all hierarchically inferior to him/her, or an external “special prosecutor” who is appointed by and can be removed by him/her.<sup>17</sup> This inherent conflict of interest renders the accountability mechanism ineffective. Notably, the Organic Law of the Prosecutor’s Office does not provide any recourse or mechanism to protect personnel from retaliation for initiating a proceeding against the Attorney General. In addition, Guatemalan law does not allow for disciplinary proceedings to be brought against the Attorney General.<sup>18</sup>

In addition, even in the unlikely event that the MP did prosecute the Attorney General, he/she enjoys procedural immunity.<sup>19</sup> Furthermore, the Organic Law of the Prosecutor’s Office does not allow the Attorney General to be suspended while he/she is being investigated. The law only allows the Attorney General to be suspended after the removal of immunity, in the event of a preventive detention order being issued.<sup>20</sup> This is insufficient to protect the independence and impartiality of any criminal process initiated against the Attorney General who could remain the hierarchical superior of those conducting the investigation for its entire duration. This further exacerbates the structural problems with the legal framework governing accountability.

In light of the structural deficiencies in the aforementioned legal framework governing prosecutorial accountability, and based on relevant international legal standards, this report presents the following recommendations to the State of Guatemala:

1. Ensure that the Public Prosecutor’s Office and its prosecutors act with impartiality, objectivity, and professionalism in accordance with Article 8 of the American

Convention on Human Rights and Article 14 of the International Covenant on Civil and Political Rights. This requires prosecutors to apply the law fairly, without outside influence, and in accordance with relevant international guidelines.

2. Implement clear and transparent disciplinary procedures to hold prosecutors accountable for misconduct. These procedures should be enshrined in law, ensuring fair and impartial hearings in accordance with the Guidelines on the Role of Prosecutors and the Standards of the International Association of Prosecutors. Any removal of a prosecutor must be based on just cause and follow a fair process.
3. Guarantee the independence of investigations, including into figures such as the Attorney General. Guatemala should ensure that such investigations are conducted without interference, in an objective and independent manner.
4. Reform Guatemala’s laws and regulations so that the hierarchical structure of the Public Prosecutor’s Office is not an obstacle for high-level officials in that office to be held accountable for misconduct.

# I. Introduction

1. In recent years, Guatemala's Public Prosecutor's Office (Ministerio Público, MP) has been the subject of numerous allegations by official sources that it has engaged in serious misconduct and abuse of power. The allegations include claims that the MP has obstructed anti-corruption investigations, instrumentalized criminal law as a tool of political persecution, and attempted to subvert democracy.<sup>21</sup>
2. As explained below, these official sources include the Inter-American Commission on Human Rights (IACHR), the Organization of American States (OAS), the United Nations, the European Union (EU), as well as the governments of nineteen countries. The MP has publicly rejected these allegations.
3. Without prejudging the merits of the allegations or the MP's response to them, this report assesses Guatemala's accountability mechanisms in light of international legal standards on prosecutorial accountability.
4. Based on these international standards, this report makes recommendations regarding prosecutorial accountability in Guatemala. The report's objective is to inform the ongoing debate on this subject and promote reforms that will advance the rule of law in the country.

## II. Official Reports Of The Abuse Of Power By The Public Prosecutor's Office

### A. The Context

5. The Public Prosecutor's Office in Guatemala is currently led by Attorney General María Consuelo Porrás Argueta, who took office in May 2018, while the International Commission against Impunity in Guatemala ("CICIG"), an independent anti-corruption organization, was operating.<sup>22</sup> CICIG began operations in 2007 based on an agreement between the government of Guatemala and the United Nations to support the Public Prosecutor's Office in investigating and prosecuting crimes committed by members of illegal security groups and clandestine security structures.<sup>23</sup> The Special Prosecutor's Office Against Impunity (Fiscalía Especial contra la Impunidad, FECI) was created to investigate cases selected and assigned by CICIG and the MP, in accordance with the competency framework.<sup>24</sup>
6. In September 2019, CICIG was forced, after twelve years of supporting anti-corruption prosecutions, to end its operations after then-President Jimmy Morales, himself under investigation by CICIG, refused to renew its mandate.<sup>25</sup> In its final 2019 report, CICIG described "the manipulation of investigations and evidence in criminal cases involving prosecutors and lawyers," and the criminalization of prosecutors and judges who were trying to guarantee objective investigations in Guatemala.<sup>26</sup> It also highlighted the existence of "structures or mechanisms that directly undermine the

impartiality and independence of judges, having serious consequences on judicial guarantees and protection."<sup>27</sup>

### B. Inter-American Commission on Human Rights

7. In its 2021 report, the Inter-American Commission on Human Rights ("IACHR") noted that it had received that year "information on the intensified criminalization and stigmatization against magistrates, judges and other independent justice operators in the country, due to, among other reasons, an apparent lack of independence of the Public Prosecutor's Office . . . . , which is said to facilitate the manipulation of criminal law against them."<sup>28</sup>
8. The report also warned about the worsening of attacks and interference against the independence of those bodies that had previously stood out for their independent and impartial work, 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 judges of high-risk courts in Guatemala.<sup>29</sup>
9. It also cited "troubling information about systematic actions by the Attorney General that call into question her obligation to combat impunity in the country. These include the arbitrary dismissal of the head of FECI, patterns of use and manipulation



of criminal law to criminalize independent justice operators and . . . a series of actions that represent a severe setback in the fight against corruption and impunity in Guatemala.”<sup>30</sup>

