



# Eviction and Criminalization of Indigenous Peoples in Guatemala: The Role of the Public Prosecutor's Office



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## Executive Summary

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### Introduction and Objective of the Report

Three decades after the signing of the Peace Accords, Guatemala continues to face major challenges as it tries to establish itself as a democratic society in which private interests are subject to the rule of law. One of the factors making this goal unattainable is the co-optation of the Public Prosecutor's Office (*Ministerio Público*, "MP" by its Spanish acronym) by corruption networks, a scourge that undermines the normal functioning of the country's justice system. The blatantly illegal actions by the MP and some judges during the 2023 electoral process are a testament to this reality.<sup>1</sup> The mobilization of indigenous peoples and their ancestral authorities in defense of the constitutional order and the election results was a decisive factor in preventing a democratic breakdown and allowing President Bernardo Arévalo to take office. However, even after overcoming that situation, Guatemalan democracy remains hostage to a network of corrupt agents entrenched in various state institutions, particularly the MP.

This report analyzes how the co-optation of the MP affects the way in which agrarian conflicts are handled, with a focus on the criminal prosecution of indigenous communities on charges of trespass—in Spanish, *usurpación*—and aggravated trespass—*usurpación agravada*. Based on an examination of the Guatemalan legal framework, institutional guidelines, complaints, and investigations of indigenous communities, this report documents how the systematic use of punitive power takes place within a broader context of co-optation of the justice system, resulting in repeated violations of rights protected by the Constitution and various international human rights treaties that Guatemala has ratified.

### Historical Background on the Agrarian Conflict

Agrarian conflict in Guatemala stems from the concentration of land ownership and the dispossession and exclusion of indigenous peoples that have marked the country's history. From the colonial period to the liberal governments of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, the land ownership structure has favored large landowners and transnational agricultural companies, who were granted the use of a large swath of the country's territory, which were inhabited by indigenous communities. The members of these communities were forced into servitude as farm workers.

During the internal armed conflict (1960–1996), the scorched earth strategy led to extreme levels of land dispossession, resulting in hundreds of communities being displaced from their ancestral territories. Although the Peace Accords included commitments on resettlement and land access for indigenous and peasant communities, these commitments have not yet been fulfilled.

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<sup>1</sup> BBC. (December 8, 2023). Prosecutors in Guatemala call for the annulment of presidential election won by Bernardo Arévalo, while OAS denounces "attempted coup." Retrieved from <https://www.bbc.com/mundo/articles/ce7prjp3x08o>

## New Patterns of Eviction and Weaponization of the Justice System

This report documents the emergence of new patterns of forced eviction in Guatemala, characterized by the use of the criminal justice system as the main mechanism for resolving agrarian disputes. Criminal proceedings for trespass and aggravated trespass have become a recurring tool used to pressure indigenous communities into vacating their lands or abandoning their claims to ownership over their territories.

According to the MP's annual reports, eviction requests increased more than sixfold in the last three years. Between April 1, 2022 and March 31, 2023, there were 25 eviction requests registered; in the following period, from April 2023 to March 2024, the number rose to 94; and in the most recent report, there were 154 eviction requests registered between April 2024 and March 2025.

The report highlights that under the current Attorney General, Consuelo Porras, the MP's objectivity in prosecuting complaints related to agrarian conflicts has been severely weakened, blurring the line between defending the public interest and protecting the interests of agro-industrial and extractive companies and landowners. One manifestation of this situation is the creation of the Special Prosecutor's Office for Crimes of Trespass and an Office of Full-Time Service to handle this type of crime. These agencies have facilitated the reporting and prosecution of land ownership disputes which should, by their nature, be resolved under civil or agrarian jurisdiction.

Furthermore, these types of criminal offenses establish a presumption of *in flagrante delicto* when individuals are found on property for which a private title has been registered. Likewise, they allow for summary judicial eviction proceedings against indigenous communities without allowing the communities to fully exercise their right of defense or to demonstrate their historical ties to the disputed lands. The Inter-American Commission on Human Rights (IACHR) has noted that these types of criminal offenses and their enforcement by the MP do not allow indigenous communities to prove their collective property rights over the lands they inhabit.

Finally, the increase in charges of trespass and aggravated trespass stands in contrast to the low number of criminal convictions for these crimes. This, along with the practice of keeping investigations open for years and postponing hearings in which a court could determine the defendants' responsibility, suggests that the MP's intention is not to investigate possible crimes, but rather to intimidate community members who resist efforts to seize their lands. These policies have an impact on many communities' lives, creating fear, restricting freedom of movement, depriving people of their livelihoods, disrupting access to education, healthcare, and civil registry services, and leading to forced displacement without guarantees of decent resettlement.

## National and International Legal Framework

The document reveals a structural gap between the formal recognition of indigenous territorial rights in the Constitution, the Peace Accords, and international treaties which Guatemala has ratified, and their effective implementation. The absence

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of adequate legislation and policies for the demarcation and titling of indigenous territories, coupled with the weakening of agrarian institutions and setbacks in constitutional jurisprudence on indigenous rights, have consolidated a state of affairs that privileges individual private property over collective indigenous property.

### **Alarming Institutional Trends in the Actions of the Public Prosecutor's Office**

This document identifies repeated practices that are inconsistent with international standards of due diligence and objectivity, which ought to guide the actions of the MP. Some of the most notable examples are:

- evictions without proper identification of the alleged criminal conduct;
- the impossibility for an accused indigenous community to prove customary tenure or the existence of communal titles over the disputed territory;
- the use of inconsistent or amended witness statements years after the alleged events;
- the undue presumption of *in flagrante delicto* to justify immediate evictions and arrests;
- requests for arrest warrants that go unexecuted for years as a means of intimidation;
- the execution of summary judicial evictions without prior notification, through extremely violent police operations that often result in the destruction of homes and violate their right to dignified resettlement.

### **Conclusion and Recommendations**

The report concludes that the MP's conduct with respect to agrarian conflicts is neither neutral nor isolated, but rather part of a policy of systematic criminalization of indigenous communities whose territories are a focal point for private interests. The report also makes recommendations to different state bodies, including the MP and the judiciary, as well as to the international community and the Nominating Commission responsible for selecting candidates for the positions of Attorney General and Head of the MP.

The document contains important contributions towards this nomination process, which will take place in Guatemala in the coming months. Specifically, we hope that the candidates will take a stance on the findings and recommendations contained herein and commit to modifying the MP's policies, directives and patterns of behavior, which are characterized by the illegal and arbitrary use of punitive power against indigenous communities. Likewise, once the new head of the MP has been appointed, the report identifies a key opportunity to take action to restore institutional independence, review irregular criminal prosecution practices, and ensure respect for the territorial rights of indigenous peoples in the country.

# 1

## Introduction

Although the dispossession of indigenous peoples from their lands has been a feature of Guatemala's history since colonial times, the most recent trends surrounding this phenomenon combine traditional strategies of authoritarianism with a certain veil of legality and the subjugation of the justice system to corruption networks entrenched in the high courts and, above all, in the MP. The "scorched earth" policy that displaced hundreds of Maya communities from their territories during the internal armed conflict (1960–1996) has mutated into new strategies of dispossession by private interest groups with the active collaboration of the MP and other state institutions. In the last two decades, this phenomenon has been driven by arbitrary criminal charges of trespass and aggravated trespass, the enactment of states of siege, and police operations authorized by court orders.

Since current Attorney General Consuelo Porras took office, the MP has significantly increased the prosecution of communities living in territories claimed by companies or individuals. Measures contributing to this trend include the creation of the Special Prosecutor's Office for Crimes of Trespass and an Office of Full-Time Service to deal with this type of offense. The end of Consuelo Porras' term in May 2026 presents an opportunity for the President of Guatemala to appoint someone committed to a thorough review of the policies and institutional practices that have resulted in the arbitrary criminal prosecution of numerous indigenous communities and their leaders.

In Guatemala, criminal law is systematically used to evict indigenous communities, without any prosecutors or courts exercising control over the validity of the private property title that supports the respective complaint. Many of these evictions are carried out by court order without prior notification or guarantees of resettlement, and without the communities having had the opportunity to exercise their right to defense and demonstrate their ownership of the territories they have historically occupied. This situation is exacerbated by the State's failure to fulfill its historic debt to demarcate, title, and remove encumbrances to land tenure over indigenous territories. Guatemala lacks a legal framework, a cadastral system, and an agrarian dispute resolution system that would guarantee indigenous territorial rights in accordance with their traditional land tenure systems.

This report examines the main trends in arbitrary criminal prosecution and eviction of indigenous communities, framing the MP's actions in a broader context of co-optation of the justice system by corruption networks. The report is based on an examination of criminal cases brought before various courts in the country, as well as on prosecutorial decisions, technical reports from state agencies, and the MP's internal directives. The report also reviews national and international case law on indigenous territorial rights and specialized bibliographic sources. The documentary analysis was supplemented by interviews with human rights defenders, lawyers who provide legal support to indigenous communities, journalists, and social organizations, as well as meetings with communities affected by eviction processes.

To protect the people and communities who participated and were interviewed during the documentation process, this report deliberately omits any identifying information in cases where confidentiality was requested or where identifying them

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could put those people or communities at risk of reprisal. This decision was made in light of Guatemala's context of criminalization and the risks faced by land rights defenders. The information collected has been carefully organized and is being held outside of Guatemala by the Due Process of Law Foundation (DPLF). DPLF is not obligated to disclose this information, and any requests for additional information from interested parties will be evaluated on a case-by-case basis in accordance with its policy on protection of sources, data, confidentiality, and informed consent. Disclosure of this information is not mandatory and will only be considered after a rigorous evaluation of the conditions of confidentiality, consent, and protection, in order to avoid any risk to the individuals or communities involved.

### 2.1 The Historical Context of the Concentration of Land Ownership and the Dispossession of Indigenous Peoples from Their Territories

The history of land dispossession in Guatemala has always been met by indigenous peoples' struggles to defend, recover, and gain recognition of their ancestral territories. This struggle is not only about protecting their livelihoods, but also about preserving cultural, social, and spiritual ties to their ancestral territories, which are an essential element for indigenous peoples' future as collective right holders.

Since gaining independence from the Spanish crown, Guatemala has been characterized by the concentration of land ownership and by economic dependence on the intensive exploitation of natural resources. During the liberal governments of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, public lands or lands without a registered owner were given to private parties on the condition that they invest in agricultural production. The so-called "liberal agrarian reform" granted a significant portion of the national territory to a limited number of new plantation owners who, together with the traditional landowning oligarchy, ended up concentrating most of the country's land into a few hands. These policies led to the widespread expropriation of indigenous territories and the forced assimilation of indigenous inhabitants of these territories as plantation workers.<sup>2</sup> The properties were registered by individual people, without the knowledge of the communities that had ancestrally lived on the lands, given that the ordinances were written in Spanish and published in newspapers that did not reach their territories.<sup>3</sup>

During the dictatorship of Manuel Estrada Cabrera (1898–1920), the State granted large tracts of land to transnational agro-export companies, such as the US-based United Fruit Company.<sup>4</sup> This further intensified the dispossession of indigenous peoples from their territories and reduced indigenous community members to "colonial peasant farmhands" (*mozos colonos*): farm workers forced into servitude on the very land they inhabited, while ownership or right of use of that land went to private individuals.<sup>5</sup>

Following a turbulent period of dictatorial governments that aligned themselves with the interests of the agrarian elites and transnational fruit companies, the Juan José Arévalo administration (1945–1951) promoted a comprehensive labor reform aimed at guaranteeing minimum social rights for urban and rural workers. Arévalo's successor, Jacobo Árbenz (1951–1954), promoted an agrarian reform based on the voluntary surrender of large unproductive landholdings in exchange for compensation. This reform was met with fierce opposition from the plantation-

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<sup>2</sup> Gantenbein, A. Z. (2006). The impact of land tenure on respect for the social and economic human rights of Guatemalans. *Journal of Human Rights*, V(6), 31-84, pp. 40 a 41. (available in Spanish)

<sup>3</sup> Castro, J. (2022). Recovering Ancestral Lands. *El Observador*, 17 (77). Retrieved from <https://elobservadorgt.org/wp-content/uploads/2024/06/Boletin-El-Observador.-Analisis-Alternativo-sobre-Politica-y-Economia-No.-77-Recuperacion-de-las-Tierras-Ancestrales.pdf> (available in Spanish)

<sup>4</sup> Castro, J. (2022). Recovering Ancestral Lands. *El Observador*, 17(77), p. 42. (available in Spanish)

<sup>5</sup> As Guatemalan novelist Mario Roberto Morales writes, "the Liberal Revolution led to the agro-export orientation of [the Guatemalan economy], the establishment of a landowning class that owned most of the land, [and] the creation of the National Army as a force for the criollos to use against the indigenous people to force them to work on the plantations." See Roberto Morales, M. (2014). *A Brief Intercultural History of Guatemala*. Guatemala: Editorial Cultura, p. 87. (available in Spanish)

owning oligarchy and the United Fruit Company, culminating in a coup d'état in 1954, sponsored by the United States intelligence service.<sup>6</sup>

In 1956, the so-called “agrarian counter-reform” took place, which consisted of returning the land expropriated during the Árbenz reform.<sup>7</sup> As noted in the report by the Commission for Historical Clarification (*Comisión para el Esclarecimiento Histórico*, “CEH” by its Spanish acronym), this measure meant that peasants and indigenous peoples would have to depend on access to small plots of land concentrated in the hands of a small number of landowners.<sup>8</sup>

In 1961, Guatemala signed the Charter of Punta del Este, through which the countries of the American continent agreed to form the Alliance for Progress, spearheaded by then-U.S. President John F. Kennedy, with the aim of curbing the influence of the Cuban revolution in Latin America and the Caribbean. Some of the measures the signatory states committed to were comprehensive agrarian reform and a more equitable system of land distribution.<sup>9</sup> In Guatemala, this commitment also had a counterinsurgency purpose, as the country had experienced its first Marxist-oriented armed incursion in 1961.<sup>10</sup>

The Law of Agrarian Transformation (1962) was enacted in this context. While it ostensibly sought to democratize peasants’ access to land, in practice it put state institutions at the service of the interests of the agrarian oligarchy. This law established three guiding principles of agrarian policy in the country, which are still in effect today: the absolute defense of private property; the exclusion of private lands from agrarian reform policies; and the promotion of a land market in which the state guarantees the rights of landowners and plays a subsidiary role in the claims of indigenous and peasant communities.<sup>11</sup>

While private land ownership was treated as an absolute right, the state created few mechanisms for allocating communal lands to indigenous peoples and peasant communities. One example was the concept of “collective agricultural property,” which allowed the state to transfer national lands in agricultural frontier areas to rural communities. However, this policy also served to settle labor in areas that the military and civilian elites sought to exploit.<sup>12</sup>

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<sup>6</sup> See, for example, the Commission for Historical Clarification (CEH). (1999). *Guatemala: Memory of Silence*, first chapter, Causes and roots of the internal armed confrontation, pp. 101 to 108.

<sup>7</sup> Gantenbein, A. Z. (2006). The impact of land tenure on respect for the social and economic human rights of Guatemalans. *Journal of Human Rights*, V(6), 31-84, p. 45. (available in Spanish)

<sup>8</sup> CEH. (1999). *Guatemala: Memory of Silence*, para. 236.

<sup>9</sup> Declaration of the Peoples of America and the Charter of Punta del Este, Punta del Este, Uruguay, August 1961. Retrieved from <https://www.memoriapoliticademexico.org/Textos/6Revolucion/1961-DPA-APE-APP.html>

<sup>10</sup> Hurtado Paz y Paz, L. (2018). *Colonization programs and the counterinsurgency state in Guatemala*. Guatemala: FLACSO, p. 18. Retrieved from <https://www.scielo.org.mx/pdf/liminar/v17n2/2007-8900-liminar-17-02-15.pdf> (available in Spanish)

<sup>11</sup> Hurtado Paz y Paz, L. (2018). *Colonization programs and the counterinsurgency state in Guatemala*. Guatemala: FLACSO, pp. 16 to 17. (available in Spanish)

<sup>12</sup> Hurtado Paz y Paz, L. (2018). *Colonization programs and the counterinsurgency state in Guatemala*. Guatemala: FLACSO, p. 17. (available in Spanish)

During the internal armed conflict (1960–1996), the Northern Lowlands<sup>13</sup> were ravaged by the military's "scorched earth" strategy, which caused the displacement of 40% of the Q'eqchi' population. These military operations were concentrated in the regions of Quiché, Huehuetenango, Chimaltenango, Alta and Baja Verapaz, the southern coast, and Guatemala City.<sup>14</sup> At the same time, army officers became the largest landowners in the region, coming to control 60% of the land in the department of Alta Verapaz by 1983.<sup>15</sup>

The Maya peoples were the most affected by human rights violations during the armed conflict, suffering forced displacement and the destruction of their communities, homes, livestock, crops, and means of survival. Many massacres occurred as a result of land dispossession and land grabbing by the military, businessmen and landowners. One of the most emblematic cases is that of the Maya Achí community of Río Negro, located in the Chixoy River basin in the municipality of Rabinal, Baja Verapaz. In 1975, Guatemala's National Electrification Institute (*Instituto Nacional de Electrificación*, "INDE" by its Spanish acronym) proposed the construction of a hydroelectric dam in the river basin, which would displace more than 3,000 people. When the community refused to be resettled, the army claimed that this was evidence of subversive influences; between 1980 and 1982, four massacres were carried out.<sup>16</sup> By January 1983, water had begun to fill the dam's reservoir, flooding most of the territory occupied by the Río Negro community.<sup>17</sup>

During the height of the armed conflict, from 1982 to 1996, the government halted the land access and titling programs for rural communities, which had been put in place by the Law of Agrarian Transformation. This left most beneficiaries without definitive titles and without legal certainty over the lands they were in the process of being awarded. According to Hurtado Paz y Paz, these programs represented the opening up of the last available land in the country for agriculture and extractive industries, a development that was only partially halted during the armed conflict and with the creation of protected areas in the second half of the 1980s.<sup>18</sup>

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<sup>13</sup> Southern Petén, Izabal, eleven municipalities of Alta Verapaz, and Playa Grande Ixcán. For reference, see Plaza Pública, p. 3. Retrieved from [https://www.plazapublica.com.gt/sites/default/files/capitulo\\_iv\\_tierras\\_bajas\\_del\\_norte.pdf](https://www.plazapublica.com.gt/sites/default/files/capitulo_iv_tierras_bajas_del_norte.pdf) (available in Spanish)

The phenomenon of evictions affects indigenous and peasant communities indiscriminately throughout Guatemala. Therefore, the reference to the Northern Lowlands aims to illustrate to the IACHR the historical patterns of irregularities in land tenure and their current implications for indigenous and peasant communities in Guatemala.

