

PROSPERITY ▼▲

FREEDOM ▼▲

INNOVATION

INTERNATIONAL PROPERTY RIGHTS INDEX 2025

ADMINISTRATIVE BARRIERS AS DE FACTO EXPROPRIATION: **HOW DISPROPORTIONATE EVICTION REQUIREMENTS UNDERMINE PROPERTY RIGHTS IN GUATEMALA**

CASE STUDY BY: OBSERVATORIO DE DERECHOS DE PROPIEDAD, GUATEMALA



MARÍA ANDREA CÁCERES¹ & JORGE GABRIEL JIMÉNEZ²
Authors



INTRODUCTION

In Guatemala, the threat to property rights does not arise solely from direct violations, but also from a state apparatus that imposes excessive and disproportionate requirements on owners seeking to recover their assets. Although illegal invasions—legally classified as usurpations—constitute a crime, institutional mechanisms for restoring legitimate possession have become so complex, costly, and delayed that they create a climate of defenselessness for dispossessed owners.

This study is based on the premise that property is not protected merely through formal recognition, but through effective restitution mechanisms. However, the various institutions responsible for addressing these situations have established requirements that distort the State's role in protecting property owners. Far from guaranteeing justice, these administrative obstacles undermine public authority and shift state responsibilities onto individuals.

This paper identifies structural contradictions and the misuse of the human rights framework, which has normalized illegal occupations under the guise of social protection.

The result is not just administrative inefficiency, but a scenario in which the State consolidates dispossession by preventing the full exercise of property rights. This institutional distortion amounts to a form of de facto expropriation, where the formal owner retains title but lacks control or the real ability to exercise their rights.

This study includes an analysis of the current legal framework, along with available statistics. It identifies recurring patterns and modalities of operation, including structures that combine physical invasion with fraudulent documentation, helping to understand the logic behind many illegal occupations and the ineffectiveness of institutional responses.

Additionally, this study addresses recent statements by the UN Special Rapporteur on the Right to Housing, which have sparked controversy by questioning the legitimacy of eviction enforcement in Guatemala—an issue that exemplifies the broader challenges addressed herein.

In response, the study offers recommendations to restore institutional balance and strengthen protection for property owners.

1

PROPERTY AS THE AXIS OF FREEDOM AND DEVELOPMENT: A PERSPECTIVE FROM HERNANDO DE SOTO

Property is not merely a legal figure or a registry entry: it is a right that guarantees individual freedom and enables the conditions necessary for a country's economic development. In *The Other Path*, Hernando de Soto defines property rights as "all those, whether personal or real, that recognize their holders' right to transfer and exclusive use, that is, the power to freely dispose of them and the ability to use them to the exclusion of others, and enjoy them freely" (De Soto, 1986, p. 204). This definition is not limited to a formalist view of the law, but highlights its active nature; the owner must be able to control the asset, decide on its use and disposal, and exclude any illegitimate interference.

For ownership to be real and not merely declarative, legal certainty is required—that is, an institutional environment where legally recognized rights are enforceable and protected against interference. This certainty is not an end in itself but the foundation that allows property to fulfill its legal and economic function. As De Soto notes, "secure property rights... encourage owners to invest in their assets, as they provide assurance that they will not be harmed or usurped. Thus, from a strictly economic standpoint, property rights are not primarily intended to benefit the individual or entity that holds them, but to provide the incentives necessary to add value—by investing, innovating, or combining them advantageously with other resources to generate a socially beneficial outcome" (De Soto, 1986, p. 204).

The protection of property rights is not justified by abstract interests; it is justified because, without property rights protections, the rightful owner lacks the practical ability to exercise that right. Recognition only makes sense when it is accompanied by effective use, enjoyment, and disposal. However, when the legal system acknowledges the right but imposes obstacles to its exercise, the result is equivalent to its nullification. The outcome is not trivial; it leaves owners without effective protection, discourages them from asserting their rights, and ultimately renders property rights meaningless in practice.

In *The Other Path*, De Soto identifies a structural flaw in many Latin American legal systems: the excess of rules, procedures, and requirements that, rather than enabling the exercise of rights, make it inaccessible or impractical. In this context, he introduces a key distinction between good laws and bad laws, noting that "a good law... ensures and facilitates efficiency, while a bad law disrupts or entirely prevents it" (De Soto, 1986, p. 231).

Applied to Guatemala, this reasoning explains why many property owners, even with fully registered titles and legally recognized rights, face obstacles that place them in a state of legal helplessness.

1. Maria Andrea Cáceres, Executive Director, Property Rights Observatory: [linkedin.com/in/andreacaceres88/](https://www.linkedin.com/in/andreacaceres88/)

2. Jorge Gabriel Jiménez, Board Member, Property Rights Observatory: [linkedin.com/in/jorgegabrieljimenezb/](https://www.linkedin.com/in/jorgegabrieljimenezb/)

The laws and administrative provisions governing evictions, instead of providing swift and proportionate mechanisms, require owners to meet disproportionate conditions—such as providing food, transportation, or shelter to those who have illegally occupied their property—in order to recover possession. Rather than facilitating the restoration of a violated right, these norms place unwarranted burdens on the legitimate owner, contrary to the principle of legality.

This is the kind of “bad law” to which De Soto refers: a regulation that, despite appearing lawful, prevents the exercise of the very right it purports to protect. Its existence not only obstructs the owner’s actions but sends a dissuasive message: that asserting one’s right is more costly, complex, and uncertain than tolerating its violation. In this context, the protection of property dissolves, and incentives for legality vanish. The system fails not just in its protective function, but ends up producing the effect of an expropriation—without process, resolution, or compensation.

More worryingly, in Guatemala, invasions are not limited to informal spaces, vacant lots, or land with unclear tenure. They directly target registered properties, lawfully acquired by private parties. The disconnect between formal law and its enforcement is therefore even more serious. Instead of affecting unclaimed lands, illegal occupation is imposed on fully protected rights—with the tacit approval of state institutions.

