



## **ISSUE BRIEF**

Ongoing international investigative capacity  
necessary to combat endemic corruption  
and instill the rule of law in Guatemala

## Introduction

While there have been recent advancements in efforts to establish effective governance and the rule of law in Guatemala, the legacy of the armed conflict and endemic corruption continue to present significant barriers to further progress. The failure to overcome these challenges has negative impacts far beyond Guatemala's borders, including by contributing to transnational crime and illegal migration. Given the gravity of the problem, the United Nations took unprecedented steps to create an International Commission to Combat Impunity in Guatemala (known by the Spanish acronym, CICIG) with investigative authority to tackle these issues. That commission has made historic progress in combatting state capture by organized crime in Guatemala, notwithstanding significant systemic failings in the justice sector that make the investigation and prosecution of crimes very difficult. The Commission has garnered widespread support among the citizens of Guatemala but the President of Guatemala recently stated that he would not renew CICIG's mandate when it expires next September on the grounds that it has completed its mission of building the capacity of the local justice sector. Based on its work over the last 10 years promoting the rule of law in Guatemala, the American Bar Association (ABA) Center for Human Rights<sup>1</sup> has concluded that an independent body with investigative and prosecutorial authority is still needed because the local justice sector lacks the independence to effectively combat transnational crime. For now, CICIG is the only body with the capacity to fill this role.

The American Bar Association is a voluntary, professional association with nearly 400,000 members. It promotes the rule of law in the United States and around the world. The ABA has various international programs that have provided assistance in Guatemala. The ABA Rule of Law Initiative (ROLI) prepared a Prosecutorial Reform Index in 2011, which broadly assessed Guatemala's prosecutorial capacity.<sup>2</sup> Subsequently, ROLI provided capacity building on forensics to Guatemalan law enforcement and the judiciary. In 2017, ROLI participated in a joint assessment of the rule of law in Guatemala as part of the International Legal Assistance Consortium (ILAC) and found that (CICIG) have achieved some impressive milestones in promoting accountability and transparency. The ABA Center for Human Rights has provided pro bono assistance in numerous cases concerning atrocity crimes that are adjudicated in the High-Risk Courts. In 2012, it conducted a fact-finding mission to assess the capacity of the justice sector to address social conflicts. In 2014 and 2018, it monitored proceedings to select a new prosecutor general and high court judges in Guatemala.

Based on this experience, the ABA Center for Human Rights has concluded that it would be impossible to instill the rule of law within Guatemala at this time without the support of an international body. While many prosecutors and judges have – at great personal risk – performed their responsibilities with integrity, the pressures on the criminal justice sector writ large are so great that it is not currently able to operate independently without international support. Moreover, there are serious grounds for concern that the decision to terminate CICIG's mandate is motivated by a desire to end investigations into high

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<sup>1</sup> The American Bar Association (ABA) Center for Human Rights (the Center) is committed to the advancement of the rule of law and basic rights at home and abroad. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

<sup>2</sup>See *ABA Rule of Law Initiative, Prosecutorial Reform Index Guatemala* (May 2011), [https://www.americanbar.org/content/dam/aba/directories/roli/guatemala/guatemala\\_prosecutorial\\_reform\\_index\\_2011.aut\\_hcheckdam.pdf](https://www.americanbar.org/content/dam/aba/directories/roli/guatemala/guatemala_prosecutorial_reform_index_2011.aut_hcheckdam.pdf).

level corruption, including investigations into alleged illegal financing of the President's election campaign.

## Background

After the end of the Guatemalan internal armed conflict – which claimed the lives of over 200,000 mostly indigenous civilians – the country struggled to implement the Peace Accords and address the root causes of the conflict. As a result, high levels of violence became the norm and clandestine armed groups with ties to the military acted with impunity.<sup>3</sup>

CICIG was created to address this state affairs. The Preamble of the Agreement between the United Nations and the State of Guatemala on the establishment of CICIG states that:

*[T]he Government of the Republic of Guatemala undertook under the Comprehensive Agreement on Human Rights of 22 March 1994 to combat illegal security groups and clandestine security organizations with the aim of assuring that such forces and organizations no longer exist and, additionally, assumed the obligation to “effectively guarantee and protect the work of human rights defenders and organizations” and that, in accordance with the Framework Law of the Peace Agreements, the State is legally bound to honour these commitments.*

