

Lawfare vs. Democracy

Report by the
Progressive International
& Common Frontiers



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Introduction

Democracy is everywhere under threat. The twin insurrections at the US Capitol and the Brazilian Three Powers Plaza not only illustrated the common fate of our democratic systems, but also the shared tactics deployed by reactionary forces to undermine them. Yet the most powerful weapon in the arsenal of authoritarianism is also the most insidious — far less theatrical than a riot but often far more effective in its assault on our democracies: legal warfare, or “lawfare.”

Despite many eulogies over the past decade, democracy is not yet dead. Across the hemisphere, powerful new movements have formed to bring popular demands into our democratic systems. The call for higher wages, land reform, and ‘total peace’ emanates today from street protests to the halls of parliament. In Latin America, in particular, new ‘progressive’ governments are coming to power with a mandate to respond to those protests and deliver on their demands.

But entrenched interests in Latin America — many of which have dominated the region for centuries, with surnames that have stayed in power for generations — are not easily dislodged. As progressive forces have gained confidence, experience, and electoral popularity, these reactionary forces have been forced to regroup and renovate their strategies to hold onto power and resist progressive reform.

Two centuries ago, that strategy was conducted by imperial powers. One century ago, by military generals. But in Latin America today, democracy retains its status as the dominant paradigm and standard norm of national governance— approved, if not mandated by northern neighbors in the United States and Canada . Reactionary forces, for their part, understand that the pursuit of domination must conform to its broad contours.

Within those constraints, then, one tactic has become dominant: “lawfare,” or legal warfare — the deployment of judicial power to persecute political opponents: candidates, parties, even entire organizations and social movements.

Latin America has been a laboratory for these tactics, from high-profile cases like President Luiz Inácio Lula da Silva that capture the world's attention to lower-profile ones like Guatemala's Movement for the Liberation of the Peoples (MLP) that receive little coverage abroad.

But these tactics are now going global, exported and deployed across the world in countries like Turkey, India, and even the United States. The fate of legal warfare, then — of the tactic, its practitioners, and those who resist it — is the fate of democracy full stop.

With these high stakes in mind, this report offers an account of legal warfare: its origins, its application, and its implications.

It begins with an overview of the concept. What is lawfare? Where did come from? How is it used? And why is it so dangerous?

The report then turns to deployment in three case studies from the past decade: Brazil, Ecuador, and Guatemala — three countries where lawfare has already irrevocably changed the course of these nations' histories.

Finally, the report reviews implications at both regional and global levels, through the internationalization of the tactic and its application beyond Latin America.

The goal of the report is therefore not only to describe a chapter in history or provides a lesson in political science. Rather, it is to help train progressive forces to prepare for the arrival of this insidious tactic — and to resist it: on the streets, in the press, in our parliaments, and in the courts.





An Overview

Legal warfare has become the chosen weapon of reactionary forces around the world. But this was not always the case. Where did it come from? When did it arrive to the Americas? Why did it gain such popularity across parties, countries, and contexts?

Throughout the Cold War, the United States installed and supported military dictatorships across Latin America — in Brazil, Guatemala, Argentina, Peru, Chile, Paraguay, among others. These interventions relied on either the public or covert intervention of the US as a global military superpower, or the credible possibility of such an intervention. This suppression of left-wing and popular forces used violent force — through assassinations, arms supplied to reactionary forces, guarantees of US military support, even proxy wars and full-scale war, such as the 1983 invasion of Grenada.

However, in the decades after the end of the Cold War, Latin America has been a site of steady democratic rejuvenation. Popular projects flourished during the so-called “Pink Tide”, as the forces of the social majorities were swept into state power in countries like Brazil, Bolivia, Ecuador, Argentina, Paraguay, Venezuela, and Uruguay. In many contexts, these governments set about reorganizing society and systems of governance in profound ways. And they began to unify as geopolitical actors in regional integration projects such as the Union of South American Nations (UNASUR) and the Community of Latin American and Caribbean Nations (CELAC), among others.

Defeated at the ballot box, the right-wing across Latin America began their search for an effective tactic to repel popular forces and their allies in government. The United States — their key sponsor to the North — found itself without the Cold War adversary of the Soviet Union and, therefore, without a convincing rationale to oppose left-wing governments elected in systems of liberal democracy that they claimed to promote.

So where did they turn? The judiciary.

What Is Lawfare?

The term lawfare was coined by US Air Force Col. Charles Dunlap in 2001 to describe “the use of the law as a weapon of war.” Initially, Dunlap identified lawfare as a potential weapon to be used against the United States and its allies — deployed either at the level of international law or against US operations in other countries.

Soon, however, lawfare was also recognized as a tool to be utilized by the US and forces aligned with its interests. The Latin American right-wing, coordinating in some cases with US government agencies, began to use lawfare as one of its primary tactics in its continental push to roll back the Pink Tide.

Vollenweider and Romano define lawfare as “the abuse of legal instruments for purposes of political persecution, destruction of a public image and disqualification of a political adversary.” Viviana Maryoli Hinojoza Caceres adds, “This means using the law as a weapon to destroy one’s political opponent through the judicial process.”

