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A New Era of Accountability in Guatemala?

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On September 1, 2015, the Guatemalan Congress unanimously voted to strip President Otto Pérez Molina of his immunity from prosecution. It was an unprecedented event in the nation's history. A retired general, Pérez Molina was the first former military officer to lead Guatemala since the end of a long succession of dictatorships in 1986. As news of the vote against him reached the streets, crowds gathered outside the chamber erupted in celebration and set off fireworks. The following day, a judge issued an order for the president's arrest, and that evening, Pérez Molina submitted his resignation to Congress. Within 24 hours, he was sitting before a judge in connection with a multimillion-dollar customs fraud scheme.

The former president now faces charges of illicit association, customs fraud, and bribery, and has been ordered to remain in the Matamoros military prison while standing trial. Nearly 100 public officials and business people, including former Vice President Roxana Baldetti, cabinet ministers, and government functionaries, have been arrested and put on trial for their alleged involvement in the same criminal network.

The massive scale of the fraud sparked widespread, nonviolent protests larger than any Guatemala has seen in its recent history. For months, thousands of Guatemalans from a diverse cross section of society poured into the streets throughout the country to demand an end to corruption and greater government accountability.

A country mired in poverty and violence carried out one of the most remarkable crusades against corruption in the region's history. Inspired by its success, citizens in neighboring El Salvador, Honduras, and even Mexico have called for robust

anticorruption mechanisms in their own countries. Guatemala, El Salvador, and Honduras are among the most violent countries in the world, with El Salvador reportedly reaching an unprecedented homicide rate of 104 per 100,000 inhabitants in 2015. Weak justice and security institutions in all three countries render the state unable to address such high levels of crime and violence, allowing corruption and impunity to flourish.

Many analysts saw the public demand for accountability as a watershed moment for Guatemala, dealing an unprecedented blow against the wall of impunity that has protected powerful and influential networks for decades. In the years after the 1996 peace accords ended a four-decade civil war, many abusive elements within the intelligence and clandestine security structures were not dismantled. The failure to address the conflict's root causes by purging the old security apparatus further corroded an already weak state, enabling these groups to penetrate deeper into both public and private institutions.

By 2002, Amnesty International was referring to Guatemala as a “corporate mafia state” built on an alliance between traditional sectors of the oligarchy, new entrepreneurs, police and military officials, and common criminals. Over the years, these networks have transformed themselves and adapted to current circumstances, co-opting nearly all branches of state power and using public institutions for their own interests and to cover up their illicit activities.

PRESIDENTIAL CORRUPTION

The corruption case known as La Línea (or “The Line,” referring to the hotline that was used by importers to reach corrupt officials) was made public in April 2015, when authorities arrested a number of officials in the Pérez Molina administration for having allegedly set up an

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elaborate criminal ring within the national tax collection agency and the customs office. Among those accused at the time were the current and former head of the tax agency and Baldetti's personal secretary, Juan Carlos Monzón.

According to the investigation, La Línea charged importers bribes in exchange for lower import taxes. Prosecutors believe that between May 2014 and February 2015, at least 500 containers of imported goods were brought into the country under this arrangement. The network defrauded the government of an estimated \$120 million in tax revenue.

The scandal reverberated throughout the justice system. Further investigations into the tax fraud scheme revealed a larger, interconnected network of judicial corruption, nicknamed *el bufete de la impunidad* (or "law firm of impunity"), which connected clients to judges willing to rule in their favor. In the case of the tax fraud scandal, the judge implicated was Marta Josefina Sierra González de Stalling. Recorded telephone conversations between members of La Línea and bank statements of one of the network's ringleaders revealed that Stalling received a bribe in exchange for reduced bail and house arrest sentences for three of the top members.

In August, authorities dealt another major blow against impunity when they publicly accused Pérez Molina (who took office in January 2012) and Baldetti of being the ringleaders of the operation. According to prosecutors, the former president and vice president are referred to in wiretapped phone calls as "the one" and "the two." The wiretaps and other documents further indicated that the pair had received 50 percent of the profits from bribes collected by the network.