The CICIG model is a novel approach whereby an UN-backed commission has the capacity to suggest criminal investigations to local prosecutors. Unlike traditional capacity building programs that simply provide training to local authorities, CICIG has a staff of investigators who pursue leads, enabling the Commission to effectively serve as a co-prosecutor in the cases.<sup>4</sup> However, it does not have independent authority to conduct arrests, searches, seizures or file a criminal case. It can only suggest these steps to the Prosecutor General of Guatemala who has ultimate authority over such law enforcement functions. It works closely with a special unit of the Prosecutor General's Office that prosecutes cases, often in the High-Risk Courts. Sentencing and detention decisions are the responsibility of the courts, subject to international oversight by the Inter-American Court of Human Rights and various UN bodies, including the UN Working Group on Arbitrary Detention.

Since its creation CICIG has played a prominent role in the consolidation of Guatemala's democratic system and rule of law. In 2009, CICIG was credited with avoiding a national political crisis when it was able to clear the then-President of Guatemala for the murder of the lawyer Rodrigo Rosenberg.<sup>5</sup> In 2011, the “Portillo Case” revealed a high-level embezzlement network involving former President Alfonso Portillo Cabrera, which appropriated over \$15 million dollars from the Ministry of Defense. Most notably, the 2015 investigation of the “La Linea” customs fraud case fuelled the massive anti-corruption protests of the “Guatemalan Spring” and ultimately forced the resignation of then-President Otto Perez Molina

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<sup>3</sup> Rhodri Williams, *International Legal Assistance Consortium (ILAC), Rule of Law Assessment Report: Guatemala* (2018), 36, <http://www.ilacnet.org/wp-content/uploads/2018/05/Guatemala-Rule-of-Law-Assessment.pdf>.

<sup>4</sup> See Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala (“CICIG”), art. 1-2, Dec. 12, 2006, [https://www.cicig.org/uploads/documents/mandato/cicig\\_acuerdo.pdf](https://www.cicig.org/uploads/documents/mandato/cicig_acuerdo.pdf).

<sup>5</sup> Rosenberg made a video days before his death blaming the then President Álvaro Colom if anything were to happen to him. CICIG investigated his death and eventually ruled out the involvement of the President and prosecuted two groups of former police officers.

and Vice President Roxana Baldetti. In addition, it has built the capacity of the Guatemalan justice sector and advocated for systemic reforms.

Given these achievements, it is no surprise that the Commission has historically enjoyed high approval ratings. A poll by the National Democratic Institute in 2016 found that 80% of Guatemalans support CICIG.<sup>6</sup> The Commission has enjoyed international support since its inception, with significant annual funding from both the United States and Europe.

Despite these achievements, security forces continue to operate with impunity and human rights defenders continue to face significant impediments to their work. Due in large part to CICIG's ability to independently undertake investigative activities, it has become clear that high level corruption is contributing to the inability of the local justice sector to address these issues. Last year, the President of Guatemala declared the CICIG Commissioner, Ivan Velázquez, *persona non grata*, after CICIG and the Attorney General announced they would be seeking to strip the President of his immunity to face charges that he had failed to report campaign contributions. Nonetheless, this was held to be unconstitutional by the Constitutional Court.<sup>7</sup> The Guatemalan Congress responded by attempting to pass a law that would have granted immunity for campaign finance violations and some other serious crimes.<sup>8</sup>

The endemic corruption within Guatemala has compromised nearly every function of the state. CICIG investigations in recent years have shown that in addition to government corruption, some members of the business community have been complicit in acts of official corruption. Due to a failure of the government to create and enforce a viable system of taxation and the large-scale embezzlement schemes that have siphoned off state resources, none of the ministries have adequate resources. In the justice sector, this has led to systemic delays in the adjudication of cases and deplorable conditions of confinement. According to the Inter-American Commission on Human Rights, nearly 50% of the prison population has not yet had a trial<sup>9</sup> and the average length of pre-trial detention is ten months.<sup>10</sup>

### **Efforts to impede CICIG investigations**

In addition to grappling with lack of resources and capacity, the Guatemalan justice sector is besieged by threats and corruption. These impediments have undermined a number of CICIG investigations. Over 117 individuals who have been indicted by the Prosecutor General with CICIG's support remain at large.<sup>11</sup>

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<sup>6</sup> *Cifras y voces. Perspectivas de cambio en la sociedad guatemalteca*, NATIONAL DEMOCRATIC INSTITUTE, 20, [https://www.ndi.org/sites/default/files/Cifras\\_Voces\\_0.pdf](https://www.ndi.org/sites/default/files/Cifras_Voces_0.pdf); See also Elizabeth J. Zechmeister and Dinorah Azpuru, *What Does the Public Report on Corruption, the CICIG, the Public Ministry, and the Constitutional Court in Guatemala?*, VANDERBILT UNIV. (Aug. 31, 2017) <https://www.vanderbilt.edu/lapop/insights/ITB029en.pdf>.

