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## RUNNING OUT THE CLOCK

How Guatemala's Courts Could Doom the Fight against Impunity



## **Running out the Clock**

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# Running out the Clock

## How Guatemala’s Courts Could Doom the Fight against Impunity

- Summary ..... 1**
- Methodology..... 7**
- Instruments of Delay: Amparos and Recusals .....8**
  - Amparos..... 8
  - Recusals..... 13
  - Impact on Criminal Proceedings..... 13
- Causes of Delay: How Judges and Lawyers Undermine Criminal Proceedings.....15**
  - 1) Judges fail to enforce admissibility rules for *amparo* petitions ..... 15
  - 2) Judges fail to meet deadlines for resolving *amparo* and recusal petitions ..... 16
  - 3) Judges and judicial functionaries delay bureaucratic procedures..... 18
  - 4) Judges suspend proceedings while awaiting the resolution of petitions..... 20
  - 5) Judges fail to reschedule suspended hearings in a timely manner ..... 21
  - 6) Defense lawyers exploit the judiciary’s failings with dilatory tactics .....22
  - 7) Judges and lawyers are not held accountable for delays .....23
- Current Cases..... 26**
  - Blanco Lapola Case ..... 26
  - Corrupt Military Officers Case .....30
  - Genocide Case .....32
  - La Línea Case .....36
  - Impunity Law Firm Case ..... 41
  - Phantom Jobs Case..... 46
- Past Cases ..... 50**
  - Myrna Mack Case .....50
  - Dos Erres Case..... 51
  - Rulings by the Inter-American Court of Human Rights .....52
- Recommendations..... 54**
- Acknowledgments..... 56**



## Summary

Guatemala has made dramatic progress over the past decade in promoting accountability for abuses of power, including cases of human rights atrocities and acts of corruption. This progress is due in large measure to the International Commission against Impunity in Guatemala (CICIG), which was established in 2007 to work with the Attorney General's Office to investigate and co-prosecute cases involving criminal networks that had emerged as a grave threat to the rule of law since the end of the country's internal armed conflict in the 1990s. CICIG's investigations over the past decade have led to the arrest and prosecution of powerful criminals and corrupt officials once considered to be untouchable. Its accomplishments have exceeded all expectations and generated unprecedented levels of public support for efforts to promote accountability in the country.

The most celebrated accomplishments of CICIG's partnership with the Attorney General's Office came in 2015 when their joint investigations exposed multiple corruption schemes, implicating officials in all three branches of government, and prompting the resignation and arrest of the country's president and vice president. These cases include:

- **The La Línea Case:** Former President Otto Perez Molina and Vice President Roxana Baldetti were charged along with 28 other officials for allegedly organizing a scheme to defraud the customs authority by collecting bribes instead of customs duties.
- **The Impunity Law Firm Case:** A judge was charged with receiving a bribe to impose conditional liberty instead of pretrial detention for three suspects arrested in the La Línea case.
- **The Phantom Jobs Case:** A former president of Congress was charged with hiring people in Congress who never performed any work for that institution, and pocketing those wages himself.

Yet now, more than two years after these cases were filed, they have yet to go to trial—and there is a serious risk they never will. Instead, they have joined a growing list of cases pursued by CICIG and the Attorney General's Office that have bogged down in pretrial proceedings. Other such cases include:

- **The Blanco Lapola Case:** A former national police director was charged in 2012 with ordering the execution of suspected criminals. Five years later, the case has yet to go to trial.
- **The Corrupt Military Officers Case:** Eight former defense ministry officials were charged in 2009 with embezzling more than US\$70 million from the government. Eight years later, the case has yet to go to trial.

It is not only CICIG's cases that have stalled. The Attorney General's Office is facing similar difficulties in cases it is pursuing on its own—including, most notably, the prosecution of one of the most heinous crimes in the recent history of Latin America:

- **The Genocide Case:** Former dictator Efraín Ríos Montt was charged in 2012 with genocide for the mass slaughter of Mayan communities in the early 1980s. He was tried and convicted in 2013, but the Constitutional Court nullified the verdict and ordered a new trial. After a delay of more than two years, a judge ruled in 2015 that Ríos Montt's deteriorating mental health had rendered him unfit for a regular trial, and ordered that he instead be subject to special proceedings that do not allow for a guilty verdict. After two more years of delay, these proceedings only began in October 2017.

The problem of stalled prosecutions is nothing new in Guatemala. Past cases involving human rights atrocities suffered similar setbacks. These include:

- **The Myrna Mack Case:** Three former military intelligence officers were charged in 1996 for the 1990 assassination of Myrna Mack Chang. One defendant was convicted and two were acquitted in 2002, 11 years after they were first charged.
- **The Dos Erres Case:** Seventeen soldiers were charged in 1999 and 2000 for a massacre that occurred in 1982. Five of them were convicted in 2011 and 2012, 12 years after the first arrests were made.

While these last two cases resulted in prison sentences for some of the perpetrators, the convictions were obtained only after more than a decade of delays. The verdicts were celebrated as important achievements for human rights accountability. But it remains unclear to this day whether they were in fact breakthroughs, paving the way toward greater accountability, or merely exceptions proving the rule that, in Guatemala, prosecuting powerful people is a prohibitively onerous endeavor.



Human Rights Watch conducted an extensive review of these eight cases to determine the causes of the delays. A close examination of the judicial proceedings, as well as interviews with judges, prosecutors, lawyers and CICIG investigators, revealed a consistent pattern in which defense lawyers are easily able to trigger prolonged delays in criminal proceedings by filing repeated—and often unfounded—motions challenging court rulings or seeking the recusal of judges hearing their cases. These motions tend to cause unreasonable delays that are then greatly compounded by the slowness with which courts react to their filing and then to their eventual resolution.

Guatemalan law provides a broad range of due process protections for criminal defendants. These include a general right to appeal for protection of any constitutional or legal right—known as the “*amparo*”—which can be filed at any point during criminal proceedings and petitions requesting the removal of a judge from a case (*recusación*) or asking judges to recuse themselves (*excusa*) on grounds of alleged conflict or bias. While the due process rights of all criminal defendants should be properly safeguarded, the system of protections in place in Guatemala has been manipulated and perverted to protect powerful people from prosecution and to prevent victims of abuse from obtaining justice.

This report describes how 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 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.

But while it is defense lawyers who have figured out how to take advantage of the courts’ deficiencies, it is the country’s judicial authorities that bear primary responsibility for prolonged delays that result from these disruptions. The derailing of justice is only possible because the courts allow it. Judges could decline to hear unfounded or frivolous appeals, but they rarely do. Courts have the discretion to continue with proceedings while *amparo* petitions are pending so long as there is no risk of irreparable harm, but, again, they rarely do. Instead, appellate courts admit unfounded appeals for review and first instance courts detain criminal proceedings until such appeals are resolved.

The resolution of these appeals should not take long, but it usually does, as courts routinely fail to adhere to the time limits for resolving them established in Guatemalan law.

*Amparo* petitions should be resolved within a month or less, but they typically take six to 12 months. If an *amparo* petition is rejected and the petitioner appeals, it should take another month to resolve the appeal. Often, however, the resolution of these appeals takes more than a year. Similarly, recusal petitions—requesting a judge’s removal from a case—should be resolved by a higher court within a week. But, in practice, they often take more than two months.

The impact of the missed deadlines is often compounded by bureaucratic delays. For example, Guatemalan law requires that parties be notified of *amparo* rulings within a day—and of recusal rulings within five days—yet these notifications often take months.

The delays are further compounded by the routine failure of judges to promptly re-schedule proceedings that have been suspended or postponed because of an appeal—or because of any other disruption, however unjustified, such as the failure of defense lawyers to show up for a hearing.

All these factors add up. 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—with multiple missed deadlines, bureaucratic holdups, and scheduling delays along the way. Examples of prolonged delays include:

- In the **Impunity Law Firm case**, five recusal petitions stalled proceedings for more than a year.
- In the **Phantom Jobs case**, an appellate court took four months to reject a recusal petition. Two defendants then presented *amparo* petitions about that decision, causing an additional nine-month delay.
- In the **Blanco Lapola case**, a series of five—largely redundant—recusal petitions stalled the case for almost three years. More than half of that delay was due to an *amparo* petition that challenged the ruling on a recusal petition: the Supreme Court took six months to reach a decision on the *amparo* petition, and it took the Constitutional Court a year to decide the appeal. Another *amparo* petition produced an additional 22-month delay.

In short, it is easy for defense lawyers to derail criminal proceedings, and they often do so knowing that it may take months or years to get the case back on track. And there are no

effective sanctions in place for lawyers who intentionally sabotage criminal proceedings, nor for judges who allow or cause egregious and unjustified delays. The Constitutional Court imposes fines on lawyers who file unfounded *amparo* petitions, but these can be no more than 1000 Quetzals (US\$135), an extremely modest sum for attorneys representing wealthy clients, and they routinely go unpaid. (There are currently more than 3000 attorneys with unpaid fines.) Judges responsible for unjustified and egregious delays can, in theory, be held accountable by the judiciary's disciplinary body—but this rarely happens. In 2016, more than one hundred disciplinary complaints were filed against judges for undue delays, but only three were found to be at fault, and their only sanction was a written reprimand.

When powerful perpetrators of abuse and corruption have found themselves facing judges who will not bend to pressure or be bought off, suspects have managed to postpone their day of reckoning so as to have their case be transferred to a malleable judge. Today, these defendants may also have the hope that they can run out the clock on CICIG and on the current attorney general, who has actively moved forward with the prosecution of cases investigated by CICIG. CICIG's mandate will expire in September 2019, and the attorney general's term expires in May 2018.

The fundamental objective of CICIG in Guatemala has been to jumpstart the Attorney General's Office—to help this office transform itself into an institution capable of prosecuting powerful criminal organizations and government officials implicated in corruption and abuse. In this regard, CICIG has delivered. But for there to be real progress in these cases, not only effective prosecutors are needed, but also judges who are able and willing—and required—to do their jobs.

Guatemalan Congress has a crucial role to play. It should comply with the 2009 ruling by the Inter-American Court of Human Rights and reform the Amparo Law to prevent the abuse of this mechanism. Unfortunately, the record of the current Congress raises serious doubts about whether it will be willing to take measures to reduce impunity.

Ultimately, however, it is up to the highest authorities within the Guatemalan judiciary to ensure that cases involving egregious abuses of power are properly handled by the country's courts. But until now, the performance of the Supreme Court and the Constitutional Court on this front has been woefully inadequate. They have failed to use

the tools at their disposal to curb unwarranted delays caused by lower-court judges and judicial functionaries. And they have themselves been directly responsible for many of the longest unwarranted delays in the cases documented in this report.

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.

## **Methodology**

Human Rights Watch conducted more than 50 interviews with lawyers, jurists, CICIG investigators, prosecutors, and justice officials—including the attorney general, the president of the Constitutional Court, members of the Supreme Court, and members of Congress. The interviews were conducted primarily during research missions to Guatemala City between May 2 and May 13, 2017, between May 22 and May 31, 2017, and between June 19 and June 23, 2017. In many instances, follow-up interviews were conducted via telephone, email, WhatsApp, or Skype following the fact-finding missions. Interviews were conducted by Human Rights Watch staff in Spanish, and interviewees were informed of how the information gathered would be used. None received any incentives for their participation—financial or otherwise.

Additionally, Human Rights Watch undertook an extensive review of laws, judicial rulings, and case files—the latter following permission from the Guatemalan Supreme Court, as well as from judges directly in charge of proceedings.

## Instruments of Delay: Amparos and Recusals

Guatemalan law establishes a range of mechanisms intended to ensure that criminal defendants are able to seek remedy for violations of their legal rights. These include the petition for *amparo* and the petition for recusal. The *amparo* petition is an extraordinary instrument to protect constitutional and legal rights when no other remedies are available. A recusal petition is a request to remove a judge from a case because of bias; a normal but exceptional measure in most countries' judicial systems.

*Amparo* and recusal petitions can play a crucial role in ensuring the fairness, lawfulness, and credibility of criminal proceedings. But, for reasons this report describes, these petitions can be abused in ways that combine with the judiciary's larger tendency to unreasonably delay to frustrate the pursuit of justice against politically powerful figures.

