



Advocacy for Human Rights in the Americas



AP Photo: Luis Soto

COMBATting CORRUPTION IN GUATEMALA

Evaluating State Capacity to Reduce Corruption and Improve Accountability

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INTRODUCTION

In the last decade, the problem of insecurity and impunity has deeply affected the people of Guatemala, El Salvador and Honduras, making this region (known as the Northern Triangle of Central America) one of the most violent in the world. High levels of violence, corruption, and impunity have eroded the capacity of the states to develop accessible and efficient institutions, and address the needs of their populations.

The absence of effective responses has weakened citizens' confidence in state institutions, leading to an alarming number of people who have been internally displaced or forced to migrate to other countries to escape the violence and lack of economic opportunities.

Against this backdrop, the Washington Office on Latin America (WOLA), the Myrna Mack Foundation (FMM) of Guatemala, the University Institute for Public Opinion (Iudop) of the José Simeón Cañas Central American University (UCA) of El Salvador, and the University Institute on Democracy, Peace and Security (IUDPAS) of Honduras have developed a tool for monitoring and evaluating the policies and strategies currently being implemented in Guatemala, Honduras, and El Salvador to reduce insecurity and violence, strengthen the rule of law, improve transparency and accountability, protect human rights, and fight corruption. This initiative has been made possible thanks to the support of the Latin America Division of the Swiss Agency for Development and Cooperation, the Tinker Foundation, the Seattle International Foundation (SIF), and the Moriah Fund.

THE CENTRAL AMERICA MONITOR

The Central America Monitor is based on the premise that accurate, objective, and complete data and information are necessary to reduce the high levels of violence and insecurity, and establish rule of law and governance in a democratic state. This will allow efforts to move beyond abstract discussions of reform to specific measures of change.

The Monitor is based on a series of more than 100 quantitative and qualitative indicators that allow a more profound level of analysis of the successes or setbacks made in eight key areas in each of the three countries.¹ More than a comprehensive list, the indicators seek to identify a way to examine and assess the level of progress of the three countries in strengthening the rule of law and democratic institutions. The indicators seek to identify the main challenges in each of the selected areas and examine how institutions are (or are not) being strengthened over time. The Monitor uses information from different sources, including official documents and statistics, surveys, interviews, information from emblematic cases, and analysis of existing laws and regulations.

The indicators were developed over several months in a process that included an extensive review of international standards and consultation with experts. The eight areas analyzed by the Monitor include:

1. Strengthening the capacity of the justice system;
2. Cooperation with anti-impunity commissions;
- 3. Combatting corruption;**
4. Tackling violence and organized crime;

5. Strengthening civilian police forces;
6. Limiting the role of the armed forces in public security activities;
7. Protecting human rights;
8. Improving transparency.

The Monitor reports are published by area and by country. The first series of reports will serve as the baseline for subsequent analysis, which will be updated annually. Each annual series of reports will be analyzed in comparison with reports from the previous year. This allows researchers, civil society organizations, and other actors to assess the level of progress in strengthening the rule of law and reducing insecurity.

The first round of Monitor reports will primarily focus on data sets from an approximate 4-year time period, 2014 to 2017, in order to provide a snapshot of Central America's institutions.

The Monitor will serve as a tool for searchable, easy-to-comprehend data, delineating trends, progress, patterns, and gaps within and between the three countries of the Northern Triangle. The data, graphics, charts, and reports will be available on the Monitor's website.

This report of the Central American Monitor produced by the Myrna Mack Foundation of Guatemala aims to define a baseline for the indicators related to analyzing the fight against corruption in Guatemala, including an overview of legislation and its adherence to international standards, and the capacity of government institutions to investigate, prosecute, and judge crimes of corruption.

ABOUT THE RESEARCH FOR THIS REPORT

The quantitative data in this report was obtained via the bibliographic review of official reports, institutional annals, and relevant information available on the official transparency web pages of the government bodies analyzed. In addition, requests for statistical information were made via the Access to Public Information Law of Guatemala, which establishes a specific process by which government agencies must receive information requests and respond within a set timeframe.

We decided that the report's primary data would be obtained via public information requests, in order to evaluate the effectiveness of Guatemala's transparency laws, including the response rate to information requests and the degree of cooperation by the various criminal justice bodies that were petitioned.

The information received from the requests was analyzed to measure the quality of the data obtained. This, in itself, is a useful exercise. Gaps in data will affect policymakers' ability to implement more effective public policies, while the refusal to provide information may reveal a lack of compliance and/or transparency on the part of the state agency involved. This data will be included in the Monitor's upcoming report on transparency.

Qualitative data and information were also compiled from other sources, taking into account the possibility that some state agencies might not comply with information requests. Consequently, this report uses information from interviews with experts, surveys, and media coverage to complement official data and to provide context, with the expectation that qualitative data can help provide a more complete picture of the reality on the ground.

We also identified quantitative information from secondary sources and studies on citizen perception of corruption collected by Transparency International and opinions on the levels of trust and citizen satisfaction with the work of the institutions analyzed in this study. This qualitative data helps identify

possible disparities by comparing existing legal frameworks with what is actually happening in practice. In addition, we conducted an analysis of existing laws and how they have been carried out in practice in practice to identify possible disparities.

KEY FINDINGS

- The Guatemalan government has passed several important reforms to existing laws that aim to improve its capacity to investigate and prosecute corruption offenses. Notable laws include but are not limited to the Law against Organized Crime (*Ley contra la Delincuencia Organizada*), the Law against Money Laundering and other Assets (*Ley contra el Lavado de Dinero y Otros Activos*), and the Asset Recovery Law (*Ley de Extinción de Dominios*). Despite these advances, the government will have to pass additional reforms—specifically, laws that confront pervasive nepotism and conflicts of interest in Guatemalan politics and institutions—in order to better meet international anti-corruption standards and treaties.
- Investigations led by the Public Prosecutor’s Office (*Ministerio Público, MP*) and the International Commission against Impunity in Guatemala (*Comisión Internacional Contra la Impunidad en Guatemala, CICIG*) revealed the existence of multiple illicit criminal networks, linking public officials at all levels of government. These corrupt networks often involved politicians, businessmen, bankers, and members of the military, among other actors. These networks had significant reach and ability to act with impunity. They illegally influenced the electoral system, government contracting and procurement processes, the customs system, the health system, the justice system, and the prison system, among other areas. In light of the networks uncovered by these investigations, it is essential that the Guatemalan government prioritize strengthening the Judiciary’s (*Organismo Judicial, OJ*) capacity to promptly and objectively administer justice for acts of corruption.
- In addition to establishing the Special Prosecutor’s Office against Impunity (*Fiscalía Especial Contra la Impunidad, FECI*), an office created to work closely with the CICIG, the MP also created the Special Methods Unit (*Unidad de Métodos Especiales, UME*) and the Criminal Analysis Directorate (*Dirección de Análisis Criminal, DAC*). These agencies have played a key role in investigating complex, large-scale corruption cases. The approval of reforms to the Organic Law of the Public Prosecutor’s Office (*Ley Orgánica del MP, LOMP*) in 2016 also marked a notable milestone. These reforms included the following: the creation of the National Coordinating Office of Prosecutors (*Coordinación Nacional de Fiscalías*), the strengthening of the Directorate of Criminal Investigations (*Dirección de Investigaciones Criminalísticas, DICRI*) and the prosecutors’ career system; and the restructuring of the Office of Protection of Procedural Subjects (*Oficina de Protección de Sujetos Procesales*). These sub-offices at the MP are among the state entities primarily responsible for advancing anti-corruption cases.
- The FECI established best-practice procedures for deploying multi-disciplinary teams to investigate and litigate high-level corruption cases. Other prosecutorial offices within the MP should adopt these practices to better advance anti-corruption cases outside of the FECI’s purview.

- There is still significant room for improvement in the justice system, particularly in the Judiciary and the high risk courts (*instancias de mayor riesgo*) responsible for handling many cases of high-level corruption. These cases are immensely complex, involving large and intricate networks of people and criminal organizations. The Guatemalan government should increase and improve trainings for those who work on these kinds of cases, improve infrastructure and case management, and adopt greater use of technology. Justice officials should also strive to uphold the law in order to reduce the use of malicious litigation and the abuse of court processes in delaying proceedings.
- It is imperative that oversight bodies, such as the Comptroller General of Accounts (*Contraloría General de Cuentas, CGC*), strengthen processes aimed at keeping Guatemala's institutions clean and transparent. Proactively improving accountability measures would go a long ways in preventing the abuse of public resources. Strengthening the legal frameworks that discourage graft would enable Guatemala's justice system to root out corruption pre-emptively, rather than relying on prosecutors to detect and investigate crimes only after they have taken place.

COMBATTING CORRUPTION IN GUATEMALA

Evaluating State Capacity to Reduce Corruption and Improve Accountability

Corruption is understood as the abuse of power for personal gain. This may be public or private, and implies diverting functions and resources in exchange for a benefit, whether it is economic, personal, or for a third party, thus affecting the common good.

Corruption is one of the main threats to democracies, affecting trust in democratic institutions and limiting the ability of states to provide basic services and rights to the public.

Several international organizations have repeatedly pointed out how corruption affects human rights. According to the Inter-American Commission for Human Rights (IACHR), corruption is a complex phenomenon that affects human rights in their entirety. More specifically, it affects the right to development, weakens governance and democratic institutions, promotes impunity, undermines the Rule of law, and exacerbates inequality.² It is a phenomenon that "has a serious and differentiated impact on the right and exercise of human rights by historically marginalized groups."³

In recent years, landmark corruption cases in Guatemala have implicated politicians at the highest levels of government and numerous

members of the political and economic elite have been brought into the public spotlight. Cases have revealed that the state apparatus has been captured by illicit networks, making it clear that corruption in Guatemala is systemic and structural. This Central American Monitor report seeks to examine and evaluate the level of progress in the fight against corruption in Guatemala. Specifically, the report provides information and analysis of four main areas:

- Citizen perception of corruption and confidence in the State's ability to fight it.
- The scope and application of national legislation to combat corruption, including the codification of new crimes and reforms to existing regulations adherent to international standards.
- Progress in criminal investigation and the capacity of State institutions to investigate, prosecute and punish acts of corruption effectively.
- The existence and capacity of external control bodies or agencies to combat corruption.

CITIZEN PERCEPTIONS OF CORRUPTION

Transparency International (TI) annually publishes the Corruption Perceptions Index (CPI), in which countries are classified according to the degree of perceived corruption of public

and political officials. TI uses a scale between 0 and 100, 0 meaning highly corrupt, and 100 meaning non-corrupt. Guatemala's placements between 2014 and 2017 are shown in Table 1.

TABLE 1

CORRUPTION PERCEPTIONS INDEX IN GUATEMALA, 2014-2017

| | 2014 | 2015 | 2016 | 2017 |
|-----------|------|------|------|------|
| Score | 32 | 28 | 28 | 28 |
| Ranking | 115 | 123 | 136 | 143 |
| Countries | 175 | 167 | 176 | 180 |

According to the results of the Index, in 2014, more than two thirds of the 175 countries evaluated received a score below 50. In the case of Guatemala, the country obtained a ranking of 32, placing the country among the 60 countries with a high perception of corruption. In Latin America, Guatemala ranked seventh of the countries with the highest corruption perception.

By 2015, 17 Latin American countries improved their ranking in comparison to the previous year, four got worse and two remained the same. In Guatemala's case, the country fell eight points compared to the previous year and ranked fifth in the region behind Venezuela, Haiti, Paraguay, and Nicaragua.⁴ This could be because 2015 was marked by mass mobilizations rooted in investigations into major corruption cases.⁵

In 2016, 69% of countries worldwide obtained a score below 50, demonstrating the massive and widespread nature of corruption in the public sector globally.⁶ Guatemala dropped 13 points while maintaining the same overall ranking. According to TI, countries with low ratings receive such scores due to the poor functioning of certain public institutions, mainly the justice sector.⁷

Finally, in 2017, more than two thirds of the countries obtained a score below 50. Guatemala dropped seven places compared to 2016 (and became one of the most corrupt countries in Latin America). According to TI, the 10 countries perceived as most corrupt are often at war or in economic crisis. Though Guatemala does not share those traits, it is dangerously close to becoming part of the bottom 10.⁸

Guatemala performed poorly during the period under study in terms of citizen perceptions of corruption. This situation is logical taking into account that during the administration of the Patriotic Party (*Partido Patriota, PP*), criminal proceeding were opened against high-level officials for acts of corruption. Popular discontent after a series of corruption scandals in the PP government led to massive protests in 2015, with the public calling for, and ultimately achieving, the immediate resignation of the president and vice president. Similarly, originally seen as an outsider who campaigned on anti-corruption, the government of Jimmy Morales has not been viewed as transparent, and there is a sense of betrayal among the public due to his inefficient management of the government.

In this context, there is an urgent need to strengthen the justice system. For corruption cases to be effectively prosecuted, it is essential to have a Public Prosecutor's Office that is increasingly capable of presenting cases with solid investigative components and to have a Judiciary with objective and independent judges and magistrates. There was a commendable effort made in 2016 to pass constitutional reforms focused on the justice sector. Proposed reforms included provisions related to the

judicial career system, procedures for selecting judges, and pre-trial proceedings for public officials. However, this effort did not pass the Congress and there are no signs that such a debate will resume in the near future. Finally, it is worth mentioning that the government's efforts to expel the International Commission against Impunity (*Comisión Internacional contra la Impunidad, CICIG*) have negatively affected perception of corruption.

REGULATIONS TO COMBAT CORRUPTION

INTERNATIONAL TREATIES SIGNED

The State of Guatemala signed the Inter-American Convention against Corruption (IACAC) in 1996. The IACAC is the first international convention against corruption and provides international standards, a regulatory framework, and procedures to combat corruption. This first action prompted others to begin to monitor compliance of the IACAC States. For example, a Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) was created and was later approved in 2001.

In 2003, Guatemala also signed the United Nations Convention against Corruption (UNCAC), a tool that has expanded the agenda of the fight against corruption.

Beyond establishing standards, policies, processes, and practices at the national level, the agreement also facilitates international cooperation through mutual technical assistance to aid in prosecuting corruption offenses, recovering assets gained through corruption, reaching agreements for establishing joint investigations, and creating joint investigative

bodies. The UNCAC also has a review mechanism, adopted in 2009, that promotes the civil society participation in the process.

DOMESTIC LEGAL FRAMEWORK

In the national sphere, Guatemala has different normative bodies that regulate different corrupt acts. These include the Penal Code, the Law against Corruption, the Law against Money Laundering and other Assets, the Law against Organized Crime, and the Asset Recovery Law, in addition to legislative decrees 15-2001 and 91-2001, which codify the Inter-American Convention against Corruption and the United Nations Convention against Corruption.

PENAL CODE

Penal Code (*Código Penal*), Legislative Decree 17-73, is the normative body that regulates, with specific detail, acts related to corruption. Chapter II of Title XIII includes descriptions for 26 crimes in which the active subject is a public official or employee that commits criminal conduct while exercising their public functions.

Chapter III contains the crimes of passive and active bribery and chapter IV contains crimes of graft and embezzlement. Chapter V defines seven crimes related to illegal negotiations, including crimes of extortion, fraud, and undue collection.

Title XIV covers crimes related to administering justice, which includes types of crimes committed by public officials who are aware of, intervene, or participate in legal proceedings, among which are the crimes of abuse of public trust, illegal representation, delay of justice, or denial of justice.

Congressional Decree 33-96, later modified by Decree 4-2010, created Chapter VI, which defined a series of electoral crimes. Among the crimes included are electoral financing (article 407 M) and illegal electoral financing (407 N).

LAW AGAINST CORRUPTION

In 2012, the Law against Corruption (Ley Contra la Corrupción, LCC) went into effect through legislative decree 31-2012. Rather than being a special criminal law, the LCC consists of a series of additions and reforms to the Penal Code, the Law against Organized Crime, and the Asset Recovery Law.

In arguing for more regulations to combat corruption, the CICIG emphasized Guatemala's need to comply with its agreements such as the Inter-American Convention against Corruption, the United Nations Convention against Transnational Organized Crime (UNTOC) and the United Nations World Convention against Corruption.

The anti-corruption law was an important step, since it signaled, for the first time, that Guatemala was making strides to punish offenses committed

by public officials. Corruption is a clearly criminal act. However, corruption has long existed in society with a veil of legitimacy, under the guise that all actions carried out by public officials are legal.

