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ILAC Discussion Paper:

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# Attacks against Judges: Institutional Weaknesses and the Lack of Legal Guarantees for Judicial Independence in Colombia, Guatemala and Mexico

Discussion paper I of the Judges  
as Peacebuilders Project



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This Discussion Paper is a product of the project ***Judges as Peacebuilders*** led by the International Legal Assistance Consortium (ILAC), the Cyrus R. Vance Center for International Justice (Vance Center) and the International Association of Women Judges (IAWJ) and is authored by Jaime Chávez Alor (Vance Center). It is one of a series of three Discussion Papers; the other two deal with judicial diversity and judges as anti-corruption actors in Colombia, Guatemala and Mexico. Vanessa Passos Araújo (ILAC), Jaime Chávez Alor (Vance Center) and Audrey Cavaness managed the ***Judges as Peacebuilders*** project.

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## Summary

**Colombia, Guatemala, and Mexico generally lack institutional policies to guarantee the necessary conditions for an independent judiciary and to effectively address attacks on judicial independence. These attacks come from government authorities in the executive, legislative and judicial branches, political parties, and other non-governmental sectors, including criminal groups.**

This discussion paper reviews and summarizes findings from a series of roundtable discussions with over 50 judges from Colombia, Guatemala and Mexico as part of the project **Judges as Peacebuilders**, organized by the International Legal Assistance Consortium (ILAC), the Cyrus R. Vance Center for International Justice of the New York City Bar Association, and the International Association of Women Judges (IAWJ).

In the three countries analyzed, there are cases of threats to the physical security of judges. Judges are often left vulnerable to attack because of the lack of official capacity to address these threats and provide the necessary attention and support, as well as the lack of a contextual analysis of other forms of attacks on judicial independence.

Along with threats to physical security, smear campaigns are common against judges in which there is a public questioning of their judicial decisions, especially regarding decisions that do not favor the government or become general knowledge and interest. Project participants from Colombia, Guatemala and Mexico all agreed that smear campaigns often stem from the "ideologization of justice." That is, an alleged left or right-wing ideology is attributed either to the meaning of certain judicial decisions or to individuals.

In addition, lawfare against judges has become a frequent threat to judicial independence. While in any democracy there should be mechanisms to discipline judges who violate the law, there are international standards on how these processes should be carried out. There has been an abusive use of complaints, pre-trial proceedings, disciplinary procedures to hinder judges from hearing certain cases, to remove them from the bench or, simply, as a form of retaliation. One of the most serious hindrances to judicial independence is that these processes take so much time. This affects the morale of judges, not only because of the filing of these complaints against them but also through a chilling effect carried over time, generating, in turn, high costs, as they require legal advice and trial expenses.

There is a clear lack of fundamental conditions so judges can conduct their work independently and impartially. This includes conditions that judges adjudicate within the timeframes established by law and free from external

influences. This lack of fundamental conditions erodes both the legitimacy of all judicial operators and of the entire justice system while damaging one of the fundamental pillars of the Rule of Law.

Unfortunately, there is a similarity in Colombia, Guatemala and Mexico (at the state level) regarding the lack of guarantees, including insufficient human and financial resources to ensure that the justice system operates as it should. Regarding human resources, a common concern is the low number of courts and tribunals along with the lack of judges, and support staff, to manage the number of cases within the timeframe provided by the law. Another concern, raised by judge participants, is how productivity is evaluated – often sacrificing quality for quantity, creating perverse incentives to resolve a high number of cases without focusing on the quality of the resolutions. The increased workload also hinders access to training, which should not only focus on legal matters but also on ethics as well, and it should include other skills necessary for an effective and efficient judiciary.

With respect to financial resources, the availability of infrastructure, facilities, materials, and resources, in general, is quite important to achieve effective and efficient justice according to the judge participants from all three countries. Insufficient budget allocation in Colombia, Guatemala and Mexico affects overall judicial independence. This has been especially apparent in the wake of the Covid-19 pandemic.

Another very important aspect for helping ensure the independence of judges relates to the conditions for tenure, including the rules and procedures for transfers. While changes of assignment may happen, judge participants raised concern that they may be used in retaliation.

In the face of attacks on individual judges' independence, it would be expected that judicial branch and the country's high courts would condemn the attacks. It would also be expected that these institutions take measures to strengthen the judiciary as an institution given the serious damages that these attacks can have on one of the pillars of the State. However, in reality, this has not been the case according to the judge participants. In Colombia and Guatemala, judicial associations such as the Corporation of Magistrates and Judges CORJUSTICIA and the Guatemalan Association of Judges for Integrity have made efforts to defend judicial independence, as well as to participate in legislative and public policy processes.

One of the common obstacles to judicial associations in Colombia, Guatemala and Mexico has been the lack of resources to conduct activities. Besides the lack of institutional support, the judges themselves carry out the activities related to the association in addition to their jurisdictional duties and training activities. These associations rely heavily on the support of other national and international organizations.

Despite these obstacles, judicial associations in all three countries continue to work and develop platforms to support the efforts of judges fighting for judicial independence and integrity.

**Key recommendations to the national governments of Colombia, Guatemala, and Mexico:**

- 1 The legislative branches must carry out legal reforms in consultation with the judiciary and judicial associations to develop professional judicial careers with clear admission selection processes, promotion, and tenure, all of which are based on merit and clear and transparent evaluations. This should cover not only trial court level judge but also appellate court level justices, and judicial assistants. The judicial career should be based upon by highly professional staff and continuous training.
- 2 Create a technical body within the judiciary with operational, managerial, and budgetary autonomy with sufficient resources, such as a "judicial ombudsperson" to receive complaints from judges regarding attacks against judicial independence. The technical body should, in turn, take these complaints to the corresponding government agencies, such as administrative, disciplinary, and criminal investigative bodies. These complaints should be brought to the authorities per the individual attack and because of the general threat to judicial independence. This body should ensure the implementation of measures to protect the physical and legal integrity of judicial personnel who are victims of these attacks.
- 3 Enact legislation that establishes the obligation to develop a protection protocol for judges and their families in the face of personal attacks. The protocol should establish the responsibilities of each authority and is scalable according to defined levels of risk, which should be based on objective analysis and criteria. The provision of sufficient budgetary resources implementing of this protocol should be considered by the legislation.
- 4 Provide legal certainty in the case of notoriously unfounded complaints and accusations against judges, used as a mechanism of intimidation and pressure. This means immediately notifying the persons accused in the complaint and carrying out an expeditious and

transparent process to resolve and dismiss meritless complaints. This process must comply with the international human rights standards, and it must be part of the "judicial ombudsperson" defense mechanism.

# 1 Introduction

The set of institutional conditions within the judiciary as one of the government branches so that its members can carry out the entrusted function of enforcing justice independently and impartially are fundamental for a democratic rule of law. On one hand, it is essential to have a judicial branch independent from the executive and legislative branches. On the other, judges should have the conditions of stability, labor guarantees, and progress in the judicial career to personally perform their duties impartially, without external meddling and based solely on the text and the authorized interpretation of the law.

The reality is that the independence of the judiciary as an institution and for each judge can be threatened by different aspects and actors from the government, private corporations, organized crime, and others.

Although both dimensions of judicial independence are equally important, this paper focuses more on the internal aspect, which includes judges' legal and physical security conditions in Colombia, Guatemala, and Mexico. Especially in countries where there has been a post-conflict transition, guaranteeing this set of conditions becomes particularly important so that judges can serve as actors in the reconstruction of peace in a democratic state under the rule of law. After major abuses have been registered, an independent judiciary is positioned to penalize and punish behaviors that have damaged society and make a great contribution to damage redressing comprehensive processes.

Attacks against judges take different forms at the international level, representing a serious threat to judicial independence. There are coordinated efforts to carry out smear campaigns against the judiciary's work and individuals, particularly intimidating judges and affecting their physical, professional, and mental integrity. Moreover, there are cases of threats to the security of judges, sometimes direct and sometimes indirect, through surveillance, messages, or espionage.

These attacks may also take the form of what has been called a 'lawfare,' through the abuse of legal mechanisms to affect the independence of judges, such as administrative and criminal complaints, accusations, requests for the removal of immunity based on their rulings in particular cases, and others.

Different types of attacks on judges have been on the rise in the three analyzed countries and other countries in the region in the face of decisions adverse to the government or private actors. These attacks cause a direct impact on the



conditions for judging independently through a chilling effect on the judiciary as a whole and the ability of its members to exercise their duties freely.<sup>1</sup>

The United Nations Special Rapporteur on the Independence of Judges and Lawyers has exposed the patterns of undue and often systematized penalties against judges in his July 2020 report (A/75/172). It also documents so-called “covert” sanctions against judges, which may amount to harassment, intimidation, and undue punishment for alleged misconduct in their duties. As examples of such “covert” sanctions, it mentions the deterioration of their working conditions, lack of physical security, or collective dismissals.