This violation manifests not only in the authorities’ failure to act but also in the imposition of disproportionate demands on owners seeking to recover their assets. Requiring them to provide food, transportation, or shelter to those who have illegally dispossessed them is not only legally unjustifiable, but morally unacceptable.

Rather than facilitating the defense of their rights, the State shifts onto the rightful owner responsibilities that should belong to public administration, distorting the principle of legality and state accountability.

When a rights holder cannot exercise their right due to conditions imposed by the State itself, this constitutes a concealed form of de facto expropriation. There is no formal declaration or compensation, but the exercise of the right is lost. Property ceases to be protected and becomes merely symbolic. And this loss does not result from judicial or administrative due process, but from state omission and regulatory distortion.

This disconnect between recognized rights and their practical enforceability has also been documented internationally. The 2025 International Property Rights Index (IPRI), published by the Property Rights Alliance in conjunction with this study, ranks Guatemala 88th out of 126 countries, with an overall score of just 4.2 out of 10. Disaggregated, the score is 4.9 in physical property, 4.2 in intellectual property, and just 3.5 in the legal and political environment—which reflects a lack of institutional strength, rule of law, and judicial independence. These scores demonstrate that the problems described here are not isolated but structural, and that Guatemala’s legal environment still does not offer the minimum guarantees needed for full exercise and protection of property rights.

Guatemala does not merely face a problem of usurpations. Fundamentally, it faces a degradation of the rule of law. Bad laws reinforce informality, and worse, not only fail to protect those outside the system, but ultimately harm those within it. As De Soto warns, when the law ceases to be a tool for protection and becomes a barrier, the institutional balance breaks down and the State loses legitimacy as a guarantor of fundamental rights—especially the right to property.



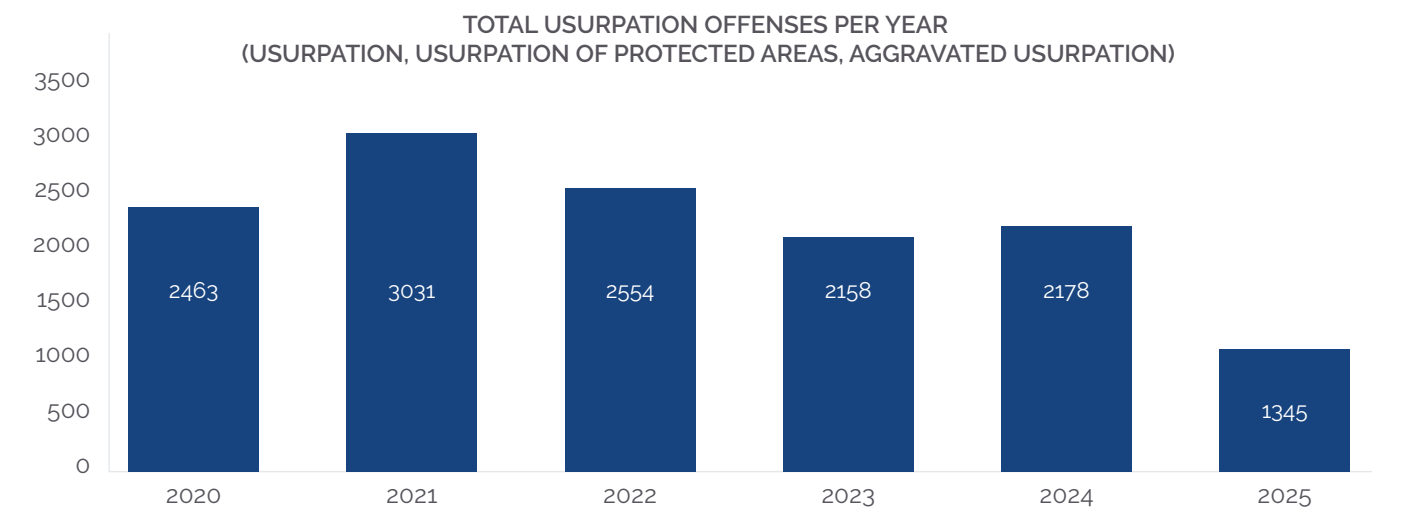
2

USURPATION AS A STRUCTURAL PROBLEM: DATA, PATTERNS, AND MODES OF OPERATION

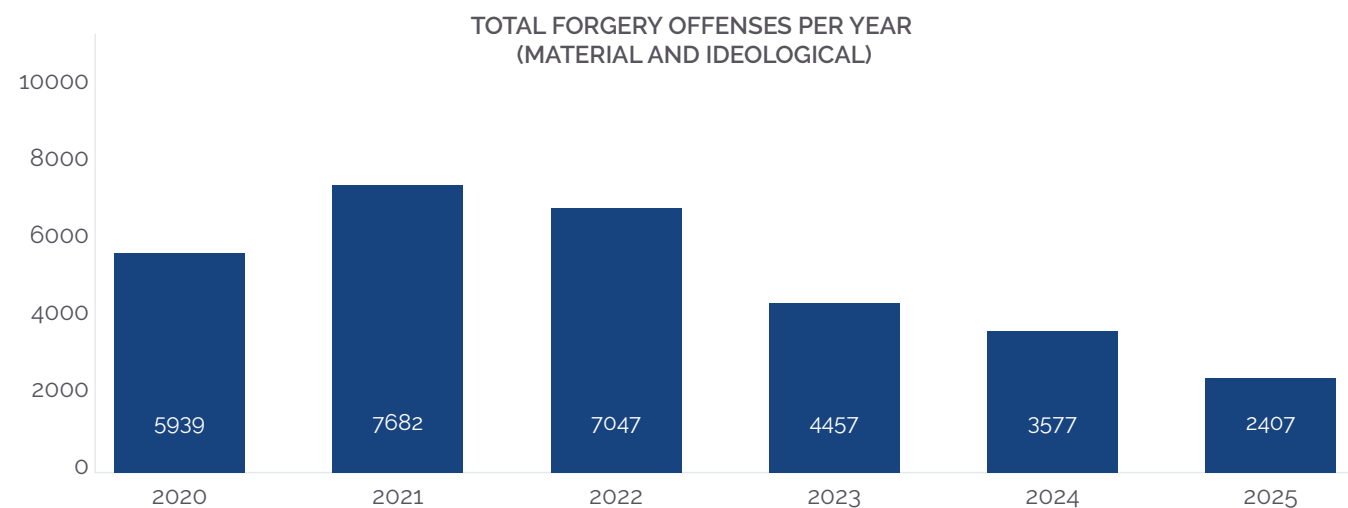
In Guatemala, the usurpation of real estate is no longer an isolated occurrence but has evolved into a structural pattern undermining private property. The problem has grown to such a scale that thousands of complaints are filed each year, while the percentage of cases that conclude with an effective eviction is minimal.