Among the reforms to the general section of the Penal Code, it is worth noting:

- A final paragraph was added on to article 28 of the Penal Code stating: "Public officials or employees, who, abusing the position in which they are vested, commit any crime shall be punished with the penalty corresponding to the crime committed, increased by one quarter."
- A reform to article 38 regulates the criminal liability of legally registered entities. According to the modification, legal entities can be held criminally responsible in all cases in which they provided authorization or consent to their directors, managers, executives, representatives, administrators, officials or employees. The hypothetical statement described obviously refers to the purposeful participation of legal entities in the conduct of criminal behavior.

The reform also stipulates that legal entities are criminally liable if: a) the criminal act is committed due to the omission of oversight or supervision; b) the criminal act is committed by choice of the decision-making body. In all crimes where legal entities are liable and no criminal penalty is designated, a fine between \$10,000 and \$625,000, or its equivalent in national currency, is imposed.⁹ In the case of a repeat offense, the authorities will definitively revoke the entity's legal registration.

These two provisions make up for previously repealed regulations. Before adopting

these changes, only directors, managers, executives, representatives, administrators, officers, or employees of those entities involved in the crime were held responsible.

Now, legal entities are also considered responsible, as is reflected in Box 1.

BOX 1

GUATEMALAN LAWS THAT ESTABLISH CRIMINAL LIABILITY OF LEGAL ENTITIES



| Law against Money Laundering and Other Assets | Law to Prevent and Suppress the Financing of Terrorism | Law against Drug Crimes | Law of Banks and Financial Groups |
|---|---|---|---|
| <p>Article 5 of this law establishes that legal entities should be liable for money laundering, regardless of the criminal responsibility of their owners, directors, managing managers, officials, or legal representatives. The penalties, in addition to those applicable to natural persons, are a fine of \$10,000 to \$625,000, in addition to the confiscation, loss, or destruction of articles originating from the crime, payment of costs and expenses, as well as the publication of the sentence. In case of a repeat offense, the judge may order the definitive cancellation of the entity's legal status.</p> | <p>Articles 2 and 7 of this law establish the criminal liability of legal entities, and the applicable criminal penalties, involving the financing of terrorism. The articles also establish that, when repeat offenses occur, the entity's legal status shall be cancelled definitively.</p> | <p>Article 10 of this law establishes that legal entities must be held liable for illicit drug-related crimes, regardless of the responsibility of their representatives, when said crimes consist of acts performed by the entity, provided they are within the normal or apparent conduct or purpose of their business.</p> | <p>Article 96 of this the law defines the crime of financial intermediation as follows: when any individual or legal entity, national or foreign, that without being expressly authorized in accordance with this law or other laws, performs transactions of this nature, usually carried out publicly or privately, directly or indirectly, by him or herself or in combination with another or individual or legal entity, for their own benefit or that of third parties.</p> |

Source: Guatemalan Penal Code

- The addition of subsection 7 to article 51 of the Penal Code, which regulates cases in which commuting sentences are not allowed. The added subparagraph indicates that the commutation will not be granted to those convicted of crimes related to public administration and the administration of justice. This provision promotes a stricter sanction for crimes that deal with important State activities.
 - Suspension of political rights is added to the list.
 - In the same way, a new regulation provides for additional penalties for public officials found guilty of crimes, with consequences including the two penalties listed above. In the case of legal entities, prohibition from holding public office translates to an inability to enter into contracts with the government.
- In accordance with international standards outlined in several international agreements, the Law against Corruption also introduced some new crimes and modified existing ones: (see Box 2)

BOX 2

CRIMES MODIFIED OR ADDED IN GUATEMALA'S LAW AGAINST CORRUPTION



| Crimes Modified | Crimes Added |
|---------------------------------------|---|
| Coercion | Breach of the Duty to present Asset Declaration |
| Threats | Falsehood in Asset Declaration |
| Specific Aggravation | Offshore Passive Bribery |
| Destruction of Computer Records | Embezzlement of Goods |
| Information Use | Illicit Enrichment |
| Abuse of Authority | Illicit Enrichment of Private Individuals |
| Noncompliance of Duties | Money Laundering |
| Insubordination | Influence Peddling |
| Disclosure of Secrets | Illegal Collection of Commissions |
| Illegal Appointment | Obstruction of Criminal Proceedings |
| Misappropriation of Allocations | |
| Passive Bribery | |
| Active Bribery | |
| Offshore Bribery | |
| Special Exemption from Responsibility | |
| Embezzlement of Public Assets | |
| Mishandling of Public Assets | |
| Misappropriation | |

| Crimes Modified | Crimes Added |
|------------------------|--------------|
| Extortion | |
| Fraud | |
| Illegal Levies | |
| Improper Collection | |
| Illegal Representation | |
| Delay of Justice | |
| Denial of Justice | |

Source: Guatemalan Penal Code

The crime of **nepotism** or, “the use of a public office to favor family members or friends in personnel selection outside of the principle of merit and ability”¹⁰ is not classified as a crime in the Penal Code. However, article 113 of the Constitution of the Republic, referring to the requirements to apply for public office, establishes that Guatemalans have the right to apply for public jobs or positions. It also states that in order to grant public jobs or positions, three considerations must be taken into account: essential abilities, suitability, and honesty.

LAW AGAINST MONEY LAUNDERING AND OTHER ASSETS¹¹

The Law against Money Laundering and Other Assets, Legislative Decree 67-2001, is a piece of legislation that aims to prevent, control, monitor, and sanction the laundering of money or other assets. The Law establishes the Intendance of Special Verification within the Superintendency of Banks, which is responsible for ensuring compliance with the law. The law will be analyzed in greater detail in the report on the fight against violence and organized crime. However, in relation to corruption, article 7 of the law establishes that if a public

official, government employee, or employee of the Special Verification Unit (Intendencia de Verificación Especial, IVE) commits laundering while in office, the person will be sanctioned with the corresponding sentence increased by a third. In addition, the person convicted would be ineligible to hold public office for a period equal to two times their prison sentence.

Among its powers, the IVE is able to file complaints in case there is evidence of a crime. It also must cooperate with the Public Prosecutor's Office in the investigation of crimes related to money laundering. In addition, the IVE can provide and request assistance from the competent authorities of other countries to facilitate judicial investigation.

LAW AGAINST ORGANIZED CRIME¹²

Guatemala also passed a Law against Organized Crime (Ley contra la Delincuencia Organizada, LcDO). Active since August 2006 and amended in 2009,¹³ the law established special investigation mechanisms, such as wiretaps, use of undercover agents, controlled deliveries, and effective collaboration procedures in criminal law. These mechanisms help criminally prosecute

those who participate in organized crime (drug activity, laundering of money and other assets, human trafficking, terrorist financing, customs fraud and smuggling, and other crimes outlined in the Penal Code). Likewise, the Law established new crimes such as conspiracy, illicit association, and obstruction of justice, among others. This Law will be examined in greater detail in the Monitor's report on combatting violence and organized crime.

ASSET RECOVERY LAW

In 2010, Guatemala passed the Asset Recovery Law (*Ley de Extinción de Dominio, LED*). The law helps identify, locate, recover, repatriate property, and annul rights related to possessions, profits, works, products, yields or swaps of illegal or criminal origin, to turn over to the State. The law's passage marked an important step in fighting criminal organizations, pursuing and seizing their assets to weaken their operational capacity. This law and its implementation will be examined in greater detail in the report on combatting organized crime and violence.

LAW ON ACCESS TO PUBLIC INFORMATION

The Access to Public Information Law (*La Ley de Acceso a la Información Pública, LAIP*), passed in 2008 by legislative decree 57-2008, is the main internal instrument on transparency and access to information that must be produced by the government of Guatemala. The Law is an important tool for combatting corruption because it establishes the right to access information that has to do with management of public resources. According to the Law, citizens may request data about the personnel hired by each institution and their salaries, how their budget is implemented, how much is spent on travel and per diem, and the progress of works and programs, among other items. The Law also

defines sanctions for those who do not provide information. The LAIP and its implementation are analyzed in the Monitor's report on improving transparency.

LAW OF PROBITY AND RESPONSIBILITIES OF PUBLIC OFFICIALS AND EMPLOYEES¹⁴

This Law seeks to create norms and procedures that make the functions of the government more transparent. It also strives to ensure strict adherence to constitutional and legal regulations in the exercise of public functions, avoid diversion of public resources, and establish mechanisms of assets control of public officials and employees while engaged in public service. According to an Oxfam study, although the law contains certain provisions related to conflicts of interest, they are not sufficient because the provisions do not specify what could constitute a conflict of interest for any public employee.¹⁵ Furthermore, the provisions do not require state employees to present evidence of the absence of a conflict of interest, and they do not contain provisions to prevent conflicts of interest after leaving public administration, among other weaknesses.

After reviewing pertinent legal regulations that aid in the fight against corruption, it is worthwhile to examine the clear attempts to exploit the law in order to seek impunity, by both the public sector, as well as in the private one.

Clear examples of this included the attempts by Congress to pass decrees 14-2017 and 15-2017, reforms to the Penal Code which would modify the crime of illegal electoral financing (Article 407 N) and provide those accused with the ability to commute their sentences by paying economic sanctions for each day that corresponded to the original sentencing.

Due to the various actions carried out by organized civil society, Congress backed down, postponing both decrees. However, this case is an example of a situation in which the state

agencies themselves pursued actions to the detriment of the fight against impunity and corruption.

EFFECTIVENESS IN THE FIGHT AGAINST CORRUPTION


Despite efforts to strengthen corruption related criminal laws, this cannot guarantee its eradication. Therefore, it is essential to examine criminal investigative capacity in Guatemala. To do this, it is pertinent to carry out an analysis of quantitative data of both the Public Prosecutor's Office (entity responsible by law for investigation and criminal prosecution) and the Judiciary (entity responsible for judging and implementing punishments). For this exercise, researchers selected a set of crimes¹⁶ that are commonly reported in cases related to large-scale corruption in Guatemala.

It's worth noting that the **Public Prosecutor's Office** manages a dynamic case management system that is updated depending on the stage of investigation or the phase of the criminal process. In this sense, the figures reported for a crime may vary depending on when they are requested from the unit of access to public information.

Having clarified this, the following section analyzes the figures obtained for the sample crimes for the 2014-2017 period.

As seen in Table 2, there was an annual increase in cases admitted to the Public Prosecutor's Office¹⁷ during the 2014-2017 period. During that period, the MP recorded a total of 12,940 admitted cases, including 2,526 in 2014 and 3,692 in 2017. Of these, the crimes that had an annual increase in complaints were: abuse of authority, fraud, and prevarication (See annex 1). Likewise, it is evident that the most frequently reported crime was abuse of authority, with a total of 8,730 cases (67.5% of the total complaints) of such crimes. Active bribery, passive bribery, fraud and embezzlement follow, with percentages of 9.84%, 8.4%, 4.95% and 3.6% respectively.

TABLE 2
CORRUPTION CASES – PUBLIC PROSECUTOR'S OFFICE, 2014-2017



| | Cases Admitted | Cases Under Investigation | Accusations | Dismissals ¹⁸ | Cases Archived ¹⁹ |
|--------------|----------------|---------------------------|-------------|--------------------------|------------------------------|
| 2014 | 2526 | 964 | 232 | 104 | 86 |
| 2015 | 3197 | 1558 | 216 | 117 | 48 |
| 2016 | 3525 | 1849 | 266 | 206 | 58 |
| 2017 | 3692 | 1954 | 231 | 69 | 253 |
| Total | 12,940 | 6,325 | 945 | 496 | 445 |



| | Conditional Suspension ²⁰ | Plea Bargains ²¹ | Summary Trial Sentences ²² | Convictions ²³ | Acquittals ²⁴ |
|--------------|--------------------------------------|-----------------------------|---------------------------------------|---------------------------|--------------------------|
| 2014 | 5 | 103 | 5 | 167 | 39 |
| 2015 | 24 | 85 | 5 | 72 | 35 |
| 2016 | 20 | 84 | 17 | 76 | 42 |
| 2017 | 17 | 65 | 8 | 80 | 46 |
| Total | 66 | 337 | 35 | 395 | 162 |

Source: Compiled using official data from the Public Prosecutor's Office

During the period, 945 accusations were registered, the majority in 2016 and the minority in 2015. The crimes for which the highest number of accusations were recorded were active bribery (485 cases) and abuse of authority (179 cases), which constitute 70.26% of the total accusations.

Regarding the judicial process²⁵ of cases, during the 2014-2017 period, the MP data reported convictions in 395 cases and acquittals in 162 cases. In other words, 71% of cases ended in convictions.

The crimes that recorded the highest number of convictions were embezzlement (170 cases), peculation (84 cases), and abuse of authority (75 cases). The crimes of illicit enrichment, electoral financing, and illegal electoral financing did not register convictions. In comparison, the crimes of active bribery (69 cases), abuse of authority (37 cases) and passive bribery (24 cases) reported the highest number of acquittal sentences, making up 80% of the total cases, according to the MP data. It is important to clarify that the MP did not send complete information regarding the following crimes: extortion, fraud, embezzlement, and prevarication.

Guatemalan law allows certain cases to be prosecuted through summary proceedings

(Art. 464 of the Penal Code). This procedure can be applied when the MP pursues a penalty of no more than five years imprisonment, or of a non-custodial sentence, or even both. For a summary proceeding to occur, there must be an agreement between the accused and the defender. This agreement includes the criminal act, admission of guilt in the crime, and the path of the summary proceedings. This proceeding must be accepted by the court. If accepted, the offender is either convicted or acquitted. According to the figures of the MP, for the crimes of abuse of authority, active bribery, passive bribery, peculation, embezzlement, coercion, and influence peddling, 35 summary proceeding cases were registered during the period under study, the majority of which were peculation cases (15 cases).

The Law defines other forms of resolution, including discontinuation (Art. 327 Penal Code), acquittal (Art. 325 Penal Code), conditional suspension of criminal prosecution (Art. 27 Penal Code), and plea bargaining (Art. 25 Penal Code), among others. Taking this into account, data reported during the 2014-2017 period produce the following figures:

445 cases were filed for crimes of abuse of authority, active and passive bribery, peculation, embezzlement, fraud, prevarication and


obstruction of justice, of which almost 68% were cases of abuse of authority. 496 requests for dismissals were filed for the crimes of active bribery (246 cases) and abuse of authority (225). It should be noted that requests for dismissal are subject to a decision by the judge. The MP did not send 2017 information for this indicator for 7 of the 12 crimes analyzed.

Regarding requests for plea bargaining, the MP only sent information on the crimes of abuse of authority, active and passive bribery, fraud, and obstruction of justice, establishing a total of 337 cases. Crimes of active bribery (233 cases) and abuse of authority (91) were the two most common offenses in this area.


Regarding conditional suspension of criminal prosecution, during the 2014-2017 period, the MP registered 66 cases for 8 of the 12 crimes included in this study, 34 for the crime of active bribery, and 15 for the crime of abuse of authority, making these two offenses most common in the area of plea bargaining.

The Judiciary reported a total of 4093 cases admitted during the 2014-2017 period, of which the majority were for crimes of active bribery (1549 cases), followed by the crimes of abuse of authority, percolation, and passive bribery, with 1369, 281, and 207 cases respectively. The lowest number of admitted cases reported were for the crimes of illicit enrichment and illegal electoral financing, of which only 10 cases were entered for each crime during the period in question.