### Amparos

The petition for *amparo* is an extraordinary remedy enshrined in the Guatemalan Constitution that provides a protection of last resort when a person's constitutional or legal rights have been or might be infringed by an authority. The protection the *amparo* provides is extremely broad, covering virtually any act or omission by any authority—including government institutions, private associations, and other legally-constituted entities<sup>1</sup>—when ordinary means to address the violation have been exhausted.<sup>2</sup> Petitions for *amparo* relief can be filed against any act or decision by a judge during any stage of a criminal proceeding, both in the pretrial phase and during the trial.<sup>3</sup>

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<sup>1</sup> The Guatemalan Constitution, art. 265, and the Law on Amparo, Habeas Corpus, and Constitutionality (Ley de Amparo, Exhibición Personal, y de Constitucionalidad), Decree No. 86, January 8, 1986, art. 8 (Amparo Law) establish that “there is no realm to which the amparo does not apply” (“[n]o hay ámbito que no sea susceptible al amparo...”). For the definition of “authority”, see Amparo Law, art. 9.

<sup>2</sup> Amparo Law, art. 19.

<sup>3</sup> Constitution, art. 265, Amparo Law, art. 8. Criminal proceedings consist of three phases—the “investigative” and “intermediate” phases that take place before a single judge, followed by the trial itself that takes place before a three-judge panel. During the “investigative” phase, the suspect provides his or her first declaration and the judge decides whether the suspect will be indicted. The judge then authorizes the Attorney General's Office to investigate the alleged criminal act, for a maximum of three months. During the second or “intermediate” phase, the Attorney General's Office presents a formal accusation at a preliminary hearing where the results of the investigation are discussed. If the judge believes there is sufficient evidence, he or she will order a trial. The intermediate phase culminates in another hearing, in which the judge decides which evidence will be admitted at the trial. The trial is conducted by a panel of three judges, which evaluates the

Guatemala does not have specialized courts dedicated to the resolution of *amparo* petitions. Instead, the law establishes whether a petition should be filed before a court of first instance, an appellate court, or the Supreme Court or Constitutional Court—depending on the authority whose act is challenged. In the case of *amparo* petitions challenging acts or decisions by judges or courts, the petitions are assigned to a higher court: petitions filed against actions by first instance judges are reviewed by appellate courts; those against actions by appellate courts are reviewed by the Supreme Court; and those against the Supreme Court are reviewed by the Constitutional Court. Petitioners have the ability to file petitions directly to the court of their own choosing (provided it is addressed to a court at the correct level of the hierarchy).<sup>4</sup> However, it is standard practice to file instead with the judiciary’s administrative body, the Center for Auxiliary Services of the Criminal Justice Administration (Centro de Servicios Auxiliares de la Administración de la Justicia Penal), which then distributes the petitions to different courts.<sup>5</sup>

The first step a court must take when it receives an *amparo* petition is to make a *prima facie* determination as to whether the petition is admissible. The Amparo Law includes the requirements for the admissibility of *amparos*, but it does not establish expressly that a petition that does not comply with those requirements is inadmissible. For that reason, the Constitutional Court has established that judges should take four basic requirements into account for determining admissibility.<sup>6</sup> The *amparo* petition must have been filed:

- by a person who might suffer a risk, threat, restriction, or violation of a constitutional or legally-established right;<sup>7</sup>
- against an authority;<sup>8</sup>
- only after all other remedies to prevent or correct the harm have been exhausted;<sup>9</sup> and

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evidence admitted and issues a decision. Decisions can be appealed to an appellate court, and appellate court decisions can be appealed to the Supreme Court. See Code on Criminal Procedure.

<sup>4</sup> Amparo Law, arts. 11-18, General Provision 1-2013 (Auto Acordado 1-2013), Constitutional Court, November 14, 2013, Arts. 1-7, Agreement 46-2006 (Acuerdo 46-2006), Supreme Court of Justice, November 8, 2006, Agreement 29-2004 (Acuerdo 20-2004), Supreme Court of Justice, July 1, 2004.

<sup>5</sup> Agreement 46-2006 (Acuerdo 46-2006), Supreme Court of Justice, November 8, 2006, Agreement 29-2004 (Acuerdo 20-2004), Supreme Court of Justice, July 1, 2004.

<sup>6</sup> Agreement 1-2013 (Acuerdo 1-2013), Constitutional Court, December 9, 2013, art. 26.

<sup>7</sup> Amparo Law, art. 10, and Agreement 1-2013, Constitutional Court, art. 26.

<sup>8</sup> Amparo Law, art. 9 and, Agreement 1-2013, Constitutional Court, art. 26.

<sup>9</sup> Amparo Law, arts. 8-10, 19-21, and Agreement 1-2013, Constitutional Court, art. 26.

- within 30 days of when the petitioner knew of the harm or received the final notification of the harm not being remedied.<sup>10</sup>

If a court determines that any of these requirements have not been met, it can—but is not obligated to—“permanently suspend” the petition without starting the process of soliciting and reviewing evidence to evaluate the merits of the claim; a *de facto* dismissal.<sup>11</sup>

If the court admits a petition, it must then determine whether there is an imminent risk that the disputed act might cause or is already causing irrevocable harm to the petitioner. If so, the court will issue an order—called a “provisional *amparo*”—requiring the authority to refrain from beginning or continuing the disputed act until a final decision has been reached on the petition.<sup>12</sup>

The procedure for resolving the petition entails the submission and review of evidence by both the petitioner and the authority, and includes a submission by the Attorney General’s Office, which must examine and take a position on every single *amparo* petition that is filed.<sup>13</sup> Once the court has ruled on whether or not to grant an *amparo*, its ruling can be appealed. All such appeals go directly to the Constitutional Court.<sup>14</sup>

Guatemalan courts receive thousands of *amparo* petitions every year. They determine that almost all of them admissible for review, but—after completing the review—reject most on the merits. Thousands of these rejections are appealed every year to the Constitutional Court, which—after its own review—usually upholds the rejection of the lower court.

In 2016, 5,152 *amparo* petitions were filed in Guatemalan courts. This represents a significant increase over the last decade: in 2012, 3,856 *amparo* petitions were filed. In 2009, that number was 3,058.<sup>15</sup>

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<sup>10</sup> Amparo Law, art. 20 and Agreement 1-2013, Constitutional Court, art. 26.

<sup>11</sup> Agreement 1-2013, Constitutional Court, art. 26.

<sup>12</sup> Amparo Law, arts. 27-30

<sup>13</sup> Constitution, art. 251 and Amparo Law, arts. 33-42 and 60-71.

<sup>14</sup> Amparo Law, art. 60.

<sup>15</sup> These are the cases in which the Attorney General’s Office *amparo* department participates. In reality, the numbers are slightly higher because when another branch of the Attorney General’s Office presents an *amparo*, the specialized *amparo* department does not participate in the proceedings and these cases are not registered. The numbers also exclude the (on average) 10 cases per month that are “permanently suspended” because they do not fulfill the basic requirements. The numbers provided by the Attorney General’s Office’s Section for Constitutional Issues, Amparos and Habeas Corpus (by email



Nearly all *amparo* petitions are deemed admissible for review by the courts that receive them. Each month, more than 400 new *amparo* petitions are admitted by courts, while only around 10 petitions are deemed inadmissible.<sup>16</sup>

Most of the petitions deemed admissible are rejected after they have been reviewed. In the 3,283 *amparo* decisions reached by courts in 2016, 73 percent—or 2,405 petitions—were rejected and 27 percent—or 878 petitions—were granted.<sup>17</sup>

The numbers for appeals are similar. More than 7,000 appeals of *amparo* rulings reached the Constitutional Court in 2016.<sup>18</sup> (This number includes appeals of both provisional and final *amparo* rulings.) Of the 1,993 *amparo* decisions issued by the court in 2016, 70 percent—or 1,388 petitions—were rejected and 30 percent—or 605 petitions—were granted.<sup>19</sup>

The large number of *amparo* petitions adds to the caseload for the judges and judicial functionaries who must process them—as well as for prosecutors within the Attorney General’s Office who must review and offer a written assessment of every single *amparo* petition.<sup>20</sup>

### **The Amparo Caseload of the Constitutional Court**

This burden is particularly onerous for the Constitutional Court given that it must review all appeals of *amparo* rulings by lower courts. The court’s president told Human Rights Watch this responsibility makes it more difficult to “focus on issues that really merit our attention.”<sup>21</sup> Instead, he complained, the court must focus considerable time reviewing

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correspondence with Human Rights Watch on May 11, 2017) were: 2009: 3,058 *amparos*; 2010: 3,088 *amparos*; 2011: 3,745 *amparos*; 2012: 3,856 *amparos*; 2013: 4,733 *amparos*; 2014: 4,417 *amparos*; 2015: 4,795 *amparos*; 2016: 5,152 *amparos*.

<sup>16</sup> Human Rights Watch email correspondence with Carla Valenzuela, Head Prosecutor of the Section for Constitutional Issues, Amparos and Habeas Corpus (“Fiscalía de Asuntos Constitucionales, Amparos y Exhibición Personal”), Attorney General’s Office, Guatemala, July 28, 2017. Such petitions are “permanently suspended” by courts; a *de facto* dismissal of the petition. See Agreement 1-2013, Constitutional Court, art. 26.

<sup>17</sup> Human Rights Watch email correspondence with Carla Valenzuela, Head Prosecutor of the Section for Constitutional Issues, Amparos and Habeas Corpus (“Fiscalía de Asuntos Constitucionales, Amparos y Exhibición Personal”), Attorney General’s Office, Guatemala, May 11, 2017.

<sup>18</sup> Human Rights Watch interview with Francisco de Mata Vela, President of the Constitutional Court, Guatemala, May 12, 2017.

<sup>19</sup> Human Rights Watch email correspondence with Carla Valenzuela, Head Prosecutor of the Section for Constitutional Issues, Amparos and Habeas Corpus (“Fiscalía de Asuntos Constitucionales, Amparos y Exhibición Personal”), Attorney General’s Office, Guatemala, May 11, 2017.

<sup>20</sup> Constitution, art. 251, and Human Rights Watch interviews with seven judges, six prosecutors, and two judicial functionaries (names withheld), Guatemala, May and June 2017.

<sup>21</sup> Human Rights Watch interview with Francisco De Mata Vela, President of the Constitutional Court, Guatemala, May 12, 2017.

*amparo* cases involving issues that are not of national importance nor of broader jurisprudential significance, as well as cases where there does not even appear to be any violation of a fundamental right.<sup>22</sup> Some examples include:

- *Whether a judge could accept as evidence a document from a notary public that referred to a registration filed in the “Mercantile Register of the Republic” even though the correct name was “General Mercantile Registry of the Republic.”* The Court ruled that the identity of the registry was clear in the document and the petition had been filed “to delay and obstruct” the ordinary proceedings. The case took 14 months to make its way through the courts, of which it spent almost 12 months in the Constitutional Court.<sup>23</sup>
- *Whether an English bulldog named “Von Quetzal’s Frosty” could be required to undergo a DNA test before being included in the registry of the Guatemalan Canine Association.* The Constitutional Court ultimately rejected the petition because the association’s registration committee had not made a final determination. It took 15 months for this case to be resolved by the courts.<sup>24</sup>
- *Whether the plaintiff in a case could demand that a hearing be rescheduled because the court did not have the correct address for notifying the defendant.* The first instance court held that the plaintiff’s rights had not been violated, so he had no standing to file an *amparo* petition. The plaintiff appealed to the Constitutional Court, where the case has been pending since May 2017.<sup>25</sup>
- *Whether a group of medical students should be allowed to register for a new academic term even though they had not met their school’s academic requirements.* The Constitutional Court rejected the *amparo* because the students should have appealed to the university’s board of directors first. It took almost nine months for the case to make its way through the courts.<sup>26</sup>

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<sup>22</sup> Ibid.

<sup>23</sup> Constitutional Court, Case File 2961-2013 (Expediente 2961-2013), May 13, 2014.

<sup>24</sup> Constitutional Court, Case File 1104-2006 (Expediente 1104-2006), November 22, 2006.

<sup>25</sup> Third Appeals Court of the Civil and Commercial Branch (Sala Tercera de la Corte de Apelaciones del Ramo Civil y Mercantil), Amparo No. 01010-2017-8, Of. 1, April 24, 2017; sent to the Constitutional Court for appeal on May 2, 2017.

<sup>26</sup> Constitutional Court, Case File 3207-2014 (Expediente 3207-2014), November 7, 2014.

## Recusals

A petition for recusal is a request to have a judge removed from a case due to bias, a conflict of interest, or other factors that might compromise his or her impartiality.<sup>27</sup>

When a party presents a petition for recusal, the judge against whom the petition is presented must decide whether or not to accept it, and provide reasons for this decision. If the judge determines that the grounds alleged for recusal are without merit, he or she can reject the petition, but must “immediately” forward it to a higher court for review.<sup>28</sup> The higher court must then convoke a hearing within five days and decide on the petition in that same hearing.<sup>29</sup> If, on the other hand, the judge concludes that the petition is sound, he or she can recuse him or herself from the case, pending authorization from a higher court, which must then rule on the matter within 48 hours.<sup>30</sup>

If the higher court rejects the recusal petition, the case returns to the original judge. If it grants the petition, it assigns the case to a new judge.<sup>31</sup> Any acts that the recused judge might have performed since the presentation of the petition may be nullified.<sup>32</sup> The higher court’s ruling is not subject to appeal but can be challenged (like any other act by an authority) through an *amparo* petition.