show a concerning trend: between 2020 and 2024, an annual average of 2,477 complaints were filed for the crimes of usurpation in its three modalities (usurpation, aggravated usurpation, and usurpation of protected areas), along with an annual average of 5,740 complaints for the crimes of ideological and material forgery, as shown in the following chart:

Data collected by the Property Rights Observatory, based on information provided by the Public Prosecutor’s Office (Ministerio Público),



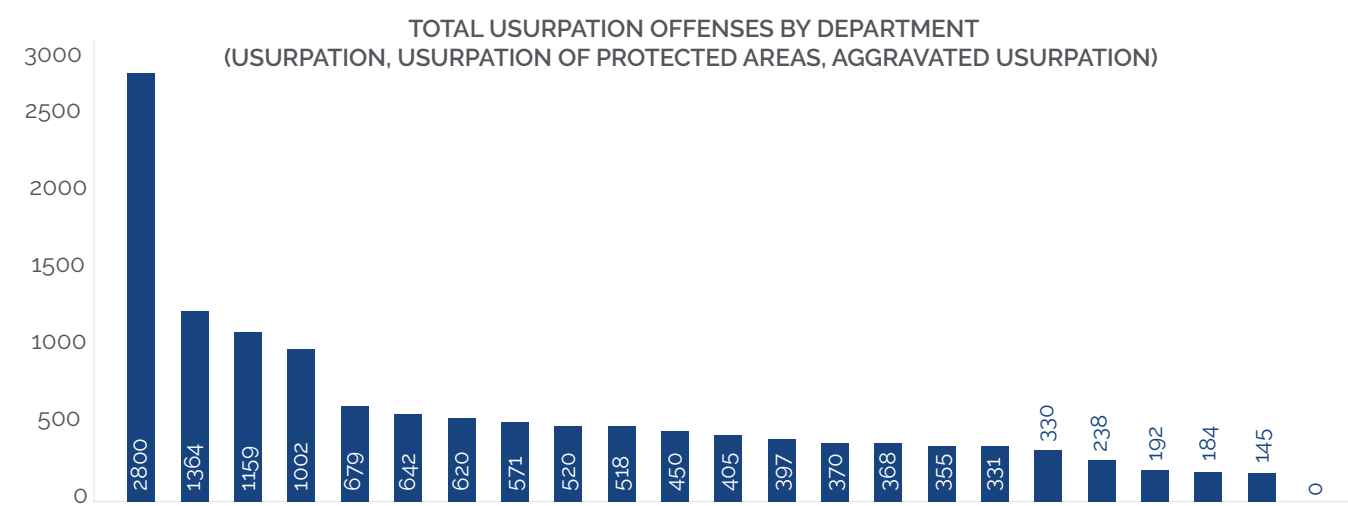
Graph based on official data from the Public Prosecutor’s Office



Graph of departments with highest incidence

These crimes occur throughout the country, affecting both urban and rural areas, confirming that this is a national issue. However, the impact has been particularly severe in the departments of Guatemala, Huehuetenango, San Marcos,

Alta Verapaz, Petén, Sololá, Chimaltenango, Quetzaltenango, Santa Rosa, and Jutiapa—the top ten departments with the highest number of usurpation complaints.



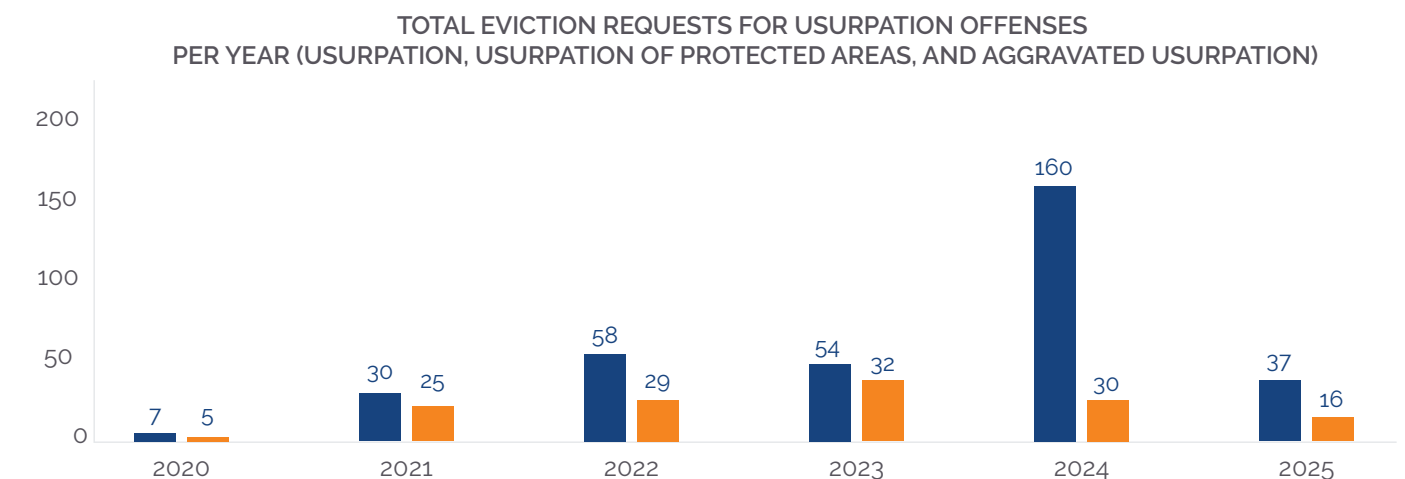
Graph based on official data from the Public Prosecutor's Office

