



Advocacy for Human Rights in the Americas



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CRIME AND INSECURITY IN GUATEMALA

Evaluating State Capacity to Reduce Violence and Combat Organized Crime

JULY 2020 | SERIES 1



TABLE OF CONTENTS

INTRODUCTION	4
KEY FINDINGS	6
CRIME AND INSECURITY IN GUATEMALA: EVALUATING STATE CAPACITY TO REDUCE VIOLENCE AND COMBAT ORGANIZED CRIME	8
THE PROBLEM OF VIOLENCE AND ORGANIZED CRIME IN GUATEMALA	8
POLICIES TO COMBAT VIOLENCE AND ORGANIZED CRIME	12
GOVERNMENT CAPACITY	27
EFFECTIVENESS IN CASE MANAGEMENT TO CURB VIOLENCE AND ORGANIZED CRIME	42
ACRONYMS AND ABBREVIATIONS	51
ANNEXES	53
BIBLIOGRAPHY	54
NOTES	57

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 University Institute for Public Opinion (Iudop) of the José Simeón Cañas Central American University (UCA) of El Salvador, the University Institute on Democracy, Peace and Security (IUDPAS) of Honduras, and the Myrna Mack Foundation (FMM) of Guatemala 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 America Monitor, produced by the Myrna Mack Foundation, aims to define a baseline for the indicators related to reducing violence and combatting organized crime in Guatemala.

ABOUT THE RESEARCH FOR THIS REPORT

Researchers gathered research through formal requests for information submitted to public information units in government agencies analyzed in this report. It is important to note that government institutions did not fully comply with requests for public information. Some institutions did not release the information we requested, at times on the grounds that the information was secret and at times by providing incomplete information.

The incomplete provision of information limits full analysis on some of the indicators in this report. However, researchers sought to compare and fill in gaps from official data with numerous reports assessing efforts to combat organized crime and violence in Guatemala, at times finding inconsistencies. For example, we analyzed official annual reports and analyses from domestic and international organizations, as well as press articles, related to organized crime and violence.

After compiling and reviewing information for each indicator, we developed a comprehensive baseline analysis on reducing violence and combatting organized crime for the 2014-2017 time period. Each year, we will collect information on these same indicators to allow for comparative analysis over time. The main points of our research and synthesized in key findings in the following pages.

KEY FINDINGS

- Crime and violence have profoundly negative impacts on society: they generate uncertainty, anxiety, high economic costs, and psychological effects (such as indifference or apathy in order to cope with reality). Furthermore, crime and violence facilitate corruption in public spaces and allow impunity to flourish, which in turn produces enormous distrust in the justice sector and its respective institutions. This chain reaction of failures can lead some to favor taking justice into their own hands.
- Between 2014 and 2017, Guatemala's justice sector made commendable efforts to implement reforms aimed at better tackling organized crime and violence, including legislative reforms that strengthen internal regulations and bring them in line with international regulations on combating violence and organized crime. However, indices for crimes like extortion and homicide are still quite high. According to figures from the Public Prosecutor's Office (*Ministerio Público*, MP), in 2014 there were 8,096 cases admitted for extortion; this figure decreased in 2015, but once again rose in 2016 and 2017, with 7,538 and 8,681 cases admitted, respectively. Regarding homicides, the MP opened 5,949 cases in 2014, 5,642 in 2015, 5,533 in 2016 and 4,871 in 2017. One reason why the number of homicide probes opened by the MP is not significantly increasing over the years is because significant parts of Guatemala's territory still lack the institutions needed to more effectively investigate homicides. Additionally, when decisions are made to expand justice institutions, this often have more to do with budgetary limitations than with responding to the areas seeing the highest crime rates. These qualitative aspects are examined in greater detail in a separate Central America Monitor report, *Guatemala's Justice System: Evaluating Capacity Building and Judicial Independence*.
- In terms of the institutional capacity of the Public Prosecutor's Office, during 2014-2017 the special office dedicated to investigating money laundering-related crimes experienced a sustained increase in the number of staff members (specifically, in the number of prosecutors and auxiliary prosecutors). Both the special prosecutor's office on money laundering and the special prosecutor's office dedicated to investigating organized crime saw their budget allocations increase over this four-year period (except for 2015, in which both offices saw some funds cut). Other specialized prosecutorial offices all saw their budgets increase during this time period, including the office dedicated to investigating extortion, the office that specializes in human trafficking, the Special Investigative Methods Unit (*Unidad de Métodos Especiales*, UME) dedicated to supporting investigations with authorized phone tapping), the criminal analysis unit, and the prosecutorial office that focuses on criminal organizations dedicated to drug trafficking and/or money laundering.
- In 2014 (the last year Claudia Paz y Paz served as head of the MP and the first for Thelma Aldana), there were qualitative advances in the Public Prosecutor's Office which allowed for the indictment and conviction of several members of criminal structures.

Many belonged to gangs such as *Mara Salvatrucha*, MS-13, *Los Sierra*, or the so-called *del pintor* criminal gang, etc. Other indictments involved high-level government officials for various acts of corruption. These advances stemmed from the strengthening of the criminal analysis unit, the implementation of a new fiscal management model, and the use of wiretapping, among other tools.

- The High Risk Courts—created in 2009 to hear cases related to drug trafficking, grave human rights violations, corruption, and organized crime—are a promising tool for more effectively prosecuting organized crime. However, the effectiveness of these courts is constrained: there is a lack of institutional capacity that would allow for more effective protection measures for judges; and there are insufficient resources to allow court employees to adequately carry out their work, among other factors. Given these challenges, authorities must address administrative and judicial management issues, to help speed up processes in High Risk Courts. Additionally, there is evidence that judges in these courts frequently face outside pressure and threats in connection to the cases they hear. It is essential to guarantee their security and judicial independence, which is constantly under threat in part due to spurious complaints and ill-founded disciplinary charges filed against them.
- There are opportunities for improvement for the special courts that deal with crimes related to the Law against Femicide and other Forms of Violence against Women (*Ley contra el Femicidio y otras Formas de Violencia contra la Mujer*) and the Law against Sexual Violence, Exploitation and Trafficking in Persons (*Ley contra la Violencia Sexual, Explotación y Trata de Personas*). Officials in these bodies could receive improved training; additionally, by expanding the number of offices across Guatemala, this would give victims of sexual violence and other crimes greater access to justice.
- Coordination between the Public Prosecutor’s Office and the National Civilian Police (*Policía Nacional Civil*, PNC) is key to the effectiveness of efforts to combat violence and organized crime in Guatemala. In this sense, it is critical that the various specialized bodies of these entities comply with certain basic parameters: sufficient personnel and budget levels, constant training to help professionalize employees, decent wages and working conditions, guaranteed security due to the risks that this work entails, reduction in the rates of staff turnover, standardized criteria and formats for investigative reports, etc. The success of the cases presented by the MP before the courts depends on fulfilling these basic requirements.

CRIME AND INSECURITY IN GUATEMALA

Evaluating State Capacity to Reduce Violence and Combat Organized Crime

THE PROBLEM OF VIOLENCE AND ORGANIZED CRIME IN GUATEMALA

In Guatemala, organized crime has been a problem for decades. The end of the civil war ushered in new and complex forms of violence: the rise of gangs, international drug trafficking, and corruption.² During the transition from conflict to “peace,” some members of the military, intelligence agents, and former police officers, among others, became involved in illicit activities, preying on a starving and divided population and a weak and corrupt State. These activities include money laundering, arms trafficking, and human trafficking. Even more concerning is that those organizations’ power is similar to that of a country with insurgent groups, with multiple areas under their control.³ Today, Guatemala is still one of the most violent countries in the world, with widespread impunity that further entrenches its insecurity and violence.

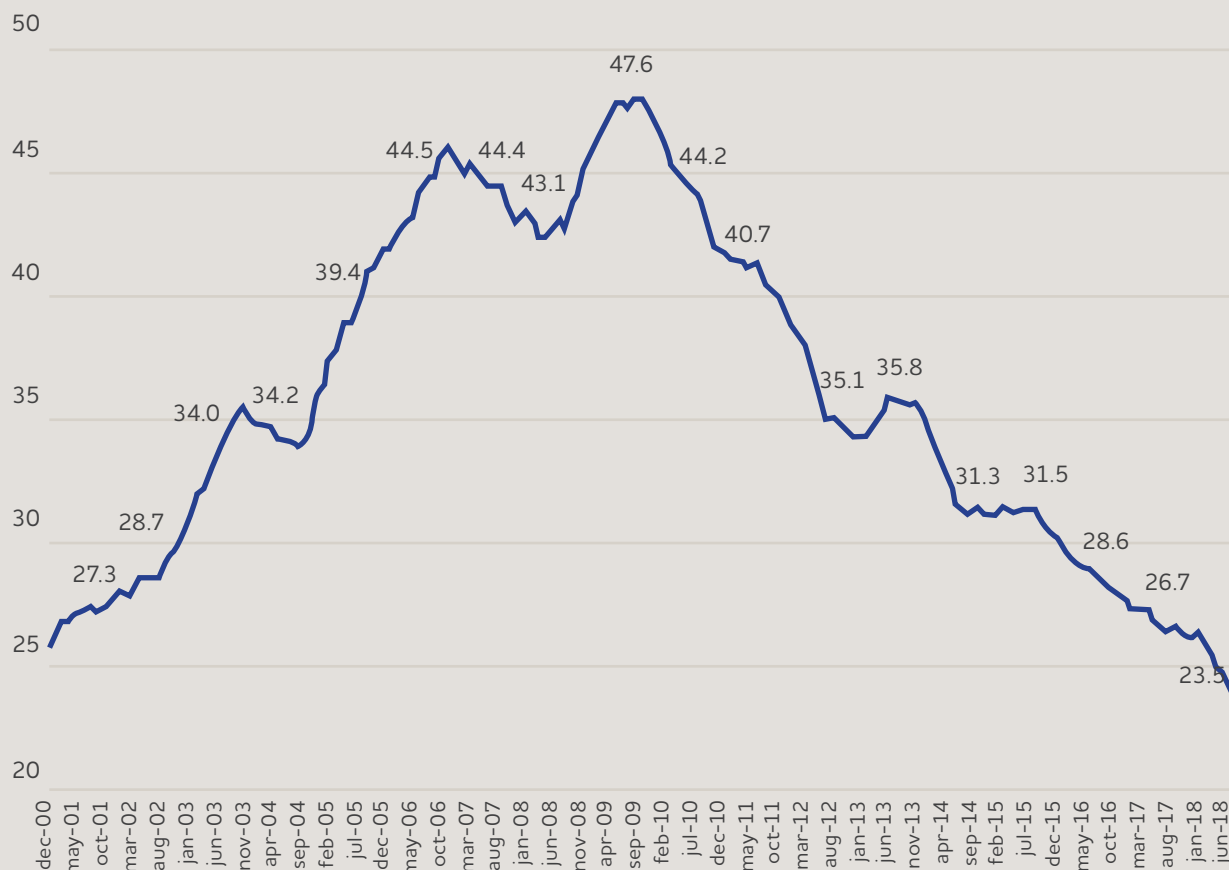
Gangs are currently responsible for a significant share of the violence and insecurity in the country’s urban areas. A 2017 report estimates that gangs are behind 41% of homicides in Guatemala.⁴ Although their activity is not restricted to the capital city, in 2014, 87%

of gang-related violence occurred in the department of Guatemala, the country’s main urban area.⁵ The *Mara Salvatrucha* and *Barrio 18* are the country’s most dominant gangs. The gangs generally finance their activity through extortion and drug dealing, and their violence stems from territorial disputes, confrontations with law enforcement, or retaliation against witnesses to crimes or people who do not obey their orders.

Homicides: Although a country’s rate and distribution of homicides provide important insight into its level of violence, they are not the sole indicator. According to statistics from the United Nations Office on Drugs and Crimes (UNDOC), the homicide rate in Guatemala doubled from 2000 to 2009, when it peaked at 46 homicides per 100,000 inhabitants.⁶ The rate has steadily fallen since 2010, largely due to efforts to fight crime. There were 18,817 homicides in the period covered by this study. In 2014, the country’s homicide rate was 31 per 100,000 inhabitants, and by the end of 2017 this figure had dropped to 26.1, the country’s lowest rate since the year 2000. Despite this steady decline, the World Health Organization (WHO) considers a homicide rate of more than 10 per 100,000 inhabitants to be an epidemic of violence.

GRAPH 1

HOMICIDE RATES OVER TIME, DECEMBER 2000 TO JUNE 2018*



Source: National Civilian Police (PNC)

*The data points on the graph correspond to June 30 of each year

It is important to note that homicide rates vary significantly from department to department. In the period covered by this study, most homicides were recorded in the department of Guatemala, which is unsurprising as it is a heavily populated urban area home to 20% of the country's total population. After the department of Guatemala, the departments with the highest homicide rates as of the end of the period of this study were Zacapa (75.7) and Chiquimula (58.9), which border Honduras and El Salvador.⁷

Additionally, there are certain populations in Guatemala that are particularly vulnerable to violence. According to the Inter-American Commission on Human Rights (IACHR), homicide is the leading cause of death in adolescents and young people (ages 15 to 24). For this group, the homicide rate was over 55 per 100,000 inhabitants in 2015,⁸ or 15 percentage points above the national average. In 2016 and 2017, around a third of all homicide victims were between the ages of 21 and 30.⁹

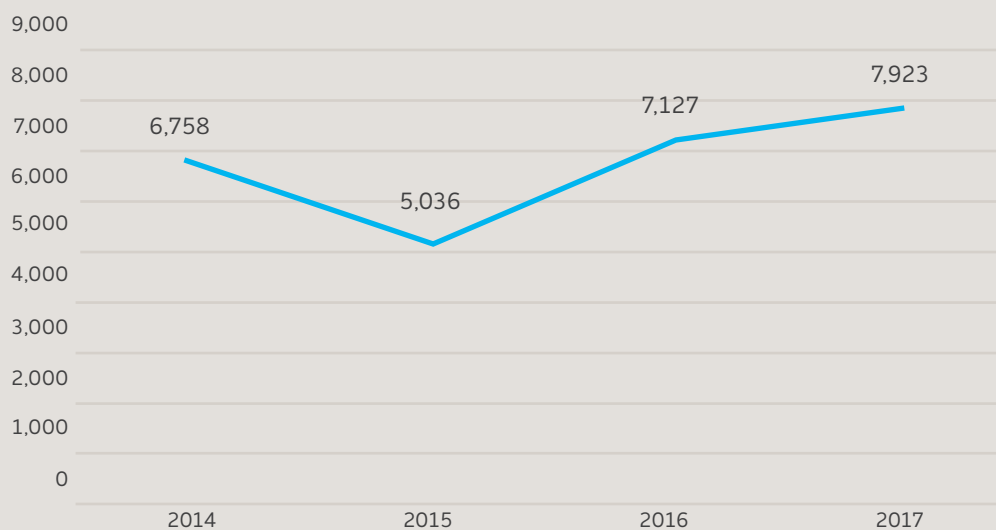
Violence against Women (VAW): Between 2014 and 2017, 2,404 homicides of women were reported in Guatemala (630 in 2014, 601 in 2015, 573 in 2016, and 600 in 2017).¹⁰ Although there tend to be fewer female homicide victims than male ones, women face many other forms of violence. UN Women's country study found that impunity, stereotyping, discrimination, the prevailing culture of machismo, and the acceptance of violence create an especially brutal environment for women.¹¹ Women are also disproportionately affected by sexual violence. Based on statistics from the Public Prosecutor's Office (*Ministerio Público*, MP), violence against women is among the most frequently reported crimes.¹² Over the course of this study, the MP received 198,545 reports of the crimes defined in the Law against Femicide and Other Forms of Violence against Women (*Ley contra el Femicidio y Otras formas de Violencia contra la Mujer*).¹³

Firearms and ammunition: The high circulation and ready availability of firearms leads to an illegal proliferation of firearms and ammunition.¹⁴ In Guatemala, around 8 in every 10 violent killings reported by the National Civilian Police (*Policía Nacional Civil*, PNC) are committed by firearm.¹⁵ As of August 2017, there were 574,000 registered firearms, but specialized organizations estimate there to be at least another million illegally in circulation.¹⁶ The Ministry of the Interior confiscated 48,029 firearms nationwide from 2008 to 2017. An average of nearly 4,800 firearms per year were seized, or 13 per day.¹⁷

Extortion: Based on data from the PNC, a total of 26,844 instances of extortion were reported from 2014 to 2017. Of these, more than 45% were reported in the department of Guatemala, followed by Quetzaltenango (8.23%), Escuintla (5.24%), Chimaltenango (4.76%), and Suchitepéquez (4.63%). In 2017 alone, authorities said they received at least

GRAPH 2

EXTORTION COMPLAINTS RECEIVED BY THE PNC, 2014-2017



Source: PNC

20 reports per day, mostly in the department of Guatemala.¹⁸ Extortion in urban areas contributes to the systemic insecurity of Guatemalan society and also has economic repercussions for the country; authorities estimate that extortionists reaped around US\$61 million per year.¹⁹ People often pay with their lives or endure death threats for not cooperating with this criminal system of extortion.