The scale of lawfare can vary widely. Lawfare can target political opponents from individuals such as political leaders, activists, or candidates to entire parties, organizations, social movements. It can even — especially during moments of social protest — be mobilized against whole classes of society, using justifications such as terrorism, sedition, rebellion, or other accusations to revoke basic rights on a mass scale.

To the succinct definitions above, we must also add several generalizable components of lawfare as it has been observed across the region.

Lawfare depoliticizes

While at first glance, lawfare appears to politicize supposedly “neutral” legal mechanisms, the tactic of lawfare is in fact part of the broader logic of the neoliberal advance — namely, depoliticization.

Lawfare seeks to submit political questions to technocratic ones, decided not by the people, but by bureaucrats, lawyers, and judges. Of course, these technocratic and legal systems are not neutral, but rather based on

particular systems of knowledge and values that favor the dominant interests. As opposed to flourishing public discourse, open ideological debate, or political contestation regarding the material needs of society and how best to meet them, lawfare seeks instead to subjugate politics to the courts.

This push to the courts transforms political questions such as ownership, redistribution, power, and social justice into legal questions of individual wrongdoing, procedural error, and accusations. Reactionary forces recognize the real stakes to be highly political, of course. Yet it is much more difficult to challenge the broadly supported redistributive policies of former presidents Luiz Inácio Lula da Silva or Rafael Correa than it is to simply attack them as criminals and impede their legal road to political power.

This depoliticization is achieved first in the initial shift from the terrain of democratic politics into the judiciary. It then reproduces and exacerbates itself in a vicious cycle by demoralizing the hopes of people, legitimization of propaganda against social reformers by way of the law, and increased cynicism. Ultimately, it threatens a wholesale rejection of politics as a mechanism for social change.

Lawfare obfuscates interests

Just as lawfare elides the political question, it also altogether conceals the political and economic interests involved. Despite the work of intrepid independent journalists, it can be nearly impossible to reveal the full extent of the specific ruling interests at work — domestic and foreign — in a given lawfare case, as its beneficiaries hide themselves behind the shield of the legal system.

Only from investigations by determined journalists at media outlets BrasilWire, Pandemia Digital, and other independent reporting do we now begin to understand the extent of these networks. While the beneficiaries and targets of an instance of lawfare can often be assumed relatively quickly, it can take years to assemble the evidence to definitively outline the full range of forces at work. For example, the active role of the US government's collusion in the Lava Jato was hidden from the Brazilian Ministry of Justice and not known by President Dilma Rousseff at the time.

Lawfare leverages the media

Lawfare rarely remains within the confines of the courts. Some, such as the Lawfare Observatory from the Latin American Strategic Center for Geopolitics (CELAG), consider lawfare the manipulation of a singular “legal-media apparatus.”

Under conditions of hegemonic, concentrated private media power sympathetic to oligarchic interests, the law and the media co-legitimate one another. Media organizations willing to collaborate with or uncritical of lawfare can “manufacture consent” to use Chomsky and Herman’s (1988) terminology — reinforcing public opinion and shaping political discourse to support shifts toward neoliberalism without necessarily overt coercion.

This makes even the allegations of wrongdoing so potent for lawfare, no matter how unfounded they might be. Even cases without a trace of legal legitimacy can be spun into years of damaging media spectacle.

Likewise, the judiciary itself legitimates the hegemonic media’s biased coverage by its very legal authority. Major news organizations do not necessarily need to invent propaganda out of whole cloth. Instead they can simply center the criminal case or judicial proceedings which they inject public debate, rather than the underlying political or class struggle.

The discourse-shaping power of hegemonic media outlets is then amplified by social media using outright disinformation, fabrications, “fake news,” and by virtue of simply overwhelming the public with negative media. Contracting of troll farms, bots, and targeted advertising for this purpose is well documented.

Lawfare operates from above

There is no popular basis for lawfare — almost by definition.

As Silvina Romano writes, lawfare always operates “from above.” In other words, lawfare is exacted upon political opponents by a small group of judges, lawyers and media professionals, often with foreign assistance from attorneys, think tanks, government agencies, or intelligence services.

Social movements, popular forces, and the working class do not and cannot instigate lawfare from below.

Within the state, lawfare seeks to privilege or elevate often unelected judicial organs of state above the people's elected representatives in the executive or legislative powers — vehicles through which popular, progressive movements have won social change through political organization from below.

Lawfare creates a state of exception

Lawfare is not random. It is deployed at particular times using particular rationales that play to the interests of their architects.

Lawfare can often be seen at work when a case emerges just in time to disqualify a political opponent, perhaps late enough so that there can be no adequate legal appeal or at the most damaging moment for popular forces. In some instances, this can be used as a last ditch effort to reverse a popular victory.

When lawfare is undertaken, it is also often rationalized under the most dubious of double standards. This can mean laws applied only to one political current, perhaps using an entirely novel legal rationale to criminalize a whole movement, or a uniquely pedantic juridical approach to disqualify the opposition over minute details.

Lawfare is flexible

One attractive aspect of lawfare as a strategy for reactionary forces are the wide range of possible objectives it offers with few political costs.

Targets can vary from individuals, organizations, parties, or entire political tendencies. While the ultimate objective may be full criminalization or prohibition of entire political tendencies — i.e. declaring a national political movement seditious — even if the goal is not achieved, the same tactics may eliminate political candidates, decapitate popular movements, or imprison key organizers.