## Impact on Criminal Proceedings

The filing of *amparo* and recusal petitions routinely result in the suspension of criminal proceedings. In the case of *amparo* petitions, Guatemalan law mandates the suspension of proceedings only when the court reviewing the petition issues a stay—or “provisional

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<sup>27</sup> Law on the Judicial Organism (Ley del Organismo Judicial), Decree No. 2-89, March 28, 1989, art. 125 (Law on the Judicial Organism) establishes that the grounds for “impediment” listed in art. 122 of the law and “disqualification” (“*excusa*”), listed in art. 123, also apply to recusals.

<sup>28</sup> The laws regulating the applicable procedure are ambiguous (arts. 62-69 Code on Criminal Procedure and arts. 122-134 Law on the Judicial Organism), but in its jurisprudence, the Constitutional Court has established the steps that judges are expected to follow. Constitutional Court, Case Files 1571-2014, 1596-2014 and 1639-2014 (accumulated) (Expedientes 1571-2014, 1586-2014 y 1639-2014 [acumulados]), Feb. 10, 2015, Constitutional Court, Case File 3009-2013 (Expediente 3009-2013), Jan. 15, 2015 and Constitutional Court, Case File 4801-2013 (Expediente 4801-2013), Jan. 16, 2014.

<sup>29</sup> Code on Criminal Procedure (Código Procesal Penal), Decree No. 51-92, September 28, 1992, art. 150bis (Code on Criminal Procedure).

<sup>30</sup> Law on the Judicial Organism, art. 128.

<sup>31</sup> Law on the Judicial Organism, art. 128, and Agreement 41-2015 (Acuerdo 41-2015), Supreme Court of Justice, November 4, 2015, arts. 1 and 2.

<sup>32</sup> Law on the Judicial Organism, art. 125.

*amparo*”—until it completes its review.<sup>33</sup> Yet, as discussed further below, it is common practice for judges to halt proceedings while awaiting a ruling from the court reviewing the *amparo* petition.<sup>34</sup>

In the case of recusal petitions, Guatemalan law bars the judge against whom the petition was presented from performing any judicial acts in the case until the petition is resolved, except for those acts that, according to the judge, cannot be delayed.<sup>35</sup> In order to ensure that proceedings in such cases do not get stalled while the higher court reviews the recusal petition,<sup>36</sup> a judge is expected to send the case to a “replacement judge.”<sup>37</sup> If the recusal petition is rejected, the case returns to the original judge.<sup>38</sup>

In practice, however, judges against whom a recusal petition has been presented generally do not send the case to a “replacement judge” and instead suspend proceedings. The judges interviewed by Human Rights Watch indicated that sending a case to a “replacement judge” would take a lot of time, and in practice, they claimed, that judge would be reluctant to perform any acts until the higher court reviewed the recusal petition, so proceedings would be stalled anyway.<sup>39</sup> The result is that criminal proceedings are typically stalled between the moment that a recusal petition is presented until the time that a higher court hands down its decision on the petition.<sup>40</sup> This would not present much of a problem if the petitions were resolved within the timeframe established by law, but as this report shows, their resolution typically takes far longer than that.

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<sup>33</sup> Amparo Law, arts. 27-32.

<sup>34</sup> Interview with Francisco De Mata Vela, President of the Constitutional Court, Guatemala, May 12, 2017.

<sup>35</sup> Code on Criminal Procedure, art. 68.

<sup>36</sup> Code on Criminal Procedure, art. 67, and Law on the Judicial Organism, art. 125.

<sup>37</sup> Code on Criminal Procedure, art. 67, and Agreement 41-2015, Supreme Court of Justice, art. 1. The judge of the First Court of First Instance must send the case to the judge of the Second Court of First Instance, the judge of the Second Court of First Instance would send it to the Third Court of First Instance, etcetera.

<sup>38</sup> Law on the Judicial Organism, art. 128.

<sup>39</sup> Human Rights Watch interviews with four judges (names withheld), Guatemala, May and June 2017.

<sup>40</sup> Human Rights Watch interviews with four judges, two judicial functionaries, four prosecutors and two lawyers (names withheld), Guatemala, May and June 2017.

# Causes of Delay: How Judges and Lawyers Undermine Criminal Proceedings

In its review of the eight cases discussed below—as well as in extensive interviews with prosecutors, judges, lawyers and CICIG personnel—Human Rights Watch identified seven key practices by courts that contribute to the unreasonably frequent and protracted delays that plague key criminal court proceedings in cases involving corruption, human rights abuses, or other egregious abuses of power in Guatemala. Not all of the patterns of delay described below are inherently problematic in and of themselves. Rather, it is the combination of these practices, and the way they build upon one another to slow down or even halt the administration of justice, that creates the extreme and harmful delays seen in many important cases.

## 1) Judges fail to enforce admissibility rules for *amparo* petitions

A major reason that Guatemalan courts must review so many *amparo* petitions is that courts often admit petitions that do not actually meet the four basic criteria for admissibility discussed above.<sup>41</sup> According to the director of the Office of the Attorney General’s *amparo* department—which must review and take a position on all admitted petitions—the large majority of *amparo* petitions are unfounded.<sup>42</sup>

One reason judges may be reluctant to dismiss unfounded *amparo* petitions is that they lack adequate guidance on when it is appropriate to do so. The Amparo Law does not expressly authorize courts to dismiss *amparo* petitions, even if they do not meet the admissibility requirements.<sup>43</sup> Instead, a Constitutional Court agreement (*acuerdo*) allows—but does not oblige—judges to “permanently suspend” those petitions that fail to meet the basic requirements; a *de facto* dismissal. Yet the agreement also establishes that judges make the admissibility determinations “under their own responsibility”<sup>44</sup>—which means

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<sup>41</sup> See “Instruments of Delay: *Amparos* and Recusals”, and Human Rights Watch interview with Francisco De Mata Vela, President of the Constitutional Court, Guatemala, May 12, 2017.

<sup>42</sup> Human Rights Watch interview with Carla Valenzuela, Head Prosecutor of the Section for Constitutional Issues, Amparos and Habeas Corpus (Fiscalía de Asuntos Constitucionales, Amparos y Exhibición Personal), Guatemala, May 8, 2017.

<sup>43</sup> Human Rights Watch interviews with three judges and two lawyers (names withheld), Guatemala, May and June 2017.

<sup>44</sup> Agreement 1-2013, Constitutional Court, art. 26.

that they may be held at fault if they make an error.<sup>45</sup> According to several judges and lawyers interviewed by Human Rights Watch, the fear of being found in error for refusing to admit a petition causes many judges to admit petitions that they do not actually believe to be admissible—a problem compounded by the fact that the Constitutional Court has failed to provide clear and consistent criteria on how to apply the admissibility requirements.<sup>46</sup>

However, Constitutional Court President Francisco De Mata Vela told Human Rights Watch that he believes judges should apply the court’s agreement strictly and be more proactive in dismissing petitions. Instead, he said, “They wash their hands of it and [as a result] everything gets [to the Constitutional Court].”<sup>47</sup>

## 2) Judges fail to meet deadlines for resolving *amparo* and recusal petitions

According to law, the process of soliciting and reviewing evidence in an *amparo* petition and issuing a decision should not take much more than a month—25 days plus six days for notifications: a maximum of 31 days.<sup>48</sup> However, according to judges, prosecutors, judicial functionaries, jurists, and lawyers interviewed by Human Rights Watch, these time limits are hardly ever respected:<sup>49</sup> in practice, reaching a decision in an *amparo* petition typically takes about six to 12 months.<sup>50</sup>

- In the **Phantom Jobs Case**, the Supreme Court took nine months to reject *amparo* petitions filed by two defendants in May 2016.
- In the **Blanco Lapola Case**, the Supreme Court took nine months to reject *amparo* petitions presented by CICIG and the Attorney General’s Office in January 2015.

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<sup>45</sup> Human Rights Watch interviews with five judges (names withheld), Guatemala, May and June 2017.

<sup>46</sup> Human Rights Watch interviews with seven judges and seven lawyers (names withheld), Guatemala, May and June 2017.

<sup>47</sup> Human Rights Watch interview with Francisco De Mata Vela, President of the Constitutional Court, Guatemala, May 12, 2017.

<sup>48</sup> An *amparo* petition needs to be acted on immediately. The court provides the challenged authority 48 hours to send more information about the issue at hand, after which it decides whether it will grant a provisional *amparo*. Petitioners and other interested parties then get 48 hours to provide a reaction. The court can then decide whether to request more evidence for a period of eight days or whether it has all information necessary to reach a decision. If it requested more evidence, the court will give another period of 48 hours for the parties to react. Either one of the parties can then request another hearing that needs to be held within three days. The court then has three days to issue a decision, but can request additional documents for a period of five days. Each of these steps needs to be officially notified to the parties. Amparo Law, arts. 33-41.

<sup>49</sup> Human Rights Watch interviews with 10 judges, eight prosecutors, four judicial functionaries, seven jurists, and seven lawyers (names withheld), Guatemala, May and June 2017.

<sup>50</sup> Human Rights Watch interview with Francisco De Mata Vela, President of the Constitutional Court, Guatemala, May 12, 2017.

- In the **Corrupt Military Officers Case**, the Supreme Court took seven months to rule on *amparo* petitions presented by several defendants in March 2015.

The delays in the Constitutional Court are even worse. Guatemalan law establishes that appeals to provisional *amparo* rulings should be resolved within about a week—six days to reach a decision, plus two days for notifications: a maximum of eight days.<sup>51</sup> Appeals to final *amparo* rulings (*sentencias*) should not take much more than a month—25 days, plus six days for notifications: a maximum of 31 days.<sup>52</sup> But, again, our sources told us these time limits are hardly ever respected, a claim supported by the analysis of cases described in this report.<sup>53</sup> And the president of the Constitutional Court admitted that it can take the court more than a year to reach a decision on an *amparo* petition.<sup>54</sup>

- In the **Corrupt Military Officers Case**, the Constitutional Court took a year and a half (until May 2017) to rule on an appeal to an *amparo* decision filed by CICIG in November 2015.
- In the **Blanco Lapola Case**, the Constitutional Court took almost 22 months (until the end of July 2017) to rule on an appeal to an *amparo* decision filed by two defendants in early October 2015.

The time limits for judges to respond to recusal petitions vary according to the stage of the proceedings.<sup>55</sup> Judges facing recusal petitions do tend to respect these time limits, but the higher courts reviewing the petitions do not.<sup>56</sup> Such reviews should take five working days

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<sup>51</sup> The Court needs to rule within 36 hours after receiving the information from the tribunal that emitted the provisional *amparo*. If it requests additional information, this period is extended with three days. Amparo Law, arts. 65 and 66.

<sup>52</sup> Within three days of receiving the information, the Court must plan a hearing within 10 days—or, in case of large distances, 15 days—and is required to issue a decision within five days of that hearing. It can add a time period of five days to receive more information. Each of these steps needs to be officially notified to the parties. Amparo Law, arts. 60-71, and Agreement 1-2013, Constitutional Court, art. 19.

<sup>53</sup> Human Rights Watch interviews with 10 judges, eight prosecutors, four judicial functionaries, seven jurists, and seven lawyers (names withheld), Guatemala, May and June 2017.

<sup>54</sup> Human Rights Watch interview with Francisco De Mata Vela, President of the Constitutional Court, Guatemala, May 12, 2017.

<sup>55</sup> When criminal investigations are still ongoing, the judge needs to respond before the preliminary hearing—in which it is decided whether there is sufficient evidence to send the case to trial—can take place. If a recusal petition is presented during the preliminary hearing, the pretrial presentation of evidence, or during trial, a judge has to respond within six working days. Code on Criminal Procedure, art. 65.

<sup>56</sup> Human Rights Watch interviews with 10 judges, eight prosecutors, four judicial functionaries, seven jurists, and seven lawyers (names withheld), Guatemala, May and June 2017.

at most,<sup>57</sup> but in practice they tend to take at least two months.<sup>58</sup> Such delays are particularly problematic in cases where defendants file repeated recusal petitions, when the total accumulated delay can stretch into many months.

- In the **Phantom Jobs Case**, a defendant presented a recusal petition on November 27, 2015, but the appellate court only ruled on March 28, 2016—almost four months later than it should have.
- In the **Impunity Law Firm case**, five recusal petitions stalled proceedings for more than a year. For example, a recusal was filed on November 7, 2016, but the appellate court did not issue a ruling until January 26, 2017—more than two-and-a-half months later than it should have.