<sup>7</sup> Dudley Althaus, *Guatemalan Court Blocks President's Expulsion of U.N. Prosecutor*, THE WALL STREET JOURNAL, Aug. 27, 2017, <https://www.wsj.com/articles/guatemala-president-orders-u-n-prosecutor-investigating-him-expelled-1503854747>.

<sup>8</sup> Angelika Albaladejo, *Public Outcry Forces Guatemala Congress to Backtrack on 'Impunity Pact'*, INSIGHT CRIME (Sept. 15, 2017), <https://www.insightcrime.org/news/brief/public-outcry-forces-guatemala-congress-backtrack-impunity-pact/>.

<sup>9</sup> *Situation of Human Rights in Guatemala*, Inter-American Commission on Human Rights, OEA/Ser.L/V/II. Doc. 208/17 31, 199. <http://www.oas.org/en/iachr/reports/pdfs/Guatemala2017-en.pdf> (Dec. 2017).

<sup>10</sup> *46% de la Población Penitenciaria Guarda Prisión Preventiva*, OFFICE OF THE GUATEMALAN OMBUDSMAN (Sept. 22, 2017), <https://www.pdh.org.gt/46-de-la-poblacion-penitenciaria-guarda-prision-preventiva/>.

<sup>11</sup> Ricardo Mendez Ruiz (@RMendezRuiz), TWITTER, <https://twitter.com/RMendezRuiz/status/877685328919900160> (last visited Aug. 30, 2018); Ricardo Mendez Ruiz (@RMendezRuiz), TWITTER, <https://twitter.com/RMendezRuiz/status/916484093734522880> (last visited Aug. 30, 2018).

Several key cases have stalled in the courts without clear justification.<sup>12</sup> One Supreme Court magistrate was accused by a lower court judge of pressuring him to rule favorable in a case against the magistrate's son.

The situation is in many ways comparable to that which existed in the United States in the 1920's when the mafia effectively controlled local judges and police officers in many jurisdictions. Just as federal intervention was necessary to end the grip of organized crime in Chicago during the reign of Al Capone, international support through CICIG will be critical for the foreseeable future in order to instill the rule of law in Guatemala.

CICIG has responded by investigating corruption within the judiciary. These investigations culminated in an indictment that identified an influence peddling scheme that penetrated the commissions charged with nominating high court judges.<sup>13</sup> Earlier this year, CICIG found that the leader of the scheme, Sergio Roberto López Villatoro, had purchased an apartment for a judge who was a member of the commission in an apparent *quid pro quo* for his support in selecting judges who would favor Villatoro's interests.<sup>14</sup> CICIG's concerns about the integrity of the process to select a new Prosecutor General in 2018 were confirmed by the ABA Center for Human Rights.<sup>15</sup>

Efforts to instill the rule of law in Guatemala are further frustrated by persistent threats against prosecutors and judges working on organized crime and human rights cases.<sup>16</sup> These threats include disinformation campaigns, frivolous criminal allegations and death threats.<sup>17</sup>

Not surprisingly, CICIG's efforts have generated a backlash and several individuals linked with subjects of CICIG investigations have long sought to bring an end to the Commission. These efforts have been spearheaded by the Foundation Against Terrorism,<sup>18</sup> an organization with links to military officers who have been credibly accused of mass atrocities.<sup>19</sup> The director of the Foundation has targeted the CICIG

<sup>11</sup> *Ministerio Público Y la CICIG Solicitan al Ministerio de Gobernación Redoblar Esfuerzos para Captura De 117 Prófugos*, CICIG AND OFFICE OF THE PROSECUTOR GENERAL (Aug. 8, 2018), <https://www.cicig.org/comunicados-2018/mp-y-cicig-solicitan-al-mingob-redoblar-esfuerzos-para-captura-de-117-profugos/>.