The chart below shows that only 0.98% of complaints for usurpation—whether simple, aggravated, or in protected areas—end in a final conviction. The vast majority are resolved through alternative mechanisms such as dismissals or criteria of opportunity, or remain active for years without judicial resolution. In forgery cases, only 0.62% reach final conviction, while most files are closed or postponed without effective action. One of the most frequent outcomes is the dismissal of the complaint, often based on the alleged lack of complete registry documentation or the reclassification of the case as a civil dispute. However, this redirection from the criminal to the civil route does not reflect legal reality but follows a deliberate strategy; usurpers present forged documents to simulate apparent rights—such as false purchase contracts or fraudulent deeds—to mislead both the Public Prosecutor and judges. This results in the case being treated not as a crime but as a private dispute, obscuring the criminal nature of the dispossession.

To this, we must add an institutional approach that frequently prioritizes peaceful resolution through inter-institutional dialogue roundtables aimed at avoiding the use of public force—even when there is a court-ordered eviction. While these roundtables are meant to avoid conflict, their practical effect is to hinder the effective restitution of the property by prolonging timelines and creating false expectations among illegal occupants.

However, just because a case has been resolved procedurally—whether through a ruling, an alternative resolution, or a dismissal—does not mean that the invaded property has actually been recovered. The execution of eviction is a separate procedure that requires inter-agency coordination and faces numerous hurdles.

This is evident in the following chart:



Graph based on official data from the Public Prosecutor's Office



From 2020 to 2025, only 1.83% of requested evictions have been effectively carried out—demonstrating a critical gap between the formal resolution of cases and the material restitution of property rights.

This phenomenon lies at the core of the present study: the factual impossibility of enforcing property rights in the face of illegal occupation, due to the many obstacles imposed by the state apparatus itself.

Excessive logistical requirements, lack of inter-agency coordination, erroneous legal reinterpretations, and operational voids have made eviction such a complex and drawn-out process that it effectively constitutes a form of de facto expropriation.

Moreover, usurpations are not merely spontaneous acts of necessity. Many are orchestrated by organized structures with various motives. The Observatory has classified these occupations into typologies that reveal their logic and associated crimes:

USURPATION TYPOLOGY	DESCRIPTION
HOUSING-MOTIVATED APPROPRIATION	Individuals or families, often informally organized, occupy land intending to establish residence.
PROFIT-MOTIVATED APPROPRIATION	Organized leaders promote occupations to later profit from fraudulent lot sales or rentals. They present falsified contracts or verbal agreements to simulate legality.
EXPANSION OF PRE-ESTABLISHED COMMUNITIES	Legally recognized communities extend their settlements onto adjacent lands, citing housing needs or historical claims without legal basis.
ORGANIZED CRIME APPROPRIATION	Armed groups invade strategic properties for illicit activities, including drug trafficking, airstrips, roadblocks, or construction of paths inside private land. These are more common in remote or border regions with limited government presence.

Alongside these invasions, crimes of forgery are a constant. The creation or alteration of notarial and registry documents allows occupants to

justify their presence, complicating judicial action and prolonging illegal occupation.

FORGERY TYPOLOGY	DESCRIPTION
FORGERY OF PUBLIC DEEDS	Fake documents are created to simulate legitimate property or possession rights.
USE OF FRAUDULENT NOTARIAL PROTOCOLS	Protocols from deceased notaries or forged signatures are used to validate transactions.
IDENTITY FRAUD	Deceased or nonexistent individuals are presented as rightful property owners.
ALTERATION OF AUTHENTIC DOCUMENTS	Legitimate documents are manipulated to include false data supporting the occupation.

As previously mentioned, these invasions are premeditated, structured actions. As De Soto warns, “they are never spontaneous, but deliberate (...) if invasions are deliberate and involve negotiations, then there is also an agreement among the invaders” (El otro sendero, De Soto, 1987, pp. 22–23). This framework allows us to speak of an “invasion contract” as the extra-legal normative source governing informal settlements and the origin of local governance structures (De Soto, 1987, p. 23).

Though unwritten and legally baseless, this contract defines internal rules among the invaders: who gets what space, the rights each one has, and how disputes are resolved. In effect, it replaces the State’s legal framework with its own system—based on numbers, organization, and an illusion of legality.

In Guatemala, this pattern is even more serious. Usurping groups operate under leaders who not only coordinate the physical invasion but also design strategies in advance to shield the occupation from legal consequences. One of their first steps is document forgery: fake deeds, copies of protocols from deceased notaries, notarial affidavits with false claims, and other instruments crafted to appear legal. In parallel, civil associations are formed—named after the targeted property—to pose as representatives of “established communities,” despite having no actual connection to the area. Their goal is to simulate legitimacy and preemptively counter any legal defense by the rightful owner.

Even more alarming is the involvement of legal professionals, often funded by NGOs, who dedicate themselves to facilitating these invasions. They either mislead communities into believing that they have valid property claims or take advantage of their vulnerability to incite them to invade, guaranteeing legal defense and even property over the seized lands.

