Legality Over Accountability?

How to Resolve the Rule of Law Dilemma in Guatemala

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Guatemala, Wednesday, April 23, 2025: Public prosecutors execute an arrest warrant against Luis Pacheco, the Deputy Energy Minister and former president of "*48 Cantones*" – a traditional self-governing body of the indigenous *K'iche' Maya*, rooted in the 19th century. It represents the interests of 48 communities in the region of Totonicapán and has long been recognized as a key actor in both local and national affairs. Pacheco is being detained under allegations of sedition, terrorism and illicit association due to the group's involvement in the "Paro Nacional 2023", a nationwide backlash against a coup d'état attempt led by the Attorney General Office. His arrest has triggered international condemnation by the European Union, Mexico, the Inter-American Commission on Human Rights and many international organizations.

This case is only the latest in a series of politically motivated prosecutions that place Attorney General (AG) María Consuelo Porras at the center of Guatemala's democratic backsliding. She has systematically targeted journalists, public officials and civil society actors, undermining democracy, the rule of law, and fundamental rights without any effective accountability mechanism in place. Those under attack share a common trait: They either fought against corruption or defended democratic institutions.

This raises an urgent question: What can be done when legal mechanisms to hold public officials accountable are effectively blocked? In this post, I argue that in contexts like Guatemala, it is not enough to claim that "the law does not allow it". When there are credible grounds to believe that a public official is abusing their mandate, accountability must take precedence in legal and political debate. That may require thinking beyond existing procedures – while remaining firmly within the constitutional framework and aligned with international standards.

A brief overview of the context

The "Paro Nacional", which started in October 2023, was a nationwide movement led by 48 Cantones and other indigenous organizations to defend Guatemalan democracy. It brought the country to a standstill and united diverse groups around a shared goal: stopping an attempted coup d'état. In order to understand this, we must go back to June 2023, when the political outsider Bernardo Arévalo and his political party *Movimiento Semilla* unexpectedly advanced to the second round of voting in the presidential election. Known for his anti-corruption stance, academic credentials, and professional integrity, Arévalo was clearly not the candidate of the political establishment, which sought to preserve its privileges and impunity. In August 2023, Arévalo went on to win the presidency.

His victory triggered a coordinated attempt to delegitimize the electoral outcome and block his inauguration – in effect, a coup attempt. The main face of this attempt was AG María Consuelo Porras. As head of the Public Prosecutor Office, responsible for criminal investigations and prosecutions, she used her authority – along with a network of public prosecutors and judges – to turn the legal system into a tool for an antidemocratic maneuver.

The AG's actions were numerous, but two stand out for their severity: a) Her office initiated a spurious criminal investigation on the creation of Arévalo's political party and through a judge of contested credibility, they managed to suspend Arévalo's party in a criminal proceeding, despite the fact that a criminal judge does not have jurisdiction for this; and, b) she

sought to undermine the legitimacy of the elections based on bogus legal arguments.

These actions reveal a clear strategy: Not only to attack Arévalo's party, but to discredit the integrity of the elections – contrary to what the electoral authority and internationals organizations had stated.

The President's response to Pacheco's arrest

Just hours after news about Pacheco's arrest broke on 23 April, President Bernardo Arévalo held a press conference to denounce the AG as a threat to democracy and to call for peaceful public protest. He urged the Congress to pass legal reforms that would allow him to dismiss the AG – an outcome that, given the pro-impunity majority in Congress, seems highly unlikely.

In the same press conference, the President stated that he was confident a fair judge would quickly dismiss Pacheco's case. Instead, on April 25, a judge ordered pretrial detention for Pacheco and fellow indigenous leader Hector Chaclán.

On April 29, the President convened another press conference – this time alongside Indigenous leaders – to announce specific measures. He announced that his government had filed an *amparo* (a constitutional challenge) against the AG before the Constitutional Court and claimed to be activating national and international mechanisms to document the AG's abuses, though without providing further detail. In an unusual move, he called on the AG to make commitments to Indigenous communities. Although the press conference demonstrated unity between the government and Indigenous communities, most of the actions announced by the President lacked tangible impact. The President's position also marks a notable shift: In January 2025, he had previously declared in interviews that no further action could be taken and that he would wait for the end of the AG's mandate to appoint a new AG, warning that any illegal action could endanger his government.

The current change in tone, however, could provide a window of opportunity – one that allows for concrete proposals and a renewed debate about the AG's role and accountability.

Unpacking the Rule of Law dilemma

Article 251 of the Guatemalan Constitution states that "[t]he President may remove the Attorney General for just cause, duly established". The original text of *Ley Orgánica del Ministerio Público* (a rule which regulates all matters concerning the Attorney General Office) outlined two scenarios in which the President could exercise the constitutional power to remove the AG: a) If the AG committed an intentional crime and was convicted in trial, during their mandate; and b) in cases of poor performance of its obligations. As we can see, the second scenario leaves the door wide open for the President to essentially justify the removal of the AG without due process based on a broad interpretation– a practice that has occurred multiple times.

