



THE ENTIRE SYSTEM AGAINST US

CRIMINALIZATION OF WOMEN JUSTICE OPERATORS AND
HUMAN RIGHTS DEFENDERS IN GUATEMALA

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Amnesty International

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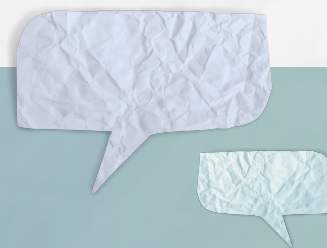
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1. EXECUTIVE SUMMARY



Since 2007, Guatemala has made significant progress in the fight against impunity and corruption, driven by the International Commission Against Impunity in Guatemala (CICIG), an international body that has supported the investigation of serious crimes and corruption in the country, cooperating with the Special Prosecutor's Office against Impunity (FECI) and other sections of the Public Prosecutor's Office.

This model of cooperation has had notable successes, such as investigations leading to the prosecution of high-level officials, including presidents and members of the political and economic elite and the dismantling of networks of corruption.

The results of these investigations triggered a negative reaction from the business, political and criminal groups affected. This reaction included legal actions to intimidate and criminalize those who had participated in the fight against impunity and corruption. In addition, high-ranking officials expressed contempt for the results achieved, and intense stigmatization, harassment and defamation campaigns were unleashed on social media against prosecutors, judges, members of the CICIG and human rights defenders. The government decided not to renew the mandate of the CICIG, and this caused it to cease operations on 3 September 2019.

Amnesty International has recorded instances of criminalization of justice operators in Guatemala since 2018 and has documented a pattern of harassment and criminalization against those who have acted in relevant cases to combat impunity and corruption. This pattern includes:

- Multiple complaints. Justice operators are faced with a large number of criminal, administrative and disciplinary complaints that remain open despite being unsubstantiated. This forces them to invest time and resources in defending themselves.
- Online attacks. These take the form of disinformation campaigns, harassment and other forms of violence in online spaces, particularly social media. Posts often contain degrading messages, insults and threats aimed at defaming justice operators, portraying them as dangerous criminals or terrorists, or leaking information about cases.
- Personal harassment. Through threats, insults and harassment of victims and their families.
- Improper criminal prosecution. The Public Prosecutor's Office initiates criminal proceedings against justice operators in cases where there are no legal grounds for doing so.
- Trials without due process. Cases brought by the Public Prosecutor's Office do not respect due process guarantees, thus depriving victims of the opportunity to defend themselves adequately before an impartial tribunal.
- Arbitrary detention. Criminalization leads to detentions that are considered arbitrary under both international human rights law and Guatemalan law.
- Increased criminalization. The pattern of criminalization is extended and repeated to cover more people who perform their duties independently in the criminal justice process (such as women defence lawyers, judges or prosecutors).
- Exile. Many of those affected are forced to leave Guatemala due to harassment, criminalization and violations of their right to due process, as well as threats to their life and integrity.

Harassment and criminalization have had multiple negative impacts on the work, economic, psychological and family lives of these people, who suffer emotional trauma as a result of politically motivated prosecutions without guarantees of a fair trial, as well as intense smear and stigmatization campaigns against them.

These negative effects are compounded for persons deprived of their liberty due to their conditions of imprisonment, restrictions on visits and lack of access to health services. Those forced into exile have also reported negative effects from displacement and family separation.

In the case of women justice operators and human rights defenders subjected to criminalization, the lack of protection from misogynistic attacks in public spaces, including in courts, tribunals and the digital world, as well as other issues related to their gender and caregiving roles, have had differentiated psychosocial impacts that affect different aspects of their lives.

Amnesty International notes with deep concern the derailing of efforts to combat impunity for serious human rights violations and crimes under international law, as well as in the fight against corruption, which has a negative impact on the enjoyment of human rights for all, and which has intensified since the closure of the CICIG in 2019.

The stories portrayed and cases analysed in this report reveal serious flaws in the administration of criminal justice in the country. Individuals who were professionally involved in efforts to seek justice are now facing coordinated actions for prosecution and arbitrary detention by the Public Prosecutor's Office, through unfounded charges brought in criminal proceedings without any guarantee of a fair trial. Such is the situation of former prosecutor Virginia Laparra, who was sentenced in 2022 and arbitrarily detained for almost two years, and of former judge Erika Aifán, who went into exile in 2022 in order to guarantee her human rights.

The organization therefore makes the following key recommendations to the Guatemalan state:

To all the authorities of the state of Guatemala

- Publicly and unequivocally recognize the legitimate work of justice operators and develop a comprehensive public policy to protect them from attacks and undue interference in their functions.
- Ensure that the selection and appointment procedures for the post of Attorney General and for judges of the Supreme Court of Justice, appellate divisions and Constitutional Court are based on the suitability, merit and independence of the candidate, while at all times ensuring transparency and the participation of civil society in such procedures.

To the Executive

- Adopt a public policy of comprehensive reparation for justice operators who have been criminalized for their legitimate work in violation of their human rights, taking their views into account and respecting international standards in this regard.

To the Guatemalan Congress

- Take the necessary measures to ensure the independence of the Judiciary, in accordance with international human rights law and standards, including by reforming the system of appointments to courts and tribunals.

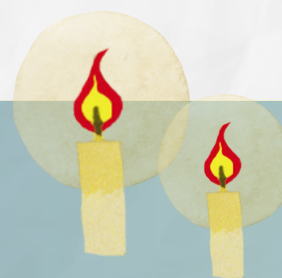
To the Attorney General and head of the Public Prosecutor's Office

- Dismiss complaints or, where appropriate, request the courts to close cases against justice operators that are unfounded and have the purpose or effect of undermining their work, intimidating them or punishing them for their work.

To the Judiciary

- Promote the reinstatement of judicial staff who have been sanctioned or forced to resign as a result of the criminal prosecution and harassment of justice operators described in this report.

2. METHODOLOGY



Amnesty International has documented cases of criminalization against justice operators in Guatemala since 2019. For this research, the organization:

- reviewed information from open sources, legal proceedings, submissions to international human rights protection bodies and reports from international bodies and organizations;
- Interviewed human rights defenders, justice operators and other experts in the Guatemalan justice system;
- conducted focus groups with experts to validate research findings.

Amnesty International analysed the documented cases with reference to international human rights law and standards – particularly those relating to the right to a fair trial – and found that justice operators in Guatemala have been attacked in multiple contexts.

Against this broad background, the research focused on the criminalization of individuals involved in the fight against impunity and corruption who were subsequently investigated and subjected to unfair trials simply for performing legitimate functions within the criminal justice system.

This document highlights four cases that are representative of the dynamics of harassment and criminalization of women justice operators, although the findings presented are based on a broader analysis of the situation and on some ten other cases about which the organisation has received information.

The analysis incorporates a gender perspective, as the information received indicates a significant presence of women among the staff of some institutions, such as the Special Prosecutor's Office against Impunity (FECI) and the Judiciary. Furthermore, some of the attacks described in this report have had a differentiated impact on specific groups. Case information is updated to April 2024, the cut-off date for this report.

Amnesty International is grateful to the organizations and individuals who provided information and contributed to this research.



3. PROGRESS AND SETBACKS IN THE FIGHT AGAINST IMPUNITY IN GUATEMALA



The International Commission Against Impunity in Guatemala (CICIG)¹ was created on 12 December 2006 by the Guatemalan government and the United Nations to combat corruption and impunity, including for crimes under international law, and in response to demands from Guatemalan civil society.

The CICIG has cooperated with and supported the work of the Public Prosecutor's Office, in particular the Special Prosecutor's Office against Impunity (FECI), to investigate the existence of illegal security forces and clandestine networks. This cooperation resulted in the identification of the composition, methods of operation, sources of funding and possible links of such networks with state entities or other groups that could potentially violate human rights in the country. The aim was to ensure the prosecution and punishment of crimes committed by their members.²

The CICIG and the FECI helped to dismantle several corruption networks and participated in investigations that resulted in the prosecution of high-ranking officials, including a president and a vice president, and members of the political and economic elite. Their work also had a positive impact on legal reforms and increased public scrutiny of corruption and impunity.

However, the progress made by the country in the fight against impunity since 2007, both in cases of crimes under international law committed during the internal armed conflict (1960-1996) and in cases of corruption, provoked negative reactions from the business and political sectors and from the criminal groups targeted by the investigations.

From 2018, coinciding with the change of Attorney General, political pressure against the CICIG increased. The government of the then president, Jimmy Morales, decided not to renew the mandate of the CICIG, which led to the suspension of its activities on 3 September 2019. As a result, the FECI investigations lost the support and investigative expertise provided by the CICIG.³

This pressure was accompanied by a series of legal actions to intimidate and criminalize those who had participated in the fight against impunity and corruption.

¹ In the early 2000s, human rights defenders seeking justice for crimes under international law committed during the internal armed conflict (1960-1996) faced high levels of violence, as did prosecutors and judges dealing with such cases, and individuals who attempted to denounce the links between criminal groups and certain state institutions, public officials and political leaders operating outside the law. Faced with this situation, civil society called for the creation of a special investigative body to combat these new criminal structures – also known as Illegal Groups and Clandestine Security Structures (Cuerpos Ilegales y Aparatos Clandestinos de Seguridad, CIACS) – which fostered impunity and undermined the rule of law. Amnesty International, Guatemala: Congress must ratify UN-backed commission against impunity, 2 July 2007. <https://www.amnesty.org/en/documents/amr34/019/2007/en/>

² United Nations and the State of Guatemala, Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala (CICIG). (New York: United Nations, 2006), Article 2.

³ Amnesty International. Last Chance for Justice: Dangerous setbacks for human rights and the fight against impunity in Guatemala. 2019, AMR 34/0611/2019.

In addition, high-ranking officials made public statements dismissing the progress that had been made, and intense social media campaigns of stigmatization, harassment and defamation targeted prosecutors, judges of the high-risk court circuit (created specifically to deal with cases involving serious human rights violations, corruption or highly dangerous situations), and magistrates. These campaigns also targeted former members of the CICIG, human rights defenders, members of the diplomatic corps and other persons who had supported the progress made over the past decade.

In October 2019, for example, the Congress of the Republic created a Truth Commission tasked with requesting, collecting, receiving and systematizing information on any activities carried out by the CICIG between 2007 and 2019 that may have violated the Political Constitution of the Republic of Guatemala and the country's existing legislation.

Two months later, in December 2019, the Commission presented its report, recommending that a plenary session of Congress condemn the activities carried out by the CICIG and its former officials and employees during the period analysed. It also announced that one of its subsequent actions would be to forward the files to the Public Prosecutor's Office, so that it could issue arrest warrants against former officials and employees of both the CICIG and the FECL to the competent judicial authorities.⁴

In the months and years that followed, the Public Prosecutor's Office continued to process a large number of clearly unfounded criminal complaints against officials and former officials of the Public Prosecutor's Office and the CICIG, as well as against judges, human rights defenders and journalists who had been involved in the fight against impunity. There were also cases of dismissals and transfers of staff from the Public Prosecutor's Office. Many justice operators were forced into exile to protect their personal integrity and freedom, including the then head of the FECL, Juan Francisco Sandoval, who was dismissed by the Attorney General, head of the Public Prosecutor's Office, in July 2021.⁵

In the meantime, emblematic cases of corruption began to be closed and convictions overturned at the behest of those affected. In this context, various bodies and mechanisms of the Inter-American and the universal human rights protection systems have repeatedly warned against the improper use of criminal prosecution against justice operators in Guatemala and have urged the authorities to put an end to such actions.⁶

However, far from stopping their practice of political persecution, the Public Prosecutor's Office and other authorities continued such practices until the 2023 elections. New criminal proceedings were brought against key figures in the electoral process, including officials from the Electoral Registry and the Supreme Electoral Tribunal, as well as members of the Semilla political party – which stood out for its anti-corruption proposal – such as presidential candidate Bernardo Arévalo, vice-presidential candidate Karin Herrera, and others.