This operation is pre-planned and activated systematically on the day of the invasion. In most documented cases, the invaders arrive in large, sometimes armed groups, violently breach the property, destroy crops, facilities, or productive assets, and forcibly displace lawful occupants. The takeover is immediate and irreversible from the outset.

This preparation is critical. The invasion typically takes place at dawn, in just a few hours. Dozens or hundreds of people arrive armed with machetes, sticks, or even firearms, seize the property, and expel workers or owners. Violence is common: installations are destroyed, tools and materials stolen, and there have been reports of temporary kidnappings of employees or guards.

Once inside, the invaders destroy everything: crops are burned, infrastructure is damaged, and equipment is stolen. In some cases, they erect makeshift structures later presented as “homes” to reinforce a narrative of human settlement even when occupants don’t actually live there.

The owner turns to the legal system, filing a complaint with deeds, photos, and registry documents—only to discover that recovering their property does not depend solely on having a valid claim. A tortuous process begins, starting with summons to so-called “eviction coordination tables,” made up of delegates from multiple institutions: the Public Prosecutor’s Office, National Civil Police, Human Rights Ombudsman, Presidential Commission for Peace and Human Rights, fire department, Guatemalan Coordinating Agency for Disaster Reduction (CONRED), Ministry of Health, among others. Before executing the eviction, the state demands a series of steps, such as site inspections, risk analyses, and cadastral studies. And even when eviction is finally coordinated, the occupiers deploy human shields—placing pregnant women, children, and the elderly at the front to prevent police action.

In many cases, if just one institution fails to appear—due to logistics, fear, or poor coordination—the eviction is suspended indefinitely. Despite having a court ruling in their favor, property owners are trapped in a labyrinth where legal enforcement is unattainable. The property remains occupied for years, while invaders continue to sell lots illegally, extend their control, and simulate community activity to make eviction even harder.

Each case illustrates not just the material loss of real estate but also the erosion of the rule of law and the institutionalization of impunity. These usurpations are not acts of desperation; they have evolved into sophisticated operations that manipulate the legal and administrative system to entrench illegal occupation of private property.

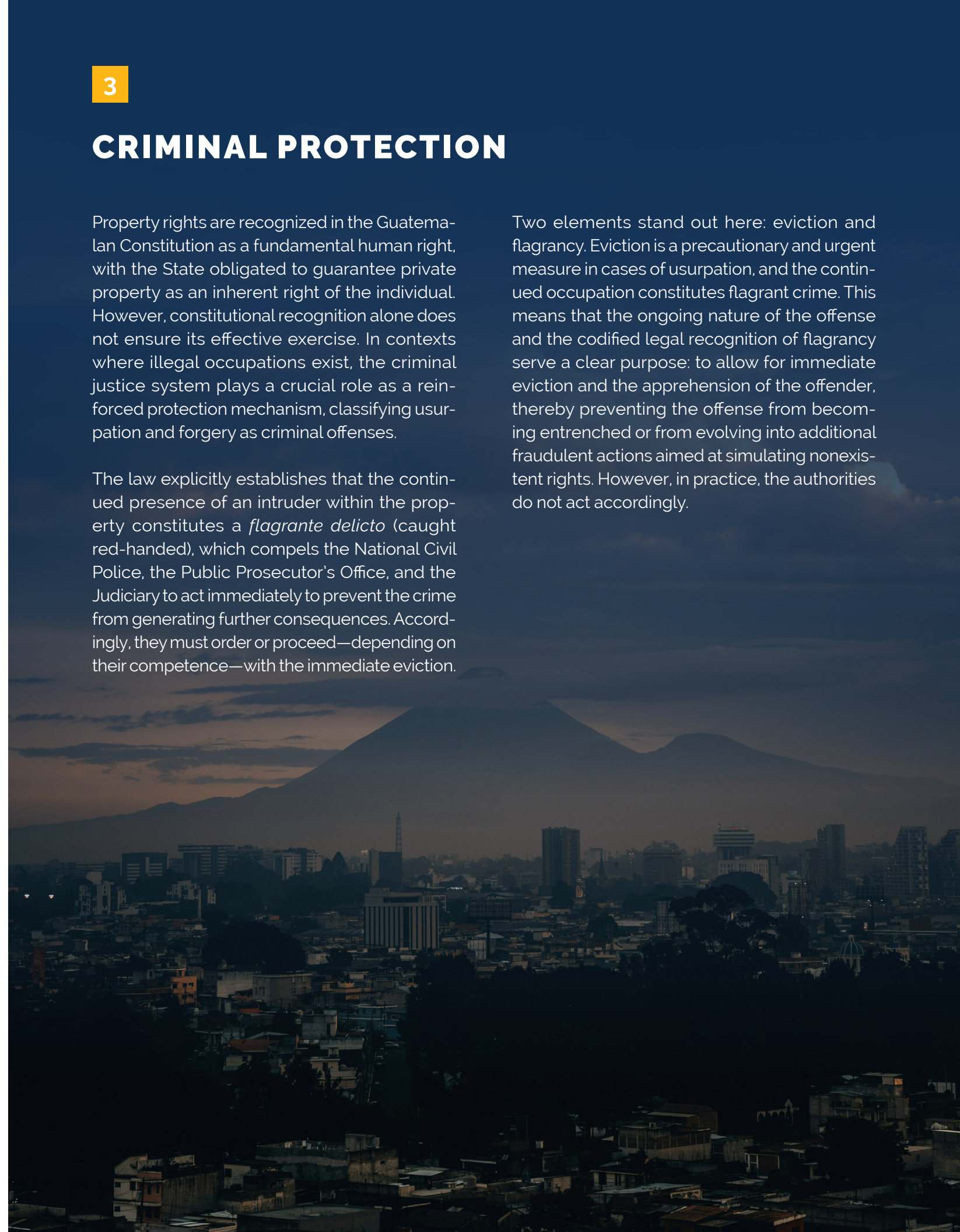
3

CRIMINAL PROTECTION

Property rights are recognized in the Guatemalan Constitution as a fundamental human right, with the State obligated to guarantee private property as an inherent right of the individual. However, constitutional recognition alone does not ensure its effective exercise. In contexts where illegal occupations exist, the criminal justice system plays a crucial role as a reinforced protection mechanism, classifying usurpation and forgery as criminal offenses.