<sup>14</sup> IACt-HR. *Case of the Río Negro Massacres v. Guatemala*. Preliminary objection, merits, reparations and costs. Judgment of September 4, 2012. Serie C No. 250, para. 57.

<sup>15</sup> Hurtado Paz y Paz, L. (2025). Draft of Chapter I of the book *Land and Racism: Modern Land Dispossession in Q'eqchi' Territory*, forthcoming, p. 26. (available in Spanish)

<sup>16</sup> IACt-HR. *Case of the Río Negro Massacres v. Guatemala*. Preliminary objection, merits, reparations and costs. Judgment of September 4, 2012. Serie C No. 250, paras. 58 to 81.

<sup>17</sup> IACt-HR. *Case of the Río Negro Massacres v. Guatemala*. Preliminary objection, merits, reparations and costs. Judgment of September 4, 2012. Serie C No. 250, para. 66.

<sup>18</sup> Hurtado Paz y Paz, L. (2018). *Colonization programs and the counterinsurgency state in Guatemala*. Guatemala: FLACSO. p. 20. (available in Spanish)

## 2.2 The End of the Internal Armed Conflict and the Continuation of Agrarian Conflict

The 1996 Peace Accords were a unique opportunity to enforce the rights of one of the primary victims of the internal armed conflict, namely the Maya communities who were displaced from their territories and subjected to massacres and other serious human rights violations. A number of the commitments made in the Peace Accords refer to the establishment of a legal and institutional framework to address agrarian conflicts, resettle indigenous peoples, and guarantee their rights to their ancestral territories.

The expansion of monocultures such as African palm and sugar cane led to a new wave of land concentration, exacerbating pressure on smaller agricultural holdings.

Not only did the State fail to honor these commitments, but it also began to promote agricultural, energy, and infrastructure megaprojects in areas inhabited or claimed by indigenous peoples. The expansion of monocultures such as African palm and sugar cane led to a new wave of land concentration, exacerbating pressure on smaller agricultural holdings.<sup>19</sup> According to a 2020 study, almost half of Guatemala's agricultural producers owned 3.2% of the land, while 56.6% of arable land was in the hands of 1.8% of producers.<sup>20</sup> Other studies show that 80% of land in general is concentrated in the hands of less than 20% of the population.<sup>21</sup>

According to the most recent Survey on Living Conditions, in 2023, 56% of the Guatemalan population lived in poverty, primarily in rural areas (66.4%).<sup>22</sup> The departments of Alta Verapaz, Baja Verapaz, and Huehuetenango had the most severe rates, with more than 80% of their populations living in poverty. Alta Verapaz showed the most serious situation, as the department with the highest rate of extreme poverty (more than 50% of its population), followed by Baja Verapaz (35.8%) and Jalapa (34.5%).<sup>23</sup>

Between 2002 and 2008, landowners filed an increasing number of complaints of "illegal occupation," many of which resulted in court orders for eviction.

The first documented evictions of indigenous and peasant communities following the signing of the Peace Accords took place in 2004. Between 2002 and 2008, landowners filed an increasing number of complaints of "illegal occupation," many of which resulted in court orders for eviction. Many evicted people, mostly indigenous and former "*mozos colonos*," were stigmatized as invaders, despite having lived and worked on their land for many generations.<sup>24</sup>

<sup>19</sup> García Munguía, M. E. & Gálvez, J. (2022). *Land*. Environmental Profile of Guatemala. Guatemala: Universidad Rafael Landívar, IARNA, VRIP, p. 2. Retrieved from [https://biblior.url.edu.gt/wp-content/uploads/publiclg/IARNA/serie\\_ambi/978-9929-54-446-8.pdf](https://biblior.url.edu.gt/wp-content/uploads/publiclg/IARNA/serie_ambi/978-9929-54-446-8.pdf) (available in Spanish)

<sup>20</sup> Setem. (2020). Land grabbing in Guatemala: a human rights and critical feminist perspective from Latin America, the case of banana and oil palm monoculture in La Blanca. Retrieved from [https://www.setem.org/catalunya/wp-content/uploads/sites/10/2022/04/INFORME\\_stopacaparamiento\\_CAST.pdf](https://www.setem.org/catalunya/wp-content/uploads/sites/10/2022/04/INFORME_stopacaparamiento_CAST.pdf) (available in Spanish)

<sup>21</sup> Land Fund, General Secretariat. (2016). *Policy on access through subsidized loans*. Retrieved from [https://www.fontierras.gob.gt/ip/Politica\\_Acceso\\_Via\\_CreditosSubs.pdf](https://www.fontierras.gob.gt/ip/Politica_Acceso_Via_CreditosSubs.pdf) (available in Spanish)

<sup>22</sup> INE. (2024). *National Survey on Living Conditions ENCOVI 2023: main findings on poverty and inequality*, p. 30. Retrieved from <https://www.ine.gob.gt/sistema/uploads/2024/08/22/20240822115045oP9hz3bt6r44qxs2amGK6YQlpGhNdg0.pdf> (available in Spanish)

<sup>23</sup> INE. (2024). *National Survey on Living Conditions ENCOVI 2023: main findings on poverty and inequality*, pp. 31 and 39. (available in Spanish)

<sup>24</sup> Hurtado Paz y Paz, L. (2025). Draft of Chapter I of the book *Land and Racism: Modern Land Dispossession in Q'eqchi' Territory*, forthcoming, pp. 2, 24 y 42. (available in Spanish)

As Hurtado Paz y Paz has pointed out,

(...) 2011 marked an undeniable trend: with a single court order, 12 communities in El Estor, Izabal department, were evicted. Two more were not evicted because of a bureaucratic error: the properties were outside the municipal jurisdiction indicated in the court order.<sup>25</sup>

Between 2012 and 2015, evictions increased, especially in the country's northern lowlands. The highest number of evictions of indigenous and peasant communities was recorded in 2022, particularly in Alta Verapaz and Izabal.<sup>26</sup>

This situation was verified by the IACHR during its most recent on-site visit to Guatemala (2024), noting that in El Estor, Izabal department, it received information about criminalization promoted by private actors and local authorities against Q'eqchi' leaders and community journalists who denounce the social and environmental impacts of extractive activities and African oil palm monoculture, which have led to numerous forced evictions, both judicial and extrajudicial.<sup>27</sup>

As the IACHR stated in its 2017 report on the situation of human rights in Guatemala, the unfair and unequal distribution of land, its concentrated ownership in the hands of a limited segment of society, and different forms of racism and discrimination are common factors that fuel violence against indigenous peoples in Guatemala.<sup>28</sup> To quote the report:

(...) the vested interests of private corporations or companies are often behind the execution of the eviction orders and involve a variety of investment projects in monoculture farming, mining, hydroelectric dams, petroleum or tourism, *inter alia*. (...) Forced evictions are often linked to a lack of legal certainty about their land, which constitutes an essential ingredient of the right to adequate housing.<sup>29</sup>

Criminalization arising from the lack of legal certainty regarding land tenure has mainly affected indigenous communities, whose members are criminally prosecuted for defending and claiming their ancestral territories. The IACHR noted with particular concern the criminalization of indigenous women for the crime of trespass. Despite this, the Guatemalan State does not have official information or statistics on how many indigenous people face criminal prosecution for defending their territory.<sup>30</sup>

A key factor in the increase in evictions in recent years has been the weaponization of the justice system and other state institutions by corruption networks. This situation

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<sup>25</sup> Hurtado Paz y Paz, L. (2025). Draft of Chapter I of the book *Land and Racism: Modern Land Dispossession in Q'eqchi' Territory*, forthcoming, p. 22. (available in Spanish)

<sup>26</sup> Hurtado Paz y Paz, L. (2025). Draft of Chapter I of the book *Land and Racism: Modern Land Dispossession in Q'eqchi' Territory*, forthcoming, pp. 6 and 8. (available in Spanish)

<sup>27</sup> IACHR. *Human rights situation in Guatemala*. OEA/Ser.L/V/II, Doc. 227/25, November 2, 2025, paras. 216 to 217. (available in Spanish)

<sup>28</sup> IACHR. *Situation of Human Rights in Guatemala*. OEA/Ser.L/V/II., Doc. 208/17, December 31, 2017. (available in Spanish)

<sup>29</sup> IACHR. *Situation of Human Rights in Guatemala*. OEA/Ser.L/V/II., Doc. 208/17, December 31, 2017, para. 215. (available in Spanish)

<sup>30</sup> IACHR. *Situation of Human Rights in Guatemala*. OEA/Ser.L/V/II., Doc. 208/17, December 31, 2017, paras. 187, 191 and 192. (available in Spanish)

has taken shape within a legal, political, and institutional framework designed to favor private interests rather than defend the public interest, to the detriment of the rights of indigenous peoples and peasant communities. Criminal prosecution has been transformed into a tool for territorial dispossession that is as effective as, if not more effective than, the scorched earth policy of previous decades.

In this context, forced evictions are part of a broader historical dispute in which indigenous peoples have consistently defended their territories against different forms of dispossession by the state and private interests. For decades, these communities have relied on collective organization, social mobilization, and legal action to assert their territorial rights, despite a structural environment marked by inequality, racism, and impunity.

# 3

## The Co-optation of the Justice System and Criminalization of Indigenous Authorities

A number of international organizations have highlighted the connection between the erosion of the rule of law and the consolidation of illegal political and economic networks in Guatemala, which include government officials, members of the judiciary, and active-duty and retired military personnel, who operate with complete impunity. During the administration of Alejandro Giammattei, these networks grew stronger, and judicial independence was undermined by the undue interference of private interest groups in selection processes for appointments to high courts and the MP.

DPLF and other regional human rights organizations made the following assessment of the co-optation of the justice system in Guatemala:

Guatemala's highest courts, its Attorney General's Office (AG), and specialized prosecutors' offices have been rigged by corrupt actors seeking to block honest judges and prosecutors from seeking reappointment or higher offices and have instead stacked the justice system with judges and prosecutors willing to side with corrupt members of the private sector, government, and security forces at the expense of a majority Indigenous population. Corruption and human rights cases that were making progress in the courts have been stalled as the honest judges presiding over them have been removed, transferred to other courts, or driven into exile. Aided by private lawyers from the Foundation against Terrorism (*Fundación Contra el Terrorismo*, "FCT" by its Spanish acronym), Attorney General Consuelo Porras has led the ousting and criminalization of independent justice operators. (...) judges and prosecutors, including the nation's lead anti-corruption prosecutor, have fled the country, and others remain jailed or were forced to resign. The Special Prosecutor's Office Against Impunity (*Fiscalía Especial Contra la Impunidad*, "FECI" by its Spanish acronym), created with the support of the International Commission against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala, "CICIG" by its Spanish acronym) in 2008, has been fully dismantled and co-opted. (...). The very institutions that are supposed to ensure access to justice are no longer independent and are instead working to protect the interests of a small, corrupt minority and to silence voices from civil society organizations and independent media.<sup>31</sup>

The IACHR has pointed out that the issue of evictions has been exacerbated by the co-optation of the judiciary and the MP,<sup>32</sup> highlighting that the election of the current Attorney General Consuelo Porras in 2018<sup>33</sup> and her re-election in 2022 intensified this phenomenon.<sup>34</sup> Ever since, the MP has systematically persecuted human rights defenders, independent justice operators, and journalists.<sup>35</sup> The attacks on the 2023

The IACHR has pointed out that the issue of evictions has been exacerbated by the co-optation of the judiciary and the MP, highlighting that the election of the current Attorney General Consuelo Porras in 2018 and her re-election in 2022 intensified this phenomenon.

<sup>31</sup> Due Process of Law Foundation, Latin America Working Group, Education Fund, Guatemala Human Rights Commission/USA & Washington Office on Latin America. (October 2022). *When the Dominoes Fall: Co-optation of the Justice System in Guatemala*. Retrieved from <https://www.wola.org/wp-content/uploads/2022/10/When-Dominoes-Fall-F.pdf>

<sup>32</sup> IACHR. *Human rights situation in Guatemala*. OEA/Ser.L/V/II, Doc. 227/25, November 2, 2025, para. 337. (available in Spanish)

<sup>33</sup> Simón, A. (May 3, 2018). Jimmy Morales chooses María Consuelo Porras as Attorney General. *Prensa Comunitaria*. Retrieved from <https://prensacomunitaria.org/2018/05/jimmy-morales-elige-a-maria-consuelo-porras-para-fiscal-general/> (available in Spanish)

<sup>34</sup> IACHR. *Human rights situation in Guatemala*. OEA/Ser.L/V/II, Doc. 227/25, November 2, 2025, para. 124.

<sup>35</sup> García, C. & García, A. (January 13, 2024). How Consuelo Porras corrupted the FECI. *Prensa Comunitaria*. Retrieved from <https://prensacomunitaria.org/2024/01/asi-pervirtio-consuelo-porras-a-la-feci/> (available in Spanish)

The attacks on the 2023 electoral process by the MP and certain judges represent clear examples of the arbitrary and illegal use of criminal law to undermine democracy and the rule of law.

electoral process by the MP and certain judges—aimed at preventing President-elect Bernardo Arévalo from taking office—represent clear examples of the arbitrary and illegal use of criminal law to undermine democracy and the rule of law.

This offensive has targeted indigenous communities with particular viciousness, a situation that was highlighted by the Panel of Independent Experts to Observe the Election of Guatemala’s Attorney General and Constitutional Court (*Panel de Personas Expertas Independientes para observar la selección de Fiscal General y designación de la Corte de Constitucionalidad en Guatemala*, “PEI-GT” by its Spanish acronym) in its latest report from February 2026. This document expresses concern about the MP’s strategy of criminalizing the indigenous authorities who led the demonstrations calling for recognition of the 2023 election results.<sup>36</sup> Through legal actions, assemblies, peaceful encampments, and peaceful roadblocks, many different indigenous communities and leaders managed to thwart the MP and certain judges in their illegal attempts to prevent President Bernardo Arévalo from taking office and to stop the members of Arévalo’s political party, *Movimiento Semilla*, who had been elected to Congress, from being sworn in.<sup>37</sup>

Ancestral organizations and authorities including the 48 Cantones of Totonicapán, the Xinka Parliament, the Indigenous Mayor’s Office of Santa Lucía Utatlán, the Ch’orti’ Maya indigenous people, the indigenous authorities of San Francisco el Alto, the Indigenous Mayor’s Office of the Ixil People, and many others demanded respect for democracy and the will of the people, as well as the resignation of Attorney General Consuelo Porras,<sup>38</sup> prosecutor Rafael Curruchiche, and judge Fredy Orellana, who led the attacks against the president-elect and *Movimiento Semilla*.<sup>39</sup>

The attacks against the protests’ most high-profile leaders have been obvious. On April 23, 2025, the MP executed arrest warrants against indigenous authorities who participated in the 2023 national strike, including Luis Pacheco, former president of the 48 Cantones of Totonicapán, an ancestral organization of the Maya K’iche’ people. At the time of his arrest, Pacheco was serving as Deputy Minister of Sustainable Development at the Ministry of Energy and Mines.<sup>40</sup> Héctor Chaclán, former treasurer for the 48 Cantones, was also arrested. Both were charged with terrorism and

<sup>36</sup> PEI-GT. Preliminary report: second visit by the PEI-GT ahead of the appointment of the Attorney General and Constitutional Court magistrates. February 2026, para. 8. Retrieved from <https://panelaltascortesgt.org/wp-content/uploads/2026/02/Informe-preliminar-segunda-visita-PEI-GT.pdf> (available in Spanish)

<sup>37</sup> García, O. & Sánchez, L. (November 2, 2023). TSE confirms suspension of legal status of Movimiento Semilla party. *Prensa Libre*. Retrieved from <https://www.prensalibre.com/guatemala/elecciones-generales-guatemala-2023/tse-confirma-que-el-movimiento-semilla-tiene-suspension-de-la-personeria-juridica-breaking/> (available in Spanish)

<sup>38</sup> Ríos, R. (August 28, 2023). Indigenous authorities demand the resignation of Attorney General Consuelo Porras. *Prensa Comunitaria*. Retrieved from <https://prensacomunitaria.org/2023/08/autoridades-indigenas-exigen-la-renuncia-de-la-fiscal-general-consuelo-porras/?tztc=1> (available in Spanish)

<sup>39</sup> Román, J. (2023). The 48 Cantones of Totonicapán demand the resignation of prosecutor Consuelo Porras, prosecutor Rafael Curruchiche, and judge Fredy Orellana. *Prensa Libre*. Retrieved from <https://www.prensalibre.com/guatemala/elecciones-generales-guatemala-2023/los-48-cantones-de-toniticapan-exigen-renuncia-de-la-fiscal-consuelo-porras-fiscal-rafael-curruchiche-y-el-juez-fredy-orellana-breaking/> (available in Spanish)

<sup>40</sup> *Prensa Comunitaria*. (April 23, 2025). Luis Pacheco, former president of the Board of Directors of the 48 Cantones, arrested. *Prensa Comunitaria*. Retrieved from <https://prensacomunitaria.org/2025/04/detienen-a-luis-pacheco-expresidente-de-la-junta-directiva-de-48-cantones/> (available in Spanish)

obstruction of criminal proceedings.<sup>41</sup> Human rights organizations such as Amnesty International have described these arrests as arbitrary and unjustified.<sup>42</sup> At the time of this report's writing, both Pacheco and Chaclán remain in custody.

