

Guatemala's Downward Spiral

With the support of the international community, Guatemala was making progress in strengthening the rule of law. Today, rule of law in Guatemala is on a dramatic downward spiral. A handful of corrupt political, military, and economic elites seeking to maintain their privileges at the expense of Guatemala's Indigenous majority population have captured the state. They have systematically dismantled anti-corruption mechanisms such as UN-led CICIG and the special anti-corruption prosecutor's office and infiltrated the justice system, starting at the top. Independent media, human rights defenders, and Indigenous leaders have been targeted and civic space restricted. Corruption is pervasive, depriving the population of access to basic public services, and few independent actors remain able to confront it. U.S. policy is also undermined. The United States needs to consider a range of policy tools to counter such a broad challenge to basic democratic values in Guatemala.

The rule of law in Guatemala is on a dramatic downward spiral. Corrupt, predatory political, military, and economic elites have captured the state, from the executive branch to the Attorney General's office. According to Human Rights Watch, "democracy is hanging by a thread." Guatemala's Attorney General is **targeting** the nation's remaining honest judges and prosecutors with false legal

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cases, which when added to the deadly threats and attacks against them, force them into exile—or jail. Twenty-five judges and prosecutors, including the nation's lead anti-corruption prosecutor and former Attorneys General Claudia Paz y Paz and Thelma Aldana, were forced to flee the country. The legislature and executive branch have advanced laws that make it more difficult to investigate and punish corrupt officials while closing civic space, making it harder for activists and journalists to expose and denounce corruption. The nation's valiant former human rights om-

budsman, Jordán Rodas, who just finished his term, was forced to fend off legal and budget challenges—and death threats. Human rights defenders, including Indigenous activists, as well as journalists, face false legal charges, social media defamation campaigns, and an **escalation** of threats, attacks, and assassinations.

The level of kleptocratic rule in Guatemala makes achieving U.S. policy goals nearly impossible. When corruption controls the state, drug trafficking, money laundering, and organized crime expand unchecked. Corruption robs the state of resources and political will to serve citizens' basic needs, undercutting any efforts to address the root causes of migration. A more consistent, targeted, and robust U.S. policy approach is needed.

From Dismantling CICIG to the Takeover of Guatemala's Judicial System

Guatemala's downward spiral began with President Jimmy Morales's decision not to extend the mandate of the International Commission against Impunity (CICIG), which closed its doors on September 2, 2019. CICIG was one of the most successful mechanisms internationally



for fighting corruption. It had a remarkable track record in helping Guatemala's judicial system investigate and prosecute corrupt officials, resulting in over 400 convictions, including of a former vice president, members of Congress, high-ranking government officials, and members of organized crime networks. The International Crisis Group credits CICIG with training dozens of prosecutors and police officers in scientific criminal investigation techniques, helping the Guatemalan state to create the architecture for complex prosecutions as well as to accomplish a sustained reduction of the nation's homicide rate. While CICIG did not itself have prosecutorial powers, it set in motion important reforms to Guatemala's judicial system and, according to the Washington Office on Latin America, "helped initiate a new era of sophisticated and effective investigations by Guatemalan prosecutors."

When CICIG touched a nerve by investigating allegations against President Morales's son, added to ongoing investigations of private sector corruption and illicit financing of Morales' campaign, Morales decided to pull the plug on the commission. His decision to terminate the mechanism was made easier by the weakening of U.S. government support for CICIG during the Trump Administration.

Corrupt actors—from within government, the private sector, former military, and other sectors—then sought to place their own corrupt allies in key positions within the judicial system. As they succeed in controlling the justice system, they are able to block investigations of their own corruption and other crimes, and seek to imprison, intimidate, or drive out those who tried to hold them accountable. Guatemala has become a textbook example of a kleptocracy—"a form of government in which the leaders use their power to steal money and resources from the country that they rule."

