

THE REACTIVATION OF REQUEST TO LIFT IMMUNITY OF CONSTITUTIONAL COURT MAGISTRATES THREATENS RESPECT FOR JUDICIAL INDEPENDENCE IN GUATEMALA

Guatemala City, San Jose, Washington DC, March 11, 2021. The international human rights organizations subscribed below express our concern about the most recent request to lift the immunity of Constitutional Court (CC) magistrates Gloria Porras and Francisco De Mata Vela. The petition threatens the independence of the judiciary and violates an earlier decision by the CC.

On March 8, 2021, the Supreme Court (CSJ) sent another request to strip Porras and de Mata Vela of their immunity to Congress. The Supreme Court's decision defies an earlier decision by the CC that had permanently suspended the lifting of judicial immunity. It is of deep concern that the CC's decision has been blatantly disregarded by the CSJ. Coming just days after the reelection of Gloria Porras as magistrate to the CC for the 2021-2026 term, the CSJ's decision suggests a retaliation from corrupt forces in response to Porras' election.

The adherence to international legal standards ensures the protection of the independence of justice operators, including judges and magistrates. Among the guarantees outlined in international norms is the protection against external pressures. One of the principal mechanisms to protect against external pressures and safeguard judicial independence is judicial immunity and thus, it is critical that it not be used to achieve political ends or threaten the very independence it is designed to protect. The UN Special Rapporteur on the Independence of Magistrates and Lawyers has clearly established that justice operators should not be subject to disciplinary procedures or sanctions related to the content of their resolutions, verdicts or judicial rulings (A / HRC / 26/32, paras. 84 and 87), something that was reiterated by Special Rapporteur Diego García-Sayán to the Guatemalan State in a communication dated October 22, 2020. Unfortunately, the requests to lift judicial immunity for Magistrates Gloria Porras and Francisco de Mata Vela are among a slew of other nefarious actions that have been carried out against them. Porras and de Mata Vela have been the target of several intimidatory tactics due to their roles as key justice operators in the fight to protect human rights and combat corruption and, as a result, have previously received precautionary measures from the Inter-American Commission on Human Rights.

Attempts to lift judicial immunity as a tactic to penalize independent justice operators for their role in upholding the rule of law, combating corruption and protecting human rights should not be tolerated. Additionally, the decision by the highest court in Guatemala - a judicial body tasked with administering justice and ensuring that only fair and well-founded suits move forward - to repeal the magistrates' immunity should draw severe scrutiny and criticism. This decision calls into question the ability of the CSJ to filter out suits raised with spurious, political or otherwise illegitimate motives, and is therefore of grave concern for the rule of law as a whole in Guatemala.

The process of electing magistrates to the Constitutional Court for the 2021-2026 period has been marked by a lack of transparency and democratic values. The external influence of corrupt actors in the process has raised alarm in Guatemala and abroad. Given these antecedents, we urge the Congress of Guatemala to:

1. Return the proceedings to repeal immunity of magistrates Gloria Porras and Francisco De Mata Vela to the Supreme Court of Justice, halting the procedure from moving forward and ensuring that the withdrawal of judicial immunity is not used for political, illicit or retaliatory means;
2. Ensure transparency, fairness and conformity with international legal standards in their decision-making process; and
3. Respect the judicial independence of the Constitutional Court and other jurisdictional bodies of the country.

Signing organizations:

Impunity Watch

Abogados Sin Fronteras Canadá (ASFC)

Protección Internacional Mesoamerica

Due Process of Law Foundation (DPLF)

Washington Office on Latin America (WOLA)

Center for Justice and International Law (CEJIL)

Latin American Working Group (LAWG)