In August 2025, Esteban Toc Tzay, former indigenous deputy mayor of Sololá and indigenous rights defender, was arrested at the behest of the MP for his participation in the 2023 demonstrations.<sup>43</sup> Toc was charged with the crimes of criminal conspiracy, sedition, terrorism, obstruction of criminal proceedings, and obstruction of justice. Toc has been granted alternative measures due to chronic kidney disease that requires outpatient treatment.<sup>44</sup>

The most recent arrest of one of the indigenous leaders who participated in the demonstrations in defense of democracy took place on January 14, 2026, two years after Bernardo Arévalo took office. Basilio Puac, former vice president of the Leadership Board of Community Mayors of the 48 Cantones, was arrested in a store he owns in Patzicía, Chimaltenango department, and charged with the crimes of criminal conspiracy, obstruction of justice, obstruction of criminal proceedings, sedition, and terrorism.<sup>45</sup>

On January 14, 2024, Bernardo Arévalo took office as President of the Republic of Guatemala, promising to respect human rights and with a renewed commitment to the indigenous movement.<sup>46</sup> However, the executive branch's efforts to stop evictions have been modest,<sup>47</sup> limited to calling on the MP and the judiciary to postpone evictions and guarantee people's rights.<sup>48</sup> Among the possible reasons for this limited

**The executive branch's efforts to stop evictions have been modest, limited to calling on the MP and the judiciary to postpone evictions and guarantee people's rights.**

<sup>41</sup> Arellano, P. & Arana, L. (2025). Luis Pacheco and Héctor Chaclán are charged with terrorism and obstruction of criminal proceedings. *Prensa Libre*. Retrieved from <https://www.prensalibre.com/guatemala/justicia/luis-pacheco-y-hector-chaclan-son-ligados-a-proceso-por-terrorismo-y-obstaculizacion-a-la-accion-penal-breaking/> (available in Spanish)

<sup>42</sup> Amnesty International. (October 23, 2025). Guatemala: Six months of injustice and criminalization against Indigenous representatives from Totonicapán. Retrieved from <https://www.amnesty.org/en/latest/news/2025/10/guatemala-seis-meses-de-injusticias-y-criminalizacion-contra-representantes-indigenas-de-totonicapan/#:~:text=%E2%80%9CToday%20marks%20six%20months%20since,must%20therefore%20be%20released%20immediately.>

<sup>43</sup> Maldonado, A. (August 28, 2025). Another ancestral leader of the 2023 National Strike arrested. Ocote. Retrieved from <https://www.agenciaocote.com/blog/2025/08/28/capturan-a-otro-lider-ancestral-del-paro-nacional-2023/> (available in Spanish)

<sup>44</sup> Valdez, A. (January 16, 2026). Hearing postponed for Esteban Toc, indigenous authority criminalized by the MP. *Prensa Comunitaria*. Retrieved from <https://prensacomunitaria.org/2026/01/se-aplaza-audiencia-de-esteban-toc-autoridad-indigena-criminalizada-por-el-mp/> (available in Spanish)

<sup>45</sup> Pérez Marroquín, C. & Vargas, E. (January 14, 2026). Basilio Puac, former vice president of the 48 Cantones, arrested; indigenous authorities reject arrest. *Prensa Libre*. Retrieved from <https://www.prensalibre.com/guatemala/justicia/detienen-a-basilio-puac-exvicepresidente-de-los-48-cantones-autoridades-indigenas-rechazan-captura-breaking/> (available in Spanish)

<sup>46</sup> Indigenous peoples played a fundamental role in defending democracy and ensuring the inauguration of President Bernardo Arévalo. Through legal challenges, artistic expressions, assemblies, marches, indefinite peaceful encampments, and roadblocks, indigenous peoples defended the 2023 election results. For more information, see: *Prensa Comunitaria*. (February 28, 2024). Indigenous peoples, guardians of democracy in the face of the installation of an authoritarian regime. *Prensa Comunitaria*. Retrieved from <https://prensacomunitaria.org/2024/02/los-pueblos-indigenas-guardianes-de-la-democracia-frente-a-la-instalacion-de-un-regimen-autoritario-parte-i/> (available in Spanish)

<sup>47</sup> The former director of the Presidential Commission for Peace and Human Rights (COPADEH) acknowledged at the time that "judicial evictions are a reality in Guatemala, and this national issue has led us to face a sad situation in which many people are permanently displaced within their own country." See COPADEH's official X account: <https://x.com/copadehgt/status/1795915558749130938> (available in Spanish)

<sup>48</sup> See COPADEH's official X account: <https://x.com/copadehgt/status/1803465145731240337> (available in Spanish)

response is the criminalization of the president,<sup>49</sup> his family members, and several of his closest political allies<sup>50</sup> by the MP. Although the current government has created roundtables to address the structural causes of agrarian conflict, the co-optation of the justice system by corruption networks continues to be the main driver of land dispossession and the criminalization of indigenous and peasant communities in the country.

The Anti-Corruption Assessment published by the Cyrus R. Vance Center for International Justice ranks Guatemala 16th out of 18 Latin American countries, highlighting as a main challenge the “institutional weakness reflected in the lack of independence of the institutions responsible for punishing corruption.”<sup>51</sup>

In the World Justice Project’s 2025 Rule of Law Index, Guatemala ranked 110<sup>th</sup> out of 143 countries, showing a slight improvement compared to previous years, but with persistent challenges in areas such as human rights, corruption, and access to justice.<sup>52</sup> In the latest Corruption Perceptions Index, published by Transparency International in February 2025, Guatemala ranks 146<sup>th</sup> out of 180 countries; again, this represents a slight improvement compared to 2023, but challenges remain, particularly in relation to the weaponization of the justice system by corruption networks.<sup>53</sup>

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<sup>49</sup> Blanco, E. (November 2, 2025). MP accumulates four requests for impeachment against Arévalo and none against Giammattei. *La Hora*. Retrieved from <https://lahora.gt/nacionales/engelberth-blanco/2025/11/02/mp-acumula-cuatro-solicitudes-de-antejuicio-contra-arevalo-y-ninguna-hacia-giammattei/> (available in Spanish)

<sup>50</sup> Bin, H. (October 24, 2025). Bernardo Arévalo’s government officials heading into exile. *Con Criterio*. Retrieved from <https://concritorio.gt/33152-2/> (available in Spanish)

<sup>51</sup> See Cyrus R. Vance Center & Lawyers Council. (2024). *Anti-Corruption Assessment in Latin America 2023-2024*. Retrieved from <https://www.vancecenter.org/initiatives/lawyers-council/evaluacion-anticorrupcion-latinoamerica-2023-24/>

<sup>52</sup> See World Justice Project. Guatemala ranks 110th out of 143 in the WJP Rule of Law Index, 2025. Retrieved from [https://worldjusticeproject.org/sites/default/files/documents/Guatemala\\_4.pdf](https://worldjusticeproject.org/sites/default/files/documents/Guatemala_4.pdf).

<sup>53</sup> See Transparency International. (2025). Our work in Guatemala. Global corruption barometer. Retrieved from <https://www.transparency.org/en/countries/guatemala>

# 4

## The Legal and Institutional Framework Governing Indigenous Land Rights in Guatemala

The Political Constitution of Guatemala grants special protection to communal and collective lands, recognizing the traditional system of indigenous administration.<sup>54</sup> It also establishes the obligation to provide state lands to the indigenous communities that need them<sup>55</sup> and to create a specific law to regulate this matter.<sup>56</sup> Meanwhile, the 1996 Peace Accords recognized indigenous territorial rights and obliged the State to regularize land tenure and implement a comprehensive strategy for peasant communities to access land. However, compliance has been limited. A number of communities that managed to survive massacres and forced displacement during the armed conflict are now subject to arbitrary persecution and dispossession through court orders.

Despite this constitutional recognition, Guatemala lacks a structure that effectively protects traditional land tenure systems.<sup>57</sup> The registration of communal lands continues to depend on an agrarian system and colonial titles, which makes it easier for third parties to illegally obtain titles to these territories, disregarding the ancestral rights of the peoples that occupy them.<sup>58</sup>

The 2014 Agrarian Policy included guidelines to guarantee due process during evictions, provide legal advice to communities, and conduct historical and cadastral investigations.<sup>59</sup> However, in practice, the use of criminal prosecution has prevailed in agrarian conflicts. This situation got even worse in 2020 with the closure of the Secretariat of Agrarian Affairs (*Secretaría de Asuntos Agrarios*, “SAA” by its Spanish acronym), further weakening the protection of indigenous territorial rights. The SAA was crucial for indigenous peoples, as it documented important information for the defense of their lands. The SAA was crucial for indigenous peoples, as it documented important information for the defense of their lands. The SAA’s duties were transferred to the Presidential Commission for Peace and Human Rights (*Comisión Presidencial por la Paz y los Derechos Humanos*, “COPADEH” by its Spanish acronym), which archived the cadastral files and transferred them to the General Secretariat for Planning and Programming of the Presidency (*Secretaría de Planificación y Programación de la Presidencia*, “SEGEPLAN” by its Spanish acronym), limiting its involvement in agrarian conflicts<sup>60</sup> and undermining the protection of indigenous territorial rights.<sup>61</sup>

Created in 2005, the Cadastral Information Registry (*Registro de Información Catastral*, “RIC” by its Spanish acronym) is the institution responsible for establishing,

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<sup>54</sup> Political Constitution of the Republic of Guatemala, Article 67.

<sup>55</sup> Political Constitution of the Republic of Guatemala, Article 68.

<sup>56</sup> Political Constitution of the Republic of Guatemala, Article 70.

<sup>57</sup> Human Rights Council, Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Guatemala, A/HRC/39/17/Add.3, August 10, 2018, para. 29.

<sup>58</sup> IACHR. *The Economic, Social, Cultural, and Environmental Rights of Indigenous Peoples and Tribal People of African Descent in El Salvador, Guatemala, Honduras, and Nicaragua*. OEA/Ser.L/V/II, Doc.52/23, March 21, 2023, para. 205. (available in Spanish)

<sup>59</sup> Hurtado Paz y Paz, L. (2025). Draft of Chapter I of the book *Land and Racism: Modern Land Dispossession in Q’eqchi’ Territory*, forthcoming, p. 7. (available in Spanish)

<sup>60</sup> Although Guatemalan institutions view agrarian issues as including disputes over land and territory involving both indigenous and peasant communities, in this report the term will be used to refer only to indigenous peoples’ territories.

<sup>61</sup> Hurtado Paz y Paz, L. (2025). Draft of Chapter I of the book *Land and Racism: Modern Land Dispossession in Q’eqchi’ Territory*, forthcoming, p. 7. (available in Spanish)

The management of FONTIERRAS has been affected by corrupt practices linked to the overvaluation of land and complicity in irregular land acquisitions.

maintaining, and updating information on the location, measurements, and use of real estate, and linking it to information in the national registry (General Property Registry and General Archive of Central America). However, no intercultural cadastral studies nor national or regional censuses exist; such studies are needed to interpret the processes that private property has undergone and how this affects traditional land tenure by different indigenous communities.

Meanwhile, The Land Fund (*Fondo de Tierras*, “FONTIERRAS” by its Spanish acronym), created in 1998 as part of the implementation of the Peace Accords, has the mission of promoting access to land, recognizing that “large sectors of the Guatemalan population, particularly indigenous peoples, are made up of peasants without land or with insufficient land.”<sup>62</sup> Until 2016, of the 800,000 families who requested access to land, only 13,162, most of whom were Maya, had received any.<sup>63</sup>

The management of FONTIERRAS has been affected by corrupt practices linked to the overvaluation of land and complicity in irregular land acquisitions. One such example is the Genesis case,<sup>64</sup> in which private individuals appropriated properties granted to peasants through intimidation, forgery, and the use of deceased people’s identities, with the participation of FONTIERRAS officials, according to CICIG documentation.<sup>65</sup>

The Cadastral Information Registry Law (2005) mandated the creation of agrarian courts<sup>66</sup> and required that a bill be introduced as soon as possible to regulate the substance and procedure for implementing the law. However, the Supreme Court of Justice stayed enforcement of this provision in 2006 as a result of legal action brought by the Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations (*Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras*, “CACIF” by its Spanish acronym).<sup>67</sup> Afterwards, between 2016 and 2018, bills were introduced to implement these mandates, but none were passed, reflecting the lack of political will to honor these commitments on agrarian issues.<sup>68</sup>

At the institutional level, there is no coordination between the entities responsible for land management, which leads to duplicated roles and operational inefficiency, despite the fact that their responsibilities are clearly defined by law.<sup>69</sup> In addition to

<sup>62</sup> Land Fund Law, Decree 24-99, second point.

<sup>63</sup> Human Rights Council, Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Guatemala, A/HRC/39/17/Add.3, August 10, 2018, para. 32.

<sup>64</sup> In this case, at least 28 properties were legalized after being obtained through intimidation tactics by armed individuals, who forced farmers to abandon their land, which was then legalized by notaries in the Petén department. The peasants were beneficiaries of the Land Fund. For more information, see CICIG. (April 6, 2016). Impunity and dispossession in Petén: the Genesis case. Retrieved from <https://www.cicig.org/casos/impunidad-y-despojo-en-peten-caso-genesis/> (available in Spanish)

<sup>65</sup> Zúñiga, N. (December 1, 2023). Guatemala – land context and governance. *Land Portal*. Retrieved from <https://landportal.org/es/book/narratives/2023/guatemala> (available in Spanish)

<sup>66</sup> Law on the Registration of Cadastral Information, Decree Number 41-2005, Article 91. (available in Spanish)

<sup>67</sup> Constitutional Court, Case No. 2265-2006, September 4, 2006. (available in Spanish)

<sup>68</sup> IACHR. *The Economic, Social, Cultural, and Environmental Rights of Indigenous Peoples and Tribal People of African Descent in El Salvador, Guatemala, Honduras, and Nicaragua*. OEA/Ser.L/V/II, Doc.52/23, March 21, 2023, para. 209. (available in Spanish)

<sup>69</sup> Zúñiga, N. (December 1, 2023). Guatemala – land context and governance. *Land Portal*. Retrieved from <https://landportal.org/es/book/narratives/2023/guatemala> (available in Spanish)

the absence of state mechanisms that guarantee certainty regarding the location, size, use, and ownership of land, there is also no legal framework that complies with international standards for resolving agrarian disputes.

This failure is further exacerbated by the systematic use of trespass and aggravated trespass charges to criminalize various indigenous communities. These criminal charges have been used by the MP to carry out violent evictions without prior notice or guarantees of resettlement, and without allowing communities to exercise their right to defend themselves and prove their title to the territories they have historically occupied and which belong to them.

As will be explained in more detail below, the provisions of the Criminal Code that define the aforementioned offenses empower the MP, the National Civil Police (*Policía Nacional Civil*, “PNC” by its Spanish acronym), and judges to order the immediate eviction of any person who is presumed, for the purposes of unlawful seizure or use, to be attempting to dispossess another of the possession or ownership of a property or of a real right constituted thereon, as well as anyone who, unlawfully and for any purpose, invades or occupies a property. Remaining on the property is considered a crime *in flagrante delicto*, and therefore the competent authorities are required to prevent the continuation of the punishable offenses and their further effects, ordering or executing, as appropriate, an immediate eviction.

As the IACHR highlighted in 2025,

[i]n many cases, evictions are authorized by the Public Prosecutor's Office under the charge of aggravated trespassing, a criminal offense introduced in 1996 that does not allow indigenous communities to prove their rights to the lands they inhabit (...) In addition, arrest warrants are frequently issued prior to the eviction, and detentions occur.<sup>70</sup>

Furthermore, Guatemala does not have a state mechanism with the specific mandate of addressing the resettlement of displaced people and communities. As a result, evicted communities often find themselves displaced, forced to relocate without the conditions necessary to enjoy basic economic and social rights such as health, education, and adequate housing.

In February 2024, the Guatemalan government signed an agreement with peasant organizations to address agrarian conflict and tackle issues related to land access, the peasant economy, territorial coordination, and the creation of a political space for ongoing communication. One of the achievements of the agreement was that representatives of the peasant and indigenous movement joined the board of the Land Fund, which had not seen any new members for 20 years. In addition, President Bernardo Arévalo revived the Joint Commission on the Land Rights of Indigenous People (*Comisión Paritaria sobre derechos relativos a la tierra de pueblos indígenas*,

**Guatemala does not have a state mechanism with the specific mandate of addressing the resettlement of displaced people and communities.**

<sup>70</sup> IACHR. *Human rights situation in Guatemala*. OEA/Ser.L/V/II, Doc. 227/25, November 2, 2025, para. 334. Retrieved from [https://www.oas.org/en/iachr/reports/pdfs/2025/informe\\_guatemala\\_en.pdf](https://www.oas.org/en/iachr/reports/pdfs/2025/informe_guatemala_en.pdf)

The Executive Branch's failure to create effective public policies to address agrarian conflicts and demarcate and title indigenous territories is exacerbated by the lack of judicial protection of the rights of indigenous peoples and communities over their ancestral lands.