The law explicitly establishes that the continued presence of an intruder within the property constitutes a *flagrante delicto* (caught red-handed), which compels the National Civil Police, the Public Prosecutor’s Office, and the Judiciary to act immediately to prevent the crime from generating further consequences. Accordingly, they must order or proceed—depending on their competence—with the immediate eviction.

Two elements stand out here: eviction and flagrancy. Eviction is a precautionary and urgent measure in cases of usurpation, and the continued occupation constitutes flagrant crime. This means that the ongoing nature of the offense and the codified legal recognition of flagrancy serve a clear purpose: to allow for immediate eviction and the apprehension of the offender, thereby preventing the offense from becoming entrenched or from evolving into additional fraudulent actions aimed at simulating non-existent rights. However, in practice, the authorities do not act accordingly.



OBSTACLES IN THE IMPLEMENTATION OF EVICTION MEASURES AND THE STATE'S FAILURE TO FULFILL ITS DUTIES

This chapter analyzes how the implementation of judicial evictions in Guatemala faces significant obstacles due to misinterpretations of international standards and excessive administrative requirements. It is essential to emphasize that in such cases, the real victim is the legitimate property owner, who is left unprotected. Any administrative protocol should focus on safeguarding the constitutional right to property, free from political interference.

However, in practice, these mechanisms have been neutralized by growing administrative interference and erroneous legal interpretations, which have made eviction a nearly impossible measure to execute. Part of this distortion originates from the increasingly common tendency to equate court-ordered evictions for usurpation with forced evictions, without distinguishing between unlawful occupation and vulnerable situations protected under international human rights law.

This perspective not only distorts the purpose of legal eviction as a precautionary measure but also imposes a series of obligations on the State that are not provided by law—ultimately shifting the burden onto the property owner. Owners are required to provide shelter, food, and assistance to those who committed a crime, while the rightful owner loses their home, crops, or livelihood, without any equivalent protection or support. Currently, there are no effective mechanisms to allow the owner to recover their investment, nor adequate compensation for time lost, damage suffered, or harm endured. In such conditions, there is no guarantee that the owner will ever regain full use, enjoyment, and disposal of their property.

CAN A COURT-AUTHORIZED EVICTION BE EQUATED WITH A FORCED EVICTION? CONCEPTUAL ERRORS

No, a court-authorized eviction cannot and should not be equated with a forced eviction.

Eviction is a legal, urgent, and precautionary measure designed to restore legitimate possession when usurpation has occurred. It is grounded in procedural principles such as *periculum in mora* (danger in delay) and is supported by the Criminal Code. Therefore, eviction is a judicial measure that responds to the commission of a criminal offense, and its omission deepens impunity.

Far from being an arbitrary act, it is the State's response to a criminal offense and aims to protect a human right: property.

However, in international debates and some reports, the concept of judicial eviction has been confused with forced eviction and internal displacement. This confusion generates a mistaken narrative that obstructs legal enforcement and misrepresents the meaning of property rights.

Forced eviction refers to the removal of persons against their will from their homes, land, or livelihoods without a judicial order, and outside the law.

Internal displacement, as defined by the UN Guiding Principles on Internal Displacement, is caused by armed conflict, human rights violations, or natural disasters, where people are forced to leave their homes without crossing an international border.

Unfortunately, the Inter-American Commission on Human Rights (IACHR) has contributed to this conceptual confusion. In various reports, it has stated that evictions executed by the Guatemalan State—even when based on court orders—constitute forced evictions, associating them with corporate interests and harm to vulnerable communities. It also claims that such evictions create internal displacement and must comply with strict international standards, including guarantees such as housing, food, healthcare, education, access to justice, and restitution. This view misrepresents the legal nature of judicial evictions for usurpation, treating them as human rights violations rather than the legitimate restitution of property rights.



THE CONCEPTUAL ERROR

The problem arises when judicial eviction for illegal occupation is misclassified as internal forced displacement. This equivalency is technically flawed for several reasons:

- Judicial eviction is the consequence of a criminal offense (usurpation), not of an involuntary situation.
- It seeks to restore a violated right (property). The illegal occupant has no legitimate right to remain, so their removal is not an arbitrary deprivation of rights.

- It is ordered by a competent judicial authority and based on legal grounds. Its execution is not a repressive or rights-violating act, but a judicial action to uphold legal order and restore rights.

To accept that eviction in such cases constitutes forced eviction or displacement positions the offender as the victim—something that is incompatible with the principle of legality and the State's duty to protect private property.

IMPORTANCE OF DEFINING TERMS ACCURATELY

It is critical to distinguish between:

- Internal forced displacement, caused by external events beyond the individual's control, without any unlawful behavior.
- Forced eviction, which may constitute a human rights violation when carried out arbitrarily and without legal process.
- Judicial eviction for usurpation, a legitimate mechanism within the legal system, designed to restore the owner's violated property rights.

Equating these terms is a serious technical error that hinders justice, weakens property rights, and distorts the State's obligations toward actual victims of displacement.

ADMINISTRATIVE REQUIREMENTS THAT OBSTRUCT EVICTION ENFORCEMENT

Despite clear legal standards, in practice authorities condition the execution of evictions on requirements that are not established in any law. These include:

- Logistical resources demanded from the complainant, such as:
 - » Transportation for illegal occupants
 - » Temporary shelters
 - » Protection of the occupiers' belongings from destruction or theft
 - » Food, drinking water, sanitation
 - » Medical teams and equipment

- Inter-institutional coordination with numerous entities: While the Public Prosecutor's Office, Judiciary, and National Civil Police are legally responsible, other agencies involved include the Human Rights Ombudsman, Presidential Peace and Human Rights Commission, fire departments, Guatemalan Coordinating Agency for Disaster Reduction (CONRED), Ministry of Health, Land Fund, and the National Council for Protected Areas.