<sup>12</sup> See *Running out the Clock How Guatemala's Courts Could Doom the Fight against Impunity*, HUMAN RIGHTS WATCH (Nov. 13, 2017), <https://www.hrw.org/report/2017/11/13/running-out-clock/how-guatemalas-courts-could-doom-fight-against-impunity>.

<sup>13</sup> *Prosecutor General of Guatemala, Comisiones Paralelas: MP y CICIG Develan red construida por Sergio Roberto López Villatoro para influir en Comisiones de Postulación en 2014-2019*, MINISTERIO PUBLICO (Feb. 27, 2018), <https://www.mp.gob.gt/noticias/2018/02/27/comisiones-paralelas-mp-y-cicig-develan-red-construida-por-sergio-roberto-lopez-villatoro-para-influir-en-comisiones-de-postulacion-en-2014-2019/>.

<sup>14</sup> *Id.*

<sup>15</sup> *Report on the Proceedings to Select Prosecutor General of Guatemala: Failure to Investigate Serious Concerns About Candidates Jeopardizes Efforts to Combat Organized Crime*, ABA CENTER FOR HUMAN RIGHTS (April 16, 2018), [https://www.americanbar.org/groups/human\\_rights/justice\\_defenders/articles/proceedings-to-select-prosecutor-general-of-guatemala.html](https://www.americanbar.org/groups/human_rights/justice_defenders/articles/proceedings-to-select-prosecutor-general-of-guatemala.html).

<sup>16</sup> *ABA Center for Human Rights, Robert Kennedy Human Rights & Georgetown Law Center. Tilted Scales: Social Conflict and Criminal Justice in Guatemala*, 10 (2018), [https://www.americanbar.org/content/dam/aba/administrative/human\\_rights/jd\\_tilted\\_scales\\_eng.authcheckdaa.pdf](https://www.americanbar.org/content/dam/aba/administrative/human_rights/jd_tilted_scales_eng.authcheckdaa.pdf); See also *Rule of Law Assessment Report: Guatemala*, INTERNATIONAL LEGAL ASSISTANCE CONSORTIUM (ILAC), 49 (2018) <http://www.ilacnet.org/wp-content/uploads/2018/05/Guatemala-Rule-of-Law-Assessment.pdf>.

<sup>17</sup> *Id.* at 81.

<sup>18</sup> Carolina Gamazo, *Fundación contra el Terrorismo: El Club de la Balanza y la Daga*, PLAZA PÚBLICA (June 25, 2013), <https://www.plazapublica.com.gt/content/el-club-de-la-balanza-y-la-daga>.

<sup>19</sup> See Sophie Beaudoin, *Guatemala Arrests Suggest New Momentum for Grave Crimes Trials*, INT'L JUSTICE MONITOR (Jan. 8, 2016), <https://www.ijmonitor.org/2016/01/guatemala-arrests-suggest-new-momentum-for-grave-crimes-trials/>.

Commissioner, the former Prosecutor General and the former U.S. Ambassador in online smear campaigns.<sup>20</sup> One attorney closely linked to the Foundation has been charged for participating in a massive embezzlement scheme in the Ministry of Defense while serving in that Ministry.<sup>21</sup> That case has stalled without justification. In other cases, the Foundation has intervened to intimidate judges and prosecutors adjudicating cases before the High-Risk Courts.

In recent months, CICIG has been the subject of a misinformation campaign alleging that it improperly prosecuted individuals and had them detained for extended periods pending trial, including in a precedent-setting case supported by US Immigration and Customs Enforcement that uncovered a scheme within the Guatemalan migration agency to sell false documents to human traffickers. The Acting Principal Deputy Assistant Secretary, Bureau of Western Hemisphere Affairs, Kenneth Marten, of the U.S. Department of State recently testified that the Department had investigated the allegations and did not find any evidence of misconduct by CICIG.<sup>22</sup> Indeed, the record shows that without CICIG's assistance, the scheme might not have been successfully prosecuted, thereby enabling individuals to purchase false identity documents in Guatemala for the purpose of migrating unlawfully to the United States.