Insufficient institutional conditions and weak judiciaries create opportunities for attacks on judicial independence. Lack of human and financial resources, insecure working conditions and minimal institutional backing and support are some of the causes identified by participating judges as contributing for attacks on judicial independence. Additionally, the efforts of judicial associations could generate a counterweight for the protection of judges.

This discussion paper of the “Judges as Peacebuilders” project is the first in a series of three focused on Colombia, Guatemala, and Mexico.<sup>2</sup> This document brings together key points from the discussions of the virtual roundtables on judicial security held on September 23-24, 2021, which brought together more than 30 judges, international organizations, and civil society.

This paper is not intended to be exhaustive or representative of the views of judges, but rather to highlight key challenges and areas of judicial security and independence that include threats to security, surveillance and espionage; smear campaigns, lawfare, pretrial proceedings, disciplinary proceedings; human and financial resources; tenure/immobility; court assignments, institutional backing and support and associationism efforts as well as possible solutions put forward by project participants. References in this paper to judges refer to project participants.

Although these three countries share common elements, they also have important differences that should be considered. For example, in Mexico, the existence of 33 judicial branches (32 at the state level and one at the federal level) creates an additional level of complexity with many differences in the conditions between the Federal Judicial Branch and the federal states.

Understanding the conditions under which attacks on the independence and security of judges arise is key to promoting national, regional, and international efforts to strengthen the independence of the judiciary and, consequently, the rule of law. The most relevant points on each of the issues

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<sup>1</sup> For more information, see ILAC's policy brief “Los jueces en la primera línea – ¿es posible que el Estado de derecho pierda a sus guardianes? Ejemplos en Cisjordania y Guatemala”, January 2021, available at: <https://ilacnet.org/publications/los-jueces-en-la-primera-linea/>

<sup>2</sup> [See Description of Project section](#)

are presented below. In addition, this paper presents recommendations at the regional level that include the international community's role in supporting judicial independence efforts.

## 2 Physical and legal security

### Threats to security, surveillance, and espionage

In Colombia, Guatemala and Mexico, there are cases of threats to the physical security of judges constituting an infringement of judicial independence. These threats create a state of vulnerability, with participants perceiving a lack of sufficient support from the judiciary to deal with the situations generated by these threats at the professional, personal, and family levels. One of the most concerning aspects is that, on many occasions, the threats are directed not only at the judge themselves but also at their families, especially in cases related to organized crime.

The lack of capacity of the authorities to address these threats and provide the necessary attention and support, and the lack of a contextual analysis of other situations and other forms of attack against judicial independence leave judges vulnerable to attack. Although these threats directly violate judges' rights, it is important not to lose sight of the fact that the undermining of judicial independence also affects those who are subject to justice since the judicial guarantees and judicial protection enshrined in Articles 8 and 25 of the American Convention on Human Rights are also violated.<sup>3</sup>

Particularly in **Colombia**, the inability to fully advance the implementation of the Final Peace Agreement have allowed old and new armed conflict actors to put at risk the administration of justice throughout a large part of the national territory and its officials.<sup>4</sup>

The Campaign for the Independence of Justice<sup>5</sup> has expressed concern about threats and coercion against judicial officials involved in land restitution in

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<sup>3</sup> The Inter-American Commission and Court of Human Rights have established extensive jurisprudence on the subject. Jurisprudence, standards and interpretation are available in the following compilations:

- Inter-American Commission on Human Rights. Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas. December 2013. OEA/Ser.L/V/II. Doc.44
- Corte IDH: Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No. 12: Debido Proceso, Corte Interamericana de Derechos Humanos (Corte IDH), 2017
- Corte IDH: Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No. 13: Protección Judicial, Corte Interamericana de Derechos Humanos (Corte IDH), 2018

<sup>4</sup> Campaña por la Independencia de la Justicia. "Independencia judicial en Colombia: en riesgo por un régimen autoritario". Colombia, June 2021. P.83

<sup>5</sup> The Campaign for the Independence of Justice, organized in 2020, is a coalition that brings together concerns and support from three human rights platforms, 212 organizations, and others.

areas openly controlled by groups associated with paramilitarism.<sup>6</sup> Judges also identify criminal, civil, commercial, and agrarian matters as risky areas.

Judges identify the lack of resources of the judicial branch as an obstacle to effectively carry out protections against threats, as well as the insufficient implementation of programs and strategies to prevent acts of violence against judicial officials, which should be adopted in coordination with other branches of government, highlighting the active participation of the police and the official security forces of the State.

In Colombia, actually following judges has been common using drones. Illegal interceptions of their communications, those of their relatives and/or judicial administrators are also frequent. Espionage through hidden microphones in the offices and rooms where draft sentences are discussed and the loss, concealment, and/or alteration of judicial records happens. Without being a pattern of conduct, these actions have been carried out in matters of national transcendence.

Recently, on the occasion of social protests derived from the general dissatisfaction of a large part of the population with the management of the government in office, a group of individuals known as “*La primera línea*”, have attacked, destroyed and set fire to courthouses in several cities, destroying files.<sup>7</sup> In the republic’s capital, a significant part of judicial facilities were also destroyed without any plan to secure judges and prosecutors. In most events, the decentralized headquarters of an accusatory criminal system, located in peripheral areas of the city with the highest crime rates, were the actual target of attacks.<sup>8</sup>

Judges identify that there are judicial buildings with only one security guard, which is insufficient to guarantee the security of the building. In addition, they are concerned about the lack of security protocols and measures determined according to personal considerations of the persons in charge.

In Colombia, the judge participants in this project mentioned the advisability of increasing the penalties for crimes of “violence against public officials” and/or implementing a special type of criminal offense to punish acts of physical or psychological violence against judicial officials, court employees, their families, and/or property, whenever they occur on the occasion of their

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<sup>6</sup> *Ibíd.* “Independencia judicial en Colombia: en riesgo por un régimen autoritario”. P.83. For further information see Osuna Patiño, Néstor and Manuel Páez Ramirez, “Independencia judicial y política en Colombia” in *Justicia constitucional y derechos fundamentales. Justicia y política en América Latina*, Colección Konrad Adenauer Stiftung, April 2018

<sup>7</sup> See, as an example: El Espectador “Destrucción de expedientes otorga ventajas a la impunidad: Corte Suprema sobre incendio en Tuluá” May 26, 2021. <https://www.elespectador.com/judicial/la-destruccion-de-expedientes-otorga-ventajas-a-la-impunidad-corte-suprema-sobre-incendio-a-palacio-de-justicia-en-tuluá/>

<sup>8</sup> See, as an example: BBC News Mundo “Protestas en Colombia: incendian el Palacio de Justicia de Tuluá” May 26, 2021 <https://www.bbc.com/mundo/noticias-america-latina-57250248>

judicial duties. Judges mentioned not having any expectation of punishment against those who attack judicial independence or the integrity of specific individuals, especially in cases related to paramilitary forces. Fundamentally, the perpetrator of the criminal conduct is whoever, by any means, intimidates, coerces, pressures, or threatens an official who exercises judiciary-related duties with the intention of having them make a decision contrary to the procedural or legal requirements. It would help discourage these attacks.

In **Guatemala**, there is a generalized situation of threats and intimidation against independent judges from various sectors, which has already been denounced and analyzed before regional bodies.<sup>9</sup> These sectors include the government (executive and legislative branches), the judiciary itself at the highest levels, the private sector and criminal groups (sometimes difficult to distinguish from the other sectors).<sup>10</sup> For example, there are situations of independent judges who are watched and spied on inside their own offices, or personnel imposed by the judiciary administration who watch them and report on their activities, or extract parts or sections of files.<sup>11</sup> It is possible to identify that threats and other types of attacks are directed, especially against judges with high-profile corruption cases or serious human rights violations, particularly those in the “high risk” category.<sup>12</sup>

<sup>9</sup> Public hearing of the Inter-American Commission on Human Rights, May 10, 2019. <https://agji-gt.org/~agjigtorg/audiencia-tematica-ante-la-comision-interamericana-de-derechos-humanos-guatemala-independencia-judicial/>. Visit of the Guatemalan Association of Judges for Integrity to the Inter-American Commission on Human Rights and the United Nations: <https://agji-gt.org/~agjigtorg/comunicado-agji-12-2021-integrantes-de-la-agji-visitaron-la-comision-interamericana-de-derechos-humanos-cidh-y-la-organizacion-de-naciones-unidas-onu/>. Inter-American Commission on Human Rights Press Release No. 203/21 dated August 6, 2021, “La CIDH expresa preocupación por acciones que debilitan la independencia judicial en Guatemala” <http://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/203.asp>

<sup>10</sup> Cases under investigation and awaiting trial, such as the case known as “Comisiones Paralelas 2020”, are evidence of the criminal network composed of different actors in the legislative and judicial branches and the private sector to influence the appointment of Supreme Court and Appeal Court judges in Colombia.