Each institution operates under its own protocols, sometimes in contradiction, creating a parallel regulatory framework in which a final judicial ruling cannot be enforced unless these extra-legal requirements are met.

Rather than enforcing a ruling to protect a violated right, the State ends up shielding the perpetrators, turning the process into an unsolvable labyrinth for the owner—as if the property owner were the offender.

STATE OMISSION AND THE CONFIGURATION OF DE FACTO EXPROPRIATION

Expropriation, as a legal figure, implies the forced transfer of property rights from the titleholder to the State or a third party, with prior, fair, and verified compensation. However, a variant exists that does not occur formally but has the same practical effect without compensation: *de facto* expropriation.

This occurs when the State, through action or omission, prevents the effective exercise of constitutionally recognized property rights. In Guatemala, this happens when authorities:

- Impose non-legal conditions for executing eviction orders, improperly burdening the owner with the task of coordinating multiple institutions, each with requirements that hinder enforcement.
- Delay or fail to execute final court orders, leaving owners in legal and material limbo.
- Tolerate prolonged occupation without taking effective steps to reverse it or protect the property.
- Offer no compensation to dispossessed owners—not restitution, not damages, nor effective recovery of their investment.

These combined elements amount to *de facto* expropriation. There is no official decree, and no compensation, but the outcome is the same: the definitive loss of property rights due to State inaction or obstruction.

This creates perverse incentives for usurpation, discourages private investment, and fosters legal uncertainty. While the usurpers benefit from State protection, rightful owners face disproportionate obstacles to exercise rights that should be constitutionally guaranteed.

ANALYSIS OF THE UN SPECIAL RAPPORTEUR'S STATEMENTS ON HOUSING

As this study demonstrates, one of the greatest obstacles to the protection of property rights in Guatemala arises not only from internal administrative barriers, but also from the conceptual distortion promoted by certain international organizations.

The statements made by the United Nations Special Rapporteur on the Right to Housing during his visit to Guatemala in March 2025 serve as a clear example of how fundamental legal concepts are misrepresented, isolated cases are generalized without technical evidence, and recommendations are issued that contradict the country's legal framework.

During his visit, the Rapporteur made statements lacking methodological rigor, ignoring national law, and presenting an ideologized narrative of judicial evictions. Instead of conducting an objective evaluation, his declarations were marked by conceptual errors, emotional appeals, and logical fallacies aimed at legitimizing unlawful acts such as usurpation and undermining democratic institutions.

One of his main recommendations was the imposition of a general moratorium on evictions. This proposal is not only legally unfeasible but also disregards the fact that judicial evictions in Guatemala are carried out in accordance with due process, as established in Article 39 of the Constitution and the Criminal Procedural Code. Suspending the enforcement of final court rulings would violate judicial independence, weaken legal certainty, and normalize the illegal occupation of private property. Usurpation and aggravated usurpation are criminal offenses under the Guatemalan Penal Code; thus, a moratorium would not only be unlawful but would also encourage impunity.

The Rapporteur also claimed that many communities are evicted without the opportunity to defend themselves or receive prior notice. This assertion lacks legal and factual basis. Guatemalan law expressly guarantees the right to a defense and establishes formal procedures for prior notification in both civil and criminal cases.

If a procedural irregularity occurs in a specific case, it must be addressed individually by the competent courts—not used as an excuse to delegitimize the entire judicial system or justify illegal occupations.

The Rapporteur further stated that evictions are typically violent, resulting in injuries or deaths. This kind of statement seeks to provoke alarm without foundation and fails to acknowledge that violence, when it occurs, is generally the result of organized resistance by those who have unlawfully taken over private property. The National Civil Police operates under strict protocols regulating the proportional use of force. Any individual abuse must be investigated and prosecuted, but such incidents cannot be used to undermine the legality of eviction proceedings or erode property rights.

Another serious claim was the alleged systematic criminalization of those who protest against evictions. This accusation, made without evidence, ignores the fact that criminal proceedings for usurpation, forgery, and coercion are initiated in response to specific criminal acts and under judicial supervision. What is prosecuted is not opinion, but conduct explicitly defined as illegal by law. Portraying those responsible for illegal occupations as victims of criminalization completely inverts the principle of legality.

Finally, the Rapporteur attributed the root of collective evictions to a "historical legacy of colonialism, dispossession, and extractivism," as if the very origin of legitimate property were inherently illegitimate. This ideological stance ignores the existence of a formal and legally valid land registration system and evades the technical legal analysis that is actually required.

The solution to land conflicts does not lie in suspending property rights or weakening the rule of law, but in strengthening mechanisms such as cadastral surveys, titling, and the legal regularization of land tenure.

In summary, the Rapporteur's statements do not help solve the problem—they worsen it.

By disregarding the legal framework, misrepresenting the role of the State, and distorting the rights of legitimate property owners, his stance becomes an obstacle to the true protection of human rights in Guatemala. Private property is a right enshrined in both the Constitution and international treaties; undermining it through unfounded narratives only serves to perpetuate legal uncertainty and impunity.



RECOMMENDATIONS

The analysis presented in this chapter shows that, despite the constitutional recognition of property rights, the Guatemalan State faces serious structural deficiencies in ensuring their effective exercise in the face of phenomena such as usurpation. A combination of omissions in the implementation of precautionary measures, operational demands not contemplated by law, and misinterpretations of international standards has created conditions that favor the consolidation of illegal occupations—amounting to *de facto* expropriation.

This situation not only violates the property rights of thousands of Guatemalans but also undermines legal certainty and confidence in the rule of law.