When the basis of lawfare is weak, fabricated and spurious even under a given legal system's logic, lawfare can still be fertile ground for cultivating a one-sided narrative in the press to damage popular movements and/or for overwhelming them with legal costs or years drawn out in court against disproportionately resourced law firms.

Regardless if any of these objectives is met, the simple attempt at lawfare can still generate "lawfear" — hesitation to instigate political change for fear of lawfare — and the spread cynicism in the people. With constant reinforcement in the media, repeated use of lawfare (even failed attempts) can lead popular bases to see movements for change as futile, self-defeating, or corrupt.

Lawfare is not a catch-all

These aspects of lawfare mentioned above can also help bound the concept of lawfare. Despite persistent, brutal use of lawfare in Latin America over the past decade — with regional, international, and global effects — any interaction between popular movements and the law should not be uncritically labelled as lawfare.

Lawfare is just one of many instruments in the broader toolkit of hybrid warfare — ranging from media propaganda to outright military intervention, and everything in between. Already in the 21st century, popular forces in Latin America have faced many assaults that used non-lawfare related tactics. These additional weapons of hybrid or conventional warfare can be complementary to lawfare, but need not be utilized in tandem.

Some of these weapons are economic. The United States continues to unilaterally impose an illegal, over 60-year economic blockade against Cuba. Countries including Canada, the United Kingdom, and other European states have joined the United States to impose collective punishment in the form of crippling sanctions against Venezuela, Nicaragua, and Haiti. For decades, the International Monetary Fund (IMF) and World Bank have imposed structural adjustment programs to accelerate neoliberal reforms, open Southern markets to privatization, and submit sovereign national development to the demands of international capital.

Some involve the use of coercive violence. The US-led War on Drugs' bullets, prisons, and toxic herbicides ravage the globe. Foreign militaries and security forces continue direct and indirect operations, ranging from British troops advising police forces in Colombia to outright military intervention by the US, Canada, among others in Haiti in 2004 to consolidate the coup against Jean-Bertrand Aristide. In 2023, Canadian and US troops, planes, and warships are again deployed in Haiti.

Still others involve explicit coups d'état. In Bolivia, false claims of electoral fraud, bolstered by the Organization of American States (OAS) along with foreign interests, precipitated by a coup against former Bolivian president Evo Morales by Jeanine Áñez and her allies. In 2009, a coup by the Honduran military encouraged by the US Department of Defense expelled then-president of Honduras, Manuel Zelaya, from the country in the middle of the night.

Yet none of these examples, as reprehensible as they are, should be conflated with lawfare. If we are to combat lawfare, we must understand it not as a catch-all category, but as a strategy systematically mobilized against popular forces.





Case Studies

The following section outlines three prominent lawfare cases at the level of national politics in Latin America:

- (i) Lawfare against the Workers' Party (PT) of Brazil resulting from the Lava Jato case, which first provoked the soft coup of Brazilian President Dilma Rousseff, severely damaged the Brazilian economy, and prevented former Brazilian President Luiz Inácio Lula da Silva from running in the 2018 presidential elections;
- (ii) Lawfare against former Ecuadorian President Rafael Correa, supporters from his Citizens' Revolution (RC) movement (including prominent elected officials along with the 2019 protest movement), and 2021 Ecuadorian presidential candidate, Andrés Arauz;
- (iii) Lawfare against the Guatemalan presidential ticket of Thelma Cabrera Pérez and Jordán Rodas from the Movement for the Liberation of the Peoples (MLP) party to disqualify their candidacy and prevent free elections in Guatemala in 2023.

Brazil

It is often difficult to pinpoint the precise moment when a given lawfare process begins. In the Brazilian case, one might begin in 2012 when, as whistleblower Edward Snowden revealed a year later, the US National Security Agency (NSA) spied on President Dilma Rousseff and her aides, intercepting their private communications in its intelligence gathering operations. Snowden also revealed that the agency had targeted Petrobras, Brazil's state oil company — one of the largest public companies in the world. Relations were clearly strained between then US President Barack Obama and President Rousseff who cancelled a state visit to the White House over the breach of Brazilian national sovereignty, causing former President Lula to call for an official US apology. But this was just the first hint of what was to come.

As Brian Mier reports, the 1977 Foreign Corrupt Practices Act (FCPA) — originally written to prevent US companies from conducting bribery overseas — was then modified and incorporated into the 1997 Anti-Bribery Convention treaty. The law and accompanying treaty allows the US to claim extraterritorial jurisdiction in any signatory state who has ever accessed the US financial system — companies who have ever used US dollars, held a US bank account, or has stocks or bank accounts in the US — assuming proper collaboration with national authorities. Since Brazil signed the treaty, its prosecutors were able to coordinate with the US Department of Justice (DOJ), the Federal Bureau of Investigations (FBI), Internal Revenue Service (IRS), Department of Homeland Security (DHS), the Securities and Exchange Commission (SEC), and possibly Immigration and Customs Enforcement (ICE) on the investigations.