Drug trafficking and organized crime: The war on drugs in Mexico, which reached its height from 2010 to 2012, pushed drug trafficking routes into Central America and took the activity in Guatemala to a new level of sophistication and severity. The nexus between transnational and local criminal organizations made Guatemala an invaluable country for drug trafficking and organized crime. These criminal networks often generate violence and insecurity, especially in areas along the trafficking route and along Guatemala's borders with Mexico, Honduras, and El Salvador. For example, in Chiquimula, a region known for smuggling routes and drug traffickers, the homicide rate has remained high, even as the national average has fallen.²⁰ From 2014 to 2017, drug production and trafficking in Guatemala

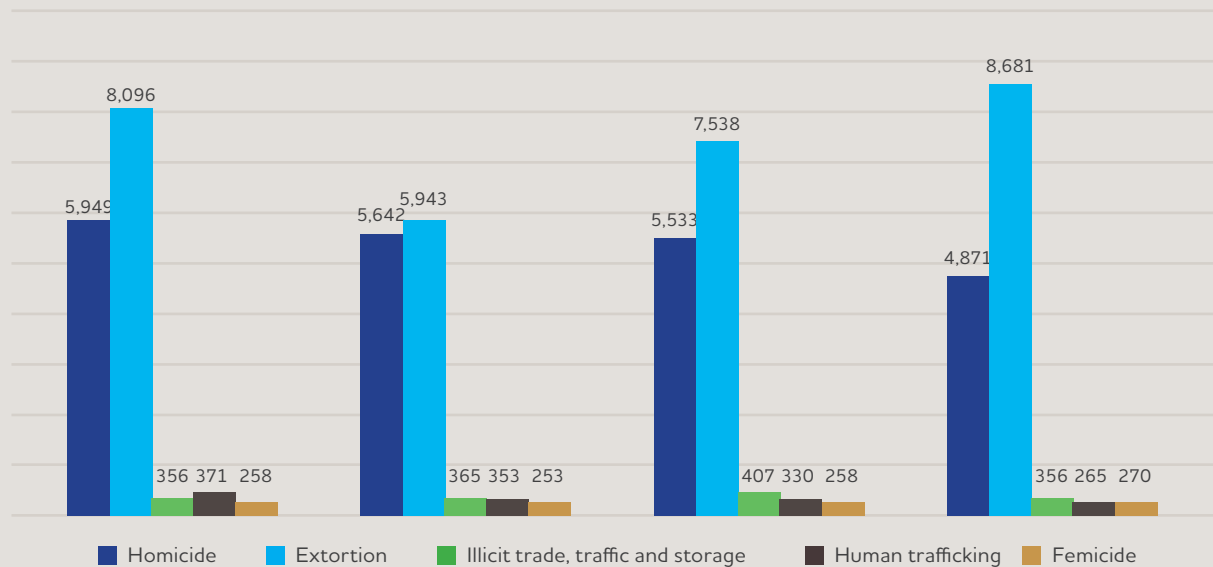
rose substantially. According to the U.S. State Department, each year an estimated 1,000 tons of cocaine passes through the country. In 2016, Guatemalan authorities estimated that an average of 4,500 hectares of poppy were being cultivated in western Guatemala, a sharp increase over previous years.²¹

Human trafficking: Transnational criminal organizations also have a hand in human trafficking in the country, along with other intermediaries who exploit vulnerable groups.²² Guatemala is a source, transit, and destination country for transnational human trafficking. The main victims are usually indigenous people and children and adolescents.²³ A 2016 study placed the number of sex trafficking victims at approximately 48,500 and the profits from this activity at US\$1.6 billion.²⁴

For a more complete analysis, information was requested from the different entities in the justice system: the Public Prosecutor's Office, the Judiciary, and the PNC. However, not all of them sent the requested data. Graph 3 shows numbers from the MP on some of the crimes described in this section. It was the only entity that sent information for the years covered by this study.

GRAPH 3

CASES ADMITTED TO THE PUBLIC PROSECUTOR'S OFFICE BY CRIME, 2014-2017



Source: Graph prepared by FMM with information from the Public Prosecutor's Office

POLICIES TO COMBAT VIOLENCE AND ORGANIZED CRIME

Any analysis of the criminal laws penalizing acts of violence and organized crime in Guatemala must start with the Constitution of the Republic of Guatemala. This reference point is critical because the Guatemalan Constitution recognizes the privileged position of international conventions or treaties in the country's legal system, particularly those on human rights (Articles 44, 46, and 149). The international treaties related to the fight against violence and organized crime that have been ratified by the State of Guatemala are shown in Table 1.

This list includes treaties that specifically address organized crime, such as the United Nations Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; the Palermo Protocol; the Protocol against the Smuggling of Migrants by Land, Sea and Air, all of which supplement the United Nations Convention against Transnational Organized Crime.

TABLE 1**INTERNATIONAL AGREEMENTS AGAINST VIOLENCE AND CRIME/ORGANIZED CRIME**

Agreement	Decree	Ratification
American Convention on Human Rights	Legislative Decree 6-78	1978
Convention on the Elimination of All Forms of Discrimination Against Women	Decree Law 49-82	1982
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	Legislative Decree 69-90	1991
Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará)	Legislative Decree 69-94	1995
Central American Convention for the Prevention and Suppression of Money Laundering and Asset Crimes Related to Illicit Drug Trafficking and Related Crimes	Legislative Decree 73-2000	2002
United Nations Convention against Transnational Organized Crime (Palermo Convention)	Legislative Decree 36-2003	2003
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)	Adopted by Guatemala on 01/04/2004	2004 (accession)
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organized Crime	Adopted by Guatemala on 01/04/2004	2004 (accession)

GUATEMALAN LAWS AGAINST VIOLENCE AND ORGANIZED CRIME

As outlined at the beginning of this report, the violence and organized crime in Guatemala is a product of the turbulent history of the country, which for years was controlled by dictators in a context of internal armed conflict and severe human rights violations. In 1985, Guatemala entered an era of free elections and ratified a new constitution. In 1996, the Peace Accords were signed, marking the beginning of a period of institutional and legal reforms. However, in

recent years it has become clear that Guatemala still needs legal reforms to more effectively fight violence and organized crime.

In this vein, Guatemala has passed and amended different laws to address the high levels of violence, combat organized crime, and align its national legislation to international instruments ratified by the State. These efforts also represent coordination with forces with other countries in the region to combat those phenomena. The following is a description of amendments to some of the most important laws in the fight against violence and organized crime that were passed between 2014 and 2017:

Criminal Code: Guatemala’s Criminal Code (*Código Penal*) was enacted in 1974 and has been amended at various points to update it to today’s needs. According to the National

Center for Judicial Analysis and Documentation, between 2014 and 2017 this code was amended as follows (see Table 2).

TABLE 2
REFORMS TO THE CRIMINAL CODE BETWEEN 2014 AND 2017

Date and Decree/ Constitutional Court Ruling	Name of the Decree or Effect of Constitutional Court Ruling	Modification in the Criminal Code
February 19, 2014. Decree 8-2014	Law for navigating highways free of obstacles (<i>Ley para la circulación por carreteras libre de cualquier tipo de obstáculos</i>)	Reformed Article 158
*April 8, 2014. Decree 12-2014	Law on Controlling Mobile Telecommunications in Prisons and Strengthening Data Transmission Infrastructure (<i>Ley de Control de las Telecomunicaciones Móviles en Centros de Privación de Libertad y Fortalecimiento de la Infraestructura para Transmisión de Datos</i>)	Added Articles 294 Ter, 421 Bis and 452 Bis.

*Decree 12-2014 (mentioned above) was challenged as unconstitutional, which caused the provisional suspension of Articles 421 Bis and 452 Bis that had been added to the Criminal Code (Ruling 2089-2014 of the CC, dated June 6, 2014). The suspended articles stated the following:

"Art. 421 BIS: Denial of help in case of disturbance to the installation, use or repair of data transmission equipment. Commits the crime of denial of help in case of disturbance to the installation, use or repair of data transmission equipment, any element in charge of public, state or municipal order, by refusing to assist a private person that the commission has reported from the crime of disturbance to the installation, use or repair of data transmission equipment. The person responsible for this crime will be punished by imprisonment of one to three years, a fine of five thousand to twenty-five thousand Quetzals and a ban on holding public office."

"Art. 452 BIS. Improper charge for installation or repair of data transmission infrastructure. The public official, the member of a Development Council or any municipal official commits the crime of improper collection by installation or repair of data transmission infrastructure, which will collect sums of money from individuals who have authorization in accordance with the Law on Controlling Mobile Telecommunications in Prisons and Strengthening Data Transmission Infrastructure, for the installation or repair of any data transmission equipment or for the construction necessary for the installation of data transmission equipment or for the use of public domain property or communal use for the installation of data transmission equipment. The person responsible for this crime will be punished with imprisonment for six to eight years, a fine of five thousand to twenty-five thousand Quetzals and a ban on holding public office."

When issuing its sentence dated March 10, 2016, the CC resolved to declare unconstitutional Articles 294 Ter, 421 Bis and 452 Bis of the Criminal Code.

Art. 294 Ter, established: *“Disturbance to the installation, use or repair of data transmission equipment. Commits the crime of disturbance to the installation, use or repair of data transmission equipment, the person who obstructs, interrupts, suspends or in any way disrupts the installation, use or repair of infrastructure for data transmission, to any person or entity that has an authorization in accordance with the Law on Controlling Mobile Telecommunications in Prisons and Strengthening Data Transmission Infrastructure. The person responsible for this crime will be punished with imprisonment for six to eight years, a fine of five thousand to twenty-five thousand quetzals and a ban on holding public office. If the person responsible for this crime is a public official or employee, the penalty will be increased by a third.”*

<p>**November 28, 2014. Decree 22-2014</p>	<p>Law for the Implementation of Fiscal Measures, Approval of the General Budget of State Income and Expenditures for Fiscal Year 2015 and Approval of Financing for Fiscal Year 2014.</p> <p>This decree sought to establish a tax on telephone lines, adding section 13 to Article 358 B of the Criminal Code, which regulates special cases of tax fraud: <i>“Whomever simulates, hides, modifies, maneuvers or in any way alters the content of detailed telecommunications records, in order to undermine the payment of the tax on fixed or mobile telephone lines.”</i></p>	<p>Added section 13 to Art. 358 "b".</p>
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**Decree 22-2014 (mentioned above) was declared unconstitutional on November 28, 2014 (Constitutional Court rulings 1-2015, 6-2015, 7-2015, 44-2015, 68-2015, 71-2015, 101-2015 , 118-2015 and 167-2015), and therefore, the addition of section 13 to Article 358 B of the Criminal Code was nullified.

<p>****November 5, 2015. Decree 7-2015</p>	<p>Credit Card Law (<i>Ley de Tarjetas de Crédito</i>).</p> <p>Through this law, the crime credit or debit card fraud was codified, adding Art. 264 Bis to the Criminal Code, which states: <i>“Anyone committing the production, reproduction, introduction, printing, use or commercialization of credit and debit cards without the consent of the person empowered commits fraud with a credit or debit card; likewise, whoever owns, distributes or uses credit or debit cards with knowledge of their falsification commits a fraud with a credit or debit card. The crime of fraud is committed by anyone who improperly obtains or uses electronic information and accesses the</i></p>	<p>Added Art. 264 Bis</p>
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	<p><i>electromagnetic equipment of issuers or operators, as well as whoever manipulates or modifies an ATM in order to obtain cardholder data and whoever obtains or uses individually or collectively the information of clients or operations registered by the issuers or operators. Whoever commits the crime of fraud with a credit or debit card will be punished with six to ten years' imprisonment and a fine of one hundred and fifty thousand to five hundred thousand Quetzals."</i></p>	
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**** Decree 7-2015 (mentioned above) was faced calls of being unconstitutional almost from its passage, which is leading to its provisional suspension in 2016. In December 2018, the CC finally decided that the entire decree was unconstitutional (published in the Official Gazette on January 1, 2019), therefore invalidating the crime of fraud with a credit or debit card.

<p>November 19, 2015. Decree 10-2015</p>	<p>Reforms to the Migration Law (<i>Ley de Migración</i>) (Decree 95-98)</p> <p>These reforms regulated aspects related to the illicit trafficking of persons, illegal facilitation of migrant workers, etc. (Article 327 B, added to the Criminal Code, establishes aggravation of penalties related to this type of crime).</p> <p>It is worth mentioning that due to the issuance of new Immigration regulations (Migration Code, Decree 44-2016), the Immigration Law was partially repealed and only the section that regulates crimes remains in force.</p>	<p>Added Art. 327 B</p>
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<p>***February 4, 2016. Decree 13-2016</p>	<p>Reforms to the Criminal Code</p>	<p>Added Articles 414 Bis and 420 Bis.</p>
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*** Decree 13-2016 (mentioned above) was declared unconstitutional on June 13, 2017 (Constitutional Court Ruling 2105-2016), nullifying Articles 414 Bis and 420 Bis that had been added to the Criminal Code. These articles stated the following:

“Article 414 Bis. Failure of individuals to maintain legislative appointments. The individual or legal representative of a legal entity, duly registered in the applicable registers, who for any reason manages, administers, guards or receives public funds, who, with an anticipation of four working days, does not appear after being summoned to report to the Congress of the Republic, its commissions or legislative blocks, or stops attending without just cause, will be sanctioned with prison for two to three years. This may be excepted by proving illness before or twenty-four hours after the time set for the citation.

Article 420 Bis. Failure of officials and public employees to attend legislative summons. Commits

the crime of non-compliance of public officials and employees to attend legislative summons, the Minister or Vice Minister who acts as representative or the public official or employee, who for any reason manages, administers, guards, executes or receives public funds, or who is required to deal with matters related to State business, who does not appear without just cause after having been summoned or invited to attend to report to the Congress of the Republic, its commissions or legislative blocks, with an anticipation of four business days, will be sanctioned with prison of two to three years. This may be excepted by proving illness before or twenty-four hours after the time set for the citation.”