<sup>11</sup> El Faro “La jueza Aifán describe la “criminalización y vigilancia” a las que está sometida” November 22, 2021. <https://elfaro.net/es/202111/centroamerica/25827/La-jueza-Aif%C3%A1n-describe-la-%E2%80%9Ccriminalizaci%C3%B3n-y-vigilancia%E2%80%9D-a-las-que-est%C3%A1-sometida.htm>; Nómada “El espionaje a la jueza Aifán que la Corte Suprema de Justicia ha ignorado” October 18, 2019 <https://nomada.gt/pais/entender-la-politica/el-espionaje-a-la-jueza-aifan-que-la-corte-suprema-de-justicia-ha-ignorado/>; La Hora “Ataques a jueza Erika Aifán van desde amenazas hasta seguimientos, así lo ha evidenciado” September 14, 2021 <https://lahora.gt/ataques-a-jueza-erika-aifan-van-desde-amenazas-hasta-seguimientos-asi-lo-ha-evidenciado/>; DW “Guatemala: jueces de alto riesgo denuncian hostigamiento” <https://www.dw.com/es/guatemala-jueces-de-alto-riesgo-denuncian-hostigamiento/a-57987604>

<sup>12</sup> The High Risk Courts and Tribunals were created in 2009 in accordance with the law and with the support of CICIG to hear cases of serious human rights violations, organized crime and corruption. See more information in Impunity Watch, Guatemala Country Office “Judges at Heightened Risk: Threats to Judicial Independence in Guatemala” February, 2019; and ILAC “A Window of Opportunity: Support to the Rule of Law in Guatemala” March, 2020.

Particularly in Guatemala, there are many threats directed at women judges as well as homophobic remarks against judges that are based on alleged sexual orientation identified in social networks. Although these attacks have been denounced in some cases, there are no concrete results in the investigations.

And even though the Guatemalan Constitution mentions that violations of judicial independence must be penalized, secondary legislation has never been created to enact.

Actors in the international community have supported Guatemalan judges in the face of threats to their security.<sup>13</sup> For the independent judges, support is important because it raises visibility of make the challenges beyond the borders, in addition to the fact that by publicizing the situation then the political cost of continuing with the attacks rises.

In Guatemala, there are no practical judicial policies to prevent and penalize threats and attacks against independent judges since many complaints against judges are not investigated but rather dismissed. The opposite happens with spurious or unfounded complaints against judges who have been impartial in their rulings, where the actions to lift immunity are frequent.<sup>14</sup>

In **Mexico**, the impact is particularly felt in cases related to criminal organizations when official security measures that do not provide sufficient guarantees for physical safety.<sup>15</sup> Unfortunately, this has been an ongoing problem for several years. There have been times when it has become even more intense, generally related to moments of strong confrontation with organized crime.<sup>16</sup> In 2012, the Chief Justice of the Supreme Court of Justice of the Nation and the Judiciary Council announced the launch of special security measures for judges and magistrates who are victims of threats, and

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<sup>13</sup> See, as examples: WOLA “Guatemala: Funcionarios de justicia y organizaciones alertan a la CIDH sobre el deterioro de la independencia judicial y el Estado de Derecho en el país” October 29, 2021 <https://www.wola.org/es/2021/10/cidh-guatemala-independencia-judicial/>; Federación Latinoamericana de Magistrados “Pronunciamiento sobre retos de la independencia judicial en Guatemala” July 8, 2020 <https://flammagistrados.org/pronunciamiento-sobre-retos-de-la-independencia-judicial-en-guatemala/>

<sup>14</sup> Prensa Libre “CSJ le retira inmunidad al juez Pablo Xitumul y falla a favor del magistrado Ranulfo Rafael Rojas” February 9, 2022 <https://www.prensalibre.com/guatemala/justicia/csj-le-retira-inmunidad-al-juez-pablo-xitumul-y-falla-a-favor-del-magistrado-ranulfo-rafael-rojas-breaking/>

<sup>15</sup> Read more about the risks to judicial independence and their relationship to security strategies at: Ana Cardenas Gonzalez De Cosio “The effect of the ‘war on organised crime’ on the Mexican federal judiciary: a comparative case study of judicial decision-making” 2016 [https://kclpure.kcl.ac.uk/portal/en/theses/the-effect-of-the-war-on-organised-crime-on-the-mexican-federal-judiciary-a-comparative-case-study-of-judicial-decisionmaking\(8093d7e5-bf31-4fa3-a4e9-82e2ca03197b\).html](https://kclpure.kcl.ac.uk/portal/en/theses/the-effect-of-the-war-on-organised-crime-on-the-mexican-federal-judiciary-a-comparative-case-study-of-judicial-decisionmaking(8093d7e5-bf31-4fa3-a4e9-82e2ca03197b).html)

<sup>16</sup> Alejandro Hope, EL Universal “Y ahora matan jueces”. October 19, 2016 <https://www.eluniversal.com.mx/entrada-de-opinion/columna/alejandro-hope/nacion/2016/10/19/v-ahora-matan-jueces>

mentioned having a map of risk areas where precautionary security measures have been taken.<sup>17</sup>

Unfortunately, following the murder of a federal criminal judge and his wife in 2020,<sup>18</sup> additional security measures had to be put in place for other at risk judges.

This reality is not exclusive to the federal level in Mexico; local jurisdictions have also received threats from criminal groups. Judges emphasized that this has happened, especially in states with security problems and a strong presence of criminal groups. In light of this, the lack of institutional capacity and budget to deal with these types of threats is reported by the judge participants.

An important element mentioned by the participants is the existence of public statements (by public institutions and national and international organizations) condemning attacks on judges as a mechanism to prevent attacks. To the extent that the attacks become known, there may be a social outcry in support of the work and personal security of judges.

## Smear campaigns

In the case of **Colombia**, there is a serious situation of public questioning of judges' rulings, especially those that do not favor the government. These campaigns and attacks come from state authorities, the executive and legislative branches, and from political parties including those authorities with the obligation to ensure judicial independence.

The role played by the Office of the Prosecutor General and its obligation to respect legal processes and not question judicial decisions as a way of discrediting them stands out to our participant judges. There is a tendency to blame judges for not complying with political agendas, especially in security matters, for not lessening the requirements to qualify detentions or carry out the processes with all the guarantees stipulated in the law. Additionally, both in the Office of the Prosecutor General and in the Judicial Disciplinary Commission (responsible for the monitoring and disciplinary punishment of judicial officials, among other legal professionals), there is a constant opening of investigations and/or preliminary inquiries against judges for decisions that contravene political guidelines.

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<sup>17</sup> Expansión "Presidente de la Suprema Corte alerta sobre riesgos de los jueces" November 5, 2012. <https://expansion.mx/nacional/2012/11/05/presidente-de-la-suprema-corte-alerta-sobre-riesgos-de-los-jueces>

<sup>18</sup> El Universal "Condena la Corte asesinato de juez federal" June 17, 2020 <https://www.eluniversal.com.mx/nacion/matan-juez-que-ordeno-traslado-de-el-menchito>

The participant judges from Colombia, Guatemala and Mexico share the view that smear campaigns are often based on the “ideologization of justice”. This is, the meaning of certain judicial decisions or individuals, in particular, is attributed to a supposed left-wing or right-wing ideology. In this sense, if a leftist ideology is politically promoted and a decision is issued not favoring that political group, the judges are accused of being extreme right-wing, and vice versa and thus bringing about arguments that judges are fascist or communist.

Concern about this issue is not exclusive to the national community. Actors in the international community have pointed out the risks of politicizing justice in Colombia in high-profile cases violates judicial independence. The New York City Bar Association issued a statement in late 2020 expressing serious concern about threats to the independence of the Colombian judiciary in reaction to the preventive detention and investigation of former President Álvaro Uribe on charges of witness tampering and obstruction of justice.<sup>19</sup>

In **Guatemala**, smear campaigns are generated using different means, including social networks. Through the so-called “net centers,”<sup>20</sup> messages are targeted against specific individuals, sometimes linking them to particular groups and interests based on ideology or “foreign” interests. These campaigns are generally based on false information, according to the judge participants, to discredit the work of judges or to explain certain adverse decisions against individuals by discrediting judges. In Guatemala, these smear campaigns are intensified when high-level cases are scheduled to be heard, clearly intimidating the independent judicial work. In addition, they are generally brought together with other acts of intimidation such as threats or judicial warfare.

Recently and worryingly, there have been accounts created by “net centers” that publish actions to be carried out in the future by the Public Prosecutor or other authorities against justice operators.<sup>21</sup> Attention should be drawn not only to the obtainment of the information but also to the strategy to generate negative messages against judges before the official announcements of the Public Prosecutor.