TABLE 3
CORRUPTION CASES – JUDICIARY, 2014-2017



| | Cases Admitted | Dismissed ²⁶ | Cases Under Investigation ²⁷ | Closure for Lack of Merit ²⁸ | Dismissals ²⁹ |
|--------------|----------------|-------------------------|---|---|--------------------------|
| 2014 | 977 | 3 | 53 | 114 | 42 |
| 2015 | 998 | 15 | 53 | 128 | 57 |
| 2016 | 987 | 58 | 66 | 185 | 108 |
| 2017 | 1,131 | 9 | 91 | 209 | 83 |
| Total | 4,093 | 85 | 263 | 636 | 290 |



| | Provisional Closure ³⁰ | Plea Bargains ³¹ | Conditional Suspension ³² | Convictions ³³ | Acquittals ³⁴ |
|--------------|-----------------------------------|-----------------------------|--------------------------------------|---------------------------|--------------------------|
| 2014 | 27 | 43 | 3 | 58 | 41 |
| 2015 | 53 | 53 | 3 | 64 | 29 |
| 2016 | 54 | 93 | 19 | 84 | 41 |
| 2017 | 109 | 71 | 2 | 238 | 69 |
| Total | 243 | 260 | 27 | 444 | 180 |

Source: Compiled using official data from the Judiciary

TABLE 4
CORRUPTION PROCESSES – THE PUBLIC PROSECUTOR’S OFFICE, 2014-2017

| | Cases Admitted | Cases Under Investigation | Allegations | Dismissals ³⁵ | Archived Cases | Conditional Suspension | Plea Bargaining | Summary Trials | Convictions | Acquittals ³⁶ |
|----------------------------|----------------|---------------------------|-------------|--------------------------|-----------------|------------------------|-----------------|----------------|-----------------|--------------------------|
| Abuse of Power | 8730 | 4258 | 179 | 225 | 302 | 15 | 91 | 8 | 75 | 37 |
| Active Bribery | 1272 | 396 | 485 | 246 | 29 | 34 | 233 | 6 | 28 | 69 |
| Passive Bribery | 1086 | 520 | 89 | 13 | 48 | 2 | 11 | 3 | 23 | 24 |
| Coercion | 43 | 24 | 7 | 0 | n/r | 3 | n/r | 0 | 2 ³⁷ | 3 |
| Illicit enrichment | 81 | 57 | 2 | 0 | n/r | 1 | n/r | n/r | 0 | 0 |
| Fraud | 639 | 448 | 17 | 2 | 2 | 1 | 1 | n/r | 4 | 8 |
| Embezzlement | 466 | 294 | 48 | 3 | 10 | 3 | n/r | 2 | 170 | 11 |
| Peculation | 113 | 81 | 83 | 5 | 8 | 6 | n/r | 15 | 84 | 6 |
| Influence Trafficking | 200 | 96 | 12 | 0 | 2 ³⁸ | n/r | n/r | 1 | 4 | 0 |
| Prevarication | 183 | 82 | 0 | n/r | 38 | n/r | n/r | n/r | 1 | n/r |
| Obstruction of the Justice | 109 | 60 | 23 | 2 | 6 | 1 | 1 | n/r | 4 | 4 |

| | Cases Admitted | Cases Under Investigation | Allegations | Dismissals ³⁵ | Archived Cases | Conditional Suspension | Plea Bargaining | Summary Trials | Convictions | Acquittals ³⁶ |
|-----------------------------|----------------|---------------------------|-------------|--------------------------|----------------|------------------------|-----------------|----------------|-------------|--------------------------|
| Electoral financing | 3 | 0 | 0 | 0 | n/r | n/r | n/r | n/r | 0 | 0 |
| Illicit electoral financing | 15 | 9 | 0 | 0 | n/r | n/r | n/r | n/r | 0 | 0 |
| TOTAL | 12,940 | 6,325 | 945 | 496 | 445 | 66 | 337 | 35 | 395 | 162 |

Source: Compiled using official data from the Public Prosecutor's Office

TABLE 5
CORRUPTION PROCESSES – THE JUDICIARY, 2014-2017

| | Cases Admitted | Dismissed | Cases Under Investigation | Closure for Lack of Merit | Dismissals | Provisional Closure | Plea Bargaining | Conditional Suspension | Convictions | Acquittals |
|--------------------|----------------|-----------|---------------------------|---------------------------|------------|---------------------|-----------------|------------------------|-------------|------------|
| Abuse of Authority | 1369 | 68 | 85 | 165 | 67 | 25 | 7 | 8 | 87 | 41 |
| Active Bribery | 1549 | 11 | 79 | 354 | 138 | 81 | 249 | 10 | 148 | 74 |
| Passive Bribery | 207 | 3 | 7 | 16 | 9 | 28 | 3 | 3 | 31 | 24 |
| Coercion | 87 | n/r | 1 | 4 | n/r | n/r | n/r | 1 | 5 | 4 |
| Illicit enrichment | 10 | n/r | n/r | n/r | n/r | 30 | n/r | n/r | 1 | 0 |
| Fraud | 200 | n/r | 26 | 45 | 10 | 9 | 1 | 2 | 35 | 4 |
| Embezzlement | 177 | 1 | 6 | n/r | 1 | n/r | n/r | n/r | 4 | 0 |
| Peculation | 281 | 2 | 20 | 35 | 56 | 56 | n/r | 1 | 71 | 9 |

| | Cases Income | Dismissed | Cases Under Investigation | Closure for Lack of Merit | Dismissals | Provisional Closure | Plea Bargaining | Conditional Suspension | Convictions | Acquittals |
|-----------------------------|--------------|-----------|---------------------------|---------------------------|------------|---------------------|-----------------|------------------------|-------------|------------|
| Influence Trafficking | 20 | n/r | 2 | 2 | n/r | 13 | n/r | 0 | 3 | 0 |
| Prevarication | 35 | n/r | 1 | 2 | n/r | n/r | n/r | 0 | n/r | n/r |
| Obstruction of Justice | 148 | n/r | 36 | 13 | 9 | 1 | n/r | 2 | 52 | 24 |
| Electoral financing | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r |
| Illegal electoral financing | 10 | n/r | n/r | n/r | n/r | n/r | n/r | n/r | 7 | 0 |
| TOTAL | 4,093 | 85 | 263 | 636 | 290 | 243 | 260 | 27 | 444 | 180 |

Source: Compiled using official data from the Judiciary

In relation to the cases that were under investigation in the MP, the data show a sustained increase. A study of the data provided by the Public Prosecutor's Office indicates that the quantitative relationship is proportional to the number of cases filed, except in the cases of active bribery, passive bribery and fraud, which rank second, third and fourth in terms of cases filed, but in the indicator of cases under investigation, the crime of passive bribery ranks second, fraud third and active bribery fourth.

The reason for the variation in these figures, which refer to the same offenses during the same period, could be that the figures for that indicator (cases under investigation) may also include cases that were entered in previous years (delayed or carry-over).

From the figures reported, it is evident that during the period 945 accusations were

recorded, the majority in 2016 and the rest in 2015. Specifically, the crimes that had the greatest number of accusations recorded were active bribery (485 cases) and abuse of authority (179 cases), which constitute 70.26% of the total number of accusations. According to the data in Table 3, the figures reported vary from those recorded by the MP, since the cases admitted to the MP are not proportionate to the cases that the OJ reports as admitted.

This is due to the fact that cases that are reported in the MP go through a preliminary investigation process that constitutes a filter to determine if there are sufficient elements to go to trial. For this reason, it is not common that the number of cases admitted to the MP is equal to the number of cases that enter the OJ.

During the period under study, the OJ reported a total of 263 cases under investigation or in

a preparatory phase (the phase in which the court establishes a certain period for the MP to produce a conclusive act based on evidence from the investigation).³⁹

The crimes in the sample that were more often in the preparatory phase during the study period are: abuse of authority (32.31%), active bribery (30%), obstruction of justice (13.69%), fraud (9.86%), and peculation (7.60%). In this case, contrary to what the MP reported as cases that were under investigation, the crimes of obstruction of justice and peculation ranked anywhere from 1st to 5th place. These figures do not include crimes of illicit enrichment, electoral financing, and illegal electoral financing since they were not provided by the OJ.

With respect to sentences handed down in court during the study period, the OJ data shows that there were 444 convictions, or guilty verdicts (49 more cases than those recorded by the MP). Unlike the MP data, OJ figures indicate that of the total convictions, 33% are for the crime of active bribery, followed by the crimes of abuse of authority (19.60%), peculation (16%), obstruction of justice (11.71%), fraud (7.88%), and passive bribery (6.98%). In the case of the OJ, the crimes of illicit enrichment, influence peddling, and coercion reported between just 1 and 5 convictions. It should be noted that the OJ did not provide data on the crimes of prevarication and electoral financing.

The OJ registered 180 acquittals (18 cases more than the figures reported by the MP), of which the majority were for crimes of active bribery (41%), abuse of authority (22.78%), obstruction of justice (13.33%) and passive bribery (13.33%). These figures do not include crimes of prevarication and electoral financing because the OJ did not provide this information.

There is a significant discrepancy between

the cases admitted and the cases resulting in sentences over a specific time period. This is due to several circumstances:

1. Not all sentences obtained in a calendar year correspond to the lawsuit entered in that same year (it is very probable that the majority correspond to cases entered in previous years due to judicial default).
2. A case can involve several people. Nonetheless, according to what is decided by the jurisdictional bodies during the different procedural stages, not all those involved receive a sentence, and even if they all reach the end of the proceedings, some may be convicted, and others acquitted.
3. As described above, not all cases end with a sentence; this is because there are other forms of resolution established by Guatemalan law, such as discontinuation, dismissal, bargaining, provisional closure, etc.

The difference in quantitative data between the MP and the OJ, during the same period for the same crimes and the same indicators, may be due to the fact that cases admitted to the MP are not always brought to trial. Likewise, not all cases under investigation correspond to cases admitted during the four years of study, as these figures may contain cases from previous years (default or carryover). Additionally, the MP's registration system is dynamic and changes during the same case depending on the phase it is in.

In light of the above, it is important to consider some qualitative aspects that demonstrate the MP's investigative work and the functions of the OJ. The following section contains factual information to better understand the investigation and prosecution of crimes related to acts of corruption.

CAPACITY OF THE PUBLIC PROSECUTOR'S OFFICE AND THE JUDICIARY

THE PUBLIC PROSECUTOR'S OFFICE

According to provisions of its organic law, the Public Prosecutor's Office had the following branches during the period under study:⁴⁰

The Prosecutor's Office against Corruption:

Established in 1999, it has jurisdiction to investigate and prosecute criminal offenses that constitute acts of corruption in which public officials and employees are involved.

The Prosecutor's Office of Administrative

Crimes: This office has jurisdiction to investigate the administrative conduct of officials and employees of the state, and decentralized and autonomous bodies and entities. This office carries out its role by regularly intervenes in all criminal matters that are related to public administration or when state interests are damaged.

The Prosecutor's Office of Internal Affairs:

This office was established in 2015 to carry out the criminal prosecution of crimes committed by MP officials and employees while exercising or serving their functions.

The Special Prosecutor's Office against Impunity (Fiscalía Especial contra la Impunidad, FECI):⁴¹

The FECI is a special unit in charge of the investigation of cases that the CICIG and MP selected due to their high impact (they must meet requirements described in the mandate of the CICIG and in the agreement between the Attorney General and the Commission). The CICIG supports the investigation activities of FECI prosecutors, providing advice and technical

support.⁴² In 2016, the FECI opened a fiscal agency in the city of Quetzaltenango to cover high impact corruption cases in Quetzaltenango, Huehuetenango, San Marcos, and Totonicapán.

For years, the FECI has been in the public eye due to the important nature of the investigations it carried out in with the CICIG. Many high impact corruption cases were revealed from 2014 to 2017, including: Corruption in the prison system, the Gudy Rivera case, phantom seats in Congress, and the impunity law firm case, among others.⁴³ However, after the President Jimmy Morales' family was implicated in investigations by CICIG and FECI, as well as executives of powerful corporations in the country, politicians and military, a political, diplomatic, legal and institutional crusade started in August 2017 in order to expel CICIG and thus stop the fight against corruption and impunity.⁴⁴

In addition to the FECI, it is worth highlighting the work of the Special Methods Unit (*Unidad de Métodos Especiales*, UME) and the Criminal Analysis Directorate (*Dirección de Análisis Criminal*, DAC) because the joint work of these three entities has been fundamental in the investigation of extremely complex and large-scale corruption cases. In this sense, in 2015, after revealing the details of "La Linea" (The Line) case, the CICIG added that it was important to strengthen the three-body unit (especially the UME) in order to increase the capacity of the Public Prosecutor's Office as an effective tool in the fight against corruption and organized crime. Along these lines, the approval of the 2016 reform to the Organic Law of the MP is considered significant because, among other feats, it helped establish the National Coordinating Office of Prosecutors,

strengthened the Directorate of Criminal Investigations (Dirección de Investigaciones Criminales, DICRI) and the professional prosecutor career system, and restructured the Office of Protection of Procedural Subjects.⁴⁵

In this context, having the participation of agents and assistant prosecutors is necessary because they contribute to the effectiveness of the work of the MP. According to articles 42 to 46 of the Organic Law of the Public Prosecutor's Office (*Ley Orgánica del Ministerio Público*, LOMP), fiscal agents, as well as those responsible for assisting district prosecutors, determine the direction of the investigation, formulate the accusation or corresponding conclusive act according to the case, and act in the deliberations before the sentencing courts. Assistant prosecutors are responsible for assisting fiscal agents, district or section prosecutors, and act under the supervision and responsibility of these officials. In other words, they are responsible for conducting the investigation during the preparatory stage.

The 2014-2017 period saw an increase in the number of prosecutors specialized in combatting impunity and corruption. In the case of the FECl, there were 5 fiscal agents in 2014 and 11 by 2017, signifying an increase of more than double. There was also an increase with respect to

auxiliary prosecutors, whose number went from 20 in 2014 to 32 in 2017. The total number of positions at the FECl during the period studied amounted to 46.

In the Prosecutor's Office against Corruption, the number of fiscal agents remained stable at 9 during the 2014-2016 period before increasing by 5 by 2017, making for a total of 14 that year. On the other hand, there was an annual increase of first assistant prosecutors, beginning in 2014 with 25 and concluding in 2017 with 34. There were 49 total positions in the specialized office in 2017.

The Prosecutor's Office of Internal Affairs had the least personnel. While it did not yet exist in 2014, it had only two fiscal agents in 2015 and 2016 before increasing to three in 2017. There were six assistant prosecutors in 2015, seven in 2016, and decreased to six again in 2017.

Finally, the Prosecutor's Office of Administrative Crimes began in 2014 with seven fiscal agents before decreasing to six for the remaining years of study. There was also a decrease in terms of assistant prosecutors, whose number decreased from 16 in 2014 to 14 in 2017. The total number of positions in this prosecutor's office by 2017 was 20.

TABLE 6

PROSECUTORIAL STAFF WHO HANDLE CORRUPTION CASES

| NUMBER OF STAFF (PROSECUTORS, ASSISTANT PROSECUTORS) ASSIGNED TO SPECIALIZED PROSECUTOR OFFICES | 2014 | 2015 | 2016 | 2017 |
|--|-------------|-------------|-------------|-------------|
| Prosecutors in the FECl | 5 | 6 | 9 | 11 |
| First Assistant Prosecutors in the FECl | 20 | 18 | 30 | 32 |
| Second Assistant Prosecutors in the FECl | 1 | 4 | 1 | 3 |
| Total staff in FECl | 26 | 28 | 40 | 46 |

| NUMBER OF STAFF (PROSECUTORS, ASSISTANT PROSECUTORS) ASSIGNED TO SPECIALIZED PROSECUTOR OFFICES | 2014 | 2015 | 2016 | 2017 |
|--|-------------------------------|-------------|-------------|-------------|
| Prosecutors in the Prosecutor's Office Against Corruption | 9 | 9 | 9 | 14 |
| Assistant Prosecutors I in the Prosecutor's Office Against Corruption | 25 | 28 | 30 | 34 |
| Assistant Prosecutors II in the Prosecutor's Office Against Corruption | 0 | 0 | 1 | 1 |
| Total positions in the Prosecutor's Office Against Corruption | 34 | 37 | 40 | 49 |
| Prosecutors in the Prosecutor's Office of Internal Affairs | Office not yet created | 2 | 2 | 3 |
| Assistant Prosecutors I in the Prosecutor's Office of Internal Affairs | Office not yet created | 6 | 7 | 6 |
| Assistant Prosecutors II in the Prosecutor's Office of Internal Affairs | Office not yet created | 0 | 0 | 0 |
| Total positions in the Prosecutor's Office of Internal Affairs | Office not yet created | 8 | 9 | 9 |
| Prosecutors in the Prosecutor's Office of Administrative Crimes | 7 | 6 | 6 | 6 |
| Assistant Prosecutors I in the Prosecutor's Office of Administrative Crimes | 16 | 15 | 14 | 14 |
| Assistant Prosecutors II in the Prosecutor's Office of Administrative Crimes | 1 | 1 | 2 | 0 |
| Total staff in the Prosecutor's Office of Administrative Crimes | 24 | 22 | 22 | 20 |