“COPART” by its Spanish acronym), which had been inactive since 2006.<sup>71</sup> Currently, the Presidential Commission on Conflict Resolution (*Comisión Presidencial de Atención a la Conflictividad*, “COPRECON” by its Spanish acronym), created by Government Agreement 100-2025, is the entity that monitors issues related to land ownership and tenure in contexts of agrarian conflict.<sup>72</sup>

The Executive Branch's failure to create effective public policies to address agrarian conflicts and demarcate and title indigenous territories is exacerbated by the lack of judicial protection of the rights of indigenous peoples and communities over their ancestral lands. Although some rulings by the Courts of Appeals and the Constitutional Court<sup>73</sup> have safeguarded these rights in the past, there is no effective mechanism for enforcing them.<sup>74</sup> On the other hand, the interference of corruption networks in the selection processes for members of high courts<sup>75</sup> and the improper dismissal of some independent judges<sup>76</sup> represented a setback in the main lines of case law related to this issue. In fact, the Constitutional Court's most recent rulings have restricted the possibility of establishing indigenous communities' rights over their territories through injunctions.

Indigenous and tribal peoples' rights to recognition, demarcation, and titling of their territories is protected by several instruments and declarations issued by bodies within the universal and Inter-American human rights systems.

<sup>71</sup> El Observador Association. (2024). Agrarian agreement for the recovery of the peasant way. *Enfoque*. 16(97). Retrieved from [https://elobservadorgt.org/wp-content/uploads/2024/09/Enfoque-97\\_Hacia-la-recuperacion-de-la-senda-campesina-Acuerdo-Agrario-y-gobernabilidad-en-lo-rural.pdf](https://elobservadorgt.org/wp-content/uploads/2024/09/Enfoque-97_Hacia-la-recuperacion-de-la-senda-campesina-Acuerdo-Agrario-y-gobernabilidad-en-lo-rural.pdf) (available in Spanish)

<sup>72</sup> As in the case of the Poqomchi' communities, where the Criminal Court for Drug Trafficking and Crimes against the Environment of Salamá, Baja Verapaz, Case File No. 15002-2016-0085, in a ruling dated March 15, 2019, after handing down a guilty verdict for the crime of trespass, ordered: “XVI) Notify the Secretary of Agricultural Affairs of the Presidency of the Republic, the National Land Fund, the Cadastral Information Registry, the Office of the Human Rights Ombudsman, the Social Investment Fund, and other entities that, by their nature, have jurisdiction over the resolution of agrarian conflicts, to establish a roundtable for dialogue to definitively resolve issues related to the ownership and delimitation of the areas mentioned in this ruling, including any legitimate ancestral and community rights that may apply.”

<sup>73</sup> The first cases were those of the Indigenous Municipality of Santo Tomás Chichicastenango, Quiché, and the indigenous community of Chuarrancho in the department of Guatemala. These were followed by cases heard between 2016 and 2018 involving the eight Q'eqchi' communities of Sierra Santa Cruz de El Estor and Livingston in the department of Izabal; the Ch'orti' communities of Camotán in the department of Chiquimula; the *Cofradía* de San José Poaquil in the department of Chimaltenango; and the Ixil community of Nebaj in the department of Quiché. Similarly, in 2020, the Constitutional Court of Guatemala issued four rulings admitting the claims of indigenous peoples for the restitution of their territorial rights. These were the claims of the Maya Ch'orti' people of the Morola community and six communities of Jocotán; and those related to the lands dispossessed during the internal armed conflict from the twelve communities of Tzabal and the Maya Ixil town of AK'ul in Santa María Nebaj, Quiché.

<sup>74</sup> IACHR. *Human rights situation in Guatemala*. OEA/Ser.L/V/II, Doc. 227/25, November 2, 2025, para. 224.

<sup>75</sup> Organization of American States. of the Special Observation Mission for the election of judges of the Supreme Court of Justice, the Courts of Appeals, and other Courts of equal rank, September 18, 2024. Retrieved from <https://scm.oas.org/pdfs/2024/CP50398ECP.pdf>

<sup>76</sup> United Nations. (April 19, 2021). United Nations. (April 19, 2021). Guatemala. Retrieved from <https://www.ohchr.org/es/2021/04/guatemala-un-expert-deeply-concerned-congress-refusal-reappoint-top-judge>. See also: Pérez, R. (April 13, 2021). Congress refuses to swear in Gloria Porras as a CC magistrate. Retrieved from <https://prensacomunitaria.org/2021/04/congreso-no-juramenta-a-gloria-porras-como-magistrada-de-la-cc/> (available in Spanish)

# 5

## Indigenous Territorial Rights in International Law

The ownership and possession of the lands traditionally occupied by indigenous peoples are expressly protected in Articles 14 and 18 of ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, ratified by Guatemala. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states that indigenous and tribal peoples have the right to control and use the lands, territories, and natural resources that they have traditionally owned, occupied, or acquired (Article 26). The Declaration also establishes the obligation to:

- prevent any dispossession or forced transfer of the lands, territories, or natural resources of indigenous peoples and prevent their forced relocation (Article 8);
- respect, protect, and guarantee the spiritual relationship that indigenous peoples have with their lands, territories, and natural resources (Article 25);
- recognize and adjudicate the lands and territories that indigenous peoples have traditionally used. This recognition must respect indigenous peoples' traditional laws, customs, and land tenure and transfer systems (Article 27);
- ensure the right of indigenous peoples to the conservation and protection of the productive capacity of their lands and resources (Article 29);
- respect the right of indigenous peoples to participate in the use, administration and conservation of the natural resources present in their territories, and to determine their development priorities and strategies (Articles 29 and 32).

The Inter-American Court of Human Rights (IACt-HR) has emphasized that:

- States have the obligation to establish appropriate procedures within their domestic legal system to process their land claims [which should] represent a real possibility for the indigenous and tribal communities to be able to defend their rights and exercise effective control over their territory without any outside interference.<sup>77</sup>

In accordance with the jurisprudence of the highest Inter-American Court, the collective ownership of indigenous peoples over their lands and territories enjoys the following safeguards:

- (...) 1) traditional possession of their lands by indigenous people has equivalent effects to those of a State-granted full property title; 2) traditional possession entitles indigenous people to demand official recognition and registration of property title; 3) the members of indigenous peoples who have unwillingly left their traditional lands, or lost possession thereof, retain property rights thereto, even though they lack legal title, unless the lands have been lawfully transferred to third parties in good faith; 4) The State must delimit, demarcate, and grant collective title to the lands to the members of indigenous communities; 5) the members of indigenous

**States have the obligation to establish appropriate procedures within their domestic legal system to process their land claims.**

<sup>77</sup> IACt-HR. *Case of the Punta Piedra Garifuna Community and Its Members vs. Honduras*. Preliminary objections, merits, reparations and costs. Judgment of October 8, 2015. Serie C No. 304, para. 233.

**By imposing or maintaining institutional and legal barriers to the recognition, demarcation, and titling of indigenous territories, the Guatemalan State fails to comply with the international obligations.**

peoples who have unwillingly lost possession of their lands, when those lands have been lawfully transferred to innocent third parties, are entitled to restitution thereof or to obtain other lands of equal extension and quality; 6) the State must guarantee effective ownership by the indigenous peoples and refrain from acts which could result in agents of the State itself or third parties acting with its acquiescence or its tolerance, affecting the existence, value, use or enjoyment of the territory; 7) the State must guarantee the right of indigenous peoples to effectively own and control their territory without outside interference of any kind; and 8) the State must ensure the right of the indigenous peoples to control and use their territory and natural resources.<sup>78</sup>

By imposing or maintaining institutional and legal barriers to the recognition, demarcation, and titling of indigenous territories, the Guatemalan State fails to comply with the international obligations described above. It further violates these obligations by giving precedence to private property titles over the collective property of indigenous peoples, a situation made worse by due process violations.

<sup>78</sup> IACT-HR. *Case of the Punta Piedra Garifuna Community and its Members v. Honduras*. Preliminary objections, merits, reparations and costs. Judgment of October 8, 2015. Serie C No. 304, para. 172.



## The Public Prosecutor's Office's Policy on Criminal Prosecution for Trespass and Aggravated Trespass

This report seeks to study the scope and orientation of this policy in Guatemala through three specific areas of analysis:

- The intensification of punitive responses and the execution of evictions: This analysis is based on the sustained increase in the number of evictions requested and executed, as well as the use of criminal charges of trespass and aggravated trespass as mechanisms for immediate repossession.
- The establishment of guidelines and action criteria that guide the prosecutors' intervention in cases of trespass and aggravated trespass.
- The allocation of resources for the prosecution of trespass and aggravated trespass offenses.

Next, we will analyze the MP's criminal prosecution policy for trespass and aggravated trespass offenses.

### a. Empirical data on criminal prosecution policy with respect to trespass

Between January 2020 and November 10, 2025, there were 6,195 documented cases of aggravated trespass nationwide.<sup>79</sup> According to information provided by the MP, there have only been substantive judicial decisions in 110 cases during the same period, 40 of which resulted in convictions, 11 in summary judgments, nine in plea bargains, and 50 in acquittals.<sup>80</sup>

During the same period, the MP recorded 7,854 cases filed nationwide for trespass, resulting in ten acquittals, 13 convictions, four convictions in summary proceedings, and three plea bargains.<sup>81</sup> The low number of court rulings, relative to the total number of complaints filed, highlights a marked gap between the initiation of criminal proceedings and the delivery of court decisions that clarify the facts and determine the criminal responsibility of the defendants.

The information provided by the MP does not allow us to determine precisely how many complaints led to formal judicial investigations, nor does it specify at what point in the proceedings most cases are currently at. However, it does reveal an intensive use of punitive power, which has significant effects, even in the absence of final verdicts, particularly in terms of changing the ownership of disputed properties.

The information in the last three work reports from Attorney General Consuelo Porras points to a growing trend in eviction requests to the judicial authorities. From April 1, 2022, to March 31, 2023, for example, the institution recorded 25 evictions requests filed with the judiciary;<sup>82</sup> from April 1, 2023, to March 31, 2024, 94 were reported;<sup>83</sup>

Between January 2020 and November 10, 2025, there were 6,195 documented cases of aggravated trespass nationwide.

<sup>79</sup> Public information from the Public Prosecutor's Office, RESOLUTION UDIP/G 2025 - 007698/bglpEXP UDIP 2025-003724. (available in Spanish)

<sup>80</sup> Public information from the Public Prosecutor's Office, RESOLUTION UDIP/G 2025 - 007698/bglpEXP UDIP 2025-003724. (available in Spanish)

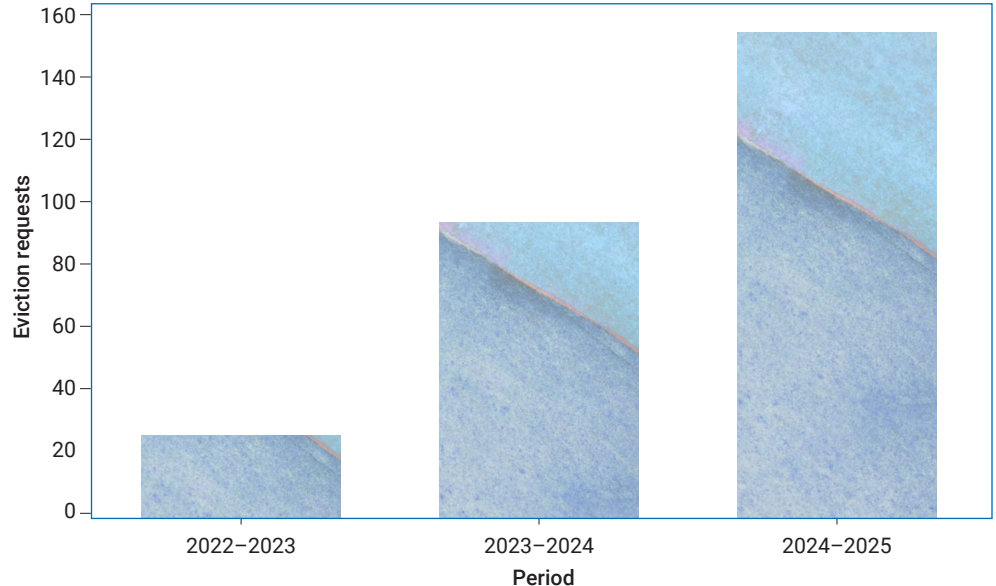
<sup>81</sup> Public information from the Public Prosecutor's Office, RESOLUTION UDIP/G 2025 - 007698/bglpEXP UDIP 2025-003724. (available in Spanish)

<sup>82</sup> Public Prosecutor's Office. First annual report, 2022-2023 period, p. 66. Retrieved from <https://www.mp.gob.gt/documentos> (available in Spanish)

<sup>83</sup> Public Prosecutor's Office. Second annual report, 2023-2024 period, second term, p. 68. Retrieved from <https://www.mp.gob.gt/documentos> (available in Spanish)

**Table 1. Eviction requests reported by the Public Prosecutor's Office from April 1, 2022, to March 31, 2025**

**Source:** prepared by the authors, with data from the annual reports from the Public Prosecutor's Office



while the most recent report recorded 154 eviction requests between April 1, 2024, and March 31, 2025.<sup>84</sup>

The imbalance between the number of complaints filed and the number of substantive court rulings creates a situation in which criminal prosecution, regardless of its outcome, acts as a means of exerting pressure on indigenous communities that remain in or seek to return to disputed territory. In practice, the main purpose of these proceedings is not to secure convictions, but to have an anticipatory punitive effect and bring about immediate evictions.

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#### **b. Guidelines for the criminal prosecution of the crimes of trespass**

There are two general instructions with guidance on investigating and prosecuting the crime of trespass that govern the MP's actions. The first is General Instruction 03-2012, dated May 8, 2012, entitled *General Instruction for the Investigation of the Crime of Trespass and the Request and Processing of Eviction Orders*, issued by former Attorney General Claudia Paz y Paz,<sup>85</sup> with the aim of:

establishing guidelines and rules of conduct to be observed by members of the Public Prosecutor's Office when dealing with complaints relating to trespass or other crimes involving the illegal occupation of real estate, dispossession or attempts to dispossess the owner of real estate, as well as during eviction proceedings resulting from a final court ruling issued in accordance with the law.<sup>86</sup>

<sup>84</sup> Public Prosecutor's Office. Third annual report, 2024-2025 period, second term, p. 82 Retrieved from <https://www.mp.gob.gt/documentos> (available in Spanish)

<sup>85</sup> Aurora Humanitarian Initiative. A Life Dedicated to the Defense of Human Rights. Retrieved from <https://aurorahumanitarian.org/en/life-dedicated-defense-human-rights>

<sup>86</sup> Paragraph 1 of General Instruction No. 03-2012. (available in Spanish)

According to this instruction, in all proceedings for trespass or other crimes related to the alleged illegal occupation of real estate, prosecutors must prove that all the legal requirements set forth in Articles 256 and 257 of the Criminal Code have been met, and must, in the shortest period of time possible:

- Determine the property rights of the invaded or occupied property, for which a recent certificate from the Property Registry shall suffice, which may be supplemented by other documents proving such rights that establish the measurements, boundaries, and adjoining properties of the property.
- Only in the absence of property rights duly registered in the Property Registry may the determination of rights of possession, tenure, or any other real rights over the property be demonstrated by means of documents proving such rights, including those stipulated in Articles 39 and 67 of the Political Constitution of the Republic.<sup>87</sup>
- Verify whether there has been actual and effective dispossession, invasion, or unlawful occupation, the length of time it has lasted, and the reasons behind it. To this end, the prosecutor must summon the complainant to amend their statement and declare, under their own responsibility, the existence or non-existence of valid lease agreements or other types of transfer of rights over the property in favor of the alleged invaders. Likewise, they must verify the existence of the offense, preparing the corresponding report and documenting the procedure with photographs and/or video, when circumstances permit.<sup>88</sup>

This general instruction is based on the principle of the MP's objectivity and requires respect for international human rights standards when investigating the crime of trespass and carrying out evictions.

The second instruction was issued by the current Attorney General, Consuelo Porrás, on March 4, 2021, following the creation of the special prosecutor's office against trespass. This is Instruction No. 04-2021, entitled *General Instruction for the Implementation of the Protocol for the Investigation of Trespass, Aggravated Trespass, and Trespass in Protected Areas*. Among the proceedings that must be carried out based on this instruction are the witness statements, reports, and documents necessary to determine the property rights and legitimate possession of the "property where trespass occurred," including reports to the Property Registries. In addition, the prosecutorial team must interview the complainant to identify the alleged perpetrator and determine the amount of time the property has been occupied.

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<sup>87</sup> Article 67 of the Constitution of Guatemala establishes the following: Protection of indigenous lands and agricultural cooperatives. The lands of cooperatives, indigenous communities, or any other forms of communal or collective ownership of agricultural property, as well as family assets and low-income housing, shall enjoy special protection from the State and preferential credit and technical assistance, which shall guarantee their possession and development, in order to ensure a better quality of life for all residents. Indigenous communities and others that have lands that historically belong to them and that they have traditionally managed in a specific way shall maintain that system.

<sup>88</sup> Paragraph 4 of General Instruction No. 03-2012. (available in Spanish)

Although judicial evictions are a phenomenon observed throughout the country, the most severely affected departments are Alta Verapaz, Baja Verapaz, Izabal, Santa Rosa, Escuintla, Quiché, and Suchitepéquez, with Alta and Baja Verapaz and Quiché accounting for the highest number of criminal prosecutions of members of indigenous communities.