<p>February 11, 2016. CC Ruling 1097-2015</p>	<p>Declared unconstitutional the penultimate paragraph of Article 132 that regulates the crime of murder, which stated: “<i>However, the death penalty will be applied instead of the maximum prison sentence, if due to the circumstances of the event and the occasion, the way in which the act was conducted and the determining motives, a greater or particular threat to public safety is revealed. To those who do not apply the death penalty for this crime, no reduction of sentence may be granted for any reason.</i>”</p>	<p>Art. 132 (murder)</p>
<p>March 3, 2016. CC Ruling 3292-2015</p>	<p>Declared unconstitutional the words "or" and "others" within Article 450 of the Criminal Code, which regulates the crime of fraud, since these words in force violate legal security, which is substantive criminal law. The legislator must clearly and precisely determine punishable behaviors, avoiding confusing or indeterminate terms that allow a wide range of discretion or subjective interpretation by the judge, as this could result in arbitrariness at the time of its application.</p>	<p>Art. 450 (fraud)</p>
<p>September 27, 2016. Decree 45-2016</p>	<p>Law for the Strengthening Road Safety (<i>Ley para el Fortalecimiento de la Seguridad Vial</i>), which sought to better regulate control over collective passenger and cargo transport vehicles, and therefore the following crimes were created: wrongful death (Art. 127); culpable injury (Art. 150); driver accountability (Art. 157); and illegal exploitation of urban or extra-urban transport of people (Art. 158 Bis - which was later modified by Decree. 11-2017, dated June 7, 2017).</p>	<p>Reformed Articles. 127, 150, 157 and 158 Bis.</p>

November 22, 2016. Decree 49-2016	Law on Implementation of Telematic Oversight in Criminal Processes (<i>Ley de Implementación del Control Telemático en el Proceso Penal</i>), whose purpose is to regulate and implement telematic (remote) monitoring methods as an effective alternative to prison; creates a set of crimes related to the disruption of said monitoring and reforms some of the articles of the Criminal Code related to the conditional suspension of the sentence, conditions for probation and security measures.	Reformed Arts. 73 and 79. Added 88 Num 8
October 24, 2017. CC Ruling 5986-2016	Declared sentences and paragraphs of some articles of the Criminal Code unconstitutional, effectively making the death penalty inoperative.	Arts. 131, 132 Bis, 201, 201 Ter and 383.
November 28, 2017. Decree 22-2017	Law on the Genetic Databank for Forensic Use (<i>Ley del Banco de Datos Genéticos para Uso Forense</i>), through which a databank is created to collect genetic information so as to facilitate clarification of evidence within a criminal investigation. In this sense, it amended Article 61 of the Criminal Code that regulates the publication of sentences in cases of crimes against honor, liberty, and sexual inviolability.	Reformed Art. 61

The following amendments are relevant to the fight against violence and organized crime:

In 2016, the Constitutional Court (*Corte de Constitucionalidad*, CC) declared the words “or” and “other” of Article 450 of the Criminal Code unconstitutional²⁵ (Constitutional Court Case 3292-2015). This decision changed the crime of fraud to give it more legal certainty (that is, to clearly and precisely define for society which conducts can be penalized).

That same year, Article 158 Bis was added to the Criminal Code. This article governs the crime of illegal operation of city or intercity passenger transportation,²⁶ and establishes that whoever operates collective passenger or cargo transportation without meeting the requirements and holding a permit will be fined,

and upon subsequent offenses, imprisoned. The same penalty will be applied to government officials who, in exchange for some form of recompense, act as a deliberate accomplice to the crime.

In 2017, Decree 13-2016 was declared unconstitutional. This decree amended the Criminal Code by adding articles 414 Bis and 420 Bis,²⁷ which decriminalized failure of public officials and government employees to comply with a congressional subpoena. While these subpoenas could be considered important in order to hold government officials accountable to Congress and keep members of organized crime from compromising the operations of government institutions, in its decision, the Constitutional Court found a procedural defect in how the decree in question was issued. This

decision was vetoed by the presidency, which claimed it was unconstitutional. However, Congress did not later present a legal challenge to this claim of unconstitutionality with the Constitutional Court (Constitutional Court Case 2105-2016).

On November 28, 2017, the Law on the Genetic Databank for Forensic Use (*Ley del Banco de Datos Genéticos para Uso Forense*) amended Article 61 of the Criminal Code, which establishes the secondary sentence of publication of judgments in cases of crimes against a person's honor and crimes against a person's sexual freedom and inviolability.

Although they are not included in the table because the respective decrees had not taken effect, in September 2017, a group of legislators introduced two bills (Decrees 14-2017 and 15-2017) to amend the Criminal Code. This took place approximately one month after the MP and International Commission against Impunity in Guatemala (CICIG) announced an investigation into the president at the time, Jimmy Morales, for the crime of illegal campaign financing. However, the content of the decrees was entirely at odds with the fight against corruption and impunity, as it involved benefits for a group of people accused or convicted of certain crimes, including: illegal campaign financing, unregistered campaign financing, anonymous campaign financing, child prostitution, extortion, homicide, conspiracy, embezzlement, human trafficking, and others. The amendments were so brazen that this parliamentary action became known as the "Pact of the Corrupt," leading many people to take to the streets to demonstrate their disapproval. On September 15, 2017, the process of passing the two decrees into law was permanently suspended.

Another event that did not take place during the period covered by the study but is worth mentioning is the passage of Decree 17-2009,

the Law on Strengthening Criminal Prosecution (*Ley de fortalecimiento de la persecución penal*), in 2009. This decree amended several criminal laws to make them more consistent with each other in order to more effectively fight organized crime. One such amendment expanded provisions on the crime of extortion, establishing a harsher range of prison sentences (from 1 to 6 years to 6 to 12 years)²⁸ and making those sentences incommutable. A local research center advanced the theory that one of the reasons why an increase in this crime was recorded after this amendment was passed was that it made people more willing to report it.²⁹ Extortion of transportation, on the other hand, continued to be governed by Articles 10 and 11 (on exaction by intimidation and extortionary obstruction of traffic, respectively) of the Law against Organized Crime (*Ley contra la Delincuencia Organizada*).

Over the years there has been discussion of the need to completely overhaul and replace the current Criminal Code with one that's better aligned with the principles and values recognized in the Guatemalan Constitution and that reflects more modern trends in criminal law. Some examples would be to include penalties that serve to rehabilitate offenders, as well as mechanisms for reducing the use of preventive detention, among others. However, this reform has not been possible. Along the same lines, there have been proposals to prevent the dispersion of criminal laws and unify them under a single code. There may be progress to report on this initiative in the Monitor's next report.

Legislation for controlling telecommunications in prisons: Efforts have been made to curb the constant smuggling of cellphones into prisons, which are often used for extortion, but these measures have been met with little success. In recent years, to restrict extortionary calls from prisons, authorities established the Law on Mobile Terminal Equipment (*Ley de Equipos Terminales Móviles*) and the Law on Controlling

Mobile Telecommunications in Prisons and Strengthening Data Transmission Infrastructure (*Ley de Control de las Telecomunicaciones Móviles en Centros de Privación de Libertad y Fortalecimiento de la Infraestructura para Transmisión de Datos*).

The first law, established in 2013, sets prison sentences for people who bring mobile telephones into or use them within prison facilities. The second law, passed in 2014, aimed to control telecommunications in prisons. It required local Guatemalan cell network operators to implement technical solutions to keep prison centers from generating mobile telecommunications traffic. However, it was declared unconstitutional, which nullified the crimes added to the Criminal Code under that decree: interference with the installation, use, or repair of data transmission equipment (294 ter); refusal to provide help in cases of interference with the installation, use, or repair of data transmission equipment (421 bis); and undue charges for the installation or repair of data transmission infrastructure (452 bis).³⁰

Law against Femicides and Other Forms of Violence against Women (*Ley contra el Femicidio y Otras Formas de Violencia contra la Mujer, LFVCM*): (Decree 22-2008.) Passed in 2008, this law is intended to guarantee the life, liberty, wellbeing, dignity, protection, and equality of women under the law, especially when due to their gender—in power-based or intimate relations, in the public or private sphere—someone attacks them; discriminates against them; commits physical, psychological, or economic violence against them; and/or violates their rights. The Law establishes government obligations: guaranteed access to information and rapid and integral assistance for women, as well as future protection for victims. It also orders the creation and strengthening of specialized divisions of the justice system and mechanisms for providing integral service and care to women who are victims of violence. This special

criminal law gives concrete form to some of the Guatemalan government's obligations under its Constitution, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and Belem do Pará Convention. Through this law, the government essentially aims to meet its international commitments on protecting women's human rights, among others, and provide a comprehensive response to the problem of violence against women. It asserts that women hold rights, creates a special court system for these types of cases, criminalizes conduct that in the past went unpunished, and coordinates inter-agency action, all with the goal of preventing and punishing violence against women and providing restitution to all of its victims.

Arms and Ammunition Law (*Ley de Armas y Municiones*): (Decree 15-2009.) Like the Law against Femicides and Other Forms of Violence against Women, this law was passed to meet Guatemala's international commitments to create laws that not only ensure control over the circulation of firearms and ammunition, but also establish the legal mechanisms needed in order to prosecute suspects in cases involving the illegal circulation of firearms.³¹ One of the State's obligations in this area is to regulate the marking of firearms: when they are manufactured, when they are imported, and when they are confiscated and allocated to the State's security forces. Marking is a means of effectively tracing firearms and involves using symbols to show which country the firearm was manufactured in or imported from. As a result, the obligation to mark firearms with the initials GUA was established.³²

This law defines illegal arms trafficking as a crime, an important step given the grave consequences of the trafficking, which far outstrips legal trade.³³ On the other hand, almost all penalties established by the law involve at least five years in prison, which impacts initiatives to lessen

court system's caseload, as under the Code of Criminal Procedure these cases do not qualify to be handled in this way.³⁴

The law also establishes that for first-time firearm carry permits, applicants must undergo a process of psychological assessments, familiarization with the law, and technical and security measures. This law does not limit the sale of firearms and ammunition.³⁵ Citizens can purchase as many firearms as they wish, and the permit can cover up to 3 different firearms, validating the hypothesis that people who have firearms tend to have more than one. From 2014 to 2017, three articles of the law were amended by means of Decree 6-2017 (articles: 26, databank; 63, procedure for registering possession; and 138, proof of ownership of firearms for registration purposes).³⁶

The purpose of these amendments is to regularize firearm possession, creating a digital and physical bank of ballistic fingerprints at the Directorate General of Arms and Ammunition Control (*Dirección General de Control de Armas y Municiones*, DIGECAM). To this end, firearm owners must register their firearms or update the ballistics fingerprint in order to receive a new possession (with a deadline of 1/31/2020).³⁷ The Forensic Office of the PNC, the Public Prosecutor's Office, and the National Institute of Forensic Science (*Instituto Nacional de Ciencias Forenses*, INACIF) will be able to access and query that databank for investigatory purposes, which is a very positive step as it strengthens the capabilities and tools of the agencies helping to curtail violence and crime.

Law against Organized Crime (*Ley Contra la Delincuencia Organizada*): (Decree 21-2006.) The need for pertinent legislation to combat organized crime was identified nearly two decades ago. In Guatemala there were long-standing barriers to addressing the issue: the impossibility of attributing a crime to members

of organized crime, the difficulty or impossibility of obtaining evidence in cases linked to organized crime, and the lack of regulations on international cooperation for fighting transnational organized crime. Fighting organized crime means investigating crimes as more than just isolated occurrences; it involves dismantling structures, which requires identifying their scope of criminal action, *modus operandi*, and members. It is particularly important to identify those most capable of plotting crimes and those who bear the most responsibility for criminal actions due to their level of decision-making.³⁸

In 2000, during the XXV United Nations General Assembly, Guatemala signed the United Nations Convention against Transnational Organized Crime (UNTOC, or Palermo Convention), which went into effect in 2003. In doing so, Guatemala agreed to take legislative and other steps to prevent and dismantle transnational organized crime in Guatemala, in the region, and internationally. This instrument was approved by Decree 36-2003. Three years later, Decree 21-2006, the Law against Organized Crime, was passed. That law defines criminal conduct that can be attributed to members or participants of criminal organizations and establishes special criminal investigation and prosecution methods.

The Law against Organized Crime uses the UNTOC definition of "criminal group," adding that the aim of such groups is to obtain, directly or indirectly, an economic or other benefit for itself or a third party. A structured group is defined as a group intentionally formed to immediately commit a crime in which it is not necessary for its members to have been assigned formally defined roles or for there to be continuity in its membership or a developed structure. The Law against Organized Crime also defines specific crimes committed by criminal groups; including crimes established in the Criminal Code and special laws, including but not limited to the Law against Drug Activity

(*Ley contra la Narcoactividad*), the Law against Laundering Money or other Assets (*Ley contra el Lavado de Dinero u otros Activos*), and the Law on Prevention and Suppression of Terrorism Financing (*Ley para Prevenir y Reprimir el Financiamiento del Terrorismo*).

There are two aspects of the list of crimes included in the law under the concept of organized crime that are worth critiquing.³⁹ The first is the inclusion of a crime of negligence (negligence in the escape of prisoners). Part of the definition of organized crime is collusion between two or more people to commit any of the crimes listed later in the law; therefore crimes committed with negligence or unintentional harmful acts are excludable, *per se*. Secondly, apart from the crime of murder, no other crimes against that legal right (for example: extrajudicial killings) were included, nor were others against fundamental legal rights such as torture, forced disappearance, and genocide.

Regarding the means for investigating organized criminal groups and crimes with a serious social impact, the Law against Organized Crime establishes that the Code of Criminal Procedure governs the timeline for investigating crimes committed by these groups, provided there is an order to prosecute. Without that order, investigators can continue taking the steps permitted by that same law up until the prosecution of the crime is time-barred. The Law against Organized Crime also establishes that entities like the Superintendency of Banks (*Superintendencia de Bancos*, SIB), the Office of Cadaster and Real Estate Appraisal (*Dirección de Catastro y Avalúo de Bienes Inmuebles*, DICABI), the General Property Registry (*Registro General de la Propiedad*, RGP), the Commercial Registry (*Registro Mercantil*, RM), the Trademarks and Patents Registry (*Registro de Marcas y Patentes*, RMP), the Superintendency of Tax Administration (*Superintendencia de Administración Tributaria*, SAT), the Special Verification Unit (*Intendencia*

de Verificación Especial, IVE), and any other government agencies are required to cooperate if asked for reports for investigating the crimes covered by that law. It also establishes special investigation methods that will be explained in more detail further on in this report.

Furthermore, the Law against Organized Crime creates the concept of cooperating witnesses as a tool for criminal investigation, allowing cases to be solved with the aid of voluntary witnesses furnished by people involved in a crime. Articles 90 to 105 further develop the concept as follows: The section "rewards-based criminal justice" establishes that people who have participated in a crime—whether or not they are a member of an organized criminal group—who effectively aid or cooperate in the investigation and prosecution of members of an organized criminal group will be able to receive the benefits specified in the Law. Cooperation is considered effective when it provides information that makes it possible to: a) keep crimes from occurring or continuing or reduce their scope; b) learn the context in which the crime was or is being planned and carried out; c) identify the perpetrators or accomplices of a crime that has been committed or is about to be committed, or identify the bosses, leaders, or heads of the criminal organization; d) identify the members of a criminal organization and how it is run, allowing it to be dismantled or diminished, or leading to the arrest of one or more of its members; e) investigate the intended use of the instruments, assets, effects, and proceeds from the crime, as well as uncover the criminal organizations' sources of funding and support; f) deliver the instruments, effects, proceeds, or assets resulting from the unlawful activity to the relevant authorities.

By law, cooperating witnesses can receive certain benefits in exchange for the information they provide. These include: a) dropping of the charges by the prosecutor according to the rules for doing so, or conditional suspension of

the criminal prosecution;⁴⁰ b) during the trial and up until the judgment is issued, suspension of the criminal investigation for accomplices or the reduction of the sentence by up to two thirds for perpetrators (upon issuing the judgment); and c) probation or release on parole for those serving a sentence (Articles 92, 92 Bis, and 92 Ter). These benefits will not be granted to bosses, leaders, or heads of criminal organizations; nor in cases of genocide, forced disappearance, extrajudicial killings, torture, and war crimes or crimes against humanity. In some cases, sentences can be reduced by up to two thirds upon issuing the judgment; or probation can be granted; or those serving sentences can be granted release on parole, among other benefits.

