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Country Profile – Guatemala Preliminary Findings on Best Practices

Justice System Background

The criminal procedure system in Guatemala was formerly inquisitorial and carried out secretly in writing. This system has been replaced by an adversarial system, which includes an oral process, as well as public trials as the main decision-making procedure. The duties of investigation, charge filing, and judgment have been assigned, respectively, to the police (PNC), The Public Prosecutors Office (MP) and the Judiciary. The enactment of the Criminal Procedural Code, in force since 1994, intended to achieve a criminal justice system that was more agile and effective in the prosecution of crimes, in particular crimes of high social impact. The MP has an annual budget line item in the General Budget of the Nation so as not to be dependent on any other ministry.

The MP may require the cooperation of any official and administrative authority of any governmental bodies for the performance of its duties. These bodies are required to cooperate without delay and must provide any documents or reports that the MP requests within the legal time periods and the terms set out in the requests. Lastly, the MP directs the National Civilian Police (PNC), which is part of the Ministry of the Interior, in the investigative phase of criminal proceedings and in executing arrest orders.¹

The National Civilian Police (PNC) also has an internal police mechanism for investigating security force abuse and misconduct in the Office of Professional Responsibility (ORP).² The functions of the ORP are to detect and investigate or provide support in the investigation of all serious instances of abuse, corruption and inappropriate or criminal conduct in which members of the PNC appear to be involved. ORP can initiate investigations—of its own accord, upon receiving complaints, or upon the request of an authority—into actions committed by police that may warrant criminal prosecution. The ORP has at times suffered from poor leadership and a lack of resources and political will. US State Department reports “revealed that PNC authorities often opt to transfer police rather than subject them to judicial processes.”³

Political Background and Years Preceding CICIG Creation

Guatemala ended its 36-year-long internal armed conflict in 1996, during which an estimated 200,000, mostly civilians, were killed or were disappeared.⁴ During the internal armed conflict, and especially as military assistance was reduced in the 1980’s, the Guatemalan army (and especially military intelligence officers) increasingly became involved with – and started developing their own - organized crime groups to coincide with state interests;⁵ they had control over certain areas, like ports, airports, and border checkpoints.

In the post war period, organized crime groups have diversified their activities and have expanded their powers of infiltration. Currently, these groups are so developed that they have professional networks including judges, lawyers and journalists in both the public and private sectors, who advocate and operate

¹ ABA Rule of Law Initiative report “Prosecutorial Reform Index for Guatemala, May 2011.”

http://www.americanbar.org/content/dam/aba/directories/roli/guatemala/guatemala_prosecutorial_reform_index_2011.authcheckdam.pdf

² Matthew Kennis Draft Report 3-2-2013, pg 9 Combined fifth and sixth periodic reports of States parties due in 2011, submitted in response to the list of issues (CAT/C/GTM/Q/6), April 3, 2012, para 63.

³ http://www.wola.org/sites/default/files/downloadable/Citizen%20Security/past/WOLA_Policing_Final.pdf.

⁴ Commission for Historical Clarification (CEH), “Report of the Commission for Historical Clarification, Guatemala Memory of Silence 1999, Conclusion para 2, <http://shr.aaas.org/guatemala/ceh/report/english/concl1.html>.

⁵ Patrick Gavigan, “Organized Crime, Illicit Power Structures and Guatemala’s Threatened Peace Process,” *International Peacekeeping*, Vol. 16, Issue 1, 2009, 62 – 76.

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to ensure that the illegal organizations and their clandestine structures, now organized crime groups, continue operating in impunity.⁶

Following the failure of a 1999 referendum on a legislative reform package meant to codify many of the Peace Accord agreements, Guatemalan NGO's and their international partners⁷, as well as UN procedures⁸ started developing a series of reports and proposals that chronicled the substantial weaknesses of the Guatemalan police and judiciary, the infiltration by military and former military officers allied with organized crime groups into key government positions, and ongoing and increasing violence⁹ and threats against human rights defenders and social movement actors. These efforts formed the basis of the CICIG Agreement proposals.

CICIG

After Guatemalan Vice President Eduardo Stein signed the CICIG agreement with the UN¹⁰ on December 12, 2006, in January 2007 VP Stein started conferring with political parties to explain some of the agreements' details and lobby on its behalf.¹¹ On February 19, 2007, the main Guatemalan Daily *Prensa Libre* came out with an article which cited the Vice President as saying that organized crime effectively had control of six of Guatemala's 22 departments and a foothold in three others.¹² That same day three Salvadoran members of the Central American Parliament (PARLACEN) and their driver traveling to Guatemala were tortured, shot to death and then set on fire in their car. Four police officers, including the head of the organized crime unit of the Guatemalan Police, were arrested and charged with the murders. While in their cells in a maximum security prison, the four suspects were killed just before they were to be questioned by FBI agents helping in the investigation.¹³ A few days later, Stein admitted that organized crime had infiltrated the Guatemalan Police.¹⁴ Not long afterwards, despite resistance from Rios Montt's FRG Party, Otto Perez Molina of the Patriot Party (PP) and Alvaro Colom of the National Unity for Hope Party (UNE) got behind the CICIG agreement, and the President sent CICIG to the Congress for debate and ratification. Ultimately, because of the way in which the measure came to the floor, CICIG needed to pass Congress by a two-thirds majority, which it narrowly did on August 1, 2007 with all members from the PP, UNE and GANA political parties unanimously in support.