Operation ‘Lava Jato’ (or ‘Car Wash,’ in English) began with Brazilian prosecutors in 2014 in Curitiba, but quickly involved the US government by March 2014. In 2015, a Brazilian delegation of prosecutors flew to Washington, DC to meet with a litany of US agencies, but when a US multi-agency delegation visited Brazil that same year, Lava Jato prosecutors did not inform the Brazilian Ministry of Justice. The Lava Jato lead prosecutor Deltan Dallagnol, even told aides that the US agencies involved asked the team not to share information regarding their involvement.

As per a separate mutual legal assistance treaty (MLAT), the Ministry of Justice should have been the agency to handle cooperation with US officials, not the Public Prosecutor’s Office (MPF). Yet even when the Ministry of Justice independently learned of the US visit to Brazil, Lava Jato prosecutors suggested they be less “jealous” with international relationships and continued to bypass the Ministry of Justice throughout the investigation. The US Acting Assistant Attorney General Kenneth Blanco would later boast at a 2017 Atlantic Council event that “given the close relationship between the Department [of Justice] and the Brazilian prosecutors, we don’t need to rely solely on formal processes such as mutual legal assistance treaties.”

Brazilian congressman Paulo Pimenta (PT-RS) argued in a 2019 report to the European Union, seeking international solidarity, that this lawfare amounted to illegal cooperation by the prosecutors and the US. “In the US action against Petrobras, Brazilian prosecutors acted as assistants to the

American prosecution, against the interests of Brazil and Petrobras,” he wrote, “[establishing], in clear defiance of the Constitution, an independent foreign policy towards the United States.”

In 2020, Fabio de Sá e Silva, a Brazilian Studies professor at the University of Oklahoma, likewise said, “A lot of people think that the US came to investigate these companies in the attempt to find something that would give it a chance to interfere in these processes, by which these companies were evolving and gaining markets.”

Yet even as Lava Jato captured headlines as “the biggest corruption scandal in history,” President Dilma Rousseff — kept in the dark regarding the extent of US collaboration — remained committed to rooting out corruption. This commitment to investigating crimes and kickbacks among the Brazilian political class led ministers from other parties to plot against her. “We have to stop this shit...we have to change the government to be able to stop this bleeding,” then-Planning minister Romero Jucá said.

Finally, in a parliamentary “soft coup” led by many politicians accused of much more severe crimes, in 2016 Dilma Rousseff was impeached as the president of Brazil. Her democratic mandate was severed based on the accusation of a minor charge of irregular transfer funds between public budgets. Needless to say, the media storm attacking the former president and her party as the epitome of corruption spiraled to a fever pitch.

Years later in 2022, the Public Prosecutor’s Office (MPF) officially confirmed that President Dilma Rousseff had committed no crime. She was innocent and, thus, had been impeached from the most powerful offices on the continent entirely without justification. Long before she became president, Dilma Rousseff survived savage torture at the hands of the military dictatorship installed in 1964 with the support of the US. After decades of popular struggle with the Workers’ Party, leading Latin America’s largest country as its head of state, President Rousseff was ousted by lawfare.

Reactionary Brazilian forces and their US collaborators didn’t stop there — and neither did the enormous, weaponized power of the Lava Jato investigation. The right-wing sought to take away any chance of the Workers’ Party and popular movements’ return to power. So they had to prevent Lula from seeking the presidency in 2018.

Led by the crusading Lava Jato judge Sergio Moro — who had received training and advice from US attorneys from the DOJ, Lula became the next target of lawfare. Leaked text messages between Lava Jato attorneys showed they were politically motivated not only to disqualify Lula from the presidency, but to defeat any candidate from the Workers' Party (PT).

The case presented against Lula alleged that he received a Petrobras corruption kickback in the form of an apartment in Guarujá, São Paulo, which he did not own and had never visited. For evidence, the prosecution presented a 2010 article stating the Lula family owned a nearby apartment in a different tower and hinged on their own PowerPoint slide with lines pointing to the name “Lula” in the center. Citing doubt and public humiliation over the PowerPoint presentation Moro privately consoled the prosecutors “the criticisms of your presentation are disproportionate. Stand firm.”

It was later shown that Moro not only unethically and illegally communicated with Lava Jato prosecutors, but actively aided and colluded with them. He provided legal tips to the prosecution and advised them on media relations and their communications strategy — all with the goal of eliminating Lula as a presidential candidate and inflicting maximum damage to his public image.

On 5 April 2018, Moro issued an arrest warrant for Lula to surrender himself to a 12 year prison sentence. Even when convicted and serving his sentence, Lula was still the most popular presidential candidate in the polls and the independent United Nations Human Rights Commission called for protection of his political rights. However, an appellate court quickly confirmed Moro's conviction, barring Lula's presidential candidacy. He remained imprisoned for 580 days.

With the Workers' Party's former presidents impeached and jailed, Lava Jato paved the way for an unprecedented victory for the extreme hard-right represented by Jair Bolsonaro. In an apparent (though never proven) quid pro quo, Bolsonaro appointed Moro his Justice Minister with expanded powers and later asserted that he “promised” Moro a lifetime appointment on the Supreme Court (STF). Sergio Moro is now a senator.