This directive establishes prosecutors' obligation to request that the courts "(...) notify the trespassers [sic], through their representative, of the decision ordering the eviction and the date set for it." As noted below, despite this directive, communities or their representatives are rarely notified of the date and time when evictions will take place.

In addition, the instruction expressly states that "(...) once the eviction has been carried out, the recovered area shall be handed over to the owner or legitimate holder, if it is privately owned, or to the administrator or co-administrator of the area, if it is state-owned." It also establishes that the continued presence of these persons on the property subject to eviction constitutes in flagrante delicto, a situation which, as noted in this report, entitles the PNC, MP, and judges to proceed with immediate eviction. This general instruction does not expressly repeal Instruction 03-2012.

Although judicial evictions are a phenomenon observed throughout the country, the most severely affected departments are Alta Verapaz, Baja Verapaz, Izabal, Santa Rosa, Escuintla, Quiché, and Suchitepéquez, with Alta and Baja Verapaz and Quiché accounting for the highest number of criminal prosecutions of members of indigenous communities.<sup>89</sup>

### c. The creation of the Special Prosecutor's Office for Crimes of Trespass

In Guatemala, the MP's mandate is to ensure strict compliance with the law and to pursue public criminal proceedings.<sup>90</sup> To carry out its mandate, the MP is divided into district and municipal prosecutors' offices and sectional prosecutors' offices, depending on the subject matter under investigation. On November 23, 2020, the current Attorney General created the Special Prosecutor's Office for Crimes of Trespass, through Agreement No. 46-2020. This prosecutor's office has jurisdiction across the country to prosecute crimes of trespass, aggravated trespass, boundary alteration, and disturbance of possession involving more than two families. The agreement also establishes that this prosecutor's office will coordinate with other prosecutor's offices to provide the support it deems necessary to effectively carry out its duties.<sup>91</sup> This specialized prosecutor's office has an Office of Full-Time Service, which allows it to receive and immediately respond to complaints related to the crime of trespass.<sup>92</sup>

The creation of the Special Prosecutor's Office for Crimes of Trespass coincides with an increase in the number of allegations of this crime, particularly in the departments of Guatemala, Escuintla, Sacatepéquez, Petén, and Santa Rosa. However, it should be noted that, although this specialized prosecutor's office has jurisdiction to investigate conduct classified as trespass, aggravated trespass, boundary alteration, and disturbance of possession throughout the country,<sup>93</sup> it is not the only entity that

<sup>89</sup> Interviews conducted between October and November 2025.

<sup>90</sup> Political Constitution of the Republic of Guatemala, Article 251.

<sup>91</sup> Attorney General and Head of the Public Prosecutor's Office, Agreement 46-2020, Articles 1 and 4. (available in Spanish)

<sup>92</sup> Public Prosecutor's Office. Second annual report, 2023-2024 period, second term, p. 232. (available in Spanish)

<sup>93</sup> Attorney General and Head of the Public Prosecutor's Office, Agreement 46-2020, Article 1. (available in Spanish)

prosecutes such crimes. In fact, district and municipal prosecutors' offices have brought the majority of the charges related to these crimes in recent years.

The increase in the number of complaints does not necessarily imply a higher crime rate, nor does it meet the demand for access to justice. In fact, without objective data that demonstrates the social impact of a particular criminal phenomenon on the population within a given territory, the creation of specialized criminal prosecution agencies and the allocation of material and human resources for their operation can hardly be justified as objectively defending the common interest. Instead, it could be seen as selectively protecting certain private and business interests.

#### d. Institutional coordination with private sectors in the context of agrarian conflict

months before the creation of the Special Prosecutor's Office, the MP signed an agreement<sup>94</sup> with the Observatory of Property Rights,<sup>95</sup> an organization created to promote the interests of member companies,<sup>96</sup> mainly linked to the agro-industrial sector. According to information received in interviews with lawyers and civil society organizations, this agreement has allowed the Observatory to provide information to the Prosecutor's Office that has led to investigations and the eviction of indigenous and peasant communities. According to its second clause, the agreement aims to "help generate statistical information on criminal acts related to violations of property rights, which will be used to produce studies, assessments, and reports on crimes committed against property in Guatemala." Through another agreement in August 2024, the Observatory donated two drones for use by the Special Prosecutor's Office.<sup>97</sup>

Furthermore, according to its second annual report for 2023-2024, the MP signed an inter-institutional agreement with the Association for the Defense of Private Property<sup>98</sup> (*Asociación en la Defensa de la Propiedad Privada*, "ACDEPRO" by its Spanish acronym),<sup>99</sup> which coordinates an alliance between landowners and retired military personnel.<sup>100</sup> Indigenous and peasant organizations have accused the

The creation of the Special Prosecutor's Office for Crimes of Trespass coincides with an increase in the number of allegations of this crime, particularly in the departments of Guatemala, Escuintla, Sacatepéquez, Petén, and Santa Rosa.

<sup>94</sup> Inter-institutional cooperation agreement between the Public Prosecutor's Office and the Observatory of Property Rights. Retrieved from [https://www.mp.gob.gt/transparencia///info/res/source/Articulo%2010\\_%20Informaci%C3%B3n%20P%C3%ABlica%20de%20Oficio/Ley%20Organica%20del%20Presupuesto/Reformas%20al%20%20Decretos%20101-97%20Ley%20Org%C3%A1nica%20del%20Presupuesto.%20Decreto%2013-2013/17%20Ter/INCISO%20E/2021/03%20MARZO/CONVENIO%20MP%20-%20OBSERVATORIO%20DE%20DERECHOS%20DE%20PROPIEDAD.pdf](https://www.mp.gob.gt/transparencia///info/res/source/Articulo%2010_%20Informaci%C3%B3n%20P%C3%ABlica%20de%20Oficio/Ley%20Organica%20del%20Presupuesto/Reformas%20al%20%20Decretos%20101-97%20Ley%20Org%C3%A1nica%20del%20Presupuesto.%20Decreto%2013-2013/17%20Ter/INCISO%20E/2021/03%20MARZO/CONVENIO%20MP%20-%20OBSERVATORIO%20DE%20DERECHOS%20DE%20PROPIEDAD.pdf) (available in Spanish)

<sup>95</sup> Official Website of the Observatory of Property Rights. Retrieved from <https://www.observatoriopropiedad.org/about/> (available in Spanish)

<sup>96</sup> MP's YouTube channel. MP and Observatory of Property Rights follow up on coordinated efforts. Retrieved from <https://www.youtube.com/watch?v=1QQJoSGEKWw> (available in Spanish)

<sup>97</sup> Public Prosecutor's Office. Third annual report, 2024-2025 period, second term, p. 189. (available in Spanish)

<sup>98</sup> Public Prosecutor's Office. Second annual report, 2023-2024 period, second term, p. 232. (available in Spanish)

<sup>99</sup> One of the most visible faces of ACDEPRO is a landowner linked to the production of coffee, rubber, cardamom, and African palm. For more information, see <https://acdepro.org/>, El Observador Association. (2022). The defense of private property. *El Observador*, 17(78), p. 19, retrieved from <https://elobservadorgt.org/2023/02/06/boltin-el-observador-no-78-la-defensa-de-la-propiedad-privada/> (available in Spanish)

<sup>100</sup> El Observador Association. (2022). The defense of private property. *El Observador*, 17(78), p. 6, retrieved from <https://elobservadorgt.org/2023/02/06/boltin-el-observador-no-78-la-defensa-de-la-propiedad-privada/> (available in Spanish)

**In accordance with applicable international standards, prosecutors must perform their duties independently and objectively, considering all evidence that supports or refutes charges.**

association of being made up of landowners who have openly supported evictions and have even demanded them in defense of private property.<sup>101</sup> The MP's report fails to provide information on the purpose of the agreement or the responsibilities of each of the signatory parties. Despite searches of open-source materials, no copy or summary of the agreement could be found.

In accordance with applicable international standards, prosecutors must perform their duties independently and objectively, considering all evidence that supports or refutes charges. Accordingly, the MP must ensure that its staff can perform their duties free from intimidation, hindrance, harassment, improper interference, or unjustified exposure to civil, penal or other liability.<sup>102</sup> The Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, published by the International Association of Prosecutors, stress that prosecutors shall perform their duties unaffected by individual or sectional interests, or public or media pressures. They shall have regard only to the public interest, have regard to all relevant circumstances, and always search for the truth, in order to assist the courts in delivering justice.<sup>103</sup>

<sup>101</sup> El Observador Team. (June 21, 2024). ACDEPRO defends private property by demanding evictions, retrieved from <https://elobservadorgt.org/2024/06/21/la-acdepro-defiende-la-propiedad-privada-exigiendo-desalojos/> (available in Spanish)

<sup>102</sup> Guidelines on the Role of Prosecutors. Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba), from August 27 to September 7, 1990, ONU Doc. A/CONF.144/28/Rev. p. 189, para. 4. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>

<sup>103</sup> Standards of professional responsibility and statement of the essential duties and rights of prosecutors, adopted by the International Association of Prosecutors (IAP) on the twenty third day of April 1999, para. 3, subparas. b, d and f).

# 7

## The Classification of the Crimes of Trespass and Aggravated Trespass in the Guatemalan Criminal Code

The criminal offenses of trespass and aggravated trespass present issues of compatibility with the principle of legality, stemming not only from their arbitrary application by the MP, but also from their very regulatory structure. The Guatemalan Criminal Code defines these offenses as follows:

Article 256. Trespass. Anyone who, for the purpose of unlawful seizure or use, dispossesses or attempts to dispossess another person of the possession or ownership of a property or of a real right constituted thereon, or anyone who, unlawfully and for any purpose, invades or occupies a property, commits the crime of trespass.

Remaining on the property constitutes a crime *in flagrante delicto*, and therefore the competent authorities are required to prevent the continuation of the punishable offenses from causing further consequences, by ordering or proceeding with immediate eviction, as appropriate.

Anyone found guilty of trespass will be punished with imprisonment for one to three years.

Article 257. Aggravated trespass. The penalty shall be two to six years' imprisonment when, in any of the cases referred to in the preceding article, any of the following circumstances apply:

- a. The act is carried out by more than five persons;
- b. The trespasser or trespassers remain on the property for more than three days;
- c. When the owners or holders of the property, their workers, employees, or dependents are denied access to the property or are expelled from it by the trespassers or are forced to leave it due to any type of intimidation exercised against them by the trespassers;
- d. When the act is carried out through harassment, disorder, violence, deception, breach of trust, secrecy or intimidation;
- e. When any type of damage or harm is caused to the property, its crops, facilities, access roads or natural resources.

The penalties set forth in this article or in the previous article shall also apply, where appropriate, to those who instigate, encourage, force, or incite others to commit this crime or cooperate in its planning, preparation, or execution.

The aforementioned provisions contain operative verbs like "dispossess," "attempt to dispossess," "invade," or "occupy," without establishing clear criteria that allow us to distinguish between unlawful occupation and other forms of presence or possession of real property that are not punishable under criminal law. Furthermore, the subjective element of acting "for the purpose of unlawful seizure or use" lacks verifiable parameters that would allow for objective assessment, making it easy to presume illegality based solely on the physical presence of one or more persons on a property. Finally, the provision that "remaining on the property constitutes *in flagrante delicto*" introduces permanent grounds for *in flagrante delicto*, which distorts its exceptional nature and allows for immediate arrests and evictions without the need to prove that a criminal act is currently being committed or is imminent.

The provision stipulating that "remaining on the premises constitutes *in flagrante* circumstances" introduces a ground for permanent *in flagrante* status that distorts its exceptional nature and authorizes immediate detentions and evictions without the need to substantiate the actual or imminent commission of criminal conduct.

**The vagueness of the punishable conduct in the criminal offenses of trespass and aggravated trespass, combined with the possibility of permanent in flagrante delicto, has facilitated unfounded accusations and arbitrary detentions, particularly against indigenous communities that continue to exercise possession of their ancestral territories.**

In light of the principle of legality protected in Article 9 of the American Convention on Human Rights (ACHR) and in other treaties ratified by Guatemala, the classification of offenses requires a clear definition of the criminalized act that establishes its elements and allows it to be distinguished from acts that are not penalized.<sup>104</sup> The IACt-HR has ruled on this matter, stating that “in order to prosecute criminal offenses, their scope of application must be defined as clearly and precisely as possible,”<sup>105</sup> warning that criminal laws should not be drafted in such a way as to leave a wide margin of discretion for their application by the authorities. This standard has been developed in the analysis of the legality requirement for deprivation of liberty, contained in Article 7.2 of the ACHR. The Court has made it clear that domestic regulations on this matter must be compatible with international standards, including those related to establishing the most specific possible causes and conditions for detention. Otherwise, detention could be considered illegal.<sup>106</sup>

In the case of Guatemala, the vagueness of the punishable conduct in the criminal offenses of trespass and aggravated trespass, combined with the possibility of permanent *in flagrante delicto*, has facilitated unfounded accusations and arbitrary detentions, particularly against indigenous communities that continue to exercise possession of their ancestral territories. This problem has been documented by the IACHR as follows:

The use of open-ended, ambiguous, or clearly inadmissible criminal charges for the acts reported is another pattern that characterizes the arbitrary use of criminal law. For example, individuals who are not public officials have been investigated for crimes specific to officials, such as “abuse of authority.” Likewise, defense attorneys have been charged with the crime of “obstruction of justice” simply for doing their job, while members of indigenous communities are commonly charged with the crimes of “usurpation,” “aggravated usurpation,” and “usurpation of protected areas for inhabiting their ancestral territories.”<sup>107</sup>

In many cases of trespass and aggravated trespass, the MP conducts investigations and brings charges based on the entire content of the article. This has led the Criminal Chamber of the Supreme Court of Justice to clarify how this crime should be interpreted, specifying that the type of crime referred to in Article 256 of the Criminal Code includes the operative verbs dispossess, attempt to dispossess, invade, or occupy, resulting from unlawful actions, and punishes 18 different types of

<sup>104</sup> IACt-HR. *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*. Merits, Reparations and Costs. Judgment of May 29, 2014. Serie C No. 279, para. 162.

<sup>105</sup> IACt-HR. *Case of Acosta Martínez et al. v. Argentina*. Merits, reparations and costs. Judgment of August 31, 2020. Serie C No. 410, para. 83.

<sup>106</sup> Fernández Valle, Mariano. Illegal and arbitrary detentions in recent case law of the Inter-American Court. Article published in Ledesma, Ángela (Dir.) and Leopardo Mauro (Coord.), *Due process in criminal proceedings*, Volume 11, Ed. Hammurabi. (available in Spanish)

<sup>107</sup> IACHR. *Human rights situation in Guatemala*. OEA/Ser.L/V/II, Doc. 227/25, November 2, 2025, para. 157. Retrieved from [https://www.oas.org/en/iachr/reports/pdfs/2025/informe\\_guatemala\\_en.pdf](https://www.oas.org/en/iachr/reports/pdfs/2025/informe_guatemala_en.pdf)

conduct, consisting of acts intended for unlawful seizure or use.<sup>108</sup> However, rather than resolving the underlying issue, this criterion highlights the excessive breadth of the criminal offense and the difficulty of establishing clear limits that prevent its arbitrary application.

The permissiveness of arrest contained in the criminal offenses analyzed when people are found *in flagrante delicto* has led to the arrest of individuals who have gathered in buildings without any intention of “illegal seizure or use.” One example of this is the case of 21 Maya Q’eqchi’ men, who belong to the first and second generations of families from the community of Chicoyogüito, which was evicted in 1968 to make way for the establishment of Military Zone 21, known as CREOMPAZ, in Cobán, Alta Verapaz.<sup>111</sup> For several years, the community has held commemorative activities to demand compliance with the Peace Accords, particularly in relation to the resettlement of displaced communities. In June 2021, this celebration was held on a farm adjacent to the Agricultural Training School in Cobán, where a tent was set up to provide shelter from the weather. There were also banners with slogans calling for access to land and the Guatemalan flag. In the early hours of the morning, PNC agents arrested 21 people, alleging aggravated trespass *in flagrante delicto* based solely on their presence at the site for a few hours.

**The permissiveness of arrest contained in the criminal offenses analyzed when people are found *in flagrante delicto* has led to the arrest of individuals who have gathered in buildings without any intention of “illegal seizure or use.”**

<sup>108</sup> According to the Criminal Chamber of the Supreme Court of Justice, in case file 110-2006, the crime of trespass, contained in Article 256 of the Criminal Code, includes the following operative verbs: dispossess, attempt to dispossess, invade, or occupy, which are all illegal acts. The factual assumption of trespass as regulated in the Criminal Code punishes the following behaviors: 1) Anyone who, for the purpose of unlawful seizure, dispossesses another of the possession of a property; 2) Anyone who, for the purpose of unlawful seizure, dispossesses another of the possession of a real right; 3) Anyone who, for the purpose of unlawful seizure, dispossesses another of the tenure of a property; 4) Anyone who, for the purpose of unlawful seizure, dispossesses another of the tenure of a real right; 5) Anyone who, for the purpose of unlawful seizure, attempts to dispossess another of the possession of a property; 6) Anyone who, for the purpose of unlawful seizure, attempts to dispossess another of the possession of a real right; 7) Anyone who, for the purpose of unlawful seizure, attempts to dispossess another of the tenure of a property; 8) Anyone who, for the purpose of unlawful seizure, attempts to dispossess another of the tenure of a real right; 9) Anyone who, for the purpose of unlawful use, dispossesses another of the possession of a property; 10) Anyone who, for the purpose of unlawful use, dispossesses another of the possession of a real right; 11) Anyone who, for the purpose of unlawful use, dispossesses another of the tenure of a property; 12) Anyone who, for the purpose of unlawful use, dispossesses another of the tenure of a real right; 13) Anyone who, for the purpose of unlawful use, attempts to dispossess another of the possession of a property; 14) Anyone who, for the purpose of unlawful use, attempts to dispossess another of the possession of a real right; 15) Anyone who, for the purpose of unlawful use, attempts to dispossess another of the tenure of a property; 16) Anyone who, for the purpose of unlawful use, attempts to dispossess another of the tenure of a real right; 17) Anyone who unlawfully invades a property for any purpose; 18) Anyone who unlawfully occupies a property for any purpose.