Since the International Commission Against Impunity (CICIG) closing in 2019, smear campaigns and attacks against judges have grown more intense.<sup>22</sup> Actors in the international community have participated in efforts to counteract

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<sup>19</sup> New York City Bar Association “Statement of the New York City Bar Association on the Guarantees of Judicial Independence in Colombia” December 4, 2020. <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/guarantees-of-judicial-independence-in-colombia>

<sup>20</sup> “Net centers” are groups of social network accounts with fake profiles used in order to generate mass messages.

<sup>21</sup> La Hora “Captura de exmandataria de CICIG: la prueba final de un MP que va contra la ley” February 10, 2022. <https://lahora.gt/captura-de-exmandataria-de-cicig-la-prueba-final-de-un-mp-que-va-contra-la-ley/>

<sup>22</sup> Ibid. “A Window of Opportunity”



smear campaigns against judges, highlighting their independent work and its importance. Foreign governments have granted recognitions supporting the independent work of justice operators in Guatemala.<sup>23</sup>

In **Mexico**, the federal and state executive branches of government have been accused of discrediting judges and justices for rulings that are unfavorable to the government. When the government announces an arrest as an achievement of its security policies and a release results from a procedural issue derived from the actions taken during the arrest, the pressure automatically turns against judges. In recent cases, the respective councils of the judiciary (bodies in charge of judicial discipline at the federal level and in each of the states) have been asked to investigate the actions of individual judges for ruling cases in a ways that are unfavorable to the government, generating the public mistrust that judges act unlawfully.<sup>24</sup> These accusations have been made public with the names and surnames of the judges, causing discredit and a danger to judges' physical and emotional integrity.

The international community has drawn attention to the seriousness of these accusations due to the specific attack on judicial independence, the presumption of innocence, and overall erosion of the rule of law.<sup>25</sup>

In all three countries, there is a lack of public defense of judges by the judiciary, further making judges vulnerable. In Colombia and Guatemala, judicial associations have publicly defended judicial independence according to participants. Consequently, membership in certain judicial associations has been the subject of smear campaigns linked to particular ideologies or interests. For example, in Guatemala, members of the Guatemalan Association

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<sup>23</sup> Judge Erika Aifán won the "2021 Women of Courage Award" and the Guatemalan Association of Judges for Integrity received the 2021 Anti-Corruption Champions Award, both from the U.S. Government. U.S. Department of State "2021 International Women of Courage Award" March 8, 2021 <https://www.state.gov/2021-international-women-of-courage-award-2/>; U.S. Department of State "2021 Anticorruption Champions Award" December 8, 2021 <https://www.state.gov/2021-anticorruption-champions-award/>. Judge Erika Aifán was also recognized by the Embassies of France and Germany Guatemala; Prensa Libre "Erika Aifán recibe premio Derechos Humanos y Estado de Derecho, de Francia y Alemania" December 10, 2021 <https://www.prensalibre.com/guatemala/justicia/jueza-erika-aifan-recibe-premio-derechos-humanos-y-estado-de-derecho-de-francia-y-alemania-breaking/>

<sup>24</sup> El País "López Obrador desafía al Poder Judicial y pide investigar al juez que frenó la reforma eléctrica" March 15, 2021 <https://elpais.com/mexico/2021-03-15/lopez-obrador-desafia-al-poder-judicial-y-pide-investigar-al-juez-que-freno-la-reforma-electrica.html>; El País "López Obrador hace del Poder Judicial el blanco de todas sus batallas" April 21, 2021 <https://elpais.com/mexico/2021-04-21/lopez-obrador-hace-del-poder-judicial-el-blanco-de-todas-sus-batallas.html>; El Universal "AMLO abrió fuego contra los jueces" March 16, 2021 <https://www.eluniversal.com.mx/opinion/salvador-garcia-soto/amlo-abrio-fuego-contra-los-jueces>

<sup>25</sup> New York City Bar Association "Statement of the New York City Bar Association on the Mexican President's Accusations of Treason toward Attorneys" March 11, 2021. [https://s3.amazonaws.com/documents.nycbar.org/files/TFILJ\\_Obrador\\_Statement\\_210311.pdf](https://s3.amazonaws.com/documents.nycbar.org/files/TFILJ_Obrador_Statement_210311.pdf)

of Judges for Integrity have been labeled “terrorist judges.”<sup>26</sup> In Mexico, members of the legal community, such as bar associations, have defended judicial independence publicly, but not judicial associations. While the legal community’s support is important, the lack of public support from judicial associations is striking.

Judges from the three countries agree on the important role played by the media perpetuating smear campaigns, sometimes overtly when the press is not independent, and sometimes inadvertently due to the lack of knowledge to inform the work performed by judges or by replicating other messages that can damage judicial independence, without being aware of the negative effects that this can have.

Judges reported that there should be programs and projects that explain due process and relevant decisions that educate the wider public on legal issues and on the administration of justice, including resolving doubts or clarifying issues or decisions that could be confusing.

Common to all three countries, smear campaigns sometimes target an individual’s integrity to discredit the judiciary in general. These smear campaigns are used by political groups to claim that the judiciary is a privileged group thereby promoting reforms that undermine judicial independence. We address this issue in depth in the second discussion paper of this series.

## **Lawfare, pretrial proceedings, disciplinary proceedings, and systematic complaints**

In any democracy, there must be a mechanism for disciplining judges who act in violation of the judiciary’s normative framework and fundamental principles. However, international standards establish that disciplinary sanctions, suspensions, or removals may only be for persistent inability to perform their duties, frequent intemperance, willful misconduct in office, conduct that brings discredit to the judicial office, or substantial breach of judicial ethics. In addition, these standards state that decisions on discipline and removal must be transparent, with the reasoning that specifies the standards, the behaviors, the reasons why the behaviors violated the standards, and why the sanction is proportionate to the misconduct.

These same standards establish that States have a duty not to conduct, tolerate, acquiesce in, or support criminal prosecutions, challenges, or complaints against bar associations that lack a reasonable basis in law or are brought in bad faith. In addition, States must avoid “disguised sanctions” against judges.

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<sup>26</sup> Posts on anonymous Twitter accounts:

<https://mobile.twitter.com/AdolfoAlbertoC2/status/1279240086031413249>  
<https://twitter.com/DonDieg28700696/status/1490427088071008259>

This is the case of proceedings supposedly conducted for administrative or other reasons, but are aimed at interfering with judicial independence.

This problem is common in all three countries to a greater or lesser extent. Parties to the proceedings and other actors, whether or not they are part of the judicial process, file complaints, pretrial proceedings, disciplinary proceedings, and complaints against judges for adverse judicial decisions to generate conflicts and to be able to change the person imparting justice, as a mechanism of intimidation and as a response to actions in the course of their duties.

There has been an abusive use of the processes described above so that judges are inhibited from hearing certain cases, from removing them from the judicial service or simply as a form of retaliation against them as reported by participant judges.

One of the most serious effects on judicial independence is that these processes are lengthy, affecting the morale of judges not only through the filing of these complaints or denunciations, but also have a chilling effect over time while generating high legal costs and court expenses.

In all three countries, there are cases in which litigants and defendants file complaints against a judge because of an actual ruling over filing appeals or other motions against the rulings.

In **Colombia**, carrying out disciplinary processes is inefficient since the State is in charge of disciplining all legal professionals, not only judges. Although there should be a professional association in charge of this, this has not happened according to the judge participants.

In addition, there is control by the political class over the issue of discipline since it is the Congress of the Republic that selects the Magistrates of the National Commission of Judicial Discipline.

Added to this lawfare is a perverse system of qualification of judges established in the norms of the judiciary, as assigning poor grades affects their professional standing. This system creates the possibility of affecting the judges' grades through lawfare, as reported by the judge participants.

In **Guatemala**, the seriousness of the lawfare to recuse independent judges from a particular case, and even remove them from their positions, stands out. A strategy has been to file complaints before the Bar Association against judges (which do not proceed under the Guatemalan law) to recuse them based on conflicts derived from these same processes. The same happens with requests for impeachment and other complaints.

There are concerning requests for pretrial proceedings to lift the immunity of judges so that criminal charges can be brought solely on the judging criteria,

thus depriving these persons of their liberty and putting their lives and integrity at serious risk.<sup>27</sup>

Participants judges from Guatemala and Colombia consider that the independence of the Public Prosecutor is fundamental to reducing judicial warfare. In the case of Guatemala, the Government of the United States of America included the Attorney General of Guatemala in a list of corrupt and anti-democratic actors.<sup>28</sup>

In Guatemala, in June 2021, four judges presented a public request to the Attorney General to dismiss complaints filed against them, including some that date back many years and are not criminal but appear to be systematically filed to harm the work of the judiciary or in retaliation for specific judicial decisions.<sup>29</sup> To-date, these requests have not received any reply.