⁴ Truth Commission of the Guatemalan Congress, Rendición de Informe de lo Actuado por la Comisión Internacional Contra la Impunidad en Guatemala (CICIG) durante el Período de su Gestión (2007 - 2019) [Report on the activities of the International Commission Against Impunity in Guatemala (CICIG) during its period of operation (2007 - 2019)]. (Guatemala City: Congress of the Republic of Guatemala, 2019).

⁵ Amnesty International. Report 2021/22 Amnesty International: The state of the world's human rights: Guatemala. 2022, Index number: POL 10/4870/2022, pp. 181-182. DPLF et al, Impacts on prosecutors' independence and the autonomy of the Attorney General's Office of Guatemala, Contribution to the Fourth Cycle of the Universal Periodic Review of the United Nations Human Rights Council 42nd Session on Guatemala, July 2022. https://www.dplf.org/sites/default/files/upr_guatemala_2022_cycle_4_impacts_on_prosecutors_independence_and_the_autonomy_of_the_attorney_general_office.pdf

⁶ Guatemala must ensure independent justice system in fight against corruption, say UN rights experts, 11 February 2019. <https://www.ohchr.org/en/press-releases/2019/02/guatemala-must-ensure-independent-justice-system-fight-against-corruption?LangID=E&NewsID=24156>; Experto recuerda a Guatemala que es obligación del Estado evitar los ataques a los magistrados [Expert reminds Guatemala that it is the state's obligation to prevent attacks against judges], 19 November 2020. <https://news.un.org/es/story/2020/11/1484352>; Guatemala: UN expert deeply concerned by Congress refusal to reappoint top judge, 19 April 2021. <https://www.ohchr.org/en/press-releases/2021/04/guatemala-un-expert-deeply-concerned-congress-refusal-reappoint-top-judge>; Top judges face threats, must be protected – expert, 2 July 2021. <https://www.ohchr.org/en/press-releases/2021/07/guatemala-top-judges-face-threats-must-be-protected-expert>; IACHR expresses concern over actions that weaken judicial Independence in Guatemala, 6 August 2021. https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/03.asp; IACHR expresses concern over new violations of judicial Independence in Guatemala, 22 February 2022. https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/037.asp; Guatemala: UN expert condemns targeting of prosecutor and judge, 25 November 2022. <https://www.ohchr.org/en/press-releases/2022/11/guatemala-un-expert-condemns-targeting-prosecutor-and-judge>; IACHR. Annual Report 2022. Chapter IV.b. Guatemala. https://www.oas.org/en/iachr/docs/annual/2022/Chapters/10-IA2022_Cap_4B_GU_EN.pdf; Guatemala: UN Human Rights Chief Volker Türk expresses deep concern at persecution of judicial officials, 18 January 2023. <https://www.ohchr.org/en/press-releases/2023/01/guatemala-un-human-rights-chief-volker-turk-expresses-deep-concern>; Guatemala: UN expert concerned by proceedings against Judge Carlos Giovanni Ruano, 14 July 2023. <https://www.ohchr.org/en/press-releases/2023/07/guatemala-un-expert-concerned-proceedings-against-judge-carlos-giovanni>

These actions led by the Public Prosecutor's Office and the Judiciary, which threaten the rule of law and the right to public participation, drew widespread condemnation from the Guatemalan people and the international community⁷

In January 2024, following extensive popular mobilization within the country led by Indigenous peoples and multiple expressions of concern from the international community about these events, the new elected government was able to take office. However, at the time of writing, the above-mentioned criminal proceedings were still pending.

As of the closing date of this report, several legal actions taken against the Attorney General and her closest team, including the new leadership of the FECCI, for driving this wave of criminalization of all anti-corruption efforts, are still pending.⁸



⁷ Guatemala: UN Human Rights Chief concerned at attempts to undermine electoral process, 27 July 2023. <https://www.ohchr.org/en/press-releases/2023/07/guatemala-un-human-rights-chief-concerned-attempts-undermine-electoral>; OAS Mission expresses deep concern about actions of the Public Prosecutor's Office against the integrity of electoral material in Guatemala, 12 September 2023. https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-054/23; Guatemala: El Alto Comisionado pide a las autoridades que respeten el voto popular [High Commissioner calls on the authorities to respect the popular vote], 1 October 2023. <https://news.un.org/es/story/2023/10/1524527>; Guatemala: Statement by the High Representative on behalf of the European Union on the situation after elections, 5 October 2023. <https://www.consilium.europa.eu/en/press/press-releases/2023/10/05/guatemala-statement-by-the-high-representative-on-behalf-of-the-european-union-on-the-situation-after-elections/>; IACHR. IACHR and Its Special Rapporteurship for Freedom of Expression reject persistent criminalization and abuse of authority for political and electoral purposes in Guatemala, press release, 18 November 2023. https://www.oas.org/en/iachr/jsForm?File=/en/iachr/media_center/preleases/2023/268.asp; OAS Electoral Mission in Guatemala rejects new attempt by Public Prosecutor's Office to violate popular will, 8 December 2023. https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-085/23; Guatemala: UN Human Rights Chief deplores persistent attempts to undermine outcome of elections, 9 December 2023. <https://www.ohchr.org/en/press-releases/2023/12/guatemala-un-human-rights-chief-deplores-persistent-attempts-undermine>

⁸ Plaza Pública, Radiografía de los casos de la FECCI-CICIG: van 83 beneficiados [X-Ray of the FECCI-CICIG cases: 83 have already benefitted], 5 December 2022. <https://www.plazapublica.com.gt/content/radiografia-de-los-casos-de-la-feci-cicig-van-83-beneficiados> and La justicia en Guatemala está más lejos: tres casos que lo explican [Justice in Guatemala is further away: three cases that illustrate why], 14 July 2023. <https://www.plazapublica.com.gt/content/la-justicia-en-guatemala-esta-mas-lejos-tres-casos-que-lo-explican>

4. CASES

7



4.1. ERIKA AIFÁN, FORMER JUDGE



Judge Erika Aifán became a key figure in the fight against corruption in Guatemala. During her time as judge of the First Court of First Criminal Instance, Drug Trafficking and Crimes against the Environment of High-Risk Court D, from 2016 until her resignation in 2022, she heard cases that had been investigated by the CICIG and the Special Prosecutor's Office against Impunity (FECl). These cases involved drug traffickers, businessmen and politicians, including operations in the Odebrecht case in Guatemala.⁹

From 2018, the number of criminal, administrative and disciplinary complaints filed against her by persons involved in legal proceedings being heard in her court increased.

As of May 2019, she had faced six requests for withdrawal of her criminal immunity (pre-trial proceedings), seven disciplinary complaints within the internal control mechanisms of the Judiciary, ten complaints to the Ombudsman's Office, six complaints

to the Office against Torture, and three complaints to the Court of Honour of the Association of Lawyers and Notaries of Guatemala.¹⁰

Between 2018 and 2022, judge Erika Aifán had to deal with approximately 100 criminal cases against her, 75 complaints before the Judicial Disciplinary Board, 30 pre-trial proceedings, and other proceedings before the Human Rights Ombudsman's Office and the Court of Honour of the Association of Lawyers and Notaries of Guatemala. As a result, most of her time outside of her work duties were dedicated to her own defence in these cases.

At least 37 complaints have reportedly been dismissed or closed to date, but others are still pending. When Amnesty International spoke to her in October 2023, she stated that she did not know the exact number of cases still pending but noted that most of them were related to her work as a judge in the High-Risk Court and were filed on the grounds of abuse of authority, dereliction of duty, and rulings that violated the Constitution.

⁹ Uncovered in 2016, this case involves the payment of millions of dollars in bribes by a Brazilian company to politicians businessmen and high-ranking government officials in 12 countries, including Guatemala. It is one of the most representative examples of corruption in Latin America.

¹⁰ IACHR, Thematic hearing Guatemala: Judicial Independence, May 2019. https://www.youtube.com/watch?v=NMPzfRDb-ps&list=PL5QlapyOGhXvyKD3Y0-GblPrD-Q1xE_Ht&index=6&t=0s

The events that triggered her departure from the country in April 2022 due to her work on the “Parallel Commissions 2020” case are described below.

This FECCI-led investigation uncovered a corruption scheme involving judges, magistrates, lawyers and others. This operated in the process for the appointment of magistrates to the Supreme Court of Justice and the Courts of Appeal, with the aim of influencing and manipulating such appointments (see box on Appointment of magistrates and the “Parallel Commissions” cases).

On 8 June 2020, the Institute of Magistrates of the Courts of Appeal of the Judiciary reported that Judge Aifán had authorised allegedly illegal investigation proceedings against magistrates named in the “Parallel Commissions 2020” case. However, the prosecution lacked solid grounds and used flawed reasoning, such as considering an irregularity the fact that the “Parallel Commissions 2020” case was registered both in the Public Prosecutor’s Office, with a file number dated 2016, and in the Judiciary, with a different file number from 2020. It is important to highlight that this situation was neither unusual nor irregular, as each institution has its own registration system, something the Public Prosecutor’s Office would have been expected to know.

These new criminal proceedings come amid a series of coordinated online attacks against Judge Aifán on social media, portraying her as a dangerous criminal and including misogynistic content.

She also faced intimidation and pressure from senior members of the Judiciary in her working environment, and encountered irregularities in the court facilities, such as missing files and devices for recording the hearings that stopped working for no reason. She also discovered a video surveillance camera that had been installed in her court without her knowledge or authorization, and which was not part of the security system. In addition, she received threats to her life and personal integrity via social media.

This harassment posed a constant threat to her judicial independence and could have resulted in her prosecution and possible imprisonment. In January 2022, the Public Prosecutor’s Office again requested that the judge’s immunity be lifted. Between 4 and 9 March of the same year, Erika Aifán appeared before an investigating judge appointed by the Supreme Court of Justice to consider this request.