For someone to be considered a cooperating witness, the prosecutor in charge of the investigation must first corroborate the information they provided. If the prosecutor finds that they qualify, he or she will ask the judge to grant some kind of benefit, under the condition that the person who receives it does not commit an intentional crime during a period of no less than the maximum sentence established by law for the crime the person is accused of or committed, otherwise the benefit will be revoked.⁴¹

Cooperating witnesses are thus “a useful means of making more evidence available in cases involving organized crime.” According to the MP, this mechanism has been applied primarily to crimes against life or bodily integrity, crimes involving corruption, environmental crimes, conspiracy, extortion; crimes involving drug trafficking, arms trafficking, and smuggling; and crimes against humanity.⁴²

Special Investigative Methods (*Métodos Especiales de Investigación, MEI*): Special investigative methods are required to determine the criminal liability of those potentially involved in acts of organized crime. The aim of these methods is to discover incriminating information and evidence to identify people involved in committing a crime, produce evidence during the trial and, when necessary, help foreign authorities achieve the same purposes.⁴³ The Law against Organized Crime establishes certain MEI as tools that justice institutions can use to prevent, combat, dismantle, and eradicate organized crime.

Some authors consider these measures to be an expansion of criminal law in response to the need to fight national and transnational organized crime, which is the source of much of the financing for terrorism, drug trafficking, human trafficking, etc. It is a political stance on crime taken by States to address unconventional crime.⁴⁴ Box 1 outlines special investigative methods, according to the Law against Organized Crime.

BOX 1

SPECIAL INVESTIGATIVE METHODS, ACCORDING TO THE LAW AGAINST ORGANIZED CRIME

Undercover operations	Controlled deliveries	Wiretapping telephones and other means of communications
<p>The purpose of these operations is to obtain information or evidence that can be used to prosecute members of organized crime groups and dismantle those groups by designing effective strategies under the strict oversight of the MP. These operations are performed by undercover agents (special police officers who perform them voluntarily or at the request of the MP). They can take on fake identities and roles, act secretly, and skip the protocol normally required in their position for when a crime is committed. Requirements: The prosecutor submits a written request for this type of operation. The agent's true identity is placed in a sealed envelope which will be kept by the MP, who may not know its contents. The MP's authorization is required, and the duration of this type of operation is six months, renewable once (its total time cannot exceed one year).</p>	<p>This technique involves transporting illicit or suspicious shipments that enter, move within, or exit the country. The purpose is to discover the channels and system for distribution and sales, as well as to gather evidence on, identify, and prosecute organizers, transporters, buyers, guards, and other people participating in illegal activities. These deliveries are carried out by special teams of PNC officers, under the supervision of the MP. Requirements: The prosecutor must request this type of operation in writing, and it must be authorized by the head of the MP.</p>	<p>This technique involves wiretapping, recording, or reproducing oral, written, telephone, radiotelephone, digital, and similar communication, with judicial authorization. This technique is performed by specialized PNC officers. However, the MP has a Special Investigative Methods Unit (<i>Unidad de Métodos Especiales</i>, UME) that conducts wiretapping, in coordination with the PNC. Requirements: Only prosecutors can submit a request for permission to use this method to a judge. The request must be written, unless a crime is endangering someone's life or liberty, in which case the MP can make the request verbally. The judge must provide an immediate response in an appealable order. The authorization lasts for a maximum of 30 days.</p>

Source: Prepared by FMM with information from the Law against Organized Crime

The Special Investigative Methods Unit (*Unidad de Métodos Especiales*, UME) of the Public Prosecutor's Office originates from the Organic Law of the Public Prosecutor's Office (*Ley Orgánica del Ministerio Público*, LOMP) and is created based on several instruments: the 2008 interagency agreement between the

Public Prosecutor's Office, the Ministry of the Interior, and the CICIG; Government Agreement 158-2009 (Regulations for applying the Law's special methods); General Directive 14-2009 for applying the special investigative method of tapping telephones and other means of communication, and General Directive 6-2011,

among others.⁴⁵ The unit is in charge of coordinating and controlling MEI applications, as well as advising and supporting prosecutors with regards to analyzing, requesting, preparing, and implementing them.

The current Democratic Criminal Prosecution Policy of the Public Prosecutor’s Office (*Política de Persecución Penal Democrática del MP*) states that, in order to investigate organized crime, certain aspects should be taken into account when applying the special investigative methods (MEI), as shown in Box 2.

BOX 2

APPLICATION OF SPECIAL INVESTIGATIVE METHODS

Wiretapping	Undercover agents and controlled deliveries	Use of cooperating witnesses to gather more evidence
Expansion of technological support, review of the work method with prosecutors, and assigning areas to be covered by prosecutors working on complex criminal cases and threats to fundamental rights that require special protection. For crimes not explicitly included in the Law against Organized Crime, wiretapping will be approached from the standpoint of investigating conspiracy to commit such crimes, given that conspiracy is listed in the Law against Organized Crime and is applicable to all kinds of criminal acts.	This method will be given priority for types of crimes considered “priority” in the criminal prosecution policy, particularly those categorized as acts affecting property and, especially, conducts involving commercialization.	This method will be given priority for the following crimes: crimes prioritized by this Democratic Criminal Prosecution Policy, especially fatal offenses, crimes involving corruption, environmental crimes, conspiracy, extortion; crimes involving drug trafficking, arms trafficking, and smuggling; and crimes against humanity.

Source: Prepared by FMM with information from the Democratic Criminal Prosecution Policy of the MP (pages 89-91)

This policy also articulates the need to strengthen the Special Investigative Methods Unit as follows: “Establish workgroups within the Special Investigative Methods Unit that address (...): organized crime, crimes in government, crimes established in the Law against Corruption, and human trafficking, and any findings that indicate the existence of other crimes must be included in the investigation results;⁴⁶ (...)

design and implement a process of assigning telephone lines to prosecution offices in the country’s departments, (...) take steps to begin implementing undercover agents; (...) Incorporate the use of other mechanisms, like wiretapping or, as the investigation moves up the ranks of the criminal structure, cooperating witnesses as per the Law against Organized Crime; develop human and physical infrastructure (...); develop

bargaining parameters cooperating witnesses (...); test out the use of cooperating witnesses at prosecutors' offices," among others.⁴⁷

In light of this, it is concerning that only wiretapping has been implemented since the law took effect, and there are still obstacles standing in the way of starting to apply the other

methods. To a large degree, these challenges are caused by administrative restructuring⁴⁸ and the difficulties of providing the training personnel need to meet the demands of those methods. This lack of progress comes despite the fact that the Special Investigative Methods Unit's budget has clearly been increasing, as shown in Table 3.

TABLE 3

SPECIAL INVESTIGATIVE METHODS UNIT BUDGET, 2014-2017

Special Investigative Methods Unit (UME)	2014	2015	2016	2017
Assigned	N/R	Q4,791,556.00	Q7,609,688.00	Q9,702,088.00
Executed	N/R	Q6,918,782.08	Q10,320,698.60	N/R

Source: Prepared by FMM with information from the MP through public information requests

Information on the human and financial resources of the Special Investigative Methods Division (*División de Métodos Especiales de Investigación*, DIMEI) was also requested from the PNC. It responded that this Division does not have a specific source of funding, since it is part of the Sub-Directorate General of Criminal Investigation and operates under the budget of that entity. As for its personnel, it said that information cannot be published because it endangers the National Security System and the life and physical safety of the police officers.⁴⁹

Finally, the Law against Organized Crime establishes that when the safety of people who testify or provide expert opinions against a member of an organized criminal group is presumed to be at risk, arrangements must be made to protect them, and their testimony or report should be received as evidence produced before the trial (Article 19).

In this matter, prosecutors must adhere to the **Law for Protection of Criminal Defendants**

and People Linked to the Administration of Criminal Justice (*Ley para la Protección de Sujetos Procesales y Personas vinculadas a la Administración de Justicia Penal*) (Decree 70-96). Among other things, this law states that in order for a citizen to fulfill their duty to further the correct administration of justice, the State must ensure they are properly protected to keep them from becoming targets of threats, intimidation, influence peddling, or other types of pressure. It also establishes that to make the judicial system effective, the safety and well-being of judges, prosecutors, defenders, and other people involved in judicial proceedings must be guaranteed. Thus, the objective of the service is to protect officials and employees of the judiciary—civil security forces and agents of the MP, witnesses, expert witnesses, consultants, or joint criminal complainants—whose involvement in criminal proceedings exposes them to risk. This protection also extends to journalists who request it because their reporting work puts them in a risky situation (Article 2).

The Protection Service (*Servicio de Protección*) is the responsibility of the Governing Council; composed of the head of the MP or their representative, who chairs the council, along with a delegate from the Ministry of the Interior and the director of the Protection Office. The prosecutor in the criminal proceeding may, at his or her own initiative or at the request of the person in need of protection, arrange for the Protection Office to evaluate the case and submit it to the office's director for approval. To decide whether to accept a witness into the program, the Protection Office must consider: a) whether the risk posed to the person requesting the protection service is reasonably certain; b) the seriousness and social impact of the punishable act; c) the testimony's value as evidence to incriminate the participants in the criminal act, whether masterminds or perpetrators; d) the possibility of obtaining the information being offered by other means; e) whether the testimony can lead to the identification of participants in other criminal acts related to the one under investigation; f) the legal options for granting protection; and g) the risks that protection could entail for society or the community where the beneficiary lives. Once a specific person is accepted into the service, the Protection Office must inform the judge hearing the case of this fact in writing, and that information must be kept confidential.

The benefits of the protection service include: a) protection of the beneficiary, with security guards; b) a new place of residence for the beneficiary, potentially covering housing, transportation, and living expenses; c) protection of the beneficiary's residence and/or workplace with security guards; d) a new identity for the beneficiary; and e) any other benefits the protection service's Governing Council deems necessary.

The law states that: "Whether or not a witness enters the Protection Service depends on the level of risk to the person who testified or provided information on a specific criminal act, such as a homicide, murder, kidnapping, extrajudicial killing, or instance of drug and arms trafficking."⁵⁰ Additionally, "with the CICIG's support, the program was strengthened, the office restructured, the staff trained, model security and service protocols were created, and new witnesses relocation mechanisms were instituted, among other achievements." Despite this progress, it is still necessary to bolster the Protection Service's finances, logistical processes, and human resources for it to run more effectively."⁵¹

Lastly, while developing this report, information for 2014-2017 on the Witness Protection Service's human and financial resources were requested but not provided by the government.

STATE CAPACITY

PUBLIC PROSECUTOR'S OFFICE

The prosecution offices' operations were restructured in 2009 to address weaknesses in the original management model. The "New Prosecution Management Model" aimed to incorporate a management concept into the prosecution offices way of handling cases and

working as a team, providing a broader range of solutions according to cases' complexity. In contrast to the previous model, this one includes the idea that some cases are more serious than others (cases can be very serious, serious, or resolved early as provided for by law). Implementing the new management model gave the MP a workflow with solutions better suited to each type of conflict, laying the groundwork for conducting in-depth and long-

term investigations, particularly those targeting criminal organizations that have a serious impact on society.⁵²

Furthermore, in May 2014, when Prosecutor General Claudia Paz y Paz's tenure ended and Prosecutor General Thelma Aldana took over the position, the new prosecution management model was revised and adjusted, as in some prosecution offices the model was implemented without basic staffing and infrastructure conditions. Along the same lines, in October 2014, General Directive 3-2014 was issued, establishing a pilot plan for proper coordination between units overseeing investigations and those overseeing cases being tried. This plan was instituted in the metropolitan prosecution office, the special prosecutor's office for crimes against the person, the special prosecutor's office for organized crime, and the special prosecutor's office for drug-related crime.⁵³

Below is a brief description of the functions of the MP's prosecution offices that investigate violent or organized crime activities. According to the Organic Law of the Public Prosecutor's Office (Article 30) and the institution's organizational chart, the following offices existed as of December 2017:⁵⁴

Prosecutor's Office for Organized Crime (*Fiscalía contra el crimen organizado*): This office investigates and prosecutes crimes that are highly disruptive to society. Organized crime is considered highly disruptive to society because, in addition to causing trauma and suffering for victims, it also has economic repercussions at the national level (it leads to wage loss, interferes with the investment climate, and drains government resources, etc.). In Guatemala, organized crime structures are also termed illegal security forces and clandestine security apparatuses, defined as structures that over time have perfected the use of intelligence methods and techniques, have

complex division of labor in their operations, and enjoy both resources and, usually, impunity. These structures are unlikely to be outside of the state apparatus, compete against it, or be completely unknown to it. There is also a wide mix of organizational models and motivations within those illegal structures. One such model involves securing the backing of formal military intelligence structures, with which, based on the objectives of the operations, they coordinate to a certain degree. This model also involves the benefit of both a certain level of autonomy and being linked to either the phenomenon of organized crime or to carrying out "personal favors."⁵⁵

During the period covered by this study, this prosecution office had units: a) against vehicle theft; b) for crimes related to banks, insurers, and other financial institutions; and c) against illegal trade in firearms, explosives; chemical, biological, or atomic weapons; war traps, and experimental weapons. As of 2017, it had physical offices in the departments of Jalapa, Quetzaltenango, and San Marcos.

Prosecutor's Office for Drug-Related Crimes (*Fiscalía de Delitos de Narcoactividad*): This office investigates all crimes linked to the production, manufacture, use, possession, trafficking, and illegal sale of narcotics. As of 2017, it had three assistant section prosecution offices: The Assistant Section Prosecution Office for the Northeast Region, headquartered in Chiquimula; the Assistant Section Prosecution Office for the Southwest Region, headquartered in Quetzaltenango; and the Assistant Section Prosecution Office for the North Region, headquartered in Petén.

Prosecutor's Office for Money or Asset Laundering (*Fiscalía Contra el Lavado de Dinero u Otros Activos*): This office investigates, brings charges in, and criminally prosecutes cases of money laundering or other assets from

any criminal activity. As of December 2017, it had a physical office for fighting terrorism financing, a special physical office at La Aurora International Airport, and an Asset Recovery Unit.

Prosecutor's Office for Extortion (*Fiscalía contra el Delito de Extorsión*): This office investigates, brings charges in, and criminally prosecutes cases of extortion, exaction by intimidation, extortionary obstruction of traffic, and any act intended to extract money or another benefit. It was created in 2014 (prior to which extortions were investigated by the Office for the Prosecution of Organized Crime). Its main office is in the capital, and it began operating in 2015. As of 2017, it coordinated 6 physical offices in Chimaltenango, Huehuetenango, Jutiapa, Quetzaltenango, San Marcos and Suchitepéquez (the last of which had yet to be set up as of January 2018). This office was created during Prosecutor General Thelma Aldana's tenure as part of the plan to strengthen the MP's capabilities and improve investigation results, which was focused on transforming units into specialized prosecution offices.

Prosecutor's Office for Human Trafficking (*Fiscalía contra la Trata de Personas*): This office investigates, brings charges in, and criminally prosecutes cases of human trafficking in all its forms, taking steps essentially aiming to protect the life, liberty, and sexual inviolability of victims of this crime. As of 2017, it consisted of six units: The Unit Against the Sale of Persons and Irregular Adoptions; the Unit Against Sexual Exploitation; the Unit Against Exploitation of Labor and Other Forms of Human Trafficking; the Comprehensive Care Unit; the Unit Serving Immigrant Victims of Potential Crimes and Their Families; and the West Region Office (which had yet to be implemented as of January 2018).

Prosecutor's Office for Kidnapping (*Fiscalía*

***contra Secuestros*):** This office brings charges against and criminally prosecutes all cases violating people's liberty for the purpose of ransoming them, swapping them, or making any decision against their will, or for any other similar or equivalent purpose. Created in 2017, it is meant to take over the cases previously handled by the kidnapping unit of the Office for the Prosecution of Organized Crime. It was created during the tenure of Prosecutor General Aldana.

Prosecutor's Office for Crimes against the Person (*Fiscalía de Delitos Contra la Vida y la Integridad de la Persona*): Created in 2004 for bringing charges in and criminally prosecuting crimes against the person. Generally, crimes against the person that occur outside of the capital area tend to be handled by the district and municipal prosecution offices, since the specialized prosecution offices do not have a presence in all parts of the country. In 2017, this office only had a physical presence in Escuintla, Izabal, and Villa Nueva (the latter two offices were still yet to be implemented as of January 2018), with the following units: Comprehensive Care Unit (*Unidad de Atención Integral*, UAI), Early Selection Unit (*Unidad de Decisión Temprana*, UDT); Investigation Oversight Unit (*Unidad de Dirección de la Investigación*, UDI); and Litigation Unit (*Unidad de Litigio*, UL).