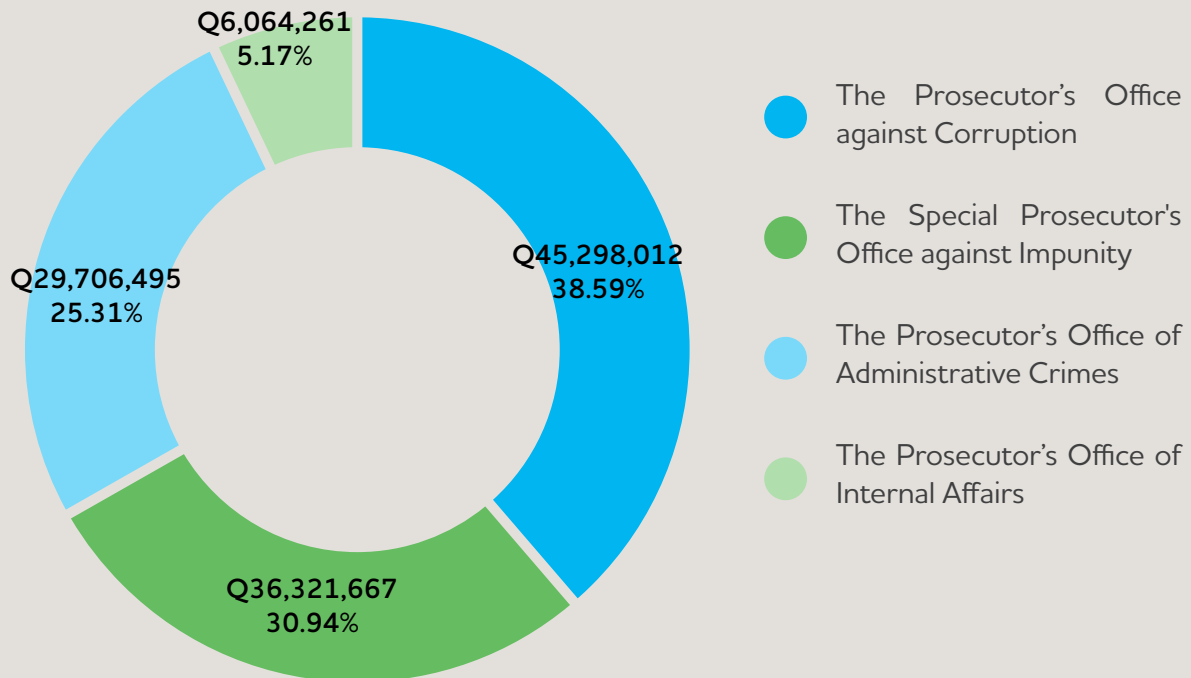
Source: Compiled using official data from the Public Prosecutor's Office

Regarding the budget, the four offices responsible for investigating the corruption phenomenon included in this study were assigned 117,390,435 quetzales (\$15.3 million), of which the largest portion was assigned to the Prosecutor's Office Against Corruption (38.59%), followed by the Special Prosecutor's Office

Against Impunity (30.94%). The prosecutor in charge of administrative crimes was assigned 25.31%, while the fiscal unit responsible for investigating crimes perpetrated by officials or employees of the institution was granted 5.17% (See Graph 1).

GRAPH 1

PERCENTAGE OF BUDGET ASSIGNED TO INVESTIGATING CORRUPTION, 2014-2017



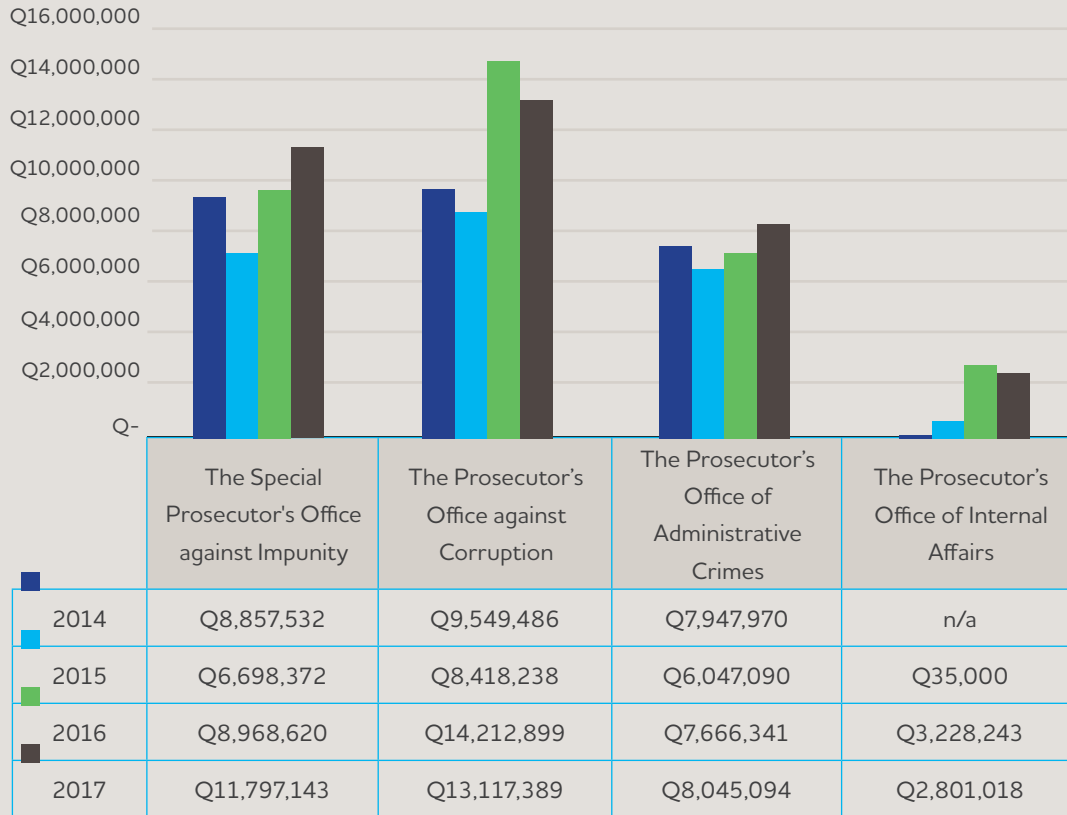
Source: Compiled using official data of the Public Prosecutor's Office

Analyzing the data received, all prosecutor's offices examined had a decrease in their budget allocation in 2015, with the exception of the Prosecutor's Office of Internal Affairs, which was created in 2015. In 2016, there was a significant increase in the budget granted to the four branches, with the Prosecutor's Office Against Corruption receiving the highest increase (5 million quetzales, or \$650,000), followed by

the Prosecutor's Office of Internal Affairs, whose budget increased from 35,000 quetzales (\$4,000) to 3,228,243 quetzales (\$420,000). The increase was sustained the following year, although at a much lower level, for the FECl and the Prosecutor's Office of Administrative Crimes. This was not the case for the Prosecutor's Office against Corruption and the Prosecutor's Office of Internal Affairs.

GRAPH 2

BUDGET ALLOCATION TO PROSECUTORIAL OFFICES INVESTIGATING CORRUPTION, 2014-2017



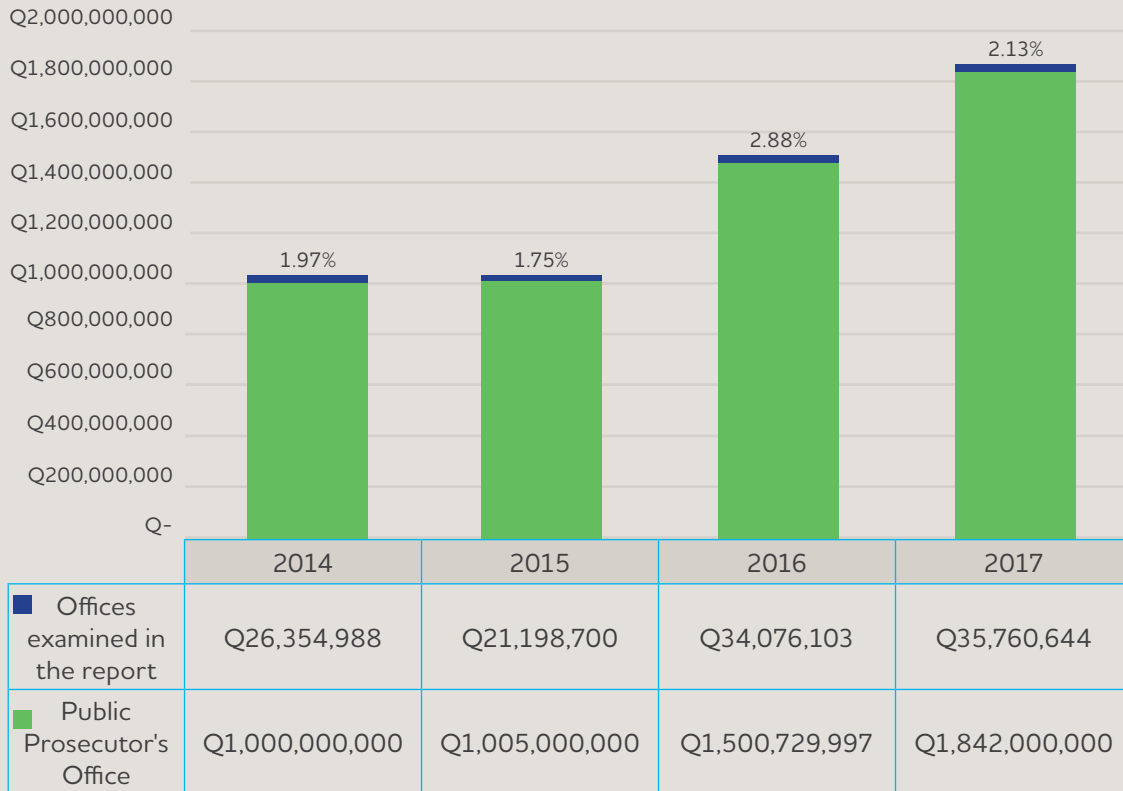
Source: Compiled using official data of the Public Prosecutor's Office

Despite the increase in budget allocation in 2016, this represented only 2.88 percent of the total budget allocated to the Public Prosecutor's Office (see Graph 3), making for a 1.13 percent

increase compared to 2015. In 2017, the allocation percentage decreased by 0.75 percent compared to 2016.

GRAPH 3

PERCENTAGE OF BUDGET ALLOCATED TO THE PUBLIC PROSECUTOR'S OFFICE, 2014-2017



Source: Compiled using official data of the Public Prosecutor's Office

THE JUDICIARY

Since 2009⁴⁶, Guatemala's Judiciary has relied on High Risk Courts and Tribunals to decide complex cases related to corruption⁴⁷, organized crime, drug trafficking, and serious human rights violations perpetrated during the internal armed conflict (1960-1996). These courts and tribunals were established to deal with those cases that present risks to the personal safety of litigants (victims, witnesses, prosecutors, judges, etc.), and therefore require extraordinary security measures. The request to assign these cases to high-risk jurisdictional bodies is made by the Attorney General and is ultimately decided by

the Criminal Chamber of the Supreme Court of Justice (Corte Suprema de Justicia, CSJ).

At the close of the study period, there were 4 high risk courts in Guatemala City (A, B, C, D).⁴⁸ These courts are competent to hear cases that occur throughout the country, except in the southern and northwestern regions of Suchitepéquez, Retalhuleu, San Marcos, Huehuetenango, Totonicapán, Quiché, Sololá and Quetzaltenango, where the Court of First Instance in Criminal Matters, Drug Trafficking, and Crimes against the Environment of High Risk in Quetzaltenango has jurisdiction over these matters.⁴⁹ The High Risk system also has

two appeals chambers based in the capital. In the case of Quetzaltenango, the high risk appeals are heard by the Fifth Chamber of the Appeals

Court of the Criminal, Drug Trafficking, and Crimes against the Environment Branch.

TABLE 7

THE CREATION OF HIGH RISK COURTS IN GUATEMALA, 2014-2017

| 2014 | 2015 | 2016 | 2017 |
|---|---------------------------|---|---------------------------|
| High Risk Court A and High Risk Court B already existed | High Risk Court C created | High Risk Court in Quetzaltenango created ⁵⁰ | High Risk Court D created |

By 2017, the high risk system had 16 judges.⁵¹ It should be noted that of these, 9 are women.

The law that established high risk courts has been in effect for 10 years. Although the creation of the various high-risk jurisdictional bodies is positive, there are many missing resources preventing the courts from fully implementing their mandated purpose: the physical spaces required, personnel, and administrative and training needs of its members are all underdeveloped. In some cases, hearings had to be suspended because there was not enough space in the courtrooms to fit all those involved in the case.⁵² These factors make it difficult for high risk courts to fully carry out their primary objective (the safety of persons involved in the case).⁵³

Additionally, although the cases that are dealt with in high risk bodies are a small fraction of the total number of those entering the justice system, the number of accused persons by case is usually higher due to the severity of the crimes. This has generated a state of overload in these bodies.

According to what some of the judges of high risk courts have expressed, other factors that increase workload are the practices of vexatious litigation (filing meritless actions with the simple intention of delaying proceedings) and an excessive use of the high risk system. These scenarios also create an extraordinary challenge for administrative compliance with procedural deadlines—the Code of Criminal Procedure (*Código Procesal Penal, CPP*) establishes clear deadlines for carrying out some procedures that, in practice, can be hard to meet.⁵⁴

Furthermore, the number of cases that have entered this jurisdiction has increased over the years, adding even more work for this institution. "In November 2014, the High Risk Court had deliberations scheduled until October 2015, while Court B had a full agenda of deliberations until October 2016."⁵⁵

On the other hand, there are many administrative and judicial management factors that can contribute to reducing the time in which proceedings of the high risk court are carried out and there must be a focus on long-term efforts to address underlying problems.

An example of this is the disparity in human resources allocated to each body or the lack of training in administrative matters given to the

Secretary of the courts. In November 2017, the OJ indicated the following figures of auxiliary personnel assigned to high risk courts:⁵⁶

TABLE 8
PERSONNEL OF THE HIGH RISK SYSTEM

| Auxiliary personnel assigned to high risk courts as of Nov. 2017 | A | B | C | D |
|--|---|---|---|---|
| Auxiliary personnel | 5 | 8 | 6 | 3 |
| Officials | 3 | 3 | 3 | 0 |

At the budgetary level, the high risk courts were assigned a budget of 25,906,208.68 quetzales (\$3.37 million) for the 2014-2017 period, growing year after year over the four-

year period. The budget allocated to the high risk courts represented only 0.33% of the total budget allocated to the Judiciary during the same period.

TABLE 9
BUDGET ASSIGNED TO HIGH RISK COURTS AND THE JUDICIARY, 2014-2017

| | 2014 | 2015 | 2016 | 2017 | Total |
|------------------|----------------|----------------|----------------|----------------|----------------|
| Judiciary | Q1,890,348,895 | Q1,800,757,378 | Q1,750,943,332 | Q2,528,932,250 | Q7,970,981,855 |
| High Risk Courts | Q 4,492,046.61 | Q 5,810,091.90 | Q6,540,642.17 | Q9,063,428 | Q25,906,208.68 |
| Percentage | 0.24% | 0.32% | 0.37% | 0.36% | 0.33% |

Despite the constraints, the work of the high risk courts has had a strong impact on the country.

According to an Impunity Watch study, since 2015, the judges of High Risk Courts have been under immense pressure, and political and economic power groups implicated in corruption cases, who seek to curb the proceedings and discredit their judicial work at all costs, have threatened judges. Likewise, a large number

of criminal and administrative complaints have been filed against high risk judges: between 2015 and 2018 alone, there were 57 administrative complaints, 33 criminal complaints, and 22 pre-trial requests filed. In addition, the National Office for the Prevention of Torture, a body with no authority to interfere in judicial functions, presented at least 6 reports against judges of High Risk Courts, holding them responsible for torture against defendants without evidence.⁵⁷

In addition to this, there are smear campaigns against judges in the media and social networks that aim to discredit their judicial work.

Finally, it is worth mentioning that, as of May 2017, the Institute of Public Criminal Defense (*Instituto de la Defensa Pública Penal*, IDPP) established a Coordinating Office of High Risk

Courts, which specifically addresses these types of complaints. Despite being comprised of five lawyers and five assistants, there was a need to include two more lawyers in September of 2017. Likewise, it was often necessary to request the collaboration of other entities to cover high risk court proceedings, since the human resources needs have not been met.⁵⁸

PROGRESS OF EMBLEMATIC CASES

Developments in judicial proceedings brought against important political actors of public life, election campaign financiers, and/or government contractors reflect important progress made in the fight against corruption and impunity. Even though a large number of paradigm cases have

emerged in Guatemala since 2015, the following is a summary of two particular cases that serve as prime examples of how the justice system and trial lawyers have dealt with cases of such magnitude.

