

## CHAPTER IV.b

### Guatemala



## CHAPTER IV.B GUATEMALA

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## CHAPTER IV.B

### GUATEMALA<sup>1</sup>

#### I. INTRODUCTION

1. Within the framework of its conventional and statutory mandate, the Inter-American Commission on Human Rights (“the Commission,” “the Inter-American Commission,” or “the IACHR”) has followed the human rights situation in Guatemala with special attention, particularly with respect to the serious setbacks in the fight against impunity<sup>2</sup> and corruption that have been progressively undermining the rule of law.<sup>3</sup>

2. In 2021, the Commission determined the inclusion of Guatemala in Chapter IV.B of its Annual Report, noting the serious setbacks in the fight against impunity and corruption resulting from the intensification of attacks and interference against the independence of those bodies that, since the departure of the International Commission Against Impunity in Guatemala (CICIG) from the country, stood out for their independent and impartial work in this area, such as: the Constitutional Court (CC), the Special Prosecutor’s Office against Impunity (FECI), and the courts with criminal jurisdiction in high-risk proceedings. The Commission also noted the intensification of harassment and criminalization against justice operators pertaining to these entities, human rights defenders, and journalists, which was possible, among other reasons, due to the lack of independence of the Public Prosecutor’s Office (MP).<sup>4</sup> In 2021, the IACHR concluded that the interference with the independence of the Judiciary and the setbacks in terms of corruption and impunity seriously affected access to justice and human rights of the Guatemalan population.<sup>5</sup>

3. In 2022, consecutively, the IACHR decided to include the State of Guatemala in this Chapter of its Annual Report, observing that the situation related to the obligation to combat impunity, and to respect and guarantee judicial independence, had worsened.<sup>6</sup> In particular, the IACHR observed the intensification of judicial persecution, criminalization, and the abuse of the pre-trial procedure to intimidate and remove from office justice operators responsible for the investigation and prosecution of cases related to the internal armed

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<sup>1</sup> Pursuant to Article 17(2) of the Commission’s Rules of Procedure, Commissioner Edgar Stuardo Ralón Orellana, a Guatemalan national, did not participate in the discussion, investigation, deliberation, or approval of this report.

<sup>2</sup> Impunity has been defined in inter-American jurisprudence as: all-round failure to investigate, prosecute, take into custody, try, and convict those responsible for violations of rights protected by the American Convention, particularly given that the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human right violations and total defenselessness of victims and their relatives. I/A Court H.R. *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, par. 211.

<sup>3</sup> Following its 2017 visit to the country, the IACHR expressed its concern over events that triggered “institutional instability in the country” and jeopardized the progress made in recent years in the fight against impunity, in particular, the declaration of persona non grata of the Commissioner of the International Commission Against Impunity in Guatemala (CICIG) and the order of immediate expulsion from the country by the then President of the Republic, Jimmy Morales. Between 2018 and 2020, the IACHR presented three follow-up reports on the recommendations issued in its Country Report. In those reports, the IACHR noted the lack of progress in complying with its recommendations related to the fight against corruption and impunity, due to other actions carried out by the Guatemalan State, unilaterally and in advance (in 2019), to undermine the capacities of CICIG until the end of its mandate. At the same time, since 2017, the IACHR observed with concern, the continuation of systematic actions designed to dismantle anti-corruption institutions in the country, which, in 2021, culminated in the dismissal of the head of the Special Prosecutor’s Office against Corruption (FECI). On several occasions, the IACHR lamented the termination of CICIG’s mandate and the weakening of the fight against corruption. Furthermore, it pointed out that such actions demonstrated the State’s unwillingness to comply with its international obligations. See: IACHR, *Situation of Human Rights in Honduras*, OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 7; IACHR, *Annual Report 2018*, [Chapter V. Follow-up report on recommendations issued by the IACHR in the Report on the Situation of Human Rights in Guatemala](#), par. 247; IACHR, *Annual Report 2019*, *Guatemala*, par. 25; IACHR, *Annual Report 2020*, [Chapter V. Third Follow-up Report on the recommendations issued by the IACHR in the Report on the Situation of Human Rights in Guatemala](#), paras. 14 et seq.

<sup>4</sup> IACHR, [Annual Report 2021. Chapter IV.B Guatemala](#), OEA/Ser.L/V/II. Doc. 64 rev. 1, May 26, 2022, paras. 2 et seq.

<sup>5</sup> IACHR, [Annual Report 2021. Chapter IV.B Guatemala](#), OEA/Ser.L/V/II. Doc. 64 rev. 1, May 26, 2022, par. 9.

<sup>6</sup> IACHR, [Annual Report 2022. Chapter IV.B Guatemala](#), OEA/Ser.L/V/II. Doc. 50 rev. 1, April 1, 2023, par. 6.

conflict, including cases with judgments of the Inter-American Court of Human Rights (I/A Court H.R.), and high-impact acts of corruption.<sup>7</sup> The IACHR found that more than 30 justice operators left the country in exile after denouncing that they had been criminally persecuted because of their jurisdictional work<sup>8</sup> and due to the fact that in most of the criminalization cases, preventive detention was reportedly ordered. Likewise, the IACHR observed that dozens of cases related to transitional justice or acts of corruption involving high-level government officials failed to progress or suffered severe setbacks.<sup>9</sup>

4. By 2023, the information analyzed by the IACHR indicates that the deterioration of human rights and the rule of law continues to worsen due to the abusive exercise of power by the Public Prosecutor's Office that undermines and runs counter to the rule of law, which in turn is reflected in the systematic and prolonged failure of the State to comply with its obligation to combat impunity.

5. Consequently, the Commission decided to include Guatemala in Chapter IV.B of its Annual Report, based on the grounds established in Article 59.6 paragraphs a.i and d.ii of the Rules of Procedure, namely:

- (a) a serious breach of the core requirements and institutions of representative democracy mentioned in the Inter-American Democratic Charter, which are essential means of achieving human rights, including:
  - (i) if there is (...) abusive exercise of power that undermines or denies the rule of law(...);
  - (d) The presence of other structural situations that seriously affect the use and enjoyment of fundamental rights recognized in the American Declaration, the American Convention or other applicable instruments. Factors to be considered shall include the following, among others:  
  
(...)
  - (ii) systematic noncompliance of the State with its obligation to combat impunity, attributable to a manifest lack of will;

6. During the 2023 general elections, the abusive exercise of power for political-electoral purposes was evidenced by a series of interferences of the Public Prosecutor's Office that were seriously questioned both nationally and internationally, and that called into question the results of the process, undermining and contravening the rule of law, jeopardizing the constitutional order and the independence of the public authorities. They included, as this report shows, the provisional suspension of the registration of the Movimiento Semilla as a legal entity in order to prevent its members from being awarded public offices and the raid on its headquarters; the theft of more than 125,000 original documents and minutes of the general elections; the arrest warrant against an official of the Registry of Citizens of the Supreme Electoral Tribunal (TSE), the raids and threats against magistrates of that institution, and the requests to impeach them;<sup>10</sup> as well as the threats against the life and integrity of Bernardo Arévalo de León and Karin Herrera Aguilar, the presidential ticket of the Movimiento Semilla, which resulted in the granting of precautionary measures by the IACHR.<sup>11</sup>

7. In this regard, the OAS Electoral Observation Mission (OAS/EOM) considered that the 2023 General Elections "marked one of the most complex episodes in Guatemala's recent history. After a pre-

<sup>7</sup> IACHR. [Annual Report 2022. Chapter IV.B Guatemala](#), OEA/Ser.L/V/II. Doc. 50 rev. 1, April 1, 2023, par. 9.

<sup>8</sup> IACHR. [Annual Report 2022. Chapter IV.B Guatemala](#), OEA/Ser.L/V/II. Doc. 50 rev. 1, April 1, 2023, par. 11.

<sup>9</sup> IACHR. [Annual Report 2022. Chapter IV.B Guatemala](#), OEA/Ser.L/V/II. Doc. 50 rev. 1, April 1, 2023, par. 11.

<sup>10</sup> IACHR. Press release No. 239/23 - [IACHR Urges State to Respect Constitutional Order](#). Washington, D.C., October 4, 2023.

<sup>11</sup> IACHR, [Resolution 48/2023. Precautionary Measures No. 574-23, Cesar Bernardo Arevalo de Leon and Karin Herrera Aguilar regarding Guatemala, August 24, 2023.](#)

electoral stage characterized by a climate of political polarization and judicialization and in the face of clear threats to the integrity of the process and attempts to disregard the popular will expressed at the ballot box on June 25, the period between the first and second round of elections pushed the country's democratic institutions to the limit and brought Guatemala to the attention of the international community."<sup>12</sup> In multiple communiqués and official statements,<sup>13</sup> the OAS expressed its concern about different aspects of the elections, "from the uncertainty and tension surrounding the candidate registration process in the pre-electoral stage to the extreme judicialization of the results after June 25."<sup>14</sup>

8. The OAS/EOM pointed out that, coinciding with the official certification of the results of the presidential election, on June 25, 2023, the Public Prosecutor's Office and a judge of the criminal jurisdiction initiated a series of actions "that amounted to harassment of the electoral authorities and political persecution against one of the contending options,"<sup>15</sup> the *Movimiento Semilla* party. Up until the second round of elections on August 20, 2023, these actions included a court order by the criminal judge to suspend the legal status (*personalidad jurídica*) of the *Movimiento Semilla* and to prevent the awarding of positions to candidates of that party; three raids, two at the TSE headquarters and one at the headquarters of the *Movimiento Semilla*; at least three arrest warrants against electoral officials and former members of the *Movimiento Semilla*; proceedings to request certified copies of the electoral records and the list of preliminary election results transmission (TREP) data entry clerks, and summonses to testify to electoral officials and other persons linked to the process.<sup>16</sup>

9. The OAS/EOM strongly rejected "the raids by the Public Prosecutor's Office in the framework of the process, which it observed directly, and condemned the political persecution of public officials and party activists by State entities that violated minimum guarantees for citizens and ignored the presumption of innocence and due process."<sup>17</sup> The EOM added that this "could constitute serious violations of the fundamental rights enshrined in national legislation, the Constitution of the Republic, and international instruments."<sup>18</sup> At all times, it insisted on the indispensable condition of respecting the will of the citizenry as expressed in the vote.<sup>19</sup>

10. On August 28, 2023, the plenary of the Supreme Electoral Tribunal (TSE) officially announced the results of the second round of the elections in Guatemala, in which Bernardo Arévalo and Karin Herrera, members of the presidential ticket of the *Movimiento Semilla*, were elected president and vice-president.<sup>20</sup> On the same day, the Registry of Citizens of the TSE announced the provisional suspension of the party's registration as a legal entity. In so doing, it alleged that it was complying with the order issued by the Seventh Court of First Criminal Instance, within the framework of a criminal investigation conducted by the Special Prosecutor's Office against Corruption of the Public Prosecutor's Office.<sup>21</sup> The IACHR warned that the decision

<sup>12</sup> OAS, [OAS Electoral Observation Mission congratulates the people of Guatemala for their civic commitment in the second round of elections](#) Preliminary Report, August 22, 2023, p. 1.

<sup>13</sup> For example: OAS, [Electoral Observation Mission in Guatemala Remains Alert to New Judicial Actions of the Public Ministry and Calls for Guarantees for Adequate Working Conditions for the TSE](#), August 23rd; Guatemala August 28; [OAS Electoral Observation Mission in Guatemala Expresses Concern over Possible Suspension of Movimiento Semilla Party](#), August 31; OAS Mission expresses deep concern for actions of the Public Ministry against the integrity of the electoral material in Guatemala, September 12; Court, September 29; [Statement from the Mediation Mission of the OAS General Secretariat in Guatemala](#), October 13.

<sup>14</sup> OAS, [OAS Electoral Observation Mission congratulates the people of Guatemala for their civic commitment in the second round of elections](#), Preliminary Report, August 22, 2023, p. 7.

<sup>15</sup> OAS, [OAS Electoral Observation Mission congratulates the people of Guatemala for their civic commitment in the second round of elections](#), Preliminary Report, August 22, 2023, p. 1.

<sup>16</sup> OAS, [OAS Electoral Observation Mission congratulates the people of Guatemala for their civic commitment in the second round of elections](#), Preliminary Report, August 22, 2023, p. 4.

<sup>17</sup> OAS, [OAS Electoral Observation Mission congratulates the people of Guatemala for their civic commitment in the second round of elections](#), Preliminary Report, August 22, 2023, p. 2.

<sup>18</sup> OAS, [OAS Electoral Observation Mission congratulates the people of Guatemala for their civic commitment in the second round of elections](#), Preliminary Report, August 22, 2023, p. 2.

<sup>19</sup> OAS, [OAS Electoral Observation Mission congratulates the people of Guatemala for their civic commitment in the second round of elections](#), Preliminary Report, August 22, 2023, p. 2.

<sup>20</sup> Supreme Electoral Tribunal, [TSE officializes results of the election for President and Vice President of the Republic](#), August 28, 2023.

<sup>21</sup> El Faro, "[Guatemala Electoral Tribunal Certifies Arévalo Victory but Suspends His Party](#)," August 29, 2023; El País, "[Guatemala electoral authorities suspend president-elect Bernardo Arévalo's Semilla Movement](#)," August 28, 2023; La Hora, "[Sin concluir proceso electoral, el Registro de Ciudadanos suspende la personalidad jurídica de Semilla](#)," August 28, 2023.

to suspend the registration of the *Movimiento Semilla* would contravene a provisional injunction issued by the Constitutional Court (CC), and would be aimed at preventing the inauguration of the party members elected for the Presidency and Vice-Presidency of the Republic, and other public offices. Likewise, it had been ordered without complying with the grounds and the process established in the Electoral and Political Parties Law, which could arbitrarily restrict freedom of association and political rights.<sup>22</sup>

11. The OAS Permanent Council addressed the situation of the electoral process Guatemala in at least five specific sessions.<sup>23</sup> In particular, on September 1, 2023, it approved the Resolution “*Recent Developments in Guatemala*” in which it said it was concerned “by the post-electoral actions of political actors and partisan forces, and by the continued litigation of the process and the practice of the Attorney General’s Office to intimidate elections authorities, as well as the action of the General Directorate of the Registry of Citizens which provisionally suspended the registration of the *Movimiento Semilla* party;”<sup>24</sup> also by “the persistent reports of acts of intimidation against members of the *Movimiento Semilla* and their families, which led to the Inter-American Commission on Human Rights (IACHR) issuing precautionary measures.”<sup>25</sup> It also stated that “State of Guatemala institutions, including the legislative, executive, and judicial branches (...) must respect and guarantee the civil and political rights of the Guatemalan people consistent with domestic law and their commitments under the Inter-American Democratic Charter regarding the separation of powers, and must abide by the obligation to protect civil and political rights established in Article 23 of the American Convention on Human Rights, so as to avoid interference in the presidential transition process.”<sup>26</sup>

12. On September 29, 2023, the IACHR denounced the persistence of actions by the Public Prosecutor’s Office against the constitutional order and the independence of public authorities,<sup>27</sup> including a new raid on the headquarters of the Supreme Electoral Tribunal (TSE) that resulted in the theft of more than 125,000 original documents and minutes of the general elections.<sup>28</sup>

13. In response to these actions of the Public Prosecutor’s Office, as of October 1, 2023, and for more than 30 days, a series of peaceful demonstrations, road blockades, and other acts of protest were held in public spaces and in front of the buildings of state institutions. At the request of the government of Guatemala, on October 6, an OAS mission was deployed to Guatemala to act as an intermediary and to enter into dialog with the social actors involved in the protests taking place in the country, as well as to meet with government officials.<sup>29</sup> On October 30, 2023, the IACHR called on the State of Guatemala to respect and guarantee the right to peaceful assembly, and all rights jeopardized, such as the right to life and integrity of demonstrators, in the face of various actions that sought to delegitimize and intimidate those who demonstrate.<sup>30</sup>

14. On October 31, 2023, the TSE certified the culmination of the electoral process.<sup>31</sup> The EOM of the Organization of American States remained in the country above all to accompany the transition process

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<sup>22</sup> IACHR. Press release No. 207/23 - [IACHR urges the State of Guatemala to respect General Election Results](#). Washington, D.C., August 31, 2023.

<sup>23</sup> OAS. [Special Meeting of the Permanent Council to consider the situation in Guatemala](#). OEA/Ser.G CP/OD-2440/23 rev. 1. July 26, 2023; OAS. [Record of the special session to receive the report of the Secretary General of the Organization of American States on the situation in the Republic of Guatemala following his recent visit to said member state, on August 10](#), 2023. OEA/Ser.G. CP/SA. 2442/23; August 14, 2023; Special session of the Permanent Council held on October 10, 2023 to consider the situation of the transition in the Republic of Guatemala; October 10, 2023, OAS Permanent Council considers the situation of the transition in Guatemala.

<sup>24</sup> Permanent Council, Resolution “[Recent Developments in Guatemala](#),” OEA/Ser.G, CP/DEC.80 (2446/23), September 1, 2023, p. 1.

<sup>25</sup> Permanent Council, Resolution “[Recent Developments in Guatemala](#),” OEA/Ser.G, CP/DEC.80 (2446/23), September 1, 2023, p. 1.

<sup>26</sup> Permanent Council, Resolution “[Recent Developments in Guatemala](#),” OEA/Ser.G, CP/DEC.80 (2446/23), September 1, 2023. Statement [Declaración]1.

<sup>27</sup> IACHR. Press release No. 239/23 - [IACHR Urges State to Respect Constitutional Order](#). Washington, D.C., October 4, 2023.

<sup>28</sup> Public Prosecutor’s Office [Press release](#) September 30, 2023.

<sup>29</sup> See, [Third Report of the Secretary General of the Organization of American States on the Mission for the Transition Process in Guatemala and Recent Developments in the Country](#), presented during the special session of the Permanent Council held on October 10, 2023 to consider the transition situation in the Republic of Guatemala.

<sup>30</sup> IACHR. Press release No. 255/ 23- [Guatemala: The IACHR and Its Special Rapporteurship for Freedom of Expression Urge the State of Guatemala to Protect the Right to Protest and the Right to Peaceful Assembly](#). Washington, D.C., October 30, 2023.

<sup>31</sup> Supreme Electoral Tribunal . [Decree 5-2023](#), October 31, 2023.

that will conclude on January 14, 2024, when President-elect Bernardo Arévalo and Vice President-elect Karin Herrera will take office, in a context of high social polarization, severe deterioration of the rule of law in Guatemala, and persistent attempts to manipulate criminal law in such a way as to prevent them from taking up their positions.

15. After the conclusion of the electoral process, the IACHR received information on new actions and interference by the Public Prosecutor's Office threatening the presidential transition process. For example, on November 16, 2023, the MP announced the opening of an investigation into facts related to the student mobilizations and the occupation of the University of San Carlos (USAC) that took place between May 19, 2022, and June 9, 2023, during which the university community denounced irregularities in the election process of the USAC's rector.<sup>32</sup> As part of that investigation, the MP reported that 31 search warrants and 27 arrest warrants against university leaders and academic staff had been requested,<sup>33</sup> and that requests for the withdrawal of immunity had been lodged against deputies belonging to the parties Movimiento Semilla, VOS and Winaq and against President-elect Bernardo Arévalo and Vice President-elect Karin Herrera.<sup>34</sup> In connection with those developments, the OAS General Secretariat stated that the decisions of the Public Prosecutor's Office constituted actions of a political nature that distorted the electoral process and could affect its outcome, "for which reason they are absolutely inappropriate and unacceptable for a democratic political system."<sup>35</sup>

16. On December 8, 2023, in a new escalation, the Public Prosecutor's Office presented the progress of three investigations related to the electoral process. Based on those investigations, the MP stated that the results of the general election should be annulled as fraudulent and illegal. In addition, it announced the lodging of a new request for the withdrawal of immunity against President-elect Bernardo Arévalo and the request for arrest warrants against two officials of the TSE.<sup>36</sup>

17. In response to these events, the OAS General Secretariat condemned the "attempted coup d'état by the Public Prosecutor's Office of Guatemala."<sup>37</sup> In particular, it considered that the actions of the MP constituted an alteration of the country's constitutional order and a breach of the rule of law.<sup>38</sup> It also stated that "the attempt to annul this year's general elections constitutes the worst form of democratic breakdown and the consolidation of a political fraud against the will of the people."<sup>39</sup> Likewise, the OAS/EOM denounced that the Public Prosecutor's Office and some members of specialized prosecutors' offices "time and again have acted in bad faith, behavior never observed by the OAS and that constitutes a clear interference with the electoral process."<sup>40</sup> Furthermore, it considered that the Public Prosecutor's Office had failed to comply with its constitutional function, and could have even incurred in electoral and other crimes and human rights

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<sup>32</sup> The MP said that the facilities of the USAC had suffered damage in the amount of 90 million quetzals. It also stated that the real purpose of the seizure of the University "was the commission of crimes to postulate and prop up candidates of political parties to the highest positions of popular election, including the President and Vice President of the Republic, Deputies to the Congress of the Republic, and others." Public Prosecutor's Office. [Press release. "MP conducts raids and coordinates arrests in Caso toma de la USAC: Botín Político." November 16, 2023.](#)

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<sup>35</sup> OAS, "OAS General Secretariat Condemns Filing of Pre-Trials in Guatemala Against President-Elect and Other Officials." November 16, 2023.

<sup>36</sup> Public Prosecutor's Office. [Press conference held on December 8, 2023.](#)

<sup>37</sup> OAS. Press release. [OAS General Secretariat Condemns Coup Attempt in Guatemala.](#) December 8, 2023

<sup>38</sup> OAS. Press release. [OAS General Secretariat Condemns Coup Attempt in Guatemala.](#) December 8, 2023

<sup>39</sup> OAS. Press release. [OAS General Secretariat Condemns Coup Attempt in Guatemala.](#) December 8, 2023

<sup>40</sup> OAS. [OAS Electoral Mission in Guatemala rejects new attempt by the MP to violate the will of the people.](#) December 8, 2023.

violations.<sup>41</sup> Regarding the new request to withdraw the immunity of the President-elect, the Mission stated that the MP incurred “in a persecution and criminalization of a political option, seeking fallacious pretexts to criminally cancel a political movement, and ignoring the people of Guatemala who clearly expressed themselves at the polls.”<sup>42</sup> It concluded: “These types of actions are typical of dictatorships and not of democracies.”<sup>43</sup>

18. On December 11, 2023, in view of the serious political and institutional crisis arising from the MP’s undue and arbitrary actions and interference, the IACHR adopted Resolution No. 03/2023, “Human Rights, the Instrumentalization of the Justice System and the serious risks to the Rule of Law in Guatemala.”<sup>44</sup> In it, the IACHR warned that the instrumentalization of the justice system and criminal law had revealed the undue and arbitrary exercise of power for political-electoral purposes by the Public Prosecutor’s Office,<sup>45</sup> as well as the erosion of the system of checks and balances of the democratic State due to the absence of guarantees for the judiciary to fulfill its role of exercising control of constitutionality and conventionality and to the complacency of the executive branch.<sup>46</sup> In addition, it noted the accelerated processing of impeachment proceedings and other controversial decisions taken by the Congress of the Republic at this juncture: for example, the lifting of immunity of the TSE magistrates on November 30, 2023.<sup>47</sup> Finally, the IACHR alerted the OAS Member States and the international community about an imminent rupture of the constitutional order due to the abuse of power and the instrumentalization of the constitutional function of investigating crimes by the MP with the purpose of invalidating the integrity and the results of the electoral process and preventing the inauguration of the elected authorities in accordance with the popular will expressed in the general elections.<sup>48</sup>

19. On December 12, 2023, the Permanent Council adopted the resolution “Actions against the rule of law that put at risk the transition of government in Guatemala,” in which it “strongly condemned the ongoing abusive exercise of power by the Public Prosecutor’s Office and other public authorities in Guatemala.”<sup>49</sup> In the resolution, it instructed the Chair of the Permanent Council and the OAS Secretary General to urgently request the consent of the Government of Guatemala to receive a good offices visit under Article 18 of the Inter-American Democratic Charter.<sup>50</sup>

20. Between December 15 and 16, the Chair of the Permanent Council and the OAS Secretary General visited the country and, on December 20, 2023, presented a report with their main conclusions to the Council. First, the Chair of the Permanent Council thanked President Alejandro Giammattei for his willingness to receive the visit and for the information provided on the presidential transition process that concluded on December 6, 2023.<sup>51</sup> President Giammattei was reportedly adamant “that the inauguration of Bernardo Arévalo

<sup>41</sup> OAS. [OAS Electoral Mission in Guatemala rejects new attempt by the MP to violate the will of the people](#). December 8, 2023.

<sup>42</sup> OAS. [OAS Electoral Mission in Guatemala rejects new attempt by the MP to violate the will of the people](#). December 8, 2023.

<sup>43</sup> OAS. [OAS Electoral Mission in Guatemala rejects new attempt by the MP to violate the will of the people](#). December 8, 2023.

<sup>44</sup> IACHR. Resolution 1/2023. [“Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala,”](#) adopted on December 10, 2023.

<sup>45</sup> IACHR. Resolution 1/2023. [“Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala,”](#) adopted on December 10, 2023. Considerations.

<sup>46</sup> IACHR. Resolution 1/2023. [“Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala,”](#) adopted on December 10, 2023. Considerations.

<sup>47</sup> IACHR. Resolution 1/2023. [“Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala,”](#) adopted on December 10, 2023. Considerations.

<sup>48</sup> IACHR. Resolution 1/2023. [“Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala,”](#) adopted on December 10, 2023. Considerations.

<sup>49</sup> Resolution [“Actions against the rule of law that put at risk the transition of government in Guatemala,”](#) adopted by the Permanent Council at its regular meeting held on December 12, 2023. Resolution 1.

<sup>50</sup> Resolution [“Actions against the rule of law that put at risk the transition of government in Guatemala,”](#) adopted by the Permanent Council at its regular meeting held on December 12, 2023. Resolution 4.

<sup>51</sup> According to the report, “the President described the transition process as a historic achievement for the country. He emphasized that transparency and cooperation had characterized the process, which culminated at a closing ceremony on December 6, 2023.” Also, “President Giammattei was keen that this Permanent Council be advised that [...] 66 files containing substantive governmental facts, covering 53 institutions, [had been] meticulously organized and delivered; and that, additionally, 45 folders were uploaded by the government’s transition committee through a QR code that was made available to the President-elect, Bernardo Arévalo, and his transition team.” Report of Sir Ronald Sanders, Ambassador of Antigua and Barbuda, in his capacity as Chair of the Permanent Council of the OAS, on

and Karin Herrera as President and Vice President of Guatemala, respectively, [would] take place on January 14, 2024.”<sup>52</sup> At the same time, it was reported that members of the Constitutional Court “expressed their concern over the labeling of the situation in Guatemala as a coup d’état,”<sup>53</sup> which they considered “inaccurate, given that the country’s institutions [were] operating and functioning properly.”<sup>54</sup> Likewise, they said that “the transfer of executive power [would] assuredly take place on January 14, 2024, given that anyone who [tried] to obstruct the process would be subject to criminal and civil liabilities.”<sup>55</sup> Finally, the Chair of the Permanent Council highlighted the request of the State of Guatemala to arrange a visit by a group of OAS Member States’ Permanent Representatives, which will take place from January 12 to 14, 2024, under Article 18 of the Democratic Charter.<sup>56</sup>

21. In addition, the Commission notes with concern the persistent criminalization<sup>57</sup> of justice operators and former members of CICIG in retaliation for their work, through the improper use of criminal law by State and non-State actors in ways that have been widely documented by the IACHR. These include: the nature of the cases under their charge, the filing of a high number of complaints that are processed more quickly, the arbitrary delay of criminal proceedings, the excessive and arbitrary application of pretrial detention, the request for international arrest warrants against those who have been forced to flee the country, and other violations of the right to defense and due process guarantees.<sup>58</sup> At the end of the first semester of 2023, the IACHR noted with concern that at least eight former justice operators were deprived of their liberty in this context (see *below*). II.B.1. Cases of criminalization and deprivation of liberty.

22. The deterioration of the rule of law in Guatemala was also a matter of concern within the Universal System due to the arbitrary use of criminal law. On January 18, 2023, the spokesperson for the Secretary General of the United Nations expressed his concern regarding the criminal prosecution of justice operators and officials of the former CICIG, including actions announced against former Commissioner Iván Velásquez, and those who sought to clarify corruption cases and strengthen the Guatemalan justice system.<sup>59</sup> According to him, since the closure of CICIG in 2019, he has received multiple reports that point to the use of criminal proceedings as retaliation against people who collaborated with CICIG in the investigation and prosecution of corruption cases.<sup>60</sup>

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a visit to Guatemala on 15 and 16 December 2023, along with OAS Secretary General Luis Almagro. CP/doc.5953/23. 20 December 2023. Original: English. Page 1.

<sup>52</sup> [Report of Sir Ronald Sanders, Ambassador of Antigua and Barbuda, in his capacity as Chair of the Permanent Council of the OAS, on a visit to Guatemala on 15 and 16 December 2023, along with OAS Secretary General Luis Almagro](#). CP/doc.5953/23. 20 December 2023. Original: English. Page 1.

<sup>53</sup> [Report of Sir Ronald Sanders, Ambassador of Antigua and Barbuda, in his capacity as Chair of the Permanent Council of the OAS, on a visit to Guatemala on 15 and 16 December 2023, along with OAS Secretary General Luis Almagro](#). CP/doc.5953/23. 20 December 2023. Original: English. Page 3.

<sup>54</sup> [Report of Sir Ronald Sanders, Ambassador of Antigua and Barbuda, in his capacity as Chair of the Permanent Council of the OAS, on a visit to Guatemala on 15 and 16 December 2023, along with OAS Secretary General Luis Almagro](#). CP/doc.5953/23. 20 December 2023. Original: English. Page 3.

<sup>55</sup> [Report of Sir Ronald Sanders, Ambassador of Antigua and Barbuda, in his capacity as Chair of the Permanent Council of the OAS, on a visit to Guatemala on 15 and 16 December 2023, along with OAS Secretary General Luis Almagro](#). CP/doc.5953/23. 20 December 2023. Original: English. Page 3.

<sup>56</sup> [Report of Sir Ronald Sanders, Ambassador of Antigua and Barbuda, in his capacity as Chair of the Permanent Council of the OAS, on a visit to Guatemala on 15 and 16 December 2023, along with OAS Secretary General Luis Almagro](#). CP/doc.5953/23. 20 December 2023. Original: English. Page 4.

<sup>57</sup> The IACHR understands that the criminalization of justice operators occurs through the improper use of criminal law and the manipulation of the punitive power of the State by State and non-State actors in order to hinder the justice operators’ work. IACHR. [Annual Report 2022. Chapter IV.B Guatemala](#), OEA/Ser.L/V/II. Doc. 50 rev. 1, April 1, 2023, paras. 32ff; IACHR. *Criminalization of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015.

<sup>58</sup> Annex to request for thematic hearing “Instrumentalization of the Public Prosecutor’s Office and political persecution in Guatemala,” August 10, 2023. In the IACHR’s archives; IACHR, 186th period of sessions. Public Hearing “America “held on March 9, 2023.

<sup>59</sup> UN News, “[Guterres concerned about the opening of a criminal case in Guatemala against former CICIG commissioner](#),” January 18, 2023; “Message from @UN\_Spokesperson for the Secretary-General, @antonioGuterres on the actions taken by the Public Prosecutor’s Office in Guatemala against justice operators and officials of the former CICIG including the current Minister of Defense @Ivan\_Velasquez\_,” Account of the Special Representative of the UN Secretary-General in Colombia @MisionONUCol and UN Under-Secretary-General (@CGRuizMassieu), [published on January 18, 2023](#).

<sup>60</sup> UN, [Statement attributable to the Spokesperson for the Secretary-General - on Guatemala](#), September 28, 2023.

23. For his part, the United Nations High Commissioner for Human Rights (UNHCHR) expressed his deep concern “at repeated intimidation, harassment and reprisals against justice officials and other individuals involved in efforts to combat impunity for human rights violations or working on anti-corruption cases.”<sup>61</sup> He said, “It is dramatic, given Guatemala’s history, that those fighting for accountability for gross human rights violations are the ones now being persecuted.”<sup>62</sup> On March 30, 2023, he reiterated his alarm at the intimidation, harassment and criminalization of justice officials and the continued erosion of the rule of law.<sup>63</sup>

24. Additionally, in the course of 2023, the Commission noted the lack of willingness of the Guatemalan State to comply with its obligation to combat impunity due to the setbacks and/or lack of progress in cases related to high-impact corruption and gross human rights violations in the context of the internal armed conflict, including cases with judgments of the Inter-American Court of Human Rights in the supervision stage and/or with provisional measures in force. This is a consequence of an alleged co-optation of the justice system and the judicial persecution of justice operators in charge of investigations against powerful groups in the country. (See *below*. II.C. Failure of the State to combat impunity in cases of gross human rights violations and corruption).