Notwithstanding the importance of CICIG's work unraveling corruption within the migration agency, members of the U.S. Congress have questioned whether additional oversight is needed to ensure that CICIG-supported investigations do not contribute to human rights violations. These criticisms, however, are based on a misunderstanding of CICIG's role in the process. As discussed above, the decision to prosecute rests with the Prosecutor General of Guatemala. By law, the Prosecutor General is obliged to prosecute certain offenses. Pre-trial detention, which is a systemic problem in Guatemala, is determined by the judge in the case.

Before any new oversight regime is considered, it will be important to first assess existing mechanisms. Any criminal defendant who claims to have been the victim of fair trial violations may appeal the proceedings to higher courts. In the event that the defendant determines that corruption within the judiciary makes it impossible to secure due process, he can appeal to various international bodies, including the Inter-American Commission on Human Rights and the UN Working Group on Arbitrary Detention. Meanwhile, CICIG has recommended a number of reforms to the criminal justice system, including reforms to the system for pre-trial detention.<sup>23</sup> These should be implemented promptly by Guatemalan authorities.

## Recommendations

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<sup>20</sup> Ricardo Mendez Ruiz (@RMendezRuiz), TWITTER, <https://twitter.com/RMendezRuiz/status/877685328919900160> (last visited Aug. 30, 2018); Ricardo Mendez Ruiz (@RMendezRuiz), TWITTER, <https://twitter.com/RMendezRuiz/status/916484093734522880> (last visited Aug. 30, 2018).

<sup>21</sup> Prosecutor General of Guatemala, *Caso Caja de Pandora: Enviados a prisión preventiva 10 sindicatos*, MINISTERIO PUBLICO, (Dec. 2, 2017), <https://www.mp.gob.gt/noticias/2017/12/02/caso-caja-de-pandora-enviados-a-prision-preventiva-10-sindicados/>.

<sup>22</sup> *Hearing: Advancing U.S. Interests in the Western Hemisphere*, U.S. House of Representatives Foreign Affairs Committee, (July 11, 2018), <https://foreignaffairs.house.gov/hearing/hearing-advancing-u-s-interests-in-the-western-hemisphere/> (see minute 65 of the video).

<sup>23</sup> *Report: Preventive Detention*, CICIG, [http://www.cicig.org/wp-content/uploads/2018/08/Boletin\\_Prision\\_preventiva\\_0713\\_English.pdf](http://www.cicig.org/wp-content/uploads/2018/08/Boletin_Prision_preventiva_0713_English.pdf) (last visited Aug. 30, 2018).

Considering the recent decision made by the president of Guatemala to terminate CICIG's mandate, the Center for Human Rights of the American Bar Association recommends the following:

**To the Government of Guatemala:**

Extend CICIG's mandate until such time as the courts have had occasion to adjudicate all pending cases brought by the Prosecutor General with the support of CICIG and immediately arrest those who have been charged. Guarantee the independence of the prosecutors and judges investigating acts of significant corruption and other high-risk cases in Guatemala, in particular, the human rights and anti-impunity units in the Prosecutor General's office, the judges of the High-Risk Courts; and the Constitutional Court. To guarantee the independence of the judiciary, the Morales administration must abide by its decisions, publicly condemn threats against justice sector personnel and call for the respect of an independent judiciary. The President of Guatemala should also condemn harassment of – and violence against – human rights organizations and call for respect for their work.

**To the International Community:**

Governments supporting the anti-impunity efforts in Guatemala should call for reconsideration of the decision to terminate CICIG's mandate until such time as local authorities have demonstrated an ability to bring high-risk cases to a conclusion, including those concerning crimes against human rights defenders. They should urge the immediate arrest of all those who have been indicted by the Prosecutor General on charges related to grand corruption and gross human rights violations and provide assistance where persons or assets which are the subject of these prosecutions are in foreign jurisdictions, including in the United States. The international community should highlight the fearless efforts of those government officials working to maintain the rule of law in Guatemala, particularly, the high-risk judges and prosecutors and the Constitutional Court.

## **Conclusion**

Guatemala sits at the crossroads between reform and retrenchment in its efforts to instill the rule of law, perhaps for the first time in the country's history. CICIG has played an historic role in those efforts. Its continued support will be essential to ensuring further progress, especially on efforts to combat transnational crime that directly implicate U.S. interests. The United States and European governments supporting CICIG should continue to do so until such time as the Guatemalan justice sector has demonstrated sufficient independence to adjudicate cases against the organized criminal structures that have infiltrated the government and undermined the rule of law.



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