The political consequences of Lava Jato lawfare on the Workers' Party were titanic — chief among them President Rousseff's impeachment, Lula's disqualification in 2018, and the rise to power of reactionary forces led Jair Bolsonaro. But its negative effects on the Brazilian economy were no less dramatic. Investment declined by the equivalent of nearly 4% of GDP, Brazil lost the equivalent of billions USD in tax revenue, billions more were paid as fines by order of US courts, and many of the country's largest engineering firms were bankrupted. Worst of all, roughly 4.4 million Brazilians — almost 2% of Brazil's population — lost their jobs in the economic fallout.

The ramifications of the combined political, economic, and social consequences of lawfare with illegal collusion by the United States cannot possibly be documented in full by this report. However, we can state with certainty that lawfare against the Workers' Party from 2012-2018 changed Brazilian history forever.

Ecuador

The last decade in Ecuadorian politics presents several of the most laughably fabricated, yet damaging examples of lawfare. Lawfare initially targeted president Rafael Correa and his political movement, but soon encompassed street protests, and, in 2021, even the Progressive International itself.

In 2017, Rafael Correa left office as president of Ecuador and later moved to Belgium. His political opponents, now in power, moved to present over 30 criminal investigations against him in order to prevent his physical return to Ecuador and preempt the agenda of his political movement. In 2018, Correa was convicted by an Ecuadorian judge of being the "intellectual author" of an alleged kidnapping in Colombia — a conviction that Interpol rejected on human rights grounds as incompatible with their standards. Interpol also refused to enforce at least two other requests on the same grounds, including the infamous "Caso Sobornos," (or the "Bribery Case").

The case against president Correa for bribery was just one of dozens of spurious investigations. But, as noted by former Ecuadorian Foreign

Minister Guillaume Long, “most of these criminal investigations could not lead to court cases that could be tried in absentia, and if you can’t be tried in absentia and there’s no guilty sentence, then [former president Lenin Moreno] can’t bar Correa from running? So, they finally found one, on a very specific case of bribery, that could be tried in absentia.”

The bribery case hinged on testimony and “evidence” presented by Pamela Martínez, a former functionary in Correa’s government, who had worked with companies such as Odebrecht. The damning evidence? A Hello Kitty notebook supposedly detailing bribes she facilitated in 2012 “down to the exact cent.” However, it was later revealed that not only was the notebook printed four years after the alleged facts of the case, but Ms. Martínez also admitted she wrote the notebook in 2018 as “a memoir.”

It was a manufactured case of lawfare in the clearest possible terms, as Interpol confirmed through its refusal to carry out international arrest warrants against Rafael Correa. Nevertheless, Correa was convicted, sentenced to eight years in prison, and lost his political rights — including the right to stand as a candidate for elected office — for 25 years.

In 2019, the conservative forces that succeeded Correa in power passed a wave of anti-austerity measures. This provoked a national strike with tens of thousands of protestors marching in historic mobilizations. The government responded with the heavy hand of lawfare, summarily arresting thousands of Ecuadorians on charges of sedition and rebellion.

These mass arrests affected not only protestors, but top leaders of Indigenous organizations, opposition parties, and popular movements. Even Paola Pabón, the governor (*prefecta*) of Pichincha was jailed for 72 days and then placed on house arrest with an ankle monitor for years through virtually her entire gubernatorial term. All charges were dropped for lack of evidence, but lawfare had done its job: to ruthlessly persecute, imprison, and slander political opponents.

“Lawfare begins with the dissemination of lies on social media, then the Prosecutor’s Office acts against you,” governor Paola Pabón said. “The media are not impartial, they are yet another tool in the strategy of the major political actors.”

Foreign intervention also played a key role in Ecuadorian lawfare. In the lead-up to 2021 Ecuadorian general elections, the *corredista* presidential candidate Andrés Arauz was the target of lawfare undertaken by the Colombian and Ecuadorian states in collusion with major Colombian media outlet, *Semana* — a case which also libeled the Progressive International.

Semana, a previously reputable Colombian magazine, was purchased several months prior in late 2020 by banking moguls with the goal to use its profile to turn it into a right-wing media outlet modeled on the US' Fox News.

On 30 January, just weeks before the 2021 elections, *Semana* published a front page article citing Colombian military and intelligence sources claiming that Andrés Arauz had received an \$80,000 USD loan from Colombian guerrilla fighter in the National Liberation Army (ELN). The basis of this defamatory lie were alleged files found on a laptop of a slain ELN fighter Andrés Felipe Vanegas Londoño, known by the alias “Uriel.” But *Semana* went even further, claiming that Rafael Correa had facilitated the payment between Arauz and ELN at the September 2020 inaugural Summit of the Progressive International.

The allegations of the case are easy to debunk. The Summit of the Progressive International took place entirely online during the first year of the Covid-19 pandemic. You can watch full Summit proceedings here. There was no physical gathering and no possible way that the alleged transaction could have been carried out. The Progressive International categorically rejected (and continues to reject) the false and malicious information published by *Semana* regarding an alleged link with the ELN. As the Progressive International stated in 2020, “The Progressive International did not have and does not have any contact with the ELN.” Finally, the Colombian government has repeatedly used the tactic of producing unsubstantiated evidence from “magic laptops” supposedly seized from guerrilla forces to claim their collusion with politicians from neighboring countries.