Prosecutor's Office for Women (*Fiscalía de la Mujer*): This office is responsible for the Public Prosecutor's involvement in proceedings involving women who are victims of gender-related crime; these cases require advice from subject-matter specialists. It has the same units as the Office for the Prosecution of Crimes against the Person, and as of January 2018 it had 21 physical locations (4 yet to be implemented).

Prosecutor's Office for Femicide (*Fiscalía Contra el Delito de Femicidio*): This office brings

charges in and criminally prosecutes crimes against women's lives. Even though the Law against Femicide and Other Forms of Violence Against Women was passed in 2008, and established the obligation to create an office for the prosecution of crimes against the lives and physical safety of women within 12 months of its passage, it was not until 2016, during the tenure of Prosecutor General Aldana, that the Office for the Prosecution of the Crime of Femicide was created. However, as of December 2017, there was only one physical office of this kind in the entire country.

The following are the relevant specialized units of the MP:

Specialized Unit against Criminal Organizations that Engage in Drug Trafficking and/or Money or Asset Laundering and Tax Crimes (*Unidad Especializada Contra Organizaciones Criminales Dedicadas a la Narcoactividad y/o Lavado de Dinero u Otros Activos y Delitos Contra el Orden Tributario, UNILAT*): This unit is in charge of investigating and criminally prosecuting crimes related to drug trafficking and/or money or asset laundering, as well as tax crimes when related to organized crime activity.

Asset Recovery Unit (*Unidad de Extinción de Dominio, UNED*): This unit, which is part of the Office for the Prosecution of Money or Asset Laundering, was created by Agreement No. 65-2011 and handles property confiscated due to unlawful acts that trigger the law's enforcement, and acts or omissions defined as crimes, committed by common criminals or organized crime groups.⁵⁶ The Asset Recovery Law establishes that recovered assets must be distributed as follows: 20% to investigative units (only for operations), 20% to exclusive MP funds, 18% to the Ministry of Interior for training and purchasing equipment to support investigation units, 15% to exclusive funds of

the National Secretariat for the Administration of Recovered Assets (to be used solely to cover the expenses of administering seized assets), 25% to the Judiciary, and 2% to the Solicitor General's Office.⁵⁷

Special Investigative Methods Unit (*Unidad de Métodos Especiales de Investigación, UME*): This unit coordinates and controls the application of the special investigative methods set forth in the Law against Organized Crime. It also advises and supports prosecutors as they analyze, request, prepare, and implement those methods.⁵⁸ This unit was not actually created until 2009, or three years after the law was passed, and initially it only implemented the wiretapping method. However, in 2017, the MP signed an Inter-Institutional Cooperation Agreement with the Ministry of the Interior to apply undercover operations and controlled deliveries, with the aim of setting ground rules for organization and coordination. Additionally, changes were made to the Support Protocol for sharing information between the MP and the DEA on cases in which wiretapping is being used.⁵⁹

Analysis Unit (*Unidad de Análisis, UA*): This unit compiles, organizes, analyzes, and produces information on crime, and it supports the MP's prosecution offices and units by providing strategic guidance on the prosecution of specific criminal cases.⁶⁰

Criminal Analysis Division (*Dirección de Análisis Criminal, DAC*): This division organizes, processes, analyzes, produces, and swiftly communicates relevant information to the MP's prosecution offices and units. This division's human resources and budget grew exponentially under Prosecutor General Claudia Paz y Paz. Its tasks include studying criminal phenomena to understand how criminal groups function and behave; geo-locating activity, using the technology on each prosecutor's computer for

reporting information directly to the Criminal Analysis Division; and drawing connections between cases to identify criminal structures using information systems. One example is the application of a ballistic database used together with the National Institute of Forensic Sciences, which has enabled progress in the fight against gangs, *maras*, hired killers, and extortionists.⁶¹ In 2017, the Public Prosecutor's Office, CICIG, and Superintendency of Tax Administration reached an agreement to exchange information, however one of the current challenges is to reinforce its ability to handle cybercrimes.⁶²

Forensic Investigation Division (*Dirección de Investigaciones Criminalísticas, DICRI*):

This division assists by investigating, collecting, processing, and performing forensic analysis on any evidence or clue—whether physical, digital, or of any other nature—linked to a crime under investigation by the MP. The division can act on its own behalf, and when warranted, with support from other State security forces. It performs its activities at the prosecutor's request, but it can also carry out any other activity that helps shed light on the crime under investigation; provided this activity arises as part of the same investigation it was assigned to work on and is legal, and that the division immediately informs the prosecutor in charge of the case so that it can oversee the activities.

This division comprises two sub-divisions. The first is the Operational Sub-Division for Criminal Investigation, which is responsible for planning, organizing, integrating, directing,

implementing, controlling, and supervising the investigatory processes requested by prosecutors to clear up the cases the MP is working on, as well as advising and supporting prosecutors. The second is the Sub-Division for Forensic Investigation, which is in charge of planning, organizing, integrating, directing, implementing, controlling, and supervising the work of advising prosecutors when collecting evidence and processing the crime scene in order to help solve a crime. It is also responsible for monitoring and maintaining communication, by any means, with departments of the MP and other institutions.⁶³ During the period covered by this study, this division was reinforced with different technological innovations for collecting evidence from and documenting crime scene, as well as GPS technology, forensic light sources for detecting evidence, digital cameras, resources for electronic packaging, and other equipment.⁶⁴

Lastly, to analyze the capabilities of the prosecution offices and specialized units described in this section, budget and staffing information was requested from the MP. The MP refused to release information on its staff, claiming that it is confidential (for security reasons). However, the information requested was the number of personnel, not sensitive information (names, telephone numbers, etc.). Because its reason for not releasing the information is unfounded, by law, it can be challenged. The following table shows the data that was obtained regarding funds allocated and spent for 2014 to 2017.

TABLE 4
BUDGET INFORMATION FOR PROSECUTOR'S OFFICES AND SPECIALIZED UNITS, 2014-2017

Prosecutor Office or Special Unit	2014	2015	2016	2017	Total
Prosecutor's Office for Organized Crime – Assigned	Q32,648,689.00	Q26,034,052.00	Q33,893,730.00	Q35,043,120.00	Q127,619,591.00
Prosecutor's Office for Organized Crime – Accrued	Q31,055,410.92	Q25,646,087.79	Q36,409,284.80	Q35,527,268.95	Q128,638,052.46
Prosecutor's Office for Drug-Related Crimes – Assigned	Q16,399,856.00	Q14,694,384.00	Q19,675,437.00	Q18,084,653.00	Q68,854,330.00
Prosecutor's Office for Drug-Related Crimes – Accrued	Q15,110,194.94	Q15,101,875.19	Q18,957,642.64	Q18,136,011.65	Q67,305,724.42
Prosecutor's Office for Money or Asset Laundering – Assigned	Q10,843,065.00	Q10,383,784.00	Q16,284,672.00	Q18,140,150.00	Q55,651,671.00
Prosecutor's Office for Money or Asset Laundering – Accrued	Q12,009,009.26	Q12,480,003.83	Q18,562,907.22	Q21,275,423.68	Q64,327,343.99
Prosecutor's Office for Extortion – Assigned	Did not exist in 2014	Q248,159.00	Q24,601,631.00	Q24,890,163.00	Q49,739,953.00
Prosecutor's Office for Extortion – Accrued	Did not exist in 2014	Q17,118,360.43	Q26,704,299.48	Q36,802,314.98	Q80,624,974.89
Prosecutor's Office for Human Trafficking – Assigned	Q2,966,853.00	Q6,617,808.00	Q8,899,513.00	Q10,749,693.00	Q29,233,867.00

Prosecutor's Office for Human Trafficking – Accrued	Q6,705,265.16	Q7,392,299.20	Q11,183,698.02	Q11,410,058.77	Q36,691,321.15
Prosecutor's Office for Kidnapping – Assigned	Did not exist in 2014	Did not exist in 2015	Did not exist in 2016	Q0.00	Q0.00
Prosecutor's Office for Kidnapping – Accrued	Did not exist in 2014	Did not exist in 2015	Did not exist in 2016	Q3,268,758.36	Q3,268,758.36
Prosecutor's Office for Femicide – Assigned	Did not exist in 2014	Did not exist in 2015	Q0.00	Q8,472,159.00	Q8,472,159.00
Prosecutor's Office for Femicide – Accrued	Did not exist in 2014	Did not exist in 2015	Q5,926,255.85	Q10,701,620.62	Q16,627,876.47
UNILAT – Assigned	Q1,304,581.00	Q2,203,271.00	Q2,491,717.00	Q3,867,223.00	Q9,866,792.00
UNILAT – Accrued	Q2,219,564.19	Q2,414,833.88	Q3,895,733.65	Q2,893,462.25	Q11,423,593.97
Special Investigative Methods Unit – Assigned	N/R	Q4,791,556.00	Q7,609,688.00	Q9,702,088.00	Q22,103,332.00
Special Investigative Methods Unit – Accrued	N/R	Q6,918,782.08	Q10,320,698.60	N/R	Q17,239,480.68
Analysis Unit – Assigned	N/R	Q18,746,701.00	Q25,137,922.00	Q31,648,872.00	Q75,533,495.00
Analysis Unit – Accrued	N/R	Q24,026,599.92	Q26,119,462.30	N/R	Q50,146,062.22

Source: Prepared by FMM with data provided by the MP through public information requests

A noteworthy trend in this data is the yearly increase in the funds allocated, with the exception of the prosecution offices for organized crime and drug trafficking, the budget for which dropped in 2015, as was the case for the anti-money laundering office in 2015 and

2017. Also of note is the substantial difference between funds allocated and funds spent at the prosecution offices dealing with extortion, kidnapping, and femicide, including cases in which there is expenditure but the allocated budget is Q0.00.

THE JUDICIARY

In 2014, 44% of the Judiciary's cases were criminal. In 2015, this figure dropped to 27% and in 2016 rose to 35% (making criminal cases the most common type in 2014, and second most common in 2015 and 2016).⁶⁵ To better perform its functions, the Judiciary has set up specialized criminal courts, such as those that handle high-risk cases, crimes under the Law against Femicides and Other Forms of Violence against Women, and crimes defined in the Law against Sexual Violence, Exploitation, and Human Trafficking. These courts are described below:

High Risk Courts: These courts are key to combating violence and organized crime. They were analyzed in the Monitor report on corruption, but certain relevant information is reiterated here. These courts were created in 2009 by the Law on Criminal Competence in High Risk Cases, and while their creation is indeed a positive step, there still are not enough professionals with the profiles needed for them to function properly. Additionally, these courts have not received the necessary physical infrastructure or human resources, and their staff's administrative and training needs have not been fully met either. These factors make it difficult for them to fully achieve their underlying purpose (ensuring the safety of criminal defendants).⁶⁶

In addition to the fact that these cases usually involve a large number of criminal defendants (due to the seriousness of the crimes), these courts are also overloaded by vexatious litigation practices (filing actions or appeals with the sole intention of delaying proceedings), overuse of the High Risk system, etc. All this makes it extraordinarily challenging to meet procedural deadlines, as the timelines established in the Rules of Criminal Procedure for certain procedural steps may in practice be very short.⁶⁷

The Judiciary provided the information shown in Table 5 on the human and financial resources of those courts.

Although the Judiciary does have a presence in the country's 22 departments, the number of judges per inhabitant is still low (Guatemala has only 6 judges per 100,000 inhabitants in all areas of the justice system, well below the global average of 17),⁶⁸ and the high risk court system is no exception. In terms of funding, from 2014 to 2016 the overall amount allocated to the Judiciary decreased (from Q1,890,348,895.00 in 2014 to Q1,800,757,378.00 in 2015 and to Q1,750,943,332.00 in 2016). 2017 was the only year that saw a budget increase (Q2,528,932,250.00). The budget specifically for high risk court system steadily increased from 2014 to 2017, and over the four years it was allocated 0.33% of the Judiciary's total budget, as shown in the Table 6.

Lastly, at least two judges in the high risk court system have become aware of plots against them, so the Supreme Court of Justice redoubled security measures at the High Risk Court's facilities and assigned more security personnel to judges. However, the security program has been criticized by the judges themselves, as it falls short of their expectations, to say nothing of the requirements for a high risk court system.⁶⁹

Femicide Courts and Tribunals: Although the specialized courts provided for in the Law against Femicides and Other Forms of Violence Against Women already exist in 50% of the country's departments (Guatemala, Alta Verapaz, Chiquimula, Escuintla, Huehuetenango, Izabal, Quetzaltenango, Quiché, Sololá, San Marcos, and Petén; plus an Appeals Division in the Department of Guatemala), a UN study found that women in rural areas do not benefit from their protection and relief, as the majority are unable to gain access to them. Additionally,

TABLE 5

HIGH RISK COURTS AND THE NUMBER OF JUDGES ASSIGNED TO THEM

Existing Courts between 2014 and 2017	Number of Judges Assigned
High Risk Courts A - D and Quetzaltenango	6 judges for 5 courts: (1 each, except court B, which has 2)
High Risk Courts A - D and Quetzaltenango	15 magistrates for 5 courts: (3 each)

Source: Prepared by FMM with information from the Judiciary

TABLE 6

BUDGET INFORMATION OF THE JUDICIARY AND HIGH RISK COURTS

BUDGET OF THE JUDICIARY, 2014-2017					
2014	2015	2016	2017	Total	Percentage
Q1,890,348,895	Q1,800,757,378	Q1,750,943,332	Q2,528,932,250	Q7,970,981,855	100%
BUDGET OF HIGH RISK COURTS, 2014-2017					
2014	2015	2016	2017	Total	Percentage
Q4,492,046.61	Q5,810,091.90	Q6,540,642.17	Q9,063,428	Q25,906,208.68	0.33%

Source: Prepared by FMM with information from the Judiciary

there are flaws in the way the ordinary court system handles violence against women: the application of criteria for dropping charges by prosecutors; changes in how crimes are defined; failure to take other types of discrimination into account, including ethnic and age-based; as well as gender stereotypes in the reasoning behind some decisions.⁷⁰

Even though preventing violence against women is one of the five pillars of the National Action Plan of the National Policy on the Prevention of Violence and Crime, Citizen Security, and Peaceful Coexistence, in practice there are no marked changes that would suggest these

types of crimes are being effectively addressed. This could be due to a lack of gender sensitivity among those responsible for implementing this policy.⁷¹

It should also be mentioned that the Management Regulations for Courts and Tribunals with Jurisdiction over Crimes of Femicide and other Forms of Violence against women (Resolution 30-2010 of the Supreme Court of Justice) allows cases of femicide and violence against women to enter the specialized court system via ordinary courts. This leads to difficulties because not all criminal judges in the ordinary court system are properly trained

and/or sensitized to understand the full extent of these issues, which in specific instances has kept these cases from advancing. A positive aspect of the Regulations is that a court can order security measures on its own motion, or they can be requested by any person. In 2013, Resolution 35-2013 gave justices of the peace, duty magistrates, family court judges, criminal trial court judges, and femicide court judges authority to grant these measures, which gave women considerably more options for accessing

justice in the event of danger to their person. Courts must immediately process and give their decision on any requests for these measures they receive, and the victim or purported aggressor are not required to appear.⁷²

In some departments, these courts are staffed entirely by men,⁷³ which could pose an obstacle for victims. It is thus fair to say that the current systems in place for handling cases of violence against women still has room for improvement. The results in the Table 7 are remarkable.