10. The Commission also noted that according to the information it had received, the Attorney General’s 23 July 2021 dismissal of Special Prosecutor Juan Francisco Sandoval, head of FECl, was “arbitrary and illegal, as it failed to meet international standards of due process of law as well as the grounds established in domestic law for removing career officials from office.”<sup>31</sup> It further observed that Sandoval was forced to leave the country because there were more than 68 complaints against him which “remain[ed] open in the Public Prosecutor’s Office, despite being manifestly groundless, so as to maintain a climate of judicial persecution and fear of arrest.”<sup>32</sup>
11. The Commission also cited information that “since the appointment of the current Attorney General, Consuelo Porras, the work of the FECl has faced increasingly intense attacks and obstacles . . . that staff had been moved and transferred arbitrarily among departments; prosecutors legally barred from leading investigations had been appointed, hampering the work of investigation; and investigations led by the FECl had been transferred to other prosecutors’ offices in cases involving the President or individuals close to him.”<sup>33</sup>
12. In its 2022 report, citing the arrest of renowned journalist and president of media outlet El Periódico, José Rubén Zamora Marroquín,<sup>34</sup> for alleged crimes related

to money laundering, the IACHR noted “with concern that the context of impunity has contributed to exacerbate a climate of censorship and intense persecution of other people who play a relevant role in public life and contribute to the democratic debate in Guatemala, in particular, human rights defenders and media workers.”<sup>35</sup> The Commission observed that Zamora had been the beneficiary of precautionary measures from the Commission since 2003, when the Commission understood that there was an imminent risk to his life and personal integrity due to a series of physical attacks and threats he received in the exercise of his profession, and the context of violence against the press in Guatemala.<sup>36</sup>

13. The Commission further noted that “civil society organizations denounced that the actions against Mr. Zamora were ‘a strong message to all journalists in Guatemala,’ who are an obstacle for the government [and that] Mr. Zamora’s case has been used as an example to intimidate and silence the press.”<sup>37</sup> It added that “State authorities have stated that those criminal cases are not related to journalistic activities and that the judicial proceedings in his case have been carried out in strict compliance with the legal and human rights framework.”<sup>38</sup>
14. In its 2023 report, the IACHR noted that “the lack of independence and impartiality of the Public Prosecutor’s Office was once again evident in the utilization of criminal law and the FECl to criminalize justice operators, journalists, members of the Supreme Electoral Tribunal (TSE), and the opposition party Movimiento Semilla with

the aim of influencing the results of the general elections and, in general, people involved in the fight against impunity and corruption. In particular, these actions carried out by the Public Prosecutor's Office in the electoral context revealed abusive exercise of power.”<sup>39</sup>

15. The 2023 report added that the IACHR had been informed that “the Public Prosecutor's Office is acting in concert with groups of individuals interested in undermining the legitimate exercise of criminal prosecution in favor of impunity, among them, the Foundation Against Terrorism. Simultaneously, the Public Prosecutor's Office is reportedly continuing to halt the progress of investigations and undo the progress achieved by CICIG and FECI, through judicial persecution and criminalization of the people who were in charge of them. Since 2018, more than 90 justice operators have been affected by acts of criminalization, imprisonment, or forced exile.”<sup>40</sup> The 2023 report also noted that the IACHR had “received information on the continuation of a recurrent practice of arbitrary transfers and dismissals of prosecutors.”<sup>41</sup>
16. In December 2023, the IACHR adopted Resolution No. 03/2023, “Human Rights, the Instrumentalization of the Justice System and the serious risks to the Rule of Law in Guatemala.”<sup>42</sup> The Resolution noted “that Guatemala is going through a political and institutional crisis with profound effects on the validity of democracy and the human rights of the population as a consequence of a series of undue and arbitrary actions and interferences by the Public Ministry

that threaten the result of the General Elections and the transition process of the Presidency and Vice-Presidency of the Republic in progress, placing in question the constitutional order, the rule of law and the validity of the human rights of the population.”<sup>43</sup> The Resolution alerted OAS member states and the international community to “an imminent rupture of the constitutional order due to the abuse of power and the instrumentalization of the constitutional function of investigating crimes by the Public Ministry with the purpose of invalidating the integrity and results of the electoral process and preventing the inauguration of the elected authorities in accordance with the will of the people expressed in the general elections.”<sup>44</sup>

17. In 2024, the Preliminary Observations of the on-site visit to Guatemala published by the IACHR revealed the “persistent instrumentalization of the criminal justice system against those who have participated in the fight against impunity and corruption”<sup>45</sup> and its correlated undermining of the principle of separation of powers and judicial independence.<sup>46</sup>
18. The IACHR documented five specific patterns that reveal the criminalization of relevant operators from the Public Prosecutor's Office. The first of these patterns is the filing of a large number of complaints against the same person, in many cases “for the same facts,” with the clear purpose of hindering their legal defense. For example, the IACHR learned that some justice operators faced between “30 and 100 [criminal] cases for carrying

