



## GUATEMALA HUMAN RIGHTS COMMISSION/USA

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### **Analysis of Guatemala's new Constitutional Court and Public Prosecutor's Office**

*by Juan Francisco Sandoval*

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The early actions of the new Constitutional Court and Public Prosecutor's office merit an assessment, as both institutions are fundamental to Guatemala's democracy.

#### **Constitutional Court**

The new composition of the Constitutional Court appears to have consolidated a majority of three justices against a minority of two. The first significant decisions—and, in particular, the voting patterns in cases involving the University of San Carlos—suggest the existence of a bloc consisting of Roberto Molina Barreto, Dina Ochoa, and Julia Rivera, whose actions have been decisive in ensuring Walter Mazariegos's continued tenure as the rector of the University of San Carlos. This situation is cause for concern because it offers a preview of how other matters of national importance that may eventually come before the constitutional court could be resolved.

Justice Julia Rivera's conduct has been particularly disappointing. Her track record as a judge and her affiliation with the Guatemalan Association of Judges for Integrity had raised expectations of a more independent judiciary. However, her first major rulings show that she aligns with the majority and with the positions that have favored Walter Mazariegos. It must also be acknowledged that without the political and academic support he provided her, she would have been unlikely to secure a seat on the Constitutional Court.

Everything seems to indicate that Walter Mazariegos's continued presence in the constitutional is practically a foregone conclusion, which sends a troubling message about the Court's ability to act as a true institutional check against controversies affecting legality and democratic legitimacy.

Walter Mazariegos formally began his second term as rector on July 1, despite the pending legal challenges and continuing questions about the legitimacy of the electoral process. This sends a troubling message about the Court's ability to act as a true institutional check against controversies affecting legality and democratic legitimacy.

Subsequent rulings have reinforced this sense of unease. In July, the Court provisionally suspended the rules established to carry out consultation with the Maya Ixil people over the Palo Viejo hydroelectric project, even though the consultation sought to remedy an earlier violation



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recognized in constitutional jurisprudence. The Court has also issued decisions that halted or definitively closed proceedings involving former public officials accused of corruption. These rulings must be assessed on their legal reasoning in each case, but taken together they reinforce the need to examine whether the Court is applying consistent standards in cases involving corruption, Indigenous peoples' rights, and politically influential actors.

Numerous cases currently pending in the lower courts will inevitably end up before the Constitutional Court, which will have to rule on matters related to judicial independence, criminal prosecution, corruption, and the protection of fundamental rights. Consequently, the stance adopted by the majority of justices will have a decisive impact on the future of the rule of law in Guatemala.

These warning signs become even more significant when the broader political and institutional context is taken into account. The process to elect the Comptroller General is underway, and in a few months, the country will enter a new electoral cycle in earnest; general elections, including for the country's presidency, will take place in June 2027. Recent experience shows that disputes arising from these processes are, to a large extent, ultimately resolved by the constitutional courts. Therefore, the decisions the Court makes in the coming years will not only resolve specific legal conflicts but will also directly influence the quality of democracy and public trust in institutions.

Given this landscape, it will be the consistency of the Court's rulings in the most significant cases—rather than initial statements or expectations—that will determine whether the Constitutional Court is prepared to fully reclaim its role as the guarantor of the constitutional order or whether it will continue to reproduce the dynamics that have raised questions in recent years.

### **Public Prosecutor's Office**

As for the Public Prosecutor's Office, a little more than two months is still too short a time to make conclusive judgments about the new Attorney General's performance. He is, moreover, the most closely watched official in the country, and enormous expectations rest on him—particularly from those of us who have been victims of criminalization. It is understandable that leading such a complex institution would involve intense pressure and public scrutiny.

Among the positive signs is the announcement of a commission tasked with reviewing cases of criminalization and exploring mechanisms for decriminalization. The mere acknowledgment that there is a problem requiring an institutional response constitutes a significant change from recent



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years. The commission's credibility, however, will depend on the independence of its members, the transparency of its criteria, and, above all, its ability to produce concrete results.

The withdrawal of some legal actions against journalists was also well received, which can be interpreted as a positive sign for freedom of expression. Nevertheless, certain decisions continue to raise doubts. In the case of the criminalization of my former colleague Astrid Paola Pimentel Carías, authorities insisted on challenging the ruling that upheld her acquittal. Media coverage and public criticism subsequently prompted the Attorney General to request information on the case, so one would expect a decision consistent with the principles that have been announced

There are also areas about which little is yet known, such as transitional justice processes, regarding which the new administration's approach has not yet been clearly defined.

One of the most debated decisions is the announcement of the dissolution of the Special Prosecutor's Office Against Impunity (FECI). Since 2021, that prosecutor's office has ceased to play the role it historically held in investigating major corruption cases and complex structures, instead becoming the primary unit used to pursue criminal charges against prosecutors, judges, journalists, and other actors. In this regard, its dissolution could represent an opportunity to bring a particularly controversial chapter to a close. However, uncertainty persists regarding the fate of the case files and the functioning of the announced commission tasked with reviewing cases of criminalization, as its criteria, powers, and the units to which the cases would eventually be transferred remain unknown. The Attorney General has since reported that the first phase of the liquidation process, consisting of an internal audit, has concluded and that decisions regarding the redistribution of cases and reassignment of personnel could take another two or three months.

Another important issue is human resources. During these first two months, there have been transfers, resignations, and dismissals, while various sectors are demanding more widespread removals. More recently, the Attorney General reversed the transfers of two career prosecutors who had publicly criticized the previous administration and considered their reassignments retaliatory. However, any purge must be weighed in light of the much-debated fiscal stability and the corresponding labor implications. After eight years of setbacks, many of the questionable practices are deeply entrenched in the institutional structure, making immediate reconstruction highly unlikely.

Likewise, when it comes to access to public information, the inaction that characterized the previous administration is still evident. In my own case, just a few days ago I was notified of a contradictory decision that failed to provide the requested information and was issued by officials who remain in the Public Prosecutor's Office after working for the previous administration, demonstrating that changes at the top of the institution do not necessarily translate immediately to all levels.



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Ultimately, some of the measures adopted so far appear to have been driven by media pressure and public scrutiny, which highlights that at the Public Ministry the new administration's legitimacy is still a work in progress. The true assessment should not be based on the first **two months** of the administration, but rather on its ability to review cases of criminalization, strengthen transparency, respect fundamental rights, and rebuild public trust in the Public Prosecutor's Office.