During the same period, several judges who, like her, had presided over emblematic cases of corruption and macro-criminality, reported the lack of protective measures and the inadequate response to attacks on judicial independence, but their calls were not addressed by the Guatemalan authorities.¹²

On 21 March, Judge Aifán released a video announcing her resignation, citing lack of guarantees for protection of her life and her physical integrity, and the inability to adequately defend herself in a fair trial.¹¹ Since then, she has been living in exile and has continued to raise awareness of the hijacking of the Guatemalan justice system and attacks on judicial independence. Her departure was a major blow to efforts to combat impunity in the country

¹¹ Guatemalan Association of Judges for Integrity (AGJI). AGJI se queja por falta de insumos de protección para magistrados, jueces y demás personal [AGJI complains of lack of protective supplies for magistrates, judges and other staff], 20 July 2020, <https://agji-gt.org/~agjigtor/agji-se-queja-por-falta-de-insumos-de-proteccion-para-magistrados-jueces-y-demas-personal/>; UN, Guatemala: Top judges face threats, must be protected – expert, 2 July 2021. <https://www.ohchr.org/en/press-releases/2021/07/guatemala-top-judges-face-threats-must-be-protected-expert>; La Voz de América, Jueces y magistrados de Guatemala denuncian falta de garantías para impartir justicia [Judges and magistrates in Guatemala denounce lack of guarantees for the administration of justice], 23 March 2022. <https://www.vozdeamerica.com/a/jueces-y-magistrados-de-guatemala-se-pronuncian-ante-falta-de-garantias-6498236.html>

¹² Prensa Libre, Renuncia la jueza Erika Aifán debido a las “presiones, amenazas y hostigamiento” en su contra, que amenazan su vida [Judge Erika Aifán resigns due to “pressures, threats and harassment” against her, which threaten her life], 21 March 2022. <https://www.prensalibre.com/guatemala/justicia/renuncia-la-jueza-erika-aifan-debido-a-las-presiones-amenazas-y-hostigamiento-en-su-contra-breaking/>

Appointment of magistrates and the “Parallel Commissions” cases

In Guatemala, magistrates are appointed every five years by the Congress of the Republic on the basis of two lists drawn up by the nominating commissions (one list for the chambers of the Courts of Appeal and the other for the Supreme Court of Justice).¹³

These commissions, made up of representatives of the deans of the faculties of law or legal and social sciences of the country’s universities, of the General Assembly of the Association of Lawyers and Notaries of Guatemala, as well as of the permanent magistrates of the Courts of Appeal and the Supreme Court of Justice, are responsible for evaluating the nominations received and drawing up the said lists.

However, recent processes have been highly questioned, including over allegations of corruption and a lack of transparency and objectivity within the process. In 2014, former magistrate Claudia Escobar was forced to flee the country after reporting a corruption scheme aimed at influencing the appointment process of magistrates for the 2014-2019 period and involving high-ranking officials, including the president of Congress and the former vice president of the Republic.

In 2018, the Public Prosecutor’s Office and the CICIG made public the investigation into the case known as “Parallel Commissions”,¹⁴ which revealed the existence of a structure operating alongside the nominating commissions for the appointment of magistrates to the Supreme Court and the Courts of Appeal for the period 2014-2019, created with the aim of manipulating this selection process.

The following appointment process, which began in 2019, was marked by multiple irregularities that required the Constitutional Court to issue resolutions to rectify them. However, the process remained inconclusive. In October 2019, the mandate of the sitting magistrates for the period 2014-2019 expired without the new appointment process having been completed, meaning that the incumbent magistrates remained in office until such process was completed. This situation continued until November 2023, when the Courts of Appeal and the Supreme Court were finally constituted.

Some magistrates of the Constitutional Court have faced unfounded criminal charges and requests to lift their immunity because of rulings they issued.¹⁵

In 2020, the Special Prosecutor’s Office against Impunity (FECI) made public the “Parallel Commissions 2020” case, detailing the actions of a series of actors with particular political and economic interests, with the aim of influencing the proceedings and votes in the 2019 nominating commissions.¹⁶

The appointment process for the period 2024-2029 is expected to begin in May 2024.

“My hope is that elections are held soon, and Congress appoints new courts. That is the most important thing. Indeed, it would be the only thing that would perhaps allow us, in some way, to start rebuilding the justice system. These people should lose power and stop manipulating and enriching themselves at the expense of people’s human rights.”

Criminalized female lawyer and human rights defender.

¹³ Law of Nominating Commissions, Decree 19-2009.

¹⁴ CICIG. Comunicado Comisiones Paralelas [Statement on Parallel Commissions], 27 February 2018. https://www.cicig.org/comunicados-2018-c/com_023_20180227/

¹⁵ Experto recuerda a Guatemala que es obligación del Estado evitar los ataques a los magistrados [Expert reminds Guatemala that it is the state’s obligation to prevent attacks against judges], 19 November 2020. <https://news.un.org/es/story/2020/11/1484352>

¹⁶ Myrna Mack Foundation, report “Comisiones Paralelas: Mecanismos de Cooptación de la Justicia” [Parallel Commissions: Mechanisms for Co-optation of Justice], May 2020. https://myrnmack.org.gt/images/stories/fmm/archivos/informes/2020/Informe_Comisiones_Paralelas.pdf

4.2. ALISS MORÁN AND PAOLA ESCOBAR, FORMER ASSISTANT PROSECUTORS AT THE PUBLIC PROSECUTOR'S OFFICE

On 16 February 2022, the Public Prosecutor's Office also announced the arrest of two FECl assistant prosecutors, Willy Roberto Racanac López and Paola Mishelle Escobar Quiñónez, on charges of abuse of authority related to the case known as "Parallel Commissions 2020".

In a statement, the institution announced that former prosecutor Rudy Manolo Herrera Lemus and former assistant prosecutor Aliss Noemí Morán Mejía were also included in the indictment. The following day, 17 February, Aliss Morán appeared voluntarily before the Third Pluripersonal Court of First Criminal Instance, where the judge ordered her provisional detention. She was sent to the Mariscal Zavala pre-trial detention centre, where Paola Escobar was already being held.



The arrests of Aliss Morán and Paola Escobar are part of a series of arrests made over several weeks in 2022, marking a further step in the criminalization of prosecutors, judges and former members of the CICIG by the Guatemalan authorities. The first to be arrested, on 10 February 2022, was Leily Santizo, a lawyer who represented the CICIG before the courts. Eva Siomara Sosa, former prosecutor of the FECl, was arrested five days later, despite having appeared voluntarily before the court on a number of previous occasions. They were accused for alleged irregularities in the Odebrecht case along with several justice operators.

The case against Aliss Morán and Paola Escobar is the result of complaints filed by a lawyer, who claimed that he had been coerced by the defendants to give false testimony in the "Parallel Commissions 2020" case.

The process experienced a number of delays, and it was not until 11 March 2022 that the first statement hearing took place, although the law provides that it should have taken place within 24 hours of the arrest. Aliss Morán and Paola Escobar were released on the same day, as the judge ruled that there were insufficient grounds to charge them with the crime of abuse of office. Following this decision, the same lawyer also filed a complaint against her (the judge).

The legal situation of Aliss Morán and Paola Escobar took a turn when both the Public Prosecutor's Office and the complainant appealed the initial decision, and the Fourth Chamber of the Courts of Appeal ruled that the consideration of "insufficient grounds" should be overturned. Thus, on 15 May 2023, the Third Court of First Criminal Instance reinstated the case against the defendants, refused to impose alternative measures, and remanded them to the Santa Teresa pre-trial detention centre for women in Guatemala City.

This centre lacked adequate security conditions given the position they had held, and the situation of Aliss Morán and Paola Escobar in the Santa Teresa women's prison therefore constituted a violation of their human rights. In view of their status as former anti-corruption prosecutors, they should not have been held in this prison, in a sector close to cells housing imprisoned members of the Barrio 18 gang and former police officers. The situation put them at additional risk, as they were recognised by people who had previously been prosecuted in cases of corruption and macro criminality that they had investigated during their time at the FECl.

In addition, the conditions of detention in this centre are not dignified, as people are held in overcrowded and unhygienic cells, without adequate medical care. Although Aliss Morán and Paola Escobar received regular visits from their families, their separation from them had a negative impact on their psychological wellbeing and was detrimental to their mental health.

Throughout the proceedings against them, both defendants have filed a number of appeals and legal actions in their defence but have faced unjustified delays – sometimes lasting months – in their admission and processing. At the time of writing of this report, some of these have yet to be resolved.

On 18 August 2023, Aliss and Paola were granted the possibility of house arrest by an Appeals Chamber, which found that the grounds for remanding them in custody had never existed. However, the failure of the public prosecution to attend the hearing to enforce this decision prevented their release. The Public Prosecutor's Office claimed that it did not have a prosecutor available to attend the hearing.

The two women were finally released on 1 September 2023, after almost four months in pre-trial detention, when the court finally decided to apply alternative measures. However, the legal case against them and the two other former members of the Public Prosecutor's Office is not yet over.

4.3. LILIAN VIRGINIA LAPARRA RIVAS, FORMER PROSECUTOR



On 23 February 2022, Virginia Laparra Rivas, a prosecutor with the FECl in the department of Quetzaltenango and the mother of two young daughters, was arrested after leaving work. She was transferred to the Mariscal Zavala pre-trial detention centre, located in a military barracks in Guatemala City.

At the time of her arrest, Virginia Laparra had been defending herself for years in two criminal cases being heard simultaneously in courts in Quetzaltenango and Guatemala City. Both cases were brought by the same judge between 2018 and 2019, after Virginia Laparra had filed administrative complaints against him with the Judicial Disciplinary Board and the Court Oversight Board. These complaints accused the judge of allegedly disclosing confidential information from an investigation conducted by the FECl in Quetzaltenango.

Virginia Laparra's arrest was ordered by the judge in charge of the case in Guatemala City, despite the fact that she regularly travelled to Guatemala City to defend

herself against the charges of abuse of authority and usurpation of power. As a result, she was dismissed from the Public Prosecutor's Office.

This arrest was marked by a series of irregularities. For example, instead of holding the first statement hearing within 24 hours of the arrest, as required by Guatemalan law, the courts on duty suspended it on four occasions. She was also not given valid reasons, in accordance with international standards, for being held in pre-trial detention.

On 3 March 2022, the Seventh Pluripersonal Court of First Criminal Instance of Guatemala charged her with the two crimes of abuse of authority and usurpation of power, and ordered that she be remanded in custody, considering that the appeals and actions filed by the former prosecutor in exercise of her right to a defence showed that she was not prepared to submit to the criminal proceedings and that there was a clear risk that she would abscond.

On 7 June 2022, the Seventh Criminal Court ruled that Virginia Laparra would face trial only for the crime of abuse of authority.

The court also upheld her pre-trial detention, on the grounds of an alleged risk of absconding and of obstructing the truth, based solely on the fact that Virginia Laparra and one of her lawyers had spoken to the media about the case, which is not forbidden in Guatemala.

The judge ordered that the former prosecutor be transferred to Matamoros prison, also located in a military barracks in Guatemala City. He further ruled that hearings would be held behind closed doors, limiting access to the media, human rights organizations and the diplomatic corps accredited to Guatemala, in violation of the right to a public trial. The Foundation Against Terrorism (FCT), an organization that focuses on the defence of ex-military personnel accused of crimes against humanity and has filed several lawsuits against justice operators, intervened in the case as “adhesive plaintiffs”.

Virginia Laparra was detained in conditions that violated her human rights. In the Mariscal Zavala prison she was held in an isolation cell – which was almost always locked – with limited access to sunlight and visits taking place in the cell itself. Visits and basic services, including adequate and timely medical care, were severely restricted in the prison. In addition, the security measures imposed on her, both in prison and during transfers to the courts, were extremely severe and appeared to be appropriate for a person considered to be at high risk of absconding.

On 19 October 2022, despite the fact that Virginia Laparra Rivas had already been deprived of her liberty for more than seven months, the court in Quetzaltenango hearing the second criminal case issued an unnecessary additional arrest warrant.

On 28 November 2022, Amnesty International declared Virginia Laparra a prisoner of conscience, as her detention was based solely on the peaceful exercise of her right to bring an administrative complaint against a judge suspected of corruption.¹⁷ The organization believes that the irregularities in the processing and investigation of the unfounded case against her, as well as other arbitrary actions by the Guatemalan authorities in this case, reflected an attempt to criminalize those who fight against corruption and impunity in Guatemala.