- out their functions.”<sup>47</sup> A second element detected by the IACHR is the filing of anonymous or unfounded complaints to generate a “climate of pressure, harassment and intimidation.”<sup>48</sup>
19. Third, the Commission observed that the Public Prosecutor’s Office often charges crimes that are not appropriate to the facts denounced. For example, “persons who are not public officials are investigated for crimes that are apply only to public officials,” or judges and lawyers are prosecuted only “for the content of their sentences” or for exercising their work as defense attorneys.<sup>49</sup>
  20. Fourth, the IACHR detected abuse in the application of provisional measures such as pretrial detention. By charging “serious crimes that do not benefit from alternative measures,” or by imposing “millionaire bonds that are impossible to pay,” persons subject to criminal proceedings are left without the option of freedom during these proceedings.<sup>50</sup>
  21. Finally, the IACHR considered that the Public Prosecutor’s Office has engaged in violations of the right to due process and the right to defense through the use of dilatory practices in criminal proceedings or denying access to files and information regarding the cases in which a person is being investigated.<sup>51</sup> In addition, the Public Prosecutor’s Office has hindered the “production of exculpatory evidence” and has pressured the accused to accept charges through the figure of “acceptance of charges” when faced with an imminent loss of liberty.<sup>52</sup>
  22. For its part, the MP has denied “the existence of a practice of criminalization, arguing that it has a legal mandate to investigate all complaints it receives, without distinction of the person denounced, his or her position or profession.”<sup>53</sup> The MP has also emphasized its autonomous organizational structure as an independent entity that “objectively applies the Guatemalan Constitution and laws.”<sup>54</sup>
  23. In 2024, Attorney General Porras filed amparo 279/2024 before the Constitutional Court, requesting assistance in executing a provisional injunction against various authorities, including President Arévalo. The amparo warned of the existence of an alleged “systematic conspiracy”<sup>55</sup> whose ultimate purpose would be “TO TAKE CONTROL OF THE PUBLIC MINISTRY AND ALTER THE FUNCTIONAL AUTONOMY AND INDEPENDENCE” of said institution.<sup>56</sup> In order to prove the existence of the claimed acts, the Public Prosecutor’s Office presented as evidence several documents of the Ministry of Finance related to budgetary provisions, as well as hundreds of publications on social networks and press headlines criticizing the actions of the Public Prosecutor’s Office and its head.<sup>57</sup>
  24. The Attorney General’s brief before the Constitutional Court stated that the MP “shall act independently, on its own initiative and in compliance with the functions attributed to it by law without subordination to any of the State agencies or any authority, except as established in said law.”<sup>58</sup> On August 26, 2024, the Constitutional Court denied the amparo on the grounds

that neither the president nor the government had violated any rights by protesting the Attorney General's performance, and that these protests had not jeopardized public order or the institution's constitutional functions.<sup>59</sup>

### C. Organization of American States

25. In the context of the 2023 presidential elections, the OAS Permanent Council issued a resolution expressing grave concern "over the continued acts of the Public Prosecutor's Office 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..."<sup>60</sup>
26. The resolution also denounced "attempts by the Public Prosecutor's Office to discredit and impede a peaceful transition of power, which undermine the democratic process and Guatemala's commitments under the Inter-American Democratic Charter."<sup>61</sup>
27. On 16 November 2023, the OAS General Secretariat strongly condemned the filing of impeachment proceedings by the Public Prosecutor's Office, stating "The General Secretariat of the Organization of American States (OAS) strongly condemns the filing of impeachment proceedings made today by the Public Prosecutor's Office of Guatemala, which includes the elected President of the country, Bernardo Arévalo, the elected Vice President, Karin Herrera, as well as several members of the

political parties Semilla, VOS and Winaq."<sup>62</sup>

The OAS described these actions as part of 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."<sup>63</sup>

28. On 12 December 2023, the OAS Permanent Council adopted the resolution "Actions against the rule of law that put at risk the transition of government in Guatemala."<sup>64</sup> The resolution expressed "grave concerns over actions taken by the Public Prosecutor's Office (MP) and the Supreme Court of Justice in Guatemala on November 16, 2023, including the opening of new unfounded investigations, the issuance of search and approval of arrest warrants, the requests to withdraw immunity of democratically-elected officials and political leaders, and the filing of pre-trial proceedings against President-Elect Bernardo Arévalo, Vice President-Elect Karin Herrera as well as several members of the opposition, actions which are inappropriate and contrary to democratic principles."<sup>65</sup> The resolution "strongly condemn[ed] the ongoing abusive exercise of power by the Public Prosecutor's Office and other public authorities in Guatemala."<sup>66</sup> The resolution also expressed "serious concern over the continued political persecution

and judicialization of the electoral and democratic transition processes by the Public Prosecutor's Office and other public authorities in Guatemala.”<sup>67</sup>

29. In December 2023, the OAS General Secretariat issued a statement condemning “the attempted coup d'état by the Public Prosecutor's Office of Guatemala.”<sup>68</sup>