### 3) Judges and judicial functionaries delay bureaucratic procedures

In addition to courts' failure to abide by deadlines for reviews, the resolution of *amparo* and recusal petitions is also held up by serious bureaucratic delays before and (especially) after the review takes place.

Before an appellate court can review a petition, it must obtain either a report about the issue at hand or the case files (or copies of the files) from the first instance court. The law requires that the transfer of these files occur promptly. In the case of *amparos*, the processing of the petition must be done as soon as possible—it has priority over other administrative processes.<sup>59</sup> In case of recusals, the court must send the case files to the higher court within one day after having notified all parties of the appeal.<sup>60</sup>

However, the transfer of the files routinely takes weeks to occur, according to judges and judicial functionaries. One cause for this delay, they said, is their large workload. Judges and

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<sup>57</sup> If a judge considers that the grounds alleged should not give rise to a recusal, he or she forwards the case to a higher court for review (Law on the Judicial Organism, art. 129), which has to hold a hearing within five days in which it will decide about the petition (Code on Criminal Procedure, art. 150bis). If, in contrast, the judge considers that the recusal petition is valid, he or she must still forward the request to a higher court for review, which must decide on the petition within 48 hours (Law on the Judicial Organism, art. 128). Also see Constitutional Court, Case Files 1571-2014, 1596-2014 and 1639-2014 (accumulated) (Expedientes 1571-2014, 1586-2014 y 1639-2014 [acumulados]), February 10, 2015, Constitutional Court, Case File 3009-2013 (Expediente 3009-2013), January 15, 2015 and Constitutional Court, Case File 4801-2013 (Expediente 4801-2013), January 16, 2014.

<sup>58</sup> Human Rights Watch interviews with 10 judges, eight prosecutors, four judicial functionaries, seven jurists, and seven lawyers (names withheld), Guatemala, May and June 2017.

<sup>59</sup> Amparo Law, arts. 5(a), (d), and 33.

<sup>60</sup> Code on Criminal Procedure, art. 410.



judicial functionaries also told Human Rights Watch that higher courts can be very particular about the order, stamping, and numbering of the files they receive, and they frequently return case files to the lower court when the files do not conform to their preferences—such as, for example, when the documents are not compiled in a certain order.<sup>61</sup>

- In the **Blanco Lapola Case**, the judge waited until April 24, 2012 to send a recusal petition to the appellate court that was presented on April 4, 2012, an almost three-week delay.
- In the **Impunity Law Firm Case**, a substitute judge sent the petition for her recusal to the appellate court on November 9, 2016. The appellate court should have decided on the petition within five days but returned the case file without a decision on the merits 15 days later, on November 24, 2016, citing that there were “inconsistencies in page numbering,” “ripped pages,” the need to “sow and stamp” a folder, “contradictions” in the notification address for a lawyer and a defendant in the case, and that regarding one of the folders in the case file, the original file—instead of the certified copy—had to be sent. (It eventually took until January 26, 2017 for the petition to be rejected.)

A second and even more serious source of bureaucratic delay occurs after a resolution has been reached. Under Guatemalan law, judicial orders only take effect when the parties in the case have received official notification.<sup>62</sup> It is unclear whether an order takes effect at the moment that one of the parties has been notified, or whether it takes effect only after all parties have received notifications. Human Rights Watch interviewed six different judges, prosecutors, and judicial functionaries who indicated that each court interprets this differently “depending on who the parties are, who the lawyers are, and who the judges are.”<sup>63</sup>

Notification of *amparo* rulings should be transmitted the day after the judge makes his or her decision, at the latest.<sup>64</sup> In ordinary cases, decisions about case processing, such as the scheduling of hearings, should be issued within two working days. Decrees (*autos*)—

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<sup>61</sup> Human Rights Watch interviews with six judges and four judicial functionaries (names withheld), Guatemala, May and June 2017.

<sup>62</sup> Code on Criminal Procedure, arts. 160-176, and Law on the Judicial Organism, art. 142bis.

<sup>63</sup> Human Rights Watch interviews with two judges, three prosecutors, and one judicial functionary (names withheld), Guatemala, May and June 2017.

<sup>64</sup> Amparo Law, art. 5(c).

slightly more elaborate determinations, such as decisions on recusals—should be notified within five working days, and judicial decisions within 15 working days.<sup>65</sup>

Notifications of *amparo* and recusal decisions, however, too often take much longer, holding up proceedings.

- In the **Blanco Lapola Case**, the notification of an appellate court decision issued on July 2, 2012 was received on September 27, 2012—nearly three months later.<sup>66</sup>
- In the **Phantom Jobs Case**, the notification process for a Supreme Court ruling on an *amparo* petition that was issued on February 7, 2017 (which itself came eight months late) only began on May 26, 2017—more than three-and-a-half months later.

#### 4) Judges suspend proceedings while awaiting the resolution of petitions

Judges routinely halt criminal proceedings when a decision from another court regarding an *amparo* petition is pending—even when they are not required to do so because no provisional *amparo* has been issued.<sup>67</sup>

One reason for this—according to judges, prosecutors, and judicial functionaries interviewed by Human Rights Watch—is that judges are reluctant to move forward with proceedings amidst uncertainty: if the *amparo* is granted, the proceedings they have carried out might be nullified.<sup>68</sup> Another reason, according to judges themselves, is that if they continue with proceedings, they might be subjected to complaints—which, however unfounded, might be time-consuming distractions that could even have negative consequences for their career.<sup>69</sup>

- In the **Blanco Lapola case**, the Attorney General’s Office and CICIG filed *amparo* petitions to the Supreme Court in January 2015, which were granted in October 2015. Blanco Lapola appealed almost immediately, but it took the Constitutional Court until the end of July 2017—almost 22 months—to reject the appeal. The judge

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<sup>65</sup> Law on the Judicial Organism, art. 142bis.

<sup>66</sup> It is unclear whether the court caused the delay by not sending the document on time to the person performing the notification, or whether the person responsible for performing the notification caused the delay.

<sup>67</sup> Human Rights Watch interviews with eight judges, nine prosecutors, four justice officials and seven lawyers (names withheld), Guatemala, May and June 2017.

<sup>68</sup> Human Rights Watch interviews with five judges (names withheld), Guatemala, May and June 2017.

<sup>69</sup> Human Rights Watch interviews with four judges (names withheld), Guatemala, May and June 2017.

in charge of the main proceedings in the case had not scheduled any hearings between October 2014 and July 2017, effectively stalling the case for two years and nine months.

When a recusal petition is presented, something similar happens. Although the presentation of a petition does not suspend proceedings, judges are not allowed to perform any acts until the petition is resolved by a higher court.<sup>79</sup> Judges do not tend to send the case to a “replacement judge”, but typically order the suspension of proceedings until the higher court has ruled on the petition.

- In the **Phantom Jobs Case**, a defendant presented a recusal petition on November 27, 2015. The judge rejected the petition, sent it to an appellate court for review, and suspended proceedings in the case. The appellate court rejected the recusal on March 28, 2016. A defendant presented an *amparo* petition about that decision, and the Supreme Court finally rejected the *amparo* in February 2017. In total, the recusal had held up the case for more than 14 months.
- In the **Impunity Law Firm Case**, two defendants presented recusal petitions against a substitute judge on November 7, 2016. Two days later, the judge rejected the petitions and sent them to an appellate court for review, suspending proceedings in the case. The appellate court did not hand down a decision until January 26, 2017. This stalled the case for two-and-a-half months.

## 5) Judges fail to reschedule suspended hearings in a timely manner

Even when a suspension or pending motion is resolved and there is no obstacle to continuing proceedings in a case, judges sometimes schedule hearings for a date several months in the future. This compounds the already considerable delays caused by *amparo* and recusal petitions, among others.

- In the **La Línea Case**, the preliminary hearing planned for September 28, 2015 was suspended. The judge scheduled a new preliminary hearing for March 28, 2016—six months later.
- In the **Impunity Law Firm Case**, the judge suspended the preliminary hearing scheduled on May 31, 2017 and re-scheduled for August 3, 2017—two months later.

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<sup>79</sup> Code on Criminal Procedure, art. 67, and Law on the Judicial Organism, art. 125.

- In the **Genocide Case**, a new trial court was appointed to try the case in June 2013, but that court took until October 2013 to schedule the start of the trial for January 2015—a year-and-a-half after it initially received the case.

## 6) Defense lawyers exploit the judiciary’s failings with dilatory tactics

Some defense lawyers take full advantage of the opportunities for delay and disruption that the court system’s dysfunctional handling of motions and petitions affords them. As noted above, the Inter-American Court of Human Rights denounced this problem in its rulings on the **Myrna Mack** and **Dos Erres Cases**, concluding that the “indiscriminate filing” of *amparo* petitions<sup>71</sup> had been used by defendants to delay criminal proceedings.<sup>72</sup> More recently, Constitutional Court President Francisco De Mata Vela told Human Rights Watch: “Some defendants present *amparo* petitions to try to hinder the ordinary proceedings without there being a provisional *amparo*. In practice, the *amparo* has been misused.”<sup>73</sup>

In the cases documented in this report, Human Rights Watch found multiple instances in which defense attorneys filed motions that—given the substance, timing, or other factors—appeared to be aimed at delaying court proceedings.

- In the **Phantom Jobs Case**, a defendant filed a petition for recusal of the judge (who had been sitting on the case for more than a year) only three days before the preliminary hearing was scheduled to take place.
- In the **Impunity Law Firm Case**, a defendant changed lawyers less than two weeks before the preliminary hearing was scheduled. The new lawyer then filed a recusal petition against the judge claiming “grave enmity.”
- In the **Blanco Lapola Case**, defendants repeatedly filed recusal petitions against the same judge—in April 2012, February 2013, April 2013, and October 2013—utilizing the same arguments that had already been rejected by the courts.

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<sup>71</sup> Inter-American Court of Human Rights, *Dos Erres Case*, paras. 108 and 109.

<sup>72</sup> Inter-American Court of Human Rights, *Myrna Mack Case*, para. 207, and Inter-American Court of Human Rights, *Dos Erres Case*, para. 119.

<sup>73</sup> Human Rights Watch interview with Francisco De Mata Vela, President of the Constitutional Court, Guatemala, May 12, 2017.

In most cases it is impossible to know for certain what motivated the defense attorneys to file a questionable appeal. However, in the **Genocide Case**, noted below, one of the defense attorneys, Francisco García Gudiel, boasted in an interview for a documentary film that he had intentionally sought to manipulate the trial court by seeking a suspension to allow time for preparation that he did not need, and by seeking to provoke a conflict with the presiding judge so as to disrupt the proceedings. García Gudiel boasted that the presiding judge had “dug her own grave with the shovel” he had given her: by having allowed him to represent Ríos Montt, he could file the actions that eventually suspended the trial.<sup>74</sup>

## 7) Judges and lawyers are not held accountable for delays

Guatemalan law allows the courts to impose a monetary fine on lawyers who file frivolous or “notoriously inadmissible” *amparo* petitions. However, the fine for each instance can be no more than 1000 quetzals (US\$135), an extremely modest sum for attorneys representing wealthy clients.<sup>75</sup> And the majority of these fines are never paid, according to the president of the Constitutional Court.<sup>76</sup>

The Constitutional Court publishes the names of lawyers who have not paid their fines for filing frivolous *amparo* petitions. At the time of writing, 3,175 lawyers had not paid the fines imposed by the Constitutional Court. One lawyer owes the Court more than 102,000 quetzals (US\$14,000).<sup>77</sup> In total, more than 9 million quetzals (US\$ 1.2 million) in fines remain outstanding.<sup>78</sup> Given that the maximum amount of a fine is US\$135, this number gives an impression of the magnitude of the problem.

Judicial independence is a cornerstone of the rule of law, and it is essential that judges be able to perform their functions without undue pressure or having to fear for their jobs. Likewise, lawyers need to be able to defend their clients to the best of their ability.

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<sup>74</sup> “So she started to dig her own grave. And I gave her the shovel so that she could start digging.” (“Entonces empezó ella a excavar su propia tumba. Y yo le di la pala para que ella comenzara a excavar.”) Izabel Acevedo, “The Good Christian” (“El Buen Cristiano”), film documentary, 2016.

<sup>75</sup> Amparo Law, art. 46, and Agreement 1-2013, Constitutional Court, art. 72.

<sup>76</sup> Human Rights Watch interview with Francisco De Mata Vela, President of the Constitutional Court, Guatemala, May 12, 2017.

<sup>77</sup> Constitutional Court, “List of lawyers with fines” (“Listado de abogados con multas”), <http://cc.gob.gt/listado-de-abogados-con-multas/> (accessed September 7, 2017).

<sup>78</sup> Ibid.