TABLE 7

FEMICIDE CASES ADMITTED TO THE PUBLIC PROSECUTOR’S OFFICE VERSUS NUMBER OF SENTENCES FOR FEMICIDE CRIMES

Cases admitted, convictions, and acquittals for femicide	2014	2015	2016	2017	Totals
Cases admitted to the MP	258	253	258	270	1,039
Convictions	68	85	73	76	302
Acquittals	22	15	23	14	74

Source: Prepared by FMM with information provided by the MP

Guatemala is one of nine countries out of 33 in Latin America with a legal framework to combat violence against women, and it passed the amendments needed in order to define femicide as a crime.⁷⁴ However, its rates of violence remain alarming. According to the National Statistics Institute (*Instituto Nacional de Estadística*, INE) and the National System for Information on Violence against Women (*Sistema Nacional de Información de Violencia en contra de la Mujer*, SNIVCM), in 2017 at least 57 in every 10,000 women suffered femicide or other forms of violence against women (an average of 135 per day). In 2017 alone, only 3% of the men charged by the MP with crimes under the Law against Femicides and Other Forms of Violence against Women were convicted by the Judiciary.⁷⁵ Unfortunately, this statistic, along with the number of reports of violence and convictions shown in the table,

demonstrate that there continues to be a very wide gap between the reality of this violence and convictions.

Lastly, quantitative information was requested from the Judiciary on the human and financial resources of courts handling cases of femicide or other forms of violence against women, but it did not supply this information. This data is crucial for analyzing the impact of these courts. According to a UN Women study published in 2017, “There is still much work to do on consistency between plans and laws in terms of funding, to implement monitoring and evaluation policies in order to eradicate violence against women.”⁷⁶

Human Trafficking Courts: Initially, courts specializing in cases of femicide and violence against women did not have jurisdiction over

crimes and governed by the Law against Sexual Violence, Exploitation, and Human Trafficking. These cases thus continued to be handled by ordinary criminal courts, which do not specialize in gender issues, allowing the furtherance of patriarchal stereotypes in court decisions (some

cases of rape and human trafficking for sexual exploitation ended in acquittals despite strong evidence of guilt). However, specialized courts for handling these cases were set up in 2012.⁷⁷ Table 8 shows specific results for the crime of human trafficking.

TABLE 8

HUMAN TRAFFICKING CASES ADMITTED TO THE MP VERSUS CASES ADMITTED TO THE JUDICIARY AND NUMBER OF SENTENCES

MP complaints, cases admitted, and sentences for human trafficking	2014	2015	2016	2017	Totals
MP Complaints	402	394	338	266	1,400
Cases admitted in court	114	121	141	115	491
Sentences	41	60	53	35	189

Source: Prepared by FMM with data from Judiciary statistics and the Human Rights Ombudsperson's Office's 2017 report on trafficking in persons (pg. 65)

Specific information on human trafficking was requested from the Judiciary, but was not furnished, so the information in this table was pulled from other official sources. Additionally, the end of this section contains specific data provided by the MP via the Office for the Prosecution of Human Trafficking.

As for the gap between cases reported to the MP and those that reach the Judiciary, it is important to recognize the complexity of investigating these crimes, which can require long investigations before cases enter the court system. In terms of the number of judgments, in a 2016 study on human trafficking, CICIG stated that more judges are needed, as their massive caseloads significantly bog down trials, ultimately impacting the number of judgments, as can be clearly seen in the table.

Despite this, one of the positive aspects of these specialized courts' work is that judges are trained on issues related to the cases they try, which according to the Human Rights

Ombudsperson's Office (*Procuraduría de los Derechos Humanos*, PDH) leads to more convictions, and thus better access to justice for victims.⁷⁸ However, in 2017, the Human Rights Ombudsperson's Office recommended that the Judiciary improve the speed and due diligence of human trafficking trials, especially in relation to restitution for victims.⁷⁹

Table 9 shows MP data with specific numbers on the different kinds of human trafficking, disaggregated by convictions and acquittals.

As in other cases described above, the low ratio of sentences to cases reported to the MP, and to the number of charges brought must be interpreted in light of various factors, including the reality that a judgment is unlikely to be issued the same year the case enters the system (there are various factors at play: vexatious litigation, vacation times, suspension of judges, long judicial lag times, and others).⁸⁰ Thus, there is significant room for improvement in terms of ensuring effective access to justice.

TABLE 9

CASES AT THE PROSECUTOR’S OFFICE FOR HUMAN TRAFFICKING

Cases	2014	2015	2016	2017	Totals
Cases Admitted by the MP	306	291	277	304	1,178
Victims	440	431	441	475	1,787
Cases Under Investigation	16	16	40	61	133
Accusations	112	166	138	128	544
Convictions	39	64	68	92	263
Acquittals	19	14	18	43	94

Source: Prepared by FMM with information provided by the MP

To conclude, as in the case of courts handling cases governed by the Law against Femicides and Other Forms of Violence against Women, quantitative information was requested from the Judiciary on the personnel and budget of courts that hear cases involving crimes under the Law against Sexual Violence, Exploitation, and Human Trafficking. The Judiciary did not provide this information.

NATIONAL CIVILIAN POLICE⁸¹

To fight violence and organized crime, the National Civilian Police (PNC) has the following subdivisions, among others:

Sub-Directorate General of Anti-Narcotics Analysis and Information (Subdirección General de Análisis e Información Anti Narcótica): This specialized unit is responsible for fighting drug trafficking in all of its forms to dismantle the criminal structures and organizations linked to this crime, money laundering, and related offenses. It operates under and is part of the Assistant Directorate General of the PNC and is composed of the “Tactics” Operations Group, “Omega” Land Interdiction Group, “Falcons” Rapid Response Team, Special Chemicals Group, Special Canine

Group, and Special Investigations Group. It is tasked with: compiling, processing, and analyzing information on drug activity and drug trafficking networks operating in Guatemala and in countries where their operations affect Guatemala; planning and designing strategies for counteracting and eradicating illegal drug crops, production, trafficking, storage, trade, distribution, and consumption, as well as chemical ingredients and money and asset laundering derived from drug trafficking; and designing and implementing strategies to combat drug-related terrorism and any groups that may form in the Republic.

Sub-Directorate General for Criminal Investigation (Subdirección General de Investigación Criminal): This unit investigates, identifies, and captures those responsible for crimes, applying technical and scientific police methods and processes to help protect people’s lives, physical safety, liberty, and property. All scientific investigation processes are overseen by police experts from this sub-directorate. It uses a variety of methods: special investigative methods, criminal investigation, police intelligence, etc. It is tasked with: coordinating the sub-directorate’s forensic, technical, and scientific investigation activities;

coordinating its investigation activities with units in charge of supplying police intelligence, when necessary; investigating crimes, providing pertinent, necessary, timely, and adequate investigatory tools to shed light on acts under investigation and their possible perpetrators or participants; and developing and applying advanced investigation methods and techniques. It comprises the following divisions, among others:⁸²

Specialized Criminal Investigation Division (División Especializada en Investigación Criminal, DEIC): (General PNC Order 12-2009.) This professional, technical, and scientific division focuses on criminal investigation. It includes departments for investigating crimes against the person; sexual and human trafficking offenses, crimes against children and adolescents, and other similar crimes; specialized property crimes; and organized crime.

National Division against Criminal Gang Activity (División Nacional contra el Desarrollo Criminal de las Pandillas, DIPANDA): (General Agreement 127-2014.) This Division was established in 2014 (previously, it was the National Action Unit against Criminal Gang Activity). Since its formation, it has focused on studying, addressing, and handling one of the crimes with the highest impact on Guatemalan society: extortion. Its investigation process has the following steps: reporting the crime, in-depth interview, final report, and supporting the MP in its process of preparing its final investigation conclusions. Its work is guided by the criteria of care for victims, case-based and structural analysis; reporting crimes, and bringing them to trial. However, by 2017 investigation results were still found to be limited by suboptimal capacity resulting from investigators' overly large caseloads, frequent staff turnover that prevents the accumulation of skills, no standard form for submitting reports, and the need for training on criminal investigation.⁸³

Special Investigatory Methods Division (División de Métodos Especiales de Investigación, DIMEI): (General PNC Order 22-2009.) This division was created in 2009 to fortify investigations into crimes under the Law against Organized Crime. The specialized unit prevents, combats, dismantles, and eradicates organized crime by applying Special Investigative Methods. Is this crucial for its members to have strong professional training on how to fight criminal structures. In October 2017, it was announced that the division would be trained on how to use and apply the Operational Guidelines for Criminal Investigators in order to better apply procedures, use new forms, and standardize instructions.⁸⁴

To evaluate its capabilities, information was requested from the PNC about its human and financial resources, but not all of the information was provided.⁸⁵ Table 10 shows the data provided.

As the table shows, the difference in human resources between the Sub-Directorate General for Anti-Narcotics Analysis and Information and the Sub-Directorate General for Criminal Investigation is substantial, especially in 2014 and 2015. There was a 1,714 person disparity over the period covered by this study. Additionally, according to a former PNC advisor, the staff increases at the Sub-Directorate General for Criminal Investigation in 2016 and 2017 are due to the fact that under former Minister of the Interior Francisco Rivas, many criminal investigation agents that had been assigned to task forces then returned after these forces were disbanded. The former advisor said the area was bolstered under Rivas, performing massive operations. However, the interviewee also pointed out that these databases are not always entirely accurate, which explains the very frequent problem at government agencies of information varying when requested.

TABLE 10

PERSONNEL AND BUDGETS OF SPECIAL PNC UNITS

Personnel within special PNC units	2014	2015	2016	2017
Sub-Directorate General of Anti-Narcotics Analysis and Information	1,070	1,491	1,428	1,549
Sub-Directorate General for Criminal Investigation	239	213	3,149	3,651
PNC assigned budget	Q2,721,964,495	Q2,765,857,540	Q2,908,418,149	Q3,485,174,269
Assigned budget – Sub-Directorate General of Anti-Narcotics Analysis and Information	Q7,000,000.00	Q7,000,000.00	Q12,060,000.00	Q30,752,671.00
Assigned budget – Sub-Directorate General for Criminal Investigation	Began operating in 2016. See endnote 83 (appears before this table).			Q21,000,000.00
Percentage of total PNC budget assigned to these special units	0.26%	0.25%	0.41%	1.48%

Source: Prepared by FMM with information provided by the PNC

The budget allocated to the Sub-Directorate General for Anti-Narcotics Analysis and Information and the Sub-Directorate General for Criminal Investigation is a small percentage of all funding allocated to the PNC, but its increase of over 1% from 2014 to 2017 is seen as a positive step. Specific budget information was requested for other specialized PNC units (Specialized Criminal Investigation Division National Division against Criminal Gang Activity, and Special Investigatory Methods Division), but the response was that they do not have “a specific source of funding because they are part of and operate under the budget allocated to the Sub-Directorate General for Criminal

Investigation, which began operating as a unit executing its own budget in 2016.”

National Institute of Forensic Sciences (INACIF): The National Institute of Forensic Sciences has a Forensic Laboratory Unit (*Unidad de Laboratorio de Especialidades Criminalísticas, ULEC*) with different sections: ballistic, toxicology, genetic, etc. This unit’s contributions reinforce the MP’s litigation capabilities, with evidence of high technical quality.⁸⁶ The requests received by the Forensic Laboratory Unit rose over the course of the period covered by this study, with ballistics section receiving the most requests over the four years.

TABLE 11

NUMBER OF REQUESTS SUBMITTED TO THE ULEC

Year	2014	2015	2016	2017
Requests	62,573	63,635	74,120	90,144

Source: Prepared by FMM with information from INACIF

Institute of Criminal Public Defense (*Instituto de la Defensa Pública Penal, IDPP*): The Institute of Criminal Public Defense has a special office for high risk criminal cases that provides legal counsel to people accused of crimes classified as high risk (crimes defined in the Law against Organized Crime). Additionally, the Asset Recovery Law states that if a person whose assets are being confiscated does not appear for the trial, the Public Defender must ensure their rights are respected.⁸⁷ This office was staffed by five attorneys and five assistants, but two additional attorneys had to be hired in September of 2017. The office also often had to request help from other units to cover high risk hearings, demonstrating that the unit was clearly understaffed, which can delay trials since hearings get suspended if not all of the accused are present.⁸⁸

Also, under the Law against Femicide and Other Forms of Violence against Women, the Institute of Criminal Public Defense provides free

psychological care and legal counsel to victims and their families, in addition to referring them for comprehensive care and to medical centers. As of 2017, the office had 12 physical locations in 9 departments with 10 public defenders on staff, 9 in training, and 7 interns (total: 26). However, the temporary suspension of the public defenders program dealt a serious blow to this program, since it carried out its activities through these defenders. It also has a call center serving women, children, and adolescents who are victims of domestic violence. The center received a total of 30,176 calls in 2017 alone. That same year, physical violence against women was the most common crime handled by the Institute of Criminal Public Defense.⁸⁹

The drop in cases handled by the Institute of Criminal Public Defense in general, and the National Office for Free Legal Counsel for Victims and their Family Members in particular, can be attributed to funding issues that make it hard to pay defenders.

TABLE 12

NUMBER OF REQUESTS FOR IDPP ASSISTANCE

Cases	2014	2015	2016	2017
Total cases assisted by IDPP	84,576	75,898	70,236	69,677
Total cases assisted by the National Office for Free Legal Counsel for Victims and their Family Members	24,037	18,080	10,784	7,684

Source: Prepared by FMM with information from the IDPP

EFFECTIVENESS IN CASE MANAGEMENT TO CURB VIOLENCE AND ORGANIZED CRIME

Despite the fact that crime prevention is a cornerstone of modern criminal justice policies, for many years Guatemala's approach was characterized by suppression and threats of punishment to dissuade people from committing crimes. However, it should be acknowledged that from 2007 to 2018, through the different legislative reforms mentioned in previous sections of this report, as well as the approval of the Democratic Criminal Policy of the State of Guatemala (2015–2035),⁹⁰ Guatemala has made great strides toward addressing crimes with serious societal consequences, especially those related to government corruption, drug trafficking, smuggling and tax fraud, irregular adoptions, illegal campaign financing, and/or extortions. This has fortified the justice system's actions, allowing it to deal a considerable blow to certain structures and networks of power and impunity.⁹¹

Under Prosecutor General Thelma Aldana (who served from May 2014 to May 2018, which includes the years covered by this study), the MP worked to make prosecutions effective and efficient, making considerable progress in strategic criminal prosecution, in increasing operational capacity for investigations, in strengthening litigation, and in other areas. Notable accomplishments include

the dismantling of 178 criminal structures nationwide, with well-known cases such as: “defrauding the PNC” (*defraudación a PNC*), “rescue operation south” (*operación rescate del sur*), “burglaries by the looters” (*robo de viviendas los saqueadores*), “money laundering electronic transfers” (*transferencias electrónicas lavado de dinero*), murders and extortions by the *Mara Salvatrucha*, conspiracy and extortionary obstruction of traffic by *Solo Raperos*, cases of human trafficking by *Los Luceros*, and “Caso Mesoamérica,” kidnappings by the criminal structure “*Rigo Rico*,” and others.⁹² In 2015 and 2016 alone, 93 structures with a total of 716 members were broken up, leading to 188 convictions.⁹³

Regarding the decline in violence and fight against organized crime, data on the cases handled by the prosecution offices analyzed in this report, which investigate crimes associated with those phenomena, was requested from the MP. This data is shown in Table 13.

Additionally, a set of offenses tied to violence and organized crime was selected, and data was requested from the MP in order to analyze how efficiently those cases were managed from 2014 to 2017, as shown in Table 14.