## D. United Nations

30. In the case of José Rubén Zamora Marroquín, six United Nations Special Rapporteurs have expressed concerns that “the charges against him are connected to his work as an investigative and anti-corruption journalist and that such tactics create a chilling effect on other journalists in the country, preventing them from exercising their right to report freely and without fear of reprisals.”<sup>69</sup>

31. The UN Working Group on Arbitrary Detention highlighted “widespread concern within the international community regarding the criminalization and protection of judges, prosecutors, journalists (including the case of Mr. Zamora), and human rights defenders, in the context of the fight against corruption in Guatemala.”<sup>70</sup> It concluded that Zamora's detention violated his fundamental rights, including the right to a fair trial and freedom of expression.<sup>71</sup> According to the Working Group, the process was plagued by irregularities, such as the lack of adequate access to defense and the exclusion of essential evidence.<sup>72</sup>

32. In another Guatemalan case of former prosecutor Virginia Laparra, the UN

Working Group on Arbitrary Detention concluded that her detention was arbitrary and the result of her work in the fight against corruption.<sup>73</sup> The Working Group expressly concluded that the deprivation of her liberty was arbitrary and unlawful.<sup>74</sup> As of the date of publication of this report, former prosecutor Laparra remains in exile.<sup>75</sup>

33. Diego García-Sayán, then UN Special Rapporteur on the independence of judges and lawyers, denounced the threats and harassment suffered by high-profile judges such as Yassmín Barrios, Miguel Gálvez, Erika Aifán and Pablo Xitumul. García-Sayán demanded that “Guatemala must immediately stop abusing the law to harass judges,” noting that “[i]f this worrying trend continues, prosecutors, lawyers and witnesses in cases related to anti-corruption or transitional justice may also be threatened.”<sup>76</sup>

34. In 2021, the former UN Special Rapporteur, Diego García-Sayán, condemned the actions of the MP related to the obstruction of the appointment of Judge Gloria Porras to the Constitutional Court, considering them part of a pattern of intimidation and reprisals against judicial independence.<sup>77</sup> In particular, the former Rapporteur expressed his concern at “the systematic use of legal weapons to obstruct the taking of office of Judge Porras,” while noting that “[t]hese actions are part of the weakening of the rule of law and judicial independence in Guatemala.”<sup>78</sup>

35. In 2022, the UN Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, noted in relation to the cases of Virginia Laparra and Miguel

Angel Galvez that “[c]riminal law is being abused to attack public servants and justice operators, who protect and guarantee human rights, who are strengthening the rule of law and making great strides in the fight against impunity in the country.”<sup>79</sup>

36. For his part, the United Nations High Commissioner for Human Rights Volker Türk stated on 5 January 2024, that “[t]he increase in criminalization against justice operators in the last 12 months in Guatemala is very worrying and undermines the independence of the judiciary and the rule of law in the country. The intimidation, harassment, prosecution and persecution of those fighting for accountability for human rights violations and working on corruption cases is reprehensible and must stop.”<sup>80</sup>

## E. European Union

37. In the context of the 2023 presidential elections in Guatemala, the EU Election Observation Mission warned that the first round of elections was characterized by three key factors.<sup>81</sup> These included: (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 freedom”; (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 [to which the incumbent President, Alejandro Giamattei Falla, belonged].<sup>82</sup>
38. On 5 October 2023, the High Representative of the European Union,

referring to the electoral process in Guatemala, stated that: “These unacceptable actions, led in particular by the office of the Attorney General (Ministerio Público), are attempting to intimidate officials and judges and represent a serious threat to democracy in Guatemala. Of particular concern in this regard are the recent raids on TSE offices and the seizure of electoral records by the Special Prosecutor’s Office Against Impunity (FECI), the legal actions against TSE magistrates, and the attempts to achieve the suspension of the MS political party.”<sup>83</sup>

39. On 2 February 2024, the Council of the European Union (“EU”) sanctioned the Attorney General, and four other individuals, for “actions that undermine democracy and the rule of law or obstruct the peaceful transfer of power in Guatemala.”<sup>84</sup> The other four individuals included three officials from the Guatemalan Attorney General’s Office (Secretary General Ángel Arnoldo Pineda Ávila, the head of the Special Prosecutor’s Office against Impunity, José Rafael Curruchiche Cucul, and prosecutor Leonor Eugenia Morales Lazo de Sánchez), as well as Judge Fredy Raúl Orellana Letona.<sup>85</sup> The sanctions froze the designated individuals’ assets, prevented them from entering or transiting through the EU, and prohibited EU citizens and businesses from providing funds available to them.<sup>86</sup>
40. In response to the EU sanctions, the MP categorically rejected the accusations and described them as “spurious, malicious and anti-democratic, propitiated by the European Council.” The MP also stated that “[t]hese systematic attacks seek to

intimidate and coerce officials of the Public Prosecutor's Office and pose a serious threat to the rule of law and democracy in Guatemala.”<sup>87</sup>