Just one day later, on 31 January, a widely shared fake video emerged online with men dressed in military fatigues appearing alongside ELN emblazoned flags and bandanas “from the Colombian jungle” allegedly defending their support for “comrade Andrés.” However, in the most

spontaneous debunking, an Ecuadorian ornithologist quickly proved the video to be a total fabrication after identifying a bird's whistle in the video as that of the pale-browed tinamou (*Crypturellus transfasciatus*). The pale-browed tinamou is only found in the Tumbesian dry forest of southwestern Ecuador and northwest Peru. In other words, the video was not filmed in Colombia, but in the pale-browed tinamou's range an entire country away.

However, the success of lawfare is not in its basis, but its execution. Ecuadorian President Lenin Moreno hurried to legitimate the *Semana* reports of Arauz's alleged ELN funding. Referring to Arauz, President Moreno stated in a public address that "it is very serious that drug traffickers' money is influencing the country's politics."

On 12 February, less than two weeks after *Semana* published its first report and just days after the first round of the election, Colombia's Attorney General Francisco Barbosa traveled to Quito on an official visit to hand-deliver to his Ecuadorian counterpart, Attorney General Diana Salazar the supposed evidence produced by Uriel's magic laptop. The visit produced a public media spectacle and reports of Arauz's purported financing scandal were widely shared across all media and political discourse, severely damaging Arauz's image and political credibility.

The case against Andrés Arauz is a window into how lawfare works. Here, a foreign right-wing mass media outlet published unverifiable and malicious evidence citing state intelligence and military sources. This precipitated the direct intervention by top Colombian government officials in Ecuadorian presidential elections — even after the allegations were publicly debunked and proven to be utterly false — and were then weaponized by Ecuadorian media and politicians to destroy Arauz's political image.

Andrés Arauz would go on to narrowly lose the runoff of the 2021 presidential elections to conservative banker Guillermo Lasso — who faced impeachment proceedings in part due to his ownership in tax haven shell companies revealed by the Pandora Papers, illegal under Ecuadorian law. But even if he had won the election, the so-called "evidence" from the magic laptop could have been used to prevent him from taking office or to impeach him from the presidency.

It is difficult to quantify the political damage to Andrés Arauz and his campaign brought on by this concerted campaign of lawfare. However, it is no exaggeration to say that this international conspiracy to use lawfare may have cost Arauz the presidency.

Guatemala

The final case study this report examines is the most timely of all — in fact it is still ongoing.

In Guatemala, the Movement for the Liberation of the Peoples (MLP) is a left-wing political party formed in strong connection with rural, largely Indigenous social bases in the Committee for Peasant Development (CODECA). The MLP has organized around demands for a constituent assembly, a new plurinational state in Guatemala to better represent Indigenous peoples, and steps toward a more socialist, democratic society.

The movement has been gaining support since the 2019 presidential elections when their Indigenous (Maya Mam) candidate Thelma Cabrera Pérez won over 10% in the first round of voting, nearly enough to pass to the runoff. By late 2022, the presidential and vice-presidential ticket of Thelma Cabrera Pérez and Jordán Rodas, the former Human Rights Ombudsman of Guatemala from 2017-2022, were preparing their campaign and tied for second place in national polls.

Rodas' years of service as Human Rights Ombudsman were extremely effective. He defended the safety of the head of Inter-American Commission on Human Rights, Iván Velásquez, who investigated post-civil war criminal impunity in Guatemala and refused to back down from criticizing Guatemalan politicians. As a result, congressional officials and the national government were revealed to having explicitly ordered a “smear campaign” against Rodas. He left Guatemala for his own safety and fear of arbitrary arrest just before his term as Human Rights Ombudsman ended.

While this arrest never took place, the new Human Rights Ombudsman, Alejandro Cordova Herrera, immediately accused Rodas of alleged “anomalies in the collection of indemnity payments” during Rodas'

previous tenure as Ombudsman. Cordova presented an official complaint on 6 January 2023 without any evidence other than his own accusations.

The Supreme Electoral Tribunal (TSE), Guatemala's electoral organ, then informed both Cabrera and Rodas that their registration as a presidential ticket was rejected on 28 January 2023 due to outstanding "legal charges and allegations." Rodas responded immediately declaring, "organized mafias intend to exclude one of the only decent candidates in this election. It is unprecedented that the TSE would reject our MLP ticket's registration. Democracy in Guatemala has taken another step back — they fear the people and their sovereign decisions."

In one move, reactionary forces in Guatemala were able to both use lawfare as retribution for Rodas' past work defending justice in Guatemala after decades of civil war as well as eliminate Thelma Cabrera — who is not accused of any wrongdoing — from participating in the presidential election. One of the most powerful, popular political parties has been excluded from seeking the presidency in 2023.

The presidential binomial ticket of course appealed this judgement, which was rejected by majority of TSE magistrates on 3 February 2023, thereby transferring jurisdiction out of the electoral authorities' hands and into the judicial branch's appeals system. However, one TSE magistrate declared in a dissenting opinion that accusations alone were insufficient to disqualify a presidential ticket, requiring a conviction and "duly executed sentence."