25. Likewise, the IACHR noted with concern the speed with which Congress is processing bill 6099, “Law for the strengthening for peace”, which seeks to establish an absolute amnesty for serious human rights violations committed during the internal armed conflict (see *infra*. II.C. Failure of the State to combat impunity in cases of gross human rights violations and corruption). In this regard, by resolution of October 20, 2023, the I/A Court H.R. ordered the State of Guatemala to take the necessary measures so that “this law or similar initiatives are not adopted, rendered ineffective, or not enacted” since it would have a negative and irreparable impact on the right of access to justice of the victims in 14 Guatemalan cases in which it has issued a judgment.<sup>64</sup> Likewise, the IACHR Court reiterated that “Guatemala has a serious problem with respect to the impunity that prevails in the country, specifically in relation to the systematic violations of human rights that occurred during the armed conflict.”<sup>65</sup>

26. In 2023, the IACHR observed a notable deterioration in the guarantees for the exercise of freedom of expression and freedom of the press in Guatemala, which was also linked to the electoral process. In this regard, journalists and civil society organizations denounced the instrumentalization of criminal mechanisms as a form of intimidation and silencing of critical voices. These events resulted in the announcement of the definitive closure of the newspaper *El Periódico* on May 12, 2023, as a consequence of the obstacles it had complained of to being able to continue operating normally since the arrest of its founder José Rubén Zamora, the intensification of the judicial persecution against its members, as well as political and economic pressures. Likewise, through the Office of the Special Rapporteur for Freedom of Expression (RELE), the IACHR received information about pervasive online attacks against human rights defenders, journalists, and other figures who participate in public debate, through the so-called “netcenters” (see *infra*. IV. Freedom of Expression).

27. In accordance with Article 59.5 of the IACHR Rules of Procedure, the preparation of this report is based on information obtained from the following sources: official acts by the State, at all levels and in any of its branches, including constitutional amendments, legislation, decrees, judicial decisions, policy

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<sup>61</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR). – “[Guatemala: UN Human Rights Chief Volker Türk expresses deep concern at persecution of judicial officials](#)” on January 18, 2023.

<sup>62</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR). – “[Guatemala: UN Human Rights Chief Volker Türk expresses deep concern at persecution of judicial officials](#)” on January 18, 2023.

<sup>63</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), [Guatemala: Türk warns against reprisals targeting justice officials](#), March 30, 2023.

<sup>64</sup> Cf. I/A Court H.R. [Case of Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal. Case of Molina Theissen et al. 12 Guatemalan cases v. Guatemala](#). Provisional Measures and Monitoring of Compliance with the Judgment. Order of the Inter-American Court of Human Rights of October 20, 2023, par. 34

<sup>65</sup> Cf. I/A Court H.R. [Case of Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal. Case of Molina Theissen et al. 12 Guatemalan cases v. Guatemala](#). Provisional Measures and Monitoring of Compliance with the Judgment. Order of the Inter-American Court of Human Rights of October 20, 2023.

pronouncements, official communications to the Commission and other human rights bodies, as well as any other pronouncements or actions attributable to the State; information available on cases, petitions, and precautionary and provisional measures in the inter-American system, as well as information on the State's compliance with the Commission's recommendations and judgments of the Inter-American Court; information obtained through public hearings held by the Commission, press releases, and requests for information to the State based on Article 41 of the American Convention;<sup>66</sup> conclusions of other international human rights bodies, including treaty bodies, rapporteurs, working groups, the Human Rights Council, and other bodies and specialized agencies of the United Nations; human rights reports of governments and regional bodies; reports of civil society organizations and information submitted by them and by individuals; public information widely disseminated in the media.

28. On November 17, 2022, the IACHR transmitted a preliminary copy of this document, part of Chapter IV.B of its 2023 Annual Report, to the Guatemalan State and, in accordance with its Rules of Procedure, requested that it submit its observations within one month. The State sent its reply on December 15, 2023.<sup>67</sup> The Commission acknowledges and expresses appreciation for the information received, the pertinent parts of which were included in the final version of this report, approved on December 29, 2023.

29. In its observations on the draft of this report, the State expressed "its disagreement with the decision of the IACHR to consider, once again, the inclusion of Guatemala in Chapter IV.B, because it is notoriously unfeasible to objectively frame the current situation of the country under the criteria contained in Article 59.6, paragraphs a.i and d.ii, of the Rules of Procedure of the Inter-American Commission on Human Rights."<sup>68</sup> In particular, the State of Guatemala categorically rejected the accusation of systematic non-compliance with its obligation to combat impunity attributed to a manifest lack of will.<sup>69</sup> It further denied the existence of "an abusive use of power that undermines or contravenes the rule of law in the country."<sup>70</sup>

30. According to the State, "the human rights situation and the fight against impunity in Guatemala is diametrically opposed to the situation and conditions in other countries that have historically been included in Chapter IV.B of the IACHR Annual Report."<sup>71</sup> It also contended that it has demonstrated the remarkable evolution of human rights in recent years and the consolidation of a living democracy in full development.<sup>72</sup> Thus, the Guatemalan State said that "it causes enormous concern that, for the third consecutive year, the

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<sup>66</sup> In 2023, the IACHR sent 5 requests for information to the State of Guatemala based on Article 41 of its Rules of Procedure. They included: A request for information from the Inter-American Commission on Human Rights regarding the suspension of the certification of the results of the General Elections and of the 2023 Election of Deputies to the Central American Parliament. Note No. 369-23/CIDH/SE/MPCT-Art.41. Date: July 7, 2023; Request for information from the Executive Secretariat of the Inter-American Commission on Human Rights on the Denial of Registration of the Movement for the Liberation of Peoples. Note No. 161-23/CIDH/SE/GAB- Art.41. dated February 22, 2023; Request for information from the Executive Secretariat of the Inter-American Commission on Human Rights on the situation of justice operators deprived of their liberty. Note No. 426-23/CIDH/SE/MPCT-Art.41. dated July 24, 2023; Request for information from the Executive Secretariat of the Inter-American Commission on Human Rights regarding the detention of Claudia Gonzalez and the search of the homes of relatives of Juan Francisco Sandoval and Eva Siomara Sosa in Guatemala. Note No. 562-23/CIDH/SE/MPCT-Art.41. dated September 18, 2023; Request for information from the Executive Secretariat of the Inter-American Commission on Human Rights on Bill no. 6099 "Law on Strengthening Peace." Note No. 691-23/CIDH/SE/MPCT-Art.41. Date: October 2, 2023.

<sup>67</sup> Note from the Permanent Mission of Guatemala to the Organization of American States (OAS). OAS-M4-NV-394-2023, December 15, 2023.

<sup>68</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OAS-M4-NV-394-2023, December 15, 2023, p. 2.

<sup>69</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OAS-M4-NV-394-2023, December 15, 2023, p. 2.

<sup>70</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OAS-M4-NV-394-2023, December 15, 2023, p. 2.

<sup>71</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OAS-M4-NV-394-2023, December 15, 2023, p. 4.

<sup>72</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OAS-M4-NV-394-2023, December 15, 2023, p. 4.

IACHR intends to include Guatemala in Chapter IV.B, when the State has transferred a considerable volume of information to the Commission during the entire year under evaluation, which calls into question the assertions made in the document presented.”<sup>73</sup> According to the State, “[as the IACHR has been made aware since 2021,] it is evident that, once again, the report lacks serious and objective criteria, with an absence of scientific and methodological rigor, which is notably evident in the reiterative, circular, and disorderly manner in which the issues are addressed.”<sup>74</sup>

31. Finally, in its observations on this report, the State sent a body of information related to the development of the General Elections and the presidential transition process.<sup>75</sup>

32. Below, the IACHR elaborates on the factors that led the IACHR to decide to include Guatemala in its Chapter IV.B of the 2023 Annual Report.

## II. RULE OF LAW AND PRINCIPLE OF SEPARATION OF POWERS

33. In recent years, the IACHR has been documenting the weakening of the rule of law in Guatemala through a series of interferences by the Public Prosecutor’s Office in the justice administration system, mainly through the criminalization of justice operators, human rights defenders and journalists, with the aim of promoting impunity in a context of accusations to favor power structures and groups in cases related to large-scale corruption and the internal armed conflict.

34. In 2023 this situation worsened due to the abusive exercise of power by the Public Prosecutor’s Office in the context of the general elections and through the continued criminalization and deprivation of liberty of justice operators, human rights defenders, and journalists, practices that then extended to electoral officials and other persons who play a relevant role in public life and contribute to political pluralism in Guatemala. As analyzed in this report, these actions have not only placed the country in a political, social, and human rights crisis; they have also jeopardized democratic stability and undermined the principle of separation of powers in the country.

35. According to Article 3 of the Inter-American Democratic Charter, the separation and independence of the branches of government are essential elements of democracy.<sup>76</sup> This principle assumes a “checks and balances model” in which the different state functions correspond to separate, independent, and balanced bodies, in such a way as to safeguard the necessary limits to the exercise of power and, in turn, to

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<sup>73</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OAS-M4-NV-394-2023, December 15, 2023, p. 6.

<sup>74</sup> The State of Guatemala insisted, in particular, on “the importance of taking into account the information sent on September 29 of this year, in the framework of the preparation of the Annual Report, in which the State presented the main actions that Guatemala, through its institutions, undertook in 2023 to guarantee and enforce human rights, in light of their integrality and respect for their indivisibility.” Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 7.

<sup>75</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 7 et seq.

<sup>76</sup> Article 3. Essential elements of representative democracy are the holding of free and fair elections as an expression of popular sovereignty, access to power by constitutional means, a pluralistic system of political parties and organizations, and respect for human rights and fundamental freedoms. Inter-American Democratic Charter, adopted at the twenty-eighth Special Session of the General Assembly of the OAS on September 11, 2001, Article 3.

avoid arbitrariness.<sup>77</sup> According to the I/A Court H.R., the separation and independence of the branches of government is one of the guarantees for effective observance of fundamental rights and freedoms.<sup>78</sup>

36. In relation to the independence of the Judiciary, the IACHR has established that its separation from the other branches of government must be respected and guaranteed, by both the Executive and Legislative Branches, which starts with regulatory recognition of its independence and the non-interference of other branches of government. In addition to being established in the regulatory framework through the recognition of the principle of separation of powers, this guarantee must be manifested in practice.<sup>79</sup> The IACHR considers that judicial independence is a prerequisite for the exercise of the rights to due process and access to justice. The Judicial Branch also plays an indispensable part in the monitoring of the constitutionality of the acts of other branches of government and in the administration of justice. Judicial independence is, therefore, vital for the existence of the rule of law and democracy.<sup>80</sup>

37. According to the Political Constitution of Guatemala, “sovereignty is vested in the people who delegate it, for its exercise, to the Legislative, Executive and Judicial Bodies. Subordination between them is prohibited.”<sup>81</sup> Likewise, the Constitution establishes as a general principle that “in matters of human rights, treaties and conventions accepted and ratified by Guatemala take precedence over domestic law.”<sup>82</sup>

38. In its observations on the draft of this report, the State emphasized that the Constitution regulates the separation of functions among the three branches of government: “this division of powers ratifies the solidity of the Guatemalan rule of law and allows the objectivity of the Public Prosecutor’s Office in its investigative and prosecutorial work, removing the need for selective criminal prosecution.<sup>83</sup> It added that “in accordance with Article 4 of the Constitution, which regulates equality, all inhabitants of the Republic who act contrary to the law must be criminally prosecuted without any discrimination.”<sup>84</sup>

39. Similarly, in response to the accusations that journalists and human rights defenders had been criminalized, the State of Guatemala contended that “the Public Prosecutor’s Office does not persecute journalists or human rights defenders because of their profession or activity; on the contrary, the Public Prosecutor’s Office has specialized prosecution offices, such as the Prosecutor’s Office for Crimes against Justice Operators and Trade Unionists, to provide quality and warm service to journalists and human rights defenders who feel threatened in their specific work, using the applicable protocols.”<sup>85</sup>

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<sup>77</sup> I/A Court H.R. Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987, par. 26; I/A Court H.R., *Advisory Opinion OC-18/21. Presidential reelection without term limits in presidential systems in the context of the inter-American human rights system*, June 7, 2021, paras. 79-85.

<sup>78</sup> I/A Court H.R. Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987, par. 26; I/A Court H.R., *Advisory Opinion OC-18/21. Presidential reelection without term limits in presidential systems in the context of the inter-American human rights system*, June 7, 2021, paras. 79-85.

<sup>79</sup> IACHR, *Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas*, 2008, par. 30.

<sup>80</sup> IACHR, *Democracy and Human Rights in Venezuela*, December 30, 2009, par. 183.

<sup>81</sup> Political Constitution of the Republic of Guatemala. Amended by Legislative Decision No. 18-93 of the November 17, 1993. Article 141.

<sup>82</sup> Political Constitution of the Republic of Guatemala. Amended by Legislative Decision No. 18-93 of the November 17, 1993. Article 46.

<sup>83</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 10.

<sup>84</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 10.

<sup>85</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 10.

40. Additionally, the State said that it “categorically opposes” the allegation that the investigating entity favors power structures and groups in cases related to corruption,<sup>86</sup> since it has a “Prosecutor’s Office against Corruption, responsible for the criminal prosecution of this scourge and it is firmly committed to promoting actions to ensure the effectiveness of measures to prevent, detect, punish, and eradicate acts of corruption, so it should be noted that the current administration has been characterized by the implementation of specialized justice.”<sup>87</sup>

41. In relation to access to justice and judicial independence, the State of Guatemala informed the IACHR that “justice is imparted in accordance with the Constitution and the laws of the Republic. The courts of justice have the power to judge and promote the enforcement of judgments.”<sup>88</sup> It also provided information on the cross-cutting work axes contemplated in the 2021-2025 Institutional Strategic Plan of the Judicial Branch, which “enable it to perform its mission of administering and imparting justice while guaranteeing access, attention, and due process to the population, in pursuit of peace and social harmony.”<sup>89</sup> In particular, the State referred to actions implemented as part of “Access to justice for the entire population” during the period from January 1 to August 31, 2023, including those related to the following items: Implementation of the Specialized Attention Model for Peace Courts;<sup>90</sup> Training program for the strengthening and training of judicial personnel; Access to justice in Mayan languages; creation of jurisdictional bodies for judicial strengthening.<sup>91</sup>

42. Below the IACHR analyzes the situation of impairments of the guarantees of independence and impartiality of the Public Prosecutor’s Office, the Supreme Court of Justice, the High Courts, and the Constitutional Court, in the context of the grounds justifying the inclusion of Guatemala in Chapter IV.B of the Annual Report.

#### A. Public Prosecutor’s Office

43. In its Annual Report for 2022, the IACHR expressed its concern about the progressive loss of independence of the Public Prosecutor’s Office and about the possible effects on the rule of law of the

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<sup>86</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 10.

<sup>87</sup> Likewise, in its report provided to the IACHR, the State emphasized that “the Human Rights Prosecutor’s Office, within its organizational structure, has a Prosecutorial Agency for Special Cases of Internal Armed Conflict, specialized in the investigation of illegal acts and major violations of human rights and international humanitarian law committed during the period of the internal armed conflict; among the crimes it prosecutes are forced disappearances, extrajudicial executions, murders, genocide, crimes against the duties of humanity, violence and rape against women, and torture when it refers to these crimes, which by their nature are imprescriptible.” Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 10.

<sup>88</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEF-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OAS-M4-NV-322-2023, September 20, 2023, p. 568.

<sup>89</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEF-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OAS-M4-NV-322-2023, September 20, 2023, pp. 568ff.

<sup>90</sup> The State indicated that: the Model of Specialized Attention for Peace Courts aims to standardize the management model, specialized care, inter-agency coordination, and specialization of the human resources of the Peace Courts, in order to help guarantee access to justice with a human rights perspective for women in cases of violence against women and domestic violence. It is made up of four axes: axis 1, Specialized care; axis 2, Specialization of the care model; axis 3, Specialization of human resources; axis 4, Inter- and intra-agency coordination. As reported: by the year 2023 it has been implemented in 106 peace courts throughout the republic, with coverage in priority municipalities of the 22 departments. Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEF-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OAS-M4-NV-322-2023, September 20, 2023, p. 571.

<sup>91</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEF-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OAS-M4-NV-322-2023, September 20, 2023, pp. 574ff.

appointment of the Attorney General for a new term, in a context of allegations of irregularities in the selection process.<sup>92</sup> The IACHR also warned about the de facto dismantling of the FECI and other units of the Public Prosecutor's Office in charge of investigating corruption and transitional justice cases, through the transfer, criminalization, or arbitrary removal of its officials, including career prosecutors, reportedly as part of a gradual co-opting of the bodies in charge of administering and imparting justice by power groups interested in perpetrating impunity and corruption in Guatemala.<sup>93</sup>

44. In 2023, the lack of independence and impartiality of the Public Prosecutor's Office was once again evident in the utilization of criminal law and the FECI to criminalize justice operators, journalists, members of the Supreme Electoral Tribunal (TSE), and the opposition party Movimiento Semilla with the aim of influencing the results of the general elections and, in general, people involved in the fight against impunity and corruption. In particular, these actions carried out by the Public Prosecutor's Office in the electoral context revealed abusive exercise of power.

45. The IACHR has been informed that the Public Prosecutor's Office is acting in concert with groups of individuals interested in undermining the legitimate exercise of criminal prosecution in favor of impunity, among them, the Foundation Against Terrorism. Simultaneously, the Public Prosecutor's Office is reportedly continuing to halt the progress of investigations and undo the progress achieved by CICIG and FECI, through judicial persecution and criminalization of the people who were in charge of them. Since 2018, more than 90 justice operators have been affected by acts of criminalization, imprisonment, or forced exile.<sup>94</sup>

46. In 2023, the IACHR received information on the continuation of a recurrent practice of arbitrary transfers and dismissals of prosecutors.<sup>95</sup> Among other cases, the IACHR learned of the dismissal of prosecutors Pablo de León, a femicide prosecutor; Mynor Pinto, prosecutor in the department of the Prosecutor's Office dealing with trafficking in persons; Blanca Aracely Monzón, prosecutor in the department of the Prosecutor's Office dealing with crimes against the life and integrity of persons; and Claudia Palencia, prosecutor in the department of the Prosecutor's Office dealing with the crime of extortion.<sup>96</sup> In April 2023, Elena Sut, the prosecutor of the Human Rights Prosecutor's Office in charge of emblematic cases of the internal armed conflict such as Bámaca Velásquez and Diario Militar, was transferred to the Prosecutor's Office for Adolescents in Conflict with Criminal Law,<sup>97</sup> contravening a resolution by the Inter-American Court granting provisional measures (See *infra*. Failure of the State to combat impunity in cases of gross human rights violations and corruption).

47. In its observations on this report, the State of Guatemala contended that "the transfers and rotation of personnel carried out in the Public Prosecutor's Office were undertaken to strengthen the institution in the investigative area and at no time have they been carried out in a discretionary manner, much less for repressive reasons; they are carried out with the corresponding legal and technical support, in line with the

<sup>92</sup> IACHR. [Annual Report 2022. Chapter IV.B Guatemala](#), OEA/Ser.L/V/II. Doc. 50 rev. 1, April 1, 2023, par. 83.

<sup>93</sup> IACHR. [Annual Report 2022. Chapter IV.B Guatemala](#), OEA/Ser.L/V/II. Doc. 50 rev. 1, April 1, 2023, par. 13.

<sup>94</sup> Agencia Ocote, "[Al menos 86 jueces, fiscales, periodistas y ciudadanos perseguidos en Guatemala \(At least 86 judges, prosecutors, journalists, and citizens persecuted in Guatemala\)](#)," October 6, 2022; IACHR, 184th regular session, Thematic Hearing: [Human Rights Situation of Human Rights Defenders, Justice Operators, and the Rule of Law in Guatemala](#), June 22, 2022; IACHR, 186th Regular Session, "Threats to judicial independence in Central and South America," March 10, 2023; Attached to request for thematic hearing "Instrumentalization of the Public Prosecutor's Office and political persecution in Guatemala," August 10, 2023. On file at the IACHR.

<sup>95</sup> Instituto de Estudios Comparados en Ciencias Penales de Guatemala, inter alia. Request for information to the State of Guatemala based on Article 41 of the ACHR in the context of illegal and arbitrary dismissals and transfers of prosecutors of the Public Prosecutor's Office of Guatemala in violation of guarantees of their irremovability (security of tenure) with respect to their position and functions as prosecutors. March 23, 2023. On file at the IACHR.

<sup>96</sup> Prensa Libre, "[MP confirma nuevas destituciones y estos son los cambios en las fiscalías \(Public Prosecutor's Office confirms new dismissals and these are the changes in the prosecutors' offices\)](#)," February 6, 2023.

<sup>97</sup> Prensa Comunitaria, "MP traslada a la fiscal encargada del caso del Diario Militar," (Public Prosecutor's Office transfers the prosecutor in charge of the Diario Militar case) April 11, 2023; Prensa Libre, "[MP traslada a la fiscal encargada del caso del Diario Militar](#)," April 11, 2023.

Organic Law of the Public Prosecutor's Office and the Collective Agreement on Working Conditions of the Public Prosecutor's Office."<sup>98</sup>

48. The State of Guatemala informed the IACHR that, in accordance with Article 251 of the Political Constitution of the Republic of Guatemala, the Public Prosecutor's Office is an ancillary institution of the public administration and the courts with autonomous functions, whose main purpose is to ensure strict compliance with the laws of the country.<sup>99</sup> "Its organization and operation are governed by its Charter. Thus, its function is to pursue the realization of justice, acting with objectivity, impartiality, and strict adherence to the principle of legality, under the terms established by law."<sup>100</sup> It also indicated that "through the Institutional Strategic Plan (PEI) the Institution was strengthened, since at the beginning of the first administration of Dr. María Consuelo Porrás Argueta, strengths, weaknesses, and obstacles were identified in the provision of services that the institution offered to the Guatemalan population."<sup>101</sup>

49. The State has indicated that the Public Prosecutor's Office is the autonomous body in charge of criminal prosecution, a technical and apolitical entity, whose proceedings are carried out under the corresponding legal framework and with the purpose of clarifying the truth in the event of the possible commission of a crime and the defense of the rights of the complainants, as well as those of the citizens. With respect to the investigations carried out in the electoral context, it has maintained that in no way does it seek to alter the democratic order or the results of the general elections.<sup>102</sup>

50. According to the information provided by the State, the Public Prosecutor's Office is currently performing its work in accordance with the Institutional Strategic Plan for the period 2022-2026, which comprises ten axes and various lines of action. These include: combating transnational organized crime; combating corruption and impunity; strengthening criminal prosecution; legal protection of the family and specialized care for victims; strengthening relations with counterpart prosecutor's offices; strengthening the Public Prosecutor's Office Institutional Integrity System; creating and implementing specialized prosecutor's offices; strengthening technical support units and administrative areas, upgrading of professional skills and specialization of personnel, and actions to reduce prosecutorial delays.<sup>103</sup>

51. Finally, the State of Guatemala contended in its observations on this report that "the Public Prosecutor's Office has not stopped any investigation initiated by the FECI and the former CICIG, given that the proceedings are conducted in accordance with the flow and decisions that are generated within the criminal proceedings, by the parties and the jurisdictional bodies that hear them, which are free of pressure and in full

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<sup>98</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 15.

<sup>99</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEH-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OAS-M4-NV-322-2023, September 20, 2023, p. 578.

<sup>100</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEH-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OAS-M4-NV-322-2023, September 20, 2023, p. 578.

<sup>101</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEH-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OAS-M4-NV-322-2023, September 20, 2023, pp. 578ff.

<sup>102</sup> Comments by the State of Guatemala on the proposed press release: "Guatemala: IACHR urges the State to respect the Constitutional order." Report DIDEH/DEPCADEH-055-2023/WEBS/LFLL of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-326-2023, August 7, 2023.

<sup>103</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEH-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OAS-M4-NV-322-2023, September 20, 2023, p. 578.

exercise of their judicial independence.”<sup>104</sup> As noted by the State, “the premise stated by the IACHR is far from reality, since such statements do not come from verifiable and verifiable sources, which is why, in the absence of official and verifiable data, the statement is spurious, since the MP does not obstruct or undermine investigations on corruption and does not violate human rights, which is why it categorically rejects such claims, since the processes are duly judicialized.”<sup>105</sup>

52. The IACHR considers that the independence of the Public Prosecutor’s Office is a fundamental guarantee of the democratic State and of respect for the principle of separation of powers. Accordingly, the relationship of dependence or subordination it may have with respect to other bodies or actors, including private individuals, has a serious impact on its independent performance, as well as on the effectiveness and momentum of investigations, on the decision to prosecute, on respect for due process and, consequently, on the guarantee of access to justice for the population.<sup>106</sup> In accordance with the above, and given the progressive loss of independence of the Public Prosecutor’s Office in Guatemala documented in recent years, the IACHR calls on the State to take measures to restore guarantees of independence and impartiality in the functioning of this institution, in particular to ensure that criminal prosecution is carried out in a manner consistent with the National Constitution and the standards of international human rights law.

## B. Supreme Court of Justice and high courts

53. On October 13, 2023, the Plenary of the Supreme Court of Justice “revalidated the continuity of their functions” in the exercise of the office of the current members of the CSJ itself, the Courts of Appeals (CA), and Collegiate Courts, due to the unjustified delay by the Congress of the Republic in continuing with the process of selection and appointment of magistrates for the period 2019-2024.<sup>107</sup> According to the information received by the IACHR, the indefinite prolongation of the judges for more than four years has undermined trust in the guarantees of independence and impartiality of these bodies.<sup>108</sup> In particular, civil society organizations have questioned the independence of the CSJ in the current context, due to facts such as, inter alia, the processing of all requests for impeachment against independent judges, the arbitrary appointment of investigating judges in charge of hearing such proceedings or with a vested interest in the matter, the rejection of requests for impeachment against public officials accused of corruption.<sup>109</sup>

54. In its observations on this report, the State of Guatemala indicated that “the judicial branch, in compliance with the functions stipulated within the regulatory framework that governs it, is the institution responsible for ensuring due process in all those cases or complaints filed by users; its function is the administration of prompt, compliant, and lawful justice.”<sup>110</sup> In addition, it reiterated that “the initiation of an investigation or criminal proceeding against justice operators does not presuppose their guilt or conviction, but only the initiation of procedures established by law, through which the truth of the facts must be elucidated, the occurrence or not of criminal offenses determined, and, if applicable, the persons responsible for them

<sup>104</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OAS-M4-NV-394-2023, December 15, 2023, p. 14.

<sup>105</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OAS-M4-NV-394-2023, December 15, 2023, p. 14.

<sup>106</sup> Cf. IACHR, [Operators: Towards](#), 2008, par. 37.

<sup>107</sup> Judicial Branch, [Press Release](#), October 13, 2023.

<sup>108</sup> IACHR, 186th regular session, “[Threats to Judicial Independence in Central and South America](#),” March 10, 2023; GAM and COPIJ, Report “El Poder Judicial, Pilar Fundamental del Estado de Derecho” (The Judiciary, Fundamental Pillar of the Rule of Law), October 2023. On file at the IACHR.

<sup>109</sup> In 2022, a report by the Mission of Judges of the Latin American Federation of Magistrates and the International Union of Magistrates revealed that the CSJ has even taken cognizance of and rejected requests for impeachment against its own members. Report of the Mission of Judges of the Latin American Federation of Magistrates and the International Union of Magistrates, “[Ataques a la independencia judicial en Guatemala](#)” ([Attacks on Judicial Independence in Guatemala](#)), October 2022, pp. 6ff. Attached to the request for thematic hearing “Instrumentalization of the Public Prosecutor’s Office and political persecution in Guatemala,” August 10, 2023. On file with the IACHR; IACHR, 186th regular session, “[Threats to Judicial Independence in Central and South America](#),” March 10, 2023.

<sup>110</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/Ifil. Note from the Permanent Mission of Guatemala to the Organization of American States (OAS). OEA-M4-NV-394-2023, December 15, 2023, p. 17.

identified.”<sup>111</sup> According to the State, “the appointment of investigating judges takes place through a systematic procedure of distribution, with the official under investigation having the power to make use of the resources granted by law in the event that he or she considers that the investigating judge has incurred in any anomaly in the investigation.”<sup>112</sup>

55. In relation to the election process of the CSJ and the High Courts, the State of Guatemala reported that, on November 6, 2023, the Constitutional Court issued a resolution in which it ordered the due execution of the amparo judgment dated May 6, 2020, and, accordingly, set a deadline for the Congress of the Republic to carry out the election of Magistrates of the Supreme Court of Justice and the Appellate Chambers by no later than December 15, 2023.<sup>113</sup> On the same day, through Legislative Agreement 14-2023, Congress approved “the election of Magistrates of the Supreme Court and Appellate Chambers for the remainder of the 2019-2024 period, who were sworn in on November 27, 2023, and are currently in office.”<sup>114</sup>

56. On the other hand, in 2023, the IACHR learned about the progress in the processing of Law 6239, which was reportedly in the last phase of approval in the Congress of the Republic. This initiative amends the Judicial Branch Law in order to transfer to the Supreme Court of Justice powers related to the appointment, transfer, promotion, sanction, dismissal and licensing of judges, judges and judicial personnel, replacing the Judicial Branch.<sup>115</sup> As has been indicated, in the current context of Guatemala this initiative would further undermine the independence of the judiciary and would represent a setback to the progress achieved by the Judicial Career Law passed in 2016.<sup>116</sup>

57. In this regard, after its visit to the country in 2017, the IACHR highlighted the fact that the approval of the Judicial Career Law was the result of citizen demands to fight corruption and improve judicial independence.<sup>117</sup> That year, CICIG, the Office of the High Commissioner, and the Public Prosecutor’s Office emphasized that the Judicial Career Law “is designed to ensure that the procedures for the selection, promotion, transfer, and performance evaluation of judges and magistrates are based on objective, transparent, merit-based and specialized criteria, and to establish guarantees for due process in the disciplinary regime,” thus helping to strengthen and guarantee judicial independence and impartiality, in light of international human rights standards.<sup>118</sup>

### C. Constitutional Court

58. In its 2021 Annual Report, the IACHR reported on a series of actions that allegedly resulted in the co-opting of the Constitutional Court (CC), including irregularities in the process of selecting and appointing judges for the 2021-2026 term.<sup>119</sup> Since then, and as analyzed in this report, the Commission noted the

<sup>111</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 17.

<sup>112</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 17.

<sup>113</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 19.

<sup>114</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 19.

<sup>115</sup> Congress of the Republic of Guatemala, [Iniciativa no. 6239 which provides for the approval of amendments to Decree No. 2-89 of the Congress of the Republic, Law of the Judiciary](#).

<sup>116</sup> Red de Información del Combate a la Impunidad en Guatemala, “Iniciativa 6239: Reformas a Ley del Organismo Judicial,” October 17, 2023; Fundación Libertad y Desarrollo, “[La evolución y retroceso de la Independencia judicial en Guatemala: la Iniciativa 6239](#),” September 29, 2023.

<sup>117</sup> IACHR, “[Situation of Human Rights in Guatemala](#).” OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 89.

<sup>118</sup> United Nations, Public Prosecutor’s Office of Guatemala, CICIG, and OHCHR welcome approval of new judicial career law, June 29, 2016.

<sup>119</sup> Situation of Judge Gloria Porras of the Constitutional Court of Guatemala. Meeting held on April 28, 2021, between the IACHR, the Human Rights Ombudsman, Magistrate Gloria Porras, and civil society organizations. On file at the IACHR; CIDH, 181st period of

worsening of a context of accusations regarding the lack of independence of the CC due to decisions questioned for favoring individuals and political groups. Particularly, in the framework of the 2023 general elections, the CSJ and the CC reportedly ensured the political participation of candidates who allegedly did not meet the requirements established in domestic law; in addition, the CC purportedly ratified exclusions of candidates not aligned with the current government and kept on hold its certification of the results of the first round of elections.<sup>120</sup> The CC had also reportedly failed to comply with its constitutional mandate to act as a counterweight in the resolution of a number of appeals for constitutional protection (*amparos*) that attempted to question the abusive exercise of power by the Public Prosecutor's Office and the interference in the electoral process, thus deepening political and democratic instability in Guatemala (See *infra*. III. Interference in the electoral process).

59. In light of the above, the Inter-American Commission reiterates that judicial independence has been seriously impaired in recent years by the gradual co-opting of the bodies responsible for administering and imparting justice. Accordingly, as analyzed below, undue interference in the electoral process and the abusive exercise of power for political-electoral purposes, far from being isolated events, have been made possible by the erosion of the system of checks and balances of the democratic State, and the absence of guarantees that the Judiciary will fulfill its role of exercising control of constitutionality and conventionality vis-à-vis the other public powers.