# 8

## Trends in the Public Prosecutor's Office's Actions in Cases of Trespass That Violate International Human Rights Standards

The MP has thus prosecuted countless cases based solely on complaints or lawsuits filed by private individuals.

Some of the criminal charges reviewed in this report are based on titles with reasonable evidence of improper registration of private property rights.

Below, we describe some trends in the MP's actions that violate international human rights standards, based on an analysis of specific prosecutorial conduct. For this analysis, we consulted open sources, reviewed judicial and prosecutorial files, examined public information provided by the MP, and interviewed journalists, lawyers representing communities and defendants, and civil society organizations. Details of the documents, individuals, and organizations consulted are available in an appendix to this report, which is duly held by DPLF.

### 8.1 Failure to verify the validity of property titles supporting complaints of trespass and aggravated trespass

Guatemalan procedural law does not provide for a preliminary prosecutorial procedure to determine the ownership or possession of a disputed property, insofar as the analysis carried out by the MP is aimed at determining the legality or illegality of the occupation. In practice, the MP's general instructions have addressed this verification, requiring no heightened evidentiary standards to verify the existence of legitimate possession (including ancestral possession) before requesting arrest warrants, which are generally executed in the context of judicial evictions.

The MP has thus prosecuted countless cases based solely on complaints or lawsuits filed by private individuals, without sufficient verification of basic evidence required for investigation, as provided for in both the criminal offenses of trespass and aggravated trespass and in the MP's own guidelines for the prosecution of these crimes, as described above. Among the evidence that is often overlooked by the MP is the precise identification of the property in question, its location, and the supporting documentation of the private property rights invoked by the complainant. The *pro forma* acceptance of land registry certifications and the exclusion of historical and cadastral analyses reflect a deliberate refusal to investigate evidence that could weaken the prosecution's case. This is inconsistent with international standards of due diligence in criminal investigations.

Some of the criminal charges reviewed in this report are based on titles with reasonable evidence of improper registration of private property rights. In Purulhá, Baja Verapaz, and some municipalities in Alta Verapaz,<sup>109</sup> for example, criminal proceedings have been brought for trespass and aggravated trespass based on documents known as "rightful titles" of ownership, in which the supposed property owners declare before a notary that a piece of real estate belongs to them.

Likewise, members of the Q'eqchi' community of Buena Vista, in Izabal, were reported by a private individual who took possession of their land through seemingly irregular property registrations. This irregularity was substantiated in an expert report presented by the legal defense team for community leader Abelino Chub Caal, who was arrested in 2017 and acquitted for the crimes of aggravated trespass

<sup>109</sup> For more information on the case of the Canasec community, see report, retrieved from <https://www.dailymotion.com/video/x9loiag> (available in Spanish)

and coercion<sup>110</sup> due to insufficient evidence.<sup>111</sup> At the time of his arrest, Chub Caal was a community promoter for the Guillermo Toriello Foundation,<sup>112</sup> which had accompanied the communities settled in the mountains near Lake Izabal and the Polochic River basin in El Estor, Izabal, for more than a decade.

The lack of diligent verification of property ownership by the MP occurs even when the community being evicted has historically and continuously held the land claimed by a private individual. In a very detailed study on evictions in Guatemala, researcher Laura Hurtado Paz y Paz documents that those evicted are often “*mozos colonos*” who had historically inhabited their territories, even before plantations were created and registered to individuals or companies, for whom they had worked for generations and who were now seeking to evict them and use their land for new economic projects.<sup>113</sup>

This is what happened, for example, with the Maya Poqomchi’ community of Washington,<sup>114</sup> in Purulhá, Baja Verapaz. In 1874, during the liberal governments’ policies of supporting agricultural investment in untitled lands, coffee plantations were established in this area, and as a result, many members of the community began working as “*mozos colonos*” planting coffee and other crops. In 2005, the community stopped working for them, but the landowners did not compensate them for the labor and social benefits they had accrued over decades. From that moment on, a dispute arose over land tenure between the community and a family of businesspeople who claimed to hold title to the land. In 2015, the MP launched a criminal investigation into the crime of aggravated trespass, and in November 2016, 34 arrest warrants were issued against members of the community, several of which have been executed.<sup>115</sup>

The Q’eqchi’ community of Río Cristalino, in Alta Verapaz, located in an area known as Finca Dolores, lived through a very similar situation. At the end of the 19<sup>th</sup> century, part of their territory was granted to a family of German migrants for agricultural production, leading to many indigenous people becoming *mozos colonos*. After decades of poorly paid or unpaid labor, the community sought legal certainty regarding the lands they had historically inhabited, using official documents held by the General Archive of Central America that showed that land had been given to third parties without the

**The lack of diligent verification of property ownership by the MP occurs even when the community being evicted has historically and continuously held the land claimed by a private individual.**

<sup>110</sup> Centro de Medios Independientes. (May 10, 2018). Abelino Chub Caal: the trial and punishment of a Q’eqchi’ promoter. Retrieved from <https://cmiguate.org/abelino-chub-caal-juicio-y-castigo-a-un-promotor-qeqchi/> (available in Spanish)

<sup>111</sup> El Observador Association. (2024). The institutionality of dispossession. El Observador, Special Report 51, p. 3. Retrieved from <https://elobservadorgt.org/2024/12/10/los-oscuros-origenes-de-la-legalidad-desalajos-de-tierras-en-guatemala/> (available in Spanish)

<sup>112</sup> A civil society organization dedicated to promoting local development processes based on Guatemala’s territorial diversity, within the framework of the Peace Accords. Its work focuses on rural development, local development, and historical memory. More information is available at: <https://www.fgtoriello.org.gt/> (available in Spanish)

<sup>113</sup> Hurtado Paz y Paz, L. (2025). Draft of Chapter I of the book *Land and Racism: Modern Land Dispossession in Q’eqchi’ Territory*, forthcoming, p. 24. (available in Spanish)

<sup>114</sup> According to information gathered in the focus group held on December 17, 2025, the name comes from the Washington variety of oranges that grow in that area. Although their ancestors had been settled in the territory for a long time, the communities gradually transformed and adopted different names.

<sup>115</sup> Case file 15002-2016-0085, heard in various courts in Salamá, Baja Verapaz.

participation or consent of the Q'eqchi' communities, who at that time had been living in this area of the country for decades and, in some cases, centuries.

According to information from the Peasant Committee of the Highlands (*Comité Campesino del Altiplano*, "CCDA" by its Spanish acronym), an organization that accompanies the community, the lands in question are communally owned. However, through different legal strategies, overlapping and inconsistent deeds have been issued that disregard the community's rights and historical tenure of the territory. Until this dispute is properly resolved under civil or administrative jurisdiction, the MP does not have sufficient evidence to assert that the community's occupation of the territory is illegal, which is an essential element of the crime of trespass. Despite this, the MP has pursued charges of aggravated trespass against the Río Cristalino Community, requested the community's eviction from the judicial authorities, and issued arrest warrants for approximately 60 people.<sup>116</sup>

In several similar cases, those providing legal support to the communities have filed motions<sup>117</sup> to prevent criminal proceedings from moving forward until the dispute over ownership of the contested lands has been resolved under administrative or civil jurisdiction. However, many of these motions have been dismissed without any substantive analysis of the arguments presented. This practice continues even when preliminary rulings are duly supported by technical reports issued by the RIC, which warn of overlapping titles and uncertainty regarding the location, limits, and ownership of the property that is the subject of the complaint.

In the complaints of trespass against members of the communities of Washington, Baja Verapaz,<sup>118</sup> Dos Fuentes, Baja Verapaz,<sup>119</sup> and Santa María Xalapán, Jalapa<sup>120</sup> reports from the RIC and the now defunct SAA indicate the existence of other titles, including communal titles, as well as the possible status of vacant lots, overlapping with the property that was allegedly invaded. In the absence of a formal civil or

<sup>116</sup> Criminal case 16004-2009-00701.

<sup>117</sup> Article 291 of the Criminal Procedure Code establishes that if criminal prosecution depends exclusively on the judgment from a preliminary ruling, which, according to the law, must be resolved in a separate proceeding, it must be initiated and pursued by the Public Prosecutor's Office, with all interested parties being summoned, provided that the law governing the matter so permits. When the Public Prosecutor's Office is not authorized to pursue the preliminary ruling, it shall notify the authorized person of its existence and, in turn, request information on the initiation and progress of the proceedings.

<sup>118</sup> In the Washington case, RIC report RIC/BV/DM/BV/812-2023 determined that the properties claimed both by the community of Washington and the Pananish Agricultural Company, whose legal representative is Byron Guillermo Thomae Estrada, overlap with property two hundred thirty-six A (236 A), page 165, of Book 2 of Baja Verapaz. That property is registered to the Municipality of Salamá and covers an area of more than 200 caballerías.

<sup>119</sup> In the Dos Fuentes case, RIC report RIC/HV/DM/455/2024 also indicates that the properties overlap.

<sup>120</sup> Report on the Historical and Cadastral Investigation of Territorial Conflicts between the Indigenous Community of Santa María Xalapán, Jalapa, and the Residents of the Municipal Capital and Surrounding Villages of Sansare El Progreso, dated March 31, 2015, which recognizes that: "(...)After several measures were taken and following an intense dispute between the Ladino community, the indigenous community, and others, the lands belonging to the town and its surroundings, known as Llanos de Jalapa or "the beltway," were finally registered in the General Property Registry in the name of the Community of Jalapa, based on a survey carried out by Valerio Ignacio Rivas in 1826 and the title issued in 1833 by the then Head of State, Dr. Mariano Gálvez, forming property 3330, page 221, book 21 of Jalapa-Jutiapa, registered in 1903, with an area of 232 ¼ caballerías, 7/8 cuerdas, and 500 ¾ varas castellanias (232.26 caballerías). Under the protection of Government Agreements, Supplementary Titling processes, and Decree 170, other titles were issued to individuals, groups, and the State, which overlap with the title registered in 1903 in the name of the Community of Jalapa, creating a complex situation of overlapping and conflicting property rights (...)."

administrative dispute, it seems reasonable that the MP would rely on current registry information.

When technical elements cast doubt on the certainty of ownership and tenure of the disputed property, criminal charges and subsequent rulings by criminal judges may produce effects that contradict the decisions of other competent authorities and turn the criminal proceedings into an indirect mechanism for determining land tenure.

In the case of Washington, in 2024, a person with an outstanding arrest warrant<sup>121</sup> decided to voluntarily appear before the authorities and was indicted on charges of aggravated trespass. The defense raised a preliminary issue based on a RIC report indicating irregularities in the private property title that supported the charges. However, the court ruled to dismiss their motion, finding that the plaintiff's property rights were valid and ordering the criminal proceedings to continue forward.<sup>122</sup>

A similar situation arose in Santa María Xalapán, where community members are facing multiple criminal charges.<sup>123</sup> Their legal counsel raised preliminary issues before the court and the MP, submitting documentation on the complete registration history of the property, as well as a report prepared by the SAA warning of the existence of additional, irregularly granted titles. However, the court found that the complete history of the property and the number of divisions and registrations made had not been sufficiently proven and therefore rejected the motion and ordered the criminal proceedings for trespass to continue forward.<sup>124</sup>

According to a lawyer from the Xinka Parliament, even when communal titles are submitted in court proceedings, they are not usually given effective evidentiary weight by the courts. Similarly, community journalists, rights defenders, and community members interviewed agree that this practice is systematically repeated in cases seeking recognition of indigenous communal property rights.<sup>125</sup>

The lack of prosecutorial and judicial review of the illegality of the occupation, in cases where the indigenous community in question exercises historical possession over the disputed property, is incompatible with the parameters developed by the IACt-HR. As explained in this report, Inter-American and international standards recognize that indigenous peoples' traditional possession of their lands produces legal effects equivalent to full title granted by the State, conferring on them the right to demand official recognition and registration of their property. In the criminal justice system, these standards are not intended to resolve disputes over land ownership, but rather to prevent the occupation from being deemed unlawful when there is sufficient evidence of historical possession, thus eliminating one of the essential elements of the crime of trespass.<sup>126</sup>

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<sup>121</sup> The arrest warrant was issued in 2016 for the crimes of coercion, threats, illegal detention, assault, and resisting arrest. In a ruling dated February 15, 2024, he was found not guilty of these crimes and was charged with aggravated trespass.

<sup>122</sup> Ruling dated June 27, 2024, issued in case file 15002-2016-00825.

<sup>123</sup> Criminal Case 21003-2017-00463 and 21003-2017-00339.

<sup>124</sup> Interview with a lawyer from the Xinka Parliament of Guatemala, conducted on November 14, 2025.

<sup>125</sup> Other cases include the Q'eqchi' communities of Río Cristalino, La Ceiba, and Canasec.

<sup>126</sup> IACt-HR. *Case of the Xucuru Indigenous People and its members v Brazil*. Preliminary objections, merits, reparations and costs. Judgment of February 5, 2018. Serie C No. 346, para. 117.

The IACt-HR has ruled on situations in which “innocent third parties” are in good faith possession of or hold title to ancestral indigenous territories. In order for this situation to justify a restriction on the right to indigenous collective property, the following conditions must be met:

a) they must be established by law; b) for the purpose of achieving a legitimate objective in a democratic society, in other words, a collective objective [...] that, owing to its importance, clearly outweighs the need for the full enjoyment of the restricted right; c) are necessary to meet a compelling public interest, and d) are proportionate, in the sense of being closely adapted to attainment of the legitimate objective, interfering as little as possible in the effective exercise of the restricted right.<sup>127</sup>

In the Guatemalan context, the State must not only justify the legality, necessity, suitability, and proportionality of the restriction of indigenous territorial rights, but also rigorously examine the evidence seeking to corroborate the private and collective property rights of each party to the dispute. The adjudication of this type of dispute requires gathering evidence and complying with legal safeguards that are clearly incompatible with criminal proceedings.

## 8.2 Shortcomings in the Identification of Defendants and in the Verification of Facts That Form the Basis of Charges Brought by the MP

Often, complaints of trespass filed by private individuals are not subject to diligent verification as to whether the crime actually occurred and whether the allegations are plausible in terms of time and location. In general, the MP initiates investigations and files charges without properly checking for such inconsistencies, meaning that the accused must prove these inconsistencies at trial or at a later stage of the proceedings.

The MP often fails to provide an individualized description of the behaviors classified as crimes and fails to make clear the intent to unlawfully seize the property. For example, charges have been brought against several individuals and, in some cases, entire communities based on generic allegations of illegal occupation of a property. The MP's conduct violates the principle of presumption of innocence which, according to the jurisprudence of the IACt-HR, “requires the accuser to prove that the criminal offense was committed by the accused, that is, that the accused is guilty of having participated in its commission (...).”<sup>128</sup>

The lack of individualization and clarity regarding the alleged conduct also violates the “right to prior notification in detail to the accused of the charges against him,” provided for in Article 8.2.b) of the ACHR and other treaties ratified by Guatemala. According to the IACt-HR, this right places the duty on the prosecution to provide

<sup>127</sup> See footnote 102 of the Judgment of the *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, in which the IACt-HR systematizes its jurisprudence on “innocent third parties” and restrictions on indigenous property.

<sup>128</sup> IACt-HR. *Case of Zegarra Marín v. Perú*. Preliminary objections, merits, reparations and costs. Judgment of February 15, 2017. Serie C No. 331, para. 124.

“a material description of the alleged conduct containing the factual information included in the indictment, which constitutes an essential reference for the defense of the accused and the subsequent consideration of the judge in the ruling.”<sup>129</sup>

To individually identify the persons under investigation, the MP relies on initial witness statements and amended statements, with the aim of charging new people. There have been documented cases in which up to five years have elapsed between the initial statement and the amended statement; these amended statements are only made when some individuals decide to voluntarily appear before the prosecutorial or judicial authorities to clear up their legal situation.<sup>130</sup> In a number of these cases, the names of these individuals did not appear in the original statements but were subsequently added on the basis of amended testimony in which witnesses claimed to remember them at the scene of the crime.

A case that illustrates this practice is that of the Kaqchikel community leaders who, in November 2018, attempted to recover the Patzún Community Center (*Centro Comunal de Patzún*, “CECOPA” by its Spanish acronym) in Chimaltenango through a decision made by the community assembly, since the communal property was being used for private purposes. This led to 13 people being charged with the crimes of unlawful entry, coercion, and aggravated trespass.<sup>131</sup> The defendants were identified solely on the basis of witness statements made by people with whom the indigenous authorities had met to try to find a solution to their problem. Five years after the incident, a judge acquitted them,<sup>132</sup> since the MP had failed to specifically identify their individual acts, and it was even proven that three of them were not present when the communal property was recovered. The judge also found that what had occurred was an action to preserve the communal property and not an unlawful seizure, as the MP had claimed. The case is still ongoing due to the MP’s appeal against the acquittal.