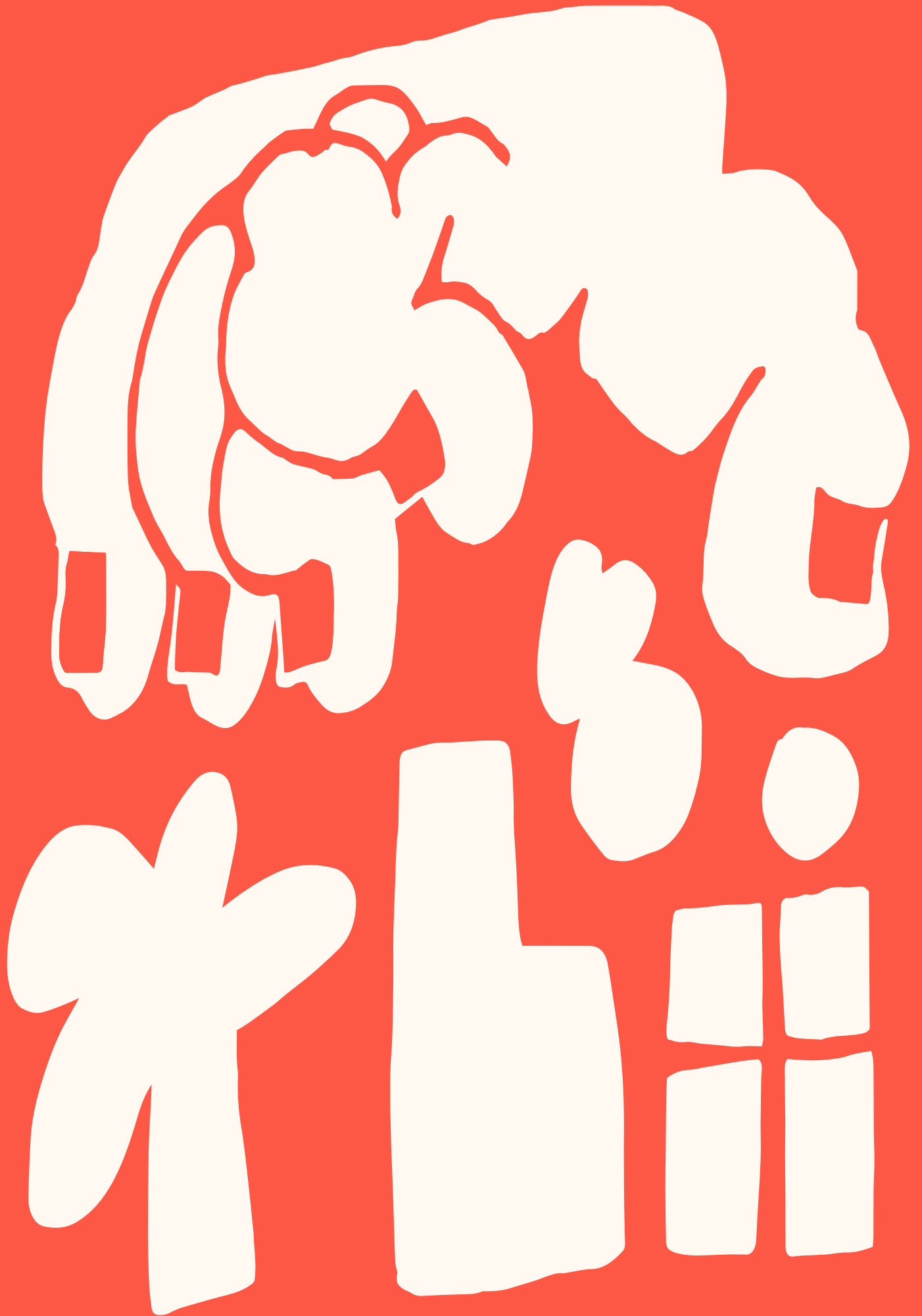
As campaigning kicked off on 27 March, the MLP found itself in court presenting a last minute appeal to the Supreme Court of Justice (CSJ). Although reinstatement of their candidacies remains a technical possibility, as of this writing, the MLP presidential ticket has been removed from the ballots of Guatemalan voters in the 2023 elections.

The blatant strategy of judicial delay is clearly this episode of lawfare's final chapter. Banned from the ballot as campaigning begins, the damage has already been done. Rodas and Cabrera have already warned against observers legitimating the elections further stating "there will be no free elections without us" because "the fraud has already taken place."

To add insult to injury, Zury Ríos now leads the presidential field. Ríos is the daughter of the ruthless military dictator Gen. Efraín Ríos Montt — convicted of crimes against humanity and the genocide of hundreds of thousands of Indigenous peoples, particularly Mayans — and leads an extreme right-wing party. In a shocking double standard, Ríos is explicitly excluded from the presidency by Article 186 of the Constitution of the Republic of Guatemala as a member of the dictator Gen. Ríos Montt’s immediate family. In their justification, courts ruled that this constitutional prohibition on Ríos’ eligibility was temporary.

Nevertheless, the MLP remains undeterred. The party and the former presidential candidates continue to rally for congressional and municipal candidates while building popular power from their social bases. On 3 April, Thelma Cabrera told supporters at the Plurinational Gathering of Women for *Buen Vivir*, “The moment has arrived for our peoples. We have to unite in the face of a failed, corrupt state and that is why they are afraid. I know you are waiting for a response from the TSE, but this is out of our hands. Whether they register us [on the ballot] or not, the struggle continues.”