### III. UNDUE INTERFERENCE IN THE ELECTORAL PROCESS AND ABUSIVE EXERCISE OF POWER FOR POLITICAL-ELECTORAL PURPOSES

60. In 2023, the Inter-American Commission noted a series of undue interferences in the electoral process, mainly as a consequence of the abusive exercise of the Public Prosecutor's Office, which, in turn, has jeopardized the constitutional order and the principle of separation of branches of government.

61. As analyzed in this section, these interferences consisted, inter alia, of restrictions on the effective participation of individuals and political parties, the suspension of the announcement of the results of the first round for more than two weeks, the suspension of the registration as a legal entity of the Movimiento Semilla, the search of its headquarters, and attempts to prevent its members from being awarded public offices; searches of the Supreme Electoral Tribunal, the processing of requests for impeachment of its members, and confiscation of the ballot boxes of the first round of the election by the Public Prosecutor's Office.

62. Regarding the electoral process, the State of Guatemala informed that, on January 20, 2023, in accordance with Article 196 of the Electoral and Political Parties Law, the Plenary of the Supreme Electoral Tribunal issued Decree Number 1-2023, which called for the General Elections for the offices of President and Vice President of the Republic; Deputies to the Congress of the Republic by the systems of electoral districts and national list; municipal corporations of the country comprised of incumbent and alternate mayors, trustees, and councilmen; election of (incumbent and alternate) Deputies to the Central American Parliament. This process consisted of 3 phases from January 21, 2023, to October 31, 2023.<sup>121</sup>

63. In relation to the first phase carried out between January 21, 2023, and March 26, 2023, the State indicated that the following activities had taken place: "1. Nomination and registration of candidates proposed by political organizations for all elected offices. In this electoral process, 40,086 duly registered Guatemalan citizens participated; 2. Appointment of incumbent and alternate national prosecutors by political

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sessions. Public Hearing "[Situation of human rights of justice operators and judicial independence](#)," held on October 28, 2021; Meeting held on November 8, 2021, with civil society organizations and the IACHR. On file at the IACHR.

<sup>120</sup> Insight Crime, "[The Road to 2023](#):" Past "June 21, 2023; Prensa Comunitaria, "[Guatemala: Authoritarianism and Elections 2023](#)" June 21, 2023; European Union Election Observation Mission Guatemala, "[Una jornada electoral bien organizada, en un proceso marcado por la exclusión de candidaturas y el voto nulo](#)" Guatemala City, June 27, 2023, p. 1.

<sup>121</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEH-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OAS-M4-NV-322-2023, September 20, 2023, pp. 83ff.

organizations; 3. Registration of citizens to guarantee the right to vote; 4. Appointment of the members of the temporary electoral bodies in accordance with the law (District, Departmental, Municipal and Voting (Polling Station) Boards).” Between March 27 and June 23, 2023, the second phase comprised actions such as the updating/correcting and printing of the electoral roll, preparation and delivery of ballots and electoral materials to the Electoral Boards, composition of the Polling Stations, among others.<sup>122</sup>

64. Finally, according to the information provided, between June 23 and October 31, 2023, the third stage of the electoral process took place, comprising:

- The first round of elections held on June 25, 2023.
- Vote count review hearings from June 26 to June 30, 2023.
- The official certification of the voting results of the first round of elections, on July 12, 2023, through the approval of agreement 1328-2023 by the Plenary of Magistrates of the Supreme Electoral Tribunal. This agreement declared the validity of the elections held on June 25, 2023.<sup>123</sup>
- On August 20, 2023, a run-off election was held with the participation of the presidential candidates of the political parties Unidad Nacional de la Esperanza (UNE) with Sandra Julieta Torres Casanova as candidate for President and Romeo Estuardo Guerra Lemus for Vice President, and for Movimiento Semilla with César Bernardo Arévalo de León as candidate for President and Karin Larissa Herrera Aguilar for Vice President.<sup>124</sup>
- After the second round, “according to the will of the people expressed at the polls and after the counting of votes and their respective review hearings, the presidential ticket of the Movimiento Semilla Political Party obtained the majority.”<sup>125</sup> That result was made official on August 28, 2023, through the approval of Agreement 1659-2023, in which the validity of the presidential election was declared and, as legally elected, the ticket that obtained the majority of votes, who were awarded the office for a non-extendable period of 4 years from January 14, 2024 to January 14, 2028.”<sup>126</sup>

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<sup>122</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEF-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. [Note from the Permanent Mission of Guatemala to the Organization of American States](#) OAS-M4-NV-322-2023, September 20, 2023, pp. 76 and 77.

<sup>123</sup> On July 16, 2023, the Plenary of the Supreme Electoral Tribunal also issued Agreement number 1361-2023, by which it declared the validity of the election of Deputies to the Congress of the Republic by National List; or 23 Agreements from 1362-2023 to 1384-2023 in which it declared the validity of the election of Deputies to the Congress of the Republic of Guatemala by Electoral District, and Agreement 1385-2023 in which it declared the validity of the election of Deputies to the Central American Parliament. Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEF-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. [Note from the Permanent Mission of Guatemala to the Organization of American States](#) OAS-M4-NV-322-2023, September 20, 2023, p. 79.

<sup>124</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEF-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. [Note from the Permanent Mission of Guatemala to the Organization of American States](#) OAS-M4-NV-322-2023, September 20, 2023, p. 79.

<sup>125</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEF-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. [Nota de la Misión Permanente de Guatemala ante la Organización de los Estados Americanos](#) OAS-M4-NV-322-2023, September 20, 2023, p. 79.

<sup>126</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEF-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. [Nota de la Misión Permanente de Guatemala ante la Organización de los Estados Americanos](#) OAS-M4-NV-322-2023, September 20, 2023, p. 79.

65. Finally, the State of Guatemala emphasized that all those elected “have been given their credentials accrediting them in the positions they will take possession of on January 14, 2024, and, in the case of the Municipal Corporations, on January 15, 2024.”<sup>127</sup>

#### A. Exclusion of candidates and restrictions on political participation

66. Since the beginning of the electoral process, on January 21, 2023, the IACHR noted the exclusion of candidates from the general elections held on June 25, and therefore called on the State of Guatemala to guarantee the effective participation of individuals, groups, organizations and political parties through regulations and practices that enable real and effective access to discussion forums on equal terms.<sup>128</sup> In all, four presidential candidacies were disqualified in this context.<sup>129</sup>

67. Among other cases, on January 27, 2023, the IACHR was informed about the refusal of the General Directorate of the Citizen Registry to register the candidacy of Thelma Cabrera Pérez de Sánchez and Augusto Jordán Rodas Andrade for the Presidency and Vice-Presidency of the political party Movimiento para la Liberación de los Pueblos (MLP). This is due to the fact that Mr. Rodas allegedly had “legal charges and a complaint” against him and, therefore, would not meet the legal requirement of presenting a no-pending-matters slip (*finiquito*) issued by the Comptroller General’s Office as required under domestic law.<sup>130</sup> On February 5, Mr. Rodas Andrade filed an *amparo* suit before the CSJ, which was dismissed.

68. In March 2023, the TSE excluded Roberto Arzú’s candidacy for the presidency for having incurred in a violation of the electoral law banning illegal and advanced advertising or propaganda, a situation that was confirmed by the CC.<sup>131</sup> On May 26, the CC excluded the candidacy of Carlos Pineda, after members of an opposition party filed an appeal challenging irregularities in his designation as candidate of the Prosperidad Ciudadana party.<sup>132</sup>

69. Likewise, the information received by the IACHR would appear to indicate that criminal law was used to prevent the participation of candidates or to intimidate them. Particularly notable were : the request for withdrawal of immunity filed on March 20, 2023 by the FECCI against Edmond Mulet, candidate for president, for allegedly obstructing justice because he filed a criminal complaint against a judge who issued an order to investigate journalists who had spoken out in the case of José Rubén Zamora;<sup>133</sup> as well as the issuance of an arrest warrant against mayoral candidate Juan Francisco Solórzano Foppa because he served as José Rubén Zamora’s defense attorney.<sup>134</sup>

70. In its observations on this report, the State of Guatemala rejected the expression “exclusion of candidacies”<sup>135</sup> and pointed out that, in the first round of elections held on June 25, 2023, “44 people participated as candidates for President and Vice President of the Republic, representing 22 political

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<sup>127</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEH-053-2023/WEBS/Ifil of the Presidential Commission for Peace and Human Rights. [Note from the Permanent Mission of Guatemala to the Organization of American States](#) OAS-M4-NV-322-2023, September 20, 2023, p. 80.

<sup>128</sup> IACHR, Press Release. No. 35/23 - [IACHR Calls for Guarantees for Free and Fair Elections in Guatemala](#). Washington, D.C., March 3, 2023.

<sup>129</sup> The OAS Secretariat for the Strengthening of Democracy expressed its concern at the way candidates were registered, since hundreds of people were excluded from the electoral process, some of whom were “high profile” and aspired to hold the highest elected positions. OAS, “Guatemala” March 22, 2023

<sup>130</sup> Supreme Electoral Tribunal, PE-DGRC-011-2023. On file at the IACHR.

<sup>131</sup> “*La Corte de Constitucionalidad a la opinión pública hace saber.*” X account (@IACHR), [published on May 25, 2023](#).

<sup>132</sup> “*La Corte de Constitucionalidad a la opinión pública hace saber.*” X account (@IACHR), [published on May 26, 2023](#).

<sup>133</sup> Public Prosecutor’s Office, “[FECCI presentó antejuicio por obstrucción a la justicia \(FECCI filed an impeachment suit for obstruction of justice\)](#)” March 20, 2023.

<sup>134</sup> Public Prosecutor’s Office, “[Dictan tercera sentencia condenatoria contra Juan Francisco Solórzano Foppa \(Third conviction for Juan Francisco Solórzano Foppa\)](#),” June 28, 2023.

<sup>135</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 21.

organizations, which included the participation of 4 women, 2 as candidates for President and 2 for Vice President.”<sup>136</sup> As candidates for the position of deputies to the Central American Parliament “272 people participated, representing 23 political organizations.”<sup>137</sup> Of these, 11 men and 9 women were elected as incumbent deputies and 13 men and 7 women as alternate deputies. For the position of deputies by national list, 387 people participated; 24 men and 8 women were elected. In relation to the candidates for 128 seats of deputies by national list, 2,347 people registered to participate. Finally, more than 37,036 people participated in the election of 340 municipal corporations.<sup>138</sup>

71. After the first round of elections on June 25, 2023, the OAS Electoral Observation Mission (OAS/EOM) reported that the day had passed peacefully throughout the country, with the exception of a few violent incidents in some departments, and therefore acknowledged the civic commitment of the Guatemalan authorities and population. However, it emphasized that the pre-electoral stage was characterized by a climate of tension and polarization that should be corrected in view of the second round and, in particular, warned that the high level of judicialization of the candidacies produced instability and uncertainty among citizens, which eroded the credibility of the process.<sup>139</sup>

72. In the same vein, the European Union Election Observation Mission (EOM/EU) concluded that the elections were held in a context of serious deterioration of the rule of law and of the independence of the judiciary, as well as severe restrictions on freedom of expression and press freedom, including controversial decisions by the TSE, the judiciary and the CC, as well as the exclusion of an unprecedented number of candidates and lists of candidates.<sup>140</sup> According to the EOM/EU, the arbitrary application of the legal framework generated distrust in the independence and impartiality of the TSE and the Judiciary.<sup>141</sup> In particular, it indicated that “most parties and candidates mentioned that the lack of separation of powers and the gradual elimination of checks and balances have led to the co-opting of institutions and judicialization for political and electoral purposes.”<sup>142</sup>

73. The IACHR recalls that “exercising the right to participate in government constitutes an end in itself and is a fundamental path through which democratic societies guarantee other rights set out in the Inter-American Convention unlike other articles of the Convention. In accordance with Inter-American jurisprudence, Article 23 establishes that all citizens must enjoy both political rights and opportunities to exercise them. This implies the obligation to ensure, by taking positive measures, that anyone who is the formal holder of political rights has the real possibility of exercising them.”<sup>143</sup>

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<sup>136</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEH-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. [Note from the Permanent Mission of Guatemala to the Organization of American States](#) OAS-M4-NV-322-2023, September 20, 2023, pp. 81.

<sup>137</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEH-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. [Note from the Permanent Mission of Guatemala to the Organization of American States](#) OAS-M4-NV-322-2023, September 20, 2023, p. 82.

<sup>138</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEH-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. [Note from the Permanent Mission of Guatemala to the Organization of American States](#) OAS-M4-NV-322-2023, September 20, 2023, pp. 83ff.

<sup>139</sup> OAS, “[OAS presents recommendations for the second round of presidential elections in Guatemala and announces that it will observe the August election day.](#)” June 27, 2023.

<sup>140</sup> European Union Election Observation Mission Guatemala, “[vote](#)” Guatemala City, June 27, 2023, p. 1.

<sup>141</sup> European Union Election Observation Mission Guatemala, “[vote](#)” Guatemala City, June 27, 2023, p. 1.

<sup>142</sup> European Union Election Observation Mission Guatemala, “[A well-organized election day, in a process marked by the exclusion of candidacies and the null vote](#)” Guatemala City, June 27, 2023, p. 1.

<sup>143</sup> IACHR, Press Release. No. [35/23 - IACHR Calls for Guarantees for Free and Fair Elections in Guatemala](#). Washington, D.C., March 3, 2023.

## B. Undue interference and abusive exercise of power in the context of the first round of elections

74. In accordance with the legal deadlines, on June 30, 2023, the TSE concluded the vote count review hearings that confirmed the voting results, according to which the candidate Sandra Torres of the UNE party and Bernardo Arévalo of the Movimiento Semilla party were elected to participate in the second round of elections. However, before the results of the first round could be made official on July 1, 2023, the CC granted a provisional injunction to nine political parties that sought to challenge the election,<sup>144</sup> ordering the Supreme Electoral Tribunal to “suspend the qualification and official certification”<sup>145</sup> of the process as well as the awarding of positions. In addition, it required an additional review and checking of tally sheets that were not contemplated in the legislation.<sup>146</sup>

75. According to the international electoral observation missions of the OAS and the European Union, voting on June 25 took place without incidents that could have invalidated the results of the first round of the General Elections in the country.<sup>147</sup> In this regard, both the OAS General Secretariat and the European Union expressed their concern about the CC’s decision, which would undermine the integrity of the electoral process and the political rights of the population.<sup>148</sup> For its part, the State of Guatemala indicated to the IACHR that the CC had acted in strict compliance with the legal framework in processing the amparo requested by nine political parties. It also indicated that the Guatemalan courts were efficiently safeguarding the integrity of the electoral process.<sup>149</sup>

76. On July 12, 2023, after the review of challenges, the TSE made the election results official and announced that the UNE and Movimiento Semilla parties will contest the second round.<sup>150</sup> On July 12, and prior to the official announcement of the results by the TSE, the head of the FECCI, Rafael Curruchiche, announced the suspension of the legal status of the Movimiento Semilla political party of presidential candidate Bernardo Arévalo.<sup>151</sup> Reportedly, the FECCI was conducting an investigation against the group for alleged falsification of followers’ signatures. On July 13, the FECCI also raided, inspected, searched, and seized evidence at the headquarters of the Citizen Registry Office. According to the same source, there were reportedly indications

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<sup>144</sup> On June 30, 2023, the political parties Cambio, Mi Familia, Valor, Podemos, Vamos por una Guatemala Diferente, Compromiso Renovación y Orden, Unidad Nacional de la Esperanza, Cabal, and Azul filed an injunction before the Constitutional Court against the Supreme Electoral Tribunal, claiming that there was a threat that the TSE would award elective positions without the Departmental Electoral Boards having examined the defects contained in the handwritten minutes and digitized tally sheets that reportedly subsisted after the review of the vote counts at the national level. “La Corte de Constitucionalidad a la opinión pública hace saber.” X account of the Constitutional Court (@CC\_Guatemala), [published on July 1, 2023](#).

<sup>145</sup> Likewise, it ordered the Departmental Electoral Boards and that of the Central District of Guatemala to hold a new hearing to check the tally sheets that were part of the electoral process, so that authorized persons may present the objections and challenges they deem pertinent. Cf. Constitutional Court, File no. 3731-2023), July 1, 2023.

<sup>146</sup> In accordance with the Electoral and Political Parties Law (LEPP), the ordinary mechanism to request the review of vote counts in the Guatemalan electoral process is through challenges filed by the political parties’ attorneys with the Junta Receptora de Votos (JRV) due to irregularities or anomalies that may arise during the voting and counting. These challenges must subsequently be ratified in a review hearing before the corresponding Departmental Electoral Board (JED). In accordance with the law, the vote count review hearings must be held no later than five days following the voting, and it is at that time that the grounds for filing a challenge must be verified through the respective examination of the votes, or their recount, as appropriate, depending on the reason for the challenge. OAS, [OAS Electoral Observation Mission Expresses its Concern for the Extreme Judicialization of the Electoral Process in Guatemala](#), July 2, 2023.

<sup>147</sup> In this regard, the EOM/OAS stated that the tally sheets that had prompted questions represented “isolated cases that do not alter the preferences expressed at the polls for the second round of the presidential election” and concluded that “there was no reason to suspect that there were irregularities on a scale that could affect the electorate’s choices in the presidential race.” OAS, [OAS Electoral Observation Mission Expresses its Concern for the Extreme Judicialization of the Electoral Process in Guatemala](#), July 2, 2023.

<sup>148</sup> OAS, [Statement from the OAS General Secretariat on the elections in Guatemala](#), July 1, 2023; [Local Declaration of the European Union on the elections in Guatemala](#), July 7, 2023.

<sup>149</sup> Response of the State of Guatemala to the request for information from the Inter-American Commission on Human Rights regarding the suspension of the official certification of the results of the 2023 General Elections and Elections of Deputies to the Central American Parliament. Report DECODEH-014- 2023/COPADEF/RACE/WB/sg of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-043-2023, February 27, 2023.

<sup>150</sup> Supreme Electoral Tribunal, “[TSE declares validity of the June 25 elections and calls for a second round](#),” July 12, 2023.

<sup>151</sup> X account of the Public Prosecutor’s Office of Guatemala (@MPguatemala), [pronouncement of July 12, 2023](#).

that possibly more than 5,000 citizens had been illegally registered as being followers of the Movimiento Semilla by falsifying documents.<sup>152</sup>

77. On July 13, the Constitutional Court announced the granting of a provisional injunction filed by the Semilla party, which ratified the results certified by the TSE and confirmed that the second round of the presidential election would be held on August 20, 2023, as scheduled by the competent authority.<sup>153</sup> The CC stated that the judicial ruling provisionally suspending the legal status of the Movimiento Semilla party cannot affect the second round of elections “without prejudice to the powers of criminal prosecution within the jurisdiction of the Public Prosecutor’s Office and the provisions of Articles 251 of the Political Constitution of the Republic of Guatemala and 251 of the Electoral and Political Parties Law.”<sup>154</sup> In this regard, the IACHR pointed out that the aforementioned ruling would have no effect in relation to the criminal proceedings, so the Public Prosecutor’s Office continued with the investigations.<sup>155</sup>

78. The OAS Electoral Mission and the EU Electoral Mission expressed their concern regarding the judicialization of this process, as well as the attempts to disrespect the popular will expressed at the polls on Sunday, June 25 and the attempts to cancel the legal status of the Movimiento Semilla party.<sup>156</sup> In particular, the OAS Mission emphasized that the electoral legislation is precise in stating that “a party may not be suspended after an election has been called and until it has been held.”<sup>157</sup> In view of the above, the Mission called on all institutions, “strictly adhering to legal regulations, to provide the necessary guarantees so that those who compete in this second round can do so under equal conditions, and so that citizens can attend freely to express their sovereign will. Only the expression of the citizenry will make Guatemala continue advancing on the democratic path.”<sup>158</sup>

79. For its part, the IACHR pointed out that the order to suspend the Movimiento Semilla would contravene of domestic law itself, i.e., the Electoral and Political Parties Law, which expressly states that “a party may not be suspended after an election has been called and until it has been held.” The arbitrary or illegal exclusion of candidates, in addition to affecting political rights, has a negative impact on the free expression of the will of the electorate, with negative repercussions for democracy.<sup>159</sup> In this regard, the IACHR urged the State of Guatemala to safeguard the principle of the separation of branches of government and to guarantee the right to political participation in accordance with national and Inter-American standards, avoiding undue interference, as well as to respect the “popular will expressed by the Guatemalan people” in the first round elections, as indicated by the OAS Electoral Observation Mission in the country.<sup>160</sup>

80. Faced with the gravity of the situation, on July 26, 2023, in a special meeting of the OAS Permanent Council, the states of the region expressed their consensus regarding the serious interference in the elections. In response, the State of Guatemala announced that it was inviting the Secretary General of the

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<sup>152</sup> “The Special Prosecutor’s Office against Impunity is performing raids, inspections, searches and seizure of evidence at the headquarters of the Citizen Registry Office (...)” X account of the Public Prosecutor’s Office of Guatemala (@MPguatemala), [statement of July 13, 2023](#).

<sup>153</sup> Constitutional Court, [Communiqué COM-013-2023](#), July 13, 2023.

<sup>154</sup> Constitutional Court, [Communiqué COM-013-2023](#), July 13, 2023.

<sup>155</sup> IACHR. Press release No. [207/ 23- Guatemala: IACHR Urges State of Guatemala to Respect General Election Results](#) Washington, D.C., August 31, 2023.

<sup>156</sup> OAS, “[Statement of the OAS Electoral Observation Mission in Guatemala](#),” July 12, 2023; [Press release of the European Union Election Observation Mission \(EU EOM\)](#), July 13, 2023; “[Guatemala: statement by the spokesperson on the electoral process in Guatemala](#),” July 13, 2023.

<sup>157</sup> [Press release of the OAS Electoral Observation Mission](#), July 12, 2023.

<sup>158</sup> [Press release of the OAS Electoral Observation Mission](#), July 12, 2023.

<sup>159</sup> IACHR. [Press release No. 207/ 23- Guatemala: IACHR Urges State of Guatemala to Respect General Election Results](#) Washington, D.C., August 31, 2023.

<sup>160</sup> “#Guatemala: #IACHR notes with concern the actions of the @MPguatemala and the Seventh Criminal Court to suspend the legal status of @msemillagat that would have the purpose of preventing it from participating in the second round of the General Elections called by the @TSEGuatemala,” X Account of the IACHR (@IACHR), [published on July 13, 2023](#).

Organization to hold high-level meetings.<sup>161</sup> The OAS Secretary General visited Guatemala between August 1 and 4, 2023.<sup>162</sup>

81. On August 10, 2023, the Secretary General presented the main conclusions of his report to the Permanent Council, highlighting: “the commitment of all state powers that the second round will be held on August 20, and that the second round will be between the lists headed by Sandra Torres and Bernardo Arévalo” In addition, he shared that the President of Guatemala, Alejandro Giammattei, would hand over power on January 14 at a time to be determined by Congress.<sup>163</sup> As a result of the Mission, the State invited the OAS to participate in the transition process until January 14, 2023.<sup>164</sup> The Secretary General’s report also reported “more than a dozen actions against the Supreme Electoral Tribunal. Whether it is the results transmission system, arrest warrants against officials, requests for election records, or calls to testify, among other actions.”<sup>165</sup>

82. At the same meeting on August 10, the Permanent Council of the Organization described as “encouraging” (*alentadoras*) the guarantees received from the government and other State authorities to carry out the second round of elections with transparency and impartiality.<sup>166</sup> Also “the assertion that they will accept the outcome of the presidential elections, including the outcome of the second round, and that the transfer of power will be effected in an open and transparent manner.”<sup>167</sup> However, several Council members indicated their concern “about the actions of the Public Prosecutor’s Office with respect to the work of the Supreme Electoral Tribunal, including the 13 or more actions brought against the Tribunal. One of them is the request for information on temporary workers employed for data entry in the June 25, 2023 elections.”<sup>168</sup>

83. According to the OAS/EOM, Guatemala’s democratic stability was under intense and constant pressure in the period between the first and the second presidential round, with “interventions by a variety of actors who sought to: ignore, delay, or reverse the official certification of results; suspend one of the parties in contention, *Movimiento Semilla* and prevent the awarding of positions to its elected authorities; intimidate the electoral bodies and the technical personnel hired for the process, as well as supporters of *Movimiento Semilla*; misinform and plant doubts in the population where there were no reasons for suspicion; and in general delegitimize and erode the democratic process.”<sup>169</sup>

84. The OAS/EOM pointed out that, coinciding with the official certification of the results of the presidential election, on June 25, 2023, the Public Prosecutor’s Office and a criminal court judge initiated a series of actions “that amounted to harassment of the electoral authorities and political persecution against one of the contending options,”<sup>170</sup> the *Movimiento Semilla* party. Up until the second round of elections on August 20, 2023, these actions included a court order by the criminal judge to suspend the legal status

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<sup>161</sup> OAS, *Special Meeting of the Permanent Council to consider the situation in Guatemala*. OEA/Ser.G CP/OD-2440/23 rev. 1. July 26, 2023.

<sup>162</sup> OAS, “[Report of the Secretary General of the Organization of American States, Luis Almagro, to the Permanent Council on the situation in the Republic of Guatemala, after leading a Mission that visited the country between August 1 and 4, 2023](#),” August 10, 2023.

<sup>163</sup> OAS, “[Report of the Secretary General of the Organization of American States, Luis Almagro, to the Permanent Council on the situation in the Republic of Guatemala, after leading a Mission that visited the country between August 1 and 4, 2023](#),” August 10, 2023.

<sup>164</sup> OAS, “[Report of the Secretary General of the Organization of American States, Luis Almagro, to the Permanent Council on the situation in the Republic of Guatemala, after leading a Mission that visited the country between August 1 and 4, 2023](#),” August 10, 2023.

<sup>165</sup> OAS, “[Report of the Secretary General of the Organization of American States, Luis Almagro, to the Permanent Council on the situation in the Republic of Guatemala, after leading a Mission that visited the country between August 1 and 4, 2023](#),” August 10, 2023.

<sup>166</sup> [Summary prepared by the Chairman of the Permanent Council of the Consensus that emerged from the deliberations of the special meeting held on August 10, 2023 to receive the report of the Secretary General of the Organization of American States](#) on the situation in the Republic of Guatemala following his recent visit to that Member State. CP/INF.9846/23. 10 August 2023. Original: English.

<sup>167</sup> [Summary prepared by the Chairman of the Permanent Council of the Consensus that emerged from the deliberations of the special meeting held on August 10, 2023 to receive the report of the Secretary General of the Organization of American States](#) on the situation in the Republic of Guatemala following his recent visit to that Member State. CP/INF.9846/23. 10 August 2023. Original: English.

<sup>168</sup> [Summary prepared by the Chairman of the Permanent Council of the Consensus that emerged from the deliberations of the special meeting held on August 10, 2023 to receive the report of the Secretary General of the Organization of American States](#) on the situation in the Republic of Guatemala following his recent visit to that Member State. CP/INF.9846/23. 10 August 2023. Original: English.

<sup>169</sup> OAS, [Electoral Observation Mission congratulates the people of Guatemala on their civic commitment in the second round of elections](#). Preliminary Report, August 22, 2023, p. 1.

<sup>170</sup> OAS, [Elections Preliminary Report](#), August 22, 2023, p. 1.

(*personalidad jurídica*) of the Movimiento Semilla and to prevent the awarding of positions to candidates of that party; three raids, two at the TSE headquarters and one at the headquarters of the Movimiento Semilla; at least three arrest warrants against electoral officials and former members of the Movimiento Semilla; proceedings to request certified copies of the electoral records and the list of preliminary election results transmission (TREP) data entry clerks, and summonses to testify to electoral officials and other persons linked to the process.<sup>171</sup>

85. The OAS/EOM strongly rejected “the raids by the Public Prosecutor’s Office in the framework of the process, which it observed directly, and condemned the political persecution of public officials and party activists by State entities that violated minimum guarantees for citizens and ignored the presumption of innocence and due process.”<sup>172</sup> The EOM added that this “could constitute serious violations of the fundamental rights enshrined in national legislation, the Constitution of the Republic, and international instruments.”<sup>173</sup>

### C. Undue interference and abusive exercise of power in the context of the second round of elections

86. On August 20, 2023, the second round of the general elections took place, in which the winner was the candidate of the Movimiento Semilla party, according to the preliminary results announced. Both the OAS/EOM and the EU Mission highlighted the civic commitment of the population and indicated that the day passed peacefully.<sup>174</sup> However, the integrity of the results was called into question by new actions taken by the Public Prosecutor’s Office, as discussed below.

87. On August 28, 2023, the TSE plenary officially announced the results of the second round of the elections, electing Bernardo Arévalo and Karin Herrera for president and vice-president.<sup>175</sup> However, the Citizens Registry Office of the TSE communicated, that same August 28, the provisional suspension of the party’s registration as a legal entity. It did so, alleging compliance with the order issued by the Seventh Court of First Criminal Instance last July 12 within the framework of a criminal investigation conducted by the Special Prosecutor’s Office against Corruption (FECCI) of the Public Prosecutor’s Office (MP).

88. In this regard, the IACHR pointed out that the decision to suspend the registration of Movimiento Semilla would contravene a provisional injunction issued by the Constitutional Court (CC), and would be aimed at preventing the inauguration of the party members elected for the Presidency and Vice-Presidency of the Republic, and other public offices. Likewise, it had been ordered without complying with the grounds and the process established in the Electoral and Political Parties Law, which could arbitrarily restrict freedom of association and political rights.<sup>176</sup>

89. On the other hand, the IACHR emphasized that the provisional suspension of the Semilla party was part of the context of constant actions and undue interference in the electoral process, through manipulation (*instrumentalización*) of the law and a lack of independence on the part of the Public Prosecutor’s Office. Among other actions, on August 22, 2023, the Prosecutor’s Office against Electoral Crimes filed a request for the withdrawal of a preliminary hearing against Ramiro José Muñoz Jordán, Director of the General Registry of Citizens of the Supreme Electoral Tribunal (TSE) for the possible commission of the crimes of abuse of

<sup>171</sup> OAS, [Elections Preliminary Report](#), August 22, 2023, p. 4.

<sup>172</sup> OAS, [Electoral Observation Mission congratulates the people of Guatemala on their civic commitment in the second round of elections](#), Preliminary Report, August 22, 2023, p. 2.

<sup>173</sup> OAS, [Electoral Observation Mission congratulates the people of Guatemala on their civic commitment in the second round of elections](#), August 22, 2023, p. 2.

<sup>174</sup> OAS, OAS Electoral Observation Mission congratulates the people of Guatemala for their civic engagement in the second round of elections, August 22, 2023; European Union Electoral Observation Mission Guatemala, “[Guatemalans showed a strong commitment to democracy despite ongoing judicial actions to disrupt the elections](#),” Guatemala City, August 22, 2023.

<sup>175</sup> The Supreme Electoral Tribunal, TSE, officially certifies results of the election for President and Vice President of the Republic, August 28, 2023.

<sup>176</sup> IACHR. Press release No. 207/23 - [IACHR urges the State of Guatemala to respect General Election Results](#), Washington, D.C., August 31, 2023.

authority for electoral purposes and breach of duties.<sup>177</sup> On August 23, 2023, the Office of the Prosecutor for Administrative Crimes filed a request for the lifting of immunity against the Supreme Electoral Tribunal Magistrates Irma Elizabeth Palencia Orellana and Mynor Custodio Franco Flores, as well as the alternate Magistrate Álvaro Ricardo Cordón Paredes, for possible commission of the crimes of breach of duties, abuse of authority, and resolutions in violation of the Constitution.<sup>178</sup> On November 7, the Supreme Court of Justice decided to proceed with the impeachment. On November 30, the Congress of the Republic decided to definitively remove the immunity of four magistrates of the TSE at the recommendation of the investigating commission. (See *infra* IV.A.2, Abuse of the pre-trial procedure.)<sup>179</sup>

90. On September 12 2023, the Public Prosecutor's Office conducted new search procedures in the facilities of the Parque de la Industria where the Center of Operations of the Electoral Process of the Supreme Electoral Tribunal is located. More than 160 boxes containing election ballots were allegedly opened in violation of national regulations.<sup>180</sup> In this regard, the OAS Electoral Mission expressed its deep concern over the actions of the Public Prosecutor's Office and pointed out that the opening of electoral packages by persons and institutions other than those designated by law represents a frontal attack on the integrity of the vote and an affront to the will of the people.<sup>181</sup> For its part, on September 12, 2023, the European Union also expressed its deep concern over the raids carried out by the Special Prosecutor's Office against Impunity (FECI) in the TSE offices, as well as the seizure of computer material related to the Transmission of Preliminary Electoral Results.<sup>182</sup> In particular, it noted that such "unjustified actions" follow the official announcement of the election results and "persistent unacceptable attempts to undermine the election results through selective and arbitrary legal and procedural actions that are not in line with international and regional standards Guatemala has subscribed to."<sup>183</sup>

91. On September 29, the Public Prosecutor's Office, through the Special Prosecutor's Office against Corruption (FECI), carried out a new raid at the headquarters of the Supreme Electoral Tribunal, which resulted in the theft of more than 125,000 documents and original minutes of the general elections. According to the Public Prosecutor's Office, the proceedings were carried out in accordance with the law, the Political

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<sup>177</sup> According to the preliminary proceedings of the Prosecutor's Office, Muñoz Jordán allegedly abused his position and possibly incurred in illicit acts by registering the Partido Prosperidad Ciudadana in an anomalous manner, in spite of it having failed to comply with the requirements established in the Electoral and Political Parties Law. This is based on the resolution of the Constitutional Court dated May 26, 2023, which states that the series of allegations contained in the file established by the constitutional action merit a criminal investigation: "This Court considers that the series of allegations contained in the file established by the abovementioned constitutional action merit an investigation by the criminal authorities, for which reason, it is appropriate to certify the part played by the Public Ministry to carry out the actions that, by law, correspond to it..." Public Prosecutor's Office, "[Fiscalía solicita retirada de antejuicio contra Director del Registro General de Ciudadanos del TSE \(Prosecutor's Office requests withdrawal of the preliminary proceedings against the Director of the Citizens Registry Office of the TSE\)](#)," August 22, 2023.