A few days later, on 16 December 2022, she was sentenced to four years' imprisonment for continued abuse of authority, following a process that did not meet international fair trial standards. Her trial suffered from undue delays attributable to the state, and her pre-trial detention was ordered without a reasoned and specific consideration of her personal circumstances and without any evidence that such a measure was necessary to ensure her participation in the proceedings. In addition, a higher court ordered a judge to continue hearing the case despite the fact that he had recused himself on the grounds of “enmity with the parties”.

In May 2023, the United Nations Working Group on Arbitrary Detention declared that the detention of Virginia Laparra was arbitrary and called for her immediate release.¹⁸

While the case was ongoing, the adhesive plaintiffs posted details of the proceedings, personal attacks against Virginia and even a video of her in prison on their social media, baselessly claiming that she enjoyed privileged prison conditions

¹⁷ Amnesty International considers a person to be a prisoner of conscience when they are imprisoned or otherwise physically restrained (such as being put under house arrest) solely because of their political, religious or conscientious beliefs, their ethnicity, sex, colour, language, national or social origin, socio-economic status, birth, sexual orientation, gender identity or expression, or other status, and if the circumstances leading to their detention did not involve the use of violence or advocacy of violence or hatred. Amnesty International calls for the immediate and unconditional release of all prisoners of conscience.

¹⁸ United Nations. Working Group on Arbitrary Detention. Definition of arbitrary detention, categories II and III. <https://www.ohchr.org/es/about-arbitrary-detention>

On 27 December 2023, it was announced that the Criminal Chamber of the Supreme Court of Justice had ruled that Virginia Laparra could benefit from house arrest, as she had already served almost half of her sentence. On 3 January 2024, the court ordered the transfer of Virginia Laparra so that she could continue to serve her sentence at home. However, this measure carries with it certain restrictions, such as the prohibition to leave the department of Quetzaltenango without authorization, and the obligation to report to the authorities every two weeks to sign a control register.

Virginia Laparra is still facing a separate case in the criminal court of Quetzaltenango for disclosure of information. During a hearing in January 2023, which was held behind closed doors, the judge reserved judgment on the case for three months and excluded one of her defence lawyers. Although she was granted an alternative to imprisonment that allows her to defend herself from outside prison, upon conclusion of the trial, scheduled for May 2024, the former prosecutor could face a sentence of up to nine years in prison.

An independent expert report requested by the defence, to which Amnesty International had access, concluded that the pattern of criminalization and harassment to which Virginia Laparra has been subjected has had a negative impact on her physical and mental integrity, has affected her life project, and has also caused harm to her immediate family.

4.4. CLAUDIA GONZÁLEZ ORELLANA, LAWYER WHO ALSO REPRESENTED THE CICIG BEFORE THE COURTS



On 28 August 2023, Claudia González Orellana, a renowned lawyer and human rights defender who previously represented the CICIG before the courts, was arrested and remanded in custody by a judge.

This arrest came at a time when the lawyer was actively involved in the legal defence of several justice operators who had been criminalized by the Guatemalan judicial authorities. The defendants included former prosecutors of the Public Prosecutor's Office such as Virginia Laparra, Juan Francisco Sandoval, Siomara Sosa, Paola Escobar and former CICIG lawyer Leily Santizo, all of whom were involved in the fight against corruption and impunity in the country. The lawyer's arrest was a serious blow to the defence of these judicially persecuted individuals and sent a chilling message to Guatemala's legal community.

The criminal complaint that led to her arrest and imprisonment is linked to an investigation by the CICIG and the FECL against a magistrate of the Supreme Court of Justice, after a judge alleged in 2017 that she had been pressured by the magistrate to favour her son, who was also accused of corruption in the case known as "IGSS-PISA"¹⁹. The magistrate reported the judge and all those who might have played a role in the investigation. In 2022, the magistrate was reinstated in a context of setbacks in the fight against impunity, while the judge was forced to leave the country to avoid being criminalized.

¹⁹ The case concerns corruption in the contract for dialysis services for kidney patients. Insight Crime, Social insecurity: The case of IGSS-Pisa in Guatemala, <https://insightcrime.org/wp-content/uploads/2021/12/Inseguridad-social-El-caso-del-IGSS-Pisa-en-Guatemala-InSight-Crime.pdf>

Since at least 2022, Claudia González was aware of multiple legal actions against her as a result of her role in defending and providing legal advice to other criminalized lawyers and former prosecutors. However, she stated that she was unaware of the exact number of complaints against her due to the lack of transparency of the Public Prosecutor's Office, as she and other colleagues had noted (see Section 6.3 Right to legal assistance and defence).

On the day of her arrest, officials from the Public Prosecutor's Office carried out a search of her home (known in Guatemala as an "allanamiento"), on the basis of a warrant issued by the Tenth Court "B" of First Criminal Instance. However, the warrant did not specify the criminal offence of which she was accused. During the raid, the officials confiscated her personal computer, mobile phone and a USB device, actions that Claudia González and her defence team have described as illegal. At the same time, in a coordinated operation, officials also searched the homes of Siomara Sosa and Juan Francisco Sandoval, both former prosecutors of the FECl who had been criminalized and were already in exile.

The arrest warrant only mentioned the charge of abuse of office. In Guatemala, however, this crime is linked to the performance of tasks that only public officials carry out. And in her case, by virtue of her position at the CICIG, she was not acting as a public official, but as a representative of an international organization recognized by the Guatemalan state.

Following her arrest, which was carried out with a massive deployment of security forces, the lawyer was not immediately brought before a judge to make her initial statement, as required by Guatemalan law. Instead, she was transferred to the pre-trial detention centre at the Mariscal Zavala military barracks in Guatemala City, a place that lacked adequate conditions of detention respecting human rights. The cell was unhygienic, with little light and ventilation, and she was subject to a more restrictive visiting regime than other inmates in the same prison.

Although Guatemalan law establishes that a first hearing must be held within 24 hours of an arrest so that detainees can be informed of the charges against them, Claudia González was in prison for 25 days without this requirement being met.

On Friday 22 September 2023, the first statement hearing was held, with the judge ruling that she should be prosecuted for abuse of office. However, as explained above, this offence would not be applicable in this case, as it only applies to public officials. The judge also ruled that she should remain in pre-trial detention for at least another three months while the investigation against her progressed, without giving any compelling reasons to justify this measure.

On 17 November 2023, after more than 80 days in prison, Claudia González was released following a decision by the First Chamber of the Courts of Appeal, which ordered the judge to place her under house arrest. Since then, she has had to appear before a court every two weeks to sign the control register. She is also unable to leave the country without judicial authorization.

On 18 March 2024, the judge ruled that Claudia Gonzalez must stand trial for abuse of power, which could carry a sentence of one to three years in prison.

Amnesty International expressed its concern at the arrest, detention and criminal proceedings against Claudia González Orellana.²⁰ These proceedings did not respect the right to a fair trial, including by not holding public hearings. The courts ruled that the hearings should not be open to the public and refused the presence of journalists and diplomatic personnel accredited to Guatemala.

²⁰ Amnesty International. Urgent action: Lawyer and human rights defender jailed. 29 August 2023, Index: AMR 34/7151/2023 and Acción urgente: retireen los cargos contra una abogada y defensora de los derechos humanos [Urgent action: withdraw charges against human rights defender and lawyer]. 14 September 2023, Index: AMR 34/7203/2023.

Corruption, human rights and the obligations of states

Although corruption is internationally recognized as a global challenge and there are numerous international commitments to combat it,²¹ there is no consensus on a definition of the multidimensional concept of corruption. In the absence of a single definition, corruption is commonly described as “the abuse of power for private gain”.²²

The universal and Inter-American systems have referred to the link between human rights and corruption, recognizing that corruption restricts the ability of states to guarantee the individual and collective rights enshrined in regional and international human rights treaties. Corruption can also undermine a particular state's obligation to use “the maximum of its available resources” to progressively achieve the full realization of economic, social and cultural rights. In this sense, legal frameworks for the eradication of corruption and the effective protection of human rights are mutually complementary, with human rights obligations reinforcing anti-corruption obligations, which are generally written in non-binding terms.

According to the IACHR “while the fight against corruption can have a positive effect on the enjoyment and exercise of human rights, the promotion of human rights reduces the chances of corruption.”²³

“The Special Rapporteur would like to stress the importance of using a human rights-based approach to tackling corruption and, most importantly... to the activities of those fighting corruption, including anti-corruption human rights defenders, whistleblowers, journalists, judges and lawyers and other relevant actors... [T]he State bears the ultimate responsibility for protecting human rights defenders working on anti-corruption.”²⁴

UN Special Rapporteur on the situation of human rights defenders, Mary Lawlor

A number of state obligations under international law arising from this convergence can be highlighted, including:

- (1) Respect for human rights: requires public officials and employees to refrain from committing acts of corruption.
- (2) Preventing violations of rights in connection with acts of corruption: this includes creating an enabling environment for civil society, the media and other anti-corruption advocates, and protecting these advocates.
- (3) Investigate acts of corruption.²⁵

In the case of *Viteri Ungaretti and others v. Ecuador*, the Inter-American Court of Human Rights recalled that states must establish protection mechanisms for those who report acts of corruption, including measures to prevent and respond to acts of reprisals, sanctions or unjustified dismissals for making such reports, as well as civil or criminal liability proceedings if the report was made in the reasonable belief that such acts had occurred. In addition, the Court underlined the importance of protection against retaliation for acts of corruption in order to promote a culture of public accountability and integrity and avoid discouraging potential future whistleblowers.²⁶

²¹ Guatemala is a party of, among others, the United Nations Convention Against Corruption, 2003. https://www.unodc.org/unodc/en/corruption/tools_and_publications/UN-convention-against-corruption.html and the Inter-American Convention against Corruption, 1996. https://www.oas.org/en/sla/dil/docs/inter_american_treaties_B-58_against_Corruption.pdf

²² Transparency International, What is Corruption? <https://www.transparency.org/en/what-is-corruption>. According to the IACHR, corruption is characterized by the abuse or misuse of the power entrusted, which may be public or private, that displaces the public interest for a private benefit (personal or for a third party) and that damages democratic institutions and the rule of law and affects access to human rights. IACHR. Corruption and human rights in the Americas: Inter-American Standards, December 2019. <http://www.oas.org/en/iachr/reports/pdfs/CorruptionHR.pdf>

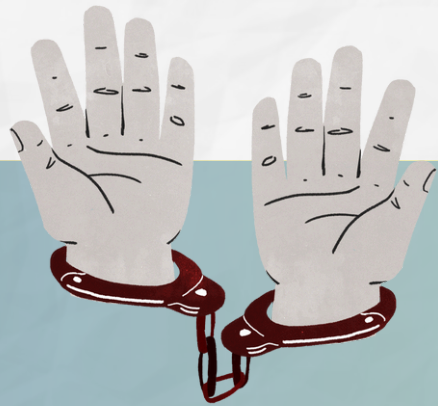
²³ IACHR. Corruption and human rights in the Americas: Inter-American Standards, para. 86.

²⁴ UN Special Rapporteur on the situation of human rights defenders, Mary Lawlor. At the heart of the struggle: human rights defenders working against corruption (A/HRC/49/49), 20 December 2021, para. 35.

²⁵ Inter-American Court of Human Rights, Case of *Viteri Ungaretti and others v. Ecuador*, Judgment of 27 November 2023 (Preliminary Objections, Merits, Reparations and Costs) para. 96. https://corteidh.or.cr/docs/casos/articulos/seriec_510_esp.pdf; CIDH. Corrupción y derechos humanos: Estándares interamericanos, diciembre de 2019; Convención de las Naciones Unidas contra la Corrupción, artículos 13, 30, 32, 33. See also: Amnesty International, Anti-corruption fight in peril, crackdown on anti-corruption human rights defenders in West and Central Africa (AFR 01/6978/2023), July 2023. <https://www.amnesty.org/en/documents/afr01/6978/2023/en/>

²⁶ Inter-American Court of Human Rights, Case of *Viteri Ungaretti and others v. Ecuador*, para. 96.