BOX 3

CASE OF “LA LÍNEA”

The criminal case known as “*La Línea*” (“The Line,” in English) was the result of an investigation into the criminal network surrounding Alfredo Moreno. The Moreno Network reflects a customs fraud network (emerging from counterinsurgency) that started operating within the state institution in the 70’s. “*La Línea*” case consisted of a customs fraud ring that, according to the investigations, embezzled at least 38,853,127.77 quetzales (about \$5.05 million) by charging irregular fees to 472 containers passing through customs.

The internal structure was made up of customs officials and agents that set prices for imports, while charging less taxes and instead an illegal fee. According to MP investigations, the network involved more than 60 individuals who participated directly or indirectly in illegal collections in three customs offices in the country.

Members of the network communicated by using a telephone number known as “*La Línea*” through which senior government authorities issued instructions to orchestrate the fraud operation. According to the investigation, the private secretary of Vice President Baldetti, Juan Carlos Monzón, served as the liaison between former Vice President Baldetti and Giovanni Marroquín Navas, a former employee of the Superintendency of Tax Administration (*Superintendencia de Administración Tributaria*, SAT) who allegedly expedited tax return credit in exchange for collecting illegal fees. Juan Carlos Monzón would deliver instructions to all those involved in the illicit network, among them, executives of the SAT. Most of the fees went to former President Pérez Molina and Vice President Baldetti. Thus, this network generated a relational dynamic of power between 2011 and 2015 around the electoral campaign and the government functions of the Patriot Party (PP).

This case led to the indictment of several people (34 who were part of the network and 28 importers). Among the first were Salvador González (who had operational command within the mafia criminal structure of the PP) and Monzón, who were accepted as protected witnesses (the first regained his freedom in October 2017 and the second in June 2018).

Another key actor involved is Luis Mendizabal, who has been described as an orchestrator of conspiracies, coups, illicit trafficking, and as a prominent member of clandestine security organizations embedded in the State.⁵⁹ He is currently a fugitive from justice for his involvement in the “La Línea” and “Bufete de la Impunidad” (“*Law Firm of Impunity*”) cases.⁶⁰ Apparently, he had been the head of the middle external structure of “The Line” and had managed alternative arrangements, through illegal means, in favor of three defendants: Francisco Javier Ortiz Arriaga⁶¹, Miguel Ángel Lemus Aldana and Salvador Estuardo González Álvarez.⁶²

Handling by state authorities: Judge Martha Sierra de Stalling oversaw the first hearing of 22 of the accused individuals for the “La Línea.” At this hearing, although it is true that they were linked to the case, several received alternative arrangements.

According to subsequent investigations, it was determined that between April 16 and 17, 2015, relatives of Francisco Javier Ortiz Arriaga received four checks amounting to \$74,200 from the dollar account in his name. They also received a fifth check for 1,300,000 quetzales (some \$162,500) from another one of his accounts. The above actions indicate that Judge Sierra de Stalling’s decisions could have been influenced by a monetary offer,

taking into account the large sum of money that Ortiz mobilized days before the first hearing took place. Due to the appearance of passive bribery and prevarication, Judge Sierra de Stalling was subsequently linked to the case.

Due to the complexity of the facts, the number of people involved, and to guarantee the safety of the litigants, in mid-2015, the MP’s request to assign the case to a high risk court was approved.

After hearing the first statement of those involved in the case, the intermediate stage hearing was held in 2017, and it lasted for three months and three weeks. At its conclusion, on October 27, 2017, Judge Miguel Ángel Gálvez resolved to send 28 of those involved to trial (including the former presidential binomial: Otto Pérez and Roxana Baldetti).

In three days of arguments, the judge detailed the participation of each of the accused individuals in the criminal structure, indicating that there was enough evidence for them to face justice. However, as new means of investigation were incorporated, two members of the middle external criminal structure had their proceedings provisionally closed. Details on this case will be updated in future reports.

Use of legal process to delay justice: To date, the judicial process has had more setbacks than advancements, often caused by the accused filing additional legal actions. In judicial case number 01074-2015-00115, the accused individuals appealed 49 verdicts by the judge of High Risk Court B and took legal action in the First Chamber of High Risk on 26 other occasions.

Former President Pérez Molina has presented a number of legal actions and has used seven lawyers to present his case. In two complaints, he sought to separate Judge Gálvez from the case. The Chamber took 71 and 56 days, respectively, to resolve his two objections raised. In addition, Molina went before the Constitutional Court five times to appeal for protection and because of allegedly unconstitutional acts committed and legal provisions presented. These actions were resolved in an average time of seven months, according to the OJ records. In total, Pérez presented legal actions 37 times.

Former Vice President Baldetti acted 10 times against Gálvez's rulings, including a challenge to separate Judge Gálvez from the case. Of those cases, six were for habeas corpus to ensure her health and safety while in the Santa Teresa Women's Prison.

An appeal raised by Mario Antonio Cuevas Vidal (defense lawyer for former SAT worker Giovanni Marroquín Navas) took three years and two months (1,156 days) for the First Chamber of the High Risk Courts to resolve. This Chamber also took more than three years to hear the appeals and protections

(*amparos*) filed by former SAT Superintendent Omar Franco Chacón, the central customs administrator Karla Mireya Herrera Spain, and the customs officer José Rolando Gil Monterroso.

The examples above demonstrate a tendency for defense attorneys to file appeals (which for the most part do not materialize or are dismissed without a judgement) to delay court proceedings so that their clients are not subject to final convictions. Through this practice, the constitutional guarantee of *amparo* has been distorted. The Inter-American Court of Human Rights (*Corte Interamericana de Derechos Humanos, Corte IDH*) has recommended that Guatemala amend the legal use of the *amparo* so that mechanisms are in place to avoid its abuse.

Finally, it is also important to note that the practice of vexatious litigation can be a way to buy time while Congress promotes reforms to criminal laws to favor those involved in cases. In conclusion, the malicious use of *amparos* and legal actions, as well as the suspension of hearings, has caused significant delays in the judicial process. The trial is not expected to begin until mid-2020.

BOX 4

COOPTATION OF THE STATE CASE

Derived from the investigations initiated by the La Línea case, financial investigators managed to unveil a complex asset laundering structure, designed to raise funds during the Patriot Party election campaign in 2011. The investigators concluded that the case involved not just members of the government who committed isolated acts of corruption,

but rather that Pérez Molina and Baldetti led a criminal structure that co-opted power through the polls.

According to the investigation, as acting Secretary of the PP, Pérez Molina dedicated his work to raising funds for the electoral campaign. To do this, he used a network of

companies controlled by his vice presidential running mate, Roxana Baldetti. These companies received money flows from medias outlets, Radiotelevisión Guatemala, SA (Channel 3) and Televisiete, SA (Channel 7), amounting to just over 17 million quetzales (some \$2.13 million). Investigators found that the money received was not reported to the Supreme Electoral Tribunal (*Tribunal Supremo Electoral, TSE*). Subsequently, when the PP took possession of office, Channels 3 and 7 received million dollar contracts.

Private sector partners funneled money through shell companies to the PP, knowing that they would not receive any product or service in return. In other cases, the members of the private sector were billed for intangible or difficult-to-track services. Another technique was to triangulate funds from several financiers to hide the origin of the money in monthly campaign expense reports that were sent to the TSE. Many of the financial companies involved belonged to Juan Carlos Monzón and Víctor Hugo Hernández but in reality, the money came from other entities. Hugo Hernandez was an employee and front man for Monzón, and operated the corruption network by managing a series of shell companies that served to launder millions of quetzales from bribes and illicit financing; later, he became an effective collaborator in the criminal proceedings.

The illicit money laundering system continued to operate and expanded from 2012 onwards: an entirely parallel framework operated by awarding State contracts, public works and services, in exchange for an economic commission. The circle of political-economic operators was made up of contractors with close ties to the nucleus of power, which

allowed them a high degree of influence and negotiation in the markets for awarding state contracts (Among others, Raúl Osoy Penados, Carlos Gabriel Guerra, Juan José Suárez, Miguel Ángel Martínez, Sergio Roberto Arévalo stand out. These entrepreneurs came from the construction industry, security sector, ports and more, and have been described as high level operators directly tied to the nucleus of power. Some of them have even been described as institutional consultants).

Thus, this mafia network coopted several key State institutions by operating a financial scheme that appeared legal, but whose main purpose was the illicit enrichment of members of the network. The investigations made it possible to establish that Pérez Molina and Baldetti were the creators and beneficiaries of the entire business conglomerate working with front men, and receiving all kinds of benefits: credit card expenses, ticket purchases, clothing, jewelry, goods, appliances, furniture for residences and offices, and even airplanes, helicopters, vehicles, motorcycles, boats, land, houses, farms, warehouses, offices and villas, etc.

In a way, the central power structure can be understood as fiefdoms (ministries) that paid taxes to the higher power (presidency and vice-presidency). Dynamics within the network say much about the internal power relations; the former president received birthday gifts worth more than 33 million quetzales (approximately \$4.13 million) from this intimate circle of political-governmental power. In this context, the Patriotic Party serves as a concrete example of a military political project that managed to co-opt the State through electoral means.

Handling by state authorities: At the

beginning of June 2016, authorities made several arrests and the case was assigned to High Risk Court B. The first declaration hearing took several days (it began on June 13, 2016 and took place over 27 sessions) due to the number of people involved; the MP and the CICIG read the allegations during 10 sessions and the defense lawyers made their arguments for acquittal over 12 days. Judge Miguel Ángel Gálvez took five days to defend his decision (he based his decision on the testimony of several witnesses heard in the MP, as well as six defendants).

The High Risk Judge linked 53 people to the case and ruled in favor of four people due to lack of merit. The CICIG, as a private prosecutor in the proceedings, filed a special appeal against Judge Gálvez's decision, challenging the argument for lack of merit for some of the accused individuals. The Commission also appealed the resolution for alternative measures (house arrest) given to 16 accused individuals, requesting that they be issued pretrial detention. Subsequently, in October 2016, a former Claro Manager and four other people were linked to the proceedings.

At the end of the study period covered by this report, the case was waiting to begin its intermediate phase. During this time, some accused individuals requested hearings to discuss coercion measures and additional arrests were made. This information will be

updated in subsequent reports.

Use of legal processes to delay justice: Due to the slow progress of the criminal proceeding (largely resulting from the number of people tied to the case), there is not much information available regarding the use of legal processes that could be considered solely delaying tactics.

However, in January 2017, it emerged that at least 26 appeals had been filed in the Cooptación del Estado case, including one filed by defense lawyers where they claimed that Juan Carlos Monzón should not be considered a cooperating witness.

Former President Otto Pérez Molina's lawyer in the Cooptación del Estado case is César Saúl Calderón de León, who has a reputation uses tactics that have been classified by some organizations as vexatious litigation (discontinuation appeals, petitions, complaints, etc. that, although legal, are brought with the sole pretense of obstructing and delaying the proceedings). The cooperating witness in the "The Line" case known as "Eco" confirmed that he did not hire Calderón for his defense. This is relevant because Calderón has been hired to defend many individuals named in corruption cases. Not having been hired by ECO raises the possibility that others have hired Calderón to defend themselves against the information they knew ECO could reveal.

FUNCTIONS OF OVERSIGHT MECHANISMS

“Managing public spending has been reconsidered in recent decades as an integral and instrumental process, composed of several important stages that can be summed up in three main areas: a) creation of a budget, b) efficient implementation of public expenditure

based on the budget, and c) control of the implementation of expenditure.” In that order of ideas, “the monitoring of public spending is then an inter-institutional process that allows follow-up as to how resources are allocated and used by implementing units at all governmental

levels and even in the private sphere (by citizens, companies, and organizations) when they manage public funds.”⁶³

In this sense, the State of Guatemala has different authorities whose mandates specialize in different areas of tax activity. Among these is the **Comptroller General of Accounts (Contraloría General de Cuentas, CGC)**, a decentralized technical institution that is responsible for auditing and governmental regulation in the form of assets and liabilities, and, in general, all matters concerning taxes in Guatemala.

The CGC is directed by the Comptroller General of Accounts, who is elected by the Congress from a list of six candidates proposed by a nomination committee, and serves for a period of four years. Notwithstanding the importance of the position, the election of the Comptroller has been subject to external influences and political factors. Currently, there are former comptrollers general who have been sentenced to prison for crimes related to corruption.⁶⁴

The institution also relies on the Deputy Comptroller of Probity and Deputy Comptroller of Quality of Public Expenditure. The first is responsible for investigating ex officio when it discovers wrongdoing by persons under the CGC’s control, in the form of illicit enrichment, influence peddling, abuse of authority, bribery, speculation, embezzlement, coercion, fraud, extortion, undue collection, document forgery, moral turpitude, and other deeds that constitute a crime. Along these lines, if an exhaustive investigation finds sufficient evidence of an illegal act, the Deputy Comptroller is obliged to present the complaint to the MP.

The Deputy Comptroller of Public Expenditure Quality has the specific mandate of analyzing and evaluating the quality and impact of official resource and asset management and of State entities, organizations, and institutions

that are involved in the physical and financial implementation of the budget according to annual operating plans.

Studies on the effectiveness of the CGC show that it has not been able to guarantee an adequate evaluation of the implementation and quality of public spending, which is due in large part to, “the historical pattern of sustaining its assets in a reactive model; that is to say, a model that implies an intervention only when misappropriation of public resources has already been committed.” Studies also point to the budgetary, legal, and human capital limitations of this institution.⁶⁵

The Special Verification Unit (*Intendencia de Verificación (IVE)*) of the Superintendency of Banks (*Superintendencia de Bancos, SIB*) is responsible for collecting all relevant information related to financial transactions that could be linked to money laundering or laundering of other assets, as well as identifying suspicious transactions. The IVE is equipped with features to carry out these functions.

Finally, the SAT is the only authority whose specific mandate is the administrative function of taxation throughout the country. Regarding the work of said entity, the Center for National Economic Investigations (*Centro de Investigaciones Económicas Nacionales, CIEN*) has expressed that, “Although there is a need for improvements in substance, incentives and culture, there is an institutional willingness that has remained steady over time and several administrations. A clear example of this are the Institutional Criteria, which are tax and customs criteria that seek to facilitate compliance with the taxpayer obligations.”⁶⁶

It should be noted that there are former SAT Superintendents of Administration who have been convicted or are linked to prosecution for acts related to corruption.⁶⁷

ACRONYMS AND ABBREVIATIONS

| | |
|----------------|--|
| CC | Constitutional Court |
| CGC | Comptroller General of Accounts |
| CIACS | Illegal Clandestine Security Apparatuses |
| CICIG | International Commission against Impunity in Guatemala |
| CPI | Corruption Perceptions Index |
| CPP | Criminal Procedure Code |
| CPRG | Political Constitution of the Republic of Guatemala |
| CSJ | Supreme Court of Justice |
| DAC | Criminal Analysis Directorate |
| DIGICRI | General Directorate of Criminal Investigation |
| FMM | Myrna Mack Foundation |
| IACAC | Inter-American Convention against Corruption |
| IDPP | Institute of Criminal Public Defense |
| INACIF | National Institute of Forensic Science |
| IVE | Special Verification Unit |
| LAIP | Access to Public Information Law |
| LcC | Law against Corruption |
| LcDO | Law against Organized Crime |
| LED | Asset Recovery Law |
| LEEP | Law on Elections and Political Parties |
| MESICIC | Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption |
| MP | Public Prosecutor's Office |
| OJ | Judiciary |
| PP | Patriot Party |
| SAT | Superintendency of Tax Administration |
| SIB | Superintendency of Banks |
| TSE | Supreme Electoral Tribunal |
| UNCAC | United Nations Convention against Corruption |
| UNTOC | United Nations Convention against Transnational Organized Crime |