In May 2018, President Morales appointed Consuelo Porras Argueta as Attorney General, where she orchestrated efforts to block the fight against corruption. During her tenure, she has systematically transferred, fired, and targeted for prosecution the nation's honest judges and prosecutors. For these actions, the State Department in September 2021 designated Porras as a corrupt actor

under section 353 of the United States–Northern Triangle Enhanced Engagement Act (the so-called "Engel list,") and in May 2022, designated her under section 7031 of the State, Foreign Operations law "due to her involvement in significant corruption.... Porras repeatedly obstructed and undermined anti-corruption investigations in Guatemala to protect her political allies and gain undue political favor." Despite an outcry from Guatemalan civil society organizations, international organizations, and donor governments, President Giammattei reappointed Porras as Attorney General in May 2022.

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Corrupt actors also targeted Guatemala's higher courts. A business leader in pretrial detention on corruption charges allegedly colluded with members of Congress and officials to influence the selection process for the Supreme Court and appellate courts in 2019-20. The State Department placed a number of those implicated on the July 2022 Engel list for allegedly participating in this scheme "to stack the Supreme Court and Appellate Courts with corrupt judges." In April 2021, when magistrate Gloria Porras was reelected to the Constitutional Court, the Guatemalan Congress intervened, refusing to allow her to take her seat on the court. This and other efforts to block her escalated following Constitutional Court rulings in 2019-20 that recognized Indigenous peoples' rights to consultation over economic projects affecting their communities. The Congress has violated Guatemala's Constitution by refusing to appoint new members of the Supreme Court and Court of Appeals, illegally extending current members' terms.

Following CICIG's closure, the nation's anti-corruption unit, the Special Prosecutor's Office against Impunity (FECI) led by Juan Francisco Sandoval, valiantly advanced corruption prosecutions, but was undermined by lack of support from the Attorney General's office. In July 2021, Attorney General Porras fired Sandoval, who had been recognized by

Guatemala in Numbers

25 out of 100 in Transparency International's 2021 [Corruption Perceptions Index](#). Transparency International ranked Guatemala 149th out of 180 countries on corruption.

51 out of 100 in Freedom House's [Freedom in World 2022](#) index – "Partly Free."

109th out of 139 countries around the world and 26th out of 32 countries in Latin America and the Caribbean and in respect for the rule of law according to The World Justice Project's [Rule of Law Index 2021](#).

Included along with Cuba and Nicaragua in **Chapter 4b** of the Inter-American Commission on Human Rights' 2021 annual report, the chapter reserved for the countries with the most troubling human rights situations.

7th highest in killings of human rights defenders out of 35 countries globally surveyed by Frontline Defenders in their [2021 report](#).

One of the 10 worst countries in the world for working people according to the International Trade Union Confederation's [Global Rights Index 2022](#).

the State Department as an "Anti-Corruption Champion." Sandoval was forced to flee the country hours afterwards to avoid reprisals. His successor, Rafael Curruchiche, was [sanctioned](#) by the State Department on the July 2022 Engel list as he allegedly "obstructed investigations into acts of corruption by disrupting high-profile corruption cases against government officials and raising apparently spurious claims against FECI prosecutors, private attorneys, and former International Commission Against Impunity in Guatemala (CICIG) prosecutors."

In August 2022, legislators [elected](#) José Alejandro Córdova as the new Human Rights Ombudsman for the period 2022-2027. Córdova was allegedly [implicated in the "Parallel Commissions"](#) case, in which legislators and officials sought to stack the courts with corrupt judges. He replaces Jordán Rodas, who braved constant threats and attacks to vigorously carry out his job to defend human rights. This change silences one of the few remaining official voices defending the rule of law in Guatemala.

As Freedom House [summed](#) it up, since the CICIG's departure, "authorities and lawmakers have obstructed the fight against corruption; prosecutions have stalled; and many high-profile cases have lost momentum. Judges, prosecutors, and civil society actors committed to tackling corruption have increasingly been the targets of physical attacks, threats, malicious lawsuits, and defamation campaigns."

Who Is Behind the Attacks on Those Fighting for Justice?