In the case of Guatemala, the Code of Criminal Procedure provides that the Public Prosecutor can dismiss complaints when it is evident that the conduct is not defined as a crime, in the particular case, when it is due to disagreement with judicial resolutions. However, the Public Prosecutor has not implemented this provision, maintaining a halo of uncertainty and concern over the people who impart justice.

In **Mexico**, as already mentioned in the previous section, disciplinary proceedings have been opened against judges following calls from high-level officials for having issued rulings that are unfavorable to the government. Likewise, investigations have been opened in other agencies, such as the Financial Intelligence Unit as an intimidation mechanism against these same persons.

Although the federal legislation for disciplinary procedures guarantees to carry out these procedures in compliance with international standards, there is a perception that the Federal Judiciary Council legitimizes its actions through

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<sup>27</sup> Diego García Sayán, El País “La jueza Aifán y los ataques a la justicia” January 20, 2022 <https://elpais.com/opinion/2022-01-21/la-jueza-aifan-y-los-ataques-a-la-justicia.html>; New York City Bar Association “Declaración del Colegio de Abogados de la Ciudad de Nueva York sobre los ataques a la jueza Erika Aifán Dávila en Guatemala” February 8, 2022 [http://documents.nycbar.org/files/Aifan\\_Statement\\_Spanish\\_22.2.8.pdf](http://documents.nycbar.org/files/Aifan_Statement_Spanish_22.2.8.pdf); . Vance Center “The Vance Center Supports Guatemalan Judge Erika Aifan” June 2021 <https://www.vancecenter.org/the-vance-center-supports-guatemalan-judge-erika-aifan/>

<sup>28</sup> United States Embassy in Guatemala, United States Department of State, United States Embassy in Guatemala, United States State Department “Acciones contra siete funcionarios centroamericanos por socavar la democracia y obstruir las investigaciones sobre actos de corrupción” September 20, 2021. <https://gt.usembassy.gov/es/acciones-contra-siete-funcionarios-centroamericanos-por-socavar-la-democracia-y-obstruir-las-investigaciones-sobre-actos-de-corrupcion/>

<sup>29</sup> Prensa Libre “Jueces de Mayor Riesgo piden al MP que desestime denuncias en su contra, pues consideran que son infundadas y espurias” June 21, 2021 <https://www.prensalibre.com/guatemala/justicia/jueces-de-mayor-riesgo-piden-al-mp-que-desestime-denuncias-en-su-contra-pues-consideran-que-son-infundadas-y-espurias-breaking/>

sanctions, and there is a bias in the disciplinary procedures against the persons under investigation, especially when a wide range of behaviors are penalized under the definition as “professional misconduct” that, according to some of the participants, do not affect the public office. The same participants mentioned that this is done to obtain statistics showing a high number of sanctions.

Since it is a federal system, local judges may appeal to the Federal Judicial Branch for decisions in disciplinary proceedings through amparo proceedings, for which the federation has developed a series of guarantees through settled jurisprudence and precedents for judges at the local level. To a certain extent, this has protected local judges who are removed due to changes in the state executive or who face other violations of their judicial independence. However, this is not the case for judges at the federal level.

Our judge participants raised concern about the federal legislation in Mexico. There is no effective remedy for a decision to suspend a judge for a serious disciplinary offense since the persons who issue decisions are also part of the body that decides on review. Unlike the decisions that remove a judge from their position, in other cases, such as a serious disciplinary offense, the amparo proceeding is not admissible. The important aspect to note is that the sanction for serious misconduct makes it impossible to ratify a judge, so it is a way to remove them from office in the short or medium term. The lack of an effective remedy may generate problems of conventionality because it does not conform to regional and international standards.

A relevant element in common among all three countries is the lack of mechanisms for dismissing complaints that are evidently inadmissible and that their mere filing constitutes an attack on judicial independence. In addition, judges are concerned with the delay in resolving cases that are ultimately dismissed as inadmissible, which simultaneously generates a violation of judicial independence and international standards that establish that these proceedings against justice operators must be ruled upon as shortly as possible.

For the participant judges, it is clear that the way to determine whether a complaint or process is illegitimate or not may result from the person who files it and their relation with the process. If litigants are not satisfied with a judicial decision, and instead of resorting to the legally established remedies, they file criminal or disciplinary complaints against the judge for the decision issued, the judges said there is a presumption of illegitimacy.

Also common to all three countries is the composition of the bodies responsible for judicial discipline (judicial councils or the Supreme Court in the case of Guatemala). Although the theory suggests these bodies should have plural integration, including the legal profession’s vision and not only of the judiciary, participating judges consider it important for the integration to be composed

mostly of judicial service members or people who understand the challenges faced daily by judges. These persons would analyze complaints or denunciations in context.

### **3 Essential guarantees**

The lack of essential conditions establishing institutional guarantees so that judges can independently and impartially render judgements within the timeframes established by law and free from external influences, generates an erosion not only in the legitimacy of the justice system as a whole but also of the judiciary in general, damaging one of the fundamental pillars of the rule of law.

The following elements were identified by the project participants as fundamental for creating conditions to strengthen judicial independence, including the physical and legal security of judges.

#### **Human and financial resources for judicial independence**

There exists a nexus in Colombia, Guatemala, and Mexico (at the state level) between the lack of human and financial resources and the justice system's ability to guarantee access to justice.

Regarding the insufficiency of human resources, a common concern of the judge participants is the low number of courts and tribunals along with the lack of personnel, judges and support staff, to manage the number of cases and be able to process them in the time provided by law; likewise, the lack of technical resources required to guarantee the performance of the judiciary properly. In addition to the delay of justice, one of the reasons for concern relates to productivity evaluation mechanisms designed by the judicial or judicial career councils in a way that sacrifice quality over quantity and create perverse incentives. However, in the cases in which quality is evaluated, the excessive workload does not allow for a deep and thorough analysis and involuntary errors per the high number of daily cases are not considered. For those involved in the delivery of justice, finding a balance implies working long hours and sacrificing time for other activities.

Aside from the high workload, training presents additional challenges according to the judge participants. Although judges are convinced of the importance of regular training, there is a perception that the administration of the judiciary does not take into account the workloads and the difficulty of combining different work activities, plus life outside work. This is equally applicable to judges and support staff, whose professionalization and training are also important.

In addition to technical training, judge participants have recognized the need for ethics training to strengthen the integrity of those working in the judiciary. Judges have also mentioned the importance of training programs to promote the recognition of the rights of judges in a democratic system and the overall

importance of judicial independence and autonomy so that they be considered more than mere operators of justice.

Regarding financial resources, having the general infrastructure, facilities, materials, and resources, is particularly important to achieve effective and efficient justice according to the judge participants. The COVID-19 pandemic and the measures taken to close the courts and tribunals during 2020<sup>30</sup> highlighted the need for technological resources for a more efficient justice system, for which financial resources are essential though lacking.

The lack of sufficient budget allocations and the imposition of austerity policies with a different logic from that of the judiciary, affects the external dimension of judicial independence. Much of the determination of these budgets is made under a logic that does not correspond to the current reality and is subject to the political will of the executive and legislative powers.

In **Colombia**, although the judiciary participates in budget reviews, judges consider that their participation is purely performative without having any real impact. It has been calculated that although the demand for the justice system has increased 300% in the last 30 years, the judiciary's capacity has not grown in the same way. In addition, there is an obstacle to the timely transfer of resources to the judiciary, as well as administrative obstacles and a great deal of bureaucracy in the use of resources, which results in not being able to use them and not covering the needs of the justice system.

In Colombia, the standard for establishing the response capacity of judges is deduced from the average of 10% of judges with the highest production without analyzing the circumstances in which this production occurs. Automatically, 90% of the remaining judges are already below the average capacity, putting at risk their professional stability and permanence in office by forcing them to produce quantity over quality. This violates the Statutory Law of the Administration of Justice, which establishes that qualification and tenure will be evaluated primarily by quality and not performance. In practice, however, performance corresponds to 58% of a qualification and the other 42% to quality.

There are insufficient minimum requirements for security, structure, and organization to deliver quality justice as reported by the judge participants. According to the law, something as basic as an electronic judicial management system does not exist, although it should have been in place 10 years ago. As a

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<sup>30</sup> ILAC and Vance Center for International Justice "Justice in the Time of COVID-19, Challenges to the Judiciary in Latin America & The Caribbean" December 2020. [http://ilacnet.org/wp-content/uploads/2020/12/ILAC\\_COVID19\\_ENGLISH\\_FINAL\\_WEB.pdf](http://ilacnet.org/wp-content/uploads/2020/12/ILAC_COVID19_ENGLISH_FINAL_WEB.pdf); United Nations, Human Rights Council "The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice : report of the Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán" July 2021. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/083/45/PDF/G2108345.pdf?OpenElement>



result of the pandemic and the need to work remotely, judges have had to acquire their own equipment to perform their work-related duties.