<sup>178</sup> On March 13, 2023, the Public Prosecutor's Office received a complaint against the Magistrates of the Supreme Electoral Tribunal Irma Elizabeth Palencia Orellana, Mynor Custodio Franco Flores, and Álvaro Ricardo Cordón Paredes, the latter an alternate Magistrate, who on March 9, 2023, resolved in file 930-2023, to admit the appeal for annulment filed by the National General Secretary and Legal Representative of the "Cambio" political party, partially revoking the resolution PE-DGRC-354-2023 R[M]/crrdl, dated March 2, 2023, issued by the General Directorate of the Registry of Citizens, and consequently declared the registration of the citizen Manuel Antonio Baldizón Méndez, as candidate for Deputy to the Congress of the Republic of Guatemala for the national list, in box one for the party "Cambio," to be admissible.

<sup>179</sup> "The Plenary of the Congress of the Republic approved to admit the formation of the pre-trial proceedings brought against Messrs. Irma Elizabeth Palencia Orellana, Ranulfo Rafael Rojas Cetina, Gabriel Vladimir Aguilera Bolaños, and Mynor Custodio Franco Flores, in their capacity as titular magistrates of the Supreme Electoral Tribunal, for the possible commission of crimes committed in the acquisition of the Preliminary Electoral Results Transmission (TREP) system." X account of the Congress of the Republic (@CongresoGuate), [statement of November 30, 2023](#). See also: Report of the Secretary General of the Organization of American States on the Mission for the Transition Process In Guatemala. Presented during the special meeting of the Permanent Council held on September 18, 2023. CP/INF.9909/23.

<sup>180</sup> "Mr. Rafael Curruchiche, Section Prosecutor of the FECI, refers to the purpose of the search carried out in the facilities of the Parque de la Industria where the Center of Operations of the Electoral Process (COPE) of the Supreme Electoral Tribunal is located." X account of the Public Prosecutor's Office of Guatemala (@MPguatemala), [pronouncement of September 12, 2023](#).

<sup>181</sup> According to the EOM, Article 243 of the Electoral and Political Parties Law (LEPP), of constitutional rank, establishes that the Supreme Electoral Tribunal (TSE) and the Departmental Electoral Boards (JED) are the only bodies competent to verify and qualify electoral documentation. OAS, "[OAS Mission expresses deep concern over actions of the Public Prosecutor's Office against integrity of electoral material in Guatemala](#)," September 12, 2023.

<sup>182</sup> European Union (EU), [Guatemala: Statement by the Spokesperson on developments after the elections](#)," September 12, 2023.

<sup>183</sup> European Union (EU), [Guatemala: Statement by the Spokesperson on developments after the elections](#)," September 12, 2023.

Constitution, and in compliance with a judge's order as part of a case subject to special rules (*caso bajo reserva*).<sup>184</sup> In the same vein, the State of Guatemala informed the IACHR that this raid "is the continuation of the proceedings that the Prosecutor's Office has carried out in the Center of Operations of the Electoral Process (Cope), located in the Parque de la Industria, in follow-up to the actions aimed at gathering information to strengthen the investigation and at ascertaining the truth of what happened."<sup>185</sup> As stated, "the ongoing criminal investigation in no way intends to alter the results of the general elections in Guatemala."<sup>186</sup> It also stated that "the Public Prosecutor's Office is a technical and apolitical entity, whose proceedings in the specific case have been carried out within the corresponding legal framework and with the purpose of clarifying the truth about the possible commission of a crime and the defense of the rights of the complainants, as well as those of the citizens."<sup>187</sup>

92. According to the OAS Electoral Observation Mission (OAS/EOM), this raid constitutes the fifth action carried out after the elections against the TSE and, in addition, it was "carried out without due cause, violating the functions, independence and autonomy of the electoral body."<sup>188</sup> In addition, it considered that the permanent harassment without grounds or clear motivation of the Public Prosecutor's Office "constitutes a political persecution reminiscent of those carried out by authoritarian regimes."<sup>189</sup> It also pointed out that "the actions of the Public Prosecutor's Office are an intolerable violation of Guatemala's Constitution" and that "it is altering the constitutional order."<sup>190</sup>

93. The IACHR notes that, in response to these actions and the constant interference of the Public Prosecutor's Office in the electoral process, as of October 1, 2023, a series of social and peaceful demonstrations, road blockades, and other acts of protest in public spaces and in front of the buildings of state institutions were organized in the country and lasted for more than 30 days. At the request of the government of Guatemala, on October 6, an OAS mission was deployed to Guatemala to act as an intermediary and to enter into dialog with the social actors involved in the protests taking place in the country, as well as to meet with government officials.<sup>191</sup> On October 30, 2023, the IACHR called on the State of Guatemala to respect and guarantee the right to peaceful assembly, and all rights jeopardized, such as the right to life and integrity of demonstrators, in the face of various actions that sought to delegitimize and intimidate those who demonstrate.<sup>192</sup>

94. On October 31, 2023, the TSE certified the culmination of the electoral process,<sup>193</sup> and that same day the provisional suspension of the legal status of the Movimiento Semilla party went into effect. At the close of this report, the EOM of the Organization of American States remained in the country with the main objective of accompanying the transition process that will conclude on January 14, 2024, when President-elect

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<sup>184</sup> Public Prosecutor's Office [Press release](#), September 30, 2023.

<sup>185</sup> Comments by the State of Guatemala on the proposed press release: "[Guatemala: IACHR urges the State to respect the Constitutional order](#)." Report DIDEH/DEPCADEH-055-2023/WEBS/LFLL of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-326-2023, August 7, 2023.

<sup>186</sup> Comments by the State of Guatemala on the proposed press release: "[Guatemala: IACHR urges the State to respect the Constitutional order](#)." Report DIDEH/DEPCADEH-055-2023/WEBS/LFLL of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-326-2023, August 7, 2023.

<sup>187</sup> Comments by the State of Guatemala on the proposed press release: "[Guatemala: IACHR urges the State to respect the Constitutional order](#)." Report DIDEH/DEPCADEH-055-2023/WEBS/LFLL of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-326-2023, August 7, 2023.

<sup>188</sup> [Statement from the OAS Electoral Mission in Guatemala on the New Raid on the TSE and the Request to Withdraw Immunity from Judges of the Court](#), September 29, 2023.

<sup>189</sup> [Statement from the OAS Electoral Mission in Guatemala on the New Raid on the TSE and the Request to Withdraw Immunity from Judges of the Court](#), September 29, 2023.

<sup>190</sup> [Statement from the OAS Electoral Mission in Guatemala on the New Raid on the TSE and the Request to Withdraw Immunity from Judges of the Court](#), September 29, 2023.

<sup>191</sup> See, Third Report of the Secretary General of the Organization of American States on the Mission for the Transition Process in Guatemala and Recent Developments in the Country, presented during the special meeting of the Permanent Council held on October 10, 2023, to consider the transition situation in the Republic of Guatemala.

<sup>192</sup> IACHR. Press release No. [255/23-Guatemala: The IACHR and Its Special Rapporteurship for Freedom of Expression Urge the State of Guatemala to Protect the Right to Protest and the Right to Peaceful Assembly](#) Washington, D.C., October 30, 2023.

<sup>193</sup> Supreme Electoral Tribunal . [Decree 5-2023](#), October 31, 2023.

Bernardo Arévalo and Vice President-elect Karin Herrera will take office, in a context of high social polarization and severe deterioration of the rule of law in Guatemala.

95. The State of Guatemala informed the IACHR about the implementation of a transition process from the current administration to the elected administration in order to “define minimum criteria for the handover in the management of the government”, with the purpose of “delivering information that will promote the achievement of the objectives, plans, and programs that benefit the population and that should not be affected by the process itself.” Likewise, “it allows the elected administration to obtain knowledge of the responsibility it receives and the situation of the institutions subject to the Organic Budget Law, as well as those where the President has the function of appointing authorities.” This process will extend through 4 phases until January 14, 2024.<sup>194</sup>

96. Following the conclusion of the electoral process, the IACHR received information about new actions and interference by the Public Prosecutor’s Office threatening the presidential transition process. On November 16, the Public Prosecutor’s Office announced the opening of an investigation into events related to the student demonstrations and the occupation of the University of San Carlos (USAC) that occurred between May 19, 2022, and June 9, 2023, in which the university community denounced irregularities in the election process of the rector of that institution.<sup>195</sup> In addition, the MP reported that 31 search warrants and 27 arrest warrants against university leaders and academic staff had been requested,<sup>196</sup> and that requests for the withdrawal of immunity had been lodged against deputies belonging to the parties *Movimiento Semilla*, VOS and Winaq and against President-elect Bernardo Arévalo and Vice President-elect Karin Herrera.<sup>197</sup>

97. Subsequently, on December 8, 2023, in a new escalation, the Public Prosecutor’s Office presented the progress of three investigations linked to the electoral process. Those investigations were:<sup>198</sup> (1) “Semilla Corruption Case Phase I: Illegalities in the constitution of the *Movimiento Semilla* political party.” In this case, it stated that the FECCI had found that the *Movimiento Semilla* party premeditated and materialized 8,121 illegalities in adhesion sheets, including 5,542 instances of non-existent name and DPI data; 2,934 names that do not coincide with the DPI; 40 deceased persons adhered to the party; 13 persons who have declared that they never signed the adhesion sheets and 132 repeated adhesions. Those actions would indicate that 32% of the affiliations are false.<sup>199</sup> Consequently, it contended that the *Movimiento Semilla* party was never legally created, since its constitution was by means of corrupt and illegal actions.<sup>200</sup> In addition, it filed a withdrawal of pre-trial proceedings against Bernardo Arévalo and Samuel Andres Pérez for the possible commission of the crimes of use of forged documents with electoral aggravation, among others.<sup>201</sup> (2) “Semilla Corruption Case Phase II: Unregistered Electoral Financing and Money Laundering.” In relation to this case, the MP pointed out

<sup>194</sup> Informe sobre la acción del Estado para la vigencia de los Derechos Humanos en Guatemala 2023 (Report on State actions to uphold human rights in Guatemala 2023), Ref. DIDEH-DEPCADEH-053-2023/WEBS/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OAS-M4-NV-322-2023, September 20, 2023, pp. 86-99.

<sup>195</sup> The MP said that the facilities of the USAC had suffered damage in the amount of 90 million quetzals. It also stated that the real purpose of the seizure of the University “was the commission of crimes to postulate and prop up candidates of political parties to the highest positions of popular election, including the President and Vice President of the Republic, Deputies to the Congress of the Republic, and others.” Public Prosecutor’s Office. Press release. “[MP conducts raids and coordinates arrests in Caso toma de la USAC: Botín Político.](#)” November 16, 2023.

<sup>196</sup> The MP said that the facilities of the USAC had suffered damage in the amount of 90 million quetzals. It also stated that the real purpose of the seizure of the University “was the commission of crimes to postulate and prop up candidates of political parties to the highest positions of popular election, including the President and Vice President of the Republic, Deputies to the Congress of the Republic, and others.” Public Prosecutor’s Office. Press release. “[MP conducts raids and coordinates arrests in Caso toma de la USAC: Botín Político.](#)” November 16, 2023.

<sup>197</sup> The MP said that the facilities of the USAC had suffered damage in the amount of 90 million quetzals. It also stated that the real purpose of the seizure of the University “was the commission of crimes to postulate and prop up candidates of political parties to the highest positions of popular election, including the President and Vice President of the Republic, Deputies to the Congress of the Republic, and others.” Public Prosecutor’s Office. Press release. “[MP conducts raids and coordinates arrests in Caso toma de la USAC: Botín Político.](#)” November 16, 2023.

<sup>198</sup> Public Prosecutor’s Office. [Press conference held on December 8, 2023.](#)

<sup>199</sup> Public Prosecutor’s Office. [Press release.](#) December 9, 2023. P.1.

<sup>200</sup> Public Prosecutor’s Office. [Press release.](#) December 9, 2023. P.1.

<sup>201</sup> Public Prosecutor’s Office. [Press release.](#) December 9, 2023. P.1.

that *Movimiento Semilla* had not presented detailed reports of income and expenses as required by the Electoral and Political Parties Law, among other actions, for which it also filed requests for impeachment against members of the party, including President-elect Bernardo Arévalo.<sup>202</sup> (3) “Case of Illegalities committed by authorities of the Electoral Tribunal in the 2023 Electoral Process.” Here, the MP reported on the results of the raids carried out at the TSE headquarters, from which “it was established that illegalities were committed in the safekeeping of the electoral boxes.”<sup>203</sup> In addition, it determined the overvaluation and “illegalities in the acquisition of the TREP and SEGA systems, sabotage to the computer system of the Supreme Electoral Tribunal, and illegalities committed by personnel of said tribunal during the process.”<sup>204</sup> Consequently, the MP concluded that the results of the general elections should be annulled as fraudulent and illegal.<sup>205</sup>

98. In view of the serious political and institutional crisis arising from the MP’s undue and arbitrary actions and interference, on December 11, 2023, the IACHR adopted Resolution No. 03/2023, “Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala.”<sup>206</sup> In it, the IACHR warned that the instrumentalization of the justice system and criminal law had revealed the undue and arbitrary exercise of power for political-electoral purposes by the Public Prosecutor’s Office,<sup>207</sup> as well as the erosion of the system of checks and balances of the democratic State due to the absence of guarantees of the judiciary to fulfill its role of exercising control of constitutionality and conventionality; and the complacency of the executive branch.<sup>208</sup>

99. In its resolution, the IACHR formulated a series of recommendations to the State of Guatemala: it urged all public authorities to guarantee respect for the constitutional order and the preservation of the rule of law;<sup>209</sup> it called for guarantee mechanisms for the accountability of the head of the Attorney General’s Office and the Public Prosecutor’s Office compatible with the standards of international human rights law and with the principle of autonomy and independence of said institution;<sup>210</sup> and it called for guarantees to ensure that the processes of selection and appointment of justice operators are carried out in accordance with Inter-American standards, under criteria based on merit and professional skills, free from undue political interference.<sup>211</sup> It also urged the protection of the life and integrity of elected political authorities, human rights defenders, journalists and media workers, and indigenous peoples and their ancestral authorities.<sup>212</sup>

100. Democracy and the rule of law are prerequisites for achieving the enjoyment and observance of human rights. Indeed, pursuant to Article 3 of the Inter-American Democratic Charter, “essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.”<sup>213</sup> For its part, the Inter-American Juridical Committee has emphasized that “democracy does not consist only in electoral processes, but also in the legitimate exercise of power within the framework of the

<sup>202</sup> Public Prosecutor’s Office. [Press release](#). December 9, 2023. P.2.

<sup>203</sup> Public Prosecutor’s Office. [Press release](#). December 9, 2023. P.3.

<sup>204</sup> Public Prosecutor’s Office. [Press release](#). December 9, 2023. P.3.

<sup>205</sup> Public Prosecutor’s Office. [Press conference held on December 8, 2023](#).

<sup>206</sup> IACHR. [Resolution 3/2023](#). “Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala,” adopted on December 10, 2023.

<sup>207</sup> IACHR. [Resolution 3/2023](#). “Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala,” adopted on December 10, 2023. Considerations.

<sup>208</sup> IACHR. [Resolution 3/2023](#). “Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala,” adopted on December 10, 2023. Considerations.

<sup>209</sup> IACHR. [Resolution 3/2023](#). “Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala,” adopted on December 10, 2023. Resolution 1.

<sup>210</sup> IACHR. [Resolution 3/2023](#). “Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala,” adopted on December 10, 2023. Resolution 5.

<sup>211</sup> IACHR. [Resolution 3/2023](#). “Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala,” adopted on December 10, 2023. Resolution 9.

<sup>212</sup> IACHR. [Resolution 3/2023](#). “Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala,” adopted on December 10, 2023. Resolution 10.

<sup>213</sup> Inter-American Democratic Charter, adopted at the twenty-eighth Special Session of the General Assembly of the OAS on September 11, 2001, Article 3.

rule of law, which includes respect for the essential elements, components and attributes of democracy.”<sup>214</sup> In this context, the IACHR urges the State of Guatemala to comply with the principle of separation of branches of government in accordance with its international obligations under the American Convention on Human Rights and the Inter-American Democratic Charter, as stated in its Resolution 3/2023.<sup>215</sup>

#### IV. FIGHT AGAINST IMPUNITY AND CORRUPTION AND JUDICIAL INDEPENDENCE

101. In 2023, the IACHR noted the unwillingness of the State of Guatemala to combat impunity due to the continued systematic use of criminal law and allegations of arbitrary deprivation of liberty against justice operators and former justice operators for their work in emblematic cases of corruption and serious human rights violations.

102. In connection with this, the State of Guatemala contended that “at no time has criminal law been systematically used against any justice operators in connection with the cases they handle, since the judges, in the exercise of their judicial independence, determine the coercive measures that the case merits, based on the complaints filed and the criminal proceedings heard by the courts of justice.”<sup>216</sup> Therefore, the State of Guatemala rejected “any accusation of criminalization, since all actions taken in the cases indicated by the Commission are subject to jurisdictional control by a supervisory judge and all parties have the right to a simple and prompt recourse or any other effective recourse before the competent judges or courts.”<sup>217</sup> It also said that it “guarantees due process so that the parties can defend themselves and refute their disagreements during the criminal proceedings, using all the defense mechanisms, procedural remedies, and ordinary and extraordinary appeals against the resolutions issued by the courts.”<sup>218</sup>

103. In this section the IACHR refers to the main patterns observed in judicial persecution and criminalization, as well as the specific cases documented during 2023. Finally, it analyzes the State’s failure to combat impunity in the face of alleged setbacks in cases of corruption and serious human rights violations. It does so, in the context of the weakening of the rule of law and judicial independence described above.

##### A. Context of criminalization of justice operators and defenders

104. In its Annual Report 2022, the IACHR delved into the main patterns observed in cases of criminalization, which persist. They include: the nature of the cases handled by the justice operators, who are criminally denounced as a form of intimidation and retaliation for their resolutions or activities within the framework of the judicial processes, both by implicated and accused persons, as well as, reportedly, by plaintiffs with no direct participation in them. In relation to the situation of prosecutors and former prosecutors, some of the accusations against them are related to complaints about the use of the tool of plea bargaining (*colaboración eficaz*) in high-impact corruption cases, since former informants were pressured by the current

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<sup>214</sup> Inter-American Juridical Committee. Essential and fundamental elements of representative democracy and their relationship to collective action within the framework of the Inter-American Democratic Charter, Resolution CJI/RES. 159(LXXV-O/09), August 12, 2009.

<sup>215</sup> IACHR. Resolution 1/2023. “[Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala](#),” adopted on December 10, 2023. Considerations.

<sup>216</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 37.

<sup>217</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 37.

<sup>218</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 37.

Public Prosecutor's Office to retract or to denounce that they were coerced, which would allow the initiation of investigations in those cases.<sup>219</sup>

105. The IACHR has also documented that criminalization has consisted of filing a high number of complaints processed more quickly and even of requesting international arrest warrants against people who were forced to flee the country in this context.<sup>220</sup> For example, former High Risk D Court Judge Erika Aifán has accumulated more than 100 cases against her, which would affect her right to defense due to the practical impossibility of litigating those cases.<sup>221</sup> For his part, Juan Francisco Sandoval, a former prosecutor in charge of the FECI who was arbitrarily dismissed in 2021, has accumulated more than 58 complaints and 5 arrest warrants.<sup>222</sup>

106. In the course of 2023, the "Foundation against Terrorism" (FCT) has maintained a preponderant role in criminalization against justice operators by filing a high number of criminal complaints and requests for impeachment; as well as in perpetrating the creation of a context of threats, intimidation, harassment, and stigmatization campaigns. As has been documented, the FCT publishes on its social networks photos of justice operators with an X on them and disseminating threatening messages.<sup>223</sup> Likewise, together with other anonymous accounts, they disseminate confidential information and announce proceedings even before they are carried out, which would be evidence of an action allegedly coordinated with the authorities.<sup>224</sup> The IACHR has not received information on the initiation of any investigation by the Public Prosecutor's Office against these groups for those leaks. Since 2018, the complaints filed by the FCT are reportedly being processed more quickly, which would coincide with the appointment of Consuelo Porras as Attorney General and Head of the Public Prosecutor's Office, with the departure of the CICIG, and with the irregularities in the conformation of the CC. Additionally, it is noteworthy that the FCT currently participates as a third party plaintiff (*querellante adhesiva*) in the criminal proceedings of at least 24 former members of the FECI, 4 former members of the CICIG, 6 former judges, and 2 former attorneys general.<sup>225</sup>

107. In connection with this, in its observations on this report, the State of Guatemala indicated that the Constitution "guarantees freedom of action: that is to say, Guatemalan citizens can do everything that the law does not prohibit them from doing; it also grants them the right to petition without any discrimination, and the authorities have the obligation to resolve and attend to all complaints and, if they constitute crimes, they must be investigated." The State added that "Article 297 of the Code of Criminal Procedure stipulates that any person may denounce the commission of a crime to the police or to the Public Prosecutor's Office."<sup>226</sup>

108. In particular, civil society organizations denounced the arbitrary and illegal extension of the investigation; the issuance of resolutions without factual, legal, and evidentiary support; arrest warrants without an objective and suitable investigation; the acceptance of charges to coerce the persons involved to

<sup>219</sup> IACHR, 186th regular session, "Threats to judicial independence in Central and South America," March 10, 2023; Attached to the request for a thematic hearing on "Instrumentalization of the Public Prosecutor's Office and political persecution in Guatemala," August 10, 2023. On file at the IACHR.

<sup>220</sup> IACHR, 186th regular session, "Threats to judicial independence in Central and South America," March 10, 2023; Attached to the request for a thematic hearing on "Instrumentalization of the Public Prosecutor's Office and political persecution in Guatemala," August 10, 2023. On file at the IACHR.

<sup>221</sup> Report of the Mission of Judges of the Latin American Federation of Magistrates and the International Union of Magistrates, "Attacks on Judicial Independence in Guatemala," October 2022, pp. 6 and 7; Cyrus R. Vance Center for International Justice, "Criminalization of Justice Operators in Guatemala as a strategy to secure impunity," December 2022, p. 23.

<sup>222</sup> Public Prosecutor's Office, [Press Release](#) of May 5, 2022.

<sup>223</sup> Report of the Mission of Judges of the Latin American Federation of Magistrates and the International Union of Magistrates, "Attacks on Judicial Independence in Guatemala," October 2022, p. 6; Cyrus R. Vance Center for International Justice, "Criminalization of Justice Operators in Guatemala as a strategy to secure impunity," December 2022, pp. 44 and 45.

<sup>224</sup> In this regard, see Agencia Ocote, "How anti-rights and human rights netcenters mutated in Guatemala," November 30, 2022; Guatemala Leaks, Connectas, [The 'Sharpshooter' Targeting The Leaders Of The Fight Against Corruption In Guatemala](#), 2022.

<sup>225</sup> IACHR, 186th regular session, "Threats to judicial independence in Central and South America," March 10, 2023; Attached to the request for a thematic hearing on "Instrumentalization of the Public Prosecutor's Office and political persecution in Guatemala," August 10, 2023. On file at the IACHR.

<sup>226</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 39.

accept non-existent facts and to testify against other persons accused.<sup>227</sup> They also denounced the excessive and arbitrary use of judicial confidentiality of investigations in criminalization cases, which reportedly prevent accused persons from accessing files and restrict access to hearings for the press and independent observers.<sup>228</sup> Thus, civil society organizations pointed out in a public hearing that “criminalization is not an isolated phenomenon, but is part of a systematic strategy with the following patterns: it begins with a spurious denunciation; subsequently, impeachment proceedings are requested or unfounded arrest warrants are issued. The investigations are declared confidential in order to hinder access to justice for the accused, deny access to the press, and hide information from public opinion.”<sup>229</sup>

109. As indicated to the IACHR, “persecution, harassment, criminalization, and the improper use of legal tools are possible because there is no real separation of powers and, therefore, judicial guarantees are not complied with” in these cases.<sup>230</sup> In particular, civil society organizations denounced the arbitrary and illegal extension of the investigation; the issuance of resolutions without factual, legal, and evidentiary support; arrest warrants without an objective and suitable investigation; the use of charges to coerce the persons involved to accept non-existent facts and to testify against other persons accused.<sup>231</sup> They also denounced the excessive and arbitrary use of judicial confidentiality of investigations in criminalization cases, which reportedly prevent accused persons from accessing files and restrict access to hearings for the press and independent observers.<sup>232</sup> Thus, civil society organizations pointed out in a public hearing that “criminalization is not an isolated phenomenon, but is part of a systematic strategy with the following patterns: it begins with a spurious denunciation; subsequently, impeachment proceedings are requested or unfounded arrest warrants are issued. The investigations are declared confidential in order to hinder access to justice for the accused, deny access to the press, and hide information from public opinion.”<sup>233</sup>

110. Below, the IACHR presents information on the cases analyzed in 2023 related to criminalization and deprivation of liberty.

### 1. Cases of criminalization and deprivation of liberty

111. On January 16, 2023, the IACHR learned of new arrest warrants announced by the FECCI against Thelma Aldana, former Attorney General of the Public Prosecutor’s Office (MP), the former Secretary of the MP, Mayra Veliz, and the former head of CICIG, David Gaitán, for their work in the case called “Fraudulent Agreements, Corruption, and Impunity”, related to the investigation of the Brazilian company Odebrecht in Guatemala.<sup>234</sup> On the same day, the Public Prosecutor’s Office announced the start of an investigation against the former head of CICIG, Iván Velásquez, and former CICIG official, Luz Adriana Camargo.<sup>235</sup> In this regard, the

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<sup>227</sup> IACHR, 186th regular session, “Threats to judicial independence in Central and South America,” March 10, 2023; Attached to the request for a thematic hearing on “Instrumentalization of the Public Prosecutor’s Office and political persecution in Guatemala,” August 10, 2023. On file at the IACHR.

<sup>228</sup> IACHR, 186th regular session, “Threats to judicial independence in Central and South America,” March 10, 2023; Attached to the request for a thematic hearing on “Instrumentalization of the Public Prosecutor’s Office and political persecution in Guatemala,” August 10, 2023. On file at the IACHR.

<sup>229</sup> IACHR, 188th regular session, “Human rights Defenders and justice operators faced with the criminal justice system,” November 8, 2023.

<sup>230</sup> IACHR, 186th regular session, “Threats to judicial independence in Central and South America,” March 10, 2023; Attached to the request for a thematic hearing on “Instrumentalization of the Public Prosecutor’s Office and political persecution in Guatemala,” August 10, 2023. On file at the IACHR.

<sup>231</sup> IACHR, 186th regular session, “Threats to judicial independence in Central and South America,” March 10, 2023; Attached to the request for a thematic hearing on “Instrumentalization of the Public Prosecutor’s Office and political persecution in Guatemala,” August 10, 2023. On file at the IACHR.

<sup>232</sup> IACHR, 186th regular session, “Threats to judicial independence in Central and South America,” March 10, 2023; Attached to the request for a thematic hearing on “Instrumentalization of the Public Prosecutor’s Office and political persecution in Guatemala,” August 10, 2023. On file at the IACHR.

<sup>233</sup> IACHR, 188th regular session, “Human rights defenders and justice operators faced with the criminal justice system,” November 8, 2023.

<sup>234</sup> “#CaseAcuerdosFraudulentosCorrupciónElImpunidad. The Special Prosecutor’s Office against Impunity reports” X Account of the Public Prosecutor’s Office of Guatemala (@MPguatemala), [pronouncement of January 16, 2023](#).

<sup>235</sup> “#CaseAcuerdosFraudulentosCorrupciónElImpunidad. The Special Prosecutor’s Office against Impunity reports” X Account of the Public Prosecutor’s Office of Guatemala (@MPguatemala), [pronouncement of January 16, 2023](#).

spokesperson for the United Nations Secretary General reminded the State that, according to the agreement signed for the establishment of CICIG, its international personnel maintain privileges and immunities even though they no longer occupy their positions.<sup>236</sup>

112. On March 16, former human rights prosecutor Orlando Salvador López was arrested for the alleged crime of continuous abuse of authority.<sup>237</sup> According to public information, the Foundation Against Terrorism (FCT) would be a co-complainant plaintiff in the process and held the former prosecutor responsible for the “illegal capture” of “war veterans.” In his work at the Human Rights Prosecutor’s Office, Mr. López led the prosecution of serious human rights violations in the context of the internal armed conflict, including the indictment for genocide against Efraín Ríos Montt.<sup>238</sup> On March 21, the Fifth Court of First Criminal Instance, Drug Trafficking, and Crimes against the Environment ordered alternative measures in favor of Mr. López consisting of house arrest and prohibition to leave the country, among others.<sup>239</sup>

113. On March 24, FECCI announced the opening of a case for alleged money laundering against former CICIG Commissioner Francisco Javier Dall’Anese Ruíz, as well as against former FECCI chief Juan Francisco Sandoval.<sup>240</sup> In relation to these events, on March 30, 2023, the United Nations High Commissioner for Human Rights indicated his concern at the use of “administrative and criminal proceedings are being used in apparent reprisal against those involved in investigating and prosecuting cases of corruption or serious human rights violations committed during the armed conflict.”<sup>241</sup> In this regard, he reiterated “his alarm at the continued erosion of the rule of law in Guatemala, where justice officials, including those who worked for or cooperated with the UN-backed International Commission against Impunity (CICIG), continue to face intimidation, harassment and prosecution.”<sup>242</sup> In relation to this case, the State of Guatemala reiterated to the IACHR that “the Public Prosecutor’s Office carries out criminal prosecutions in strict adherence with the legal system and the principle of objectivity, without any political bias, prioritization of social status, or for compliance with a statistical number.”<sup>243</sup>

114. On May 3, the Seventh Criminal Court issued new arrest warrants against Thelma Aldana, former attorney general, for the possible commission of the crimes of illicit association, extortion, ideological falsehood, abuse of authority, breach of duties, and resolutions in violation of the constitution; Juan Francisco Sandoval, former head of the FECCI, for the possible commission of the crimes of illicit association, abuse of authority, and breach of duties; and against Erika Lorena Aifán, former High Risk Judge, for the possible commission of the crimes of illicit association, usurpation of functions, ideological falsehood, abuse of authority,

<sup>236</sup> UN News, “[Guterres concerned about the opening of a criminal case in Guatemala against former CICIG commissioner](#),” January 18, 2023; “Message from @UN\_Spokesperson for the Secretary-General, @antonioguterres on the actions taken by the Public Prosecutor’s Office in Guatemala against justice operators and officials of the former CICIG including the current Minister of Defense @Ivan\_Velasquez\_,” Account of the Special Representative of the UN Secretary-General in Colombia @MisionONUCol and UN Under-Secretary-General (@CGRuizMassieu), [published on January 18, 2023](#).

<sup>237</sup> “The Internal Affairs Prosecutor’s Office in coordination with the #PNC performs search, inspection, search and seizure of evidence procedures, in a property located in zone 2 of Guatemala City.” X account of the Public Prosecutor’s Office of Guatemala (@MPguatemala), [pronouncement of March 16, 2023](#).

<sup>238</sup> CEJIL, “[International organizations request that due process and the personal integrity of the prosecutor Orlando López be respected](#),” September 28, 2016.