⁶ ABA Rule of Law Initiative report "Prosecutorial Reform Index for Guatemala, May 2011."

http://www.americanbar.org/content/dam/aba/directories/roli/guatemala/guatemala_prosecutorial_reform_index_2011.authcheckdam.pdf.

⁷ A few examples are: Movimiento Nacional por los Derechos Humanos, "Breve análisis de la situación de defensores de derechos humanos en Guatemala," May 13, 2005, <http://www.caldh.org/analisis.pdf>;

Washington Office on Latin America, "Hidden Powers in Post-Conflict Guatemala: A study on illegal armed groups in post-conflict Guatemala and the forces behind them," September 2003, http://www.wola.org/publications/hidden_powers_in_post_conflict_guatemala; Human Rights Watch, "Guatemala: Political Violence Unchecked, Guatemala Mission Findings," August 22, 2002, <http://www.hrw.org/legacy/press/2002/08/guatemission.htm>.

⁸ United Nations, "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alton," UN Doc., A/HRC/4/20/Add.2, 19 Feb. 2007. <http://daccess-ods.un.org/TMP/8121861.html>. Based on available statistics from 2005, the study reports a conviction rate of 1.4% in cases involving "crimes against life."

⁹ The UN Development Programme (UNDP) reported that the number of murders rose 120% over a seven year period from 2,655 deaths in 1999 to 5,885 deaths in 2006, with a homicide rate of 108 per 100,000 in Guatemala City. "Informe estadístico de la violencia en Guatemala," December 2007, https://www.who.int/violence_injury_prevention/violence/national_activities/informe_estadistico_violencia_guatemala.pdf. The number of murders deaths rose to 6,292 by 2008. "Datos de Violencia Homicida en Guatemala," <http://www.nd.edu/~cmendoz1/homicidios.htm>.

¹⁰ "Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala ("CICIG")," <http://cicig.org/index.php?page=mandate>. Signed 12 December 2006 in New York.

¹¹ Washington Office on Latin America, "Advocates against Impunity: A Case Study on Human Rights Organizing in Guatemala," January 2009, http://www.wola.org/publications/advocates_against_impunity_a_case_study_on_human_rights_organizing_in_guatemala.

¹² Lorena Seijo and Carlos Menocal, "Crimen organizado, tras diputaciones y alcaldías," *Prensa Libre*, February 19, 2007, http://www.prensalibre.com/noticias/Crimen-organizado-diputaciones-alcaldias_0_145785815.html.

¹³ Washington Office on Latin America, "Advocates against Impunity: A Case Study on Human Rights Organizing in Guatemala," January 2009, http://www.wola.org/publications/advocates_against_impunity_a_case_study_on_human_rights_organizing_in_guatemala.

¹⁴ Francisco González Arrecis, "Eduardo Stein: Crimen se infiltra en Estado," *Prensa Libre*, February 24, 2007, http://prensalibre.com/noticias/Eduardo-Stein-Crimen-infiltra_0_145786683.html.

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CICIG is an independent commission with a UN affiliation that is embedded fully within the national justice system. It is funded by international donors and is administered by the UNDP.¹⁵ CICIG's mandate is to "support, strengthen, and assist" state institutions investigating and prosecuting crimes committed in connection with the activities of organized crime groups and clandestine security organizations.¹⁶

CICIG has the power to 1) collect information from any person, official or private entity; 2) promote criminal prosecutions by filing criminal complaints and join a criminal proceeding as a complementary prosecutor; 3) Provide technical advice in investigations and advise State bodies in the implementation of such administrative proceedings against state officials; 4) Report to the authorities the names of civil servants who have allegedly committed administrative offenses and act as an interested third party in the administrative disciplinary proceedings; 5) Guarantee confidentiality to witnesses, victims, experts or collaborators who assist CICIG; 6) Request statements, documents, reports and cooperation from any official or state administrative authority of the State – Officials are obligated to comply with such request without delay; 7) Request the Public Prosecutor and the Government to ensure the safety of witnesses, victims and all those who assist in its investigations, and provide advice to authorities on adoption and implementation of such measures; 8) Request and supervise an investigation team of proven competence and moral integrity; 9) Publish general and thematic reports on its activities and the result thereof, including recommendations pursuant to its mandate.

The views expressed herein do not necessarily represent the views of the European Union

¹⁵ Canada, Denmark, the European Union, Finland, Germany, Ireland, Italy, Mexico, Netherlands, Norway, the Open Society Foundation, Spain, Sweden, Switzerland, the United Kingdom and the United States. Furthermore, Argentina, Chile, Colombia and Uruguay contribute to CICIG's functioning by providing security contingents.

¹⁶ The full text of the agreement can be found here: http://cicig.org/uploads/documents/mandato/acuerdo_creacion_cicig.pdf#page=14. Note that CICIG is a "non-UN organ, functioning solely in accordance with the provisions of this agreement."