A handful of families seeking to preserve their privileges at the expense of Guatemala's majority Indigenous population drive the kleptocratic takeover of the Guatemalan state. The attacks on judges, prosecutors, journalists, Indigenous community leaders, and human rights defenders are often motivated by corrupt private sector actors who seek to line their own pockets via being awarded lucrative government contracts and mining and other extractive industry concessions and licenses while rewarding corrupt politicians

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2017



2018



2019



2021



2022

8/24/2017 International Commission against Impunity (CICIG)'s head Ivan Velásquez announces CICIG is **investigating** allegations of illicit campaign financing of President Jimmy Morales's 2015 presidential campaign.

8/31/2018 Guatemala's military **deploys** U.S.-supplied armored jeeps outside the offices of CICIG and the U.S. Embassy, sending an ominous signal and violating an agreement with the U.S. regarding the donated jeeps' use.

5/3/2018 President Morales declares CICIG's head Ivan Velásquez a security threat and bars his reentry into the country. He then declares he will close CICIG, although the Constitutional Court later rules he must wait until its mandate ends in September 2019.

5/3/2018 President Morales appoints Consuelo Porras Argueta as Attorney General. Allies of President Morales **express** hope she will roll back anti-corruption efforts led by her predecessors Thelma Aldana and Claudia Paz y Paz.

9/2/2019 CICIG closes its doors after a dozen years of advancing investigations into high-level corruption, resulting in over 400 convictions.

11/12/2019 The Guatemalan Congress **changes** the penal code to reduce penalties for corruption, money laundering, and bribery.

4/12/2021 Corruption-fighting judge Gloria Porras is **reelected** to the Constitutional Court. The Guatemalan Congress refuses to swear her in, and she is left off the court.

6/21/2021 Guatemala's controversial NGO law goes into effect, placing burdensome **restrictions** on NGO registration and giving the government new authorities to shut NGOs.

7/23/2021 Attorney General Porras **fires** anti-corruption prosecutor Juan Francisco Sandoval, the head of the Special Prosecutor's Office against Impunity (FECI). That night, Sandoval flees the country to protect his life.

9/21/2021 The U.S. State Department designates Guatemalan Attorney General Consuelo Porras Argueta for "**obstruct[ing]** investigations into acts of corruption by interfering with criminal investigations."

2/20/2022 Attorney General Porras orders the **arrest** of four anti-corruption prosecutors and five members of the anti-corruption office **resign**.

3/20/2022 High-risk court Judge Erika Aifán, who has presided over high-profile corruption cases including the alleged payment of bribes to President Giammattei, is forced to flee Guatemala.

5/16/2022 President Giammattei reappoints Consuelo Porras Argueta as Attorney General despite outcry from the international community. Hours later, the U.S. State Department **designates** Consuelo Porras on an sanctions list as due to her "involvement in significant corruption."

6/7/2022 A judge **orders** a trial against Virginia Laparra, FECI's number-two prosecutor, related to a complaint she filed against another judge. The dormant case was reactivated by Attorney General Porras.

6/30/2022 Attorney General Porras fires Hilda Pineda, a high-performing prosecutor who **led** the office that took former dictator Efraín Ríos Montt to trial for crimes against humanity, before being sidelined by AG Porras by a transfer to the office of crimes against tourists. Another 11 prosecutors and staff from the AG's office are fired the same day.

through bribes, kickbacks, and illicit campaign financing. For example, the threats and attacks against Judge Erika Aifán, who was forced into exile in March 2022, likely stem in part from a [case](#) regarding charges that President Giammattei allegedly received over \$2.6 million in bribes from construction companies to finance his 2019 presidential campaign. Judge Aifán went into exile, she [states](#), “because I saw no other way to guarantee my physical safety.”

The attacks also seek to maintain impunity for crimes committed during Guatemala’s war. For example, Attorney General Porras transferred and later fired Hilda Pineda, a prosecutor who [led](#) the office that took former dictator Efraín Ríos Montt and other former military officers to trial for crimes against humanity. Judge Miguel Ángel Gálvez, presiding over the Diario Militar trial, is facing an [escalation](#) of threats and efforts to oust him. According to Human Rights Watch, one prominent source of lawsuits [against](#) upstanding prosecutors and judges, as well as against victims and human rights and Indigenous activists, is the Foundation against Terrorism, which [includes](#) former military members, and was founded to seek to [block](#) prosecutions of Guatemala’s genocide and other war crimes. Several members of the foundation’s leadership were included on [the State Department’s 2021 Engel list](#) of corrupt and undemocratic actors.