<sup>239</sup> Prensa Libre, “[Court decides to link former prosecutor Orlando Salvador López to criminal proceedings](#),” March 21, 2023; The Internal Affairs Prosecutor’s Office succeeded in having the Fifth Court of First Criminal Instance, Drug Trafficking, and Crimes against the Environment order the criminal prosecution of Orlando Salvador López, former section prosecutor of the Human Rights Prosecutor’s Office and former special prosecutor I of the Special Cases Prosecutor’s Office, for the crime of abuse of authority in a continuous manner. X account of the MP of Guatemala (@MPGuatemala), [pronouncement of March 21, 2023](#).

<sup>240</sup> “#CaseFedecocagua. The Special Prosecutor’s Office against Impunity reports.” X account of the Public Prosecutor’s Office of Guatemala (@MPguatemala), [pronouncement of March 24, 2023](#).

<sup>241</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “[Guatemala: Türk warns against reprisals targeting justice officials](#),” March 30, 2023.

<sup>242</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “[Guatemala: Türk warns against reprisals targeting justice officials](#),” March 30, 2023.

<sup>243</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 39.

and prevarication. It did so as a result of complaints filed by the persons investigated and accused of acts of corruption within the framework of the “Fénix” case.<sup>244</sup>

115. Subsequently, on May 15, 2023, the Third Pluripersonal Court of First Criminal Instance for Drug Trafficking and Crimes against the Environment of the Department of Guatemala filed criminal charges against Paola Escobar Quiñonez and Aliss Noemí Morán Mejía, former prosecutors of the FECCI, and remanded them in custody for the crime of abuse of authority.<sup>245</sup> According to information in the public domain, both were involved in the investigation of the “2020 Parallel Commissions” case related to acts of corruption aimed at influencing the election of the High Courts in 2019 and were denounced by one of those accused at the time, Dennis Herrera, a member of the Nominating Committee for the Bar Association (Colegio de Abogados y Notarios – CANG).<sup>246</sup>

116. On May 26, prosecutors Stuardo Ernesto Campo Aguilar, Gonzalo Rafael Chilel López, and Carlos Faustino Pérez Flores were arrested and remanded in custody for the alleged crime of breach of duty. In particular, prosecutor Stuardo Campo was in charge of a number of prosecutor’s offices in the Public Prosecutor’s Office (MP), among them, the FECCI from where he investigated emblematic corruption cases such as “Libramiento de Chimaltenango”, “corruption in the Ministry of Culture and Sports, in the Comptroller General’s Office, and in the Victim’s Institute, among others. In 2021, he was transferred to the prosecutor’s office for smuggling of migrants, after requesting the withdrawal of immunity to investigate former President Jimmy Morales. According to the same former prosecutor, the investigation against him is a “spurious complaint filed by the Foundation against Terrorism” which “has systematically devoted itself to the persecution of justice operators.”<sup>247</sup>

117. On August 28, 2023, former CICIG President, lawyer and human rights defender Claudia González was arrested at her home after an arrest warrant was issued in connection with an operation carried out by the MP’s Internal Affairs Prosecutor’s Office and charged with the crime of abuse of authority based on a complaint filed by Judge Blanca Stalling.<sup>248</sup> On September 25, the Tenth Judge of First Criminal Instance, Drug Trafficking and Crimes against the Environment decreed the indictment and remanded her in custody, considering that “neither the defendant nor her defense attorneys were able to disprove the danger of flight, as well as obstruction of the investigation,” and she remains in custody at the Mariscal Zavala Center.<sup>249</sup>

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<sup>244</sup> República, “[Por caso de desfalco al IGSS ordenan captura de Aldana, Sandoval y Aifán \(Arrest of Aldana, Sandoval, and Aifán ordered for embezzlement of IGSS funds\)](#),” May 3, 2023; Prensa Comunitaria, “[Ordenan la detención de la exjueza Erika Aifán y dos exfiscales del MP \(Arrest warrants issued against former judge Erika Aifán and two former prosecutors of the MP\)](#),” May 3, 2023.

<sup>245</sup> “The Third Pluripersonal Court of First Criminal Instance of Drug Trafficking and Crimes against the Environment of the department of Guatemala announced the decision of the Appeals Chamber, which accepted the appeal filed by the Prosecutor’s Office of Internal Affairs, and ordered criminal proceedings against Paola Mishell Escobar Quiñonez and Aliss Noemí Morán Mejía for the crime of abuse of authority. The judge also ordered that they be remanded in custody and granted a period of 3 months for the investigation. The intermediate stage hearing was scheduled for August 29, 2023.” X account of the Public Prosecutor’s Office of Guatemala (@MPguatemala), [pronouncement of May 15, 2023](#).

<sup>246</sup> Prensa Comunitaria, “CC respalda fallo que encarceló a dos exfiscales auxiliares de FECCI (CC backs ruling that imprisoned two former FECCI assistant prosecutors),” August 9, 2023.

<sup>247</sup> “At the request of the Internal Affairs Prosecutor’s Office and based on the evidence presented, the Ninth Court of First Criminal Instance, Drug Trafficking and Environmental Crimes, decided to indict prosecutors Stuardo Ernesto Campo Aguilar, Gonzalo Rafael Chilel López, and Carlos Faustino Pérez Flores, for the crime of breach of duty. According to the investigation, in the exercise of their functions in the Prosecutor’s Office of the Section against the Smuggling of Migrants, they carried out actions that caused a 70 year old person to be unjustly apprehended and held in a detention center for 27 days while awaiting the resolution of his legal situation. The accused were remanded in custody at the Mariscal Zavala Detention Center, zone 17.” X account of the Public Prosecutor’s Office of Guatemala (@MPguatemala), [pronouncement of June 06, 2023](#).

<sup>248</sup> On the same day, the Public Prosecutor’s Office searched the homes of the parents of former prosecutors Eva Siomara Sosa Pérez and Juan Francisco Sandoval, who are elderly and claimed that they were victims of intimidation by agents of the Public Prosecutor’s Office. On this, see: (@MPguatemala), [pronouncement of August 28, 2023](#).

<sup>249</sup> The Public Prosecutor’s Office informed that it considers that the defendant could have committed that crime since she had acted a Judicial Mandate to represent the International Commission against Impunity in Guatemala (CICIG) and was authorized to act on its behalf. Acting therefore as a public official or employee of a Public International Organization as established in Article 418 of the Penal Code, and in such capacity, she carried out and allowed illegal acts to the detriment of the public administration and another public official, by promoting impeachment proceedings (*diligencias de antejuicio*) without having the authority to do so. In addition, she used means that had been collected prior to the filing of the complaint. Likewise, she intervened in said process without the defendant being an illegal

118. In connection with her detention, the UN Secretary General again called on the State of Guatemala to respect the agreement between the United Nations and the Government to protect CICIG staff from abuses, threats, reprisals, or acts of intimidation because of their work.<sup>250</sup> On the other hand, the information received by the IACHR indicates that the deprivation of liberty of Ms. González also constitutes a reprisal for her work as defense attorney for 12 former prosecutors indicted as a result of 150 complaints, among them Juan Francisco Sandoval and Virginia Laparra. In this regard, civil society organizations have complained that her arrest “constitutes a clear attempt to silence her”<sup>251</sup> and denounced severe irregularities in the process against her, such as: the initial refusal to hold the hearing to hear the charges; the failure of the Public Prosecutor’s Office to appear at the hearing in order to prolong the process; and the failure to comply with the constitutional deadline of 24 hours to hold the hearing for the first statement. In addition, Claudia González reportedly remains in solitary confinement.<sup>252</sup>

119. In short, at the end of the first semester of 2023, the Inter-American Commission observed with concern that the criminalization resulted in the detention and deprivation of liberty of attorney Claudia Gonzalez and eight justice operators under allegations of violations of the right to defense and due process guarantees.

Justice operators deprived of their liberty in 2023 <sup>253</sup>		
<b>Aliss Moran Mejia</b>	Former FECCI Prosecutor	Remanded in custody since May 2023.
<b>Virginia Laparra Rivas</b>	Former head of the FECCI of Quetzaltenango	Arrested in February 2022, convicted of abuse of authority and usurpation of functions.
<b>Samari Gómez Díaz</b>	Assistant prosecutor FECCI	In July 2022 she was arrested along with José Rubén Zamora; she was indicted for allegedly disclosing confidential information. She remained deprived of her liberty until June 2023.
<b>Paola Mishelle Escobar Quiñonez</b>	Assistant prosecutor FECCI	Remanded in custody since May 2023.
<b>Stuardo Campo Aguilar</b>	Former Chief Prosecutor of the Anti-Corruption Prosecutor’s Office	Remanded in custody since May 26, 2023.
<b>Gonzalo Chilel López</b>	Prosecutor’s Office for the Smuggling of Migrants	Remanded in custody since May 26, 2023.
<b>Carlos Pérez Flores</b>	Prosecutor’s Office for the Smuggling of Migrants	Remanded in custody since May 26, 2023.
<b>Brayan Palencia Carrera</b>	Prosecutor’s Office for the Smuggling of Migrants	Remanded in custody from May 26 to June 6.

120. With respect to the detention of these individuals, other matters of concern reported to the IACHR include, inter alia, violations of due process and the right to defense due to dilatory practices in the criminal proceedings, particularly with respect to the holding of the first statement hearing with a view to keeping individuals uncertain about the charges against them and their legal situation; the appointment of judges allegedly aligned with political groups interested in maintaining impunity; the arbitrary use of confidentiality to deny the accused access to files; the excessive use of pretrial detention.<sup>254</sup>

121. For its part, the State of Guatemala informed the IACHR that the aforementioned persons have at all times had access to medical and basic services, security conditions, food, and communication with family

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security body or apparatus, in addition to the fact that there was no authorization from the Attorney General at the request of the Commissioner for the intervention of said international entity and its personnel, as required by the cooperation agreement signed between the MP-CICIG. Public Prosecutor’s Office, [“En el caso ‘Persecución Penal Ilegal fase I’ fue ligada a proceso una persona por el delito de abuso de autoridad \(In the ‘Illegal Criminal Prosecution Phase I’ case, a person was indicted for the crime of abuse of authority\),”](#) September 25, 2023.

<sup>250</sup> UN, [Statement attributable to the Spokesperson for the Secretary-General - on Guatemala](#), September 28, 2023.

<sup>251</sup> Amnesty International, Guatemala: Lawyer” August 29, 2023.

<sup>252</sup> Plaza Pública, [“The case against Claudia Gonzalez is ‘the symbol of the fight against injustice by the MP’”](#), September 14, 2023.

<sup>253</sup> Prepared by the authors based on information received by the IACHR in the course of its monitoring activities.

<sup>254</sup> Attached to the request for thematic hearing “Manipulation (*Instrumentalización*) of the Public Prosecutor’s Office and political persecution in Guatemala,” August 10, 2023. On file at the IACHR.

members and their lawyers through visits, on the days established for this purpose.<sup>255</sup> It also indicated that “all their rights have been guaranteed, including the right to defense; that they have had access to all the remedies available to them under the law.”<sup>256</sup> Regarding the aforementioned persons who are being held in pretrial detention, the State of Guatemala indicated that “the jurisdictional bodies, with the evidence and convictions brought to their attention, established in a timely fashion that some or all of the requirements established in the Code of Criminal Procedure were met in order to decree that these persons presented a danger of flight or of hindering the investigation of the truth, and therefore they determined that pretrial detention was the most appropriate measure to guarantee the integrity and result of the criminal proceeding.”<sup>257</sup>

122. In this serious context, the IACHR stresses that the United Nations mechanisms have described the detentions and the use of deprivation of liberty in some of these cases as arbitrary. On April 3, 2023, the United Nations Working Group on Arbitrary Detention considered that the deprivation of liberty of the former FECI prosecutor, Lilian Virginia Laparra Rivas, was arbitrary and contrary to international human rights law, and therefore requested the State to immediately release her. Among other reasons, the Working Group considered that Ms. Laparra Rivas was deprived of her liberty for the exercise of her functions “when she filed a disciplinary complaint against a judge, due to the information she possessed and considered credible that this judge had leaked information in judicial proceedings related to corruption. The exercise of her functions is part of her legitimate right to freedom of opinion and expression.” Furthermore, it considered that “she has been kept in prolonged detention for exercising her legitimate right to defense, since the examining magistrate pointed out her numerous resources as one of the reasons why she should be deprived of her liberty.”<sup>258</sup>

123. On October 30, 2023, the Committee on the Elimination of Discrimination against Women (CEDAW) urged Guatemala to eradicate the arbitrary use of criminal law, including for arrest warrants and pre-trial detention, as reprisals against women human rights defenders in judicial functions, to obstruct their legally mandated work, and to refer the cases of Virginia Laparra and Claudia Gonzalez for re-trial, and immediately release them pending trial, as other UN mechanisms have called for.<sup>259</sup>

124. The Inter-American Commission calls on the State of Guatemala to put an end to the judicial persecution, criminalization, and arbitrary deprivation of liberty of justice operators, former justice operators and human rights defenders, because of their work in the fight against impunity. In particular, the Judiciary must fully exercise its autonomy in order to effectively guarantee the rights to due process and access to justice, and exercise its role of control over the misuse of the criminal justice system as a tool to persecute human rights defenders, justice operators, and other government critics.

125. On this point, the State of Guatemala indicated in its observations on this report that “the initiation of an investigation or criminal proceeding against justice operators does not presuppose their guilt or conviction, but only the initiation of procedures established by law, through which the truth of the facts must be elucidated, the occurrence or not of criminal offenses determined, and, if applicable, the persons responsible

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<sup>255</sup> Response of the State of Guatemala to the request for information from the Inter-American Commission on Human Rights regarding the situation of justice operators deprived of their liberty. Report DIDEH-DEPCADEH--043-2023/LFLL of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-215-2023, August 07, 2023.

<sup>256</sup> Response of the State of Guatemala to the request for information from the Inter-American Commission on Human Rights regarding the situation of justice operators deprived of their liberty. Report DIDEH-DEPCADEH--043-2023/LFLL of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-215-2023, August 07, 2023.

<sup>257</sup> Response of the State of Guatemala to the request for information from the Inter-American Commission on Human Rights regarding the situation of justice operators deprived of their liberty. Report DIDEH-DEPCADEH--043-2023/LFLL of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-215-2023, August 07, 2023.

<sup>258</sup> Cf. Human Rights Council, Working Group on Arbitrary Detention, [Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session](#), 27 March-5 April 2023, A/HRC/WGAD/2023/24, 18 May 2023.

<sup>259</sup> Committee on the Elimination of Discrimination against Women (CEDAW), [Concluding observations on the tenth periodic report of Guatemala](#), CEDAW/C/GTM/CO/10, paras. 30-33

for them identified.”<sup>260</sup> Thus, the State contended that “the fact that the IACHR is requesting that investigations be halted generates impunity and likewise violates the principle of equality, since the request is directed specifically against certain officials, which can be understood as a biased and non-objective request.”<sup>261</sup> Finally, it added that “in any democratic system, people are subject to the rule of the current legal system; therefore, no one can be above the law, regardless of the position they hold or the function they perform, and they must be subject to the corresponding administrative and jurisdictional procedures and exercise their right of defense and petition in each of them.”<sup>262</sup>

## 2. Abuse of pre-trial/impeachment procedure (*antejuicio*)

126. In 2023, the IACHR observed the persistence of the filing of complaints and the abuse of the impeachment procedure as a mechanism of harassment and retaliation directed against justice operators, in an attempt to strip them of their jurisdictional immunity or force them to resign and leave the country. As the IACHR has pointed out, such impeachments do not follow the procedure established by law, among other reasons, because they are assigned to magistrates with a direct interest in the case, who process them without the guarantees of due process and the right to defense.

127. In this context, on September 27, 2023, the IACHR was informed of the resignation and forced exile of Carlos Giovanni Ruano, judge (*juez vocal*) of the Ninth Criminal Sentencing Court of Guatemala and vice president of the Guatemalan Association of Judges for Integrity (AGJI) due to the criminal prosecution and request for his impeachment filed by Judge Blanca Stalling and the FCT.<sup>263</sup>

128. In February 2022, the CSJ decided to process the request for impeachment and, on September 28, 2023, the Tenth Criminal Court of First Instance for Drug Trafficking and Crimes against the Environment issued an arrest warrant against him for the crimes of abuse of authority, ideological falsehood, accusation and false accusations, for facts related to the same proceedings against former FECCI officials, Juan Francisco Sandoval Alfaro, Eva Siomara Sosa Pérez and the former CICIG president, Claudia González Orellana in the case called “Illegal criminal prosecution phase I.” According to the complainant, at all times, the Judicial Branch denied him a copy of the judicial file, thus hindering his right to defense.<sup>264</sup> In this regard, the United Nations Special Rapporteur on the Independence of Judges and Lawyers expressed her serious concern about the patterns of criminalization observed in a context of attacks against judges, magistrates, and prosecutors.<sup>265</sup>

129. Requests for lifting of immunity also began to be used in the electoral context. Thus, on August 23, 2023, the Office of the Prosecutor for Administrative Crimes filed a request for the lifting of immunity against the Magistrates of the Supreme Electoral Tribunal, Irma Elizabeth Palencia Orellana and Mynor Custodio Franco Flores, as well as the alternate Magistrate, Álvaro Ricardo Cordón Paredes for the possible

<sup>260</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 43.

<sup>261</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 43.

<sup>262</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 43.

<sup>263</sup> According to information in the public domain, this complaint was due to the fact that the magistrate summoned judge Ruano to her office to present aspects of a case against her son Otto Fernando Molina Stalling and to advocate for him, since the judge would hear the case in court. As a result of this complaint, the magistrate was prosecuted for influence peddling, because the judge recorded the conversation with the official in order to have proof that he was summoned to the meeting and that at no time did he compromise his work, nor did he accept what she proposed to him. Report of the Mission of Judges of the Latin American Federation of Magistrates and the International Union of Magistrates, “[Ataques a la independencia judicial en Guatemala \(Attacks on Judicial Independence in Guatemala\)](#),” October 2022, p.9; Agencia Ocote, “[Carlos Ruano el último juez en la mira \(Carlos Ruano the latest judge to be targeted\)](#),” March 30, 2023; Independencia Judicial, “[Retalias contra el Juez Ruano \(Reprisals against Judge Ruano\)](#),” 2023.

<sup>264</sup> Prensa Comunitaria, “[Juez Jimi Bremer veda el derecho de defensa al exjuez Carlos Ruano \(Judge Jimi Bremer vetoes the right of defense of former judge Carlos Ruano\)](#),” October 4, 2023.

<sup>265</sup> United Nations, “[Guatemala: Guatemala: UN expert concerned by proceedings against Judge Carlos Giovanni Ruano](#),” July 14, 2023.

commission of the crimes of breach of duty, abuse of authority, and resolutions in violation of the Constitution.<sup>266</sup> According to official information, the Prosecutor's Office considered that the officials possibly incurred in the commission of criminal acts by declaring the candidate's registration admissible when they were fully aware that he did not comply with the requirements of Article 113 of the Political Constitution of the Republic of Guatemala, which defines the requirements of capacity, suitability, and honesty, as well as Articles 162 and 164, which establish the prohibitions and compatibilities.<sup>267</sup> On November 7, the Supreme Court of Justice resolved to proceed with that preliminary hearing. On November 30, at the recommendation of the commission of investigation, the Congress of the Republic decided to definitively remove the immunity of four TSE magistrates who are currently out of the country.<sup>268</sup> These facts are part of a series of actions and interferences in the electoral process, through the instrumentalization of the law and the lack of independence of the Public Prosecutor's Office.

130. In a communication sent to the IACHR, the State of Guatemala reiterated that "in all impeachment proceedings (*proceso de antejuicio*), the rights of those involved are guaranteed and it is a requirement that is designed precisely to safeguard the guarantees that go with the office and, when applicable, judicial independence."<sup>269</sup> It also indicated that "the pre-trial proceedings/impeachment is a prerogative that is regulated in Article 165. h of the Political Constitution of the Republic of Guatemala (CPRG), a norm that refers to the Law on Pre-Trial/Impeachment Proceedings, Decree 85-2002 of the Congress of the Republic, Article 3 of which establishes that this is a guarantee that is granted to officials and which is inalienable, imprescriptible, and unwaivable."<sup>270</sup>

131. Similarly, the State declared that "holding the position of judge or magistrate does not make a person unpunishable for possible criminal acts, so that the pre-trial proceeding/impeachment embodies the balance between the responsibility of the judge or magistrate and the function he or she performs, since prior to initiating criminal proceedings it must be determined whether there are sufficient elements to do so."<sup>271</sup> The request made by any person to withdraw a pre-trial proceeding against an official cannot be considered as a form of intimidation; on the contrary, it derives from the right of individuals to submit to the competent bodies acts or omissions that they consider illegal, in order to verify that public officials who enjoy this prerogative act in accordance with the law in the exercise of their duties."<sup>272</sup> According to the State, "the initiation of a pre-trial proceeding/impeachment is not synonymous with the initiation of a criminal proceeding, as the State has

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<sup>266</sup> On March 13, 2023, the Public Prosecutor's Office received a complaint against the Magistrates of the Supreme Electoral Tribunal Irma Elizabeth Palencia Orellana, Mynor Custodio Franco Flores, and Álvaro Ricardo Cordón Paredes, the latter an alternate Magistrate, who on March 9, 2023, resolved in file 930-2023 to admit the appeal for annulment filed by the National General Secretary and Legal Representative of the "Cambio" political party, partially revoking resolution PE-DGRC-354-2023 RJMJ/crrdl, dated March 2, 2023, issued by the General Directorate of the Citizens Registry Office, and consequently declared the registration of the citizen Manuel Antonio Baldizón Méndez, as candidate for Deputy to the Congress of the Republic of Guatemala for the national list, in box one for the party "Cambio," to be admissible.

<sup>267</sup> [Ministerio Público solicita levantamiento de inmunidad de dos magistrados titulares y un suplente del TSE \(Public Prosecutor's Office requests lifting of immunity of two incumbent magistrates and one alternate magistrate of the TSE\)](#) August 23, 2023.

<sup>268</sup> "The Plenary of the Congress of the Republic approved to declare with place the formation of cause the pre-trial proceedings promoted against Messrs. Irma Elizabeth Palencia Orellana, Ranulfo Rafael Rojas Cetina, Gabriel Vladimir Aguilera Bolaños and Mynor Custodio Franco Flores, in their capacity as titular magistrates of the Supreme Electoral Tribunal, for the possible commission of crimes committed in the acquisition of the system of Transmission of Preliminary Electoral Results (TREP)." X account of the Congress of the Republic (@CongresoGuate), [pronouncement of November 30, 2023](#). See also: [Report of the Secretary General of the Organization of American States on the Mission for the Transition Process in Guatemala](#). Presented during the extraordinary session of the Permanent Council held on September 18, 2023. CP/INF.9909/23.

<sup>269</sup> Comments by the State of Guatemala on the proposed press release: "[Guatemala: IACHR urges the State to respect the Constitutional Order](#)." Report DIDEH/DEPCADEH-055-2023/WEBS/LFLL of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-326-2023, August 7, 2023.

<sup>270</sup> Comments by the State of Guatemala on the proposed press release: "[Guatemala: IACHR urges the State to respect the Constitutional order](#)." Report DIDEH/DEPCADEH-055-2023/WEBS/LFLL of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-326-2023, August 7, 2023.

<sup>271</sup> Comments by the State of Guatemala on the proposed press release: "[Guatemala: IACHR urges the State to respect the Constitutional order](#)." Report DIDEH/DEPCADEH-055-2023/WEBS/LFLL of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-326-2023, August 7, 2023.

<sup>272</sup> Comments by the State of Guatemala on the proposed press release: "[Guatemala: IACHR urges the State to respect the Constitutional order](#)." Report DIDEH/DEPCADEH-055-2023/WEBS/LFLL of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-326-2023, August 7, 2023.

explained extensively in thematic hearings and reports, the pre-trial proceeding entails a series of stages that must be exhausted prior to initiating a criminal case, respecting due process in accordance with Article 8 of the American Convention on Human Rights. And when it comes to initiating a criminal proceeding, every person enjoys the right of presumption of innocence provided for in Article 14 of the Guatemalan Constitution (CPRG).<sup>273</sup>

132. In this regard, as has been pointed out by the IACHR, although the preliminary hearing (*antejuicio*) constitutes a guarantee in favor of justice operators, in the current context of Guatemala, this procedure has been used as a mechanism to control their work and as a means of intimidation, distraction, and obstruction against them.<sup>274</sup> This is reportedly possible due to the lack of independence of the entities in charge of the pre-trial proceeding, among them, the Public Prosecutor's Office and the CSJ.<sup>275</sup> As mentioned above, this mechanism was even used this year against members of the TSE in the context of the General Elections and in retaliation to its resolutions.

133. In this connection, the Commission recalls that continued validity of rights and freedoms in a democratic system requires a legal and institutional order in which laws prevail over the will of the rulers and individuals, and in which there is effective judicial control of the constitutionality and legality of the exercise of public power. For this reason, unlike other public officials, judges enjoy reinforced guarantees for the exercise of their jurisdictional power, especially independence in the performance of their functions. This guarantee functions as a corollary of the right of access to justice for all persons and is embodied in a proper appointment process, irremovability in office, and a guarantee against pressure from judges.<sup>276</sup>

134. The Inter-American Commission reminds the State of Guatemala that it is prohibited by international law to establish as disciplinary grounds or, in this case, as grounds for impeachment, actions related to the judgment or legal criteria developed by justice operators in a decision, in the exercise of their jurisdictional function. For this reason, it reiterates that one of the essential aspects to be considered in the resolutions that establish sanctions against justice operators is that the disciplinary investigations and sanctions that are imposed may under no circumstance be substantiated by the legal judgment argued in any of its resolutions.<sup>277</sup> Likewise, taking into account the risks entailed by the free removal of justice operators for access to justice, as well as the punitive nature of disciplinary proceedings, the acts aimed at punishing them for reasons attributable to their conduct must observe the principle of legality and the guarantees of due process.<sup>278</sup>

135. The Inter-American Commission urges Guatemala to take measures to prevent the misuse of criminal law as a way to restrict the independent work of justice operators, particularly judges. It also calls for the cessation of any interference against the independence of the Judiciary in order to guarantee independent and impartial justice proper to a State governed by the rule of law.

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<sup>273</sup> Comments by the State of Guatemala on the proposed press release: "[Guatemala: IACHR urges the State to respect the Constitutional order](#)." Report DIDEH/DEPCADEH-055-2023/WEBS/LFLL of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-326-2023, August 7, 2023.

<sup>274</sup> See IACHR, [Resolution 34/2017](#), *Precautionary Measure No. 431/2017, Glorias Patricia Porras Escobar and family, Guatemala*, August 29, 2017, par. 22.

<sup>275</sup> In its report Chapter IVB of the 2021 Annual Report, the IACHR indicated that as an example of the above, the information received indicated that the Attorney General failed to respond to requests made by the judges at greatest risk to definitively dismiss unfounded complaints against them, some of which date back to 2012, but which nevertheless reportedly remain active in order to maintain a climate of fear and control in the performance of their jurisdictional work. See: IACHR, 2021 Annual Report, Chapter IVB, Venezuela, par. 74; IACHR, Press Release No. 37/22, Guatemala, February 22, 2022. See also IACHR, *Resolution 34/2017, Precautionary Measure No. 431/2017, Gloria Patricia Porras Escobar and family, Guatemala*, August 29, 2017, par. 22.

<sup>276</sup> IACHR, [Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II. Doc.44, December 05, 2013, par. 24.

<sup>277</sup> IACHR, [Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II. Doc.44, December 05, 2013, par. 216.

<sup>278</sup> IACHR, [Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II. Doc.44, December 5, 2013, par. 216.

## B. Failure of the State to combat impunity with respect to cases of gross human rights violations and corruption

136. In the past three years, the criminalization of more than a dozen justice operators and the gradual co-opting of the justice system has resulted in a situation of impunity in Guatemala, particularly due to severe setbacks, the dismissal of, and lack of progress in, cases linked to the internal armed conflict and cases of large-scale corruption, including cases with an Inter-American Court judgment in the supervision stage and/or with provisional measures in force.

137. In addition to their role in the judicial persecution of justice operators, various judicial bodies such as the CSJ, the CC, and the Third Criminal Appeals Chamber and the Seven A Pluripersonal Court of First Criminal Instance, Drug Trafficking and Environmental Crimes have been questioned for their actions to benefit groups interested in perpetrating impunity, through the annulment of sentences, annulment of arrest warrants, or the rejection of pre-trial/impeachment proceedings. Different journalistic investigations revealed that approximately 100 people accused in investigations carried out by CICIG have benefited from the partial or total closure of their cases between 2021 and April 2023.<sup>279</sup>

138. Among other cases, in 2023, the CC allegedly benefited those involved in the “Parallel Commissions” case by denying an injunction (amparo) that sought to keep in force a plea bargain that was used in the process. Likewise, on March 6, 2023, it granted an injunction in favor of providing alternative measures to the deprivation of liberty to three retired military personnel convicted in the Molina Theissen case.<sup>280</sup> In this regard, the IACHR recalled that in the case of persons convicted of serious human rights violations, requests for alternative measures to imprisonment are subject to more demanding analysis and requirements, in accordance with the principle of proportionality and applicable inter-American standards.<sup>281</sup> For their part, the FECI and the Public Prosecutor’s Office have been singled out for failing to act in corruption cases, such as: “Assault on the Ministry of Health”, “Genesis Case: Impunity and Dispossession in Petén”, “IGSS-PISA” and even the closing of the investigation into corruption involving the current president known as “Magic Carpet” in 2023, among others.<sup>282</sup>

139. In addition, the IACHR has received information on setbacks in cases related to the internal armed conflict that reportedly even resulted in non-compliance with judgments and resolutions issued by the Inter-American Court with respect to Guatemala. In this regard, civil society organizations reported on the setbacks in the *Diario Militar* case, after the resignation and forced exile of the Judge in charge of the case, Miguel Ángel Gálvez, beneficiary of provisional measures,<sup>283</sup> such as: the granting of substitute measures to the accused by the alternate judge of the High Risk Court B.<sup>284</sup> Likewise, in April 2023, the agent of the Human Rights Prosecutor’s Office, Elena Sut, in charge of the same process and other emblematic cases of the internal

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<sup>279</sup> See: Agencia Ocote, “[La Justicia en Guatemala está más lejos: tres casos que lo explican.](#)” [Justice in Guatemala is further away: three cases that explain it] July 14, 2023; Plaza Pública, “[Radiografía de los casos de la Feci-Cicig: van 83 beneficiados.](#)” [X-ray of the Feci-Cicig cases: 83 beneficiaries have benefited] December 5, 2022.

<sup>280</sup> Prensa Comunitaria, “[Caso Molina Theissen \[Molina Theissen case\]: Resolución de la CC recomienda dejar en libertad a militares condenados](#)” [Resolution of the CC recommends the release of convicted military personnel] March 8, 2023.

<sup>281</sup> IACHR. Resolution 1/2020. The Pandemic and Human Rights in the Americas, par. 46.

<sup>282</sup> Prensa Comunitaria, “[MP cierra caso “Alfombra mágica” que implicaba en sobornos rusos a Giammattei](#)” [Public Prosecutor’s Office closes “Magic Carpet” case that implicated Giammattei in Russian bribes] October 25, 2023; Red de Información del Combate a la Impunidad, “Combating Impunity Information Network, “[FECI-CICIG cases ignored and stalled under Porras and Curruchiche.](#)” August 18, 2023.

<sup>283</sup> Washington Office on Latin America (WOLA), Due Process of Law Foundation (DPLF), Latin America Working Group (LAWG), Roberto F. Kennedy Human Rights (RFKHR), Center for Justice and International Law (CEJIL), Protection International (Mesoamerica) Impunity Watch, Guatemalan Human Rights Commission (GHRC), [Guatemala: Case](#), November 30, 2022; El Faro, “[Las viejas estructuras clandestinas de Guatemala completan la cacería contra el juez Gálvez](#) [Guatemala’s old clandestine structures complete the hunt against Judge Galvez],” November 15, 2022.