In **Guatemala**, the lack of human resources is particularly acute and negatively affecting judicial performance, according to the judge participants. There are cases in which the judicial body itself has determined the number of people necessary for the proper functioning of an office, demonstrating that there are not enough resources to allocate that number of staff.

Given violations of independence of judges, there are cases in which support personnel have been denounced for espionage activities, extracting and leaking confidential information to the public.<sup>31</sup> Although the corresponding complaints have been filed, the administration of the judiciary does not remove these persons from their duties, but only transfers them to other offices and does not conduct investigations for the corresponding misconduct. In some cases, minor sanctions have been imposed for serious misconduct.<sup>32</sup>

In Guatemala, an element to consider is that the Supreme Court of Justice is in charge of the administration of the human and financial resources of the judicial body, even though there is a Judicial Career Council, which does not have budgetary autonomy. Recently, on February 2, 2022, the Congress of the Republic of Guatemala approved reforms to the Judicial Career Law, which constitute a serious setback for the administration of the judicial career system in Guatemala since it returns to the Supreme Court of Justice the powers to preside over and rule upon all circumstances concerning the admission, transfer, promotion, discipline, training and dismissal of judges and justices. These powers are taken away from the Council of the Judicial Career, which as of the entry into force of such reforms, becomes a technical, auxiliary and processing body for all matters for the Supreme Court of Justice to decide. The Guatemalan Association of Judges for Integrity has pronounced on this serious setback.<sup>33</sup>

An aspect that drew attention concerning the evaluation of judges in Guatemala is that, according to the law and the corresponding regulations, judges must send a list of references of their performance evaluation. This is unique in the three countries, and the participating judges consider it to be a violation of judicial independence, since it is not correct that the users should

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<sup>31</sup> El Faro “La jueza Aifán describe la “criminalización y vigilancia” a las que está sometida” November 22, 2021. <https://elfaro.net/es/202111/centroamerica/25827/La-jueza-Aif%C3%A1n-describe-la-%E2%80%9Ccriminalizaci%C3%B3n-y-vigilancia%E2%80%9D-a-las-que-est%C3%A1-sometida.htm>

<sup>32</sup> El Faro “Un poder a la sombra se ensaña contra la resistencia en Guatemala” June 23, 2021. <https://elfaro.net/es/202106/centroamerica/25559/Un-poder-a-la-sombra-se-ensa%C3%B1a-contr-la-resistencia-en-Guatemala.htm>

<sup>33</sup> Asociación Guatemalteca de Jueces por la Integridad “Comunicado AGJI 02-2022. Con Relación a las Reformas a la Ley de la Carrera Judicial aprobadas por el Congreso de la República de Guatemala” February 8, 2022. <https://bit.ly/AGJICo222>

have to participate in this exercise, especially since in most cases one party will have its claim satisfied and the other will not.

Regarding financial resources, Article 213 of the Guatemalan Constitution states that no less than two percent of the State's Ordinary Income Budget shall be allocated to the judiciary, which is very low considering that it is one of the three branches of the State government. As a reference, there are activities such as sports, for which three percent of the budget is allocated. For this same reason, the infrastructure and equipment of the judicial headquarters is mostly due to international cooperation and support, which is affected by the lack of will of the superior authorities and the lack of confidence in the administration of justice.

Within the discussion of the pending justice system reform process, this is one of the aspects to which legislators should pay special attention to provide a larger budget for the justice system, according to the judge participants.

Judge participants in Guatemala identify that the lack of courts and appointment of judges generates an excessive workload in the existing ones, affecting the quality of justice and delaying the resolution of cases.

In **Mexico**, a distinction was made between the budget allocated to the Federal Judicial Branch and the budget allocated to state judicial branches, which depends on each of the legislatures. The participants consider the federal budget to be reasonable and sufficient, which contrasts with the few resources allocated to the state judiciaries, which do not have what is necessary to impart justice. This is problematic because the state judiciaries are the bodies in charge of the largest number of cases in the country.

At the federal level in Mexico, it was pointed out that if a judge attends a training activity, a secretary fills in for that judge so that the workload does not accumulate for the person in training.

Concerning judges' evaluation, the Mexican Supreme Court of Justice ruled in a case that evaluation systems that include vetting examinations violate judicial independence and the principle of stability within the tenure.<sup>34</sup>

In all three countries, the concern of participating judges stands out to strengthen meritocracy for access to positions in the different hierarchies of the judiciary and to eliminate, as far as possible, the intervention of other branches of government on the conditions of the judicial service.

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<sup>34</sup> Non-binding legal precedent: 2a./J. 10/2022 (11a.). Weekly Judicial Bulletin of the Federation. Book 10, February 2022, Volume II, pag. 1608. Digital Registry Number: 2024192.

## Permanence/immobility and secondments

The conditions for tenure and immobility of office are among the most important conditions to guarantee the independence of judges.

While reassignments may be legitimate, there is concern that they may be retaliatory and therefore affect judicial independence. In addition, this is a particularly complicated issue for women as primary caregivers of children.

In **Colombia**, transfers may be at the request of the person imparting justice, which may be considered a guarantee. However, judges do not find cases of transfers where the person imparting justice does not request it, which is an important difference with the other two countries.

Unlike the judiciary, transfers of prosecutors in Colombia are carried out as a hidden sanction mechanism.

In **Guatemala**, entry into the judicial career is based on merit; however, the judicial career is limited because only lower and trial court judges are included. The judgeships of appellate chambers come from political appointments.<sup>35</sup> This forces career judges to submit themselves to a politically exhaustive process if they want to be promoted within the judiciary, which violates judicial independence according to judge participants. At the regional level, it is exceptional that the judgeships of appellate chambers come from political appointments and are not part of the judicial career. These chambers have the last word in the vast majority of cases, so it is considered that the people who occupy these positions should also be part of the judicial career and be appointed through merit.<sup>36</sup>

In Guatemala, until February 2, 2022, transfers were based on a public call process and by opposition, decided by the Judicial Career Council. However, the recent reforms to the Judicial Career Law grant this decision-making power to the Supreme Court of Justice, which may order the transfer of a judge “by need of service”, placing at risk those judges who have demonstrated independence in office; they may be removed from the presiding over certain processes or transferred as a measure of punishment for not ruling in favor of certain persons or interests.

In the case of **Mexico**, this phenomenon is particularly relevant at the federal level since the change of assignment can occur from one end of the country to another. The Constitution speaks of objective elements for the determination and change of assignment, where according to the new Organic Law of the Federal Judiciary, the number of family members in the assignment is an element. The reason behind this was nepotism and abuse in hiring relatives,

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<sup>35</sup> *Ibíd.* “A Window of Opportunity”.

<sup>36</sup> See more at Lawyers' Council for Civil and Economic Rights, Vance Center for International Justice “Acompañamiento al proceso de nombramiento de Magistrados de la Corte Suprema y Corte de Apelaciones”. July 2019: <http://bit.ly/VCLCGuate>

which has seriously affected the public's perception of an effective federal judiciary; however, doing so without a specific criterion complicates that personal and family situations that developed naturally within the office (not as nepotism) are not always taken into account, according to judge participants.

The recently reformed Organic Law of the Federal Judiciary included the obligation to take into account the gender perspective in its performance. For this reason, at the federal level, competitions are being held to gain access to judgeships as judges or chief justices for women only. In the experience of participating judges, sometimes people who are able to participate in these competitions do not do so due to the lack of certainty as to what their assignment positions and other conditions would be, which can cause disruptions to personal and family life, particularly for women. Although it has not been possible to solve this problem completely, efforts are being made in order to reduce this uncertainty with cross-cutting gender policies.

In Mexican local judiciaries there are many challenges to permanence because, similarly to Guatemala, appointments of appellate justices are political in nature (between the executive and the legislature) and every time there is a change of administration there is a desire to make changes to the composition of the local judiciary. In this sense, the legislation is being reformed to remove or retire judges early and to appoint people who are in line with the administration in office according to judge participants.

Although there have been efforts to reform federal legislation with a view toward strengthening the federal judiciary, in Mexico, participants say that it is necessary to reform the Federal Constitution to strengthen local judiciaries, so that they are governed by the same principles as the federal judiciary, and the judicial career is guided by objective criteria that privilege merit and not politics.

## **Institutional backing and support against attacks on judicial independence**

In the face of attacks on the judicial independence of individual judges, it would be expected that the institution and the high courts of the country would assume the role of condemning these attacks and strengthen the judiciary as an institution, given the seriousness that these attacks can have on one of the pillars of the State. Whether publicly or privately, depending on the circumstances and form that the attacks on judicial independence take, the judiciary should be the first to support judges who are victims of these attacks. However, the reality is that the conditions for such support do not exist for various reasons, as reported by our judge participants, including the lack of independence and impartiality of the people who comprise the judicial

councils, because they do not have direct experience of the situation faced by judges, or because they do not identify situations of risk.