41. On 22 August 2024, the Delegation of the European Union to Guatemala stated that “[t]he recent actions of the Guatemalan Attorney General's Office (Ministerio Público), including its request to remove the immunity of democratically elected President Bernardo Arévalo, are part of a wider and highly worrying pattern of politically motivated accusations and investigations directed against the current government. The EU has repeatedly expressed its concern about the continued misuse and instrumentalization of the justice system, particularly in the aftermath of the 2023 elections and ongoing efforts to overturn the will of the Guatemalan people.”<sup>88</sup>

**F. Governments of Albania, Armenia, Bosnia and Herzegovina, Canada, France, Georgia, Germany, Iceland, Lichtenstein, North Macedonia, Norway, Montenegro, the Republic of Moldova, Serbia, Sweden, Switzerland, Ukraine, the United Kingdom, and the United States**

42. According to the U.S. State Department' 2021 Country report on Guatemala, despite numerous allegations of corruption in the legislative and executive branches, few high-profile cases were prosecuted, and anti-corruption efforts in the judicial system stalled. Prominent prosecutors were

dismissed or removed from important cases, while independent judges were threatened with unfounded allegations to strip them of their immunity.<sup>89</sup> The reported that on 23 July 2021, the Attorney General abruptly dismissed the head of the Special Prosecutor's Office against Impunity, Juan Francisco Sandoval, who fled the country after implicating several officials in corruption cases. Subsequently, arrest warrants and new accusations were issued against Sandoval, who, as of the time of writing of this report, remains in exile.<sup>90</sup>

43. On 30 July 2021, the Embassies of Canada, France, Germany, Sweden, Switzerland, the United Kingdom, and the United States issued a joint statement following the dismissal of anti-corruption prosecutor Juan Francisco Sandoval by Attorney General Consuelo Porras. Their statement said: “we regret the actions of the Attorney General in the recent dismissal of the Special Prosecutor Against Impunity (FECI). This fact is perceived as part of a pattern of instability and institutional weakening that affects the rule of law in Guatemala.”<sup>91</sup>
44. On 20 September 2021, the United States added Maria Consuelo Porras Argueta de Porres and Angel Arnoldo Pineda Avila to its “undemocratic and corrupt actors list,” which generally makes the perpetrators ineligible for visas and admission to the United States.<sup>92</sup> In its press statement, the U.S. said: “Maria Consuelo Porras Argueta de Porres, current Attorney General of Guatemala, obstructed investigations into acts of corruption by interfering with criminal investigations. Porras' pattern of obstruction included ordering prosecutors

in Guatemala's Public Ministry (MP) to ignore cases based on political considerations and actively undermining investigations carried out by the Special Prosecutor Against Impunity, including by firing its lead prosecutor, Juan Francisco Sandoval, and transferring and firing prosecutors who investigate corruption. Angel Arnoldo Pineda Avila, current Secretary General of the MP, obstructed investigations into acts of corruption by interfering in anticorruption probes. The MP has opened a probe into allegations that Pineda interfered in an anticorruption investigation. Pineda is alleged to have tipped off investigative targets about cases being built against them."

45. In a March 2022 statement, the U.S. Embassy in Guatemala said: "The United States is deeply concerned about the continued and brazen attacks by Guatemala's Attorney General, Consuelo Porras, against Guatemala's justice system through politically motivated arrests and detentions of current and former public officials who have fought corruption. The reports of repeated, uncommon delays in arraignment hearings, the withholding of information to defense counsels, refusals to hold hearings publicly, and leaks of sealed case details to online entities raise serious concerns regarding the fairness of these proceedings. In addition to the arrest of at least six former and current anti-corruption prosecutors, other prosecutors have been forced to flee the country and efforts continue to remove the immunity of additional anti-corruption judges and prosecutors. We are also alarmed that procedural delays often place public

servants in the same facilities with those they have helped investigate or convict, leading to serious risks to their safety."<sup>93</sup>

46. On 16 May 2022, the U.S. State Department designated Guatemala's Attorney General "due to her involvement in significant corruption" which rendered her and her immediate family members ineligible for entry into the United States.<sup>94</sup> It stated that "[d]uring her tenure, Porras repeatedly obstructed and undermined anticorruption investigations in Guatemala to protect her political allies and gain undue political favor. Porras's pattern of obstruction includes reportedly ordering prosecutors in Guatemala's Public Ministry to ignore cases based on political considerations and firing prosecutors who investigate cases involving acts of corruption."<sup>95</sup>

47. On 10 December 2023, official representatives of Germany, Canada, the United States, France, Great Britain, Sweden, and Switzerland published the following statement identifying the MP as being a key actor in relation to the attempt to undermine the 2023 election results:

"As representatives of the governments of Germany, Canada, the United States, France, the United Kingdom, Sweden and Switzerland, we have followed with growing concern the attempts to silence the voice of the Guatemalan people expressed at the polls. We have witnessed the abusive judicial manipulation of the process and the results. . . .