<sup>284</sup> Prensa Comunitaria, “[Juez beneficia a acusados del Diario Militar con arresto domiciliario: víctimas expresan indignación](#) [Judge benefits Diario Militar defendants with house arrest: victims express indignation],” February 1, 2023; Agencia Ocote, “[La Justicia en Guatemala está más lejos: tres casos que lo explican.](#)” July 2023.

armed conflict such as Bámaca Velásquez, was transferred to the Prosecutor's Office for Adolescents in Conflict with Criminal Law.<sup>285</sup>

140. The IACHR was told that this decision was contrary to the provisional measures granted by the Inter-American Court. In a resolution of November 22, 2022, the Inter-American Court required the State of Guatemala, "to guarantee the right of access to justice of the victims in the cases of Bámaca Velásquez, Maritza Urrutia, Plan de Sánchez Massacre, Chitay Nech et al, Río Negro Massacres, and Gudiel Álvarez et al. ("Diario Militar") and to adopt all appropriate measures to effectively protect the rights to life and personal integrity of the head prosecutor of the Human Rights Prosecutor's Office of Guatemala along with the measures needed to guarantee her independence in the exercise of her office."<sup>286</sup> Although the information available indicates that the Public Prosecutor's Office made the transfer on the recommendation of the Security Department, in its Resolution, the Inter-American Court emphasized that the prosecutor herself was opposed to her transfer because she considered that she should "have other measures that would allow her to remain in charge of the investigations in the emblematic cases that have been sentenced."<sup>287</sup>

141. In its observations on this report, the State of Guatemala reported that Elena Gregoria Sut Ren presented her resignation on May 31, 2023.<sup>288</sup> With respect to the "Diario Militar" case, the State reported that the Public Prosecutor's Office, through the Human Rights Prosecutor's Office, "has conducted an objective investigation in accordance with the principles and legal norms established at both the national and international levels, as a result of which 14 persons are currently facing criminal proceedings."<sup>289</sup> In accordance with Article 277 of the Code of Criminal Procedure, the accused and their defense attorneys have requested the review of coercive measures, and those requests have been heard in bilateral hearings and substitute measures have been granted to several defendants in accordance with the provisions of Article 264 of that legal code."<sup>290</sup> It also noted that the Public Prosecutor's Office has proceeded to analyze each resolution and in most of them has presented the corresponding appeal in order to ensure effective judicial protection:<sup>291</sup> "To date, the competent jurisdictional chamber has revoked several of the substitutive measures granted to the defendants and they are pending execution by the controlling jurisdictional body, without prejudice to any amparo actions that may be filed by the accused."<sup>292</sup>

142. In connection with the case of Molina Theissen v. Guatemala, on June 9, 2023, in alleged compliance with a ruling of the Constitutional Court, the First High Risk Court ordered substitution measures for three former military personnel convicted of the aggravated rape of Emma Molina Theissen and the forced disappearance of the child Marco Antonio Molina Theissen, events that occurred in 1982.<sup>293</sup> In this regard, civil

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<sup>285</sup> Prensa Comunitaria, "MP traslada a la fiscal encargada del caso del Diario Militar," (Public Prosecutor's Office transfers the prosecutor in charge of the Diario Militar case) April 11, 2023; Prensa Libre, "[MP traslada a la fiscal encargada del caso del Diario Militar](#) [Public Prosecutor's Office transfers prosecutor in charge of the Diario Militar case]," April 11, 2023.

<sup>286</sup> Cf. IACourtHR, [Cases Bámaca Velásquez, Maritza Urrutia, Plan de Sánchez Massacre, Chitay Nech and others, Río Negro Massacres, and Gudiel Álvarez and others \("Diario Militar"\) Vs. Guatemala](#). Provisional Measures and Monitoring of Compliance with the Judgment. Order of the Inter-American Court of Human Rights of November 22, 2022.

<sup>287</sup> Cf. IACourtHR, [Cases Bámaca Velásquez, Maritza Urrutia, Plan de Sánchez Massacre, Chitay Nech and others, Río Negro Massacres, and Gudiel Álvarez and others \("Diario Militar"\) v. Guatemala](#). Provisional Measures and Monitoring of Compliance with the Judgment. Order of the Inter-American Court of Human Rights of November 22, 2022.

<sup>288</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 54.

<sup>289</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 54.

<sup>290</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 54.

<sup>291</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 54.

<sup>292</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 54.

<sup>293</sup> Cf. Judgement of March 6, 2023, issued by the Constitutional Court, Case File 1198-2022.

society organizations denounced that this decision was in open contempt of the March 24, 2023 Resolution of the IACHR Court, which ordered the State of Guatemala to refrain from executing the decision issued by the CC, until such time as a pending request for provisional measures was resolved.<sup>294</sup> In the case of *García and Family v. Guatemala*, on September 21, the IACHR learned that the alternate judge of the High Risk Court “B” also dismissed the case in favor of a former police officer accused of being responsible for the forced disappearance of Fernando García.<sup>295</sup>

143. In this regard, in its observations on the present report, the State of Guatemala indicated that “the jurisdictional body, guarantor of the criminal process and in compliance with its function as a supervisory body, applies the law in accordance with the requirements and evidence presented by each of the parties.”<sup>296</sup> According to the State, “all judges are empowered to resolve cases according to law and to order the measures they consider appropriate in each proceeding, with total independence at the time of issuing those resolutions and respecting constitutional guarantees. Accordingly, if the person against whom the resolution was issued feels that the resolution is not in accordance with the law, he/she may make use of the resources that he/she deems appropriate.”<sup>297</sup>

144. Finally, the IACHR received with concern information on the progress in the processing of bill 6099, “Law for the strengthening of peace”, which seeks to establish an absolute amnesty for gross human rights violations committed during the internal armed conflict and, if approved, to prevent the jurisdictional bodies from carrying out a conventionality control, which could leave at least ten active cases in impunity before the country’s courts, including: Mayan Ixil Genocide 1978-1982 and 1982-1983, Dos Erres Massacre, Diario Militar, Creompaz, Xamán Massacre, Tululché Massacre, Achí Women Case, Tactic Case and the Molina Theissen Case.<sup>298</sup>

145. In particular, on November 23, 2022, the Plenary of the Congress of the Republic transferred the bill for study by the Human Rights Commission.<sup>299</sup> On August 23, 2023, the Commission issued a favorable opinion on the bill “after analyzing the articles of the Bill and the respective ordinary constitutional and legal considerations.”<sup>300</sup> In a session held on September 27, 2023, the Plenary heard the bill in first debate and approved a motion to submit it to the Constitutional Court for optional consultation, in order to determine

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<sup>294</sup> I/A Court H.R. *Case of Molina Theissen v. Guatemala. Request of Provisional Measures*. Order of the Inter-American Court of Human Rights of March 24, 2023.

<sup>295</sup> I/A Court H.R., Hearing on Supervision of Compliance in the Case of García and family members v. Guatemala, March 13, 2023.

<sup>296</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 55.

<sup>297</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 55.

<sup>298</sup> FADS, Legal Analysis of Amnesty Bills. Unconstitutionality in light of international human rights standards, 2022, p. 4; See also: Prensa Comunitaria, “[Familia Molina Theissen ha sido revictimizada; atraso del Estado para cumplir sentencia, solo favorece impunidad \[Molina Theissen family has been revictimized; delay by the State to comply with sentence, only favors impunity\]](#),” November 24, 2022.

<sup>299</sup> Response of the State of Guatemala to the request for information from the Inter-American Commission on Human Rights regarding Bill (Law Initiative) No. 6099 “Strengthening for Peace Act.” Report DIDEH-DEPCADEF-056-2023/LOCK/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-322-2023, October 9, 2023.

<sup>300</sup> Response of the State of Guatemala to the request for information from the Inter-American Commission on Human Rights regarding Bill (Law Initiative) No. 6099 “Strengthening for Peace Act.” Report DIDEH-DEPCADEF-056-2023/LOCK/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-322-2023, October 9, 2023.

whether it violates constitutional principles or human rights treaties.<sup>301</sup> On October 23, 2023, the CC refused to hear the consultation.<sup>302</sup>

146. The IACHR asked the State for information about that Bill, pursuant to the attributions granted it under Article 41 of the American Convention. In this regard, the State of Guatemala informed the IACHR that, in accordance with the Organic Law of the Legislature, “the presentation of legislative initiatives is a right by which one or more deputies, in the exercise of their functions, may present draft legislation (bills).” In this regard, it stated that the presentation of the Bill “represents only the first step in the process of creating a law,”<sup>303</sup> therefore “it is not possible to speculate or anticipate the results that will be obtained by Bill number 6099.”<sup>304</sup> Finally, it ratified that its approval “seeks to achieve social peace and harmony among Guatemalans, in addition to avoiding violations to the judicial guarantees enjoyed by all parties involved in criminal proceedings in connection with events that occurred during the internal armed conflict.”<sup>305</sup>

147. In relation to these facts, on October 20, 2023, in a resolution ordering provisional measures, the IACHR Court considered that the passing of this law or similar initiatives would have a negative and irreparable impact on the right of access to justice of the victims in 14 Guatemalan cases in which it has issued a judgment, so it ordered the State of Guatemala to take the necessary measures so that “they are either not adopted, left without effect, or not put into effect.”<sup>306</sup> The Court also reiterated that “Guatemala has a serious problem with respect to the impunity that prevails in the country, specifically in relation to the systematic violations of human rights that occurred during the armed conflict.”<sup>307</sup>

148. As has been pointed out by the IACHR, this initiative states in Article 1 that: “The extinction of criminal liability and the extinction of the penalty, by absolute and inclusive amnesty in favor of all persons who have incurred by action or omission, in the exercise of their positions as members of the Army of Guatemala and other security forces of the State, and members of subversive groups, in the alleged commission of political and related common crimes, without any exclusion of criminal categories, during the period of the

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<sup>301</sup> Response of the State of Guatemala to the request for information from the Inter-American Commission on Human Rights regarding Bill (Law Initiative) No. 6099 “Strengthening for Peace Act.” Report DIDEH-DEPCADEH-056-2023/LOCK/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-322-2023, October 9, 2023.

<sup>302</sup> Congress of the Republic, “[CC se inhibe de conocer consulta en torno a la iniciativa 6099 \[CC refrains from hearing the consultation on Bill 6099\]](#)” October 25, 2023.

<sup>303</sup> The State informed that the process of creating laws is regulated by the National Constitution and the Organic Law of the Legislative Branch. In this regard, it stated that: after the presentation of the bill, it must be submitted to the Congressional Committee in charge of the matter addressed by the bill, which shall issue a favorable or negative opinion. After the opinion is issued by the respective Committee, it is heard by the Plenary of the Congress together with the bill and will be discussed in three sessions held on different days. On the other hand, if the opinion is negative, the Bill is archived. After the discussion of the bill in the three sessions mentioned above, the bill must be approved by a vote of the Plenary of the Congress of the Republic, after which it will be sent by the Board of Directors of the Congress to the Executive Branch so that it can be reviewed and analyzed. Likewise, the President of the Republic has the power of presidential veto over the bill. If the President of the Republic decides to exercise his right to veto it, legislative primacy may apply: a mechanism by which the Congress of the Republic, by means of a vote of two thirds of the total number of deputies, may reject the veto. If the President does not veto the bill, the law will be published in the Official Gazette and will enter into effect as per the terms set forth in its articles. Response of the State of Guatemala to the request for information from the Inter-American Commission on Human Rights regarding Bill (Law Initiative) No. 6099 “Strengthening for Peace Act.” Report DIDEH-DEPCADEH-056-2023/LOCK/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-322-2023, October 9, 2023.

<sup>304</sup> Response of the State of Guatemala to the request for information from the Inter-American Commission on Human Rights regarding Bill (Law Initiative) No. 6099 “Strengthening for Peace Act.” Report DIDEH-DEPCADEH-056-2023/LOCK/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-322-2023, October 9, 2023.

<sup>305</sup> Response of the State of Guatemala to the request for information from the Inter-American Commission on Human Rights regarding Bill (Law Initiative) No. 6099 “Strengthening for Peace Act.” Report DIDEH-DEPCADEH-056-2023/LOCK/lfl of the Presidential Commission for Peace and Human Rights. Note from the Permanent Mission of Guatemala to the Organization of American States OEA-M4-NV-322-2023, October 9, 2023.

<sup>306</sup> Cf. I/A Court H.R. [Case of Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal, Case of Molina Theissen et al. 12 Guatemalan cases v. Guatemala](#). Provisional Measures and Monitoring of Compliance with the Judgment. Order of the Inter-American Court of Human Rights of October 20, 2023, par. 34.

<sup>307</sup> Cf. I/A Court H.R. [Case of Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal, Case of Molina Theissen et al. 12 Guatemalan cases v. Guatemala](#). Provisional Measures and Monitoring of Compliance with the Judgment. Order of the Inter-American Court of Human Rights of October 20, 2023.

internal armed conflict from November 13, 1960 until its conclusion with the signing of the Firm and Lasting Peace Agreement on December 29, 1996.”<sup>308</sup> It also prohibits the prosecution of actions or omissions committed during the internal armed conflict by members of the Guatemalan Army and other State security forces, as well as members of insurgent groups, that were not classified as crimes prior to their alleged perpetration; it decrees the immediate release of persons convicted of these crimes; among other aspects of concern.<sup>309</sup>

149. The Commission reminds the State of Guatemala that the norms tending to impede the investigation and punishment of serious human rights violations are incompatible with its international obligations and Inter-American human rights standards and it therefore urges the State of Guatemala to definitively shelve bill No. 6099 in compliance with the resolution of the Inter-American Court.

150. Finally, the IACHR recalls that, within the Inter-American system, the right of access to justice derives from Articles 8 and 25 of the American Convention, from which a series of State obligations are derived that must be guaranteed to persons whose rights have been affected in order to seek justice in their respective cases. In addition, these State obligations entail certain guarantees that States must provide to justice operators in order to guarantee the independent exercise of their functions and thus enable the State to comply with its obligation to provide access to justice to persons.<sup>310</sup>

## V. FREEDOM OF EXPRESSION

151. In 2023, the IACHR and the Office of the Special Rapporteur for Freedom of Expression observed a notable deterioration in the guarantees for the exercise of freedom of expression and freedom of the press in the context of a serious deterioration of the independence of the judiciary and abusive exercise of power by the Public Prosecutor’s Office. Particularly, as discussed in this section, the IACHR and its RELE received information on acts of violence and attacks against journalists, including murders, assaults, threats, obstruction of information sources, judicial harassment, and economic pressure on the media, as well as regarding the manipulation of criminal justice mechanisms as a form of intimidation and silencing of critical voices, especially in the context of the general elections held.

### A. Attacks, threats, and intimidation against journalists and the media

152. In the context of the serious deterioration of the independence of the justice administration system in Guatemala, the IACHR and RELE(SRFOE) found that violence and the lack of diligent investigations of crimes committed against journalists continued to pose a challenge when it comes to guaranteeing the full exercise of freedom of expression. On March 18, 2023, Eduardo Fernando Mendizabal Gálvez, a local journalist and creator of the website *Visor Villa Canales*, was murdered. The reporter was attacked by unknown individuals who shot him with a firearm while Mendizabal was driving his car in the second alley of the Colmenas village in the municipality of Villa Canales, on the outskirts of Guatemala City.<sup>311</sup> RELE condemned the murder and called on the State to investigate the facts thoroughly and independently, and to punish those

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<sup>308</sup> Initiative no. 6099 which provides for the approval of the [Law for the Strengthening of Peace](#). Article 1. Initiative presented by Congressmen Javier Alfonso Hernández Franco, José Adolfo Quezada Valdez, Boris Roberto España Cáceres, Julio César Longo Maldonado, Juan Francisco Mérida Contreras, Manuel Eduardo Conde Orellana, José Alberto Sánchez Guzmán, Carlos Napoleón Rojas Alarcón, José Francisco Zamora Barillas, among others.

<sup>309</sup> Initiative no. 6099 which provides for the approval of the [Law for the Strengthening of Peace](#). Article 1. Initiative presented by Congressmen Javier Alfonso Hernández Franco, José Adolfo Quezada Valdez, Boris Roberto España Cáceres, Julio César Longo Maldonado, Juan Francisco Mérida Contreras, Manuel Eduardo Conde Orellana, José Alberto Sánchez Guzmán, Carlos Napoleón Rojas Alarcón, José Francisco Zamora Barillas, among others.

<sup>310</sup> See also, IACHR, [Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II. Doc.44, December 5, 2013, par. 24.

<sup>311</sup> Swissinfo, 20 March 2023, [Community Journalist Murdered in Central Guatemala](#) Soy 502, March 19, 2023, [Cruel murder of online journalist in Guatemala](#).

responsible.<sup>312</sup> The State of Guatemala reported that it is conducting the corresponding criminal investigation to help clarify the facts and identify those responsible for the crime against the journalist.<sup>313</sup>

153. Also, on August 11, 2023, journalists Edin Alonso and Hugo Gutiérrez were murdered in the department of Retalhuleu, southwest of Guatemala City, by unknown persons on a motorcycle.<sup>314</sup> The events occurred after Alonso and Gutiérrez covered an alleged femicide case. According to reports from civil society organizations, the journalists were the administrators of the Facebook page “Noticias Caballo Blanco”, specialized in reporting on issues of general interest to their community.<sup>315</sup> RELE condemned the murder of the journalists and called on the authorities to investigate the facts fully, effectively, and impartially, and to find those responsible.<sup>316</sup>

154. The State of Guatemala reported that it has initiated the corresponding investigations in order to clarify the facts and identify those responsible. In particular, it stated that the investigation into the murders of Alonso and Gutiérrez is being conducted by the Retalhuleu District Prosecutor’s Office.<sup>317</sup> In addition, the State of Guatemala also reported that it has implemented a number of measures that guarantee special attention to cases of harm done to journalists, such as differentiated attention in the Public Prosecutor’s Office through the Prosecutor’s Office for Crimes against Journalists and institutional mechanisms to protect journalists.<sup>318</sup>

155. RELE stresses that lethal violence against journalists is the most extreme form of censorship, and violates the rights to personal integrity, to life, and to freedom of thought and expression.<sup>319</sup> It is crucial that States fulfill their obligation to investigate in order to find those responsible for these crimes, bring justice in the specific case, prevent their repetition, and avoid the inhibiting effect that violence has on communicators.<sup>320</sup> The lack of due diligence in the investigation, prosecution, and punishment of all those responsible may generate an additional violation of the rights to access to justice and judicial guarantees of the affected persons and their families.<sup>321</sup>

156. In 2023, there were also reports of armed attacks, physical aggression, threats, and intimidation against journalists. In particular, a situation of vulnerability and a climate of persecution is reported in territories far from the capital, where the problem of violence against the press is rooted in political and economic interests and the presence of powerful mining industries.<sup>322</sup> Civil society organizations allege

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<sup>312</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, June 1, 2023, [RELE rejects murders of journalists in the region and calls on States to redouble efforts to prevent and protect the press](#). Press release R106/23.

<sup>313</sup> Information sent by the State of Guatemala in response to the draft press release “RELE rejects murders of journalists in the region and calls on States to redouble efforts to prevent and protect the press,” OAS-M4-NV-144-2023, Note from the Presidential Commission for Peace and Human Rights, May 31, 2023.

<sup>314</sup> Deutsche Welle (DW), August 13, 2023, [Guatemala: two journalists shot dead in Retalhuleu](#) Prensa Comunitaria, 12 August 2023, [Two Journalists Murdered in Retalhuleu](#).

<sup>315</sup> Fundamedios, August 14, 2023, [Dos periodistas fueron asesinados en Guatemala \(Two journalists were murdered in Guatemala\)](#).

<sup>316</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, August 24, 2023, [SRFOE condemns violence against journalists in Guatemala and urges authorities to investigate effectively and find those responsible](#) Press Release No. 193/23.

<sup>317</sup> Information sent by the State of Guatemala in response to the draft press release “RELE condemns violence against journalists in Guatemala and urges the authorities to investigate the facts effectively and find those responsible,” OEA-M4-NV-273-2023, Note from the Presidential Commission for Peace and Human Rights, August 23, 2023.

<sup>318</sup> Information sent by the State of Guatemala in response to the draft press release “RELE condemns violence against journalists in Guatemala and urges the authorities to investigate the facts effectively and find those responsible,” OEA-M4-NV-273-2023, Note from the Presidential Commission for Peace and Human Rights, August 23, 2023.

<sup>319</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Silenced Zones: Highly dangerous areas for the exercise of freedom of expression](#), OEA/Ser.L/V/II, CIDH/RELE/INF.16/17, March 17, par. 147.

<sup>320</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Silenced Zones: Highly dangerous areas for the exercise of freedom of expression](#), OEA/Ser.L/V/II, CIDH/RELE/INF.16/17, March 17, par. 31

<sup>321</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Silenced Zones: Highly dangerous areas for the exercise of freedom of expression](#), OEA/Ser.L/V/II, CIDH/RELE/INF.16/17, March 17, par. 147.

<sup>322</sup> Freedom House, Free Press Unlimited, Reporters Without Borders (RSF), Article 19, Fundación para la Libertad de Prensa (FLIP), Committee to Protect Journalists (CPJ), Fundamedios, Protection International Mesoamérica, IFEX-ALC, Voces del Sur, June 2023, [Report of findings of the international mission on press freedom and freedom of expression in Guatemala](#) information provided by journalists and civil society organizations in 2023. Archive of the Office of the Special Rapporteur.

that there has been an increase in aggressions with respect to previous years, and that this is related to the electoral context.<sup>323</sup> According to data from the Observatorio de Periodistas de Guatemala, in the first seven months of the year there were 120 cases of attacks on journalists.<sup>324</sup>

157. On February 8, 2023, broadcasters Óscar Geovany Colucho and Óscar José León, of *Radio La Peligrosa*, and Óscar Edwin Sosa, of *Radio Tropicana*, were the target of an armed attack while they were traveling in a vehicle in the city of Escuintla. According to information in the public domain, they were admitted to the Guatemalan Social Security Institute Hospital with gunshot wounds. The following day, the Guatemalan National Police (PNC) reported that they had located the firearm allegedly used in the attack and had referred a minor to court for his alleged involvement in the events.<sup>325</sup>

158. Journalist Diego Petzey Quiejú, correspondent of *Prensa Comunitaria* in Sololá, was attacked with a sharp object on April 24, 2023 in Santiago Atitlán, while he was with family members. The Mayan journalist Tz'utujil is also secretary of the Comité de Playa del Cantón Panaj, a community organization that seeks to safeguard and protect the shores of Lake Atitlán, in Santiago Atitlán.<sup>326</sup>

159. *Prensa Comunitaria* also reported that journalist Santiago Botón Simaj, correspondent of *TeleSur*, was the target of a series of intimidating actions on social networks, including the creation of false social network accounts with his personal data and photographs. The journalist denounced that reliable sources warned him about a plan to murder him. The attacks reportedly began after a report he made on alleged irregularities in the salary increase of the municipal mayor of Ixcán.<sup>327</sup>

160. RELE also received information about aggressions against Laura Rojas, a journalist and member of the Coordinating Committee of Communities Affected by TRECSA, after she made a live transmission about allegedly illegal constructions by the company in Santa Lucía Milpas Altas.<sup>328</sup> According to the information received, the journalist reportedly recorded facts linking the company to a group of hooded men who were in the area intimidating local inhabitants and human rights defenders opposed to the company's operations in Sacatepéquez.<sup>329</sup> The PEN Guatemala center denounced that these events "provoke a climate of animosity against the press that impedes the professional performance of communicators."<sup>330</sup>

161. Likewise, according to reports in the public domain, the director of the local news program InfoXpress, Mardoqueo Agustín Guzmán Cuchil, was allegedly attacked on May 19 by supporters of the mayor of Nebaj, Quiché department, moments after the journalist asked the official about the alleged sale of municipal land to a Central American energy transportation company.<sup>331</sup>

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<sup>323</sup> Information sent by Red Rompe el Miedo, Threats to the right to freedom of expression and increase of attacks against journalists and social communicators in Guatemala in the context of the country's general elections, August 10, 2023. Archive of the IACHR and the Office of the Special Rapporteur.

<sup>324</sup> Observatorio de Periodistas de Guatemala, General elections increase actions against journalists. Aggressions during first 7 months of 2023 total 120, August 6, 2023. Information sent by the Red Rompe el Miedo, August 10, 2023. Archive of the IACHR and the Office of the Special Rapporteur.

<sup>325</sup> X account of PNC de Guatemala (@PNCdeGuatemala), [February 9, 2023](#); Soy 502, February 9, 2023, [Detienen a presunto implicado en el ataque a locutores en Escuintla \(Alleged person involved in attack on broadcasters in Escuintla arrested\)](#).

<sup>326</sup> Prensa Comunitaria, April 24, 2023, [Periodista y autoridad comunitaria Tz'utujil fue atacado en Santiago Atitlán \(Journalist and community authority Tz'utujil was attacked in Santiago Atitlán\)](#); X account of the journalists' collective No Nos Callarán (@NoNosCallaranGT), [March 25, 2023](#).

<sup>327</sup> Prensa Comunitaria, April 28, 2023, [Periodista Santiago Botón denuncia difamaciones y amenazas de muerte \(Journalist Santiago Botón denounces defamation and death threats\)](#).

<sup>328</sup> Guatemala PEN Centre, [Guatemalan PEN Centre condemns aggression against community communicator in Santa Lucía Milpas Altas](#), August 10, 2023; Observatorio de Derechos Humanos de los Pueblos / Facebook, [July 25, 2023](#).

<sup>329</sup> Guatemala PEN Centre, [Guatemalan PEN Centre condemns aggression against community communicator in Santa Lucía Milpas Altas](#), August 10, 2023; Observatorio de Derechos Humanos de los Pueblos / Facebook, [July 25, 2023](#).

<sup>330</sup> Observatorio de Derechos Humanos de los Pueblos / Facebook, [July 25, 2023](#).

<sup>331</sup> X account of the journalists' collective No Nos Callarán (@NoNosCallaranGT), [May 19, 2023](#); X account of Red Rompe el Miedo Guatemala (@RompeElMiedoGt), [May 19, 2023](#).

162. In addition, RELE received reports of intimidation by police agents against community journalist Juan Bautista Xol in El Estor, Izabal department.<sup>332</sup> On March 22, the journalist was returning home when he was followed by a patrol car of the National Civil Police (PNC). Upon arriving at the door of his home, the agents surrounded him and threatened him, alleging that a complaint had been filed against him. The journalist demanded an explanation and showed them his accreditation as a member of the Community Development Committee (COCODE). The agents reportedly left without notifying him of any complaint against him. According to Xol, in the previous weeks he had noticed suspicious following by a PNC patrol car in the vicinity of his home.<sup>333</sup>

163. During 2023, the journalist was the target of other acts of intimidation, including visits by unknown persons after the publication of a newspaper article in which he profiled a pre-candidate for municipal mayor for the Unidad Nacional de la Esperanza (UNE) party. According to information in the public domain, the journalist has been documenting complaints from former workers of mining companies in Guatemala.<sup>334</sup> In 2021, the Rapporteurship warned of acts of intimidation and criminalization against Juan Bautista Xol and other journalists from El Estor, who were targets of attacks, threats and inspections of their homes by police officers due to their reporting on demonstrations by the Q'eqchi' population in opposition to mining exploitation, and the use of public force to disperse them.<sup>335</sup>

164. On the other hand, the Special Rapporteurship learned of the start of the trial against three National Police officers and a former commissioner, accused of abuse of authority towards journalist Norma Sancir, for events that took place in 2014.<sup>336</sup> In September of that year, the journalist was arrested and imprisoned for covering a demonstration by the Maya Ch'orti' indigenous communities at the Jupilingo bridge in Camotán, Chiquimula.<sup>337</sup> Despite having identified herself as a journalist with her credential and vest, Norma Sancir was arrested and prosecuted for assault, public disorder and assault on authority, and spent five days in Los Jocotes prison in Zacapa, until she was released for lack of evidence.<sup>338</sup> The judicial process was extended for more than nine years, due to alleged obstacles put forward by the legal defense of the police officers and due process violations attributable to the judicial body.<sup>339</sup> The journalist's legal representatives, from the Centro de Acción Legal en Derechos Humanos (CALDH), have denounced "obstructionist and malicious attitudes" during the proceedings.<sup>340</sup> The trial is currently taking place in the Criminal Sentencing, Drug Trafficking and Environmental Crimes Court of Chiquimula.

165. In this regard, the State of Guatemala reported that, according to data from the Public Prosecutor's Office, from January to July 2023 they received 16 reports of threats, 5 reports of intimidation,

<sup>332</sup> X account of the journalists' collective No Nos Callarán, [March 25, 2023](#).

<sup>333</sup> X account of the journalists' collective No Nos Callarán, [March 25, 2023](#).

<sup>334</sup> Prensa Comunitaria, March 24, 2023, [Periodista comunitario bajo acoso y riesgo en El Estor \(Community journalist under harassment and at risk in El Estor\)](#).

<sup>335</sup> IACHR, October 29, 2021, Office of the Special Rapporteur for Freedom of Expression, [The Office of the Special Rapporteur calls on the State of Guatemala to respect and guarantee the work of journalists in accordance with international human rights standards](#). Press release R286/21.

<sup>336</sup> Prensa Comunitaria, May 15, 2023, [Inicia juicio contra policías que detuvieron ilegalmente a la periodista Norma Sancir \(Trial begins against police officers who illegally detained journalist Norma Sancir\)](#) PBI, undated, [PBI-Guatemala accompanies Maya Kaqchikel journalist Norma Sancir in court on May 12 \(PBI-Guatemala accompanies Maya Kaqchikel journalist Norma Sancir in court on May 12\)](#).

<sup>337</sup> La Cuerda, June 30, 2023, [Una esperanza para la libertad de prensa en el país. \(A hope for press freedom in the country\)](#). [Inicio del juicio para la periodista Norma Sancir \(Start of trial for journalist Norma Sancir\)](#); Ruda, April 10, 2023, [Juez declara sin lugar un recurso que buscaba aplazar el caso de la periodista Norma Sancir \(Judge dismisses an appeal seeking to postpone the case of journalist Norma Sancir\)](#).

<sup>338</sup> Agencia Ocote, June 13, 2023, [Suspendido dos veces: el juicio contra agresores de la periodista Norma Sancir \(Trial of journalist Norma Sancir's assailants suspended twice\)](#).

<sup>339</sup> LatAm Journalism Review, July 11, 2022, [Justice for journalists in Guatemala: Prosecutor archives more complaints than it brings to trial](#); Plaza Pública, July 24, 2022, [Justice for journalists in Guatemala: Prosecutor archives more complaints than it brings to trial](#).

<sup>340</sup> La Cuerda, May 22, 2023, [Suspensión del juicio de Norma Sancir: \(Suspension of Norma Sancir's trial:\) Obstáculos en la búsqueda de justicia para una periodista comprometida \(Obstacles to justice for a committed journalist\)](#).

and 1 report of attacks against journalists. It also stated that there were no reports of attacks on radio stations or media outlets, stigmatizing statements against journalists, or censorship of journalistic material.<sup>341</sup>

166. In its observations on this report, the State of Guatemala said that the Public Prosecutor's Office "strives to uphold the right to freedom of free expression; for that reason it has incorporated the Office of the Prosecutor for Crimes against Journalists within its structure."<sup>342</sup> Likewise, it reported that "the Public Prosecutor's Office can carry out investigations against any citizen who commits an act typified as a crime, regardless of whether they are journalists; in other words, it does not prosecute the journalistic function, but the crime committed as a citizen in the most personal sense."<sup>343</sup>

167. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR provides that "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."<sup>344</sup> This obligation becomes especially relevant during election periods.<sup>345</sup>

168. The Rapporteurship emphasizes that acts of violence against journalists have a triple effect: they violate the right of the victims to express and disseminate their ideas, opinions, and information; they have a chilling and silencing effect on their peers; and they violate the rights of individuals and societies in general to seek and receive information and ideas of any kind. The consequences for democracy, which depends on a free, open, and dynamic exchange of ideas and information, are particularly serious.<sup>346</sup> A independent and critical press is a prerequisite for ensuring respect for other freedoms that are part of a democratic system and the rule of law.<sup>347</sup> Therefore, the authorities must strongly condemn violence against journalists and encourage the competent bodies to act with due diligence and speed in clarifying the facts and punishing those responsible.<sup>348</sup>

169. Furthermore, the IACHR and its Office of the Special Rapporteur have followed with particular concern reports of the improper use of criminal law in Guatemala against journalists who investigate government irregularities and criticize government administration. The information gathered shows that these actions have sought to limit freedom of the press, intimidating critical voices.

170. On June 14, the Eighth Criminal Sentencing Court sentenced the chairman and founder of *el Periódico*, José Rubén Zamora, to 6 years in prison for the crime of money laundering.<sup>349</sup> *El Periódico* has been one of the most prominent media outlets in the country for exposing cases of corruption and abuses of power

<sup>341</sup> Information sent by the State of Guatemala in response to RELE's request for information in the framework of the preparation of the Annual Report, OEA-M4-NV-288-2023, Note from the Presidential Commission for Peace and Human Rights, September 6, 2023, p. 3.

<sup>342</sup> This Prosecutor's Office, "upon becoming aware by any means of facts constituting a crime against freedom of expression, initiates the respective investigation; subsequently, work groups are organized and the corresponding follow-up of cases is carried out, especially those that in some way have an impact because they involve a type of complaint that requires an immediate response, thus, decisions have been made to set up work teams, and the work groups have been reviewed by superiors and also by headquarters." Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifnl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 62.

<sup>343</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifnl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 62.

<sup>344</sup> CIDH, *Declaration of principles on freedom of expression*, 2000.