Nevertheless, both judges and lawyers have an obligation to perform their functions within the limits of the law and the code of ethics of their profession. Participating in, or condoning, the willful disruption, delay, or obstruction of judicial proceedings violates this obligation.

Judicial delays are largely condoned in Guatemala, according to nearly all judges, prosecutors, jurists, and lawyers interviewed by Human Rights Watch.<sup>79</sup> The president of the Constitutional Court, for example, told Human Rights Watch that “there are no consequences for judges who do not comply with deadlines.”<sup>80</sup>

In Guatemala, the Council on the Judicial Career (Consejo de la Carrera Judicial)—an autonomous body within the judiciary—is in charge of the supervision, evaluation, and discipline of judges and judicial functionaries.<sup>81</sup>

Information from the Disciplinary Board of the Judiciary (Junta de Disciplina Judicial), one of the auxiliary bodies of the Council, shows that in 2016, 111 complaints were filed against judges for allegedly unjustified delays. Of those 111 cases, 100 were dismissed and in 11 cases, hearings were held. After those 11 hearings, eight cases were dismissed; in only three of the 111 cases were the judges found to have been responsible for undue delays. Their only sanction was a written reprimand (*amonestación escrita*). In the five years prior (2011-2015), there were 527 complaints filed against judges for delays. The Disciplinary Board applied sanctions in 15 of these cases, ranging from written reprimands to suspensions without pay of up to 20 days.<sup>82</sup>

Human Rights Watch is not in a position to assess the Disciplinary Board's rulings in these cases. Nonetheless, the results suggest several possible conclusions. One is that the Disciplinary Board is not sanctioning judges who are indeed responsible for causing unjustifiable delays—a conclusion that is supported by the strong consensus Human

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<sup>79</sup> Human Rights Watch interviews with 10 judges, eight prosecutors, seven jurists, and seven lawyers (names withheld), Guatemala, May and June 2017

<sup>80</sup> Human Rights Watch interview with Francisco De Mata Vela, President of the Constitutional Court, Guatemala, May 12, 2017.

<sup>81</sup> Law on the Judicial Career (Ley de Carrera Judicial), Decree No. 32-2016 of June 29, 2016, art. 4. At the time of writing, the council was not fully operational because of Congress' failure to appoint two members. However, the auxiliary bodies of the council that supervise and discipline judges and judicial functionaries—bodies that previously were under the authority of the Supreme Court (and thus already existed)—continue to do their work as before. Human Rights Watch interview with Osvaldo Aguilar, President of the Council on the Judicial Career, Guatemala, June 22, 2017.

<sup>82</sup> Human Rights Watch email correspondence with Gabriel Estuardo García Luna, President of the Disciplinary Council of the Judiciary, Guatemala, July 5, 2017.

Rights Watch found among lawyers and justice officials (including the President of the Constitutional Court) that such unjustifiable delays are commonplace.<sup>83</sup> Another possible conclusion is that the Disciplinary Board was right to determine that, in the vast majority of cases brought before it, the judges have reasonable grounds for justifying their failure to meet deadlines. One such justification offered by multiple judges interviewed by Human Rights Watch is that judges are assigned caseloads that are too heavy for them to be able to meet all their deadlines.<sup>84</sup> Yet, if indeed the delays are caused by factors beyond the judges' control, that judiciary bears responsibility for addressing these factors and ensuring that judges are able to meet their legally-mandated deadlines.

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<sup>83</sup> Human Rights Watch interviews with Francisco De Mata Vela, President of the Constitutional Court, Guatemala, May 12, 2017, and with three prosecutors and three lawyers (names withheld), Guatemala, May and June 2017.

<sup>84</sup> Human Rights Watch interviews with seven judges (names withheld), Guatemala, May and June 2017.

## Current Cases

Human Rights Watch examined five ongoing criminal prosecutions alleging egregious abuses of power that are currently being co-prosecuted by the Attorney General's Office and CICIG, as well as a sixth—the Genocide Case—that does not involve CICIG participation. All six cases have been plagued by unreasonably long delays.

### Blanco Lapola Case

In 2012, the Attorney General's Office and CICIG brought charges against Marlene Blanco Lapola, a former director of the National Police and deputy interior minister, for her alleged involvement in the creation of criminal groups inside the National Police and the ministry, and for allegedly ordering the extrajudicial execution of three people.<sup>85</sup> *More than five years* later, her case has yet to go to trial.

According to the prosecution, Blanco Lapola—who served as a director of the National Police between September 2008 and June 2009 and then as a deputy interior minister until June 2010—created a criminal group composed of elite police forces and, in 2009, ordered them to kill three people. (The alleged victims were suspected of extorting entrepreneurs in the transport sector; however, the investigation by CICIG and the Attorney General's Office turned up no evidence that the three were responsible for the extortions.) Before each assassination—according to the prosecution—Blanco Lapola instructed the group's coordinator to find those responsible for the extortion and kill them and afterwards, received a report back from him about what happened in each case.<sup>86</sup>

Blanco Lapola was arrested in March of 2012, along with three other suspects—a former police commissioner and two former police officers—who had allegedly participated in the

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<sup>85</sup> “Press release 018 Former Director of the PNC detained” (“Comunicado de prensa 018. Capturan a ex directora de la PNC”), CICIG, March 23, 2012, <http://cicig.org/index.php?mact=News,cntnto1,detail,o&cntnto1articleid=148&cntnto1returnid=512> (accessed September 7, 2017).

<sup>86</sup> Juan Carlos Rojas Salguero, the coordinator of group of elite police forces who became a collaborating suspect (*colaborador eficaz*), testified about the planning and execution of the assassinations. Investigators obtained copies of emails that Rojas Salguero sent to Blanco Lapola about the assassinations, and Blanco Lapola's assistants confirmed that she had ordered them to send information received from Rojas Salguero to Blanco Lapola's email. Human Rights Watch interviews and online correspondence with prosecutor (name withheld), Guatemala, May, June and July 2017.



assassinations. Two others were arrested later, and two remain fugitive.<sup>87</sup> Although prosecutors presented their accusation in June 2012, the preliminary hearing to determine if the case will go to trial had not taken place as of September 2017. This delay has been caused by a combination of dilatory tactics by the defense and the repeated failure of judges at each stage of the process to meet legally-established deadlines for reaching decisions.

Since the proceedings started, the case was stalled for *almost three years* as a result of recusal petitions. Blanco Lapola’s defense attempted to remove the judge on five separate occasions, repeatedly using the same arguments that the court had previously rejected. While all five motions were eventually rejected, higher courts took months to do so even though Guatemalan law requires these decisions to be made in five days.<sup>88</sup>

For instance, on April 4, 2012, two weeks after Blanco Lapola’s detention and prior to the hearing to determine whether the case would be sent to trial, she sought to remove the judge, claiming that the fact he had imposed pretrial detention on her was evidence of bias. Her petition also offered as evidence of bias the fact that the judge had performed a procedure to record evidence without the defense being present. An appellate court rejected these arguments as “completely inadmissible.”<sup>89</sup> The court held that pretrial detention had been justified, that the procedure to record evidence had been performed according to law, and that the defense had had the opportunity to review and challenge these proceedings. The judge took *20 days* to send the case to the appellate court, and the appellate court then took until July 2—a *month-and-a-half*, instead of the five days established by law<sup>90</sup>—to reach a decision. The official notification of this decision then took almost *three more months*—until September 27—even though Guatemalan law requires that parties be notified of judicial decisions within 15 working days.<sup>91</sup>

The first petition for recusal eventually ended up causing a *10-month* delay, given that the court only scheduled the preliminary hearing—to determine whether the case would go to trial—for February 3, 2013. But Blanco Lapola’s lawyers failed to appear that day, and the

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<sup>87</sup> Human Rights Watch interviews with prosecutor (name withheld), Guatemala, May 3-5 and 24, 2017.

<sup>88</sup> Code on Criminal Procedure, art. 150bis.

<sup>89</sup> First Chamber of the Court of Appeals for Criminal Matters, Drug-Trafficking and Environmental Crimes (Sala Primera de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos contra el Ambiente), Case 01076-2011-0019, July 2, 2012.

<sup>90</sup> Code on Criminal Procedure, art. 150bis

<sup>91</sup> Law on the Judicial Organism, art. 142bis.

court rescheduled the hearing for *three weeks* later. This time the lawyers showed up, only to file two new motions to remove the judge from the case because, they again alleged, the fact that the judge imposed pretrial detention on her was evidence of bias, and they alleged that they saw seen lawyers from CICIG and the Attorney General’s Office near the judge’s office the day before the hearing.<sup>92</sup> The judge suspended proceedings<sup>93</sup> and forwarded these motions to an appellate court, but it took *two months* for him to do so.<sup>94</sup> The appellate court rejected the motions as “inadmissible”: the defense lawyers had made use of a type of motion, called an “impediment,” that can only be employed by a judge. If the defense wished to remove the judge, the court ruled, they needed to file an actual recusal petition. Although these motions should have been decided within five days,<sup>95</sup> the appellate court took more than *two months* to reject them and then another *month* to officially notify its decision.<sup>96</sup> As a result, the case was stalled again until August.

In the meantime, on April 1, 2013, Blanco Lapola filed a fourth request to remove the judge, repeating the exact same arguments from the original petition that had previously been rejected by the appellate court, and adding as further evidence of bias the fact that the judge had sat, several years prior, on a case involving three of her co-defendants in the current case. She was joined on this petition by one of these co-defendants, Israel Chávez y Chávez. Both the judge and the appellate court rejected the recusal petition—but, once again, only after a delay.<sup>97</sup> Although it should have taken only about five days to reach that decision,<sup>98</sup> it took more than *three months* to do so.

The lawyer representing Blanco Lapola and Chávez y Chávez then filed yet another petition to remove the judge—their fifth—on October 10, 2013, making the same arguments that had already been repeatedly rejected. On this occasion, the appellate court accepted

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<sup>92</sup> Impediments filed on February 27, 2013.

<sup>93</sup> First Court of First Instance for High Risk Criminal Matters (Juzgado Primero de Primera Instancia Penal de Mayor Riesgo), Case 01076-2011-0019, February 28, 2013.

<sup>94</sup> Ibid., April 24, 2013.

<sup>95</sup> For the purpose of these calculations, we considered these motions to be recusal petitions since their objective was to remove the judge from the case, and applied the corresponding deadlines of the Code on Criminal Procedure, art. 150bis.

<sup>96</sup> Human Rights Watch review of case files, Case 01076-2011-0019, May 24-26, 2017.

<sup>97</sup> Chamber of the Court of Appeals for Criminal Matters for High Risk and Forfeiture Proceedings (Sala de la Corte de Apelaciones del Ramo Penal, de Procesos de Mayor Riesgo y de Extinción de Dominio), Case 01076-2011-0019, July 8, 2013; this ruling was implemented by the First Court of First Instance for High Risk Criminal Matters (Juzgado Primero de Primera Instancia Penal de Mayor Riesgo) on July 19, 2013.

<sup>98</sup> Code on Criminal Procedure, art. 150bis.

Chávez y Chávez’s petition and ordered the case to be transferred to another court on October 30, 2013.<sup>99</sup> CICIG and the Attorney General’s Office filed an *amparo* petition to appeal this judgment, but the Supreme Court sided with the defendants.<sup>100</sup> The prosecution then appealed to the Constitutional Court, which overruled the Supreme Court, finding that the Supreme Court’s decision was not supported by any evidence.<sup>101</sup>

That ruling returned the case to the original court—with the original judge—but only after almost *two years*. The Supreme Court had taken *six months* to issue a ruling, which it should have issued in a maximum of 31 days.<sup>102</sup> The Constitutional Court took a *full year*, when it should have taken only 31 days.<sup>103</sup> And it then took another *two months* to reject Blanco Lapola’s request for clarification, although it should have done so within days.<sup>104</sup>

In the meantime, after the Supreme Court’s ruling in October 2013, the pretrial proceedings in the case against Blanco Lapola had been forwarded to another judge. The only action this new judge took was in October 2014, when she held a hearing on Blanco Lapola’s pretrial detention. She ruled that Blanco Lapola should be released, arguing that the prison she was detained in was overcrowded and that, because the Attorney General’s Office already had presented its accusation, there was no longer any risk that Blanco Lapola might obstruct the case. CICIG and the Attorney General’s Office filed an *amparo* petition in January 2015, which the Supreme Court granted in October 2015—*nine months* later (although it should have only taken 31 days) and a year after Blanco Lapola had been released, Blanco Lapola appealed the Supreme Court ruling to the Constitutional Court on October 7, 2015.