Corrupt Actors’ Next Moves

Observers expect Guatemala’s corrupt actors to close down remaining avenues to fight corruption and defend human rights. Some of the areas of concern are:

- General elections: Guatemala holds its general elections in June 2023 in a context marked by cooptation of state institutions by organized crime and corrupt elites. There are many risks, including that political participation will be limited and legitimate candidates blocked from competing, further consolidating authoritarian rule. Political violence is likely to increase as the elections approach.

- Growing restrictions on human rights defenders, non-governmental organizations, and Indigenous communities as the restrictive NGO law is implemented. Some NGOs might lose their status, others may tone down efforts to avoid reprisals, and Indigenous communities, which generally do not have NGO status, may be harshly affected.
- Escalating threats, attacks, and false legal cases against judges and prosecutors, human rights defenders, Indigenous activists, and independent journalists, silencing independent voices and driving many into exile.
- Escalating attacks on and legal harassment of journalists are feared following the detention of the award-winning president and founder of *elPeriódico*, José Rubén Zamora, in July 2022.
- The selection process for the new Comptroller General, a key position that can stop or facilitate corruption.

With Guatemala’s primary defenders of the rule of law attacked, silenced, jailed, and forced into exile, Guatemalan citizens—especially vulnerable groups, including the nation’s Indigenous majority—are left defenseless against corruption and authoritarian rule.

U.S. Policy: A Start but Not Enough

The Biden Administration recognizes the gravity of the penetration of the Guatemalan state by corrupt actors. It is testing in Central America its new emphasis on addressing corruption abroad. Dozens of Guatemalans implicated in large-scale corruption have been placed on lists of corrupt actors, resulting in the U.S. visas being revoked of prominent politicians and businessmen, including Guatemala’s current Attorney General. However, the administration’s approach has sometimes been weakened by mixed messages, strong statements are not backed up by sufficient policy consequences, and the level of actions have failed so far to convince the Guatemalan government to stop its campaign to undermine the rule of law.

Transparency International: Guatemala has declined eight points in the last 10 years. The successes achieved in the fight against corruption and impunity by the International Commission against Impunity in Guatemala (CICIG) have quickly faded. . . . The state, particularly the justice system, has been coopted by economic and political elites, certain sectors of the business community and organized crime. These groups have taken over the judicial system and forced into exile prosecutors and judges recognized for fighting corruption. SCORE: 25 out of 100

– 2021 Corruption Perceptions Index (CPI)

Freedom House: While Guatemala holds regular elections that are generally free, organized crime and corruption severely impact the functioning of government. Violence and criminal extortion schemes are serious problems, and victims have little recourse to justice. Journalists, activists, and public officials who confront crime, corruption, and other sensitive issues risk attack. SCORE: 51 out of 100

– Freedom in the World, 2022

Human Rights Watch: Following the *most recent corruption allegations* against Guatemalan President Alejandro Giammattei, Attorney General Consuelo Porras issued a *new round of arrest warrants* for anti-corruption prosecutors from her own office, which had been investigating the president and other high-level officials. Some are now behind bars. Many others have resigned or fled the country. These are just the latest in years of attacks that have left Guatemala's democracy hanging by a thread.

– "In Guatemala, A Fresh Crackdown on Prosecutors,"
March 1, 2022

State Department: The Attorney General's efforts to target anticorruption and other prosecutors follow a disturbing trend of corruption and the weakening of democratic institutions and processes in Guatemala.

– "Guatemala's Public Ministry's Continued Attacks
Against Independent Judges and Prosecutors,"
March 8, 2022

Due Process of Law Foundation, Center for Justice and International Law, et. al: In recent years the Public Ministry has become a tool of criminalization of judicial personnel, especially [against] those who fight against corruption and impunity.