Although it is the best-known case, La Línea is not the only recent investigation that has exposed the profound level of corruption in Guatemala and the degree to which the nation's institutions have been infiltrated and co-opted by criminal interests. In September 2014, authorities broke up a corruption ring directed by Byron Lima Oliva, a former army captain convicted of the 1998 murder of Bishop Juan José Gerardi. (Gerardi was bludgeoned to death two days after he released the Catholic Church's report on human rights violations committed during the civil war, which said that the military was responsible for 85 percent of the killings and disappearances.) The investigation revealed that through his connections, Lima had been able

to construct a powerful and lucrative criminal empire from prison, becoming the de facto head of the country's penitentiary system. Lima allegedly received money and goods in exchange for selling various benefits to other inmates, including transfers to other prisons, which cost as much as \$100,000. According to media reports, Lima sent the minister of the interior a list of people to be considered for important positions in the prison system, many of whom were hired by the Pérez Molina administration.

Guatemala's Social Security Institute (which provides retirement benefits and health services) was implicated in another massive corruption scandal after investigations revealed that top officials in the Pérez Molina government had paid inflated prices to a Mexican pharmaceutical company in exchange for kickbacks. As a result, scores of patients are believed to have died due to a lack of proper kidney dialysis treatment. Members of Guatemala's Congress, leaders of several political parties, and judges have been caught up in separate criminal allegations, and Pérez Molina's son-in-law was charged with influence peddling on behalf of a major energy company.

COMMISSION ON A MISSION

These cases are the product of joint investigations by the Guatemalan attorney general's office and the International Commission against Impunity in Guatemala (CICIG). Created in 2007 with the support of the United Nations, and at the request of the Guatemalan government, the CICIG aims to investigate and ultimately dismantle the networks of criminality and corruption that are deeply embedded in the country's institutions.

To do so, the commission was endowed with the capacity to investigate a select number of complex cases and to bring criminal charges. (It acts as *querellante adhesivo* or complementary prosecutor in local courts, which means it can take part in the proceedings and request examination of evidence or court decisions. This authority is subject to the consent of the public prosecutor's office and approval of the judiciary.) It also has the ability to propose public policies and institutional reforms, and to request disciplinary procedures against any public official who fails to cooperate or obstructs its work.

In contrast to other international mechanisms, the CICIG is an independent investigative body that operates under Guatemalan law and relies on the local justice system. This novel setup

allows the CICIG to work hand-in-hand with the country's prosecutors and police, helping to build their capacities in the process. The commission is headed by a jurist with a high level of professional qualifications in the areas of human rights and criminal and international law, as well as a demonstrable degree of integrity and a commitment to investigating and combating impunity. It is supported exclusively by the voluntary contributions of the international community.

In its eight years of existence, the CICIG has helped launch over 200 investigations involving more than 30 criminal structures and hundreds of government officials. In addition to Pérez Molina and Baldetti, its targets have included former President Alfonso Portillo, who was charged with embezzlement of public funds, and several ministers, retired generals, and other high-level government officials who have been removed from office for colluding with criminal and corrupt organizations.

While its work in investigating high-impact cases has drawn the most attention, the CICIG has also played a fundamental role in boosting the investigative capacity of the Guatemalan public prosecutor's office. Its contributions have included the implementation of a new methodology for pursuing group investigations to identify patterns and criminal networks as opposed to focusing on individual crimes or single cases, as well as the establishment of a special investigations unit, a criminal analysis unit, and a witness protection program. The commission has also contributed to the adoption of legal reforms and much needed investigative tools, including the use of supervised wiretapping and the creation of special courts in the capital where judges can be better protected from organized crime.

Unsurprisingly, the CICIG's practice of working with the same institutions it seeks to reform has not always resulted in a perfect marriage. Its success or failure depends on the commitment of its counterparts. At the same time, this local partnership is its greatest strength. Through its actions, the CICIG has made the legal system function, demonstrating that Guatemala's own laws and courts can be used to investigate highly sensitive cases and bring to justice those once considered untouchable.

A TURNING POINT?