In some of the charges reviewed, there is evidence of the use of “investigative procedures” conducted by the complainants or plaintiffs themselves, such as photographs taken by devices that do not belong to the MP or in land or aerial vehicles provided by the complainants.

### 8.3 Failure to Provide Timely Notification, Violence, and Destruction of Property and Possessions During the Execution of Eviction Orders

Several of the evictions reviewed were carried out summarily, without adequate notice and without allowing the community to exercise its right of defense. Most evictions involved excessive use of force and failed to safeguard the welfare of

The MP often fails to provide an individualized description of the behaviors classified as crimes and fails to make clear the intent to unlawfully seize the property.

<sup>129</sup> IACt-HR. *Case of Maldonado Ordoñez v. Guatemala*. Preliminary objections, merits, reparations and costs. Judgment of May 3, 2016. Serie C No. 311, para. 80.

<sup>130</sup> Dos Fuentes, Washington, and CECOPA cases.

<sup>131</sup> Criminal case 04003-2019-0065 and 1004-2023-02149.

<sup>132</sup> Solano, J. & Pérez, R. (2025, 19 de junio). CECOPA case: Kaqchikel and community authorities declared innocent after seven years of criminalization. *Prensa Comunitaria*. Retrieved from <https://prensacomunitaria.org/2025/06/caso-cecopa-autoridades-kaqchikeles-y-comunitarios-declarados-inocentes-luego-de-siete-anos-de-criminalizacion/> (available in Spanish)

**Evicted communities are typically left homeless and without access to basic services such as health care, education, and housing.**

children, women, and elders. Evicted communities are typically left homeless and without access to basic services such as health care, education, and housing.<sup>133</sup>

There have been reports of the burning and destruction of homes, traditional indigenous clothing, crops, and animals, thereby eliminating any possibility of return and restoration of their way of life. An example of this took place on July 19, 2023, in the Kumatz community in Santa Cruz Barillas, Huehuetenango department, where a court-ordered eviction was carried out by more than 5,000 PNC officers, leaving at least 130 families facing a profound humanitarian crisis.<sup>134</sup> The community was displaced without a prior hearing, and neither shelter nor food was guaranteed to the families. Their homes were destroyed and burned, and the state authorities did not provide them with humanitarian assistance.

A similar situation occurred during the August 9, 2023 eviction of the Nueva Jerusalén community in the municipality of Iztapa, department of Escuintla. Community members' homes and belongings were burned, and law enforcement ignored the order issued by the enforcement judge allowing community members to remove their belongings the day after the eviction.

The Polochic case is one of the most emblematic examples of police violence linked to territorial disputes in Guatemala. In March 2011, peasant Antonio Beb Ac was executed on the Chabil Utzaj plantation in the municipality of Panzós, Alta Verapaz, during an eviction operation characterized by excessive use of force against the Q'eqchi' communities who were claiming their historical rights to their lands. The International Commission against Impunity in Guatemala investigated the case, and Pedro González Rodríguez, then head of the Special Police Forces Directorate, was prosecuted for extrajudicial execution.<sup>135</sup>

Evicted communities are frequently subjected to inhumane living conditions, characterized by a lack of access to drinking water, which has a disproportionate impact on women, who lack adequate areas to perform basic household tasks. Such is the case of the Indigenous Community of Xalapán. On November 29, 2019, an order was issued to evict the inhabitants of the Cerro Arluta area, who had already been evicted on October 8 of the same year. In order to prevent the eviction, two injunctions were filed on the grounds that the affected individuals had documentation proving their ownership of the land and had lived there for approximately 25 years. Several families ended up living on the streets in very precarious conditions; they had been unable to retrieve their belongings from their homes because they were at work at the time of the eviction.<sup>136</sup>

<sup>133</sup> Interviews with lawyers and community members on November 14 and December 17, 2025.

<sup>134</sup> See Simón Francisco, S. (July 21, 2023). Huehuetenango: homes and animals belonging to indigenous families in Kumatz burned. *Prensa Comunitaria*. Retrieved from <https://prensacomunitaria.org/2023/07/huehuetenango-que-man-viviendas-y-animales-de-familias-indigenas-de-kumatz/> (available in Spanish)

<sup>135</sup> See CICIG. (April 20, 2018). PNC commissioner indicted in Polochic case. Retrieved from <https://www.cicig.org/casos/ligado-a-proceso-comisario-de-la-pnc-involucrado-en-caso-polochic/> (available in Spanish)

<sup>136</sup> Oriente News. (December 3, 2019). Evicted families in Jalapa sleep outdoors with their children. Retrieved from <https://orientenews.com.gt/familias-desalojadas-en-jalapa-duermen-a-la-intemperie-con-sus-hijos/> (available in Spanish)

The examples mentioned above demonstrate Guatemalan judicial, prosecutorial, and police authorities' failure to comply with the UN Basic principles and guidelines on development-induced evictions and displacement. This instrument establishes that evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected; states have the obligation to take steps to ensure that no one is deprived of property or possessions during evictions.<sup>137</sup>

In 2018, the IACHR and the UN Special Rapporteurs on Adequate Housing and on the Human Rights of Internally Displaced Persons urged the State of Guatemala to comply with the obligations enshrined in these principles, specifically with regard to:

- (i) preventing displacement; (ii) providing protection and assistance during displacement; (iii) providing and facilitating humanitarian assistance; and (iv) facilitating return, reintegration, relocation and rehabilitation or fair compensation, in safe conditions. In specific cases of displacement that stem from forced evictions, the solution must immediately follow the eviction and, if it involves different land, that land must be of the same quality or better.<sup>138</sup>

In its General Comment 7 on the right to adequate housing and protection against forced evictions, the Committee on Economic, Social and Cultural Rights (CESCR) elaborated on the obligations of States before, during, and after an eviction. According to this general comment, States must:

- (...) ensure that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected (...)"<sup>139</sup>.

When a forced eviction is duly justified, the CESCR has outlined procedural safeguards that must be implemented by States, including:

- (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of

**Evicted communities are frequently subjected to inhumane living conditions, characterized by a lack of access to drinking water, which has a disproportionate impact on women, who lack adequate areas to perform basic household tasks.**

<sup>137</sup> Basic principles and guidelines on development-based evictions and displacement. Annex I of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. A/HRC/4/18, paras. 47 and 50.

<sup>138</sup> IACHR. (July 20, 2018). IACHR, UN Experts Express Concern over Forced Evictions and Internal Displacement in Guatemala. Retrieved from [https://www.oas.org/en/iachr/media\\_center/PReleases/2018/158.asp](https://www.oas.org/en/iachr/media_center/PReleases/2018/158.asp)

<sup>139</sup> CESCR, General comment 7, The right to adequate housing (Art.11.1): forced evictions, May 20, 1997, para. 13.

legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.<sup>140</sup>

States have an obligation to guarantee evicted persons access to food, potable water, sanitation, basic shelter and housing, appropriate clothing, essential medical services, livelihood sources, fodder for livestock, access to common property resources previously depended upon, education for children and adolescents, as well as access to medical care and attention for evicted individuals who are wounded or sick. The locations designated for resettlement must meet the criteria for culturally appropriate housing, including security of tenure and access to services, among others.<sup>141</sup>

A number of international human rights organizations have expressed concern about the way in which evictions of indigenous and peasant communities are carried out in Guatemala. For example, the UN Committee on the Elimination of Racial Discrimination (CERD) has expressed alarm at:

allegations of excessive use of force and violence, including the burning of communal houses, crops and animals during forced evictions of Q'eqchi' and Poqomchi' communities in the departments of Alta Verapaz, Baja Verapaz, Izabal and Petén and the criminalization of Indigenous leaders and individuals from these communities.<sup>142</sup>

Statements by the United Nations Special Rapporteur on the right to adequate housing confirm the patterns of violence and the lack of minimum guarantees described in this report. At the conclusion of an official visit to Guatemala in July 2025, the Rapporteur noted that evictions are too easily authorized by judges through *ex parte* proceedings, without adequate notification to the people living in the territories. As a result, these communities often learn of imminent violent evictions at the last minute.<sup>143</sup> For its part, the IACHR has pointed out that, in Guatemala, "evictions are carried out violently, without prior notification, with excessive use of force by police officers and private security agents."<sup>144</sup>

It is important to emphasize that all the cases reviewed in this report refer to indigenous communities with historical and cultural ties to the territories from which they have been displaced or where judicial eviction is sought. International standards impose differentiated obligations in this type of situation, requiring States to refrain from carrying out forced removals and to guarantee the possession of the indigenous people or community over their ancestral territories. Among the instruments that enshrine this obligation, Article 16 of ILO Convention 169 establishes that:

<sup>140</sup> CESCR, General comment 7, The right to adequate housing (Art.11.1): forced evictions, May 20, 1997, para. 15.

<sup>141</sup> Basic principles and guidelines on development-based evictions and displacement. Annex I of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. A/HRC/4/18, paras. 52, 54 and 55.

<sup>142</sup> CERD, Concluding observations on the combined eighteenth to twentieth periodic reports of Guatemala, CERD/C/GTM/CO/18-20, December 5, 2015, para. 34.

<sup>143</sup> Human Rights Council, Report of the Special Rapporteur on the right to adequate housing, End of mission statement at the conclusion of the country visit to Guatemala, July 25, 2025, p. 4.

<sup>144</sup> IACHR. *Human rights situation in Guatemala*. OEA/Ser.L/V/II, Doc. 227/25, November 2, 2025, para. 335. Retrieved from [https://www.oas.org/en/iachr/reports/pdfs/2025/informe\\_guatemala\\_en.pdf](https://www.oas.org/en/iachr/reports/pdfs/2025/informe_guatemala_en.pdf)

**A number of international human rights organizations have expressed concern about the way in which evictions of indigenous and peasant communities are carried out in Guatemala.**

1. (...) the peoples concerned shall not be removed from the lands which they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, (...) which provide the opportunity for effective representation of the peoples concerned.
3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.
4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

Similarly, Article 10 of the UN Declaration on the Rights of Indigenous Peoples prohibits the forced eviction or relocation of indigenous peoples from their territories as follows:

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Finally, the information gathered in this report shows that Guatemala's legal, institutional, and jurisprudential framework imposes a series of barriers to the titling of communal territories on the one hand and restricts access to legal avenues to prevent evictions resulting from the arbitrary use of punitive power by the MP on the other. This situation exposes hundreds of indigenous communities to the ongoing risk of losing their connection to their ancestral territories, which is essential for preserving their ways of life and for their physical and cultural survival.<sup>145</sup>

## 8.4 Arbitrary, Selective, and Indefinite Arrest Warrants

In several of the cases described in this report, the people who were arrested were granted an alternative measure,<sup>146</sup> but they remained subject to criminal proceedings.

<sup>145</sup> The UN Committee on Economic, Social, and Cultural Rights has emphasized that the integrity and cultural identity of indigenous peoples are indispensable for their existence, well-being, and comprehensive development, and include the right to the lands, territories, and resources that they have traditionally owned, occupied, and used. See Committee on Economic, Social and Cultural Rights, General Comment No. 21, The right of everyone to take part in cultural life (Article 15, paragraph 1(a), of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/21/Rev.1, December 21, 2010.

<sup>146</sup> Such is the case of four people from the Xinka community of Santa María Xalapán, Jalapa, who, after several days under arrest, were released under alternative measures but remain subject to prosecution

A number of international organizations and agencies have documented the MP's use of punitive power to persecute independent justice operators, members of the academic community, journalists, and community reporters, among other human rights defenders.

This situation continues to violate their rights to due process and personal liberty, since the criminal charges against them are illegal and arbitrary *per se*.

A number of international organizations and agencies have documented the MP's use of punitive power to persecute independent justice operators, members of the academic community, journalists, and community reporters, among other human rights defenders.<sup>147</sup> A notable example of this practice was when an investigation was opened against lawyer Ramón Cadena for criminal conspiracy, aggravated trespass, and destruction of cultural property. In November 2025, the MP accused Cadena of continuous aggravated trespass because, in his work as a human rights defender, he was on the premises of the University of San Carlos, advising students who were demonstrating in favor of the university's autonomy. He also attended press conferences where he expressed his opinion that the eviction of students from the university campus was unwarranted. According to his lawyers, the accusation against him fails to meet the main requirement for the criminal offense of aggravated trespass, namely, the intention to take possession of a property belonging to third parties.<sup>148</sup>

A similar case is that of students Heizer Morales and Sergio Morataya, outspoken opponents of the president of the University of San Carlos, whose appointment has been widely questioned by the academic community, civil society organizations, and the media. It is alleged that his appointment violated university procedures and reflects the interference of corrupt actors who sought to ensure that the vote reserved for the president of the University of San Carlos in the selection process for members of the high courts would be rigged in favor of candidates linked to corruption networks.<sup>149</sup> The students, Morales and Morataya, were arrested in the University Auditorium in December 2023, where the MP found personal belongings and other objects during a police raid. According to the prosecution, these items constitute evidence of prolonged unauthorized occupation. Both students are facing charges of aggravated trespass.<sup>150</sup>

Among criminalized rights defenders, those who defend indigenous peoples' rights have been a constant target of the MP. On this matter, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has highlighted the following:

The pattern of criminalization, which is the most alarming and growing trend, is strategically directed against indigenous leaders and peasant farmers, increasing their risk. (...) In some cases, this criminalization goes beyond

for the crime of aggravated trespass and, thus, banned from entering the areas where they live.

<sup>147</sup> Cyrus R. Vance Center for International Justice. (2022). *Criminalization of Justice Operators in Guatemala as a strategy to secure impunity*. Retrieved from <https://www.vancecenter.org/publication/criminalizationguatemala/>

<sup>148</sup> Interview conducted on December 26, 2025.

<sup>149</sup> Montepeque, F. (June 27, 2022). The mechanism that imposed a de facto university president on the USAC. *Plaza Pública*. Retrieved from <https://www.plazapublica.com.gt/content/el-mecanismo-que-impuso-un-rector-de-facto-en-la-usac> (available in Spanish)

<sup>150</sup> Pérez Marroquín, C. (December 19, 2025). Court overturns ruling that freed students and orders trial for occupation of university auditorium. *Prensa Libre*. Retrieved from <https://www.prensalibre.com/guatemala/justicia/sala-revoca-fallo-que-liberaba-a-estudiantes-y-ordena-juicio-por-toma-del-paraninfo-universitario-breaking/> (available in Spanish)

the leaders and spreads to the communities, collectively stigmatizing them and deepening their exclusion. This is a clear manifestation of a continuous process of violence that results in “civil death” or “exemplary punishment” to deter other individuals and communities from exercising their rights and defending their lands.<sup>151</sup>

An unprecedented example of the arbitrary use of punitive power to dismantle efforts to defend the rights of indigenous and peasant communities is the arrest of Leocadio Juracán Salomé. He is a former Guatemalan congressman and leader of the CCDA, an organization that accompanies more than 1,000 people who have arrest warrants for defending their communities' territory and natural resources. Mr. Juracán was arrested on August 13, 2025, and charged with aggravated trespass, forest fires, attacks on the nation's natural and cultural heritage, and the unauthorized collection, use, and sale of forestry products. According to the MP's complaint, he is accused of having been present in the community of Río Tebernal, in Livingston, Izabal, where, at the request of the person who claims to be the owner of the plantation, several families were evicted on March 5, 2025.

The arrest took place at Guatemala City airport, as Mr. Juracán was trying to leave the country. It was carried out under an arrest warrant issued by the Court of First Instance for Criminal Matters, Drug Trafficking, and Environmental Crimes in Puerto Barrios, Izabal department.<sup>152</sup> According to his lawyers, Mr. Juracán was not even at the site of the eviction on the date the court order was executed, and the grounds for the charges brought by the MP include the filing of a constitutional injunction to seek to stop the eviction.<sup>153</sup> This is clearly an unjustified arrest. The charges against him criminalize the legal representation of a community that is at risk of displacement without due process guarantees. The IACHR has issued the following warning regarding the persecution of Mr. Juracán:

(...) the IACHR learned of the arrest of lawyer Leocadio Juracán, leader of the CCDA, for crimes against the nation's natural and cultural heritage, aggravated trespassing, use and sale of forest products without the proper documentation, and forest fires, which would constitute retaliation for his work in defense of human rights and territory.<sup>154</sup>

The case of the Xinka community of Santa María Xalapán, in the department of Jalapa, reflects a similar pattern of criminalization against those who seek recognition and title to indigenous territories through legal action. While the community's lands have a duly registered communal title, landowners in the area have acquired property rights and possession of the same plots of land. In an effort to resolve this conflict, a historical cadastral investigation was conducted, revealing the existence of a property registered in 1903 in favor of the Community of Jalapa,

<sup>151</sup> OHCHR, Guatemala: Challenges in the defense of human rights 2020-2025, November 2025, para. 45.

<sup>152</sup> Criminal case 18002-2021-00306.

<sup>153</sup> Interview conducted on December 11, 2025.

<sup>154</sup> IACHR. Human rights situation in Guatemala. OEA/Ser.L/V/II, Doc. 227/25, November 2, 2025, para. 161.

also known as Santa María Xalapán. Unaware of this fact, the State itself approved supplementary titling processes for land that overlaps with the property, which is currently used by public institutions, such as the local offices of the Judiciary and the Superintendency of Tax Administration.<sup>158</sup> Despite the above, landowners in the area have filed several criminal complaints against members of the Santa María Xalapán community, leading to prosecutions and judicial evictions.