In **Colombia**, judges reported a lack of political will to protect judicial independence, which translates not only into passivity in the face of external attacks, but also in the face of internal attacks from within the judiciary itself, the Ministry of Justice or the Office of the Attorney General. The Superior Council of the Judiciary does not defend judicial independence, and there is no office within the judiciary, or outside it, that provides defense or representation to the judges of the Republic against attacks on judicial independence; nor has training been provided to strengthen respect for judicial autonomy.

Although there are protocols to provide security and protection to judges, a lack of regulations exist to identify and notify of risks, especially for judges who are not classified as high-risk due to the subject matter they preside over. In turn, women judges consider that there are no public policies to address attacks on judicial independence with a gender perspective.

As in Guatemala, judicial associations in Colombia have assumed a role of assistance, solidarity and support in the face of attacks on judicial independence, which has made them the target of attacks and persecution.

In **Guatemala**, the situation presents an additional problem according to the judge participants. Institutions in charge of supporting the independent work of judges are part of the institutions that are attacking it. For example, court supervision is used as a mechanism to intimidate independent judges. Moreover, the Supreme Court, hearing requests for impeachment (unlike other countries where political bodies are in charge of removing immunity) instead of protecting the judicial independence of its own judges, gives rise to these types of attacks.

Additionally, there is no institutional policy to support for judges whose independence has been attacked; accordingly, the project participants highlight the silence of the highest authorities when officials from other branches of government or individuals through social media accounts direct hateful or discrediting attacks against judges who have ruled impartially. The greatest support and accompaniment come from civil society organizations, independent press, embassies or agencies of foreign countries with which there are diplomatic relations, judicial associations, and citizens committed to the rule of law.

Faced with the intervention of regional bodies such as the Inter-American Commission on Human Rights, which has issued precautionary measures to protect the integrity and judicial independence of judges, State authorities and the judiciary itself attempt to appear as if they were actually carrying out specific actions, but in reality, they only minimally comply with the measures.

In **Mexico**, there is a perceived lack of support in the face of attacks on judicial independence, in some cases due to political interference in the bodies in charge of judicial independence.

The Council of the Federal Judiciary has a plural integration, including representatives of the Judiciary, the Senate and the Federal Executive Branch, precisely so that it does not depend on a single power. However, a few months ago, in one of the daily conferences held by the President of the Republic, he mentioned missing three councilors of the judiciary that “he appointed himself” due to their lack of action<sup>37</sup> and referring to them as his employees, when according to the Constitution, they should be autonomous from the office that has appointed them.

It is important to mention that the members of the Judiciary Council, appointed by the executive and legislative branches, are appointed through political procedures that do not guarantee knowledge or professionalism, which contrasts with the high requirements for the entry and permanence of members of the judiciary. This is relevant because judges consider that there is little understanding of the daily work of judges and the importance of defending judicial independence.

Unlike Colombia and Guatemala, and as mentioned above, in Mexico the judicial associations have not assumed a role of open support and backing for those whose judicial independence has been violated.

## Efforts of judicial associations

In the three countries there is a variety of judicial associations with different visions and missions. There are associations that are closer to the institutional framework of the judiciary, and others that have an autonomous purpose, which is considered to be a fundamental element for the associations to be able to watch over the rights of judges and the overall protection of judicial independence.

In **Colombia**, the Corporation of Judges and Justices of Colombia (Corjusticia), with very limited resources and infrastructure, has taken the defense of the independence of judges as a primary objective.

Article 152 of the Statutory Law on the Administration of Justice (which regulates the fundamental right of access to justice, as it prevails over ordinary laws and other laws) allows associations for mutual support, cultural,

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<sup>37</sup> Reforma “Adormecidos, consejeros de Judicatura que propuse.- AMLO” [September 21, 2021](https://www.reforma.com/aplicacioneslibre/preacceso/articulo/default.aspx?_rval=1&urlredirect=https://www.reforma.com/adormecidos-consejeros-de-judicatura-que-propuse-amlo/ar2262460?referer=-7d616165662f3a3a6262623b727a7a7279703b767a783a--).  
[https://www.reforma.com/aplicacioneslibre/preacceso/articulo/default.aspx?\\_rval=1&urlredirect=https://www.reforma.com/adormecidos-consejeros-de-judicatura-que-propuse-amlo/ar2262460?referer=-7d616165662f3a3a6262623b727a7a7279703b767a783a--](https://www.reforma.com/aplicacioneslibre/preacceso/articulo/default.aspx?_rval=1&urlredirect=https://www.reforma.com/adormecidos-consejeros-de-judicatura-que-propuse-amlo/ar2262460?referer=-7d616165662f3a3a6262623b727a7a7279703b767a783a--)

cooperative, and other types of purposes, but there is no structure allowing the exercise of the defense of rights and judicial independence as a union would have, which is a deficiency with respect to the possibility for associations to fight for judicial independence.

As in **Guatemala** with the Guatemalan Association of Judges for Integrity (AGJI), judicial associations have become a form of protection to preserve judicial independence and generate a space for support and solidarity among judges. Judge participants reported that the efforts of individuals can generate isolation and a perception of weakness, which can lead to further attacks. On the other hand, when the efforts come from associations, there is a sense of greater protections. At the same time, these independent associations may face challenges that other non-independent associations or that are not faced in the defense of judicial independence.

In Colombia and Guatemala, judicial associations have made efforts to have a voice in legislative and public policy processes. For example, Corjusticia has toured the main cities of the country trying to educate and raise awareness of legislative changes that would seriously affect judicial independence. In Guatemala, the AGJI has led discussions on issues directly relevant to judicial independence, presenting a reform proposal and providing comparative studies for the discussion of issues of national relevance.<sup>38</sup>

One challenge in Guatemala is the recent legal reforms to the regime of non-governmental organizations that seek to restrict the activities of these organizations and weaken civic space overall. If these reforms and the obligations derived from them become fully effective, they would be a direct attack against the rights to association,<sup>39</sup> and in this case, against judicial associations. In view of these acts, the AGJI has filed unconstitutionality motions before the Constitutional Court.<sup>40</sup>

One of the common obstacles to judicial associations in Colombia and Guatemala is the lack of resources to strengthen and carry out their missions and activities. There is no institutional support and, on top of their jurisdictional activities and training activities, the judges themselves are the ones who carry out the activities related to the association. These associations

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<sup>38</sup> Asociación Guatemalteca de Jueces por la Integridad. “Propuesta de Reformas a la Constitución Política de La República de Guatemala en materia de elección de Magistrados del Organismo Judicial”, September 2020. <https://agji-gt.org/~agjigtor/propuesta-de-reformas-a-la-constitucion-politica-de-la-republica-de-guatemala-en-materia-de-eleccion-de-magistrados-del-organismo-judicial/>

<sup>39</sup> Vance Center for International Justice and Alianza por las Reformas “Reformas a la Ley de Organizaciones No Gubernamentales para el Desarrollo de Guatemala: Análisis a la luz de estándares internacionales”, June 2021 <https://www.vancecenter.org/wp-content/uploads/2021/06/Reporte.-Analisis-reformas-Ley-ONG-Guatemala.-Vance-Center.-Junio.pdf>

<sup>40</sup> Guatemalan Association of Judges for Integrity. “Comunicado 09-21. AGJI presenta acción de inconstitucionalidad por reformas a Ley de ONG” August 31, 2021. <https://agji-gt.org/~agjigtor/comunicado-09-21-agji/>

rely heavily on support from other national and foreign organizations for their activities.

As part of seeking this support, reaching out to national civil society as a protection strategy has spurred good results. Initially, many organizations may have a poor perception of judges, but building these bridges has allowed them not only to gain support and assistance, but also to change perceptions and convince them of the importance of protecting judicial independence, according to judge participants.

In the case of Colombia and Guatemala, some partnership efforts have been achieved thanks to international cooperation, private organizations and diplomatic representations.

In the case of **Mexico**, although several judicial associations exist and are active, participating judges recognize the importance of judicial associations taking an active role in protecting judges from attacks on their judicial independence at the national and regional levels. In addition, associations can be a vehicle to promote changes in the performance of the judicial duty; for example, in the incorporation of the gender perspective promoted by the Mexico Chapter of the International Association of Women Judges.