The Constitutional Court took until July 25, 2017—*almost 22 months*—to reject Blanco Lapola’s appeal, even though, according to the applicable deadlines, it should have done

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<sup>99</sup> Chamber of the Court of Appeals for Criminal Matters for High Risk and Forfeiture Proceedings (Sala de la Corte de Apelaciones del Ramo Penal, de Procesos de Mayor Riesgo y de Extinción de Dominio), Case 01076-2011-0019, October 30, 2013.

<sup>100</sup> Supreme Court of Justice, Accumulated *amparos* 2105-2013, 2199-2013 (Amparos acumulados 2105-2013, 2199-2013), June 19, 2014.

<sup>101</sup> Constitutional Court, Accumulated case files 3146-2014, 3182-2014, and 3183-2014 (Expedientes acumulados 3146-2014, 3182-2014 y 3183-2014), July 24, 2015.

<sup>102</sup> Timeframes established in the Amparo Law, arts. 33-41, plus time for notifications.

<sup>103</sup> Timeframes established in the Amparo Law, arts. 61-71, plus time for notifications.

<sup>104</sup> Constitutional Court, Accumulated case files 3146-2014, 3182-2014, and 3183-2014 (Expedientes acumulados 3146-2014, 3182-2014 y 3183-2014), Clarification (Aclaración), September 21, 2015.

so in about a month.<sup>105</sup> While the pending *amparo* petition should not have stopped other proceedings in the case, the judge did not schedule any hearings in the case because there had not been a final resolution about the *amparo* petition. It took until July 10, 2017, after the case had been transferred to a new court to alleviate the workload of the original judge, for a hearing to be scheduled—one in which it would be determined whether the case would go to trial. However, Blanco Lapola’s defense lawyer, Francisco García Gudiel (who defended Ríos Montt in the Genocide Case), did not appear in court. This created another delay of at least **three months**, after the make-up hearing, originally scheduled for August 7, 2017, had to be postponed three times. At the time of writing, the judge had scheduled the hearing for November 13, 2017.

## Corrupt Military Officers Case

In 2001, eight former military officers embezzled more 470 million quetzals (US\$73 million) from the Guatemalan Ministry of Defense, according to CICIG and the Attorney General’s Office. Among the eight were the son and the lawyer of former dictator Efraín Ríos Montt.<sup>106</sup> Prosecutors maintain that these officials, who all worked in the ministry’s financial department, introduced budget modifications to inflate the ministry’s budget and withdrew this extra money in cash. They are accused of having hidden the evidence by classifying the documents authorizing the withdrawals as “military secrets.” In 2005, the Attorney General’s Office managed to declassify these documents and uncover the evidence that the case against the defendants is largely built on, along with audit reports from the Government Accountability Office (Contraloría de Cuentas) and from forensic experts. The suspects were arrested in March and April of 2009.<sup>107</sup> More than **eight years** later, the case has yet to go to trial.

The defense’s attempts to separate CICIG from the case, claiming the issue did not fall within CICIG’s mandate, stalled proceedings for about **two years**.<sup>108</sup> Then, the judge who initially presided over the pre-trial proceedings ruled in 2013 against sending the case to trial—a ruling later overturned and strongly criticized by the Supreme Court. Yet in the

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<sup>105</sup> Timeframes established in the Amparo Law, arts. 61-71, plus time for notifications.

<sup>106</sup> “Military Officers Case” (“Caso Militares”), CICIG, <http://www.cicig.org/index.php?page=01073-2009-0656> (accessed September 7, 2017).

<sup>107</sup> Human Rights Watch interview with CICIG investigator (name withheld), Guatemala, June 27, 2017, and email correspondence, June 21 and 22, and August 10, 2017.

<sup>108</sup> Human Rights Watch review of case files, Case 01073-2009-0656, June 22 and 23, 2017.

review process that resulted in the overturning, the appellate and Supreme Court took much longer than the law provides to reach a decision.

After the judge of first instance dismissed the case in September 2013,<sup>109</sup> the Attorney General's Office and CICIG appealed that decision to an appellate court, which rejected their appeal and took *six months*—until April 2014—to do so.<sup>110</sup> The prosecution then appealed this ruling to the Supreme Court, which overturned the dismissal, taking another *six months* to do so. The Supreme Court decision found that the first instance judge had failed to “fulfill his obligation to perform a legal, analytical, objective, and concrete study of the evidence that sustained the accusation formulated by the Attorney General's Office.” The Supreme Court then ordered the appellate court to revise its ruling on the appeal,<sup>111</sup> but this court waited *four months* to do so—until February 2015<sup>112</sup>—and then another month to order the first instance judge to execute that decision, which it did not do until April 2015.<sup>113</sup> In other words, it took *a year and seven months* before the judge of first instance revoked his initial decision to dismiss the case.

In the meantime, in March of 2015, several defendants had filed *amparo* petitions against the appellate court's revised decision to order the judge of first instance to open criminal proceedings. *Seven months* later, in October 2015, the Supreme Court ruled in favor of the defendants because it considered that the appellate court had “insufficiently detailed” the accusations against the defendants.<sup>114</sup> CICIG appealed that decision successfully before the Constitutional Court, which ruled that the appellate court had provided sufficient detail and arguments in its ruling, and that the defendants' *amparo* petition had been “manifestly unfounded.”<sup>115</sup> However, it took the Constitutional Court another *year-and-a-*

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<sup>109</sup> Tenth Court of First Instance for Criminal Matters, Drug-Trafficking and Environmental Crimes (Juzgado Décimo de Primera Instancia Penal, Narcoactividad y Delitos contra el Ambiente), Case 01073-2009-0656, September 27, 2013.

<sup>110</sup> First Chamber of the Court of Appeals for Criminal Matters, Drug-Trafficking and Environmental Crimes (Sala Primera de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos contra el Ambiente), Case 01073-2009-0656, April 15, 2014.

<sup>111</sup> Supreme Court of Justice (Corte Suprema de Justicia), Cassation (Casación), October 10, 2014.

<sup>112</sup> First Chamber of the Court of Appeals for Criminal Matters, Drug-Trafficking and Environmental Crimes (Sala Primera de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos contra el Ambiente), Case 01073-2009-0656, February 26, 2015.

<sup>113</sup> Tenth Court of First Instance for Criminal Matters, Drug-Trafficking and Environmental Crimes (Juzgado Décimo de Primera Instancia Penal, Narcoactividad y Delitos contra el Ambiente), Case 01073-2009-0656, March 26, 2015. The judge scheduled the hearing for April 14, 2015.

<sup>114</sup> Supreme Court of Justice, Accumulated *amparos* 373-2015, 469-2015, 515-2015, 528-2015 and 567-2015 (Amparos acumulados 373-2015, 469-2015, 515-2015, 528-2015 y 567-2015), October 27, 2015.

<sup>115</sup> Constitutional Court, Accumulated Case Files 4995-2015, 5041-2015 and 5043-2015 (Expedientes acumulados 4995-2015, 5041-2015 y 5043-2015), May 30, 2017.

*half*, until May 2017, to reach that decision. The case should now be reopened, but in October 2017, the judge of first instance had not taken any action to do so.<sup>116</sup>

## Genocide Case

In 1999, the (UN-sponsored) Guatemalan truth commission concluded that the Guatemalan army committed hundreds of massacres and “acts of genocide” during the dictatorship of General Ríos Montt in 1982 and 1983.<sup>117</sup> The Attorney General’s Office opened an investigation in 2010. Mauricio Rodríguez Sánchez, who was director of military intelligence when the killings occurred, was arrested in 2011. Efraín Ríos Montt was arrested the following year. Both were charged with genocide and war crimes (*crímenes contra los deberes de la humanidad*) for their role in 105 massacres in which 1,771 Mayan Ixiles were murdered.<sup>118</sup> The case went to trial in March 2013. Seven weeks later, Ríos Montt was convicted and sentenced to 80 years in prison. Rodríguez Sánchez was acquitted. However, the Constitutional Court annulled the trial 10 days after the verdict was issued and ordered a new trial.<sup>119</sup> In October 2017, the trial has still not been finalized.

The 2013 trial was marred from the beginning by dilatory tactics by the defense. On the first day, the lawyers who had been representing Ríos Montt throughout the process did not appear in court. Instead, another lawyer, Francisco García Gudiel, announced he had replaced the original defense team, and he requested a five-day suspension of the trial so he could familiarize himself with the case<sup>120</sup>—although he later admitted he did not need it.<sup>121</sup> The tribunal denied this request: he should have been prepared when he agreed to take up representation, the presiding judge, Yassmin Barrios, told him. García Gudiel then sought to remove Barrios from the case, claiming that a “grave enmity” existed between

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<sup>116</sup> Human Rights Watch online correspondence with CICIG investigator (name withheld), October 27, 2017.

<sup>117</sup> Commission for Historical Clarification (Comisión de Esclarecimiento Histórico), *Guatemala, Memory of Silence, Conclusions and recommendations (Guatemala, Memoria del Silencio, Conclusiones y recomendaciones)*, June 1999, [http://www.undp.org/content/dam/guatemala/docs/publications/UNDP\\_gt\\_PrevyRecu\\_MemoriadelSilencio.pdf](http://www.undp.org/content/dam/guatemala/docs/publications/UNDP_gt_PrevyRecu_MemoriadelSilencio.pdf) (accessed August 30, 2017), paras. 108-123.

<sup>118</sup> Human Rights Watch interview with Erick de León, prosecutor of the Unit of Special Cases from the Internal Armed Conflict (Unidad de Casos Especiales del Conflicto Armado Interno), Human Rights Unit, Attorney General’s Office, Guatemala, June 21, 2017.

<sup>119</sup> Constitutional Court, Case File 1904-2013 (Expediente 1904-2013), May 20, 2013.

<sup>120</sup> First Sentencing Court “A” for High Risk Criminal Matters, Drug-Trafficking and Environmental Crimes (Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente de Mayor Riesgo “A”), audio recording of hearing of March 19, 2013.

<sup>121</sup> Izabel Acevedo, “The Good Christian” (“El Buen Cristiano”), film documentary, 2016.

the two of them. He also, simultaneously, sought removal of another of the three judges on the panel, Pablo Xitimul, objecting to the judge's participation because, he claimed, he and the judge were friends. The court rejected the recusal but, to avoid any appearance of conflict, removed García Gudiel from the case and instructed him to leave the courtroom.<sup>122</sup>

Ríos Montt appealed García Gudiel's removal, but an appellate court provisionally rejected his appeal a week later and proceedings in the criminal case continued.<sup>123</sup> In the following weeks, the trial court would hear 133 witnesses, 90 of whom were Maya Ixil victims who testified about crimes committed by the armed forces under Ríos Montt.<sup>124</sup>

Yet a month into the trial, the appellate court changed its earlier decision and instructed the trial court to reverse its expulsion of García Gudiel.<sup>125</sup> The trial court complied, reinstating García Gudiel for the final days of the trial<sup>126</sup>—which ended on May 10 with a guilty verdict for Ríos Montt.<sup>127</sup>

Ten days after the court convicted Ríos Montt, the Constitutional Court effectively annulled the verdict, ruling that the trial court had not properly implemented the appellate court's instructions (the appellate court itself had previously concluded that it had<sup>128</sup>).<sup>129</sup> The Constitutional Court ordered that the trial be restarted—by a new court—at the point where it had been on April 19, 2013—the day the original court should have suspended proceedings.<sup>130</sup> Since then, the process has been mired in interminable delays for *more than four years*.

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<sup>122</sup> First Sentencing Court "A" for High Risk Criminal Matters, Drug-Trafficking and Environmental Crimes (Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente de Mayor Riesgo "A"), audio recording of hearing of March 19, 2013.

<sup>123</sup> Third Chamber of the Court of Appeals for Criminal Matters, Drug-Trafficking and Environmental Crimes (Sala Tercera de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos contra el Ambiente), Amparo 01019-2013-0030, March 26, 2013.

<sup>124</sup> Human Rights Watch interviews with Erick de León and Jennifer Rocío García Estrada, prosecutor and assistant prosecutor of the Unit of Special Cases from the Internal Armed Conflict (Unidad de Casos Especiales del Conflicto Armado Interno), Human Rights Unit, Attorney General's Office, Guatemala, June 21, 22, and 28, and email correspondence, August 16, 2017.

<sup>125</sup> Third Chamber of the Court of Appeals for Criminal Matters, Drug-Trafficking and Environmental Crimes (Sala Tercera de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos contra el Ambiente), Amparo 01019-2013-0030, April 18, 2013.

<sup>126</sup> First Sentencing Court "A" for High-Risk Criminal Matters, Drug-Trafficking and Environmental Crimes (Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente de Mayor Riesgo "A"), May 8, 2013.

<sup>127</sup> *Ibid.*, May 10, 2013.