TABLE 13**CASES ADMITTED BY THE PUBLIC PROSECUTOR'S OFFICE AND CASE OUTCOMES, 2014-2017**

Office	2014	2015	2016	2017	Total	Total convictions	Total acquittals
Prosecutor's Office for Organized Crime	6,887	6,752	6,642	6,560	26,841	1,796	632
Prosecutor's Office for Drug-Related Crimes	524	575	589	606	2,294	1,655	119
Prosecutor's Office for Money or Asset Laundering	367	376	364	344	1,451	357	73
Prosecutor's Office for Extortion	1,918	1,956	2,054	2,478	8,406	1,676	234
Prosecutor's Office for Human Trafficking	306	291	277	304	1,178	263	94
Prosecutor's Office for Kidnapping	102	116	100	168	486	9	0
Prosecutor's Office for Crimes against the Person	2,827	2,647	2,562	2,391	10,427	2,246	304
Prosecutor's Office for Women	10,895	10,425	8,706	7,665	37,691	2,342	814
Prosecutor's Office for Femicide	87	98	249	380	814	34	3

Source: Prepared by FMM with data provided by the MP

TABLE 14**DATA ON CRIME REGISTERED BY THE PUBLIC PROSECUTOR'S OFFICE, 2014-2017**

Cases and type of crime	2014	2015	2016	2017
Extortion				
Cases Admitted	8,096	5,943	7,538	8,681
Under Investigation	2,702	2,043	2,483	2,268
Accusations	731	684	774	882
Cases Closed	4,102	2,300	2,421	5,154
Cases Terminated for Lack of Evidence	43	42	47	44
Provisional Closures	29	17	23	27
Conditional Suspensions	6	2	2	1
Dismissals	34	41	38	30
Plea Bargains	31	27	25	24
Acquittals	89	96	89	86
Convictions	579	691	644	753
Conspiracy				
Cases Admitted	232	195	129	121
Under Investigation	40	40	40	44
Accusations	494	215	269	226
Cases Closed	4	22	18	21
Cases Terminated for Lack of Evidence	1	6	14	20
Provisional Closures	0	5	7	7
Conditional Suspensions	0	19	1	0
Dismissals	19	5	13	13
Plea Bargains	7	10	4	5
Acquittals	166	139	116	89
Convictions	332	235	230	291

Illegal Commerce, Trade, and Storage				
Cases Admitted	356	365	407	356
Under Investigation	41	52	54	77
Accusations	149	150	155	161
Cases Closed	3	9	6	13
Cases Terminated for Lack of Evidence	18	11	12	15
Provisional Closures	4	1	2	4
Conditional Suspensions	6	6	6	12
Dismissals	1	8	5	10
Plea Bargains	14	15	2	11
Acquittals	15	14	14	5
Convictions	99	86	119	92
Money and Asset Laundering				
Cases Admitted	377	381	305	306
Under Investigation	152	170	138	168
Accusations	110	92	108	119
Cases Closed	1	1	2	4
Cases Terminated for Lack of Evidence	12	9	10	4
Provisional Closures	2	3	3	4
Conditional Suspensions	0	0	2	1
Dismissals	4	6	8	14
Plea Bargains	4	4	11	12
Acquittals	18	16	17	21
Convictions	47	39	31	92
Transnational Transit				
Cases Admitted	4	10	9	14
Under Investigation	1	1	3	6
Accusations	2	2	3	5
Cases Closed	0	0	1	0
Cases Terminated for Lack of Evidence	1	0	1	0
Provisional Closures	0	0	0	0
Conditional Suspensions	n/r	n/r	n/r	n/r
Dismissals	0	0	0	1
Plea Bargains	n/r	n/r	n/r	n/r
Acquittals	7	0	0	0
Convictions	2	3	0	0

Human Trafficking				
Cases Admitted	371	353	330	265
Under Investigation	121	144	120	118
Accusations	44	34	36	40
Cases Closed	1	2	5	13
Cases Terminated for Lack of Evidence	3	4	7	5
Provisional Closures	7	6	2	2
Conditional Suspensions	0	26	0	1
Dismissals	3	6	5	4
Plea Bargains	4	2	2	10
Acquittals	9	10	5	15
Convictions	16	16	12	21
Homicide				
Cases Admitted	5,949	5,642	5,533	4,871
Under Investigation	3,551	3,580	3,400	3,205
Accusations	513	588	531	538
Cases Closed	1,300	2,149	2,056	2,007
Cases Terminated for Lack of Evidence	19	28	22	35
Provisional Closures	22	22	29	34
Conditional Suspensions	3	7	3	2
Dismissals	51	46	50	53
Plea Bargains	29	35	33	19
Acquittals	79	105	113	82
Convictions	273	349	301	273
Abduction or Kidnapping				
Cases Admitted	454	403	378	308
Under Investigation	180	154	167	138
Accusations	133	109	103	123
Cases Closed	6	21	8	137
Cases Terminated for Lack of Evidence	4	1	2	2
Provisional Closures	3	0	2	2
Conditional Suspensions	0	0	0	1
Dismissals	3	3	6	4
Plea Bargains	3	4	0	4
Acquittals	44	34	37	38
Convictions	161	108	85	96

Femicide				
Cases Admitted	258	253	258	270
Under Investigation	107	114	130	158
Accusations	136	131	133	124
Cases Closed	2	17	14	19
Cases Terminated for Lack of Evidence	1	1	3	2
Provisional Closures	2	1	3	3
Conditional Suspensions	0	1	0	2
Dismissals	4	5	4	1
Plea Bargains	1	0	0	0
Acquittals	22	15	23	14
Convictions	68	85	73	76
Rape				
Cases Admitted	7,907	6,679	6,508	6,596
Under Investigation	4,812	4,304	4,105	4,314
Accusations	857	821	779	786
Cases Closed	81	199	172	331
Cases Terminated for Lack of Evidence	32	50	60	64
Provisional Closures	37	62	58	74
Conditional Suspensions	6	2	1	1
Dismissals	55	60	66	42
Plea Bargains	61	69	130	129
Acquittals	104	135	145	145
Convictions	346	363	312	368
Murder				
Cases Admitted	716	770	921	1,070
Under Investigation	270	345	483	608
Accusations	750	573	443	450
Cases Closed	67	100	92	153
Cases Terminated for Lack of Evidence	8	9	6	5
Provisional Closures	11	6	8	16
Conditional Suspensions	2	1	2	2
Dismissals	31	21	27	17
Plea Bargains	5	6	2	6
Acquittals	58	86	125	62
Convictions	387	435	472	362

Sexual Assault				
Cases Admitted	2,860	2,818	2,879	2,821
Under Investigation	1,572	1,734	1,765	1,798
Accusations	374	404	365	462
Cases Closed	33	105	68	95
Cases Terminated for Lack of Evidence	17	20	34	28
Provisional Closures	17	32	25	30
Conditional Suspensions	3	3	0	2
Dismissals	10	17	26	20
Plea Bargains	45	24	59	62
Acquittals	55	52	68	51
Convictions	132	184	179	214
Sexual Assault with an Aggravated Sentence				
Cases Admitted	195	169	167	177
Under Investigation	81	62	67	89
Accusations	104	125	182	179
Cases Closed	0	5	0	4
Cases Terminated for Lack of Evidence	1	3	7	3
Provisional Closures	0	5	6	4
Conditional Suspensions	n/r	n/r	n/r	n/r
Dismissals	0	3	4	3
Plea Bargains	1	1	3	2
Acquittals	9	17	24	20
Convictions	30	40	67	92
Parricide				
Cases Admitted	25	27	30	16
Under Investigation	9	11	8	13
Accusations	20	15	21	17
Cases Closed	1	1	1	1
Cases Terminated for Lack of Evidence	1	0	0	0
Provisional Closures	1	0	0	0
Conditional Suspensions	n/r	n/r	n/r	n/r
Dismissals	3	1	2	0
Plea Bargains	0	0	0	2
Acquittals	4	5	5	3
Convictions	11	8	10	10

These tables show the significant gap that frequently occurs between the total caseload and number of judgments. But this gap always has an explanation. Not all of the cases at the MP in a given year manage to make it to trial and receive a sentence in that same year (backlog of cases). Also, circumstances may arise during the investigation that lead to the case being closed or dismissed, or cases may be resolved by means not involving an oral and public trial. Lastly, depending on the complexity of the crimes, the investigation stage can sometimes become quite protracted before charges can be brought.

From the results in the second table, it can be concluded that the crimes representing the biggest share of the MP's caseload are extortions, homicides, and rapes. These crimes made up the highest percentages during the four years covered by the data, while

international trafficking, conspiracy, parricide, and aggravated sexual assault had the lowest percentages during the same period.

However, the MP's progress is closely tied to advances in how the Judiciary operates. The problems that most affect the Judiciary are: impunity, lack of human and financial resources (approximately 6 judges for each 100,000 inhabitants), the lack of independence and impartiality of some judges and justices, delays in the court system, and others. These issues hinder the swift resolution of the caseload. In 2017 alone, the Center for National Economic Research reported that of the criminal court system's load of 48,500 cases, 34,100 were resolved in some way, or seven in every 10. However, this proportion drops to two out of every 10 when the backlog of cases is taken into account.

TABLE 15

CASES ADMITTED TO THE JUDICIARY AND SENTENCES ISSUED RELATED TO VIOLENCE AND ORGANIZED CRIME, 2014-2017

Year	2014		2015		2016		2017	
	Cases Admitted	Sentences	Cases Admitted	Sentences	Cases Admitted	Sentences	Cases Admitted	Sentences
Extortion	1,315	1,012	1,308	1,009	2,134	1,368	2,399	1,168
Conspiracy	790	747	1,416	1,006	1,494	1,482	1,598	1,371
Money and Asset Laundering			496	272	566	393	443	397
Human Trafficking	114	41	121	60	141	53	115	35
Homicide			2,052	789	2,249	764	2,581	751
Femicide	223	173	178	53	199	96	183	85
Rape	1,250	224	2,463	807	2,669	952	2,727	1,060
Murder	768	452	750	609	1,086	807	1,401	836
Sexual Assault	243	185	880	344	993	368	1,165	469

Source: Prepared by FMM with data from the Annual Judiciary Statistics

Table 15 shows data from 2014 to 2017 on the total caseload and judgments issued by the Judiciary for a group of crimes related to violence and organized crime. To prepare this report, specific data was requested from the Judiciary, but it was not provided. It was therefore necessary to use other sources, which do not always provide a breakdown of convictions and acquittals, and the data from the MP does not cover all crimes analyzed.

As is evident, the number of cases reported annually is always larger than the number of judgments, which makes sense given how the Judiciary is overburdened with cases. Additionally, the number of judgments per year does not necessarily match the number of cases that entered the system that same year. Due

to the backlog of cases, a significant number may be from previous years. Other factors that can influence this data are the suspension of hearings, vexatious litigation practices used in some cases to draw out proceedings, the number of people on trial in a given proceeding, and whether cases are tried in High Risk Courts, etc.

Lastly, to achieve the aims of the **Asset Recovery Law** (*Ley de Extinción de Dominio*), the jurisdiction of some courts and Divisions of the Court of Appeals was expanded to allow them to hear this kind of case. Table 16 shows statistics on this type of case from 2015 to 2017 (2014 was not included because the Judiciary’s annual statistics do not include that information).

TABLE 16

ASSET RECOVERY LAW CASES AND ASSETS ACQUIRED, 2015-2017

Year	2015	2016	2017
Sentences			
Sentences issued by the Asset Recovery Court of First Instance	32	33	27
Assets seized by the Asset Court of First Instance			
Dollars	\$ 9,118,091.02	\$8,482,798.00	\$ 8,820,644.90
Quetzales	Q. 6,462,880.57	Q. 1,325,548.00	Q. 2,365,224.00
Vehicles	67	15	18
Sea or aerial transportation means	1	1	3
Real estate	22	9	20
Firearms	2	4	2

One positive development is that, in 2015, the Supreme Court of Justice issued Resolution 49-2015, establishing that funds from recovered assets shall be allocated as specified in international standards. It was decided that the

money recovered would go into funds exclusive to the Judiciary and be used to create and run courts and administrative units, especially those assisting the courts’ work or intended to fight corruption within the Judiciary.

ACRONYMS AND ABBREVIATIONS

Art.	Article
ASIES	National Association for Social Science Research
Belem do Pará Convention	Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women
CC	Constitutional Court
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CENADOJ	National Center for Judicial Documentation and Analysis
CGC	Comptroller General's Office
CIACS	Illegal Clandestine Security Apparatuses
CICIG	International Commission against Impunity in Guatemala
CIEN	Center for National Economic Research
CONABED	National Council of the Administration of Asset Recovery
CP	Criminal Code
CPI	Corruption Perceptions Index
CPP	Rules of Criminal Procedures
CPRG	Political Constitution of the Republic of Guatemala
CSJ	Supreme Court of Justice
DAC	Department of Criminal Analysis
DEA	Drug Enforcement Agency
DEIC	Specialized Criminal Investigation Division
DICABI	Office of Cadaster and Real Estate Appraisal
DICRI	Forensic Investigation Division
DIGECAM	Directorate General of Arms and Ammunition Control
DIMEI	Special Investigative Methods Division
DIPANDA	National Division against Criminal Gang Activity
FMM	Myrna Mack Foundation
IACAC	Inter-American Convention against Corruption
IACHR	Inter-American Court of Human Rights
IDPP	Institute of Criminal Public Defense
INACIF	National Institute of Forensic Science
Iudop	University Institute for Public Opinion
IUDPAS	University Institute for Democracy, Peace and Security
IVE	Special Verification Unit

LAIP	Access to Public Information Law
LcC	Law against Corruption
LcDO	Law against Organized Crime
LED	Asset Recovery Law
Ley VET	Law against Sexual Violence, Exploitation, and Human Trafficking
LFVCM	Law against Femicide and Other Forms of Violence Against Women
LOMP	Organic Law of the Public Prosecutor's Office
MEI	Special Investigative Methods
MINGOB	Ministry of the Interior
MP	Public Prosecutor's Office
OJ	Judiciary
OP	Office of Protection
PGN	Solicitor General's Office
PP	Patriotic Party
RGP	General Registry of Property
RM	Commercial Registry
RMP	Registry of Brands and Patents
SAT	Superintendence of Tax Administration
SENABED	Secretary of the Administration of Asset Recovery
SIB	Superintendence of Banks
UAI	Comprehensive Care Unit
UDI	Investigation Oversight Unit
UDT	Early Selection Unit
UL	Litigation Unit
ULEC	Forensic Laboratory Unit
UME	Special Investigative Methods Unit
UNCAC	United Nations Convention against Corruption
UNED	Asset Recovery Unit
UNILAT	Specialized Unit against Criminal Organizations that Engage in Drug Trafficking and/or Money or Asset Laundering and Tax Crimes
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime/ Palermo Con-vention
VAW	Violence against Women
WHO	World Health Organization
WOLA	Washington Office on Latin America

ANNEXES

PRE-EXISTING CRIMES RELATED TO THE LAW AGAINST ORGANIZED CRIME

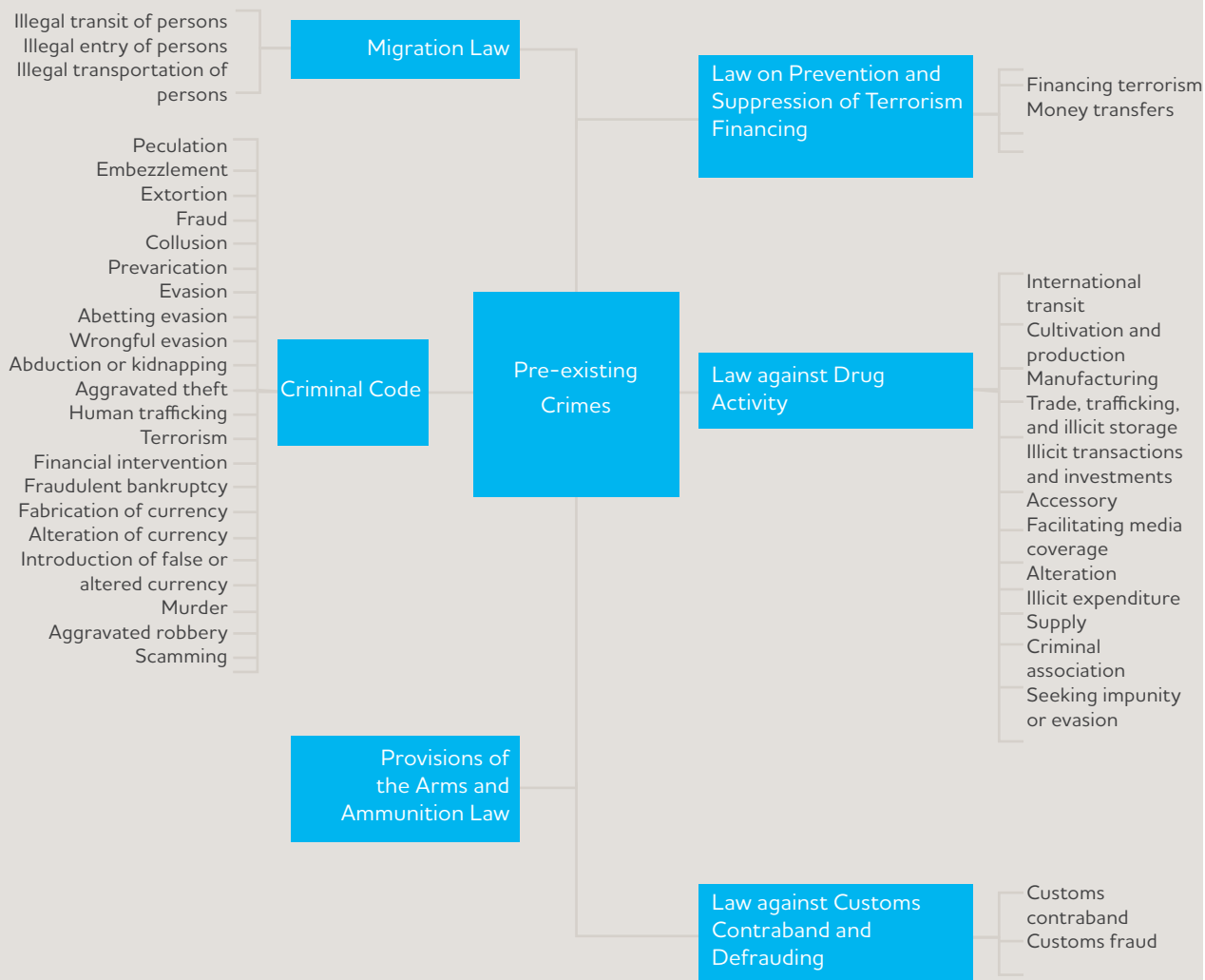


Illustration created with information from report: "El Estado frente a la delincuencia organizada". Guatemala. ASIES. 2013.