5. THE STRATEGY OF CRIMINALIZATION



Strategic lawsuits against public participation (SLAPPs) are legal actions that are threatened or initiated by companies, state actors, media figures, politicians and powerful actors in general with the intention of silencing or intimidating the participation of individuals and organizations in public affairs. SLAPPs often target journalists, human rights defenders, civil society organizations or activists, among others, with the aim of silencing them and deterring other critical voices through a chilling effect on society. Such actions seek to intimidate, exhaust and deplete the financial and psychological resources of those targeted.²⁷

Regarding SLAPPs, the IACHR has warned that these cases are difficult to fight and also difficult to protect those targeted, since “they appear to be an apparent legitimate use of legal tools, but in reality they are intended to manipulate public opinion or the justice system itself for private benefits”.²⁸ It is essential to ensure an enabling environment for participation in public debate on matters of public concern and to recognize that the right to a fair trial and effective remedy cannot be extended to include improper use of the criminal justice system or abuse of law to strategically undermine public participation. To avoid this, it is imperative to review national laws and policies and adopt anti-SLAPP legislation that prevents early dismissal, minimizes harm to victims and imposes deterrent sanctions on those who resort to SLAPPs. The fight against SLAPPs must include a holistic approach to cover awareness-raising and legal education, support mechanisms and free legal aid.²⁹

Amnesty International believes that the extremely high number of simultaneous lawsuits analysed in this report and lacking sufficient legal or factual grounds means that these legal tactics can be considered SLAPPs, applied with the intention of silencing justice operators and human rights defenders.

The information available also shows the existence of a pattern of criminalization and harassment of justice operators involved in cases relevant to the fight against impunity and corruption, in particular against those who have worked with the CICIG and in the FECI or have had knowledge of such cases through the Judiciary. This same pattern extends to those who work as lawyers in these criminal proceedings and, in some cases, to judges who act impartially in such proceedings.³⁰

²⁷ Council of Europe, Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs), 5 April 2024. <https://rm.coe.int/0900001680af2805>

²⁸ IACHR, Business and Human Rights: Inter-American Standards, 1 November 2019, http://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf, para. 325

²⁹ Council of Europe, Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs), 5 April 2024.

³⁰ The organization reached its conclusion about the existence of this pattern on the basis of a large number of cases and sources of information showing the non-random repetition of lines of conduct that coincide in terms of operation and time, with the same actors involved and the same identity or background of the people concerned.

The Inter-American Commission on Human Rights has stated that the systematic criminalization of justice operators in Guatemala occurs in a context in which state and non-state actors make improper use of criminal law by influencing the state.³¹

Amnesty International notes with concern that these strategies do not only respond to the immediate objective of ensuring impunity for those who may have been involved in acts of corruption, but also have broader structural objectives. These objectives include the intimidation of justice sector professionals and the imposition of reprisals or punishment against them for having participated in efforts to combat corruption and impunity.

These actions also call into question the proper performance of judicial functions, have a chilling effect on the legal profession as a whole, and jeopardise the rule of law in the country. In this sense, the ultimate aim of these attacks seems to be to undermine the independence of the country's Judiciary and to end any attempt to revive the fight against corruption and impunity in certain sectors.

“The person from the prosecutor's office said to me: ‘Look, I could dismiss the complaint because as far as I'm concerned there's no crime, but I can't do that because you know who the people behind this are.’”

Criminalized lawyer and human rights defender.

In a more limited sense, these attacks mean that judges and prosecutors hear cases under undue pressure to reach decisions that are not always in accordance with the law. Meanwhile, criminalized justice operators have difficulty finding legal teams to defend them, as there is a real risk that these defenders will also come under attack.

Finally, criminalization and intimidation also have a chilling effect on society as a whole, impacting negatively on the right to freedom of expression and eroding public space.

“We still have prosecutors and judges who want to do their job properly, but who are often unable to do so because of fear”.

Exiled former prosecutor.

5.1. THE VICTIMS

The victims of abuse of the criminal justice system and politically motivated persecution are those who have worked with or supported the CICIG, public officials from specific teams of the Public Prosecutor's Office – such as the FECl and the Judiciary – who have participated in efforts to combat impunity and corruption, and lawyers who have undertaken to defend criminalized justice operators.

Persons subjected to criminalization often face specific acts of discrimination, gender-based violence and racism in the public or digital sphere. This particularly affects women, who make up a significant proportion of professionals working in the justice sector. For example, according to figures obtained by Amnesty International, 45.5% of judges and magistrates are women.

³¹ IACHR. Annual Report 2022. Chapter IV.b. Guatemala, paras 32 and 33. https://www.oas.org/en/iachr/docs/annual/2022/Chapters/10-IA2022_Cap_4B_GU_EN.pdf

5.2. RESPONSIBLE AUTHORITIES AND OTHER RELEVANT ACTORS

There are three main authorities and actors involved in the above: the Public Prosecutor's Office, the Judiciary and the so-called “adhesive plaintiffs”. A brief description of the role of each is given below.

Public Prosecutor's Office. Has a duty to investigate promptly, effectively and impartially crimes brought to its attention, including those related to acts of corruption and their impact on the exercise of human rights.³²

However, in the context analysed, the actions of the Public Prosecutor's Office to punish or persecute justice operators, human rights defenders, journalists and other key actors in the context of the 2023 electoral process were politically motivated.³³

The Prosecutor's Office has failed to ensure respect for human rights and a working environment free from pressure and threats for prosecutors who have reported attacks in retaliation for their work on emblematic corruption cases. It has also failed in its duty to investigate complaints from justice operators who have reported harassment and gender-based violence as part of the criminalisation process against them.

***“States [must adopt] measures to create a safe and enabling environment for civil society, whistleblowers, witnesses, activists, human rights defenders, journalists, prosecutors, lawyers and judges, in order to protect them from threats arising from their activities in preventing and combating corruption.*”**

Inter-American Court of Human Rights. Case of Viteri Ungaretti and others v. Ecuador, judgment of 23 November 2023, para. 85

The Judiciary. Cases prosecuted by the Public Prosecutor's Office are brought to the attention of criminal judges and magistrates, who must act independently and impartially.³⁴

In the cases analysed, judicial action has been discouraging, perpetuating criminalization and thus also violations of due process against justice operators and human rights defenders.

In addition, Amnesty International notes that a large number of cases of criminalization are heard only by a limited number of Courts of First Criminal Instance, Drug Trafficking and Crimes against the Environment, which appear to be particularly receptive to the positions of the Public Prosecutor's Office regarding unfair and unfounded criminalization, as well as to the abusive and dilatory positions of adhesive plaintiffs and other procedural obstacles.

For example, these courts have signed arrest warrants even where cases had already been assigned to a control judge. Moreover, when the cases reach other courts, staff often ask to be removed from the case or face recusal proceedings brought by the adhesive plaintiffs.³⁵

Furthermore, members of the Judiciary have tolerated gender violence against women subjected to criminalization, allowing misogynistic remarks and threats to be made during proceedings without condemning them or taking steps to prevent them, as happened, for example, in the hearings of the cases against Virginia Laparra or Leily Santizo and Siomara Sosa.

³² United Nations. Human Rights Council. Independence of judges and lawyers: Report of the Special Rapporteur on the independence of judges and lawyers. A/HRC/44/47, para. 29. See also Code of Criminal Procedure of Guatemala, Article 8.

³³ IACHR. Guatemala: IACHR and its Special Rapporteurship for Freedom of Expression reject persistent criminalization and abuse of authority for political and electoral purposes, press release, 18 November 2023. United Nations. Situation of human rights in Guatemala: Report of the United Nations High Commissioner for Human Rights, 6 February 2024, A/HRC/55/21, paras 72 to 74.

³⁴ Political Constitution of the Republic of Guatemala, Article 203 and Judicial Career Law, Article 2.

³⁵ All the persons interviewed expressed concern about the way in which cases of criminalization are distributed among the courts, in an atypical pattern that seems to favour the Public Prosecutor's Office.

Meanwhile, despite numerous national and international expressions of concern about criminalization and other attacks against judges and magistrates who have been involved in emblematic cases in the fight against impunity and corruption, the Supreme Court of Justice, the highest authority of the Judiciary in the land, has failed to take any measures to safeguard judicial independence or to protect the human rights of these justice operators.

“The judge should have stopped the adhesive plaintiff for his misogynistic remarks, verbal abuse, and questioning of our personal lives, which had nothing to do with the case, but he failed to do so. One prosecutor even laughed. We were the ones who had to stop them.”

[Woman] lawyer and human rights defender.

Adhesive plaintiffs. Guatemalan law allows for the participation of interested third parties in criminal proceedings as co-accusers alongside the Public Prosecutor's Office.³⁶ These “adhesive plaintiffs” must represent the rights of those affected by the alleged crimes being prosecuted. In the case of Virginia Laparra, for example, the Foundation Against Terrorism joined the case as such a plaintiff.

Individuals who often appear as adhesive plaintiffs in cases against justice operators and human rights defenders have also been identified as responsible for the filing of unfounded complaints on numerous occasions, such as against Leily Santizo and Siomara Sosa, against former judges Aifán and Miguel Ángel Gálvez, against former prosecutor Juan Francisco Sandoval, and in one case against Claudia González.

In the cases analysed, the victims of criminalization reported that the adhesive plaintiffs and complainants did not simply carry out their procedural functions, but used strategies to delay the process, and in some cases pressured, harassed and bullied them.

In addition, the same individuals have on various occasions used social media to amplify coordinated postings from anonymous accounts that harass, threaten and stigmatize justice operators and human rights defenders and publish confidential information about the proceedings.



³⁶ Guatemala. Code of Criminal Procedure, Article 116.

5.3 KEY ELEMENTS

While a number of features of the pattern of criminalization described in this report coincide with the pattern of criminalization of defenders of land, territory and the environment previously documented by Amnesty International,³⁷ some of the elements show variations specific to the harassment of justice operators and, more generally, of those in the country's criminal justice sector who are committed to the fight against corruption. Amnesty International has identified the following elements in the pattern of criminalization of justice operators in Guatemala.

MULTIPLE COMPLAINTS



Judicial and administrative harassment begins with complaints and other proceedings being brought simultaneously against the victims. These complaints remain open over time, regardless of whether they are unfounded, repetitive or manifestly unjustified. The justice operators targeted by these complaints have to expend considerable effort and resources to be aware of them, follow them up and defend themselves. Between 2018 and 2022, for example, Judge Aifán faced more than 100 criminal proceedings, around 75 disciplinary complaints, some 30 preliminary investigations to lift her immunity, and other proceedings before various institutions.

ONLINE ATTACKS



Online harassment can precede or coincide with complaints. It is characterised by harassment, insults, threats of arrest, injury or death, and other violence in online spaces, particularly on social media, from a large number of coordinated accounts (netcentres). These attacks may intensify or subside in response to developments in the legal process, as they are used strategically by their perpetrators.