We urge the three powers that make up the State of Guatemala, *and in particular the Attorney General's Office which is at*



*the centre of this storm*, to take definitive actions to ensure a transition of power that respects the fundamental principles of democracy and the will expressed by the people of Guatemala on June 25 and August 20, 2023.”<sup>96</sup>

48. In February 2024, the governments of Armenia, Albania, Bosnia and Herzegovina, Georgia, Iceland, Liechtenstein, North Macedonia, Montenegro, Republic of Moldova, Serbia, Ukraine, and Norway, aligned themselves with European Council Decision to impose sanctions on the Attorney General and three officials from the Guatemalan Attorney General’s Office (Secretary General Ángel Arnoldo Pineda Ávila, the head of the Special Prosecutor’s Office against Impunity, José Rafael Curruchiche Cucul, and prosecutor Leonor Eugenia Morales Lazo de Sánchez), as well as Judge Fredy Raúl Orellana Letona.<sup>97</sup>
49. In February 2024, the Canadian government sanctioned the Attorney General as well as Cinthia Edelmira Monterroso Gómez (prosecutor), José Rafael Curruchiche Cucul (Special Prosecutor Against Impunity Within the Public Ministry) and Jimi Rodolfo Bremer Ramírez (judge) for “committing acts of significant corruption and gross and systematic violations of human rights in Guatemala.”<sup>98</sup>
50. On 10 April 2024, the Swiss government sanctioned Attorney General Consuelo Porras for attempting to prevent the inauguration of President Bernardo Arévalo de León.<sup>99</sup>

# III. Structural Flaws In Legal Framework Governing Prosecutorial Accountability

51. In its resolution 3/23, the IACHR called on the Guatemalan state to “[g]uarantee mechanisms for the accountability of the head of the Attorney General’s Office and the Public Prosecutor’s Office compatible with the standards of international human rights law and, in particular, with the principle of autonomy and independence of that institution.”<sup>100</sup>
52. As explained below, however, Guatemala’s current legal framework does not provide an effective, independent, and impartial mechanism for investigating and holding the Attorney General accountable for misconduct.
53. First, the only means of holding the Attorney General accountable is removal by the President for “duly established just cause.”<sup>101</sup> The latter term, following a reform in 2016, is in turn narrowly defined as “the commission of an intentional crime during the performance of [the Attorney General’s] duties, provided that there is a duly executed conviction.”<sup>102</sup> Thus, the Attorney General can only be removed on the basis of a final conviction for an intentional crime.
54. This legal framework makes it practically impossible to remove the Attorney General because the MP is the entity in charge of criminal investigation and prosecution. Any criminal investigation against the Attorney General would have to be initiated by the institution which he/she heads and either by personnel who are all hierarchically inferior to him/her, or an external “special prosecutor” who is appointed by and can be removed by him/her.<sup>103</sup>
55. This inherent conflict of interest renders the only existing accountability mechanism ineffective. Notably, the Organic Law of the Prosecutor’s Office does not provide any recourse or mechanism to protect personnel from retaliation for initiating a proceeding against the Attorney General.
56. Second, the Attorney General enjoys procedural immunity (antejuicio), which means that he/she can only be investigated if Congress removes this immunity.<sup>104</sup> However, even if Congress were to initiate this procedure, the Supreme Court of Justice has the power to preliminarily reject any complaint against the Attorney General that it considers to be based on spurious, political or illegitimate motives, which adds another obstacle to the process.<sup>105</sup>
57. Third, a criminal trial in Guatemala can take up to eight years to resolve, which means that even if a prosecution against the Attorney General were to be successful, it would likely not be concluded during his or her term, eliminating any practical effect of an impeachment.<sup>106</sup>

58. Fourth, although there is a Code of Ethics applicable to the Public Prosecutor's Office, the commission in charge of enforcing it is appointed by the Attorney General and does not have the power to remove him or her from office.<sup>107</sup> In addition, failure to comply with the Code of Ethics is not considered grounds for removal.
59. Guatemalan law does not allow for disciplinary proceedings to be brought against the Attorney General for misconduct.<sup>108</sup> While the "General Supervision" is in charge of investigating administrative misconduct within the Public Prosecutor's Office, it too reports hierarchically to the Attorney General and does not have the authority to investigate him/her.<sup>109</sup>
60. Finally, the Organic Law of the Public Prosecutor's Office does not contemplate suspending the Attorney General once an investigation is initiated into his/her misconduct. The law only allows the Attorney General to be suspended after the removal of immunity, in the event that a preventive detention order is issued.<sup>110</sup> This is insufficient to protect the independence and impartiality of the criminal process initiated against the Attorney General, since the Attorney General would remain the hierarchical superior of those conducting the investigation for its entire duration.

## IV. Relevant International Legal Standards

### A. Guatemala must comply with international standards

61. Article 46 of the Guatemalan Constitution establishes that human rights treaties prevail over national legislation.<sup>111</sup> The Constitutional Court of Guatemala has confirmed that human rights treaties prevail over the Constitution.<sup>112</sup> Guatemala has signed and ratified the American Convention on Human Rights and the International Covenant on Civil and Political Rights. It is also bound by the Inter-American Convention Against Corruption and the United Nations Convention against Corruption, treaties which it has also signed and ratified.

