



*Resolution 3/23 - Doc. 321*

# **Human Rights, the instrumentalization of the Justice System and the serious risks to the Rule of Law in Guatemala**

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## I. Introduction

The Inter-American Commission has noted that an independent, effective and impartial system of administration of justice is essential to ensure respect for and protection of the human rights of all persons. A justice system with these characteristics is essential for the strengthening and preservation of the rule of law and democracy.

Respect for democracy entails ensuring the validity of a model of checks and balances in which the different state functions correspond to separate, independent and balanced bodies, so as to allow the necessary limits to the exercise of power and, in turn, to avoid arbitrariness. In this sense, the democratic regime is also expressed in the legitimate exercise of power within the framework of the rule of law, which includes respect for human rights and the elements, components and attributes of democracy.

In this regard, the Democratic Charter reaffirms that "the following are essential elements of representative democracy: respect for human rights and fundamental freedoms; access to power and its exercise subject to the rule of law; the holding of periodic, free, fair elections based on universal and secret suffrage as an expression of the sovereignty of the people; the pluralistic system of political parties and organizations; and the separation and independence of the branches of government."

The Inter-American Commission notes with concern alarming trends regarding the abusive exercise of power in different countries of the Americas, derived from the instrumentalization of the justice system to guarantee and perpetrate impunity, in contexts of corruption, and even for political-electoral purposes. This is based on the improper use of criminal law through unfounded complaints, accelerated processing or arbitrary delay of proceedings, undue influence on judicial decisions by other branches of government, and violations of due process and judicial protection.

The manipulation of the justice system for these purposes represents one of the most pressing challenges for today's democracies, since, under the guise of legality, the principle of separation of powers and judicial independence are deeply affected.

For the reasons stated above and the commitments related to the protection of human rights in the region, the IACHR decided to issue this resolution.

## II. Considerations

**NOTING** that Guatemala is going through a political and institutional crisis with profound effects on the validity of democracy and the human rights of the population as a consequence of a series of undue and arbitrary actions and interferences by the Public Ministry that threaten the result of the General Elections and the transition process of the Presidency and Vice-Presidency of the Republic in progress, placing in question the constitutional order, the rule of law and the validity of the human rights of the population.

**NOTING** that the instrumentalization of the justice system and criminal law, since the beginning of the electoral process, have revealed the abusive exercise of power for political-electoral purposes, as well as the erosion of the system of checks and balances of the democratic rule of law due to the absence of guarantees of the Judicial Power to fulfill its role of exercising a control of constitutionality and conventionality; and the complacency of the Executive Power.

**ALARMED** by the accelerated processing of impeachment proceedings and other severely questioned decisions that have been taken by the Congress of the Republic at this juncture, such as the lifting of immunity of the magistrates of the Supreme Electoral Tribunal.

**NOTING** that particularly since the year 2021 an intense criminal prosecution and persecution by the Public Prosecutor's Office against people who have performed work of special relevance for democracy, such as journalists, justice operators, human rights defenders, student organizations, officials of electoral bodies and members of political parties and movements is being denounced.

**RECALLING** that in its Resolution 1/17 and in its country report of the same year, the IACHR referred to the problem of impunity and corruption derived from the lack of capacity of the Guatemalan State to provide an adequate and efficient justice administration system, and independent and impartial justice for both past and present cases, a situation that was aggravated by the measures adopted to expel the International Commission Against Impunity in Guatemala (CICIG) from the country and thereby facilitate impunity.

**RECALLING** that in 2021 and 2022, the Commission included Guatemala in Chapter IV.B of its Annual Report, due to the progressive weakening of the rule of law as a result of a process of gradual co-optation of the justice administration system by power groups interested in perpetrating impunity and corruption. Among other facts, the IACHR observed the dismantling of anti-corruption institutions, including the removal of the head of the Special Prosecutor's Office against Impunity (FECI) in 2021; irregularities in the selection process of the Constitutional Court for the period 2021-2026; as well as the weakening of other units of the Public Ministry responsible for the investigation of corruption and transitional justice cases, through the transfer, criminalization or arbitrary removal of its officials and career prosecutors. In this context, more than 30 justice operators have left the country in exile after denouncing criminal persecution due to their jurisdictional work and due to the fact that in repeated cases of criminalization, preventive imprisonment would be ordered.

**CONCERNED** because this situation is compounded by the undue delay of the election of magistrates of the Supreme Court of Justice and the Courts of Appeals for the period 2019-2024 for more than three years, to the detriment of the independence of such bodies. It also notes the initiative to reform the Law of the Judiciary 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 persons, in substitution of the Judiciary.

**TAKING INTO ACCOUNT** that the Inter-American Commission has established that among the guarantees necessary to ensure the adequate and independent fulfillment of judicial functions are the mechanisms for the appointment of judges, stability in their positions and adequate professional training. Only an appointment process that is transparent, based on objective criteria and that guarantees equal opportunity for candidates is a fundamental guarantee of their independence.

**WARNING** of the serious deterioration of guarantees for the exercise of freedom of expression, the right to peaceful assembly and the right to defend human rights due to the improper use of criminal law as a form of intimidation and silencing of critical voices in the country, stigmatizing statements and threats of criminalization from state authorities, as well as aggressions and threats against indigenous persons, defenders, journalists and those who participate in social mobilizations that have taken place in different parts of the country.

**ALERTING** the Member States of the OAS and the international community of an imminent rupture of the constitutional order due to the abuse of power and the instrumentalization of the constitutional function of investigating crimes by the Public Ministry with the purpose of invalidating the integrity and results of the electoral process and preventing the inauguration of the elected authorities in accordance with the will of the people expressed in the general elections.

### III. Resolute

By virtue of the foregoing, the Inter-American Commission on Human Rights, in exercise of the function established in Article 41.b of the American Convention on Human Rights, resolves:

1. To urge all public authorities to guarantee respect for the constitutional order and the preservation of the rule of law.
2. Call for the independent exercise of the Public Powers in order to guarantee the presidential transition.
3. Cease the misuse of criminal law, including unfounded allegations for political-electoral purposes, in accordance with inter-American standards.
4. Urge the authorities to ensure that their voice is actively functional to the protection of democratic institutionalism and human rights, in the context of political and institutional crises.
5. 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, in particular, with the principle of autonomy and independence of said institution.
6. Take measures to restore citizen confidence in public institutions, aimed at ensuring the proper functioning of the justice administration system in accordance with its international human rights obligations, within the framework of its competencies.

7. The State of Guatemala must reaffirm its commitment to the fight against impunity and corruption, the strengthening of the justice system and full respect for human rights, including through technical assistance and international cooperation.
8. Urge the State of Guatemala to reestablish the guarantees and conditions to ensure a democratic, open and pluralistic debate.
9. Guarantee that the selection and appointment processes of justice operators are carried out in accordance with Inter-American standards, under criteria based on merit and professional capacities, free from undue political interference.
10. Comply with its obligation to protect the life and integrity of elected political authorities, human rights defenders, journalists and media workers, indigenous peoples and, in particular, their ancestral authorities.

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