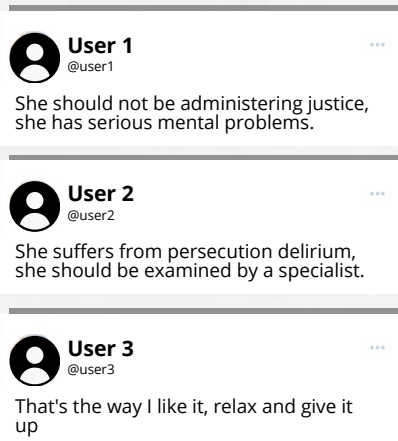
Publications often portray individuals as dangerous criminals, “terrorists”, “enemies of justice”, “traitors to the homeland” or “guerrillas”, making them the targets of military operations. Altered messages and photographs often contain discriminatory, misogynistic, homophobic or xenophobic language.³⁸ A number of accounts have also engaged in following and monitoring justice operators, human rights defenders and journalists or their families, taking photographs of them and posting information about their movements and personal details. Netcentre accounts have leaked information about cases that should only be known by the parties to the proceedings, the prosecution or the Judiciary, through publication, for example, of operations or other actions by these bodies against Erika Aifán and Leily Santizo.³⁹

In the case of women, attacks also focus on physical appearance or mental capacity, using derogatory nicknames and attributing sexual relations to them in order to undermine their professional practice and moral judgement. Attacks can even include threats of sexual violence.

³⁷ Amnesty International, We are defending the land with our blood: defenders of the land, territory and environment in Honduras and Guatemala, 2016. <https://www.amnesty.org/en/documents/amr01/4562/2016/en/>
Guatemala: Bernardo Caal Xol should never have spent a day in prison, 25 March 2022. <https://www.amnesty.org/en/latest/news/2022/03/guatemala-bernardo-caal-xol-should-never-have-spent-a-day-in-prison/>

³⁸ See, for example, Agencia Ocote, “Cómo mutaron los netcenters anti justicia y derechos humanos en Guatemala” [How anti-justice and human rights netcenters mutated in Guatemala], 30 November 2022. <https://www.agenciaocote.com/blog/2022/11/30/mutaron-netcenters-anti-justicia-y-derechos-humanos-en-guatemala/>; WOLA and Myrna Mack Foundation, Criminalización, ataques mediáticos y discurso de odio [Criminalization, media attacks and hate speech], July 2020. <https://myrnack.org.gt/wp-content/uploads/2020/11/Criminalizacion-Discurso-de-Odio-Myrna-Mack-Wola.pdf>; CICIG, Bots, Netcenters and the fight against impunity, 2019. <https://www.cicig.org/statement-2019/bots-netcenters-and-the-fight-against-impunity?lang=en>; American Bar Association, Center for Human Rights, “Invisible threats: Mitigating the risk of violence from online hate speech against human rights defenders in Guatemala”, 2019. https://www.americanbar.org/content/dam/aba/administrative/human_rights/invisible-threats-guatemala-may-2019.pdf; Impunity Watch, Leadership and participation of women in Guatemala's justice, 2017. https://www.impunitywatch.org/wp-content/uploads/docs/ResearchReport_Leadership_Participation_Women_Guatemala_Justice_2018_eng.pdf

³⁹ Agencia Ocote. Ibid. See also ConCriterio, MP abre acceso privilegiado de información a netcenter [Public Prosecutor's Office brings case of privileged Access to information against netcenter], 2 August 2022. <https://concritero.gt/un-netcenter-que-apoya-al-mpgood-job-fiscal-curruchiche/>; and La Hora, 22 August 2022. El MP no investiga filtraciones a “netcenters” por falta de denuncias [Public Prosecutor's Office fails to investigate netcentre leaks due to lack of complaints], <https://lahora.gt/nacionales/jeanelly/2022/08/22/el-mp-no-investiga-filtraciones-a-netcenters-por-falta-de-denuncias/>



Those who post these messages often use expressions, images and emojis that are very specific to the Guatemalan context, such as by alluding to surveillance and repression techniques used by state security and intelligence forces during the internal armed conflict, which means that they are not easily detected by, for example, the content moderation tools of social platform X. When these accounts are suspended after being reported by users, they often reappear under a different name but with the same modus operandi. According to the information received, these attacks are neither investigated nor stopped by the Public Prosecutor's Office or any other Guatemalan state authority, despite the complaints filed by the victims.

Note: Comments posted on the social media X and compiled by Amnesty International. Images associated with women were removed, many times altered, which amplifies the degrading and misogynistic nature of the whole.

“They threaten us with the loss of civil rights [muerte civil] or life imprisonment. Due to my being a feminist, I have also been told that I have a childhood problem. The discourse of hate against women, against us, is very powerful.”

Criminalized lawyer and human rights defender

PERSONAL HARASSMENT



Bullying, harassment and threats also occur on a personal level, by individuals who threaten or insult victims or otherwise attempt to attack their honour and reputation.

Women justice operators and human rights defenders have on some occasions reported being subjected to such attacks by adhesive plaintiffs who have joined the proceedings, staff from the Public Prosecutor's Office and – at least in some cases – from the judges themselves. These attacks are often misogynistic, for example challenging women's participation in the justice system.

“I was shouted at [in court] and called out as arrogant. How could I, a woman, dare to put a high-ranking military officer in prison? How could my father have allowed me to do this job? I should have stayed at home.”

Woman lawyer and human rights defender

IMPROPER CRIMINAL PROSECUTION



Complaints against victims of unfair criminalization are taken up by the Public Prosecutor's Office, which initiates legal action by filing a case in court. In some cases, when a victim of criminalization obtains a favourable judgment, the Public Prosecutor's Office announces another criminal case against the victim shortly afterwards, thus perpetuating the pattern of continued criminalization.

TRIALS WITHOUT DUE PROCESS



In the cases analysed, Amnesty International has documented countless instances of due process violations that deprived the victims of the opportunity to defend themselves adequately before an impartial tribunal. These violations are discussed in the next chapter of this document (see Chapter 6. Violations of the right to a fair trial).

ARBITRARY DETENTION.



Criminalization, in its most extreme form, results in arbitrary detention as defined under international human rights law.

Detentions are considered arbitrary when they result from the exercise of rights recognized in international human rights instruments and derive from the non-observance by the Guatemalan authorities of international norms relating to the right to a fair trial.⁴⁰

Moreover, arbitrary detention has differentiated impacts for many women with a high burden of care responsibilities for their children or other dependents.

INCREASED CRIMINALIZATION



The pattern of criminalisation expands and replicates to include more people and those who carry out their duties independently within the criminal justice system (such as defence lawyers, judges or public prosecutors).

On the one hand, victims' defence lawyers are themselves subject to unfounded criminal proceedings that impede their clients' right to a defence. On the other, the Public Prosecutor's Office and adhesive plaintiffs file complaints and other proceedings against judges who issue decisions with which they disagree, thereby undermining the independence of the Judiciary by directly attacking those whose duty it is to issue judgments, rather than properly appealing the decisions with which they disagree.

“I was told: ‘We need a lawyer to go and help. And we are thinking of you. We've already asked other lawyers, but no one wants to do it’.”

Criminalized lawyer and human rights defender

EXILE



Many of the people affected are forced to leave the country because of harassment, criminalization and lack of judicial guarantees, as well as threats to their lives and physical integrity, as in the case of Erika Aifán. The Unit for the Protection of Human Rights Defenders in Guatemala (UDEFEQUA) estimates that, to date, some 79 former prosecutors, judges and members of the CICIG, as well as human rights defenders and journalists, are in exile. Several of those interviewed for this report requested that their current place of residence be withheld. The lawyer Flor Gálvez was one of those forced to leave Guatemala. While at the CICIG, she worked on the case that led to the prosecution of Virginia Laparra, which in turn resulted in her being subjected to criminal prosecution and harassment.⁴¹ She has also defended criminalized justice operators.

The fact that exile is a consequence of criminalization is known to those who promote such strategies, and they often celebrate this through online attacks via netcentres. The threat of exile is also used as a means of harassing justice operators.

Even in exile, however, criminal and digital harassment often continues, causing constant stress and distress to those criminalized.

⁴⁰ United Nations. Working Group on Arbitrary Detention. Definition of arbitrary detention, categories II and III. <https://www.ohchr.org/es/about-arbitrary-detention>









⁴¹ Amnesty International, It's hunting season against justice officials in Guatemala, 22 November 2023. <https://www.amnesty.org/en/latest/news/2023/11/hunting-season-against-justice-officials-guatemala/>

“In all legal traditions, members of the public prosecution service, whether styled as prosecutors, attorneys or by any other title, are a key element of the criminal justice system and hold responsibilities that are critically important in the fight against corruption.

Justice cannot be effectively administered if justice officials cannot act independently, impartially, objectively and with integrity, autonomy and neutrality in the performance of such a sensitive function that comes with a high level of responsibility.

One of the priorities in building institutions and protecting human rights is to strengthen the independence of the judiciary and ensure that it can resist attempts by political authorities or corrupt forces to exert control over it.”⁴²

UN Rapporteur on the independence of judges and lawyers, Diego García-Sayán

Main characteristics of the criminalisation of justice operators and human rights defenders in Guatemala	
 <p>Multiple complaints</p> <p>Several administrative, criminal and disciplinary complaints are lodged simultaneously against the same person.</p>	 <p>Online attacks</p> <p>It is characterised by: insults, denigrating messages towards criminalised persons and their families, and even threats of arrest, harm or death, surveillance, leaking of confidential information about cases in order to intimidate, gender-based violence.</p>
 <p>Improper criminal prosecution</p> <p>Despite the fact that the demands are baseless, the Public Prosecutor's Office is pursuing the criminal charges instead of dismissing them.</p>	 <p>Personal harassment</p> <p>Threats, insults and harassment of the criminalised persons and their families, including during penal audiences, with misogynistic content towards the criminalised women.</p>
 <p>Trials without due process</p> <p>Violations of the right to defence, presumption of innocence, undue reservations and restrictions on the publicity of hearings, unjustified delays in proceedings, inaccurate or inapplicable offences, and permissiveness of gender-based violence.</p>	 <p>Arbitrary detention</p> <p>and restrictions on people's liberty: misuse of imprisonment without bail, prolonged pre-trial detention, instrumentalisation of imprisonment without bail to intimidate, unnecessary use of arrest warrants.</p>
 <p>Exile</p> <p>Many criminalised persons have been forced to flee the country to protect their lives and rights in the absence of fair trial guarantees.</p>	 <p>Repeat pattern of criminalisation</p> <p>to include more people who have contributed to the fight against corruption and impunity, which generates an atmosphere of fear.</p>

⁴² United Nations. Report of the Special Rapporteur on the independence of judges and lawyers. (A/HRC/44/47), 23 March 2020, para. 81.

6. VIOLATIONS OF THE RIGHT TO A FAIR TRIAL



“This is the worst time to be defending the rights of justice operators: there is no guarantee of due process. The entire system has been co-opted. We have nowhere to turn to, no mechanisms to enforce our rights. We cannot go to court because we know what will happen.”

Criminalized lawyer and human rights defender

When states exercise their power to bring a person to trial on criminal charges, they must follow a set of internationally recognised minimum standards to ensure that the person's human rights are respected throughout the proceedings.

A trial without due guarantees affects the defendant, the victims and society as a whole, as its conclusions and the legitimacy of the sanctions imposed lack credibility.