### B. Guatemala must ensure that prosecutors, as essential members of the administration of justice, maintain at all times the honor and dignity of their profession, and act in a fair, objective and impartial manner

62. The official source allegations of misconduct by the MP described above raise serious concerns about the MP's possible violation of Guatemala's international obligations under the American Convention on Human Rights, the International Covenant on Civil and Political Rights, the Inter-American Convention against Corruption and the United Nations Convention against Corruption.<sup>113</sup>

63. Both Article 8 of the American Convention on Human Rights<sup>114</sup> and Article 14 of the International Covenant on Civil and Political Rights<sup>115</sup> establish the right to an independent and impartial justice system. Prosecutors - including the Attorney General - are "essential members of the administration of justice."<sup>116</sup>

64. The Inter-American Court of Human Rights (IACHR) 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 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, acting with professionalism, good faith, procedural loyalty, considering both elements that can prove the crime and the participation of the accused in such act, as well as those that may exclude or mitigate the criminal liability of the accused."<sup>117</sup>

65. The United Nations Guidelines on the Role of Prosecutors (Guidelines on the Role of Prosecutors), recognized as a relevant authority by the Inter-American human rights system,<sup>118</sup> have been "formulated to assist Member States in their role of ensuring and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings," and "should

be respected and taken into account by governments within the framework of their national laws and practices.”<sup>119</sup> These Guidelines state that “Prosecutors, as essential agents in the administration of justice, shall at all times uphold the honor and dignity of their profession.”<sup>120</sup>

66. Similarly, the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors adopted by the International Association of Prosecutors (IAP Standards) state that “Prosecutors shall uphold the honor and dignity of their profession at all times.”<sup>121</sup> The United Nations Commission on Crime Prevention and Criminal Justice has endorsed these standards as complementary to the Guidelines on the Role of Prosecutors and has invited Member States to consider them in developing their own national standards relating to the role of prosecutors.<sup>122</sup>
67. Both the Guidelines on the Role of Prosecutors and the IAP Standards also require prosecutors to perform their duties with fairness, objectivity and impartiality.<sup>123</sup>

### **C. Guatemala must hold prosecutors accountable through a fair, independent and impartial procedure established by law**

68. The Inter-American Court of Human Rights (IACHR) has clarified that, pursuant to Article 8 of the American Convention on Human Rights, the legal standards applicable to judges also apply to prosecutors.<sup>124</sup> In addition, the United Nations Convention against Corruption (“UNCAC”) requires

States Parties that, like Guatemala, have independent prosecutors’ offices<sup>125</sup> to adopt measures to strengthen integrity and prevent any opportunity for corruption in the prosecutor’s office, analogous to the measures adopted for members of the judiciary.<sup>126</sup>

69. The Inter-American Court has also held, under Article 8 of the American Convention, that the “specific guarantee for prosecutors, in equivalent application of the protection mechanisms recognized for judges, entails the following: (i) that the removal from office be exclusively due to the permitted grounds, either by means of a process that complies with judicial guarantees or because the term or period of their mandate has expired; (ii) that prosecutors may only be removed or dismissed for serious disciplinary offenses or incompetence, and (iii) that any process followed against prosecutors be resolved through fair, objective and impartial procedures, according to the Constitution or the law, since the free removal of prosecutors fosters objective doubt about the effective possibility they have of exercising their functions without fear of reprisals.”<sup>127</sup>
70. The Inter-American Court has also emphasized “the need for States to guarantee an independent and objective investigation with respect to human rights violations and, in general, in the criminal sphere, having emphasized that the authorities in charge of the investigation must enjoy independence, de jure and de facto, which requires “not only hierarchical or institutional independence, but also real independence.”<sup>128</sup>

71. The former UN Special Rapporteur on the independence of judges and lawyers has stated that “The fair, independent and impartial administration of justice also requires that prosecutors be held accountable in the event that they fail to perform their functions in accordance with their professional duties. In this regard, the Special Rapporteur emphasizes that autonomy cannot be detrimental to accountability.”<sup>129</sup> She has further noted that “The issue of accountability of prosecutors’ offices is particularly important in cases where the prosecutor’s office is totally independent and there is no scrutiny by the executive or the legislature of the activity of prosecutors.”<sup>130</sup>
72. The Guidelines on the Role of Prosecutors, recognized as relevant authority by the IACHR Court,<sup>131</sup> similarly state: “Disciplinary misconduct by prosecutors shall be provided for by law or regulation. Complaints against prosecutors alleging that they have clearly acted outside the framework of professional standards shall be promptly and impartially dealt with in accordance with the relevant procedure. Prosecutors shall be entitled to a fair hearing. Decisions shall be subject to independent review.”<sup>132</sup>
73. The Guidelines further state: “Disciplinary proceedings against prosecutors shall ensure an objective assessment and decision. They shall be determined in accordance with the law, the code of professional conduct and other established ethical rules and standards and bearing in mind these Guidelines.”<sup>133</sup>
74. The European Court of Human Rights (ECtHR) has been recognized by the IACHR as a relevant authority.<sup>134</sup> In the case of *Kolevi v. Bulgaria*, the ECtHR found that Bulgaria had violated its obligation to conduct an effective investigation into the alleged crimes of the Chief Public Prosecutor because the Bulgarian prosecution was organized in such a way that it was impossible for there to be an independent investigation of the Chief Public Prosecutor.<sup>135</sup> The Court noted that “it was legally impossible in Bulgaria to bring criminal charges against the Chief Public Prosecutor without his consent. Accordingly, he could not be removed from office against his will, even if he committed the most serious crime, as his conviction was a prerequisite for the termination of his mandate under the Constitution.... Moreover, the Chief Public Prosecutor could not be temporarily suspended from his duties, as this could only be done if charges had been brought against him.... Under these circumstances...it was legally impossible to investigate any suspicion [of wrongdoing]...of the Chief Public Prosecutor.”<sup>136</sup>
75. The ECtHR noted in this case that “as a result of the hierarchical structure of the prosecution system and, apparently, its internal working methods, no prosecutor would issue an indictment decision against the Chief Public Prosecutor.”<sup>137</sup> The Court considered that the fact that “the Bulgarian Government had not been able to demonstrate that any indictment against the Chief Public Prosecutor had ever been investigated” confirmed that “Bulgarian law lacked sufficient guarantees