<sup>345</sup> UN, OSCE, OAS, CADHP, [Joint Declaration on Media and Elections](#), 2009.

<sup>346</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, "Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators, 2013. OEA/Ser.L/V/II. CIDH/RELE/INF.12/13, par. 287.

<sup>347</sup> IACHR, [Report on the Situation of Human Rights in Mexico](#) OEA/Ser.L/V/II.100, Doc 7, September 24, 1998, par. 649.

<sup>348</sup> IACHR, [Report No. 7/16, Case 12.213. Merits \(Publication\). Aristeu Guida da Silva and family. Brazil](#), April 13, 2016, par. 138.

<sup>349</sup> CNN en Español, June 14, 2023, [journalist José Rubén Zamora sentenced to 6 years in prison for money laundering in Guatemala, acquitted on 2 other charges](#); AP, June 14, 2023, [Guatemala: journalist José Rubén Zamora sentenced to six years in prison for money laundering](#).

in recent years.<sup>350</sup> The IACHR and its RELE expressed their grave concern in this regard and called on the State to respect the right to freedom of expression and of the press, and to refrain from using punitive power to intimidate people who criticize the Government.<sup>351</sup>

171. The Commission and the Rapporteurship received information on violations of due process guarantees in the case against Zamora, such as the prolonged use of pretrial detention and serious limitations to the right of defense.<sup>352</sup> As indicated, in a period of nine months, Zamora had to change his legal representative on several occasions, and had up to ten different attorneys due to acts of harassment, stalking, and even the filing of criminal complaints against him by those who represented him.<sup>353</sup> In addition, during the hearing to offer evidence, the Court allegedly did not admit the evidence presented by the journalist's defense, among other facts.<sup>354</sup>

172. José Rubén Zamora faces two other criminal proceedings, one for the alleged crime of conspiracy to obstruct justice and the other for alleged continuous use of false documents.<sup>355</sup> It should be noted that journalist Zamora has been the beneficiary of IACHR precautionary measures since 2003 for reasons related to his journalistic work and the exercise of freedom of expression in Guatemala.<sup>356</sup>

173. Several international organizations dedicated to the defense of press freedom, such as the Committee to Protect Journalists (CPJ), PEN International, and the International Center for Journalists (ICFJ) have considered these actions as judicial persecution for purposes of intimidation and harassment, and have called on the authorities to immediately release the journalist.<sup>357</sup> Also, former United Nations and IACHR Special Rapporteurs described Zamora's conviction as a "very serious violation of the right to an independent and free press."<sup>358</sup>

174. The State of Guatemala proffered assurances that freedom of expression is respected in Guatemala and at no time has the criminal justice system been used against journalists or media outlets for their journalistic work.<sup>359</sup> In this regard, it indicated that the conviction for money laundering against José Rubén Zamora is not related to the right to freedom of expression, but rather to a citizen facing justice for illegal

<sup>350</sup> NPR, June 14, 2023, [A court in Guatemala has sentenced a prominent journalist to 6 years in jail](#).

<sup>351</sup> IACHR, June 21, 2023, [IACHR and RFOE Express Concern Over the Conviction of José Rubén Zamora in Guatemala No.131/23](#).

<sup>352</sup> El País, June 14, 2023, [Juicio contra José Rubén Zamora en Guatemala: el discurso final que el tribunal no quiso escuchar \(Trial against José Rubén Zamora in Guatemala: the final speech that the court did not want to hear\)](#); El Faro, May 14, 2023, [Nueve meses del juicio contra Zamora: el reemplazo de ocho defensores y el cierre de El Periódico \(Nine months of the trial against Zamora: the replacement of eight defenders and the closing of El Periódico\)](#); Fundación Gabo, May 3, 2023, [El periodista José Rubén Zamora en la hora de inicio de su juicio: montajes, acoso y criminalización \(Journalist José Rubén Zamora at the start of his trial: falsifications, harassment, and criminalization\)](#); Gatopardo, August 14, 2023, [Un hombre contra el sistema: la batalla legal de José Rubén Zamora en Guatemala \(One man against the system: José Rubén Zamora's legal battle in Guatemala\)](#).

<sup>353</sup> El Faro, May 23, 2023, [La recta final del juicio: un Zamora deteriorado, un décimo abogado defensor y nuevas acusaciones \(The final stretch of the trial: a deteriorated Zamora, a tenth defense attorney, and new accusations\)](#).

<sup>354</sup> Swissinfo, December 22, 2022, [Un juez de Guatemala rechaza pruebas de defensa del periodista José R. Zamora \(Guatemalan judge rejects evidence in defense of journalist José R. Zamora\)](#); Prensa Comunitaria, December 24, 2022, [Juez Orellana rechaza las pruebas para la defensa del periodista Jose Rubén Zamora \(Judge Orellana rejects evidence for the defense of journalist Jose Ruben Zamora\)](#).

<sup>355</sup> El País, February 28, 2023, [Un juzgado abre un segundo proceso penal contra el presidente de 'elPeriódico' de Guatemala, José Rubén Zamora \(A court opens a second criminal proceeding against the chairman of Guatemala's 'elPeriódico', José Rubén Zamora\)](#); Prensa Libre, February 28, 2023, [Jose Rubén Zamora es ligado a proceso por conspiración para la obstrucción de la justicia \(Jose Ruben Zamora is indicted on charges of conspiracy to obstruct the course of justice\)](#); Soy 502, June 15, 2023, [Tercer caso contra José Rubén Zamora: \(Third case against José Rubén Zamora:\) MP lo acusa de falsificar documentos \(Public Prosecutor's Office accuses him of falsifying documents\)](#); Agencia EFE, June 12, 2023, [El periodista guatemalteco Rubén Zamora enfrenta el tercer proceso en su contra desde su detención en 2022 \(Guatemalan journalist Rubén Zamora faces the third trial against him since his arrest in 2022\)](#).

<sup>356</sup> IACHR, *Precautionary Measure MC-551-03*, July 24, 2003.

<sup>357</sup> International Press Institute, [Guatemala: IPI reiterates call for release of journalist José Rubén Zamora](#) CPJ, July 30, 2023, [CPJ calls for immediate release of Guatemala journalist José Rubén Zamora](#) CPJ, June 14, 2023, [Guatemalan journalist José Rubén Zamora convicted of money laundering, sentenced to 6 years in prison](#); ICFJ, June 23, 2023.

<sup>358</sup> Fundamedios, June 28, 2023, [Declaración Pública sobre Guatemala: \(Public Statement on Guatemala:\) Former Freedom of Expression Rapporteurs from the Americas, United Nations, and the OAS demand the release of José Rubén Zamora](#).

<sup>359</sup> Information sent by the State of Guatemala in response to the draft press release "CIDH y RELE manifiestan grave preocupación por la condena a José Rubén Zamora en Guatemala (IACHR and RELE express grave concern regarding the conviction of José Rubén Zamora in Guatemala)," OEA-M4-NV-166-2023, Note from the Presidential Commission for Peace and Human Rights, June 20, 2023.

acts proven in a trial.<sup>360</sup> In addition, the State emphasized that the judgment against Zamora is of first instance and is therefore not final, so that there are still appeals available.<sup>361</sup>

175. The authorities also indicated that the State does not exercise any control over the content communicated by the media, thus guaranteeing freedom of thought, expression, and the exercise of journalism.<sup>362</sup>

176. Also, in 2023, RELE followed up on the opening of a criminal investigation against at least eight journalists and columnists of *El Periódico*, who were charged with the alleged crime of obstruction of justice due to a series of newspaper articles that covered Zamora's judicial case. According to the information received, on February 28, 2023, the Special Prosecutor's Office against Impunity (FECI) of the Public Prosecutor's Office (MP) asked the judge to investigate the journalists and columnists, arguing that their journalistic articles were "presumably aimed at attacking the personal sphere of justice operators" related to the Zamora case, and that this could lead to the possible commission of the crime of obstruction of justice.<sup>363</sup> The head of the Tenth Court of Criminal Instance granted the prosecutor's request and ordered that an investigation be initiated against the journalists to determine their possible involvement in the alleged crime of obstruction of justice.<sup>364</sup> According to information in the public domain, the head of FECI requested that the Fifth Pluripersonal Court of First Criminal Instance, Drug Trafficking and Crimes against the Environment have jurisdictional control in this case.<sup>365</sup>

177. Both the Inter-American Commission, through its Office of the Special Rapporteur for Freedom of Expression, and the Office of the United Nations High Commissioner for Human Rights expressed their concern regarding the facts, and called on the State to guarantee international human rights standards in the face of any measure that may restrict the right to freedom of expression.<sup>366</sup>

178. Regarding this case, the State emphasized that it "recognizes the fundamental value of freedom of expression in any democratic system and its relevance to public debate", and that the judge's decision "does not constitute an isolated persecution against certain journalists."<sup>367</sup> In the State's opinion, the judge's order to investigate journalists does not constitute any action that seeks to intimidate communicators, or to limit or restrict freedom of expression, but rather demonstrates the existence of evidence that the journalists may have acted in cooperation with Mr. Zamora to disseminate false information or information that threatens the integrity, dignity, and reputation of officials of the Public Prosecutor's Office, with the aim of

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<sup>360</sup> Information sent by the State of Guatemala in response to the draft press release "CIDH y RELE manifiestan grave preocupación por la condena a José Rubén Zamora en Guatemala (IACHR and RELE express grave concern regarding the conviction of José Rubén Zamora in Guatemala)," OEA-M4-NV-166-2023, Note from the Presidential Commission for Peace and Human Rights, June 20, 2023.

<sup>361</sup> Information sent by the State of Guatemala in response to the draft press release "CIDH y RELE manifiestan grave preocupación por la condena a José Rubén Zamora en Guatemala (IACHR and RELE express grave concern regarding the conviction of José Rubén Zamora in Guatemala)," OEA-M4-NV-166-2023, Note from the Presidential Commission for Peace and Human Rights, June 20, 2023.

<sup>362</sup> Information sent by the State of Guatemala in response to RELE's request for information in the framework of the preparation of the Annual Report, OEA-M4-NV-288-2023, Note from the Presidential Commission for Peace and Human Rights, September 6, 2023, p.3.

<sup>363</sup> La Hora, February 28, 2023, [Libertad de expresión bajo AMENAZA: juez ordena investigar a periodistas en caso Zamora \(Freedom of expression under THREAT: judge orders investigation of journalists in Zamora case\)](#); Prensa Comunitaria, February 28, 2023, [Ministerio Público busca criminalizar a periodistas \(Public Prosecutor's Office seeks to criminalize journalists\)](#).

<sup>364</sup> Prensa Libre, February 28, 2023, [Juez ordena investigar a periodistas y columnistas de elPeriódico y medios de comunicación a petición del MP \(Judge orders investigation of journalists and columnists from elPeriódico and media outlets at the request of the Public Prosecutor's Office\)](#); CPJ, February 28, 2023, [CPJ calls for Guatemala to halt investigation into elPeriódico journalists](#).

<sup>365</sup> La Hora, June 6, 2023, [A solicitud de FECI: \(At the request of FECI:\) Juzgado Quinto conocerá caso contra periodistas y columnistas de elPeriódico \(Fifth Court to hear case against journalists and columnists of elPeriódico\)](#).

<sup>366</sup> United Nations Human Rights X account (@UNHumanRights), [March 2, 2023](#); IACHR, Office of the Special Rapporteur for Freedom of Expression, March 29, 2023, [SRFOE expresses concern about the opening of a criminal investigation against journalists in Guatemala for their coverage of matters of public interest](#), press release R52/23.

<sup>367</sup> Information sent by the State of Guatemala in response to the request for information from the Office of the Special Rapporteur regarding the opening of a criminal investigation against journalists in Guatemala, OEA-M4-NV-060-2023, Note from the Presidential Commission for Peace and Human Rights, March 10, 2023.

coercing them, influencing their behavior, and hindering their functions.<sup>368</sup> According to the State, this would constitute subsequent liability under the terms of Article 13(2) of the American Convention.<sup>369</sup>

179. Additionally, the Rapporteurship learned that the Special Prosecutor's Office against Impunity (FECI) requested Aldea Global S.A., publisher of *El Periódico*, to deliver within three working days all articles published between July 2022 and May 2023 by the journalists and columnists under investigation for obstruction of justice, and by José Rubén Zamora.<sup>370</sup> These publications have denounced alleged procedural irregularities and questioned the actions of judges and prosecutors in cases against justice operators, human rights defenders, and journalists.<sup>371</sup>

180. Several local civil society organizations considered that this action "confirms the illegal, systematic persecution and criminalization of the right to freedom of expression." They also argued that this violates the Constitution and the Law of Free Speech, since "any claim against journalists for their publications must be heard in a court of law."<sup>372</sup> In response, the Public Prosecutor's Office stated that "there is no arbitrary criminal prosecution against freedom of expression" and that all its investigations "are carried out with objectivity, impartiality, and strict adherence to the principle of legality. Respect for due process, the presumption of innocence, and all procedural guarantees have been guaranteed at all times."<sup>373</sup>

181. In this serious context, the IACHR and its Rapporteurship were concerned about the definitive closure of *El Periódico* on May 12, 2023, as a result of the obstacles it reportedly faced to continue operating normally since the arrest of Zamora, the intensification of judicial persecution against its members, as well as political and economic pressures.<sup>374</sup> Since its foundation in 1996, *El Periódico* has been recognized as one of the most important investigative media in Guatemala for its coverage of corruption. "Despite the fatigue, the severe adverse conditions, the humiliation and scorn, I will not cease in my struggle for freedom and democracy in Guatemala," José Rubén Zamora wrote from prison in his latest editorial column.<sup>375</sup>

182. The IACHR and its RELE have pointed out that the use of criminal law as a form of reprisal and intimidation against journalists and communicators investigating matters of great public interest constitutes an indirect means of censorship.<sup>376</sup> According to Principle 13 of the Declaration of Principles on Freedom of Expression of the IACHR, the use of State power and ordinary institutional mechanisms with the aim of pressuring, threatening, and punishing social communicators and the media based on their lines of reporting violates freedom of expression.<sup>377</sup> As has been noted previously, "when the law is used with the purpose of

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<sup>368</sup> Information sent by the State of Guatemala in response to the request for information from the Office of the Special Rapporteur regarding the opening of a criminal investigation against journalists in Guatemala, OEA-M4-NV-060-2023, Note from the Presidential Commission for Peace and Human Rights, March 10, 2023.

<sup>369</sup> Information sent by the State of Guatemala in response to the request for information from the Office of the Special Rapporteur regarding the opening of a criminal investigation against journalists in Guatemala, OEA-M4-NV-060-2023, Note from the Presidential Commission for Peace and Human Rights, March 10, 2023.

<sup>370</sup> AP News, June 5, 2023, [Guatemala: Attorney General's Office requests publications of eight investigated editors from local media outlets](#); La Hora, June 5, 2023, [El MP no cesa: \(The Public Prosecutor's Office does not stop:\) FECI solicita a el Periódico publicaciones de periodistas y columnistas \(FECI requests el Periódico to provide publications from journalists and columnists\)](#); Prensa Comunitaria, June 7, 2023, [Denuncian anomalías en investigación contra periodistas y columnistas de el Periódico \(Anomalies denounced in investigation against journalists and columnists of el Periódico\)](#).

<sup>371</sup> AP News, June 5, 2023, [Guatemala: la Fiscalía requiere a medio local las publicaciones de ocho redactores investigados \(Guatemala: Prosecutor's Office requires local media to provide publications of eight editors under investigation\)](#).

<sup>372</sup> UDEFEGUA X account (@UDEFEGUA), [June 7, 2023](#).

<sup>373</sup> X account of the Public Prosecutor's Office of Guatemala (@MPGuatemala), [June 7, 2023](#).

<sup>374</sup> AP News, May 12, 2023, [Guatemala's El Periódico announces closure one year after founder's arrest](#); Deutsche Welle (DW), May 13, 2023, [El Periódico de Guatemala closes due to persecution of its owner](#).

<sup>375</sup> The New York Times, May 16, 2023, [Closure of el Periódico deals blow to Guatemala's democracy](#); University of Oxford, Reuters Institute, May 25, 2023, [These are the journalists who are keeping the flame of free journalism alive in Guatemala](#).

<sup>376</sup> IACHR, [Background and Interpretation of the Declaration of Principles on Freedom of Expression](#).

<sup>377</sup> IACHR, [Background and Interpretation of the Declaration of Principles on Freedom of Expression](#).

eliminating or pacifying criticism or dissidence, it amounts to persecution and not a legitimate attempt to reinforce the Rule of Law.”<sup>378</sup>

183. Finally, RELE also learned about obstructions by public agents of the work of journalists trying to cover public events. For example, on May 4, congressional workers and members of the Guatemalan Education Workers Union (STEG) reportedly blocked access to journalists from *Prensa Libre* and *Guatavisión*, violently preventing them from entering the legislative building.<sup>379</sup> According to a public source, this allegedly occurred when reporter Andrea Domínguez was trying to cover a meeting between the president of Congress and the leader of the teachers’ union.<sup>380</sup> Likewise, according to public information, on May 17, during an activity of the General Secretariat of Planning and Programming of the Presidency in Ixcán, Quiché department, access to the local press was denied on the grounds that it was a “private event.”<sup>381</sup>

184. In addition, information was received about measures of the judiciary that allegedly hindered press coverage and press access to information on criminal proceedings in the public eye, such as that of the former anti-corruption prosecutor Virginia Laparra, arrested and charged with disclosure of confidential information. According to information in the public domain, in January the Laparra case was judicially declared confidential (*bajo reserva*), on the grounds that the media misrepresent information about the proceeding and “hinder the ascertainment of the truth.”<sup>382</sup> RELE has been able to observe that the practice of declaring files confidential has been frequently used in much publicized cases with an impact on public opinion.<sup>383</sup>

185. According to information in the public domain, in April, the president of the Supreme Court of Justice reportedly sent a circular to judges and other Judicial Branch personnel prohibiting the sharing of information with the media.<sup>384</sup> Failure to comply with this regulation could result in administrative disciplinary proceedings against judicial officials or employees.<sup>385</sup>

186. For its part, the State informed that the Secretariat of Social Communication of the Presidency (SCSP) uses official channels in order to disseminate the activities carried out by judicial agencies. In this regard, it indicated that the SCSP favors the practice of journalism by providing access to sources of information.<sup>386</sup> In addition, the Supreme Electoral Tribunal stated that since January 2023 it had held a monthly

<sup>378</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [A Hemispheric Agenda for the Defense of Freedom of Expression](#), OEA/Ser.L/V/II CIDH/RELE/INF 4/9, February 25, 2009, par. 82.

<sup>379</sup> La Hora, May 4, 2023, [Sindicalistas del magisterio y trabajadores del Congreso agreden a periodistas \(Teachers’ unionists and congressional workers attack journalists\)](#); X account of the journalists’ collective No Nos Callarán (@NoNosCallaranGT), [May 4, 2023](#).

<sup>380</sup> La Hora, May 4, 2023, [Sindicalistas del magisterio y trabajadores del Congreso agreden a periodistas \(Teachers’ unionists and congressional workers attack journalists\)](#).

<sup>381</sup> Prensa Comunitaria, May 22, 2023, [Niegan el acceso a la prensa a una actividad de Segeplan en Ixcán \(Press denied access to Segeplan activity in Ixcán\)](#).

<sup>382</sup> Prensa Libre, January 3, 2023, [Jueza Carmen Acú declara bajo reserva el caso contra Virginia Laparra y MP señala a periodistas y medios de comunicación \(Judge Carmen Acú declares case against Virginia Laparra confidential and Public Prosecutor’s Office points fingers at journalists and media outlets\)](#); X account of Prensa Comunitaria (@PrensaComunitar), [January 3, 2023](#); La Hora, [Jueza y fiscal siguen con narrativa contra la prensa por publicaciones \(Judge and prosecutor continue with narrative against press for publications\)](#), April 12, 2023.

<sup>383</sup> El Faro, March 2, 2023, [Virginia Laparra personifica la cacería contra la oposición en Guatemala \(Virginia Laparra personifies the hunt against the opposition in Guatemala\)](#).

<sup>384</sup> La Hora, [Presidenta de la CSI restringe a jueces y empleados del OJ compartir información a medios de comunicación \(President of the CSI restricts judges and OJ employees from sharing information to the media\)](#), April 4, 2023; Prensa Libre, [Organismo judicial restringe a sus empleados divulgar información y advierte procesos administrativos \(Judicial Branch restricts its employees from disclosing information and warns of administrative proceedings\)](#), April 3, 2023.

<sup>385</sup> La Hora, [Presidenta de la CSI restringe a jueces y empleados del OJ compartir información a medios de comunicación \(President of the CSI restricts judges and Judicial Branch employees from sharing information to the media\)](#), April 4, 2023; Prensa Libre, [Organismo judicial restringe a sus empleados divulgar información y advierte procesos administrativos \(Judicial Branch restricts its employees from disclosing information and warns of administrative proceedings\)](#), April 3, 2023.

<sup>386</sup> Information sent by the State of Guatemala in response to the draft press release: “The State of Guatemala must fully and effectively guarantee the right to freedom of expression and freedom of the press,” NV-OEA-M4-No.180-2022, September 1, 2022.

meeting with the representatives of the different media and had transmitted the different activities that take place within the framework of the electoral process.<sup>387</sup>

187. RELE recalls that the State must guarantee that the press can carry out its work without undue interference, particularly when dealing with matters of public interest. When the authorities hinder journalistic coverage or impose restrictions such as the confidentiality of cases of public importance, the principle of transparency and accountability is put at risk, which has a negative impact on democratic institutions.<sup>388</sup>

188. As noted by the United Nations, the Organization for Security and Cooperation in Europe (OSCE) and the OAS rapporteurs for freedom of expression in their Joint Declaration on International Mechanisms for the Promotion of Freedom of Expression, the right of access to information should be subject to a narrow system of exceptions carefully tailored to protect overriding public and private interests.<sup>389</sup> In this sense, exceptions are only applicable when there is a risk of substantial harm to the protected interests and when such harm is greater than the general public interest in having access to such information. The public authority seeking to deny access must demonstrate that the information is covered by the system of exceptions.<sup>390</sup>

## B. Freedom of expression, democratic institutionalism, and electoral process

189. Criminalization and violations of due process in cases against journalists, human rights defenders, justice operators and, in general, people who actively participate in public life, have weakened the exercise of freedom of expression and access to public information in Guatemala, and this has had negative consequences for democratic institutions.<sup>391</sup> The Rapporteurship stresses the urgent need for the State to embark on efforts to restore citizen confidence in public institutions and protect democratic values in the transition from one government to another.

190. On this point, the report on the findings of the international mission on freedom of the press and expression in Guatemala concluded that “The capture of the State by these elites has dismantled democratic institutions and the rule of law, co-opting public institutions, especially the judiciary system; this, has created an institutional framework at the service of impunity and corruption that does not seem to have a chance of changing course in the next elections.”<sup>392</sup> The mission was conducted between May 3 and 27, 2023, and its objective was to analyze and draw attention to the violence and obstacles faced by journalists and communicators in the country, especially in the pre-electoral context. It was formed by the international organizations Article 19 Office for Mexico and Central America, Freedom House, Free Press Unlimited (FPU), Protection International Mesoamerica, Reporters Without Borders (RSF), Committee to Protect Journalists (CPJ), Fundamedios and the Foundation for Press Freedom (FLIP), in alliance with the regional networks IFEX-ALC and Voces del Sur.<sup>393</sup>

191. In addition, citizen distrust in Guatemalan state institutions is a factor that has contributed to the weakening of democratic institutions. An opinion poll by the consulting firm ProDatos for *Prensa Libre* and *Guatevisión* in April indicated that six out of 10 Guatemalans have more confidence in churches than in state

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<sup>387</sup> Information sent by the State of Guatemala in response to the draft press release: “The State of Guatemala must fully and effectively guarantee the right to freedom of expression and freedom of the press,” NV-OEA-M4-No.180-2022, September 1, 2022.

<sup>388</sup> IACHR, Background and Interpretation of the Declaration of Principles on Freedom of Expression.

<sup>389</sup> United Nations, OSCE, and OAS, [Joint Declaration on International Mechanisms for the Promotion of Freedom of Expression](#), December 6, 2004.

<sup>390</sup> United Nations, OSCE, and OAS, [Joint Declaration on International Mechanisms for the Promotion of Freedom of Expression](#), December 6, 2004.

<sup>391</sup> OHCHR Guatemala, March 27, 2023, [Report of the United Nations High Commissioner for Human Rights](#), p. 28.

<sup>392</sup> Freedom House, Free Press Unlimited, RSF, Article 19, FLIP, CPJ, Fundamedios, Protection International Mesoamérica, IFEX-ALC, Voces del Sur, June 2023, [Report of findings of the international mission on freedom of press and of expression in Guatemala](#), p. 19.

<sup>393</sup> Freedom House, Free Press Unlimited, RSF, Article 19, FLIP, CPJ, Fundamedios, Protection International Mesoamérica, IFEX-ALC, Voces del Sur, June 2023, [Report of findings of the international mission on freedom of press and of expression in Guatemala](#), p. 19.

institutions. In this context, only 16% of the population trusts the Supreme Electoral Tribunal as a guarantor of a democratic electoral process.<sup>394</sup>

192. In 2023, the Rapporteurship followed up on the situation of freedom of expression during the electoral period and received information on curtailments of the exercise of journalism during the first round of elections on June 25, 2023.<sup>395</sup>

193. According to the electoral monitoring report of the Red Rompe el Miedo, at least 27 incidents were recorded and verified, affecting 38 journalists and communicators, between Saturday, June 24 and Monday, June 26, 2023.<sup>396</sup> Of those incidents, 14 reportedly occurred prior to the closing of the polls, and the rest after the closing of the polls. The most widely denounced incident was the obstruction of journalistic work, for example through limitations on press coverage and the prohibition on entering the voting centers during the vote count.<sup>397</sup> In addition, acts of intimidation were recorded -one of them with a firearm- along with cases in which information was denied.<sup>398</sup>

194. RELE was also informed of attacks on journalists by supporters of candidates for public office in the context of the 2023 general elections. In April, Juan Bautista Xol, a journalist with *Prensa Comunitaria*, was reportedly attacked by UNE supporters in Izabal; Marvin del Cid and Sonny Figueroa were reportedly attacked by supporters of the Valor party in Zone 6 of the capital; and Mario Guzmán, of *T13 Noticias*, was said to have received death threats from a former mayor and candidate for reelection to the same position in Sololá.<sup>399</sup>

195. According to the analysis carried out by the European Union (EU) Electoral Observation Mission, the general elections in Guatemala were held “in a context of a serious deterioration of the rule of law and the independence of the judiciary, together with severe restrictions on freedoms of expression and of the press,” and in an “intimidating environment” and self-censorship for the media.<sup>400</sup> According to the EU, this situation would have limited the right of voters to receive information and the right of journalists to report during the election period.<sup>401</sup>

196. With respect to the right to freedom of expression and the electoral process, the State reported on various actions carried out by the Supreme Electoral Tribunal (TSE). For example, the launching of the “non-aggression pact”, a national agreement aimed at promoting an electoral process with integrity, which strengthens democracy and the rule of law, in an environment of peace, respect, inclusion and ethics. The agreement contains 16 points and most of them are commitments made by the signatory political parties to

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<sup>394</sup> Freedom House, May 18, 2023, [Guatemala: Without freedom of the press there is no democracy](#); Prensa Libre, May 4, 2023, [Guatemaltecos todavía confían en las iglesias, no así en las instituciones públicas y en la clase política \(Guatemalans still trust in churches, but not in public institutions and the political class\)](#).

<sup>395</sup> Red Rompe el Miedo Guatemala, July 6, 2023, [Informe Ejecutivo. \(Executive Report.\) Monitoreo electoral, primera vuelta, elecciones generales Guatemala 2023 \(Election monitoring, first round, general elections Guatemala 2023\)](#).

<sup>396</sup> Red Rompe el Miedo Guatemala, July 6, 2023, [Informe Ejecutivo. \(Executive Report.\) Monitoreo electoral, primera vuelta, elecciones generales Guatemala 2023 \(Election monitoring, first round, general elections Guatemala 2023\)](#).

<sup>397</sup> Red Rompe el Miedo Guatemala, July 6, 2023, [Informe Ejecutivo. \(Executive Report.\) Electoral monitoring, first round, general elections Guatemala 2023; Prensa Comunitaria, June 29, 2023, PNC y Juntas Electorales obstaculizaron el trabajo de periodistas en jornada electoral \(PNC and Electoral Boards obstructed the work of journalists on Election Day\)](#).

<sup>398</sup> Red Rompe el Miedo Guatemala, July 6, 2023, [Informe Ejecutivo. \(Executive Report.\) Monitoreo electoral, primera vuelta, elecciones generales Guatemala 2023 \(Election monitoring, first round, general elections Guatemala 2023\)](#).

<sup>399</sup> Observatorio de Periodistas de Guatemala, June 2023. Information sent by the Red Rompe el Miedo, August 10, 2023. Archive of the IACHR and the Office of the Special Rapporteur; La Hora, [Cuenta de NoNosCallarán denuncia amenaza contra periodista \(NoNosCallarán account denounces threat against journalist\)](#), April 26, 2023.

<sup>400</sup> European Union Electoral Observation Mission Guatemala, June 27, 2023, [Preliminary Statement. A well-organised election day in a process marked by the exclusion of candidates and the null vote](#).

<sup>401</sup> European Union Electoral Observation Mission Guatemala, June 27, 2023, [Preliminary Statement. A well-organised election day in a process marked by the exclusion of candidates and the null vote](#).

guarantee violence-free elections.<sup>402</sup> In addition, information and training activities were developed for journalists, under the theme of “culture of electoral legality.”<sup>403</sup>

197. The State also informed that the TSE held a coordination meeting with representatives of the Red Rompe el Miedo Guatemala, in order to define criteria for journalistic coverage of the general elections. Within this framework, the Network prepared informative material that was distributed in the different voting centers, with a view to upholding journalistic rights and obligations in the voting centers.<sup>404</sup>

198. In light of the facts presented, the Commission and the Rapporteurship emphasize that, in the context of an electoral campaign, freedom of thought and expression in its two dimensions constitutes a fundamental bastion for debate, the formation of public opinion among voters, and the strengthening of the political contest between the different candidates and parties.<sup>405</sup> For that, it is essential that the exercise of freedom of expression be protected and guaranteed in the political debate that precedes the election of State authorities who will govern a State, as well as that which takes place after the results come out.<sup>406</sup>

199. International standards on freedom of expression recognize the importance for democracy of a dynamic media environment during election periods, so that the public has access to a diverse range of information and ideas.<sup>407</sup> In this regard, States should implement various measures in order to create an environment conducive to the proliferation of pluralistic media in electoral contexts.<sup>408</sup> In addition, they have a special obligation to take prompt and effective measures to prevent, protect, investigate, prosecute, and punish attacks, threats, intimidation, and harassment, both online and offline, against journalists and other media workers during election periods, particularly in cases where State actors are or may be involved.<sup>409</sup>

200. RELE followed up on several events that occurred after the second round of elections on August 20, 2023, where threats to the exercise of the right to freedom of expression and peaceful assembly were reported. In particular, RELE learned that on August 24, 2023, the Attorney General of Guatemala filed a request for amparo before the Constitutional Court because she considered that there had been violations of the autonomy and independence of the Public Prosecutor’s Office.<sup>410</sup> She alleged that the messages circulated on social networks, which reported a call for a public demonstration to protest actions taken by the Public Prosecutor’s Office, entailed public disorder and violated compliance with the constitutional mandate of the entity under her charge.<sup>411</sup> In this regard, she asked the Court to order actions by (*que ordenara la actuación*) President Alejandro Giammattei, the Ministry of the Interior, and the National Civil Police.<sup>412</sup> Among other things, she requested that “public order be preserved using sufficient properly uniformed members of the security forces and that public force be used, if absolutely necessary and in exceptional cases, when the assembly as such or demonstration is not peaceful or if there are clear indications of an imminent threat of

<sup>402</sup> Information sent by the State of Guatemala in response to RELE’s request for information in the framework of the preparation of the Annual Report, OEA-M4-NV-288-2023, Note from the Presidential Commission for Peace and Human Rights, September 6, 2023, p.4.

<sup>403</sup> Information sent by the State of Guatemala in response to RELE’s request for information in the framework of the preparation of the Annual Report, OEA-M4-NV-288-2023, Note from the Presidential Commission for Peace and Human Rights, September 6, 2023, p.6.

<sup>404</sup> Information sent by the State of Guatemala in response to RELE’s request for information in the framework of the preparation of the Annual Report, OEA-M4-NV-288-2023, Note from the Presidential Commission for Peace and Human Rights, September 6, 2023, p.6.

<sup>405</sup> I/A Court H.R., [Case of Ricardo Canese v. Paraguay, Merits, Reparations and Costs](#), Judgment of August 31, 2004, Series C No. 111, paragraph 88.