ANNEX 1

CORRUPTION CASES HANDLED BY THE PUBLIC PROSECUTOR'S OFFICE 2014-2017

| | Year | Cases Admitted | Cases Under Investigation | Accusations | Dismissals | Archived Cases | Conditional Suspension | Plea Bargaining | Summary Trials | Convictions | Acquittals |
|--------------------|------|----------------|---------------------------|-------------|------------|----------------|------------------------|-----------------|----------------|-------------|------------|
| Abuse of Authority | 2014 | 1839 | 709 | 38 | 55 | 59 | 1 | 26 | 1 | 19 | 5 |
| | 2015 | 2077 | 1052 | 40 | 61 | 29 | 5 | 18 | 2 | 13 | 7 |
| | 2016 | 2275 | 1206 | 44 | 104 | 41 | 2 | 26 | 3 | 15 | 6 |
| | 2017 | 2539 | 1291 | 57 | 5 | 173 | 7 | 21 | 2 | 28 | 19 |
| Active Bribery | 2014 | 341 | 103 | 118 | 44 | 3 | 3 | 76 | 0 | 0 | 20 |
| | 2015 | 334 | 91 | 112 | 49 | 7 | 11 | 64 | 1 | 1 | 13 |
| | 2016 | 347 | 116 | 138 | 95 | 4 | 12 | 54 | 3 | 0 | 18 |
| | 2017 | 250 | 86 | 117 | 58 | 15 | 8 | 39 | 2 | 27 | 18 |
| Passive Bribery | 2014 | 227 | 94 | 12 | 5 | 9 | 1 | 0 | 0 | 2 | 4 |
| | 2015 | 275 | 142 | 24 | 2 | 3 | 0 | 3 | 1 | 7 | 5 |
| | 2016 | 314 | 135 | 33 | 3 | 2 | 0 | 3 | 2 | 8 | 7 |
| | 2017 | 270 | 149 | 20 | 3 | 34 | 1 | 5 | 0 | 6 | 8 |
| Coercion | 2014 | 4 | 1 | 0 | 0 | n/r | 0 | n/r | 0 | 1 | 0 |
| | 2015 | 16 | 10 | 2 | 0 | n/r | 3 | n/r | 0 | 0 | 1 |
| | 2016 | 8 | 5 | 4 | 0 | n/r | 0 | n/r | 0 | 1 | 2 |
| | 2017 | 15 | 8 | 1 | n/r | n/r | 0 | n/r | 0 | n/r | n/r |
| Illicit enrichment | 2014 | 2 | 1 | 0 | 0 | n/r | 0 | n/r | n/r | 0 | 0 |
| | 2015 | 35 | 19 | 0 | 0 | n/r | 0 | n/r | n/r | 0 | 0 |
| | 2016 | 19 | 16 | 0 | 0 | n/r | 0 | n/r | n/r | 0 | 0 |
| | 2017 | 25 | 21 | 2 | n/r | n/r | 1 | n/r | n/r | 0 | 0 |
| Fraud | 2014 | 9 | 7 | 2 | 0 | 0 | 0 | 0 | n/r | 0 | 0 |
| | 2015 | 135 | 81 | 4 | 1 | 0 | 0 | 0 | n/r | 1 | 1 |
| | 2016 | 238 | 167 | 4 | 1 | 1 | 1 | 1 | n/r | 2 | 7 |
| | 2017 | 257 | 193 | 7 | n/r | 1 | 0 | 0 | n/r | 1 | n/r |
| Embezzlement | 2014 | 19 | 12 | 28 | 0 | 4 | 0 | n/r | 0 | 116 | 8 |
| | 2015 | 157 | 83 | 12 | 2 | 2 | 2 | n/r | 0 | 30 | 3 |
| | 2016 | 143 | 95 | 6 | 0 | 1 | 1 | n/r | 2 | 23 | 0 |
| | 2017 | 147 | 104 | 2 | 1 | 3 | 0 | n/r | 0 | 1 | n/r |
| Peculation | 2014 | 7 | 4 | 25 | 0 | 1 | 0 | n/r | 4 | 27 | 2 |
| | 2015 | 33 | 26 | 17 | 2 | 1 | 2 | n/r | 1 | 16 | 2 |
| | 2016 | 46 | 34 | 30 | 1 | 2 | 4 | n/r | 7 | 27 | 1 |
| | 2017 | 27 | 17 | 11 | 2 | 4 | 0 | n/r | 3 | 14 | 1 |

| | Year | Cases Admitted | Cases Under Investigation | Accusations | Dismissals | Archived Cases | Conditional Suspension | Plea Bargaining | Summary Trials | Convictions | Acquittals |
|-----------------------------|------|----------------|---------------------------|-------------|------------|----------------|------------------------|-----------------|----------------|-------------|------------|
| Influence Peddling | 2014 | 14 | 6 | 0 | 0 | n/r | n/r | n/r | 0 | 0 | 0 |
| | 2015 | 57 | 20 | 1 | 0 | n/r | n/r | n/r | 0 | 1 | 0 |
| | 2016 | 56 | 29 | 3 | 0 | n/r | n/r | n/r | 0 | 0 | 0 |
| | 2017 | 73 | 41 | 8 | n/r | 2 | n/r | n/r | 1 | 3 | 0 |
| Prevarication | 2014 | 23 | 9 | 0 | n/r | 8 | n/r | n/r | n/r | 0 | n/r |
| | 2015 | 43 | 16 | 0 | n/r | 6 | n/r | n/r | n/r | 1 | n/r |
| | 2016 | 45 | 25 | 0 | n/r | 6 | n/r | n/r | n/r | 0 | n/r |
| | 2017 | 72 | 32 | 0 | n/r | 18 | n/r | n/r | n/r | 0 | n/r |
| Obstruction of Justice | 2014 | 41 | 18 | 9 | 0 | 2 | 0 | 1 | n/r | 2 | 0 |
| | 2015 | 24 | 13 | 4 | 0 | 0 | 1 | 0 | n/r | 2 | 3 |
| | 2016 | 29 | 18 | 4 | 2 | 1 | 0 | 0 | n/r | 0 | 1 |
| | 2017 | 15 | 11 | 6 | n/r | 3 | 0 | 0 | n/r | 0 | 0 |
| Electoral Financing | 2014 | 0 | 0 | 0 | 0 | n/r | n/r | n/r | n/r | 0 | 0 |
| | 2015 | 3 | 0 | 0 | 0 | n/r | n/r | n/r | n/r | 0 | 0 |
| | 2016 | 0 | 0 | 0 | 0 | n/r | n/r | n/r | n/r | 0 | 0 |
| | 2017 | 0 | 0 | n/r | n/r | n/r | n/r | n/r | n/r | 0 | 0 |
| Illegal Electoral Financing | 2014 | 0 | 0 | 0 | 0 | n/r | n/r | n/r | n/r | 0 | 0 |
| | 2015 | 8 | 5 | 0 | 0 | n/r | n/r | n/r | n/r | 0 | 0 |
| | 2016 | 5 | 3 | 0 | 0 | n/r | n/r | n/r | n/r | 0 | 0 |
| | 2017 | 2 | 1 | n/r | n/r | n/r | n/r | n/r | n/r | 0 | 0 |
| TOTAL | | 12,940 | 6,325 | 945 | 496 | 445 | 66 | 337 | 35 | 395 | 162 |

Source: Prepared by the author with data from the Public Prosecutor's Office
NR = Information was not provided by the Public Prosecutor's Office.

ANNEX 2

CORRUPTION CASES HANDLED BY THE JUDICIARY 2014-2017

| | Year | Cases Admitted | Cases Rejected | Under Investigation | Closure for Lack of Merit | Dismissals | Provisional Closure | Plea Bargaining | Conditional Suspension | Convictions | Acquittals |
|--------------------|------|----------------|----------------|---------------------|---------------------------|------------|---------------------|-----------------|------------------------|-------------|------------|
| Abuse of Authority | 2014 | 316 | 0 | 19 | 29 | 14 | 0 | 3 | 0 | 9 | 11 |
| | 2015 | 331 | 10 | 17 | 37 | 21 | 3 | 2 | 0 | 6 | 0 |
| | 2016 | 323 | 53 | 18 | 49 | 16 | 9 | 1 | 7 | 18 | 4 |
| | 2017 | 399 | 5 | 31 | 50 | 16 | 13 | 1 | 1 | 54 | 26 |

| | Year | Cases Admitted | Cases Rejected | Under Investigation | Closure for Lack of Merit | Dismissals | Provisional Closure | Plea Bargaining | Conditional Suspension | Convictions | Acquittals |
|--------------------|------|----------------|----------------|---------------------|---------------------------|------------|---------------------|-----------------|------------------------|-------------|------------|
| Active Bribery | 2014 | 415 | 1 | 25 | 79 | 26 | 20 | 37 | 3 | 30 | 24 |
| | 2015 | 404 | 4 | 9 | 74 | 30 | 12 | 51 | 0 | 23 | 9 |
| | 2016 | 410 | 2 | 25 | 85 | 36 | 18 | 92 | 6 | 22 | 21 |
| | 2017 | 320 | 4 | 20 | 116 | 46 | 31 | 69 | 1 | 73 | 20 |
| Passive Bribery | 2014 | 27 | 0 | 1 | 0 | 1 | 7 | 3 | 0 | 4 | 0 |
| | 2015 | 35 | 0 | 2 | 5 | 6 | 4 | 0 | 0 | 4 | 1 |
| | 2016 | 62 | 3 | 2 | 7 | 2 | 11 | 0 | 3 | 3 | 4 |
| | 2017 | 83 | 0 | 2 | 4 | 0 | 6 | 0 | 0 | 20 | 19 |
| Extortion | 2014 | 42 | n/r | 0 | 2 | n/r | n/r | n/r | 0 | 0 | 1 |
| | 2015 | 10 | n/r | 0 | 0 | n/r | n/r | n/r | 0 | 1 | 0 |
| | 2016 | 14 | n/r | 1 | 0 | n/r | n/r | n/r | 1 | 2 | 2 |
| | 2017 | 21 | n/r | 0 | 2 | n/r | n/r | n/r | 0 | 2 | 1 |
| Illicit Enrichment | 2014 | 0 | n/r | n/r | n/r | n/r | 0 | n/r | n/r | 0 | 0 |
| | 2015 | 3 | n/r | n/r | n/r | n/r | 0 | n/r | n/r | 0 | 0 |
| | 2016 | 2 | n/r | n/r | n/r | n/r | 0 | n/r | n/r | 1 | 0 |
| | 2017 | 5 | n/r | n/r | n/r | n/r | 30 | n/r | n/r | 0 | 0 |
| Fraud | 2014 | 20 | n/r | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| | 2015 | 56 | n/r | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 |
| | 2016 | 32 | n/r | 0 | 18 | 6 | 0 | 0 | 2 | 0 | 4 |
| | 2017 | 92 | n/r | 26 | 26 | 4 | 9 | 1 | 0 | 33 | 0 |
| Embezzlement | 2014 | 34 | 0 | 1 | n/r | 0 | n/r | n/r | n/r | 0 | 0 |
| | 2015 | 48 | 1 | 1 | n/r | 0 | n/r | n/r | n/r | 1 | 0 |
| | 2016 | 27 | 0 | 3 | n/r | 0 | n/r | n/r | n/r | 1 | 0 |
| | 2017 | 68 | 0 | 1 | n/r | 1 | n/r | n/r | n/r | 2 | 0 |
| Peculation | 2014 | 77 | 2 | 2 | 2 | 0 | 0 | n/r | 0 | 10 | 3 |
| | 2015 | 62 | 0 | 2 | 8 | 0 | 26 | n/r | 1 | 8 | 0 |
| | 2016 | 59 | 0 | 12 | 17 | 42 | 16 | n/r | 0 | 14 | 3 |
| | 2017 | 83 | 0 | 4 | 8 | 14 | 14 | n/r | 0 | 39 | 3 |
| Influence Peddling | 2014 | 0 | n/r | 0 | 0 | n/r | 0 | n/r | n/r | 0 | 0 |
| | 2015 | 0 | n/r | 0 | 0 | n/r | 8 | n/r | n/r | 1 | 0 |
| | 2016 | 3 | n/r | 2 | 0 | n/r | 0 | n/r | n/r | 1 | 0 |
| | 2017 | 17 | n/r | 0 | 2 | n/r | 5 | n/r | n/r | 1 | 0 |
| Prevarication | 2014 | 10 | n/r | 0 | 0 | n/r | n/r | n/r | n/r | n/r | n/r |
| | 2015 | 7 | n/r | 1 | 0 | n/r | n/r | n/r | n/r | n/r | n/r |
| | 2016 | 14 | n/r | 0 | 2 | n/r | n/r | n/r | n/r | n/r | n/r |
| | 2017 | 4 | n/r | 0 | 0 | n/r | n/r | n/r | n/r | n/r | n/r |

| | Year | Cases Admitted | Cases Rejected | Under Investigation | Closure for Lack of Merit | Dismissals | Provisional Closure | Plea Bargaining | Conditional Suspension | Convictions | Acquittals |
|-----------------------------|------|----------------|----------------|---------------------|---------------------------|------------|---------------------|-----------------|------------------------|-------------|------------|
| Obstruction of Justice | 2014 | 36 | n/r | 5 | 2 | 1 | 0 | n/r | 0 | 4 | 2 |
| | 2015 | 42 | n/r | 21 | 3 | 0 | 0 | n/r | 2 | 19 | 19 |
| | 2016 | 31 | n/r | 3 | 7 | 6 | 0 | n/r | 0 | 22 | 3 |
| | 2017 | 39 | n/r | 7 | 1 | 2 | 1 | n/r | 0 | 7 | 0 |
| Electoral Financing | 2014 | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r |
| | 2015 | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r |
| | 2016 | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r |
| | 2017 | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r |
| Illegal electoral financing | 2014 | 0 | n/r | n/r | n/r | n/r | n/r | n/r | n/r | 0 | 0 |
| | 2015 | 0 | n/r | n/r | n/r | n/r | n/r | n/r | n/r | 0 | 0 |
| | 2016 | 10 | n/r | n/r | n/r | n/r | n/r | n/r | n/r | 0 | 0 |
| | 2017 | 0 | n/r | n/r | n/r | n/r | n/r | n/r | n/r | 7 | 0 |
| TOTAL | | 4,093 | 85 | 263 | 636 | 290 | 243 | 260 | 27 | 444 | 180 |

Source: Compiled using data from the Judiciary
NIR = Information not provided by the Judiciary

ANNEX 3

TYPES OF CRIMES RELATING TO CORRUPTION ANALYZED IN THIS REPORT

| | | |
|--|--|---|
| Art. 214 Coercion | This crime is committed by anyone who, without being legitimately authorized, through violent, intimidating or otherwise compelling procedures, obliges another to act or refrain from acting when the law does not prohibit that act, engage or consent to what that someone does not want to do or tolerate someone else to do it, whether fair or not. | 6 months to 2 years imprisonment |
| Art. 215 Threats | This crime is committed by anyone who threatens another with causing them or their relatives within the degrees of the law, harm that constitutes or not a crime, be it to their person, honor or property. | 6 months to 3 years imprisonment |
| Art. 274 (A) Destruction of computer records | This crime is committed by anyone who destroys, deletes or in any way disables, alters, or damages computer records. If the action referred to in the preceding paragraph is intended to impede an investigation or prosecution of a criminal nature, the person responsible shall be punished in accordance with article 458 Bis of the Penal Code (obstructing criminal liability). | 6 months to 4 years imprisonment and a fine of. 2,000.00 Q. to 10,000.00 Q. |

| | | |
|---|--|--|
| Art. 274 (F) Use of information | This crime is committed by anyone who, without authorization, uses or obtains for oneself or another, data contained in computer records, databases or electronic files. | 6 months to 2 years imprisonment and a fine of 2,000.00 Q. to 10,000.00 Q. |
| Art. 407 M Electoral financing | <p>This crime is committed by any individual or legal entity who contributes more than 10% of the maximum campaign spending limit.</p> <p>The same penalty shall be imposed on the legal representative or any member of the organs of political organizations that:</p> <ul style="list-style-type: none"> a. Receive assistance or contributions that exceed 10% of the maximum campaign expenditure limit b. Receive assistance or contribution from other States and from foreign individuals or legal entities. Exceptions from this case are those grants that come from academic entities or foundations and that are granted for training purposes c. Do not channel through the respective political organization, the contributions made in favor of a candidate for popular election | 1 to 5 years imprisonment |
| Art. 407 N Illegal electoral financing | <p>This crime is committed by any individual or legal entity who contributes, receives, or authorizes receiving resources destined to the financing of political organizations or their candidates for ongoing activities, campaigns, and electoral events, knowing that such contributions or resources came from organized crime, money laundering, or any other activity classified as a crime by the Penal Code and other related laws.</p> <p>The penalty will be increased by two thirds when the person committing the crime exercises employment, public office or elected office. In addition to the penalty imposed, he/she will be disqualified from running for public office.</p> | 4 to 12 years of unchangeable imprisonment and fine of Q. 200.00 to Q. 500,000.00 |
| Art. 418 Abuse of authority | <p>This crime is committed by any public official or public employee who, abusing his/her appointment or position, orders, performs, or permits any illegal or arbitrary conduct not specifically addressed in the provisions of the Penal Code and in detriment of the public administration or third parties, whether individuals, public officials or employees.</p> <p>The same penalty will be imposed on the public official or employee who uses illegal or unnecessary coercion.</p> | 3 to 6 years imprisonment and special disqualification |
| Art. 419 Non-compliance of duties | This crime is committed by any public official or employee who omits, refuses or delays any act of his function or position commits | 3 to 6 years imprisonment and special disqualification |
| Art. 419 BIS Breach of the duty to file an asset declaration | This crime is committed by any public official, public employee, or person who performs public functions that is legally obligated to present or update his asset declaration and fails to do so after sixty days after the inauguration, or does so without complying with the requirements set forth in the law of the matter. | A fine that corresponds to a multiplication of the monthly salary or salary of the person responsible for the months of delay in the delivery of the declaration |
| Art. 419 TER Falsehood in asset declaration | <p>This crime is committed by any public official or employee, or anyone who performs public functions, that, during the exercise of the position, lies in the sworn asset declaration before the Comptroller General of Accounts.</p> <p>The criminal action of this crime is independent of the pro-account processes established in the ordinary legislation in force.</p> | 2 to 6 years imprisonment , a fine of 25,000.00 Q. to 200,000.00 Q. and special disqualification |