To prevent such abuses and strengthen prosecutorial independence, the UN International Commission Against Impunity and the former AG Thelma Aldana, pushed for reforms. As a result, Article 14 of the current *Ley Orgánica del Ministerio Público* now stipulates that the AG can only be removed "[…] due to intentional crime, convicted in trial, committed during their mandate".

However, this reform has created a paradox. The process for removing the AG hinges on a criminal conviction in trial, yet this trial is entirely under the AG's authority. This structural conflict of interest severely limits the feasibility of any impartial removal process, effectively shielding the AG from accountability. In practice, nothing moves in the Public Prosecutor's Office without the AG's approval. The AG can remove prosecutors without due process and appoints prosecutors with serious allegations of corruption, and raise salaries – all to foster loyalty and maintain control over criminal proceedings.

Why is the discussion about removing the Attorney General on the table?

The AG's actions have been extensively documented by many actors. In its 2024 report on Guatemala, Human Rights Watch denounced the continued criminalization of human rights actors by the AG's office, including orchestrating spurious criminal prosecutions

against them. Moreover, the United Nations High Commissioner for Human Rights concluded in the 2024 Annual Report about Guatemala that the Public Prosecutor Office perpetuates the criminalization of human rights defenders, thus ensuring impunity.

Notably, the AG herself, along with her advisors, close staff, and some judges aligned with her, have been subject to international sanctions by the United States, the Council of the European Union, Switzerland, and the United Kingdom for their involvement in corruption and the attempted coup in 2023.

The Inter-American Commission on Human Rights has played a key role to document the actions and to present alternatives. In their 2023 Annual Report, in Chapter IV. b about Guatemala, the Commission clearly states that the AG's Office has played a key role in weakening the rule of law through the criminalization of justice operators, human rights defenders, and journalists, as well as its involvement in undermining the 2023 general elections, jeopardizing democratic stability, and undermining the separation of powers.

Following an invitation of Arévalo's government, the Commission conducted an on-site visit to Guatemala in July 2024. In its Preliminary Observations, the Commission highlighted the instrumentalization of the criminal justice system against anti-corruption actors. It recommended – most notably in recommendation Nr. 6 – an independent review of the Attorney General's office and its impact on human rights. The Commission also identified systematic patterns of the instrumentalization of criminal law: Violations of due process; a high number of complaints against the same individuals to complicate their defense and the processing of baseless claims as a method of sustained harassment.

A way out?

There is no clear-cut legal pathway within the Guatemalan law to address this unprecedented situation – but that cannot be the end of the road. The Constitution and the Law of the Executive empower the President, together with his cabinet, to issue "*Acuerdos Gubernativos*": administrative acts aimed at adopting specific decisions or to regulate laws within the executive's competence.

To answer the main question of this post, I propose that the President issues an *Acuerdo Gubernativo* establishing an administrative process to review the AG's actions. The executive already made a tentative attempt in late 2024 by issuing the *Acuerdo Gubernativo* 200-2024, which aimed to coordinate compliance with international human rights standards and invited the AG to participate. However, the Constitutional Court struck down this initiative.

The new proposal, however, might stand a better chance if certain key elements are fulfilled. First, the process should include members of all three branches of government, independent experts and civil-society representatives. This kind of composition could create the political will to address the elephant in the room and would likely garner strong public support.

Second, the process must align with international standards on prosecutorial conduct, including those established by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Inter-American Court of Human Rights standards in Cuya Lavy v. Perú or the Venice Commission report. These standards can be summarized as follows: a) Grounds for dismissal must be clearly defined; b) the process must guarantee fair trial; and c) a judicial trial is not mandatory to review the AG's conduct.

Finally, several legal and political factors support this proposal. The President holds the exclusive authority to remove the Attorney General for just cause. Yet, the existing removal mechanism has proven unworkable, effectively placing the Attorney General above the law and undermining both the President's authority and the rule of law itself. Moreover, the Inter-American Commission on Human Rights has explicitly recommended an independent review of the Attorney General's actions. Given Guatemala's binding obligations under the Inter-American human rights system – particularly the duty to take concrete measures to prevent human rights violations – the President and the broader state apparatus must take this issue seriously.

If conducted transparently and efficiently, this process could result in a well-reasoned recommendation based on the AG's performance. This, in turn, could provide the President with the legal and political foundation to act decisively within the constitutional framework and initiate the removal of the AG based on a transparent and legitimate process. Still, "all roads lead to Rome" – whether the President follows this route, waits for legislative reform, or attempts a direct dismissal, any action will ultimately be subject to review by the Constitutional Court.

This proposal is intended to foster solutions. If Guatemala aspires to genuine democracy, it cannot allow its AG to leave office unexamined. The President must seize this opportunity to restore accountability.

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