6.1. CHARGES USED

Available information suggests that certain offences are used more frequently in processes of criminalization, such as abuse of authority, disclosure of information and failure to comply with duties.⁴³

The first challenge for justice operators is that they are charged with offences that are so broadly and imprecisely defined in the criminal code that there is a risk of arbitrary interpretation. For example, the offence of “abuse of authority” does not adequately specify the prohibited behaviour, but instead indicates that any act of authority that is arbitrary or unlawful and does not fall under another offence is punishable.⁴⁴

This type of vague offence violates the principle of legality, as it does not make it possible to clearly distinguish the prohibited conduct from other behaviours that are neither illegal nor punishable under criminal law.⁴⁵

In other cases, the offence alleged by the Public Prosecutor's Office may be admitted by the courts, even if not applicable to the case in question. An example of this is the accusation of a person who was neither a public official nor in a public position, as in the case of Claudia González analysed above.⁴⁶

Amnesty International has also obtained worrying information suggesting that the Public Prosecutor's Office may be using organized crime-related offences in cases that are unrelated to organized crime. This would allow the authorities to use more invasive investigative mechanisms, such as phone tapping and other forms of surveillance, and to conduct criminal trials with fewer procedural safeguards.

⁴³ A study found that the crimes of conspiracy, resolutions violating the constitution, influence peddling, illegal association, obstruction of justice, usurpation of functions, among others, are also commonly used. Jaime Chávez Alor and María Cristina Martínez Armas, *Criminalization of Justice Operators in Guatemala as a strategy to secure impunity*. Cyrus R. Vance Center for International Justice, New York City Bar, 2022, p. 28.

⁴⁴ See Article 418 of the Criminal Code of Guatemala.

⁴⁵ Inter-American Court of Human Rights. *Case of Pollo Rivera and others v. Perú*. Merit, Reparations and Cost. Judgment of 21 October 2016. Series C No. 319. para 219.

⁴⁶ Amnesty International. Urgent action: Lawyer and human rights defender jailed. 29 August 2023, Index: AMR 34/7151/2023 and Acción urgente: retire los cargos contra una abogada y defensora de los derechos humanos [Urgent action: withdraw charges against human rights defender and lawyer]. 14 September 2023, Index: AMR 34/7203/2023.

6.2. RIGHT TO PERSONAL LIBERTY

Criminalisation affects victims' right to liberty, particularly when a court imposes a prison sentence for crimes not actually committed, as in the case of Virginia Laparra, which is included in this report.

Other actions by the Guatemalan authorities affect and restrict people's freedom. One of these is the unnecessary use of arrest warrants, which can lead to arbitrary detention. In some cases, the criminalized persons could have appeared in court had they been summoned; there are even situations in which justice operators have appeared in court but have not been heard by the judicial authorities, as in the case of Paola Escobar and Siomara Sosa.

Moreover, the decision to remand a defendant in custody is not adequately justified, as it often fails to explain why the judge believes that the only way to bring the parties to trial is to have them arrested by the police.

Amnesty International has received worrying information regarding forms of detention used against criminalized persons in violation of their rights.

The first of these is “provisional” detention. Although the Constitution and the law stipulate that anyone arrested must be brought before a judge within 24 hours of arrest,⁴⁷ in practice a form of deprivation of liberty occurs that is not regulated by Guatemalan law. This is the case when a person is arrested on the basis of an arrest warrant and is detained for more than 24 hours without being brought before a judicial authority for an initial hearing.

This situation violates the right of anyone arrested or detained in connection with a criminal offence to be brought promptly before a judge (or other officer authorized by law to exercise judicial power), who must effectively control such detention.⁴⁸

In several of the cases analysed, such as those of Claudia González and Virginia Laparra, this did not happen until days or weeks after the arrest, despite the fact that local law requires it to happen within 24 hours. The same was the case for Aliss Morán and Paola Escobar, who were detained for more than 20 days before their first hearing.

At the same time, the authorities make improper use of pre-trial detention. Both international law and Guatemalan legislation establish that the deprivation of liberty of persons who have not been sentenced can only occur exceptionally while criminal proceedings are ongoing.⁴⁹

Such a measure must be justified on grounds admissible under international human rights law, which must be interpreted strictly and narrowly, and must be informed by the principles of the presumption of innocence, legality, need and proportionality.⁵⁰

Furthermore, pre-trial detention must be of a precautionary nature, meaning that it must be used only to ensure that the criminal proceedings can be conducted, in particular by ensuring that the accused person appears for trial and does not interfere with the development of the proceedings.⁵¹

In several of the cases analysed, judges imposed pre-trial detention without any evidence to suggest a risk of absconding or danger to the parties or the proceedings. They also failed to explain why other measures, such as house arrest, would be insufficient to ensure that those accused would appear for trial.

In a case of excessive arbitrariness, Aliss Morán was remanded in custody despite the fact that she appeared in court voluntarily to face the charges against her. Virginia Laparra was kept in prison for making statements to the media, as determined by the judge in the case, although this prerogative is not prohibited in Guatemalan law.

⁴⁷ Guatemala. Political Constitution of the Republic of Guatemala, Article 9 and Code of Criminal Procedure, Article 87.

⁴⁸ This right is recognized in Article 9.3 of the International Covenant on Civil and Political Rights and Article 7.5 of the American Convention on Human Rights.

⁴⁹ Code of Criminal Procedure, Article 259 and following.

⁵⁰ Inter-American Court of Human Rights. Case of López Álvarez v. Honduras. Merits, Reparations and Costs. Judgment of 1 February 2006. Series C No. 141, para. 67.

⁵¹ Inter-American Court of Human Rights. Case of Amrhein and others v. Costa Rica. Merits, Reparations and Costs. Judgment of 25 April 2018. Series C No. 354, para. 357.

Pre-trial detention is also used as a means of exerting pressure on criminalized persons. According to the information obtained, several wrongfully accused persons have preferred to accept the charges in exchange for a lesser penalty,⁵² despite not having committed the offences, in order to regain their freedom immediately rather than face a long period of imprisonment with no prospect of a fair trial.

Some criminalized persons have also reported receiving warnings that “what happened to Virginia Laparra” would happen to them, as a means of intimidation or to threaten them with arbitrary arrest. This instrumentalization of pre-trial detention undermines its objectives and turns it into an abusive measure that violates the right of all persons not to testify against themselves or to plead guilty, and to be free from any coercion in the exercise of their rights to due process.⁵³

“They have realized that by threatening the defence lawyers they can get people to accept the charges, so they threaten you.”

Criminalized lawyer and human rights defender.

6.3. RIGHT TO LEGAL ASSISTANCE AND DEFENCE

All persons subject to criminal proceedings have the right to counsel of their own choosing and to have the time, information and facilities necessary to prepare their defence. These procedural guarantees are essential for a fair trial.⁵⁴

Many of those interviewed told Amnesty International that they had not been informed in a timely manner of the complaints against them, even when they had requested this information from the Public Prosecutor’s Office. In some cases, their names did not appear in the Prosecutor’s information system, while in other cases they were denied the requested information without justification.

Some of those affected only became aware of the existence of the complaints when the case was brought before the courts. This lack of information obstructs the possibility of an adequate legal defence for criminalized persons, as the right to defence must be exercised from the moment they are accused of a crime.⁵⁵

Another issue related to the lack of information is the reservation or secrecy of a case. In some instances, the Guatemalan criminal justice system allows information on a case to be declared “in reserve”, preventing the person under investigation or their defence from having access to such information.

This extreme measure should be used exceptionally, with due justification and for the shortest possible time during the investigation by the Public Prosecutor’s Office. It should not be extended to the criminal proceedings. When a person is formally charged, they must have access to the case file in order to prepare an adequate defence.⁵⁶

However, in the cases of criminalization analysed, such as those of Claudia González and Virginia Laparra, reserve is often abused. This means that defendants do not have access to their own files and their ability to defend themselves is compromised. It also limits the possibility for the defendant and their legal team to publicly denounce any irregularities that may have occurred during the hearings held under reserve.

⁵² Article 491 (3) of the Code of Criminal Procedure allows a person to accept the facts and offences of which they are accused in exchange for a reduced sentence.

⁵³ Inter-American Court of Human Rights. Case of Tzompaxtle Tecpile and others v. México. Preliminary Objection, Merits, Reparations and Costs. Judgment of 7 November 2022. Series C No. 470, para. 131.

⁵⁴ Inter-American Court of Human Rights. Case of Ruano Torres and others v. El Salvador. Merits, Reparations and Costs. Judgment of 5 October 2015. Series C No. 303, paras 153 and 154 and Prosecutor v. Tadić (IT-94-1-A), Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (1999), para 47. See also Political Constitution of Guatemala, Article 12, and Code of Criminal Procedure, articles 71 and 81.

⁵⁵ Inter-American Court of Human Rights. Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs. Judgment of 17 November 2009. Series C No. 206, para. 29.

⁵⁶ Inter-American Court of Human Rights. Case of Barreto Leiva Vs. Venezuela. Merits, Reparations and Costs. Judgment of 17 November 2009. Series C No. 206, paras 45 and 46 and United Nations. Human Rights Committee. General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial. 23 August 2007, CCPR/C/GC/32, para. 33.

Finally, as mentioned earlier in this report, lawyers defending criminalized justice operators have also faced attacks and harassment, and in some cases have themselves been subject to criminalization. Such is the case of Claudia González, Flor Gálvez and Leily Santizo, who have been persecuted for their work with the CICIG. Geraldina López, another of Virginia Laparra's lawyers, also faces harassment and lawsuits for legally representing the former prosecutor.

These actions limit the right to proper counsel for those facing unfounded charges and violate the human rights of their legal defence teams.

6.4. REASONABLE TIME

Persons have the right to be tried within a reasonable time, or to be released pending trial if they are detained (for example, in pre-trial detention).⁵⁷

If a detained person is not brought to trial within a reasonable time, their pre-trial detention is tantamount to a sentence without a conviction, which means that the long period in prison prior to sentencing has a punitive purpose.⁵⁸

Numerous credible and consistent testimonies indicate that there is a systematic pattern of delays in judicial proceedings against criminalized persons. This pattern is manifested through various strategies, such as delays in the issuance of rulings, unjustified delays in the scheduling of hearings, and legal proceedings that run for weeks or even months. There are also delays in simple formalities due to minor errors that result in having to repeat procedural steps or actions, such as repeated errors in information that prevent a file from being urgently forwarded to another authority that may require it.

Other delays are caused by the recusal of judges, sometimes driven by the judges themselves. This may be an indication of their fear of dealing with cases that could be subject to political and legal attacks in retaliation for the independent exercise of their duties.

In some cases, these delays create uncertainty as to the legal status of the persons concerned, as explained above in relation to the imposition of pre-trial detention. In other cases, such as in amparo (protection) proceedings, long delays in reaching a decision may result in a lack of effective protection.

6.5. FAIR AND PUBLIC HEARING

Persons charged with a criminal offence are entitled to a fair hearing before an independent, impartial and competent court established by law, which respects the procedural rights of the parties and is public, meaning that the general public and the media are able to be present.⁵⁹

Although these rights are clearly enshrined in international human rights law and Guatemalan legislation, Amnesty International has found that they are not respected in criminal proceedings against justice operators in Guatemala.

The organization has documented unlawful restrictions on the public nature of hearings,⁶⁰ such as in the criminal proceedings against Claudia Gonzalez and Virginia Laparra. It is common practice for criminal judges to order hearings to be held behind closed doors, either by placing the case “under reserve”, typically without sufficient grounds, or simply by issuing a verbal and unsubstantiated order banning the public from the courtroom. Moreover, even in cases where public access is allowed, the judge or a public official designated by the judge may determine who may actually enter the courtroom on the day of the hearing.

⁵⁷ Article 9.3 of the International Covenant on Civil and Political Rights and Article 7.5 of the American Convention on Human Rights.