The scale of the corruption unearthed by the public prosecutor's office and the CICIG in the spring of 2015 set off waves of peaceful protests, the largest in the country's recent history. For five months, thousands of people from across the ideological spectrum gathered every weekend in Guatemala City to demand an overhaul of the country's broken political system and an end to corruption. They were supported by mobilizations in other cities and by Guatemalans abroad. On August 27, an estimated 100,000 people participated in a general strike, with universities, schools, businesses, unions, indigenous groups, and social movements all joining the protests. Mobilizations took place in over 140 municipalities across the country.

These massive protests paved the way for leading civil society institutions and government officials to support the demands for Pérez Molina's resignation. The comptroller general's office, the national prosecutor general, various business and trade groups, the National Council of Bishops, and eventually Congress itself joined the calls for the president's resignation in the wake of the August protests.

After Pérez Molina's downfall, the popular anticorruption movement took its frustration with the traditional political establishment to the polls and helped elect comedian and political outsider Jimmy Morales as president. Morales, who campaigned under the slogan "neither corrupt nor a thief," was able to capture citizens' dissatisfaction with the political system and swiftly rose to prominence. On October 26, he won a landslide victory against former first lady Sandra Torres of the National Unity of Hope party, capturing nearly 70 percent of the vote. It was the biggest margin of victory in a Guatemalan presidential election since 1999.

The runoff vote followed a first round of balloting in early September, in which Manuel Baldizón of the Renewed Democratic Liberty party finished a surprising third. A runner-up in the 2011 presidential election, Baldizón had led in opinion polls for months and was the favorite to succeed Pérez Molina. But his campaign suffered a major setback after the public prosecutor's office and the CICIG alleged that his running mate and several members of his party were implicated in corruption. His chances were further diminished by criticism

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of his disregard for campaign spending limits and his alliance with Pérez Molina, which lasted until just days before the former president's arrest.

The election outcome may not so easily bring about the political transformation citizens want. Although Morales won thanks to the perception of him as an anti-establishment candidate, analysts noted that his National Convergence party was founded by members of the Guatemalan military veteran's association, an influential group created by ex-soldiers implicated in human rights abuses. Others cautioned that his positions were vague—his campaign manifesto was only six pages long and based almost entirely on an anticorruption platform with little clarity on the policies he intends to advance. Questions were also raised by media reports that more than a third of his campaign's funds were linked to powerful military officers and their companies.

Morales' pending cabinet appointments will reveal much about his true intentions and whether he can deliver on his campaign promises to tackle corruption and govern with transparency. His administration will have to contend with a divided Congress. The events of the past year have shown that Guatemalans will likely hold their new president to tough standards. The anticorruption movement scheduled a demonstration for January 14, 2016, the day of Morales's inauguration, to remind him that it expects concrete progress.

REGIONAL IMPACT

The events that unfolded in Guatemala did not go unnoticed in the region. They triggered calls for the establishment of new investigative bodies similar to the CICIG in countries wrestling with their own endemic levels of corruption, violence, and impunity. A growing number of dissatisfied citizens have taken to the streets in countries across Latin America to demand greater accountability from their governments. Many have referred to the protest movements as a Latin American Spring. Yet unlike the Arab uprisings, they have been peaceful and most have challenged democratic rather than autocratic governments.

In Honduras, protests shook the country for months in response to revelations of a massive corruption scheme within the national social

security system, which provides medical care and pensions. Top officials have been accused of awarding inflated contracts worth at least \$200 million to phantom companies. Media reports, later supported by a congressional inquiry, revealed that a portion of the stolen money ended up in the coffers of President Juan Orlando Hernández's 2013 presidential campaign. The corruption is said to have resulted in the deaths of around 3,000 patients due to a lack of medicines and proper health care.

As in Guatemala, thousands of fed up citizens took to the streets. Carrying torches and calling themselves the "Indignados," the demonstrators called for both the resignation of Hernández and the creation of their own United Nations-backed international commission to combat rampant corruption.

Resisting the demands for a full-fledged CICIG-like entity, Hernández turned to the Organization of American States (OAS). On September 28, at the president's request, the OAS announced a proposal to create a Mission to Support the Fight against Corruption and Impunity in Honduras.

The proposal calls for establishing a group of international judges and prosecutors to monitor and provide technical support to the Honduran public prosecutor's office and other relevant state institutions in order to facilitate the investigation and prosecution of corruption. As initially proposed, however, the mission would not be able to independently select, initiate, and carry out investigations or commence prosecutions in conjunction with the public prosecutor's office. These capabilities were key to the CICIG's unprecedented success in Guatemala.