for an independent investigation of crimes of which the Prosecutor General or other senior officials close to him might be suspected.”<sup>138</sup> The Court accepted that, “given the centralized structure of the Bulgarian prosecution system, based on subordination, its exclusive power to bring charges, and the procedural and institutional rules allowing full control by the Chief Public Prosecutor over all investigations in the country,” meant that “it was virtually impossible to conduct an independent investigation into the circumstances implicating him, even after [a]...constitutional amendment which allowed in theory for charges to be brought against him.”<sup>139</sup>

76. In 2017, the Venice Commission similarly concluded that the “weak accountability structure of the [Chief Public Prosecutor] who [was] essentially immune from criminal prosecution and ... virtually immovable through impeachment for other misconduct” was “problematic.”<sup>140</sup> In 2018, the HRC also expressed “concern” about the Bulgarian Chief Public Prosecutor because he was “essentially immune from criminal prosecution and immovable by impeachment for other misconduct.”<sup>141</sup>

#### **D. Guatemala must have disciplinary procedures to hold prosecutors accountable**

77. The Inter-American Court of Human Rights has pointed out that “the regulations designed to judge judges disciplinarily must seek to protect the judicial function by evaluating the performance of judges in

the exercise of their functions.”<sup>142</sup> The Court has further observed that “disciplinary control is intended to assess the conduct, suitability and performance of the judge as a public official.... Thus, the disciplinary rules for judges must be oriented to the protection of the judicial function in such a way as to evaluate the performance of the judge in the exercise of his or her functions.”<sup>143</sup> In the case of *Chocrón Chocrón v. Venezuela*, the I/A Court H.R. held that a judge could be removed “in the framework of a disciplinary process or through a duly motivated administrative act.”<sup>144</sup> As noted above, this jurisprudence applies equally to prosecutors.<sup>145</sup> In *Casa Nina v. Peru*, the I/A Court H.R. held “that prosecutors can only be removed for serious disciplinary offenses or incompetence....”<sup>146</sup>

78. The UN Special Rapporteur on the independence of judges and lawyers has stated that human rights principles and standards relating to prosecutors recognize that they are accountable in the performance of their duties and that disciplinary proceedings may be initiated against them.<sup>147</sup> The UN Special Rapporteur has further stressed that “disciplinary measures should be proportionate to the gravity of the offence, and recalls the recommendation made in relation to judges by the previous mandate holder that legislation should provide guidance with respect to offences committed by judges and the disciplinary measures that may be taken in that regard, and notes that this should also apply to prosecutors.”<sup>148</sup>

79. Comparative practice reflects the availability of administrative procedures to hold prosecutors accountable. In Peru, the Attorney General may be removed through a disciplinary proceeding conducted by the National Justice Commission.<sup>149</sup> In Mexico, according to Article 102 of the Mexican Constitution, the Attorney General of the Republic may be removed by the President of Mexico for serious causes defined in the law.<sup>150</sup> According to Article 24 of the Attorney General Law, the Attorney General may be removed by criminal or disciplinary proceedings.<sup>151</sup>



## V. Conclusion And Recommendations

80. In light of the structural deficiencies in the aforementioned legal framework governing prosecutorial accountability, and based on relevant international legal standards, this report presents the following recommendations to the State of Guatemala:

- A. Ensure that the Public Prosecutor's Office and its prosecutors act with impartiality, objectivity, and professionalism, in accordance with Article 8 of the American Convention on Human Rights and Article 14 of the International Covenant on Civil and Political Rights. This requires prosecutors to apply the law fairly, without outside influence, and in accordance with relevant international guidelines.
- B. Guarantee the independence of investigations, including into figures such as the Attorney General. Guatemala should ensure that such investigations are conducted without interference, in an objective and independent manner.
- C. Implement clear and transparent disciplinary procedures to hold prosecutors accountable for misconduct. These procedures should be enshrined in law, ensuring fair and impartial hearings, in accordance with the Guidelines on the Role of Prosecutors and the Standards of the International Association of Prosecutors. Any removal of a prosecutor must be based on just cause and follow a fair process.
- D. Reform Guatemala's laws and regulations so that the hierarchical structure of the Public Prosecutor's Office is not an obstacle for high-level officials in that office to be held accountable for misconduct.

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