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| Art. 420 Insubordination | This crime is committed by any public official or employee who refuses to comply with judgments, resolutions or orders issued within the limits of their respective authority and containing all the legal formalities. | 1 to 3 years imprisonment , a fine of Q. 5,000.00 to Q. 20,000.00 and special disqualification |
| Art. 422 Disclosure of secrets | This crime is committed by any public official or employee who reveals or facilitates the disclosure of facts, actions or documents of which he has knowledge by reason of the charge and that by provision of the law must remain secret. | 1 to 3 years imprisonment , a fine of Q. 5,000.00 to Q. 20,000.00 and special disqualification |
| Art. 432 Illegal Appointment | This crime is committed by any public official or employee who, knowingly, appoints a person who does not meet the legal requirements to a position or public appointment. The same sanction will be imposed to one that appoints a person that meets the legal requirements of the appointment, but intentionally omits or alters the legal or regulatory procedures established. If the named person is a relative in the degrees established by law of the offender, the penalty will be increased by a third and special disqualification will be imposed. | 6 months to 2 years imprisonment and a fine of 10,000.00 Q. to 25,000.00 Q. |
| Art. 433 Usurpation of powers | This crime is committed by any public official or employee who knowingly assumes powers or assignments that do not correspond to his office. | 6 months to 2 years imprisonment and a fine of 10,000.00 Q. to 25,000.00 Q. |
| Art. 439 Passive bribery | This crime is committed by any public official, public employee or whomever performs public functions, who requests or accepts, directly or indirectly, any object of pecuniary value or other benefit, in exchange for a favor, gift, present, promise, advantage or for any other concept, for himself or for another person, to perform, order, delay, or omit a function of his own office. When the public official or employee obliges the favor, gift, present, promise or advantage, the penalty shall be increased by a third. People who report the acts mentioned in this article will be protected by the corresponding authorities, in accordance with current legislation. | 5 to 10 years imprisonment , a fine of 50,000.00 Q. to 500,000.00 Q. and special disqualification, without prejudice to the penalty applicable to the crime committed |
| Art. 440 Concurrence with another crime | In the crime of passive bribery, when the gifts requested, received, offered or promised have the objective of the performance of an action that constitutes a crime, the sanction stated in Article 439 of the Penal Code will be imposed without prejudice of those sanctions related to the commitment of that crime. | Sanction established in Art. 439 of the Penal Code, without prejudice to the crime. |
| Art. 441 Bribery of arbitrators, experts or other persons with a public function | The provisions of the two preceding articles are applicable to arbitrators, experts or any person who performs, occasionally or permanently, a public function or position. | See penalties established in Arts. 439 and 440 of the Penal Code. |
| Art. 442 Active bribery | This crime is committed by any person who offers or delivers to a public official, public employee or whomever exercises public functions, directly or indirectly, any object of monetary value or other benefit in exchange for a favor, gift, present, promise, advantage, or for any other concept, for himself or for another person, to perform, order, delay or omit a function of his own position. | 5 to 10 years imprisonment , a fine of 50,000.00 Q. to 500,000.00 Q. and special disqualification, without prejudice to the penalty applicable to the crime committed |

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| <p>Art. 442 BIS Transnational Active Bribery</p> | <p>This crime is committed by any person who offers or delivers to an official or public employee of another State or international organization, directly or indirectly, any object of pecuniary value or other benefit, in exchange for a favor, gift, present, promise, advantage or for any other concept, for himself or for another person, to perform, order, delay or omit a function of his own position.</p> | <p>5 to 10 years imprisonment and a fine of 50,000.00 Q. to 500,000.00 Q.</p> |
| <p>Art. 442 TER Transnational passive bribery</p> | <p>This crime is committed by any official or public employee of another State or international organization that requests or accepts, directly or indirectly, any object of pecuniary value or other benefit, in exchange for a favor, gift, present, promise, advantage or any other concept, for himself or for another person, to perform, order or omit a function of his own position.</p> | <p>5 to 10 years imprisonment and a fine of 50,000.00 to Q. 500,000.00 Q</p> |
| <p>Art. 443 Unlawful acceptance of a gift</p> | <p>This crime is committed by any public official or employee who accepts gifts, presents, offers, or promises of persons who have a pending matter before him.</p> | <p>1 to 3 years imprisonment and a fine of 5,000.00 Q. to 25,000.00 Q.</p> |
| <p>Art. 444 Special exemption from liability</p> | <p>In cases of bribery that violate the tax regime, the person who denounces or assists in obtaining evidence of the commission of the crime will be exempted from criminal responsibility.</p> | <p>N/A</p> |
| <p>Art. 445 Peculation by subtraction</p> | <p>This crime is committed by any public official or employee who subtracts or consents that another subtract money, effects, or goods that he keeps, receives, administers or saves because of his or her functions.</p> <p>If the money, effects, or goods are destined for welfare purposes or social support programs, the penalty will be increased by two thirds.</p> | <p>5 to 10 years imprisonment, fine of 10,000.00 Q. to 50,000.00 Q. and special disqualification</p> |
| <p>Art. 445 BIS Peculation of goods</p> | <p>This crime is committed by any public official or employee who, for purposes other than the service established in the public administration, uses or permits that another uses, for his own benefit or that of third parties, vehicles, machinery, any other work equipment or instrument that is under his custody, work to the public administration, as well as work or services destined for the public office it exercises.</p> <p>This provision is applicable to the contractor of a public work or its employees, when the indicated assets belong to the State or to any public agency.</p> <p>If the vehicles, machinery, and any other work instruments, work, or services were intended for welfare purposes or social support program, the penalty will be increased by two thirds.</p> | <p>3 to 5 years imprisonment , a fine of Q. 10,000.00 to Q. 50,000.00 and special disqualification</p> |
| <p>Art. 446 Peculation</p> | <p>This crime is committed by any public official or employee who, due to negligence, makes it possible for another person to subtract money, effects or goods referred to in articles 445 and 445 Bis of the Penal Code.</p> <p>The same penalty shall be imposed on the public official or employee who knowingly permits the loss, destruction, decomposition, or expiration of goods, food or products of perishable nature that are in his custody or administration, even if they do not belong to the State.</p> <p>If the money, effects, or goods were destined for welfare purposes or social support programs, the penalty will be increased by a third.</p> | <p>1 to 3 years imprisonment and special disqualification</p> |

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| <p>Art. 447 Misappropriation</p> | <p>This crime is committed by any public official or employee who gives the funds, effects, or goods they administer, an application or use different from that to which they were intended.</p> <p>If, as a result of the commission of this crime, damage or obstruction of service is caused, the penalty shall be increased by a third.</p> <p>If the funds, effects, or goods were destined for welfare purposes or social support programs, the penalty shall be increased by two thirds.</p> | <p>2 to 6 years imprisonment and a fine of 20,000.00 Q. to 50,000.00 Q.</p> |
| <p>Art. 448 Failure to make payments</p> | <p>This crime is committed by any public official or employee who, having expedited funds, will unreasonably delay a regular payment or one ordered by a competent authority.</p> <p>The same sanction shall be imposed on the public official or employee who, though legally required to do so, refuses to turn in money or effects deposited or placed in his/her custody or administration.</p> | <p>Fine from Q. 100.00 to 1,000.00 Q.</p> |
| <p>Art. 448 BIS Illicit enrichment</p> | <p>This crime is committed by any public official or employee or person performing public duties who, within five years of ceasing to perform public duties and as a result of the position held, obtains for himself/herself or for any person a capital benefit, an increase in level of expenses, cancellation of debts or obligations that do not correspond to what they could have obtained or any income, and that its legal origin cannot be justified.</p> | <p>5 to 10 years imprisonment , a fine of Q. 50,000.00 to Q. 500,000.00 and special disqualification</p> |
| <p>Art. 448 TER Illicit enrichment of individuals</p> | <p>This crime is committed by any official, public employee or person performing public duties who, within five years of ceasing to perform public duties and as a result of the position held, obtains for himself or for any person a capital benefit, an increase in level of expenses, cancellation of debts or obligations that do not correspond to what they could have obtained or any income, and that its legal origin cannot be justified.</p> <p>In the event that the person responsible for this crime is a legal entity, the provisions of article 38 of the Penal Code shall apply for the imposition of the penalty.</p> | <p>4 to 8 years imprisonment and a fine of 50,000.00 Q. to 500,000.00 Q.</p> |
| <p>Art. 448 QUATER Front man</p> | <p>This crime is committed by any individual or legal entity who lends his name or business name to collaborate in the commission of any of the crimes contemplated in Title XIII of the Penal Code.</p> | <p>5 to 10 years imprisonment and a fine of 50,000.00 Q. to 500,000.00 Q.</p> |
| <p>Art. 449 Extortion</p> | <p>This crime is committed by the officer or public employee who, directly or indirectly or through simulated actions, becomes interested in any contract or operation in which he/she intervenes as a result of his position. This provision is applicable to arbitrators, experts, accountants, tutors, executors and trustees, with respect to the functions they perform as such.</p> | <p>2 to 6 years imprisonment and a fine of Q. 5,000.00 to Q. 25,000.00</p> |
| <p>Art. 449 BIS Influence Peddling</p> | <p>This crime is committed by the person who, by himself/her or through a third party or acting as an intermediary, influences an officer or public employee, taking advantage of his hierarchical position, friendship or any other personal ties, to obtain an undue benefit, for himself or for a third party, in a matter in which said officer or public employee has knowledge or must decide, whether or not there is detriment to the assets of the State or of a third party. If the officer or public employee that has knowledge, should have knowledge or makes the decision is an officer or employee of justice administration, double the penalty will be imposed.</p> | <p>2 to 6 years imprisonment and special disqualification</p> |

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| <p>Art. 450 Fraud</p> | <p>This crime is committed by an official, public employee, one who performs public duties or one that has one or more contracts with the State for the performance of works or services and that interferes in any phase of the bidding, quotation, acquisition, purchase, granting, auction or liquidation processes, either directly or through an implementation unit, using any means to defraud the State.</p> <p>If the operation in which it intervenes is related or intended for welfare purposes or social support programs, the penalty will be increased by two thirds.</p> | <p>5 to 10 years imprisonment and special disqualification</p> |
| <p>Art. 450 BIS Illegal collection of commissions</p> | <p>This crime is committed by any public official or employee who requests, manages or receives directly, commission, financial compensation, payment, promise or any kind of benefit, for carrying out or assigning public work of any kind to himself or a third party.</p> | <p>5 to 10 years imprisonment , a fine of 50,000.00 Q. to 500,000.00 Q. and special disqualification</p> |
| <p>Art. 451 Illegal levies</p> | <p>This crime is committed by any public official or employee who demands an illegal tax, economic retribution, rate, or means greater than what is called for.</p> <p>If the public official or employee converts the proceeds of the levies expressed in the preceding paragraph into his own benefit or that of a third party, the penalty shall be increased by a third.</p> | <p>1 to 3 years imprisonment , a fine of Q. 5,000.00 to Q. 25,000.00 and special disqualification</p> |
| <p>Art. 452 Improper collection</p> | <p>This crime is committed by any official or public employee who authorizes fictitious, altered or unjustified receipts or vouchers, or whoever charges them.</p> | <p>1 to 3 years imprisonment , a fine of Q. 5,000.00 to Q. 25,000.00 and special disqualification</p> |
| <p>Art. 458 BIS Obstruction of justice</p> | <p>This crime is committed by someone who influences another person to prevent the arrival of information or evidence to the competent bodies of the justice system.</p> <p>A person who uses physical force, intimidation, threats or coercion on any public official or employee who is a member of the OJ or of the auxiliary institutions of the administration of justice, translator, interpreter or expert, to hinder the fulfillment of their functions.</p> <p>A person who, in order to avoid obtaining evidence or means of proof, refuses to provide the MP, OJ, PNC or Directorate General of Criminal Investigation (DIGICRI) documents or information that they are aware of or that they hold in their possession, though they are obligated to do so.</p> <p>A person who, for the same purpose, destroys or conceals information or documents, or provides documents or false information to the MP, OJ, PNC or DIGICRI.</p> | <p>3 to 6 years imprisonment and special disqualification</p> |
| <p>Art. 462 Prevarication</p> | <p>This crime is committed by any judge who knowingly delivers verdicts contrary to the law or bases them on false claims.</p> <p>If the verdict issued consists of a conviction in criminal proceedings, the penalty will be three to six years.</p> | <p>2 to 6 years imprisonment</p> |
| <p>Art. 463 Wrongful Prevarication</p> | <p>This crime is committed by any judge who, by inexcusable negligence or ignorance, issues resolutions contrary to the law or bases them on false acts.</p> | <p>Fine from Q. 100.00 to Q. 1,000.00 and special disqualification of 1 to 2 years</p> |

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| <p>Art. 464 Prevarication of arbitrators</p> | <p>The provisions in the first paragraph of article 462 and in the previous article shall apply, in their respective cases, to the arbitrators.</p> | <p>N / A</p> |
| <p>Art. 467 Illegal representation</p> | <p>This crime is committed by any official or employee of the MP DIGICRI, or of the OJ, who, during or after his tenure in office, represents, advises, or assists one of the parties in a matter in which he has intervened or participated in because of the position.</p> | <p>2 to 5 years imprisonment and special disqualification</p> |
| <p>Art. 468 Delay of justice</p> | <p>This crime is committed by any judge who does not give effect to a legally filed application or who, knowingly, will delay or order to delay the administration of justice.</p> <p>The same penalty will be applied to the representative of the MP, the PNC and the DIGICRI who knowingly delay criminal investigation or the exercise of the criminal action.</p> | <p>2 to 4 years imprisonment, a fine of 100,000.00 Q. to 500,000.00 Q. and special disqualification</p> |
| <p>Art. 469 Denial of justice</p> | <p>This crime is committed by any public official or employee of the OJ, the MP, the PNC and the DIGICRI who maliciously:</p> <ul style="list-style-type: none"> a. Diverts, by means of office, the criminal investigation or criminal proceedings to avoid linking or extricate the person or persons responsible for the crime. b. Stops, by means of office promoting the criminal investigation or criminal proceedings. c. Hides, alters, or destroys any evidence that allows establishing the commission and authorship of the crime or criminal involvement. <p>With the same penalties, the judge who refuses to rule in these cases will be sanctioned, under the pretext of obscurity, insufficiency or silence of the law.</p> | <p>3 to 8 years imprisonment and special disqualification</p> |

NOTES

¹A detailed list of indicators is available at www.wola.org/cam.

²<http://www.oas.org/es/cidh/decisiones/pdf/resolucion-1-18-es.pdf>

³<http://www.oas.org/es/cidh/decisiones/pdf/resolucion-1-18-es.pdf>

⁴Tabory, Sam. Índice de corrupción revela resultados diversos en Latinoamérica. InSight Crime. January 29, 2016. Available at: <https://es.insightcrime.org/noticias/noticias-del-dia/indice-corrupcion-revela-resultados-diversos-latinoamerica/> [Accessed on August 1, 2019].