<sup>128</sup> Third Chamber of the Court of Appeals for Criminal Matters, Drug-Trafficking and Environmental Crimes (Sala Tercera de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos contra el Ambiente), Amparo 01019-2013-0030, May 9, 2013.

<sup>129</sup> Constitutional Court, Case File 1904-2013 (Expediente 1904-2013), May 20, 2013.

<sup>130</sup> Constitutional Court, Case File 1904-2013 (Expediente 1904-2013), May 20, 2013.

García Gudiel later boasted in an interview for a documentary film that he had orchestrated this outcome by manipulating the trial court. He had in fact been fully prepared for the trial on the first day when he requested a five-day suspension, he said in the interview, and anticipated that the suspension would be rejected. García Gudiel also said that the defense team knew that if the court would allow him to participate in the trial, he would have grounds to petition to recuse the judges and thus suspend proceedings. By initially allowing him to represent Ríos Montt, García Gudiel said, the presiding judge had opened the possibility for him to file the motions that would eventually nullify the trial. She had “started to dig her own grave” with the shovel he had given her, he boasted.<sup>131</sup>

More than four years have passed since a new trial was ordered by the 2013 Constitutional Court ruling, but the proceedings have been repeatedly delayed and stalled. A new court was assigned to take the case on June 4, 2013, but that court took until October 30, 2013 to schedule the new trial for January 5, 2015—*a year and a half* after the case had been assigned to it, claiming that its existing caseload prevented it from turning to the genocide case—perhaps the most important court case in the country’s history—any sooner.<sup>132</sup>

When the trial finally began on January 5, 2015, Ríos Montt failed to appear. His defense team said he was too sick to attend the hearing, but after the court threatened sanctions if he did not show up, he arrived within an hour. Then Ríos Montt’s defense petitioned for recusal of one of the judges, Jeannette Valdés, on the grounds that her 2004 academic thesis about the crime of genocide constituted a pre-formed opinion about Ríos Montt’s culpability.<sup>133</sup> The defense, however, had known that this judge would be on the case for more than a year<sup>134</sup>—and Guatemalan law establishes that recusal petitions must be

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<sup>131</sup> “So she started to dig her own grave. And I gave her the shovel so that she could digging.” (“Entonces empezó ella a excavar su propia tumba. Y yo le di la pala para que ella comenzara a excavar.”) Izabel Acevedo, “The Good Christian” (“El Buen Cristiano”), film documentary, 2016.

<sup>132</sup> First Sentencing Court “B” for High Risk Criminal Matters, Drug-Trafficking and Environmental Crimes (Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente de Mayor Riesgo “B”), Case file 01076-2011-00015 (Expediente 01076-2011-00015), October 30, 2013.

<sup>133</sup> José Elías, “Former Guatemalan dictator arrives to genocide trial on gurney” (“El exdictador de Guatemala llega en camilla al juicio por genocidio”), *El País*, [https://elpais.com/internacional/2015/01/05/actualidad/1420493687\\_058039.html](https://elpais.com/internacional/2015/01/05/actualidad/1420493687_058039.html) (accessed September 7, 2017).

<sup>134</sup> Sebastián Escalón, “Judge Valdés wrote her master’s thesis about genocide” (“La juez Valdés escribió su tesis de maestría sobre el genocidio”), *Plaza Pública*, June 24, 2013, <https://www.plazapublica.com.gt/content/la-juez-valdes-escribio-su-tesis-de-maestria-sobre-el-genocidio> (accessed September 7, 2017).



submitted within five days of the trial date being put on the calendar.<sup>135</sup> Nevertheless, the trial court accepted the recusal petition and suspended proceedings,<sup>136</sup> and an appellate court confirmed the removal of the judge in March. A new judge was appointed, and the trial was scheduled to resume in July 2015—more than *six months* after the initial rescheduling.<sup>137</sup>

However, on the day the trial resumed, the defense claimed that Ríos Montt's mental health was so precarious that he would not be able to stand trial. The court ordered a psychiatric evaluation.<sup>138</sup> On August 18, the court decided that the trial could continue, but that because of Ríos Montt's deteriorated mental health, he was unfit for a regular trial and that he would be subject to special proceedings in which the court would not make a determination about his guilt nor apply a prison sentence. Instead, it would only consider whether his condition warranted coercive measures, such as internment in a psychiatric clinic. These proceedings would take place behind closed doors, without Ríos Montt's presence being required. Victims could attend, but not the press.<sup>139</sup> The prosecution appealed this decision, but the court rejected their appeal a week later and set a new trial date for January 2016, producing another *five-month* delay.<sup>140</sup>

In September, the prosecution filed an *amparo* petition against that decision. They accepted that the case against Ríos Montt would have to take place behind closed doors, but, they argued, holding the trial against Rodríguez Sánchez behind closed doors would violate the victims' right to justice. They claimed that the cases against Ríos Montt and Rodríguez Sánchez should be separated, so that at least Rodríguez Sánchez' trial would be public.<sup>141</sup>

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<sup>135</sup> Code of Criminal Procedure, art. 344

<sup>136</sup> BBC News, "Rios Montt Guatemala genocide retrial suspended," January 5, 2015, <http://www.bbc.com/news/world-latin-america-30678693> (accessed August 30, 2017).

<sup>137</sup> Chamber of the Court of Appeals for Criminal Matters for High Risk and Forfeiture Proceedings (Sala de la Corte de Apelaciones del Ramo Penal, de Procesos de Mayor Riesgo y de Extinción de Dominio), Case 01076-2011-0015, March 19, 2015.

<sup>138</sup> First Sentencing Court "B" for High Risk Criminal Matters, Drug-Trafficking and Environmental Crimes (Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente de Mayor Riesgo "B"), Case 01076-2011-0015, July 23, 2015.

<sup>139</sup> Code on Criminal Procedure, arts. 76, 484, and 486, and Criminal Code, art. 88.

<sup>140</sup> *Ibid.*, August 25, 2015.

<sup>141</sup> See First Chamber of the Court of Appeals for Criminal Matters, Drug-Trafficking and Environmental Crimes (Sala Primera de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos contra el Ambiente), Amparos 01017-2015-00078 and 01017-2015-00079, May 6, 2016.

The January 2016 court date was suspended because the *amparo* petition remained pending, but the trial eventually restarted on March 16, 2016—*two months* later—even though the petition had still not been resolved. On May 6, 2016, the appellate court finally decided on the *amparo* petition from the prosecution—more than *seven months* later, even though it should have only taken a maximum of 31 days<sup>142</sup>—and separated the cases against Ríos Montt and Rodríguez Sánchez.<sup>143</sup> Rodríguez Sánchez appealed the decision, and the Constitutional Court ruled on May 18, 2017—*a year* later, instead of the 31 days the law provides as a maximum<sup>144</sup>—to separate the cases. The Court also determined that the trials should resume from their procedural situation on May 4, 2016.<sup>145</sup> In October 2017, *five months later*, the hearings restarted.<sup>146</sup> Ríos Montt and Rodríguez Sánchez remain under house arrest.

## La Línea Case

In April 2015, a major corruption case involving the customs authority shook Guatemala. Evidence emerged that a criminal network had defrauded the state by collecting bribes instead of customs duties from importers.<sup>147</sup> Revelations that high-level authorities might be involved sparked mass protests that led to the resignation of Guatemala’s president and vice president.<sup>148</sup> Thirty people have been charged in the case.<sup>149</sup> *More than two years* after the case got underway, in October 2017, the case has not gone to trial yet.

In an operation that started in the early morning of April 16, 2015, police arrested 22 people, including the director and a former director of the national tax authority, the supervisor and directors of the customs authority, and direct operators of the criminal

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<sup>142</sup> Timeframes established in Amparo Law, arts. 33-41, plus time for notifications.

<sup>143</sup> First Chamber of the Court of Appeals for Criminal Matters, Drug-Trafficking and Environmental Crimes (Sala Primera de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos contra el Ambiente), Amparos 01017-2015-00078 and 01017-2015-00079, May 6, 2016.

<sup>144</sup> Timeframes in Amparo Law, arts. 61-71, plus time for notifications.

<sup>145</sup> Constitutional Court, Case File 2234-2016 (Expediente 2234-2016), May 18, 2017.

<sup>146</sup> The case against Rodríguez Sánchez will proceed like an ordinary trial, but the case against Ríos Montt will a special procedure in which he cannot be found guilty, as described above.

<sup>147</sup> “Press release 011. Network of customs fraud dismantled (“Comunicado de prensa 011. Desmantelan red de defraudación aduanera”), CICIG, April 16, 2015, <http://www.cicig.org/index.php?mact=News,cntnto1,detail,o&cntnto1articleid=587&cntnto1returnid=67> (accessed September 6, 2017).

<sup>148</sup> Carlos Dada, “Corruption Charges Turn Guatemala Upside Down,” *New Yorker*, September 4, 2015, <https://www.newyorker.com/news/news-desk/corruption-charges-turn-guatemala-upside-down> (accessed September 7, 2017).

<sup>149</sup> Human Rights Watch online correspondence with prosecutor (name withheld), September 1, 2017.

network. The private secretary of the vice president was also a suspect, but at the time, he remained at large.<sup>150</sup>

These arrests were the result of an eight-month investigation that included the interception of 66,000 phone calls and 6,000 emails, the surveillance of the suspected leaders of the crime ring, and an extensive analysis of documents. Investigations by CICIG and the Attorney General's Office uncovered evidence that an external criminal network created a corruption ring inside the customs authority. Investigators concluded that import companies would call operators of the criminal network by telephone, "*la línea*," and would arrange to pay the criminal network a bribe that was lower than the customs duties they would have paid the state. Members of the criminal network then allegedly divided the money among themselves. According to estimates by Guatemala's tax authority, the corruption ring defrauded the state of at least 27 million quetzals (US\$3.7 million) in 2014 and 2015.<sup>151</sup>

Initially, investigators believed that the private secretary of the vice president was the leader of the crime ring. However, in wiretaps presented during the first hearing in the case, on April 17, 2015, La Línea operators mentioned receiving orders from "the President," "the Lady," "Number 2," and "The R," which suggested that the then-president and vice president might be directly involved in this corruption ring.<sup>152</sup> The news of the possible involvement of the leaders of the country in the corruption scheme sparked massive street protests in the capital. These eventually led to the resignation of the vice president in May 2015, and of the president in September 2015.<sup>153</sup>

On September 28, 2015, one of the alleged operators of La Línea, Estuardo González, who later became a collaborating suspect (*colaborador eficaz*), provided more incriminating information. He said he was the one who referred to the president and vice president as "Number 1" and "Number 2" (as heard on the wiretaps) for the purpose of dividing the

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<sup>150</sup> "Press release 011. Network of customs fraud dismantled ("Comunicado de prensa 011. Desmantelan red de defraudación aduanera"), CICIG, April 16, 2015, <http://www.cicig.org/index.php?mact=News,cntnto1,detail,o&cntnto1articleid=587&cntnto1returnid=67> (accessed September 6, 2017).

<sup>151</sup> Human Rights Watch interviews with CICIG investigator (name withheld), Guatemala, May 10, 2017, and online correspondence with prosecutor (name withheld), August 1, 2017.

<sup>152</sup> "'The Lady' appears in audios of #RedSAT case" ("Aparece 'la Señora' en los audios del caso #RedSAT"), *Soy502*, April 17, 2015, <http://www.soy502.com/articulo/aparece-senora-audios-caso-redsat-audiencia> (accessed September 7, 2017).

<sup>153</sup> Carlos Dada, "Corruption Charges Turn Guatemala Upside Down," *New Yorker*, September 4, 2015, <https://www.newyorker.com/news/news-desk/corruption-charges-turn-guatemala-upside-down> (accessed September 7, 2017).

corruption money, and that he distributed the money that the crime ring brought in, 50 percent of which went to the president and vice president.<sup>154</sup>

The investigations in the La Línea case led to the discovery of other high-level corruption cases: alleged corruption in the construction and operation of a new container terminal in the port of Puerto Quetzal,<sup>155</sup> evidence of illegal financing of the former president’s Patriot Party political campaign by media companies and other businesses,<sup>156</sup> and allegations that cabinet ministers pooled their money, also allegedly obtained through corruption, to buy the then-president and vice president expensive birthday gifts—like a beach house, a yacht, and a helicopter.<sup>157</sup> Another case involved allegations of judicial corruption: three La Línea suspects were accused of bribing a judge in order to be conditionally released from prison.<sup>158</sup> All these cases are currently being prosecuted.

The La Línea case has been plagued by delays resulting from the tactics of the defense team, and protracted delays by the court in scheduling new hearings. As a result, the preliminary hearing—in which the judge will determine whether the case will be sent to trial—only started on July 24, 2017—more than two years after the initial arrests.