Conclusion

This report provides a detailed account of the concept of legal warfare and three critical cases of its application in Latin America, illustrating the existential threat that lawfare poses to fair elections, civil and political rights, and democratic systems more broadly.

Yet lawfare is not exclusively a Latin American phenomenon. For decades, Latin America has played the role of empire's workshop, a laboratory for the United States and its allies to experiment with economic policies and political tactics that are then exported elsewhere in the world.

Lawfare is no exception. At the time of writing, the tactic of legal warfare is being actively deployed across the world's largest democracies to criminalize, incarcerate, and eliminate progressive forces from the field of contention — from Turkey, where the Erdogan government has deployed a captured judiciary to ban the People's Democratic Party (HDP) just days before a general election; to India, where Prime Minister Modi has used flimsy judicial pretext to raid opposition party headquarters and remove their leading figures from parliament.

Given the global scale — and the existential stakes — of legal warfare, the report turns to its key questions: What is to be done? How can we resist the tactic of lawfare? How can we repair its corrosive effects on our democracies? And what is the role for allies living abroad?

Pundits frequently answer these questions with a focus on the ballot box: If you do not like something or someone in democratic politics, then simply vote them out of office. But as the cases in this report illustrate, the structure of legal warfare cannot be dismantled by elections alone.

Indeed, the success of legal warfare hinges largely on the behavior of unelected judges, journalists, and editors — actors not easily evicted from their entrenched positions of power. Even control of presidential and legislative powers is not sufficient to contain the effects of lawfare — especially when it can be driven by foreign governments determined to interfere in the political affairs of sovereign powers from abroad.

But lawfare is not an unstoppable tactic. It can, and it has, been defeated in the past. And international solidarity — through trade unions, political parties, press publications, organized diasporic communities, and even local community organizations — has played a critical role in that resistance.

For one, international campaigns can provide essential material support to victims of lawfare — from donations to families to asylum and shelter abroad. This form of international solidarity offered life-support to thousands of families during the Latin American dictatorships of the twentieth century; it remains a critical life-line to persecuted activists, politicians, and their families in exile today.

Second, international campaigns offer technical support in these cases: legal aid, for example, or investigative reporting to uncover the corrupt practices that often lie behind the pact between judicial and political actors. Rigorous and investigative journalism has been an essential resource for both citizens and observers to make sense of legal warfare cases and to recover the truth from a morass of lies and propaganda.

Third, international solidarity brings critical political support: from grassroots demonstrations to parliamentary declarations, international pressure can puncture local myths that sustain legal persecution and change the political calculus that guides these core case. The moral reinforcement gained from an outpouring of global support cannot be overstated.

Consider the “Lula Livre” (Free Lula) campaign. Mobilized by the “International Committee of Solidarity in Defense of Lula and Democracy in Brazil,” the Lula Livre campaign convened the highest-profile allies to the defense of the jailed former president, such as other former presidents like Pepe Mujica or Evo Morales. The campaign also called on trade unions, social movements, organized students, journalists and artists from all around the world.

Every single day, the campaign mobilized these supporters to the jail where Lula was held to yell ‘good morning,’ ‘good afternoon,’ and ‘good evening’. Hunger strikes, radio stations and major marches were launched in Lula’s name. Internationally, statements of international support poured in from

parliamentarians, celebrities, lawyers, and esteemed institutions to denounce lawfare against the former president.

After nearly 600 days Lula finally walked free. His first act upon release was to thank the encampment of supporters who physically stood by him everyday during his imprisonment. “Every single day you were the living force of democracy that I needed to resist,” Lula said.

The Lula Livre campaign illustrates how international solidarity can be mobilized as a political instrument. Journalists uncovered the corruption of the Lava Jato case. Activities raised the morale of the resistance. Politicians raised the political cost of Lula’s persecution. In short, not only did the campaign defeat lawfare’s immediate goal of keeping Lula imprisoned; it also defeated its more insidious aim to slander his image, deter his political activism, and prevent his return to power.

Today, President Lula is a leading force in building the type of international movements that were so vital to his freedom. “The extreme right is an international movement. That is why I propose the unity of democratic and progressive forces around the world,” President Lula recently said.

This report has taken the first step to document the deployment of lawfare. It is now the task of social movements, political parties, and trade unions to join President Lula’s global movement to confront legal warfare and dismantle the mediatic-judicial-political complex that sustains it.

The Progressive International and Common Frontiers have heard Lula’s call to build the “unity of democratic and progressive forces around the world.” We hope you hear it, too.



About us

The **Progressive International** launched in May 2020 with a mission to unite, organize and mobilize the world's progressive forces.

Since then, it has grown to include over a hundred organizations representing millions of people on all inhabited continents — and organized campaigns and actions involving millions more.

Common Frontiers is a multi-sectorial working group focused on building international solidarity in support of human and labour rights and democracy across the Americas.

Our guiding principles are the recognition and defence of human rights (including rights of workers, women and racialized communities) the struggle for social justice, equality, and support for the existence of accountable, transparent and democratic governments.

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