⁵⁸ Inter-American Court of Human Rights. Case of the “Juvenile Reeducation Institute” v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of 2 September 2004. Series C No. 112, para. 229.

⁵⁹ Amnesty International. Fair Trial Manual. 2014, POL 30/002/2014, pp. 118 and 121.

⁶⁰ See also United Nations. Situation of human rights in Guatemala: Report of the United Nations High Commissioner for Human Rights, 6 February 2024, A/HRC/55/21, para. 63.

This has resulted in the general population not having access to adequate information on the activities of the Judiciary. The organization notes with concern that, in particular, the media, representatives of human rights organizations and members of the diplomatic corps accredited to Guatemala have been excluded.

Another way in which the right to a fair trial is violated, in particular the presumption of innocence as an essential element of due process, is through the public and unjustified use of handcuffs and the deployment of a large security detail during proceedings, in full view of the media and the community. This is contrary to the state's obligation to protect the presumption of innocence and to avoid taking any steps that may suggest to the community that the person on trial is guilty until this has been determined by an impartial judge.⁶¹



⁶¹ Inter-American Court of Human Rights. Case of Lori Berenson Mejía v. Peru. Merits, Reparations and Costs. Judgment of 25 November 2004. Series C No. 119, para. 160.

7. THE IMPACTS OF CRIMINALIZATION



Judicial harassment has had multiple negative impacts on the lives of those who have been criminalised, with consequences for their work, finances and psychological and family wellbeing. Some of these are discussed in this section.

Those interviewed have reported significant emotional fatigue as a result of the legal uncertainty and due process violations inherent in the politically motivated criminal prosecutions they have faced. They have been forced to leave their jobs and the cases they were involved in as a result of criminalization. They have also been subjected to intense smear and stigmatization campaigns on social media, narratives that in some cases have been supported by high-ranking officials.

All of the tactics deployed or condoned by the Guatemalan authorities affect the ability of criminalized justice operators to carry out their professional activities and life projects without arbitrary interference. Some of those interviewed consider that these strategies result in a loss of civil rights (“muerte civil”), since it deprives them of the possibility to participate effectively in public affairs and to work to support their families.⁶²

The psychosocial distress of those deprived of their liberty is exacerbated by the conditions of detention, restrictions on visits and lack of access to health care. At the same time, they are witnesses to the privileges enjoyed by those accused of and investigated for acts of corruption, as well as to the alternative measures to detention or permanent release that they benefit from. Those forced into exile have also reported on the negative consequences of exile and family separation.

Despite the increased participation of women as justice operators, recent studies show that justice in Guatemala is marked by strong gender biases and stereotypes. Women working in the justice system experience various forms of discrimination and gender-based violence throughout their careers, including from members of the institution. These challenges may hinder their ability to fully perform their duties and advance in their professional careers.⁶³

The cases presented in this report reveal that social condemnation is particularly acute for women justice operators occupying key positions, as well as for women human rights defenders who have reported corrupt practices and challenged the roles traditionally associated with masculinity in the justice system.

“I think that’s their ultimate aim, to keep us quiet. They have told us so many times in the hearings that we should stay at home. And because we are women defending other women, and also other men, they want to silence that part of us as well.”

Criminalized lawyer and human rights defender

⁶² Amnesty International, It’s hunting season against justice officials in Guatemala, 22 November 2023.

⁶³ Rachel Sieder, Ana Braconnier and Camila De León. Women in the Judiciary in Guatemala: Living between professionalization and political capture]. Guatemala: Catafixia Editorial, 2022. See also Impunity Watch, Leadership and participation of women in Guatemala’s justice, 2017. https://www.impunitywatch.org/wp-content/uploads/docs/ResearchReport_Leadership_Participation_Women_Guatemala_Justice_2018_eng.pdf

Criminalisation and lack of protection from misogynistic attacks in public spaces, including courts and tribunals, or online, together with other challenges related to the gendered and car-giving roles of these women, have had psychosocial and other impacts on their lives. These include prolonged separation from their families and the need to go into exile with no guarantee of an early family reunification.

Criminalized individuals have reported financial losses as a result of actions taken to defend themselves, suspension from their posts during pre-trial detention, and loss of employment due to forced exile.

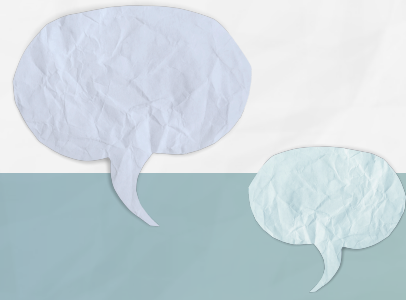
Those in exile have reported additional difficulties in connection with the blocking of their bank accounts. As well as defending themselves before the courts and other bodies, some have had to deal with the deactivation of INTERPOL Red Notices issued at the request of the Guatemalan authorities.

Criminalized individuals in exile have access to some support programmes in host countries. However, not all host nations have such public policies, and their scope is not sufficient to provide comprehensive support that will enable these individuals to continue their work for justice in Guatemala.

Other exiled persons have also reported additional forms of retaliation and indirect attacks through pressure on their close relatives who remain in Guatemala. These include the opening of unfounded criminal investigations against relatives, as well as obstacles to the professional or academic development of those left behind.



8. CONCLUSIONS AND RECOMMENDATIONS



Amnesty International notes with deep concern the failure of efforts to combat impunity for serious human rights violations and crimes under international law in Guatemala, as well as in the fight against corruption. This has a negative impact on the enjoyment of human rights, which has intensified since the closure of the CICIG in 2019.

The stories portrayed and the cases analysed in this report reveal serious flaws in the administration of criminal justice in the country, marked by a lack of awareness of international treaties ratified by Guatemala and the country's own legislation. Individuals who were professionally involved in efforts to seek justice are now facing coordinated actions for arbitrary prosecution and detention by the Public Prosecutor's Office and the Judiciary, through unfounded charges brought in criminal proceedings without any guarantee of a fair trial.

These actions create a pattern of criminalization and harassment that not only constitutes a violation of internationally recognized human rights, but also has an intimidating effect on the performance of the professional duties of women justice operators and lawyers. This in turn undermines judicial independence and jeopardizes access to justice for victims of crime and human rights violations.

Such actions also contribute to the shrinking of civic space and have a chilling effect on human rights defenders and society as a whole, sending the message that seeking accountability and fighting for justice, particularly in cases involving political and economic actors, is a risky and heavily punished activity.

In this context, criminalization has been compounded by various forms of discrimination and gender-based violence, aimed at devaluing women justice operators and human rights defenders in society, both as professionals and as women. These actions, tolerated by the authorities of the Public Prosecutor's Office and the Judiciary, have also had a differentiated impact on these women.

For all the above, Amnesty International makes the following recommendations.

To all the authorities of the state of Guatemala

- Publicly and unequivocally recognize the legitimate work of justice operators and develop a comprehensive public policy to protect them from attacks and undue interference in their functions.
- Adopt public policies, in broad consultation with civil society and with the participation of international human rights organizations, to identify, prevent and punish discrimination and gender-based violence against women justice operators, human rights defenders and journalists, including in online environments.
- Ensure that the selection and appointment procedures for the post of Attorney General and for judges of the Supreme Court of Justice, appellate divisions and Constitutional Court are based on the suitability, merit and independence of the candidate, while at all times ensuring transparency and the participation of civil society in such procedures.
- Review national laws and policies and adopt anti-SLAPP legislation that includes early dismissal of such lawsuits, measures to redress the harm caused to victims, and prevention and deterrence measures to avoid the use of SLAPPs.

To the Executive

- Acknowledge the state's international responsibility for the criminalization and other forms of harassment experienced by justice operators working on cases of corruption or impunity for serious human rights violations and crimes under international law.
- Adopt a public policy of comprehensive reparation for justice operators who have been criminalized for their legitimate work in violation of their human rights, taking their views into account and respecting international standards in this regard.

To the Guatemalan Congress

- Take the necessary measures to ensure the independence of the Judiciary, in accordance with international human rights law and standards, including by reforming the system of appointments to courts and tribunals.
- Create an independent commission of inquiry into human rights violations, and in particular violations of the right to a fair trial, committed by the Public Prosecutor's Office and the Judiciary against justice operators acting in cases of corruption and impunity for serious human rights violations.
- Ensure that the selection and appointment procedures for the posts of judges of the Supreme Court of Justice and appellate divisions, known as “nominating commissions”, are based on the suitability, merit and independence of the candidate, while at all times ensuring transparency and the participation of civil society in such procedures.

To the Attorney General and head of the Public Prosecutor's Office

- Ensure that the various instances of the Public Prosecutor's Office are able to carry out their work in a professional and independent manner, free from political pressure or other undue interference.
- Conduct timely and diligent investigations into attacks on justice operators, including harassment and all forms of bullying, discrimination and gender-based violence.
- Take the necessary steps to investigate all staff involved in the persecution of justice operators, imposing appropriate disciplinary and administrative measures. Where sufficient evidence of responsibility is found, bring them to justice in fair trials.
- Dismiss complaints or, where appropriate, request the courts to close cases against justice operators that are unfounded and have the purpose or effect of undermining their work, intimidating them or punishing them for their work, as described in this report.
- Promote the reinstatement of staff from the Public Prosecutor's Office who have been arbitrarily dismissed, forced to resign or sanctioned as a result of the criminal prosecution and harassment of justice operators described in this report.
- Urgently adopt an action protocol for prosecutors on the use of criminal law against justice operators, human rights defenders and journalists, incorporating international standards in this area and in broad consultation with stakeholders.

To the Judiciary

- Adopt the necessary measures to ensure that the judicial reserve is used as an exceptional and justified resource in a way that does not affect defendants' right to defence.
- Respect the principle of open court hearings and judicial proceedings and ensure that any exceptions are duly justified by a reasoned decision.
- Ensure timely compliance with procedural deadlines, particularly in cases where defendants are deprived of their liberty. This can be achieved through administrative measures and reforms to ensure the availability of sufficient and adequately trained staff, commensurate with the workload of the courts.

- Diligently assess every request for preventive measures, reserving pre-trial detention exclusively for cases where it is clearly the only option to ensure the continuity of proceedings, the safety of persons or the presence of the accused.
- Ensure that judges are free from pressures and reprisals for the independent and professional performance of their duties.
- Promote the reinstatement of judicial staff who have been sanctioned or forced to resign as a result of the criminal prosecution and harassment of justice operators described in this report.

To the international community

- Promote, through international cooperation and diplomatic efforts, the upholding of human rights in Guatemala by combating impunity for serious human rights violations and crimes under international law.
- Support efforts to achieve truth, justice and reparation in cases of politically motivated criminalization of justice operators for simply carrying out their work. Support civil society, both within the country and in exile, in achieving this goal.
- Ensure that exiled justice operators have access, without discrimination, to comprehensive support programmes in the states where they are located. Similarly, facilitate and expedite family reunification, ensure their basic needs are met, and allow their work for achieving justice in Guatemala to continue.



“THE ENTIRE SYSTEM AGAINST US”


CRIMINALIZATION OF WOMEN JUSTICE OPERATORS AND HUMAN RIGHTS DEFENDERS IN GUATEMALA

The report analyses, from a gender perspective, the pattern of harassment and criminalization of former prosecutors, former judges, former members of the now defunct Commission against Impunity in Guatemala (CICIG), as well as justice operators and human rights defenders who have contributed to the fight against impunity and corruption. The study highlights the human rights violations suffered by these individuals in retaliation for their legitimate activities and makes specific recommendations to the Guatemalan authorities.

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