Members of the community have been criminalized based on information provided at roundtable discussions organized by the State to mediate a solution to the dispute over the ownership of their lands. Among the institutions that have participated in these discussions are COPADEH, the National Dialogue Commission, the Ministry of Agriculture, Livestock, and Food, and the Office of the Human Rights Ombudsman. At one of the meetings convened, an indigenous authority presented a document requesting an end to the harassment of community members and attached a list with the names of 69 people who own various plots of land on communal territory. The MP used this information to request arrest warrants for the people on the list, four of whom were indeed arrested.<sup>155</sup> The OHCHR has expressed concern about this modus operandi, noting that it “has also received allegations about the misuse of some State-coordinated roundtables, which allowed leaders to be identified, criminalized, and captured.”<sup>156</sup>

A similar situation occurred with the Poqomchi’ community of Dos Fuentes, in Purulhá, Baja Verapaz, which has been under precautionary measures from the IACHR since October 2020. Those measures were granted because the families that make up the community “are in a situation of risk due to (...) a series of threats, harassments and acts of violence perpetrated against them, in the framework of an agrarian conflict over specific plots of land where they claim their ancestral property.”<sup>157</sup> According to the organization representing the community, the MP has used a list of community members who accessed humanitarian support programs from the Ministry of Agriculture to file charges for the crime of aggravated trespass. The complaints to the MP were allegedly filed by individuals linked to a family claiming property rights over the community’s territory, one of whom has a professional relationship with the Ministry of Agriculture.<sup>158</sup>

The information gathered indicates the selectivity with which the MP requests arrest warrants against those who hold leadership roles in communities involved in land disputes. Some leaders have been held in pretrial detention, while others have been granted alternative measures<sup>159</sup> that include prohibitions on returning to the disputed territories or communicating with community members. Restrictions of this nature

<sup>155</sup> Interview conducted on November 14, 2025.

<sup>156</sup> PDH & OHCHR, Situation of human rights defenders in Guatemala: Between commitment and adversity, May 17, 2019, p. 19.

<sup>157</sup> IACHR. *Poqomchi’ Mayan Indigenous Families of Washington and Dos Fuentes Communities regarding Guatemala*. Precautionary Measure No. 306-20. Resolution 67/2020, October 14, 2020. Retrieved from [https://www.oas.org/en/iachr/decisiones/pdf/2020/res\\_67-20\\_mc\\_306-20\\_gt\\_en.pdf](https://www.oas.org/en/iachr/decisiones/pdf/2020/res_67-20_mc_306-20_gt_en.pdf)

<sup>158</sup> Interview conducted on October 16, 2025.

<sup>159</sup> This is the case of nine people from the Q’eqchi’ community of Buena Vista, who have been indicted and must report to the Court of Puerto Barrios to sign a register. Similarly, in the Río Cristalino case, where nine arrest warrants have been executed and the individuals have been indicted, they have been required to pay bail as an alternative measure.

have even been imposed on community leaders who have been acquitted by a trial court, as a result of new arrest warrants issued simultaneously with appeals filed by the MP. This occurred, for example, in the case of the Patzún Community Center in Chimaltenango, where, despite an acquittal, restrictions on access to the community property remain in place.

Another recurring practice by the MP is to request arrest warrants against multiple individuals, which are not always executed or are only partially executed. This has occurred in the communities of Calijá, Baja Verapaz,<sup>160</sup> Lajeb Kej, in the Polochic Valley, Alta Verapaz,<sup>161</sup> Buena Vista, El Estor, Izabal,<sup>162</sup> Qeqxibal, San Juan Chamelco, Alta Verapaz<sup>163</sup> and Mucbilha, Raxruhá, Alta Verapaz.<sup>164</sup> This situation seems to reflect the fact that the main interest of those who file the complaints is not to shed light on an alleged crime, but to coerce the communities into abandoning the disputed lands.

According to information provided by some communities' legal counsel, failure to immediately execute certain arrest warrants may be related to the possibility that, in a court hearing, the defendants might be acquitted, and anomalies could be found in the property titles presented by the individuals who filed trespass charges. In the case of the Poqomchi' community of Washington, arrest warrants in connection with a case of aggravated trespass have remained outstanding since 2016, or in other words, for ten years. One of the community leaders was arrested in February 2017 and subsequently sentenced to two years in prison, but the court granted probation.<sup>165</sup>

According to Peace Brigades International, the existence of outstanding arrest warrants has a significant impact on community life. Those affected tend to restrict their mobility and remain in their communities for safety reasons, leading to significant social and economic consequences, such as the inability to access work, participate in commercial activities, accompany their children to school, register their children in the National Registry of Persons, or seek health services when necessary.

In some communities, the uncertainty stemming from the practices described in this section has led members to accept prosecutorial discretion<sup>166</sup> or plea

**Another recurring practice by the MP is to request arrest warrants against multiple individuals, which are not always executed or are only partially executed.**

<sup>160</sup> Twenty people in this community have arrest warrants for the crime of aggravated trespass.

<sup>161</sup> There are six outstanding arrest warrants, one of which has been executed against a community leader.

<sup>162</sup> Nine people were arrested for the crime of aggravated trespass.

<sup>163</sup> In this case, there are two people in prison, three with alternative measures, and three outstanding arrest warrants.

<sup>164</sup> In this case, there are 52 leaders facing criminal prosecution. Two are under investigation, one is in prison, and 48 outstanding arrest warrants. They are charged with aggravated trespass, aggravated robbery, unlawful entry, illegal detention, and sexual violence. Criminal Case 16004-2013-00502.

<sup>165</sup> Judgment dated September 26, 2018, handed down in Case 15002-2016-00825. By the Court of Criminal Sentencing, Drug Trafficking, and Environmental Crimes of the Department of Baja Verapaz.

<sup>166</sup> Prosecutorial discretion is a measure to reduce the burden on the courts provided for in Articles 25 and 25 bis of the Guatemalan Code of Criminal Procedure. When the MP believes that the public interest or public safety are not seriously affected or threatened, it may, with the prior consent of the injured party and judicial authorization, refrain from bringing criminal proceedings in the case of offenses not punishable by imprisonment, offenses prosecutable at the request of a private party, and offenses subject to public prosecution with a maximum prison sentence of less than five years, with the exception of offenses defined in the Law against Drug Trafficking, where the responsibility of the defendant or their contribution to the commission of the offense is minimal, where the defendant

**In some communities, the uncertainty stemming from the practices described in this section has led members to accept prosecutorial discretion or plea bargain.**

bargain.<sup>167</sup> For example, in the community of Santa María Xalapán, it has been documented that the use of prosecutorial discretion was contingent on testifying against other people from the same community. Likewise, it has been reported that some community members were pressured to sign sworn statements recognizing the complainants as the legitimate owners of the land.<sup>168</sup>

Finally, when proceedings are drawn out over time, even after acquittals have been handed down, retrials have been ordered following appeals filed by the MP. In these cases, the role of the Courts of Appeals has been called into question, as to whether the retrial is ordered based on formal criteria.<sup>169</sup>

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has been directly and seriously affected by the consequences of a criminal offense and the penalty is inappropriate. Prosecutorial discretion shall be applied by trial court judges to accomplices or perpetrators of the crime of concealment who provide effective testimony against the perpetrators of certain crimes provided for in Article 25(6) of the Code of Criminal Procedure. In order to grant prosecutorial discretion, the accused must have repaired the damage caused or there must be an agreement with the injured party and guarantees must be provided for its fulfillment. The application of prosecutorial discretion will result in the case being closed for a period of one year, at the end of which the criminal proceedings will be dropped.

<sup>167</sup> This happened with a couple from the Q'eqchi' community of Río Cristalino, who accepted a plea bargain and were ordered, as a form of dignified reparation, not to return to the community and to make a public apology. Similarly, members of the Q'eqchi' community of Chicoyogüito accepted prosecutorial discretion to avoid further criminal proceedings against them.

<sup>168</sup> Interview with a lawyer for the Xinka Parliament, November 14, 2025.

<sup>169</sup> In the case of the acquittal of a member of the Poqomchi' community in April 2025, the MP filed a special appeal, and the Salamá Regional Mixed Chamber ordered a retrial in a ruling dated July 7, 2025. According to PBI, the same thing happened with a member of the Q'eqchi' community of Nuevo Chintún, who opted for prosecutorial discretion, accepting his participation in the crime and the charges against him, as well as a series of conditions of probation (no recidivism, no causing conflict, and no approaching the company's facilities or its employees) for a period of one year, after which the case would be definitively closed. This was after he had been acquitted in a trial court, but a court ordered a retrial. Faced with uncertainty about what might happen, he opted for prosecutorial discretion.

# 9

## Reflections on Reducing Social Conflict Through Criminal Proceedings

Within the framework of a democratic rule of law that respects human rights, the Public Prosecutor's Office should act objectively, intervening to manage conflicts in a way that absorbs and transforms social violence. However, according to this analysis, in Guatemala's agrarian conflicts, there has been a shift from this integrated approach to a strictly punitive response, with low levels of proven effectiveness, as well as an absence of coordination with and involvement of Guatemala's indigenous communities in conflict management and/or joint planning of clear criminal prosecution guidelines for the issues raised.

This "penalization of conflict" (which reduces structural disputes over territory to the crime of trespass and its aggravating circumstances) creates a deficit of institutional legitimacy that is visible from two levels of analysis:

1. Selective reactivity: The MP acts reactively and swiftly in response to complaints of "trespass," but maintains a systemic passivity in the face of community demands regarding irregular and extrajudicial evictions.
2. Punitive response over alternative approaches: By preventing property disputes from being addressed under administrative or civil jurisdiction before pursuing criminal proceedings, the MP closes off any non-violent solutions. This turns criminal law into a "fast track" tool for eviction, avoiding any substantive discussion of the legality of land ownership and, ultimately, of the underlying conflict.

In order for the MP to regain its role as a defender of the public interest, it must transition to a model of management based on the following conditions:

1. Proactive investigation of the validity of registered titles: The MP should not be a passive recipient of land registry certifications. When faced with a complaint of trespass in contexts of historical conflict, the prosecutor's office has a duty to investigate *ex officio* whether the alleged ownership stems from dispossession, registry fraud, or anomalies in the chain of ownership.
2. Recognition of historical tenure and ancestral possession: Within the framework of democratic conflict management, the MP must recognize that the legal right in dispute is not limited to registered private property but also includes communities' right to possession and territory. This requires that, before resorting to punitive measures, the prosecutor's office prioritize coordination with agrarian and administrative institutions to determine the legitimacy of the occupation, preventing criminal eviction from being used to resolve disputes that arise from other causes.
3. Pluralistic coordination and participation of ancestral authorities: Conflict management must cease to involve only the MP and the complainants. There is a fundamental need to institutionalize spaces for dialogue with ancestral authorities so that knowledge of the territory and evidence of historical tenure can be incorporated into the investigation.

**For the MP to reclaim its role as a defender of the public interest, it is imperative to transition toward a model of articulated and proactive management.**

**A coordinated, pluralistic approach must ensure that criminal prosecution policy responds to the public interest, guaranteeing that criminal law is not used as a private protection service for those with the most influence over law enforcement and judicial bodies.**

# 10

## Conclusions and Recommendations

1. The MP's actions and the criminalization of indigenous communities are part of a broader context of institutional weakening and progressive co-optation of the justice system in Guatemala. Far from being isolated incidents, the patterns identified reveal the recurrent use of punitive power as a tool to manage agrarian conflicts to the detriment of legally established spaces of civil and administrative jurisdiction.
2. The creation of specialized prosecutors' offices for the prosecution of the crimes of trespass and aggravated trespass and the increase in criminal charges for these offenses reinforce this approach.
3. By imposing a series of legal and institutional barriers to the recognition and titling of indigenous territories, the Guatemalan State is violating its constitutional and international obligations, leaving indigenous peoples completely defenseless against criminal charges of trespass and judicial evictions brought by companies and individuals who claim ownership over their territories.
4. The cases examined reveal deficiencies in the verification of the facts reported by individuals and in the assessment of evidence by the Public Prosecutor's Office. In several of these cases, the Public Prosecutor's Office argues that the possession or occupation of real estate is "unlawful," fails to do a thorough check on the validity of the private property title that's the basis for the trespass complaint, and ignores evidence of communal titles and the ongoing possession by the accused indigenous community.
5. The extensive use of detention on the basis of *in flagrante delicto* and arrest warrants that remain outstanding for long periods of time, as well as the imposition of alternative measures that prohibit defendants from entering their communities, violate the principle of presumption of innocence, personal liberty, and a series of judicial guarantees applicable to criminal proceedings.
6. Despite the existence of a constitutional and international framework that recognizes and protects these rights, the report highlights several factors that prevent their enforcement, one of the most significant being the criminalization of indigenous communities seeking to protect their territories. Although the Public Prosecutor's Office is obliged to interpret Guatemalan law in light of the aforementioned framework, the patterns of behavior analyzed in the report reflect its systematic violation.
7. The upcoming process of appointing the head of the Public Prosecutor's Office provides an opportunity to promote reforms that strengthen institutional independence, review policies and guidelines for criminal prosecution in relation to agrarian conflicts and move toward an approach that is more respectful of the rights of indigenous peoples.

In light of the above, the organizations endorsing this report issue the following recommendations:

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### **To the Public Prosecutor's Office**

1. Conduct a comprehensive review of institutional policy on investigation and criminal prosecution to ensure that criminal proceedings are not used as the first resort for resolving disputes over land rights, ownership, or tenure, especially in cases involving territories claimed by indigenous peoples on the basis of historical or ancestral rights.
2. Strengthen the criteria for due diligence and objectivity in the investigation of the crimes of trespass and aggravated trespass, ensuring a thorough examination of the reported facts, the plausibility of the allegations in terms of time and place, and the validity and origin of the property titles submitted, including consideration of communal titles and historical possession by indigenous communities.
3. Adopt more flexible criteria for investigation and evidentiary assessment to prove ancestral tenure, including expert reports, historical records and parish archives, restrict the use of supplementary titles as grounds for criminal prosecution or eviction requests, in order to prevent abuses and evictions of communities who may turn out to be the legitimate owners of disputed lands.
4. Incorporate conventionality control and an intercultural approach into prosecutorial practice, ensuring that prosecutors' decisions and requests comply with international standards on indigenous peoples' rights, in particular ILO Convention 169 and Inter-American jurisprudence.
5. Refrain from requesting arrest warrants and forced evictions as an automatic or intimidatory measure and review the use of the presumption of *in flagrante delicto* in trespass cases, in order to avoid broad interpretations that violate the right to personal liberty and due process.
6. Ensure that alternative measures respect the principle of proportionality, avoiding restrictions that prevent individuals from staying in their communities, exercising community leadership, or maintaining family and social ties, in the absence of a final conviction.
7. Review and ensure transparency in cooperation agreements signed with private actors, ensuring that these do not directly or indirectly influence how cases are prioritized, the lines of investigation pursued, or how criminal charges are determined, and that they do not compromise the functional independence of the Public Prosecutor's Office.
8. Strengthen a proactive institutional policy aimed at detecting, investigating, and prosecuting false or spurious property titles, particularly in cases where they are used as grounds for evicting indigenous communities.

9. Effectively investigate allegations of abuse and undue pressure exerted against communities, including situations in which they are forced to sign documents or accept third-party ownership of lands they occupy or claim as ancestral territories.

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### **To the Judicial Branch**

1. Exercise proper judicial review of the actions of the Public Prosecutor's Office, particularly in the authorization of arrest warrants, evictions, and precautionary measures, verifying compliance with constitutional requirements and the compatibility of such measures with international human rights standards.
2. Properly assess evidence related to indigenous communal property, including historical expert reports, communal titles, and evidence of ancestral possession, especially when evidence of communal property is presented by the community that is the subject of a criminal complaint or when there are territorial disputes pending resolution under constitutional, civil, or administrative jurisdiction.
3. Establish action protocols for judges to resolve these types of cases with an intercultural approach and in accordance with constitutional and international human rights standards.
4. Conduct arraignments and evidentiary hearings in a timely manner, rigorously examining the charges and evidence presented by the Public Prosecutor's Office and avoiding undue delays in criminal proceedings when there is insufficient evidence to support the charges.

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### **To the Executive Branch**

1. Promote a comprehensive public policy for addressing agrarian conflicts, prioritizing administrative, civil, and dialogue mechanisms over criminal proceedings, and follow through on the responsibility to demarcate, title, and remove encumbrances to the land tenure rights of indigenous peoples and communities to their traditional territories.
2. Strengthen and properly resource agricultural institutions, including those responsible for mediation, cadastral surveys and land tenure regularization, ensuring an intercultural approach and respect for the collective property rights of indigenous peoples and communities.
3. Develop specific mechanisms for the prevention, services, and reparations for internal forced displacement, guaranteeing dignified resettlement alternatives, access to basic services, and effective protection of the economic, social, cultural, and environmental rights of displaced communities.

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### **To the Congress of the Republic**

1. Adopt legislative measures to regulate specialized procedures for resolving disputes over communal lands.
2. Review the criminal classification of trespass and aggravated trespass, in order to avoid broad or ambiguous formulations that allow for arbitrary interpretations and the misuse of punitive power in contexts of agrarian conflict.

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### **To the international community**

1. Maintain and strengthen mechanisms for monitoring, accompanying, and providing institutional support to state entities and civil society organizations dedicated to protecting the territorial rights of indigenous peoples.
2. Make agrarian conflict, the criminalization of indigenous communities, and the deterioration of judicial independence priority issues in political dialogue and cooperation programs in Guatemala, promoting sustainable institutional reforms based on human rights.

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### **To the Nominating Committee for the selection of candidates for Attorney General and Head of the Public Prosecutor's Office**

1. Incorporate, as an important criterion in the evaluation of work plans submitted to the Nominating Commission, a clear and explicit definition of the role that the Public Prosecutor's Office will assume in territorial conflicts involving indigenous peoples and peasant communities.