## 4 Recommendations

### National governments (executive, legislative, and judicial branches)

- 1 Guarantee in legislation and regulations the strengthening of the judicial service and the conditions for the independent work of judges, considering the following:
  - Guarantee the allocation of sufficient economic resources for an effective and efficient performance of the entire judiciary and not only for the high courts. In **Guatemala**, as in other countries, a percentage of the GDP is devoted to the judiciary. However, following the lessons learned in Guatemala, this percentage should be higher in order to respond to the service demand and the judges' professional development needs. This budget should be sufficient to implement legal reforms in the justice sector.
  - The legislative branch should carry out legal reforms in consultation with the judiciary and judicial associations, to create complete judicial careers that include trial court judges and appellate judges, with processes for admission, promotion and tenure based on merit and clear and transparent evaluations. Admission and promotion in the judicial career must also consider diversity criteria in the judiciary.
    - The administration of the judicial service should be entrusted to a technical body, and not to a political one.
  - In **Colombia, Guatemala and at the state level in Mexico**, assisting judicial staff should be included as an integral part of judicial administration to guarantee a professional staff. The admission processes should ensure high-level of knowledge and skills. It should also include a probationary period, following the Mexican Federal judiciary's example where full employment is offered only after a six-month probationary period.
  - Analyze the number of existing judges in relation to the population their workload and, if necessary, create additional courts and tribunals.
  - Capacity development and continuous training should be a basic aspect of the professional development for judges and assisting

judicial staff. They should be provided with equal opportunities to be trained and to act as trainers in their area of expertise.

- Training should be mandatory. To advance the development of skills of justice administrators and assisting judicial staff, a minimum number of credits should be established for specific subjects and workshops, which should go beyond the legal aspects.
- The time allocated to training should be considered part of the working day, and not a reason to increase the workload.
- The evaluation mechanism should be based on objective quantitative and, mainly, qualitative criteria, including continuous capacity development and training, using the parameters established by the Supreme Court of Mexico<sup>41</sup> to not include vetting in the evaluation.
- Prioritize specialization for judges and administrators over general knowledge in all law matters.

## 2 Support to judges against threats to their judicial independence:

- Government actors should refrain from attacking judges and judicial associations as well as guarantee, at all times, the performance of the judicial duty with due diligence. In the event of disagreement with any judicial decision, corresponding judicial remedies should be presented, avoiding smear campaigns.
- Judicial Councils, Supreme Courts and judicial associations, and judicial associations should take on their role as guarantors of judicial independence by calling on other actors to refrain from attacking judges and publicly defend and support judges against smear campaigns.
- Create a technical body within the judiciary with operational, managerial, and budgetary autonomy with sufficient resources, as a "judicial ombudsperson" to receive complaints from judges regarding attacks against judicial independence. The technical body should, in turn, take these complaints to the corresponding government agencies, such as administrative, disciplinary, and criminal investigative bodies. These complaints should be brought to the authorities per the individual attack and because

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<sup>41</sup> Non-binding legal precedent: 2a./J. 10/2022 (11a.). Weekly Judicial Bulletin of the Federation.

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of the general threat to judicial independence. This body should ensure the implementation of measures to protect the physical and legal integrity of judicial personnel who are victims of these attacks.

- It is important to ensure the representation of judicial associations and the different levels of the judiciary in this entity.
  - Statistical information on attacks must be public to identify systematic attacks and pay attention to them.
- Enact legislation that establishes the obligation to develop a protection protocol for judges and their families in the face of the attacks on judicial independence. The protocol should establish the responsibilities of each authority that is scalable according to defined levels of risk, which should be based on objective analysis and criteria. Provision of sufficient budgetary resources for the implementation of this protocol should be considered by the legislation.
  - The protocol should provide that the State authorities comply with regional and international organizations' precautionary and provisional measures.
  - The protocol should include the obligation to provide sufficient and adequate physical security to judicial headquarters (including video surveillance and police personnel). Such security measures must comply with the protection standards according to the levels of risk, through objective and equal criteria for persons at the same level of risk and in agreement with the justice operators.
- Enact legislation that clearly establishes punishable conduct that is strictly applied at the disciplinary level.
- Provide legal certainty in the case of notoriously unfounded complaints and accusations against judges that are known intimidation tactics. This implies immediately notifying the persons accused in the complaint and carrying out an expeditious and transparent process to resolve and dismiss meritless complaints. This process must comply with the highest international human rights standards, and it must be part of the defense of the "judicial ombudsperson" mechanism.
- The entities in charge of judicial discipline should refrain from opening ex officio investigations due to the attention given by the

media. These bodies should also refrain from announcing disciplinary investigations that violate the presumption of innocence of judges. This is fundamental when it comes to issues related to judicial opinion, for which there are legal remedies.

- All disciplinary process resolutions should be published with statistics on the processing times and the criteria of the resolutions that allow for establishing consistency between different decisions.
- 3** Strengthen judicial associations and their participation in judicial public life, through:
- Creating the legal basis for formal participation of judicial associations and determining specific support on equal terms for the different associations.
  - Allowing participation of judicial associations in preparing and discussing the budget to ensure a pluralistic contribution covering the needs of both different sectors and levels of the judiciary.
  - Encouraging and validating that judicial associations can be a vehicle for capacity building and training of judges and their staff.

## **Judicial associations**

- 4** Generate a commitment from judicial associations on judicial independence and integrity, not as a political platform of its members.
- 5** React publicly to attacks against the judicial independence of their members.
- 6** Request physical and legal protections from national and international bodies for their members.
- 7** Facilitate dialogue and analyses on the strengthening of judicial independence and judicial service with other judicial associations and relevant legal community.
- 8** Organize workshops, capacity building and training activities, as well as exchanges with other associations at the national and international levels.

- 9 Organize activities aimed at the care of the mental and emotional health of its members.
- 10 Undertake efforts to inform society of the content of relevant rulings in understandable language, including images and other academic activities.
- 11 In **Mexico**, judicial associations should bring federal judges professionally and collegially closer to local judges.

### **National and international legal community**

The national and international legal community (non-governmental organizations, private legal sector, bar associations, the academia and others) should support partnership efforts in each of the countries and at the regional level in order to:

- 12 Raise awareness of problems faced by judicial independence through observatories and the preparation of papers, reports, monitoring as well as active support from national and international networks, including international media. These efforts should consider structural issues of the judiciary, particularly regarding attacks on individual judges.
- 13 Support efforts at the international level to promote the adherence to human rights mechanisms of the inter-American and universal systems for the protection of judicial independence.
- 14 Facilitate dialogue with national and international media to improve understanding of the importance of judicial independence at the national and international levels.
- 15 Support communication on the importance of an independent judiciary.
- 16 Monitor and support judicial associations in their efforts vis-à-vis judicial councils, judicial branch, and other governmental and non-governmental institutions.

- 17** Support projects and efforts that strengthen judicial independence through training activities, workshops, regional dialogues, exchange, and other activities.
- 18** Conduct applied research to seek evidence-based solutions to problems regarding security and judicial independence in the three countries.
- 19** Facilitate exchanges between judges from different countries and legal community actors that allow for a comparative experience as well as to raise awareness of the importance of the judiciary.

## 5 Description of the *Judges as Peacebuilders* Project

This discussion paper is the second in a series of three published as part of the **Judges as Peacebuilders** project. The aim of the project is to promote peace and social stability by supporting and empowering judges and justice sector actors in Colombia, Guatemala, and Mexico in their fight against corruption and impunity, while upholding judicial independence. The project is framed under the 2030 Agenda, especially the Sustainable Development Goal (SDG) **16: Promote fair, peaceful, and inclusive societies and SDG 5: Achieve gender equality and empower all women and girls**. The “Judges as Peacebuilders” is an initiative of the International Legal Assistance Consortium (ILAC), funded by the Swedish government agency for peace, security and development, *Folke Bernadotteakademin*. ILAC implemented the project in collaboration with our members, the Cyrus R. Vance Center for International Justice of the New York City Bar Association (Vance Center) and the International Association of Women Judges (IAWJ).

As part of this project, roundtables were held with a group of justice providers from Colombia, Guatemala, and Mexico. Through the roundtables, participants came together to: first, problematize their situation at both national and regional levels, and develop recommendations and possible solutions to improve anti-corruption efforts, judicial diversity and to strengthen the independence of the judiciary; second, to shed light on these causes and contribute to policy dialogue at both national, regional, and international levels.

These papers are intended to serve as a tool for national partners to elevate their arguments and recommendations at the policy level, and for the promotion of judicial independence and the rule of law.

The other reports part of this series are Discussion Paper II and III and they cover anti-corruption efforts and diversity in the judiciary.

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ILAC is a global rule of law consortium providing technical assistance to justice sector actors in fragile and conflict-affected countries. ILAC's mission is to rapidly respond to and assess the needs of the justice sector in conflict-affected and fragile countries, and help strengthen the independence and resilience of justice sector institutions and the legal profession. Today, ILAC has more than 80 members including individual legal experts as well as organizations that represent judges, prosecutors, lawyers and academics worldwide.

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**International Association  
of Women Judges**

Read the report online:



As the only global network of women judges, the International Association of Women Judges (IAWJ) envisions a world where gender equality, respect for human rights, and inclusive systems are the norm. The IAWJ was founded nearly 30 years ago with a vision of increasing the number of women judges and promoting equal justice for women and girls throughout the world. Today, the IAWJ has grown into a highly respected organization with over 6,100 judges in more than 100 countries and territories.