– "Afectaciones a la independencia de los y las fiscales y la autonomía del Ministerio Público de Guatemala," presentation for the United Nations,
Universal Periodic Review, July 2022

Inter-American Commission on Human Rights: The IACHR warns that the systematic interference in the independence of the judiciary, the weakening of human rights institutions, and the increasingly evident setbacks in the fight against corruption and impunity have an impact, in turn, on democratic stability and the very exercise of human rights by the Guatemalan people, especially groups that have historically been excluded and discriminated against, such as women, Indigenous peoples, children and adolescents, and victims of the internal armed conflict, among others.

– Inter-American Commission on Human Rights
2021 Report

Front Line Defenders: Front Line Defenders expresses deep concern regarding the deterioration of the conditions in which human rights defenders, civil society organisations and journalists carry out their work in Guatemala. This is attributable to an increase in attacks on and criminalisation of human rights defenders, pervasive impunity, the drafting of restrictive legislation and the closure of fundamental spaces for dialogue with the authorities in the country and access to justice and information.

– "Concern about the deterioration of conditions
for human rights defenders and the regression
in access to justice in Guatemala,"
April 23, 2021

Recommendations:

To support rule of law in Guatemala, members of Congress can:

- ❶ Raise with Guatemalan officials and the State Department the urgency of (1) restoring confidence in Guatemala's judicial sector by respecting judicial independence, ending false prosecutions of honest judges and prosecutors, and ensuring transparent and merit-based selection procedures of judicial personnel; and (2) respecting freedom of expression and association for human rights defenders, Indigenous activists, trade unionists, and journalists, including by ending false legal cases against them and lifting onerous restrictions on NGOs.
- ❷ Urge the State Department and the Treasury to thoroughly investigate Guatemalan government officials, judicial personnel, legislators, security force members, and private sector individuals who have participated in significant acts of corruption or human rights abuses, and to issue visa sanctions and to step up the investigation and freezing of economic assets and holdings in the U.S. financial system of such individuals.
- ❸ Urge the Treasury Department to review pending loans or aid from international financial institutions to Guatemala to ensure such loans and aid are not granted to individuals or entities responsible for corruption, illicit political campaign financing, or human rights violations, and to vote against pending loans or aid to entities responsible for such abuses.
- ❹ Instruct the Executive Director of the U.S. Development Finance Corporation to review current and pending loans and grants to ensure they do not put human rights defenders, including Indigenous rights defenders, at risk and are not channeled through entities whose leadership has engaged in corruption. Loans should prioritize small and medium enterprises.
- ❺ Ensure all U.S. government-associated initiatives that promote U.S. investment in Guatemala, including the Vice President's Call to Action and the Partnership for Central America, have safeguards and transparency to screen out investment that violates labor rights, undermines Indigenous community rights, or benefits corrupt actors.
- ❻ Implement conditions Congress included in the State, Foreign Operations Act, by urging the State Department to suspend assistance to the Guatemalan armed forces and National Civilian Police until the Secretary of State can certify that the Guatemalan government is taking effective steps to investigate and prosecute security forces implicated in corruption and human rights abuses, including those committed against Indigenous communities and human rights defenders, and is taking effective steps to curtail the role of the military in public security.
- ❼ Urge the US Trade Representative and Department of Labor to conduct a full review of the extent to which Guatemala is in compliance with the Dominican Republic-Central America-United States Free Trade Agreement, including the provisions that require governments to establish debarment procedures to disqualify suppliers that engage in fraudulent or illegal activities and the provisions related to labor rights.
- ❽ Direct the State Department and USAID to adequately fund and effectively carry out : (a) a program implemented by organization(s) with human rights expertise to provide support, including financial and psychological, for justice operators, human rights defenders, trade union leaders, and journalists forced into exile from Central America and (b) a binational legal assistance program, including U.S. and Guatemalan lawyers, to defend justice operators, human rights defenders, Indigenous community activists, and journalists who have been falsely criminalized.