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- ²⁵Article 450. “Any public official, government employee, who exercises public authority, or person who, in relation to one or more contracts with the State for works or services, intervenes in any phase of the processes of competitive bidding, providing quotes, procurement, purchasing, concession, auctioning, liquidation, whether processed directly or through another implementing unit, or uses any other artifice to defraud the State is guilty of the crime of fraud in the government. The perpetrator of this crime will be sentenced to five to ten years in prison and disqualification from holding the specific public office he or she held. If the transaction in which the person intervenes is related to or intended for aid or social support programs, the sentence will be increased by two thirds. **(The words that are stricken through were declared unconstitutional by the Constitutional Court in Case 3292-2015).**
- ²⁶Article 158 Bis. **Illegal operation of city or intercity passenger transportation.** “Whoever operates in any way the service of collective public transportation of passengers or cargo without meeting all requirements established by law for doing so and without the necessary permit shall be fined ten thousand (10,000.00) to one hundred thousand (100,000.00) quetzales. Upon a subsequent offense, such person shall be sentenced to two (2) to five (5) years in prison, in addition to the fine. Any public official or government employee who for any price or

recompense, deliberately aids or contributes in benefit of a third-party responsible for operating the service of city or intercity passenger transportation, without meeting the legal requirements, shall be fined five thousand (5,000.00) to fifty thousand (50,000.00) quetzales. Upon a subsequent offense, such person will be sentenced to one (1) to three (3) years in prison, in addition to the fine.”

²⁷“**Article 414 Bis. Failure by individuals to comply with congressional subpoenas.** Any individuals or legal representative of a legal person, duly entered in the respective registers, who in any capacity handles, administrates, keeps, or receives public funds, who does not appear after having been subpoenaed or summoned to appear to report to the Congress of the Republic, its committees or legislative blocs, with four business days of advance notice, fails to appear without justified cause, shall be sentenced to two to three years in prison. An illness that has been demonstrated prior to or 24 hours after the time specified for the appearance shall be considered full justification. **(Declared unconstitutional).** **Article 420 Bis. Failure by public officials and government employees to comply with congressional subpoenas.** Any public official or government employee, or minister or vice-minister who is supposed to represent such person, who in any capacity handles, administrates, keeps, disburses or receives public funds, or who is summoned to discuss matters related to State business, who fails to appear without justified cause after having been subpoenaed or summoned to appear to report to the Congress of the Republic, its committees or legislative blocs, with four business days of advanced notice, commits the crime of failure by public officials and government employees to comply with congressional subpoenas and shall be sentenced to 2 to 3 years in prison. An illness that has been fully demonstrated prior to or 24 hours after the time specified for the appearance shall be considered full justification.” **(Declared unconstitutional)**

²⁸Article 261. Extortion. Any person who, for an unfair profit, to defraud someone, or to demand from someone any amount of money using violence or an open or veiled threat, or through a third party and via any means of communication, forces another person to hand over money or property, or who uses violence to force that person to sign, execute, destroy, or hand over any document, undertake or release someone from an obligation, or waive any right, shall be penalized with an incommutable sentence of six (6) to twelve (12) years in prison.

²⁹CIEN. Entendiendo el fenómeno de extorsiones en Guatemala. Guatemala. CIEN. 2014. Retrieved from: <https://es.slideshare.net/CIENgt/entendiendo-el-fenomeno-de-extorsiones-en-guatemala>

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Guatemala, IEPADES, 2016. Page 5.

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³⁴One example is Article 123, which reads: “Any person carrying firearms classified as for civil or sporting use or both without a permit from the Directorate General of Arms and Ammunition Control or without legal authorization is guilty of the crime of illegally carrying firearms for civil and/or sporting use. The incommutable sentence for perpetrators of this crime shall be 8 to 10 years in prison and confiscation of the firearms.” The sentence increases to 10 to 15 years for firearms classified as for exclusive use by the Guatemalan Armed Forces: explosives; chemical, biological, or atomic weapons; war traps, and experimental weapons (Article 125).

³⁵Rojas, Alex y Glenda Sánchez. Mercado legal facilita tráfico de municiones. Retrieved from: <https://www.prensalibre.com/guatemala/pl-datos/mercado-legal-facilita-trafico-de-municiones/>

³⁶Amended articles: **Article 26. Databank.** The Directorate General of Arms and Ammunition Control must record the ballistic fingerprint of each firearm in order to register it, with the exception of those that are muzzle-loading, obsolete, broken, or disused; to this end, it must collect and keep the projectile, casing, or shells resulting from the required test to create the digital and physical bank of ballistic fingerprints. The Forensic Office of the National Civilian Police, the Public Prosecutor’s Office, and the Guatemalan National Institute of Forensic Sciences, shall be able to access and query the digital databank of ballistic fingerprints of the Directorate General of Arms and Ammunition Control, solely for investigatory purposes, in cases involving firearms. For firearms already registered with the Department of Arms and Ammunition Control, a request for registration of its ballistic fingerprints must be submitted the Directorate General of Arms and Ammunition Control, which shall issue the new possession card. The deadline for this registration is January 31, 2020. Those who register firearms during the established period will pay the cost of the possession card as of that date to the Directorate General of Arms and Ammunition Control. The new ballistic fingerprint will be registered with the Directorate General of Arms and Ammunition Control once the requirements established in the Arms and Ammunition Law have been met. After the above deadline, all possession cards issued by the Department of Arms and Ammunition Control automatically become invalid, unless used in the Directorate General of Arms and Ammunition Control’s process of registering the ballistic fingerprint

and issuing the possession card. **Article 63. Procedure for registering possession.** To register possession of a firearm, applicants must go in person to the Directorate General of Arms and Ammunition Control and present the firearm or firearms they intend to register with an invoice proving their ownership or an official copy of the bill of sale. Applicants must provide three (3) rounds of ammunition according to the requirements and techniques established by the Directorate General of Arms and Ammunition Control in a technical report on the matter, to be used to record the firearm's fingerprint, which it will do at that same time. The projectiles and the shells or casings will be kept in the ballistic data archives of the Directorate General of Arms and Ammunition Control. The Directorate General of Arms and Ammunition Control will then issue to the applicant the possession card, which shall state: his or her name, residency and address, nationality, and Unique Identification Code (CUI) number, as well as the firearm's brand, model, caliber, serial number, length of barrel or barrels, and any caliber conversions it might have, in addition to its place and date of registration. If applicants are unable to appear in person, they may seek registration via a special representative with a disclosed principle, in accordance with the law; the representative must be authorized to meet all requirements set forth in this Law. If the requirements have been met, the Directorate General of Arms and Ammunition Control may not for any additional reason refuse to register the possession, or retain or keep the firearms that are submitted." **Article 138. Proving ownership of firearms for registration purposes.** To register firearms, ownership must be proven by one of the following means: a) Invoice or certificate from the establishment where it was purchased, whether in Guatemala or abroad, and should that document be lost, stolen, or destroyed, applicants must submit the report of this event that was filed with the proper authority. b) Certified copy of the notarial instrument recording the change in ownership, whether gratuitously or for a consideration. c) As an exception, when there is no other way to prove ownership of the firearm, and for a period ending on January 31, 2020, ownership can be demonstrated via an affidavit recorded in a notarial instrument by a notary public who is an active member of the association of notary publics, and all requirements established by the law for the corresponding registration must be met. This affidavit shall constitute proof of ownership, both for first-time registration of firearms and for transferring ownership between individuals; in the latter case, the applicant must also present the original possession card and the firearm so its information and characteristics can be verified. For changes in ownership between individuals, the Directorate General of Arms and Ammunition Control will register the change provided there are no reports of the firearm having been stolen or lost, or any other legal circumstance that would prevent such registration. d) Certificate issued by the Directorate General of Arms and Ammunition Control confirming the details of the firearm and the

name of the current owner, as well as the owner's Unique Identification Code (CUI) or identity card number. Such certificate will be valid for thirty (30) days from its date of issue. This certificate must be issued by the Directorate General of Arms and Ammunition Control no more than five (5) business days after the applicant requests it."

³⁷Santizo, Astrid. Reformas a la Ley de armas y municiones. Guatemala. 2017. Retrieved from: <https://www.lexology.com/library/detail.aspx?g=dd8bc553-e2c7-4fd7-8b93-179a0b483a9f>

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³⁹See Annex 1.

⁴⁰Articles 25 and 27 of the CPP.

⁴¹The request must state: the benefit being granted; the information provided by the cooperating witness, and the steps taken to corroborate that information, when necessary, the measures for ensuring the witness's safety; the witness's commitment to continue cooperating throughout the criminal proceeding, on the understanding that this in no way diminishes his or her right to refrain from testifying against him or herself; and the obligations binding on the person seeking the benefit, notwithstanding the continuation of the respective investigation.

⁴²Public Prosecutor's Office. Política de persecución penal democrática del ministerio público. Page. 90. Retrieved from: <https://www.mp.gob.gt/transparencia/info/res/source/Articulo%2010:%20Informaci%C3%B3n%20P%C3%BAblica%20de%20Oficio/29%20Otra%20informacion/2018/Pol%C3%ADtica%20de%20Persecuci%C3%B3n%20Penal%20Democr%C3%A1tica%20del%20MP.pdf>

⁴³United Nations Office on Drugs and Crime of Bolivia. Manual of Special Investigation Techniques Undercover Agent and Controlled Delivery. Bolivia, United Nations Office on Drugs and Crime, 2013. Page 13.

⁴⁴The Public Criminal Defense Institute. Módulo de garantías penales con relación a la delincuencia organizada. Guatemala. IDPP. 2013. Page 17.

⁴⁵Public Prosecutor's Office. Política de Persecución Penal Democrática del Ministerio Público. Guatemala. 2016. Page 111.

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- ⁴⁷Public Prosecutor's Office. Política de Persecución Penal Democrática del Ministerio Público. Guatemala. 2016. Pages 111 – 114.
- ⁴⁸ASIES. El Estado frente al crimen organizado, implementación de la Ley contra la Delincuencia Organizada. Octavo Estudio del Proceso de Fortalecimiento del Sistema de Justicia, avances y debilidades. Guatemala. ASIES. 2013. Pages 38-40.
- ⁴⁹This reasoning is questionable, as the number of staff was requested, not names or sensitive personal data.
- ⁵⁰International Commission against Impunity in Guatemala. Protección a testigos: una herramienta necesaria para la administración de justicia. Retrieved from: <https://www.cicig.org/noticias-2011/proteccion-a-testigos-una-herramienta-necesaria-para-la-administracion-de-justicia/>
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- ⁵²Justice Studies Center of the Americas (JSCA). Evaluación del impacto del nuevo Modelo de Gestión Fiscal del Ministerio Público de Guatemala. JSCA. 2014. Pages 90 and 91.
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- ⁵⁴Public Prosecutor's Office Organization Chart updated January, 2018, retrieved from: [https://www.mp.gob.gt/transparencia/info/res/source/Articulo%2010:%20Informaci%C3%B3n%20P%C3%BAbli-ca%20de%20Oficio/01%20Estructura%20Org%C3%A1nica%20Funciones%20y%20Marco%20Normativo/2017/12%20DICIEMBRE/Estructura%20C3%81rea%20de%20Fiscal%C3%ADa%20\(Regionalizaci%C3%B3n\).pdf](https://www.mp.gob.gt/transparencia/info/res/source/Articulo%2010:%20Informaci%C3%B3n%20P%C3%BAbli-ca%20de%20Oficio/01%20Estructura%20Org%C3%A1nica%20Funciones%20y%20Marco%20Normativo/2017/12%20DICIEMBRE/Estructura%20C3%81rea%20de%20Fiscal%C3%ADa%20(Regionalizaci%C3%B3n).pdf)
- ⁵⁵Public Prosecutor's Office. Política Criminal Democrática del Estado de Guatemala 2015-2015. Guatemala. Public Prosecutor's Office. 2016. Pages 26 and 97.
- ⁵⁶Annual Report. Administrative Report May 2017- May 2018. Page 86. Retrieved from: <https://www.mp.gob.gt/transparencia/info/res/source/Articulo%2010:%20Informaci%C3%B3n%20P%C3%BAbli-ca%20de%20Oficio/05%20Misi%C3%B3n,%20visi%C3%B3n%20y%20objetivos/Memoria%20de%20Labores/Memoria%20de%20Labores%202017-2018%20.pdf>
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- ⁵⁸Official website of the Public Prosecutor's Office. Retrieved from: <https://www.mp.gob.gt/noticias/acerca-de/organizacion-del-mp/>
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- ⁶⁰Official website of the Public Prosecutor's Office. Retrieved from: <https://www.mp.gob.gt/noticias/acerca-de/organizacion-del-mp/>
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- ⁶²Annual Report. Administrative Report May 2017- May 2018. Pages 224 and 255.
- ⁶³Official website of the Public Prosecutor's Office. Retrieved from: <https://www.mp.gob.gt/noticias/acerca-de/organizacion-del-mp/>
- ⁶⁴Justice Studies Center of the Americas (JSCA). Evaluación del impacto del nuevo Modelo de Gestión Fiscal del Ministerio Público de Guatemala. JSCA. 2014. Pages 88 to 89.
- ⁶⁵Escobar, Lorena, et al. Desafíos actuales de la justicia penal. Proceso de fortalecimiento del sistema de justicia, avances y debilidades, 2015-2016. Guatemala, ASIES, Konrad Adenauer, 2018, page 26.
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- ⁷⁹PDH. Informe de situación de trata de personas en Guatemala 2017. Guatemala. PDH. 2018. Page 80
- ⁸⁰Escobar Noriega, Lorena. Desafíos actuales del Organismo Judicial. Proceso de fortalecimiento de justicia penal, avances y debilidades, 2017-2018. Undécimo estudio de justicia. Guatemala, Asociación de Investigación y Estudios Sociales, 2019, Page 13.
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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, combating 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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