<sup>406</sup> I/A Court H.R., [Case of Ricardo Canese v. Paraguay, Merits, Reparations and Costs](#), Judgment of August 31, 2004, Series C No. 111, paragraph 90.

<sup>407</sup> United Nations, OSCE, OAS, [Joint Declaration on Freedom of Expression and Elections in the Digital Age](#), April 30, 2020.

<sup>408</sup> United Nations, OSCE, OAS, CADHP, [Joint Declaration on the Media and Elections](#), 2009.

<sup>409</sup> United Nations, OSCE, OAS, [Joint Declaration on Freedom of Expression and Elections in the Digital Age](#), April 30, 2020.

<sup>410</sup> France 24, [Corte de Guatemala rechaza pedido de fiscal general de frenar protestas en su contra \(Guatemalan court rejects attorney general’s request to halt protests against her\)](#), August 28, 2023; Emisoras Unidas, [Fiscal Porras presenta amparo para “garantizar su independencia \(Prosecutor Porras files injunction to “guarantee his independence”\)](#)”, August 23, 2023.

<sup>411</sup> La Hora [Fiscal General pide en amparo uso de la fuerza pública de ser necesario \(Attorney General requests in amparo the use of public force if necessary\)](#), August 25, 2023; Soy 502, [Los mensajes en redes sociales que originaron el amparo de Consuelo Porra \(The messages on social networks that gave rise to Consuelo Porras’ injunction\)](#), August 26, 2023.

<sup>412</sup> Prensa Comunitaria, [CC niega amparo solicitado por Consuelo Porras en contra de ciudadanos que exigen su renuncia \(CC denies amparo request by Consuelo Porras against citizens demanding her resignation\)](#); Inter American Press Association, August 29, 2023, [IAPA rejects the “abuse of privilege” of Guatemala’s attorney general.](#)

serious violence.”<sup>413</sup> The Constitutional Court of Guatemala rejected her request for amparo, stating that “the right to demonstrate was exercised by the citizens without jeopardizing public order or the constitutional functions of the Public Prosecutor’s Office.”<sup>414</sup>

201. On the other hand, since October 2, the IACHR and its RELE closely monitored a series of marches (*movilizaciones sociales*) led by indigenous authorities, in response to a series of complaints about interference by the Public Prosecutor’s Office (MP), contrary to the democratic order and the sovereign will of the population expressed at the polls.<sup>415</sup> The IACHR and its RELE observed that the population’s demands and discontent were expressed peacefully in social mobilizations and other acts of protest in public spaces and in front of the buildings of state institutions.<sup>416</sup>

202. In this context, the Commission and its RELE received complaints about actions that seek to limit the free exercise of the right to protest, in a climate of growing social tension. For example, stigmatizing statements and threats of criminalization from the highest authorities, as well as aggressions and threats from individuals against those who demonstrate in different parts of the country, including indigenous people, defenders, and journalists.<sup>417</sup>

203. Thus, for example, the Commission learned of an armed attack against demonstrators by private individuals who were attempting to remove a blockade in the municipality of Malacatán on October 16.<sup>418</sup> This attack reportedly occurred in the presence of the National Civil Police (PNC) and resulted in the death of one person and two persons injured.<sup>419</sup> In this regard, the Public Prosecutor’s Office and the Ministry of the Interior reported the arrest of eleven people.<sup>420</sup> The IACHR was also informed about the murder of Noé Gómez, human rights defender, a member of the Xinka People, and one of the leaders of the mobilizations in Jutiapa, which occurred on October 28, and therefore calls on the authorities to investigate what happened with due diligence.<sup>421</sup>

204. In this regard, in its observations on this report, the Public Prosecutor’s Office indicated that it is investigating the incident that occurred in the hamlet of El Caulote, municipality and department of Jutiapa, “in which a male person was found dead, on October 28, 2023, at approximately 12:30 hours, with wounds caused by a firearm. Prosecutors and technicians in criminal investigations processed the scene and identified the victim as Noé Gómez Barrera. Several pieces of evidence were found at the scene, including seven pieces of

<sup>413</sup> La Hora, August 25, 2023, [Fiscal General pide en amparo uso de la fuerza pública de ser necesario \(Attorney General requests in amparo the use of public force if necessary\)](#).

<sup>414</sup> France 24, August 28, 2023, [Guatemalan court rejects attorney general's request to halt protests against her](#); Voice of America, August 28, 2023, [Guatemala's Constitutional Court denies attorney general the right to repress protests called on social networks](#).

<sup>415</sup> La Hora, October 2, 2022, [Manifestaciones en contra del MP inician hoy, con plazo indefinido \(Demonstrations against the Public Prosecutor's Office begin today, with indefinite deadline\)](#); AP News, October 3, 2023, [Guatemala: blockades and protests against prosecutor's actions on electoral process continue](#).

<sup>416</sup> CIDH, Guatemala: The; Press Release 255/23, October 30, 2023.

<sup>417</sup> Deutsche Welle (DW), [Giammattei says he will no longer tolerate road blockades](#), October 10, 2023; La Hora, [Barrientos hace llamado a líderes, habla de los bloqueos y disturbios en zona 1 \(Barrientos makes call to leaders, talks about blockades and unrest in zone 1\)](#), October 10, 2023; Soy 502, [Bloqueos: \(Blockades:\)Bernardo Arévalo rechaza actos de vandalismo por grupos de infiltrados \(Bernardo Arévalo rejects acts of vandalism by groups of infiltrators\)](#), October 9, 2023; Information provided by civil society organizations and journalists, October 2023.

<sup>418</sup> Prensa Libre, [Autos quemados, casquillos y los otros detalles de la balacera que dejó un muerto y heridos en un bloqueo en Malacatán \(Burned cars, shell casings and other details of the shooting that left one person dead and others wounded at a blockade in Malacatán\)](#), October 17, 2023; La Hora, [Enfrentamiento en Malacatán por bloqueo deja un fallecido y dos heridos \(Confrontation in Malacatán over blockade leaves one person dead and two wounded\)](#), October 16, 2023.

<sup>419</sup> La Hora, [Un muerto y dos heridos en San Marcos: persisten más dudas que respuestas \(One dead and two injured in San Marcos: more doubts than answers persist\)](#), October 16, 2023; Prensa Libre, [Disparos, un muerto y varios heridos: bomberos dan detalles de violento desalojo en bloqueo en Malacatán \(Gunshots, one dead and several wounded: firefighters give details of violent eviction at blockade in Malacatán\)](#), October 16, 2023; X account of the Public Prosecutor’s Office of Guatemala (@MPguatemala), [October 16, 2023](#).

<sup>420</sup> Emisoras Unidas, [MP investiga los hechos ocurridos en Malacatán, San Marcos \(Public Prosecutor's Office investigates events in Malacatán, San Marcos\)](#), October 16, 2023.

<sup>421</sup> Prensa Comunitaria, [Asesinan a dirigente Xinka y defensor de derechos humanos \(Xinka leader and human rights defender murdered\)](#), October 29, 2023; La Hora, [Líder comunitario de Jutiapa fallece en ataque armado; PNC recaba información \(Community leader from Jutiapa dies in armed attack; PNC gathers information\)](#).

ballistic evidence and a cell phone. On November 23, 2023, the case was transferred to the Human Rights Prosecutor's Office for follow-up investigation.”<sup>422</sup>

205. On the other hand, Red Rompe el Miedo documented attacks against journalists and communicators for their coverage of the protests, allegedly by people infiltrating the demonstrations as well as by agents of the National Civil Police.<sup>423</sup> According to information in the public domain, as of October 18, at least 9 incidents against the press had been reported, including physical aggressions, intimidation, and hacking.<sup>424</sup>

206. On October 18, the Constitutional Court (CC) issued a ruling in response to an appeal filed by the Public Prosecutor's Office in response to the prolonged blockade of its headquarters in Barrio Gerona due to demonstrations.<sup>425</sup> The CC ordered the PNC and the Ministry of the Interior to “execute the pertinent actions and measures to restore public order”, including through the use of public force and with the cooperation of the Guatemalan Army.<sup>426</sup> In addition, it raised the question whether some “non-peaceful” mobilizations could constitute crimes against humanity for “provoking the extermination of civilians” as a result of “situations of destruction of water facilities and reserves.”<sup>427</sup> It also ordered the arrest of persons involved in the commission of flagrant crimes.<sup>428</sup>

207. For the IACHR and its RELE, judgment has a severe impact on the right to freedom of expression and the right to defend rights at a transcendental moment for the country, such as the post-electoral and presidential transition period.<sup>429</sup>

208. In addition, on October 27, the Public Prosecutor's Office filed a request for impeachment against the deputy of the Movimiento Semilla, Samuel Perez, due to a publication by the legislator on social networks in which he questioned the Court's ruling and considered it a “declaration of war on the people of Guatemala.”<sup>430</sup> According to the Public Prosecutor's Office, the congressman's message could generate a “destabilization of the democratic rule of law” and constitute an alleged crime of activities against the internal security of the nation.<sup>431</sup> In this regard, the IACHR and its Rapporteurship recall that the right to freedom of expression cannot be restricted by indirect ways or means, such as abuses of official controls and obstacles aimed at preventing the free circulation of ideas and opinions.<sup>432</sup>

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<sup>422</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 66.

<sup>423</sup> Voces del Sur, [Voces del Sur condena la orden de desalojar la manifestación pacífica en Guatemala, en abierto desacato a garantizar el derecho de reunión y libertad de expresión \(Voces del Sur condemns the order to evict the peaceful demonstration in Guatemala, in open contempt of the obligation to guarantee the right of assembly and freedom of expression\)](#), October 18, 2023.

<sup>424</sup> Voces del Sur, [Voces del Sur condena la orden de desalojar la manifestación pacífica en Guatemala, en abierto desacato a garantizar el derecho de reunión y libertad de expresión \(Voces del Sur condemns the order to evict the peaceful demonstration in Guatemala, in open contempt of the obligation to guarantee the right of assembly and freedom of expression\)](#), October 18, 2023.

<sup>425</sup> X account of the Constitutional Court of Guatemala (@CC\_Guatemala), [October 18, 2023](#).

<sup>426</sup> Constitutional Court, [Case 1322-2023](#), October 18, 2023.

<sup>427</sup> Constitutional Court, [Case 1322-2023](#), October 18, 2023.

<sup>428</sup> Constitutional Court, [Case 1322-2023](#), October 18, 2023.

<sup>429</sup> IACHR, [Guatemala: The IACHR and Its Special Rapporteurship for Freedom of Expression Urge the State of Guatemala to Protect the Right to Protest and the Right to Peaceful Assembly](#); Press Release 255/23, October 30, 2023.

<sup>430</sup> La Hora, [MP presenta antejuicio contra Samuel Pérez por tuit publicado \(Public Prosecutor's Office files impeachment complaint against Samuel Pérez for published tweet\)](#), October 27, 2023; Soy 502, [MP pide retirar la inmunidad de Samuel Pérez, diputado de Semilla \(Public Prosecutor's Office asks for the lifting of the immunity of Samuel Pérez, deputy of Semilla\)](#), October 27, 2023; Prensa Libre, [Ministerio Público solicita retiro de inmunidad contra el diputado Samuel Pérez \(Public Prosecutor's Office requests withdrawal of immunity of deputy Samuel Pérez\)](#), October 27, 2023.

<sup>431</sup> La Hora, [MP presenta antejuicio contra Samuel Pérez por tuit publicado \(Public Prosecutor's Office files impeachment complaint against Samuel Pérez for published tweet\)](#), October 27, 2023; Soy 502, [MP pide retirar la inmunidad de Samuel Pérez, diputado de Semilla \(Public Prosecutor's Office asks for the lifting of the immunity of Samuel Pérez, deputy of Semilla\)](#), October 27, 2023; Prensa Libre, [Ministerio Público solicita retiro de inmunidad contra el diputado Samuel Pérez \(Public Prosecutor's Office requests withdrawal of immunity of deputy Samuel Pérez\)](#), October 27, 2023.

<sup>432</sup> [American Convention on Human Rights](#), Article 13; IACHR, [Declaration of Principles on Freedom of Expression](#), 2000.

209. In its observations on this report, the State of Guatemala reported that “on October 18, 2023, Deputy Pérez Álvarez published on his social media account a message in which he shared two photographs of the communiqué published by the Constitutional Court on that date ordering the Minister of the Interior and the Director of the National Civil Police to safeguard the rights protected in order to enable access to the offices of the MP and ensure the physical integrity of workers and users.”<sup>433</sup> However, “this publication was accompanied by the message ‘Declaration of War: The CC sends the Army to the streets,’ a statement that when shared with public opinion could potential lead to the destabilization of the democratic rule of law that should prevail in the Republic of Guatemala.”<sup>434</sup> According to the State, “publications such as this may lend themselves to groups of people seeking to take advantage of the national situation and may constitute an attack on the legal and democratic regime of the State of Guatemala; therefore, they may be considered to constitute criminal offenses and acts that threaten the internal security of the nation.”<sup>435</sup>

210. For its part, the State of Guatemala emphasized that it complies with international standards on the matter, that it has always favored and given priority to the prior exhaustion of dialogue, and that the use of force is a last resort.<sup>436</sup> Regarding the actions of the Public Prosecutor’s Office, it stated that the ongoing criminal investigation is in no way intended to alter the democratic order or the results of the general elections.<sup>437</sup> It also pointed out that all the actions of the Constitutional Court have been carried out within the framework of the Guatemalan legal system and geared to the protection of the fundamental rights of the population.<sup>438</sup>

211. The State also indicated that the Ministry of the Interior, favoring dialogue and in accordance with the current legal system, established plans and protocols, and with absolute respect for the human rights of all those present, managed to reach an agreement with the leaders of the group stationed in front of the Public Prosecutor’s Office building, thus freeing access to the building.<sup>439</sup> It also affirmed that as the days go by, the achievements of the mediation roundtables are becoming evident, given that passage ways have been freed and mobility at many points has been restored peacefully and by the will of the demonstrators themselves.<sup>440</sup>

212. The IACHR and its Rapporteurship recall that the right to peaceful protest is a fundamental component of freedom of expression, since the expression of opinions, dissemination of information, and articulation of demands are central objectives of protests.<sup>441</sup> When social protest takes the form of speeches

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<sup>433</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 66.

<sup>434</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 66.

<sup>435</sup> In its report, it stated that “The criminal offense of activities against the internal security of the nation is regulated in Article 390 of the Criminal Code, Decree 17-73 of the Congress of the Republic, paragraph 1 of which establishes that “Persons who: I. Disseminate or promote, by word or in writing or any other means, doctrines that tend to destroy, through violence, the social and legal organization of the nation, shall be punished with imprisonment of one to five years and a fine of three hundred to three thousand quetzals. Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/lfl. Note from the Permanent Mission of Guatemala to the Organization of American States (OAS). OEA-M4-NV-394-2023, December 15, 2023, p. 66.

<sup>436</sup> Information sent by the State of Guatemala in response to the draft press release: “*Guatemala: IACHR and RELE urge the State to guarantee the right to protest and peaceful assembly*,” OAS-M4-NV-362-2023, Note from the Presidential Commission for Peace and Human Rights, October 30, 2022.

<sup>437</sup> Information sent by the State of Guatemala in response to the draft press release: “*Guatemala: IACHR and RELE urge the State to guarantee the right to protest and peaceful assembly*,” OAS-M4-NV-362-2023, Note from the Presidential Commission for Peace and Human Rights, October 30, 2022.

<sup>438</sup> Information sent by the State of Guatemala in response to the draft press release: “*Guatemala: IACHR and RELE urge the State to guarantee the right to protest and peaceful assembly*,” OAS-M4-NV-362-2023, Note from the Presidential Commission for Peace and Human Rights, October 30, 2022.

<sup>439</sup> Information sent by the State of Guatemala in response to the draft press release: “*Guatemala: IACHR and RELE urge the State to guarantee the right to protest and peaceful assembly*,” OAS-M4-NV-362-2023, Note from the Presidential Commission for Peace and Human Rights, October 30, 2022.

<sup>440</sup> Information sent by the State of Guatemala in response to the draft press release: “*Guatemala: IACHR and RELE urge the State to guarantee the right to protest and peaceful assembly*,” OAS-M4-NV-362-2023, Note from the Presidential Commission for Peace and Human Rights, October 30, 2022.

<sup>441</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Protest and Human Rights, OEA/Ser.L/V/II, IACHR/RELE/INF.22/19, September 2019, par. 18.

that criticize or denounce public officials and authorities or refer to matters of public interest, it is especially protected by Article 13 of the ACHR.<sup>442</sup>

213. States are obliged to guarantee and facilitate the exercise of the human rights at stake during demonstrations and protests and to implement measures and mechanisms so that these rights can be exercised in practice, not as a way of hampering them.<sup>443</sup> Public demonstrations should not be considered by the authorities as a threat to public order or internal security.<sup>444</sup> Due to the nature of social protests, it is necessary to tolerate a certain level of disruption to daily life, for example, in relation to traffic and entry to public buildings.<sup>445</sup>

214. In accordance with inter-American standards, the use of force must conform to strict principles of exceptionality, necessity, progressiveness, and proportionality.<sup>446</sup> In this regard, the Commission and RELE recall that the breaking up of peaceful demonstrations by force is a direct interference with this right and, in addition, may affect the life or integrity of persons.<sup>447</sup>

### C. Threats in the digital environment

215. The IACHR and RELE continued to receive information on attacks and threats to journalists, human rights defenders, and political leaders through the so-called “netcenters.”<sup>448</sup> These accounts reportedly operate anonymously and manage hundreds of interconnected dummy accounts, have few or no followers, have no verifiable profile picture, and use fake names. Research has revealed that a user controlling a netcenter account can falsely create 5 to 10 users per day, which equates to a monthly growth of 150 to 300 followers.<sup>449</sup>

216. In recent years, netcenters have allegedly undertaken coordinated actions aimed at harassing people who criticize or question the current government administration, and deliberately disseminating content against the fight against impunity, with the purpose of influencing the agenda and public opinion.<sup>450</sup> In addition, these accounts disclose government information on judicial proceedings and other confidential matters under the responsibility of the Public Prosecutor’s Office, which raises concerns about the proper handling of the information by the authorities.<sup>451</sup> On this point, the State has indicated that “such publications

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<sup>442</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Protest and Human Rights](#), OEA/Ser.L/V/II, IACHR/RELE/INF.22/19, September 2019, par. 206.

<sup>443</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Protest and Human Rights](#), OEA/Ser.L/V/II, IACHR/RELE/INF.22/19, September 2019, par. 28.

<sup>444</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Protest and Human Rights](#), OEA/Ser.L/V/II, IACHR/RELE/INF.22/19, September 2019, par. 339.

<sup>445</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Protest and Human Rights](#), OEA/Ser.L/V/II, IACHR/RELE/INF.22/19, September 2019, par. 154.

<sup>446</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Protest and Human Rights](#), OEA/Ser.L/V/II, IACHR/RELE/INF.22/19, September 2019, par. 350.

<sup>447</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Protest and Human Rights](#), OEA/Ser.L/V/II, IACHR/RELE/INF.22/19, September 2019, par. 153.

<sup>448</sup> IRI, May 2023, [Guatemala 2023 Elections: A Risk Assessment on the Online Information Space](#); Deutsche Welle (DW), June 5, 2023, [The Dark Outlook for Journalism and Democracy in Guatemala](#); Civicus, May 3, 2023, [GUATEMALA: “El acoso judicial y la persecución penal tienen efectos desgastantes” \(“Judicial harassment and criminal prosecution wear people down.”\)](#); Vox Populi Guate X account (@VoxPopuliGuate), [March 23, 2023](#); U.S. Government Department of State, [2022 Country Reports on Human Rights Practices: Guatemala, 2022](#).

<sup>449</sup> CICIG, [Report: “Bots, netcenters, and the fight against impunity. The case of Guatemala”](#), May 20, 2019.

<sup>450</sup> IRI, [Guatemala 2023 Elections: A Risk Assessment on the Online Information Space](#), May 2023; Civicus, [Freedom of expression and human rights defenders remain vulnerable in Guatemala](#), June 7, 2019; Con Criterio, October 9, 2020, [De noticias falsas a netcenters: la manipulación es el gran motor \(From fake news to netcenters: manipulation is the big driver\)](#); U.S. Government, Department of State, [2022 Country Reports on Human Rights Practices: Guatemala, 2022](#); Just Security, [Guatemalan Election Runoff Endangered by Corrupt Authorities](#), July 27, 2023.

<sup>451</sup> Infobae, [Cómo la fiscalía de Guatemala utiliza trolls en las redes sociales para amedrentar al presidente electo Bernardo Arévalo \(How Guatemala’s prosecutor’s office uses social media trolls to intimidate president-elect Bernardo Arevalo\)](#), September 16, 2023; Con Criterio, [MP abre acceso privilegiado de información a netcenter \(Public Prosecutor’s Office opens privileged access of information to netcenter\)](#), August 2, 2022; Centro Latinoamericano de Investigación Periodística (CLIP), [Cómo mutaron los netcenters anti justicia y derechos humanos en Guatemala \(How Anti-Justice and Human Rights Netcenters Mutated in Guatemala, 30 November 2022\)](#), November 30, 2022.

have at no time been aired by official accounts of the State of Guatemala, nor by its public officials, so it is not attributable to the State.”<sup>452</sup>

217. In connection with this, the State of Guatemala said that “the Public Prosecutor’s Office cannot take responsibility for information circulating on social networks when the corresponding complaints for initiating and pursuing an objective criminal investigation have not been filed.”<sup>453</sup>

218. In the context of the 2023 general elections, threats and intimidations with incitement to violence were reported against the winning electoral candidates in the general elections, Cesar Bernardo Arévalo de León and Karin Herrera Aguilar.<sup>454</sup> Among other instances, it was reported that several profiles have repeatedly published Arévalo’s location and private family information by publicly displaying photographs of him and his family.<sup>455</sup> In addition, several netcenter publications against him reportedly constituted illegal leaks of supposedly confidential criminal proceedings, allegedly coming from persons linked to the Public Prosecutor’s Office.<sup>456</sup> Based on these facts, the Commission decided to grant precautionary measures in their favor, after considering that they were in a serious and urgent situation of risk of irreparable harm to their rights in Guatemala.<sup>457</sup>

219. In its observations on this report, the State of Guatemala said that “the Prosecutor’s Office against the Crime of Extortion obtained an alert and information related to criminal gang structures that could endanger the life of Mr. César Bernardo Arévalo de León. In accordance with the established protocols, the relevant actions were immediately taken to protect his life.”<sup>458</sup> It also stated that “he was informed, and coordination took place with the General Directorate of the National Civil Police to provide the applicable security measures.”<sup>459</sup> Currently, “the Prosecutor’s Office is investigating the incident in order to find those responsible and determine responsibilities. This situation is included in the resolution of the IACHR in which precautionary measures were granted to Bernardo Arévalo and Karin Herrera.”<sup>460</sup>

220. The Rapporteurship notes that the widespread presence of netcenters and their intimidating actions have fostered a hostile environment and self-censorship of Guatemalan citizens. In this regard, the Rapporteurship recalls that it is the duty of the State to protect and guarantee the full exercise of the right to freedom of expression on the Internet.<sup>461</sup> This implies taking all possible measures to create an enabling environment in which citizens can express information, ideas, and opinions without fear of reprisals or intimidation.<sup>462</sup> Given that the exercise of the right to freedom of expression is conducive not only to the personal fulfillment of those who express themselves but also to the consolidation of truly democratic societies,

<sup>452</sup> Information sent by the State of Guatemala in response to the draft press release: “The State of Guatemala must fully and effectively guarantee the right to freedom of expression and freedom of the press,” NV-OEA-M4-No.180-2022, September 1, 2022.

<sup>453</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 66.

<sup>454</sup> El País, [El presidente electo de Guatemala, Bernardo Arévalo, denuncia planes para atacar contra su vida \(Guatemala’s president-elect, Bernardo Arévalo, denounces plans to assassinate him\)](#), August 24, 2023.

<sup>455</sup> IACHR, [Resolution 48/2023](#). *Precautionary Measures No. 574-23, Cesar Bernardo Arevalo de Leon and Karin Herrera Aguilar regarding Guatemala*, August 24, 2023.

<sup>456</sup> IACHR, [Resolution 48/2023](#). *Precautionary Measures No. 574-23, Cesar Bernardo Arevalo de Leon and Karin Herrera Aguilar regarding Guatemala*, August 24, 2023.

<sup>457</sup> IACHR, [Resolution 48/2023](#). *Precautionary Measures No. 574-23, Cesar Bernardo Arevalo de Leon and Karin Herrera Aguilar regarding Guatemala*, August 24, 2023.

<sup>458</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 71.

<sup>459</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 71.

<sup>460</sup> Response of the State of Guatemala to the contents of the IACHR’s Preliminary Chapter IV.B Report. DIDEH-DEPCADEF-073-2023/WEBS/Ifil. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 71.

<sup>461</sup> United Nations, OSCE, OAS, [Joint Declaration on Freedom of Expression and Elections in the Digital Age](#), April 30, 2020.

<sup>462</sup> IACHR Office of the Special Rapporteur for Freedom of Expression, [Inter-American Legal Framework on the Right to Freedom of expression](#), OEA Ser.L/V/II CIDH/RELE/INF. 2/09, December 30, 2013, par. 8.

the State has the obligation to generate sufficient conditions for public, pluralistic, and open deliberation on issues that concern us all as citizens of a given State.<sup>463</sup>

221. Additionally, in relation to reports on the dissemination of privileged information on confidential judicial proceedings, it is imperative that the State of Guatemala, through the Public Prosecutor's Office, adopt effective measures to safeguard the integrity of its information and guarantee its proper handling, avoiding leaks and ensuring diligent state document management. According to inter-American standards on access to public information, States have the obligation to train their public officials on the custody of files related to the information that the State is obliged to safeguard and manage.<sup>464</sup>

222. In this regard, the State of Guatemala informed the IACHR that "it is important to take into account all the institutions or parties involved: any person or entity that is a plaintiff in the process has access to a file; the information is not exclusive to the Public Prosecutor's Office."<sup>465</sup> Likewise, it pointed out that "some media publish information on cases, many of which are subject to special rules, including excerpts and images of the files, official information, or explicit references to the fact that they had access to files to which only the parties involved in the process have access. The Public Prosecutor's Office has investigations underway in this regard."<sup>466</sup>

## VI. CONCLUSIONS AND RECOMMENDATIONS

223. In 2023, the Inter-American Commission found that the situation of human rights and the rule of law in Guatemala continues to worsen as a result of the abusive exercise of punitive power for political-electoral purposes in the context of the General Elections, as well as the State's prolonged failure to comply with its obligation to combat impunity.

224. In this context, the absence of judicial control over the interference of the Public Prosecutor's Office in the electoral process, such as raids against the Supreme Electoral Tribunal (TSE), the Movimiento Semilla party, and the opening and confiscation of ballots, has revealed the current weakening of the principle of separation of powers and the progressive loss of a system of checks and balances in the country, thus deepening the political, social, and democratic instability in Guatemala. This state of affairs has been seriously questioned both nationally and internationally, as it has called into question the results of the process, the popular will be expressed at the polls and, therefore, the constitutional order.

225. Likewise, in Guatemala, criminalization and severe accusations persist regarding the arbitrary use of imprisonment against justice operators and former justice operators, due to their work in emblematic cases of corruption and serious human rights violations, in a context of lack of independence and impartiality of the Public Prosecutor's Office.

226. The pre-trial/impeachment procedure (*procedimiento de antejuicio*) continues to be used as a mechanism of harassment and reprisal against justice operators, in an attempt to strip them of their jurisdictional immunity or make them resign from office, and then force them into exile. In 2023 it was also observed that this procedure has been used against TSE magistrates in the context of the elections in order to initiate criminalization processes.

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<sup>463</sup> IACHR Office of the Special Rapporteur for Freedom of Expression, [Inter-American Legal Framework on the Right to Freedom of expression](#), OEA Ser.L/V/II CIDH/RELE/INF. 2/09, December 30, 2013, par. 8.

<sup>464</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [The Right of Access to Public Information in the Americas](#), OEA/Ser.L/V/II. CIDH/ RELE/ INF.7/12, December 30, 2011, par. 315.

<sup>465</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 71.

<sup>466</sup> Response of the State of Guatemala to the contents of the IACHR's Preliminary Chapter IV.B Report. DIDEH-DEPCADEH-073-2023/WEBS/lfl. [Note from the Permanent Mission of Guatemala to the Organization of American States \(OAS\)](#). OEA-M4-NV-394-2023, December 15, 2023, p. 71.

227. The criminalization of justice operators is also often accompanied by severe setbacks or a complete lack of progress in the cases they were in charge of, mainly related to high-impact corruption and serious human rights violations in the context of the internal armed conflict, some of them with sentences from the Inter-American Court of Human Rights in the supervision stage and/or with provisional measures in force. This demonstrates the Guatemalan State's unwillingness to comply with its obligation to combat impunity in these proceedings.

228. The IACHR ascertained a notable deterioration in the guarantees for the exercise of freedom of expression and freedom of the press in Guatemala, inter alia, due to attacks, acts of violence, and the manipulation (*instrumentalización*) of criminal mechanisms as a form of intimidation and silencing of critics. In 2023, these developments resulted in the definitive closure of *El Periódico*, one of the country's most emblematic newspapers, the prosecution of its staff, and the criminal conviction of its founder José Rubén Zamora on charges of violations of due process and the right to defense.

229. In light of the political situation and the progressive erosion of democratic safeguards in the country, the IACHR stresses the urgent need to restore public trust in public institutions, in the system of administration of justice, and in democratic values. Consequently, the State of Guatemala must reaffirm its commitment to combat impunity and corruption, strengthen the justice system, and fully respect human rights, including through technical assistance and international cooperation.

230. In accordance with the foregoing analysis, the IACHR formulates the following recommendations:

### **Combating corruption and impunity**

1. Reaffirm the importance of the fight against corruption to combat impunity through a strengthened, independent, and impartial justice system.
2. Implement the mechanisms needed to prevent, investigate, and punish any form of corruption that impairs the functioning of the justice administration system and the rule of law.
3. Definitively shelve Bill (legislative initiative) No. 6099; and reinforce actions in the fight against impunity for serious human rights violations committed during the internal armed conflict.

### **Judicial independence and justice operators**

4. Adopt measures to ensure that justice system operators perform their work impartially and independently, respecting the principle of separation of the branches of government and free from any threat or pressure from powerful groups.
5. Protect justice system operators from attacks, acts of intimidation, threats, and harassment, and investigate, and effectively punish, those who violate their rights.
6. Refrain from promoting pre-trial/impeachment proceedings based on the legal arguments adduced by justice operators or as a means of retaliation for the work they perform.
7. Ensure that the criminal proceedings described in this report are resolved within a reasonable period of time in an impartial manner. In particular, cease the use of pretrial detention and deprivation of liberty as a form of reprisal against justice operators, human rights defenders, journalists, and others who play a relevant role in the fight against impunity and corruption.

## Freedom of Expression

8. Refrain from exerting direct or indirect pressure against journalists and media outlets by virtue of their news content and editorial line, in accordance with Principle 13 of the IACHR Declaration of Principles on Freedom of Expression. Accordingly, refrain from using legal proceedings - criminal or other - against journalists and/or media outlets for acts related to their work, especially those that may have a negative impact on the deliberation of information of public interest, in line with the inter-American standards of appropriateness, necessity, and strict proportionality. Likewise, refrain from indefinitely prolonging judicial proceedings underway against journalists, especially those of a criminal nature, in accordance with the judicial guarantees established in Article 8.1 of the American Convention on Human Rights.
9. Strengthen mechanisms for the prevention and timely protection of journalists and social communicators in relation to cases of murder, aggressions, detentions, intimidation, and threats related to their informative work. Likewise, in the area of administration of justice, fully, exhaustively, and impartially investigate journalists' complaints regarding violations of their rights due to the work they do. In this sense, redouble the efforts of the various judicial bodies, especially the Prosecutor's Office for Crimes against Journalists, to guarantee the administration of justice; and refrain from dismissing without grounds the complaints filed by journalists.
10. Guarantee that persons who perform public functions do not promote intolerance, discrimination, or disinformation through their discourse, and that their expressions do not generate a climate of hostility against journalists, communicators, and the media. Instead, such authorities must reasonably ascertain with enhanced diligence the facts on which their opinions are based and take responsibility from their position of leadership to promote respect for diversity and to provide equal access to information through official acts, press conferences, and interviews.
11. Implement measures to legally recognize and regulate the operation of community radio stations, in accordance with inter-American standards on freedom of expression; and refrain from criminal prosecution of journalists and community media, and from coercive measures such as raids and confiscation of the equipment they need for their work, in accordance with the guidelines established by the Inter-American Court of Human Rights.