Below is a set of institutional recommendations aimed at reversing this trend and restoring the central role of property rights as a pillar of the legal order:

1. Creation of Specialized Courts

Currently, eviction orders are not executed with the necessary promptness because they are handled by Justice of the Peace courts with overwhelmed dockets and without the personnel or conditions to execute urgent measures—especially in areas subject to community pressure or risk of confrontation. Furthermore, these courts handle a variety of cases and lack specialization in usurpation-related matters, which are complex and require differentiated approaches.

The lack of institutional capacity and the increasing number of complaints prevent the progress of proceedings in accordance with legal objectives, leading to suspensions, rescheduling, and loss of effectiveness. The creation of specialized judicial bodies would allow for more agile, technically sound, and less politically pressured responses.

2. Adoption of a Joint Inter-Institutional Eviction Protocol

It is essential to implement a joint operational protocol that defines clear, simple, and coordinated rules for eviction enforcement, while respecting the fundamental rights of all parties within the bounds of the law. This instrument must:

- » Eliminate disproportionate burdens on the owner
- » Harmonize criteria across involved institutions
- » Prevent discretionary actions that currently cause operational blockages

This protocol should also clearly define the role and limits of each institution, so that a judicial resolution cannot be obstructed by bureaucratic inconsistencies or administrative overreach.

3. Strengthening the Special Prosecutor's Office for Usurpation Crimes

The creation of the Special Prosecutor's Office against Usurpation Crimes through Agreement 46-2020 by the Public Prosecutor's Office is a significant institutional advancement. However, this unit needs:

- » More human, logistical, and technical resources to meet the growing complexity of cases
- » Territorial expansion to reach areas most affected by usurpations
- » Specialized training for staff
- » Greater autonomy to coordinate inter-institutional actions, especially in cases involving multiple actors or related crimes such as forgery, threats, and coercion
- » Only through these measures can the office provide effective criminal prosecution.

4. Strengthening the Technical Capacities of Institutions Involved in Evictions

It is necessary to systematically strengthen the technical capacity of entities involved in eviction procedures through:

- » Specialized and ongoing training programs
- » Deepening knowledge about property rights as human rights
- » Understanding the procedural guarantees that protect owners

- » Clarifying the specific role of each institution according to current legal frameworks

Improving technical competencies will help overcome institutional resistance, ensure enforcement of judicial rulings, and strike a proper balance between the rights at stake in these types of conflicts.

5. Effective Application of the Flagrancy Principle in Usurpation Cases

Under Article 256 of the Criminal Code, the continued presence of the usurper on the property constitutes flagrante delicto. This provision authorizes law enforcement—particularly the National Civil Police and the Public Prosecutor's Office—to act immediately to prevent further harm resulting from the ongoing offense.

However, in practice, this provision is not applied with the required urgency, causing delays in actions that are legally defined as urgent. It is recommended to establish a clear operational directive, reinforced with institutional guidelines, to ensure that flagrancy is recognized and acted upon immediately.

This would allow authorities to intervene from the outset of an illegal occupation, preventing the consolidation of facts that undermine property rights.

With these five recommendations, the study concludes its policy proposal to address the structural and operational weaknesses that enable illegal property invasions and perpetuate *de facto* expropriation. These reforms are necessary to restore the legitimacy of the State, uphold property rights, and reestablish legal certainty as a foundation for peace, investment, and freedom in Guatemala.

BIBLIOGRAPHY

- Congress of the Republic of Guatemala. (1963). Civil Code. Decree No. 106. Diario de Centro América.
- Congress of the Republic of Guatemala. (1973). Criminal Code. Decree No. 17-73. Diario de Centro América.
- Congress of the Republic of Guatemala. (1985). Constitution of the Republic of Guatemala. Diario de Centro América.
- Congress of the Republic of Guatemala. (1992). Criminal Procedural Code. Decree No. 51-92. Diario de Centro América.
- De Soto, H. (1987). The Other Path: The Invisible Revolution in the Third World (7th ed.). Editorial El Barranco.
- Inter-American Commission on Human Rights. (2017). Human Rights Situation in Guatemala. OEA/Ser.L/V/II. Doc. 208/17.
- International Commission of Jurists. (2012). Access to Justice: The Case of Communities in San Andrés and La Libertad, Petén, Guatemala.
- National Civil Police. (2021). Resolution No. 33-2021: Police Action Protocol for Evictions.
- Public Prosecutor's Office. (2012). General Instruction No. 03-2012 for the Investigation of the Crime of Usurpation and the Request and Processing of Eviction Orders.
- Public Prosecutor's Office. (2020). Agreement No. 46-2020: Creation of the Prosecutor's Office Against the Crime of Usurpation.
- Public Prosecutor's Office. (2021). General Instruction No. 04-2021: Implementation of the Protocol for the Investigation of Usurpation, Aggravated Usurpation, and Protected Areas Usurpation.
- United Nations. (1998). Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2). Presented by Francis M. Deng.
- United Nations. (2007). Basic Principles and Guidelines on Development-Based Evictions and Displacement (A/HRC/4/18, Annex I).

ACKNOWLEDGMENTS

The Property Rights Observatory extends its deepest gratitude to Lorenzo Montanari, executive director of Property Rights Alliance, whose close and generous support made it possible to prepare and publish this case study in the International Property Rights Index (IPRI).

We also wish to thank Dr. Hernando de Soto, President of the Institute for Liberty and Democracy, for his visionary leadership in promoting property rights as a foundation of freedom and development worldwide. Our recognition extends as well to Dr. Sary Levy-Carciente, author of the IPRI, for her technical rigor and steadfast commitment to strengthening institutions across Latin America.

The Observatory reaffirms its mission to position property rights as a central pillar of freedom for Guatemalans and a catalyst for economic and social growth, contributing with proposals aimed at strengthening the institutions that guarantee property rights in Guatemala.





INTERNATIONALPROPERTYRIGHTSINDEX.ORG