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Louisa Reynolds

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Judicial Corruption Threatens Guatemala's Fight Against Impunity

by Louisa Reynolds

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A report published by Human Rights Watch in November 2017 praises Guatemala's achievements in terms of prosecuting corrupt political actors and human rights violators but highlights concerns that years after several landmark cases were filed, the cases have yet to go to trial and risk becoming bogged down in endless pre-trial proceedings.

Based on interviews with judges, prosecutors, lawyers, and investigators from the International Commission Against Impunity in Guatemala (CICIG), the report examines a number of high-profile cases, including the prosecution of a former president, Otto Pérez Molina (2012-2015), his vice-president, Roxana Baldetti, and 28 other officials who allegedly set up a scheme to defraud the customs authority, a case known as "La Linea" ([NotiCen, Sept. 3, 2015](#), [July 14, 2016](#), [July 13, 2017](#)). It also looks at what became known as the "Impunity Law Firm Case," in which Judge Marta Sierra de Stalling was charged with receiving a bribe in exchange for granting conditional liberty in lieu of pretrial detention to three suspects arrested as part of the investigation into the "La Linea" case.

The report, titled "Running out the clock: How Guatemala's courts could doom the fight against impunity," also focuses on the prosecution of José Luis Mijangos, a former president of Congress accused of hiring Congressional employees who never carried out any work and pocketing their wages for himself, a scandal known as the "Phantom Jobs Case." And it looks at the prosecution of former police director Marlene Blanco Lapola, charged in 2012 with ordering the execution of suspected criminals, and at the prosecution of eight former defense ministry officials, charged in 2009 with embezzling more than US\$70 million from the government ([NotiCen, Feb. 18, 2010](#)).

In many of these cases, warns Human Rights Watch, barely any progress has been made because defense lawyers have abused the right, granted by Guatemalan law, to appeal for protection (known as amparo) at any point in the criminal proceedings, or to seek the removal of a judge from a case on the grounds of alleged conflict or bias (known as recusal, or recusación, in Spanish).

In the Impunity Law Firm Case, for example, proceedings ground to a standstill for more than a year after defense attorneys put forward five recusal petitions. Similarly, five largely redundant recusal petitions stalled the Blanco Lapola case for almost three years. The delay resulted from an amparo petition that challenged the ruling on a recusal petition, as it took the Supreme Court six months to come to a decision on the amparo petition and it took the Constitutional Court an entire year to rule on the appeal. After that, another amparo petition produced a further 22-month delay. As a result, Blanco Lapola has yet to stand trial, five years after she was charged.

The Blanco Lapola case, in particular, illustrates how the Guatemalan legal system allows appeals to build up, leading to a vicious cycle of delays. For instance, a recusal petition, once rejected, can lead to an amparo petition challenging that rejection, which can lead to another appeal if that petition is also rejected. The process entails a string of missed deadlines, bureaucratic holdups, and scheduling delays.

“Defense attorneys are able to exploit the slow and hesitant manner in which many courts treat amparo and recusal petitions to secure unreasonably long delays in proceedings,” the report notes. “The repeated filing of such petitions has brought many key prosecutions to a standstill, and lawyers are not effectively sanctioned even when filing petitions that are manifestly frivolous.”

Slow-moving process

The report also points out that the resolution of appeals by far exceeds the time limits established by Guatemalan law. Amparo petitions are supposed to be resolved within a month or less, but in practice they take six to 12 months. If an amparo petition is rejected and the petitioner appeals, it should take a month to resolve the appeal, but the resolution of these appeals often takes more than a year. The law also states that a higher court should resolve recusal petitions within a week, but in practice this takes more than two months. In the Phantom Jobs Case, for instance, an appellate court took four months to reject a recusal petition. Two defendants presented amparo petitions to appeal against that decision, causing an additional nine-month delay.

The report points out that Congress has failed to comply with the 2009 ruling issued by the Inter-American Court of Human Rights to reform the law on amparo in order to prevent the system from being abused in this manner.

The report is highly critical of the country’s highest courts—the Supreme Court and the Constitutional Court—which have repeatedly failed to use their power to curb unnecessary delays caused by lower-court judges and judicial functionaries and ensure that high-profile corruption and human rights violations cases are handled adequately.

In August 2017, for instance, Judge Mynor Moto ordered the Impunity Law Firm Case to be closed, arguing that the Attorney General’s Office had failed to provide enough evidence against Judge Sierra de Stalling and eight other legal professionals.

This is not the only controversial ruling on Judge Moto’s track record. In January 2017, he ruled there were sufficient grounds for Arnaldo Medrano, a former mayor of Chinautla, to be tried for corruption, but exonerated him of five of the crimes of which he was accused and ordered him to be placed under house arrest on condition of bail.

CICIG and the Attorney General’s Office fought back by ordering Judge Moto to be stripped of his prosecutorial immunity so that he could be investigated for prevarication and obstruction of justice. However, the Supreme Court denied their request.

‘Spaces of impunity’

The Human Rights Watch report echoes many of the findings presented by CICIG in a 95-page report titled “The Judges of Impunity” and published in December 2012, in which it named 18 judges whose controversial rulings had served the interests of organized crime and accused them of creating “spaces of impunity.” The judges named included Julio Jerónimo Xitumul, accused of improperly favoring former President Alfonso Portillo (2000-2004), who was acquitted of corruption charges in 2011 in a trial plagued with irregularities. Portillo was later extradited to the US to face money laundering and embezzlement charges ([NotiCen, June 2, 2011](#), [April 24, 2014](#), [June 26, 2014](#)).

“If Guatemala’s two highest courts do not take their responsibility for safeguarding the judicial process more seriously, it is very possible that the efforts by CICIG and the Attorney General’s

Office to prosecute their most important cases will fail, the country's hopes for strengthening the rule of law will wither, and the forces of corruption, abuse and impunity will prevail," the Human Rights Watch report warns.

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