⁵Blanco, R. Patricia. Brasil y Guatemala, los dos países latinoamericanos que más caen en transparencia. El País. Madrid. January 27, 2016. Accessible at: https://elpais.com/internacional/2016/01/27/actualidad/1453917916_694845.html [Accessed on: August 1, 2019].

⁶Transparencia Internacional. Índice de percepción de la corrupción 2016: Urge abordar círculo vicioso de corrupción y desigualdad. Transparency.org. 25 de enero de 2017. Available at: https://www.transparency.org/news/pressrelease/indice_de_percepcion_de_la_corrupcion_2016_urge_abordar_circulo_vicioso_de [Accessed on: 1 de agosto de 2019].

⁷Pocasangre, Henry. Guatemala baja 13 puestos en el índice de corrupción. Prensa Libre. Guatemala. January 25, 2017. Accessible at: <https://www.prensalibre.com/guatemala/politica/guatemala-sin-mejora-en-indice-de-corrupcion/> [Accessed on: August 1, 2019].

⁸Citizen action. IPC 2017: Nuevo gobierno no logró cambiar la percepción de altos niveles de corrupción. Guatemala. Sf Accessible at: <http://accionciudadana.org.gt/indice-de-percepcion-de-corrupcion-2017-nuevo-gobierno-no-logro-cambiar-la-percepcion-de-altos-niveles-de-corrupcion/> [Accessed on: August 1, 2019].

⁹The fine will be determined according to the financial capacity of the legal entity and will be set taking into account the circumstances in which the crime was committed.

¹⁰Royal Spanish Academy (Real Academia Española, RAE). Dictionary of Legal Spanish. Accessible at: <https://dej.rae.es/lema/nepotismo>.

¹¹https://www.oas.org/juridico/MLA/sp/gtm/sp_gtm-mla-leg-lavado_dinero.pdf

¹²http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20compilaciones/Compilacion%20Leyes%20Penales/expedientes/10_LeyContraDelincuenciaOrganizada.pdf

¹³https://web.oas.org/mla/en/G_Countries_MLA/Guate_asisjud_leg_esp_9.pdf

¹⁴<https://www.contraloria.gob.gt/wp-content/uploads/2018/02/4-LEY-DE-PROBIDAD-DECRETO-DEL-CONGRESO-89-2002.pdf>

¹⁵ICEFI and OXFAM. La Corrupción: Sus caminos, su impacto en la sociedad y una agenda para su eliminación. Guatemala. ICEFI y OXFAM. 2015. Accessible at: https://www.icefi.org/sites/default/files/informe_icefi_-_corrupcion_0.pdf

¹⁶In the case of Guatemala, the study analyzed case management for abuse of authority, active bribery, passive bribery, extortion, illicit enrichment, fraud, embezzlement, peculation, influence peddling, prevarication, obstruction of justice, illegal electoral financing, and electoral financing. It should be noted that the crime of peculation as is does not exist in the legal system. There are three variants of peculation that are: subtraction peculation, peculation by use and wrongful peculation (articles 445, 445 bis and 446 of the Penal Code). The data includes these three variants.

¹⁷The Public Prosecutor's Office can open a file following a complaint, grievance or receiving relevant certification.

¹⁸The Public Prosecutor's Office did not provide 2017 data for crimes of extortion, illicit enrichment, obstruction of justice, electoral financing, and illegal electoral financing, so the total includes those crimes. Likewise, the MP did not provide data on the crime of prevarication for the four years under study.

¹⁹For the crime of influence peddling, the Public Prosecutor's Office only provided data for 2017. This being the case, this crime was not included in the total. The MP also did not provide data for any of the years of study on crimes of extortion, illicit enrichment, electoral financing, and illegal electoral financing.

²⁰The MP did not provide information on any of the years of study corresponding to the following crimes: influence peddling, electoral financing, illicit electoral financing, and prevarication.

²¹The MP did not provide information for any of the years of study related to the following crimes: peculation, embezzlement, extortion, illicit enrichment, influence peddling, electoral financing, illegal electoral financing, and prevarication. Therefore, the total of 337 only corresponds to 5 of the 13 crimes included in the study.

²²The MP did not provide information for any of the years of study related to the following crimes: fraud, illicit enrichment, electoral financing, illegal electoral financing, prevarication, and obstruction of justice. Therefore, the total of 35 only corresponds to 7 of the

13 crimes included in the study.

²³The MP did not provide 2017 data corresponding to the crime of extortion. Therefore, the total does not include such data.

²⁴The MP did not provide data for any year corresponding to the crime of prevarication. It also did not provide 2017 data for crimes of extortion, fraud, and embezzlement. Therefore, the total does not include such data.

²⁵Sentences can be reached by common procedure, summary procedure and simplified procedure.

²⁶The Judiciary did not provide data for any of the years of study for the crimes of extortion, illicit enrichment, fraud, influence peddling, prevarication, obstruction of justice, electoral financing, and illegal electoral financing. Therefore, the total did not include such crimes.

²⁷The Judiciary did not provide data for any of the years of study for the crimes of illicit enrichment, electoral financing, and illegal electoral financing. Therefore, the total does not include such crimes.

²⁸The Judiciary did not provide data for any of the years of study for the crimes of illicit enrichment, embezzlement, electoral financing, and illegal electoral financing. Therefore, the total does not include such crimes.

²⁹The Judiciary did not provide data for any of the years of study for the crimes of extortion, illicit enrichment, influence peddling, prevarication, electoral financing and illegal electoral financing. Therefore, the total does not include such crimes.

³⁰The Judiciary did not provide data for any of the period of study of the crimes of extortion, embezzlement, prevarication, electoral financing, and illegal electoral financing. Therefore, the total does not include such crimes.

³¹The Judiciary did not provide data for any of the years of study for the crimes of extortion, illicit enrichment, embezzlement, peculation, influence peddling, prevarication, obstruction of justice, electoral financing, and illegal electoral financing. Therefore, the total did not include such crimes.

³²The Judiciary did not provide data for any of the years of study for the crimes of illicit enrichment, embezzlement, influence peddling, prevarication, electoral financing, and illegal electoral financing. Therefore, the total did not include such crimes.

³³With regards to guilty verdicts, the Judiciary did not provide data for the crimes of prevarication and electoral financing for any of the years of study. Therefore, the total did not include such crimes.

³⁴With regards to acquittals, the Judiciary did not provide data for the crimes of prevarication and electoral financing for any of the years of study. Therefore, the

total did not include such crimes.

³⁵The MP did not provide 2017 data on the following crimes: extortion, illicit enrichment, fraud, obstruction of justice, electoral financing, and illegal electoral financing.

³⁶The MP did not provide 2017 data on the following crimes: extortion, fraud, and embezzlement.

³⁷The MP did not provide 2017 data on the crime of coercion.

³⁸The MP only provided 2017 data, indicating that two cases were filed for the crime of influence peddling.

³⁹In some cases launched by the MP following a complaint from the CGC, the CGC did not always submit complaints after finalizing oversight reports, contrary to established procedures. This influences the amount of time that some MP investigations may last, since it prolongs the conclusion of CGC reports.

⁴⁰See article 30 of the Organic Law of the Public Prosecutor's Office, legislative decree 40-94.

⁴¹In 2008, the Special Prosecutor's Office for CICIG was created, through a bilateral cooperation agreement signed between the Public Prosecutor's Office and CICIG. The agreement was modified in 2013 to create the Special Prosecutor Against Impunity (FECI).

⁴²International Commission against Impunity. Special Prosecutor's Office against Impunity –FECI–. CICIG Guatemala. S.f. Accessible at: <http://www.cicig.co/index.php?page=fiscalia-especial> [Accessed on: July 25, 2019].

⁴³An annex includes a summary of several cases of corruption started during the study period.

⁴⁴Solano, Francelia. La CICIG en cifras: los casos, los implicados y los procesos. Plaza Pública. Guatemala. January 14, 2019. Accessible at: <https://www.plazapublica.com.gt/content/la-cicig-en-cifras-los-casos-los-implicados-y-los-procesos>. [Accessed on: July 25, 2019].

⁴⁵CICIG. Boletín Temático: Fortalecimiento al Ministerio Público. Guatemala. CICIG. 2018. Accessible at: https://www.cicig.org/wp-content/uploads/2018/09/Boletin_Fortalecimiento_MP_Esp_.pdf Pg. 4.

⁴⁶The High Risk Courts and Tribunal were created with the enactment of the Law on Criminal Competition in High Risk Hearing of 2009.

⁴⁷The catalog of High Risk crimes established in the Law on Criminal Competition in Higher Risk Processes does not expressly refer to corruption offenses. However, the reforms to the Law against Organized Crime through the Law against Corruption, now consider as a criminal group any group of three or more people, existing for a certain time and acting for the purpose of committing one or more crimes of a catalog of crimes, many of which are considered corruption offenses under international conventions.

⁴⁸The High Risk Court and Tribunal “E” was inaugurated in January, 2019

⁴⁹Family and friends against crime and kidnapping and Mothers Distressed by our children demand security. SYNOPSIS OF THE REPORT. Casos complejos: un análisis de los retos jurídicos e institucionales en el sistema de mayor riesgo. Guatemala. Sf Accessible at: <http://www.movimientoprojusticia.org.gt/images/archivos%202018/Sinopsis%20informe%20casos%20complejos.pdf> Pg. 6.

⁵⁰See Agreement 2-2019 of the CSJ and its reforms.

⁵¹Judges on High Risk: Threats to Judicial Independence in Guatemala, Impunity Watch.

⁵²Impunity Watch report.

⁵³Family and friends against crime and kidnapping and Mothers Distressed by our children demand security. SYNOPSIS OF THE REPORT. Casos complejos: un análisis de los retos jurídicos e institucionales en el sistema de mayor riesgo. Guatemala. Sf Accessible at: <http://www.movimientoprojusticia.org.gt/images/archivos%202018/Sinopsis%20informe%20casos%20complejos.pdf> Pg. 11.

⁵⁴Family and friends against crime and kidnapping and Mothers Distressed by our children demand security. SYNOPSIS OF THE REPORT. Casos complejos: un análisis de los retos jurídicos e institucionales en el sistema de mayor riesgo. Guatemala. Sf Accessible at: <http://www.movimientoprojusticia.org.gt/images/archivos%202018/Sinopsis%20informe%20casos%20complejos.pdf> Pgs. 8 and 9.

⁵⁵International Commission of Jurists (Comisión Internacional de Juristas CIJ). Buenas prácticas y Resultados de la Justicia Especializada en Femicidio y Mayor Riesgo. Ginebra, Suiza. CIJ. 2016. Pg. 136.

⁵⁶Family and friends against crime and kidnapping and Mothers Distressed by our children demand security. SYNOPSIS OF THE REPORT. Casos complejos: un análisis de los retos jurídicos e institucionales en el sistema de mayor riesgo. Guatemala. Sf Accessible at: <http://www.movimientoprojusticia.org.gt/images/archivos%202018/Sinopsis%20informe%20casos%20complejos.pdf> Pgs. 8 and 12.

⁵⁷Impunity Watch. Judges on High Risk Courts: threats to judicial independence in Guatemala. Guatemala. Impunity Watch. 2019. Pg. 86.

⁵⁸Family and friends against crime and kidnapping and Mothers Distressed by our children demand security. SYNOPSIS OF THE REPORT. Casos complejos: un análisis de los retos jurídicos e institucionales en el sistema de mayor riesgo. Guatemala. Sf Accessible at: <http://www.movimientoprojusticia.org.gt/images/archivos%202018/Sinopsis%20informe%20casos%20complejos.pdf> Pg 6.

⁵⁹Myrna Mack Foundation. Impunity and Illicit Networks: An analysis of its evolution in Guatemala. Guatemala. Myrna Mack Foundation. 2019. Pg. 25.

⁶⁰The case of “Bufete de la Impunidad” arises out of the discovery of illegal agreements between networks of lawyers and judges that benefited certain accused individuals involved in corruption cases.

⁶¹According to an article from Plaza Pública, cited in the report by the Myrna Mack Foundation: Impunity and Illicit Networks: An analysis of its evolution in Guatemala, “Javier Ortiz was linked to customs fraud structures in the 1990s. He was part of “... the dome that led the Red Moreno: the so-called Lifeguard Group. On the board of directors of this group, Portillo was the political advisor, and Ríos Montt, the statute manager. Alfredo Moreno was the president; Elio Sánchez, vice president; Osmundo Villatoro Escobar, secretary; Javier Ortiz, treasurer; Rolando Sagastume and Mario Reyes, press officers; Augusto Catalán, security; Vicente González, Ramón Saénz, Álvaro Sierra, the lawyers in charge of legal matters; and the importer, Alex Castillo, was “the wild card” (entrepreneur and part of the network to look for new customers). The legal obstacles, the amparos and appeals, as the former prosecutor Mendizábal laments, prevented that these high command of the customs fraud of the Moreno case could be touched. ”

⁶²Information gathered from the following websites:

- Myrna Mack Foundation. Impunity and Illicit Networks: An analysis of its evolution in Guatemala. Guatemala. Myrna Mack Foundation. 2019. Págs. 22, 25, 26, 30, 31 y 43.
- International Commission against Impunity in Guatemala. Comisión Internacional contra la Impunidad en Guatemala. Caso La Línea. CICIG. Guatemala. Accessible at: <https://www.cicig.org/casos/caso-la-linea/> [Accessed on: July 23, 2019].
- Ríos, Rony. Giovanni Marroquín Navas obtiene medida sustitutiva. El Periódico. Guatemala. February 7, 2019. Accessible at: <https://elperiodico.com.gt/nacion/2019/02/07/giovanni-marroquin-navas-obtiene-medida-sustitutiva/> [Accessed on: October 25, 2019].
- Ríos, Rony. La Línea: cuatro años sin juzgar a la supuesta estructura de defraudación. El Periódico. Guatemala. April 16, 2019. Accessible at: <https://elperiodico.com.gt/nacion/2019/04/16/la-linea-cuatro-anos-sin-juzgar-a-la-supuesta-estructura-de-defraudacion/> [Accessed on: July 23].
- Hernández Mayen, Manuel. Juan Carlos Monzón queda en libertad. Prensa Libre. Guatemala. June 20, 2018. Accessible at: <https://www.prensalibre.com/guatemala/justicia/juan-carlos-monzon-queda-libertad-casos-corrupcion/> [Accessed on: July 23, 2019].

⁶³CIEN. Hacia una Contraloría General de Cuentas Transparente y Eficiente. Guatemala. CIEN. 2019. Accessible at: <https://cien.org.gt/wp-content/uploads/2019/05/Contraloria-documento-final.pdf> Pg. 8

⁶⁴Marco Tulio Abadío (Comptroller General of Accounts and also Chief of the SAT) and Omar Franco Chacón (head of the SAT and linked to the process for the facts arising from the La Linea case).

⁶⁵ICEFI and OXFAM. La Corrupción: Sus caminos, su impacto en la sociedad y una agenda para su eliminación. Guatemala. ICEFI y OXFAM. 2015. Accessible at: https://www.icefi.org/sites/default/files/informe_icefi_-_corrupcion_0.pdf Pg. 14.

⁶⁶CIEN. Hacia una Contraloría General de Cuentas Transparente y Eficiente. Guatemala. CIEN. 2019. Accessible at: <https://cien.org.gt/wp-content/uploads/2019/05/Contraloria-documento-final.pdf> Pg. 25.

⁶⁷Marco Tulio Abadío (former Comptroller General of Accounts and also Chief of the SAT) and Omar Franco Chacón (head of the SAT and linked to the process for the facts arising from the La Linea case).

ABOUT THE ORGANIZATIONS

THE MYRNA MACK FOUNDATION is a Guatemalan nongovernmental organization that develops and produces research and policy proposals aimed at furthering the fight against impunity, strengthening the rule of law, and consolidating peace and democracy in Guatemala.

THE WASHINGTON OFFICE ON LATIN AMERICA (WOLA) is a leading research and advocacy organization advancing human rights in the Americas. We envision a future where public policies protect human rights and recognize human dignity, and where justice overcomes violence.

ABOUT THE PROJECT

The Central America Monitor is a subregional project that seeks to assess the level of progress being made by the countries of Guatemala, Honduras and El Salvador in the areas of strengthening the rule of law, reducing violence, combatting corruption and organized crime, and protecting human rights through the use of a series of indicators. The project also monitors and analyzes international cooperation programs in the aforementioned areas.

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