Since the September announcement, Honduran authorities and OAS officials have been negotiating over the specific powers and parameters of the mission. A final deal was scheduled to be sealed on December 10, but for reasons not made entirely clear, the Honduran government decided at the last minute to postpone the signing until an unspecified date in January 2016.

The prospect of establishing an international mechanism to combat corruption presents an important opportunity for Honduras that should not be wasted. The recent delay could provide the time needed to strengthen the proposal and ensure

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that the mission has enough clout to generate the systematic reforms required to break the culture of impunity. Moreover, as the CICIG's experience has shown, the appointment of an honest and committed leader will be vital.

While the public outcry against corruption, and efforts to strengthen the rule of law, have been notable in Guatemala and Honduras, the movement has not yet had the same impact in El Salvador. Although former President Mauricio Funes had at one point entertained the idea of supporting the creation of a CICIG-like mechanism, it never materialized. The Salvadoran government has rejected recent calls to establish a UN-backed anticorruption body, arguing that existing domestic institutions are strong enough to address the country's problems.

The pending appointment of a new attorney general will be a test of the government's commitment to combating corruption and strengthening the rule of law, particularly given the poor track record of the most recent attorney general. His term ended in December 2015 and he is seeking to be reelected. Congress has the final say in selecting the attorney general and has yet to pick a successor. Earlier this year, the administration of President Salvador Sanchez Ceren, in consultation with the private sector, and with support from the UN Development Program, developed a National Plan for Citizen Security, which calls for a special inter-institutional commission to investigate corruption and criminal infiltration. While this scheme lacks the powerful hybrid nature and broad, independent investigative powers of the CICIG, a committed attorney general could make use of it in a serious campaign against corruption.

In Mexico, too, activists have called for a CICIG-like body to root out corruption and impunity and address human rights violations. Those calls have gained urgency in light of the forced disappearance of 43 university students from Ayotzinapa in Guerrero state in September 2014, at the hands of local police working on behalf of an organized criminal groups, as well as corruption scandals involving President Enrique Peña Nieto and members of his cabinet. In the case of the students, the Mexican government reached an agreement with the Inter-American Commission on Human Rights and the legal representatives of the students and their families to create the Interdisciplinary Group of Independent Experts (GIEI) to provide technical assistance to investigators. The GIEI found that

the Mexican government's investigation had been severely mishandled, and dismissed as impossible the official conclusion that the students' bodies were incinerated in a garbage dump. In September 2015, the family members of the disappeared students petitioned Peña Nieto to collaborate with the UN on the creation of a commission modeled on the CICIG.

MAINTAINING MOMENTUM

The events in Guatemala over the past year are a major sign of progress in a country long mired in corruption and lacking accountability. Forcing Pérez Molina's resignation was a historic victory for the thousands of Guatemalans who took to the streets for months to peacefully demand justice and an end to corruption. The example of a president being removed from office and immediately brought before a court to face charges proved to Guatemalans—and to others across the region—that the rule of law can prevail and the justice system can function, even when confronting corruption at the highest levels of government.

Yet the impressive successes of the CICIG and the attorney general cannot guarantee the eradication of criminal structures deeply entrenched in the state. Sustaining the progress achieved to date will require profound political and institutional reforms to the machinery that allowed those structures to operate unimpeded. These must include legislation to ensure that judges and prosecutors are more independent, political and campaign finance reforms, and transparency and anticorruption safeguards. As CICIG Commissioner Iván Velásquez cautioned in a recent interview, without deep political changes, the criminal structures and their allies will regroup and seek to undermine the progress made so far.

Securing these far-reaching, necessary reforms will not be easy. But the popular anticorruption movement has changed the country's political dynamics. Politicians are now facing a more active citizenry that knows it can demand greater accountability from its government and mobilize in pursuit of its goals. The protesters who pushed for the resignation of Pérez Molina appear willing to return to the streets at the first signs of corruption in the new administration. If they are able to organize and maintain momentum, Guatemalans may be able to bring about lasting reforms and an end to the pervasive culture of impunity. ■