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<sup>154</sup> J. Gramajo and J. Ramos, “Eco: ‘It was me who identified Pérez and Baldetti as 1 and 2’ to distribute bribes” (“Eco: ‘Fui yo quien identificó como 1 y 2 a Pérez y Baldetti’ para distribuir sobornos”), *Prensa Libre*, September 28, 2015, <http://www.prensalibre.com/guatemala/justicia/la-linea-> (accessed August 30, 2017) and “‘Eco’: Otto Pérez and Roxana Baldetti received 50 percent of the collected customs bribes” (“‘Eco’: Otto Pérez y Roxana Baldetti recibían el 50 por ciento de lo cobrado por sobornos aduanales”), *El Periódico*, September 28, 2015, <https://elperiodico.com.gt/nacion/2015/09/28/eco-otto-perez-y-roxana-baldetti-recibian-el-50-por-ciento-de-lo-cobrado-por-sobornos-aduanales/> (accessed August 30, 2017).

<sup>155</sup> “Press release 025. New corruption case in Port of Quetzal linked to former leaders” (“Comunicado de prensa 025. Nuevo caso de corrupción en Portuaria Quetzal vincula a exgobernantes”), CIGI, April 15, 2016, <http://www.cicig.org/index.php?mact=News,cntnto1,detail,o&cntnto1articleid=701&cntnto1returnid=1671> (accessed September 6, 2017).

<sup>156</sup> “Press release 047. Case of the Cooptation of the Guatemalan State” (“Comunicado de prensa 047. Caso Cooptación del Estado de Guatemala”), CIGI, June 2, 2016, <http://www.cicig.org/index.php?mact=News,cntnto1,detail,o&cntnto1articleid=723&cntnto1returnid=67> (accessed September 6, 2017).

<sup>157</sup> “Press release 051. The Contribution Case” (“Comunicado de prensa 051. Caso la Cooperacha”), CIGI, June 11, 2016, <http://www.cicig.org/index.php?mact=News,cntnto1,detail,o&cntnto1articleid=727&cntnto1returnid=67> (accessed September 6, 2017).

<sup>158</sup> “Press release 016. Request to strip Judge Marta Sierra de Stalling of immunity and criminal structure of impunity law firm” (“Comunicado de prensa 016. Antejudio contra jueza Marta Sierra de Stalling y estructura criminal de bufete de la impunidad”), CIGI, May 8, 2015, <http://www.cicig.org/index.php?mact=News,cntnto1,detail,o&cntnto1articleid=592&cntnto1returnid=67> (accessed September 6, 2017).

The preliminary hearing was originally scheduled for early August 2015, but was then rescheduled three times—due first to the illness of a prosecutor,<sup>159</sup> then the illness of a defendant’s lawyer,<sup>160</sup> and then an appeal that had not been resolved yet<sup>161</sup>—producing a nearly *eight-month* delay.

Three weeks before the hearing was finally going to take place in late March 2016, one of the defendants filed a motion to remove the General Prosecutor’s Office (*Procuraduría General de la Nación*) as a co-prosecutor in the case.<sup>162</sup> Being a co-prosecutor allows affected people or institutions to participate in the case alongside the Prosecutor’s Office to ensure that their interests are taken into account.<sup>163</sup> The General Prosecutor’s Office functions as the representative of the state (similar to the Solicitor General’s Office in the United States), which had been harmed when the La Línea crime ring defrauded it of customs duties and which has an interest in recovering its losses. A series of rulings and appeals resulted in the General Prosecutor’s Office being able to participate as an aggrieved party.<sup>164</sup>

While this petition was being decided, the preliminary hearing was suspended for another *month-and-a-half*. After it was resolved, in April 2016,<sup>165</sup> the court rescheduled the hearing for October 2016, adding another *six-month* delay. On the day the hearing was to take place, October 10, the lawyers of former President Pérez Molina did not show up in court.<sup>166</sup> The hearing had to be rescheduled once again, this time for the end of January 2017—another *three-and-a-half month* delay. By this time, almost a *year-and-a-half* had passed since the preliminary hearing had first been scheduled. However, another series of delays would follow.

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<sup>159</sup> “Succinct act” (“Acta sucinta”), First High Risk Court of First Criminal Instance Group “B” (Juzgado Primero de Primera Instancia Penal de Mayor Riesgo Grupo “B”), Case 01074-2015-00115, August 10, 2015.

<sup>160</sup> *Ibid.*, September 1, 2015.

<sup>161</sup> *Ibid.*, September 28, 2015.

<sup>162</sup> Chamber of the Court of Appeals for Criminal Matters for High Risk and Forfeiture Proceedings (Sala de la Corte de Apelaciones del Ramo Penal, de Procesos de Mayor Riesgo y de Extinción de Dominio), Appeal 01074-2015-00115 (Apelación 01074-2015-00115), April 19, 2016.

<sup>163</sup> Code on Criminal Procedure, art. 116

<sup>164</sup> Code on Criminal Procedure, art. 117.

<sup>165</sup> Chamber of the Court of Appeals for Criminal Matters for High Risk and Forfeiture Proceedings (Sala de la Corte de Apelaciones del Ramo Penal, de Procesos de Mayor Riesgo y de Extinción de Dominio), Appeal 01074-2015-00115 (Apelación 01074-2015-00115), April 19, 2016.

<sup>166</sup> Human Rights Watch interviews with Julio Agustín Jerónimo Sazo, Secretary of the First Court of First Instance for High-Risk Criminal Matters “B”, May 30, June 20 and 22, and July 21 2017.

On the day of the hearing, January 30, the lawyers of former Vice President Roxana Baldetti let the judge know their defendant had to appear in a different case that day, and the hearing was delayed another *week*.<sup>167</sup> On the new day of the hearing, February 6, Perez Molina's defense filed a petition for recusal of the judge, Miguel Ángel Gálvez, who had been presiding over the case for more than a year. The grounds for questioning Judge Galvez's impartiality were dubious: first, that he had already convicted another suspect in the case (which was untrue); second, that he had been named "Person of the Year" by a Guatemalan newspaper because of his performance in the early stages of this high-profile case; and third, that he had referred to the president's alleged participation in the corruption scheme when another defendant provided her first declaration.<sup>168</sup>

Judge Gálvez rejected this recusal petition and proceeded with the preliminary hearing for five days until, following a ruling by an appellate court that required holding another hearing to assess whether the charges against Pérez Molina had to be modified, the judge annulled the hearing and scheduled a new one.<sup>169</sup> On the day the new hearing was to begin, February 21, Pérez Molina's defense re-submitted their recusal petition. This time Judge Gálvez passed the petition to an appellate court for review.<sup>170</sup> That court also rejected it, but did so *two months* later,<sup>171</sup> instead of within the five days required by law.<sup>172</sup> Proceedings could then resume, but Judge Galvez scheduled the next hearing for July 17—*three months* later. On the day the hearing was to take place, several defense lawyers failed to show up, forcing the judge to reschedule it yet again, for July 24, 2017.<sup>173</sup> On October 27, 2017, the judge concluded that 28 of the 30 suspects, among whom the former president and vice president, should go to trial. At the time of writing, it was unclear whether any of the parties would appeal this decision. No trial date had been set yet.

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<sup>167</sup> "Succinct act" ("Acta sucinta"), First Court of First Instance for High-Risk Criminal Matters "B" (Juzgado Primero de Primera Instancia Penal de Mayor Riesgo "B"), Case 01074-2015-00115, January 30, 2017.

<sup>168</sup> *Ibid.*, February 6, 2017.

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.*, February 21, 2017.

<sup>171</sup> Chamber of the Court of Appeals for Criminal Matters for High Risk and Forfeiture Proceedings (Sala de la Corte de Apelaciones del Ramo Penal, de Procesos de Mayor Riesgo y de Extinción de Dominio), resolved in hearing on April 18, 2017.

<sup>172</sup> Code on Criminal Procedure, art. 150bis.

<sup>173</sup> Human Rights Watch online correspondence with CICIG investigator (name withheld), July 17, 2017.

## Impunity Law Firm Case

As police were making the first arrests in the La Línea case in the early morning of April 16, 2015, one of the alleged leaders of the crime ring called another on his cell phone. The caller was Francisco Javier Ortiz Arriaga, a former customs official.<sup>174</sup> After police presented him with an arrest warrant in his home, but before they took him away, Ortiz called Luis Alberto Mendizábal Barrutia, from whose business the La Línea crime ring allegedly operated. An order for the arrest of Mendizábal was issued at a later date. During the call, Ortiz told Mendizábal the name of the judge who had signed his detention order.<sup>175</sup>

That judge, Marta Sierra de Stalling had been on the bench for 28 years and was well-connected within the judiciary: her brother, José Arturo Sierra, is a former president of the Supreme Court and of the Constitutional Court, and her sister-in-law, Blanca Stalling, was the president of the Criminal Chamber of the Supreme Court (until her dismissal in May 2017 after being indicted for allegedly pressuring another judge to conditionally release her son from pretrial detention, who is facing corruption charges<sup>176</sup>).<sup>177</sup>

Mendizábal allegedly replied to Ortiz that he was already making arrangements with his lawyer, who “had the connections” to make sure that Judge Sierra de Stalling would not impose pretrial detention on Ortiz and two other alleged accomplices in the crime ring. Mendizábal reportedly added that he could “not tell over the phone what has been done, but [that he was] fully confident” that things would work out.<sup>178</sup> They allegedly planned to

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<sup>174</sup> Ortiz admitted to have participated in the so-called Moreno Network, another crime ring in which former dictator Ríos Montt also took part, which collected bribes and trafficked contraband through the customs authority. Ortiz was a protected witness in the prosecution of the Moreno Network. See Bill Barreto and Oswaldo J. Hernández, “From Moreno to La Línea: the military footprint in the customs fraud” (“De Moreno a La Línea: la huella militar en la defraudación aduanera”), *Plaza Pública*, August 22, 2015, <https://www.plazapublica.com.gt/content/de-moreno-la-linea-la-huella-militar-en-la-defraudacion-aduanera-o> (accessed August 30, 2017).

<sup>175</sup> “Press release 017. Members of scheme The Impunity Law Firm related to ‘La Línea’ charged” (“Comunicado de prensa 017. Ligados a proceso miembros de estructura Bufete de la Impunidad relacionada con ‘La Línea’”), CICIG, May 11, 2016, <http://www.cicig.org/index.php?mact=News,cntnto1,detail,0&cntnto1articleid=593&cntnto1returnid=67> (accessed August 30, 2017).

<sup>176</sup> Jerson Ramos, “Blanca Stalling loses her position as justice of the Supreme Court of Justice” (“Blanca Stalling pierde el cargo de magistrada de la Corte Suprema de Justicia”). *Prensa Libre*, May 13, 2017, <http://www.prensalibre.com/guatemala/justicia/blanca-stalling-pierde-el-cargo-de-magistrada-de-la-corte-suprema-de-justicia> (accessed August 30, 2017).

<sup>177</sup> Bill Barreto, “CICIG takes on ‘impunity law firms’” (“La CICIG arremete contra los ‘bufetes de la impunidad’”), *Plaza Pública*, May 8, 2015, <https://www.plazapublica.com.gt/content/la-cicig-arremete-contra-los-bufetes-de-la-impunidad> (accessed September 7, 2017).

<sup>178</sup> “Press release 017. Members of scheme The Impunity Law Firm related to ‘La Línea’ charged” (“Comunicado de prensa 017. Ligados a proceso miembros de estructura Bufete de la Impunidad relacionada con ‘La Línea’”), CICIG, May 11, 2016,

use a law firm as an intermediary. Prosecutors say that Mendizábal insisted that Ortiz get the money ready, in cash, as soon as possible to pay the lawyers in this firm and the judge. In the following hours, there were several more conversations between Mendizábal and Ortiz, as well as between Mendizábal and Ortiz' daughter, about the need to withdraw sufficient money.<sup>179</sup>

All these conversations were recorded by the Attorney General's Office, which had wiretapped Mendizábal's phone as part of the investigation of La Línea. Prosecutors eventually obtained bank statements showing that on the day of Ortiz's conversation with Mendizábal, as well as the next day, Ortiz' family allegedly made withdrawals from the bank totaling more than US\$250,000. Investigators also obtained cell phone location records that they say place Judge Sierra de Stalling's son at the same location as members of the law firm that Mendizábal indicated would handle the bribe. A few days afterward, on April 21, Sierra de Stalling imposed house arrest instead of pretrial detention on Ortiz and two other alleged leaders of the crime ring.<sup>180</sup>

One of the three alleged ring leaders granted house arrest, Estuardo González, eventually entered a plea bargain arrangement (*colaboración eficaz*) and affirmed that they had bribed Judge Sierra de Stalling with the assistance of the law firm recommended by Mendizábal. Ten people were charged—including Judge Sierra de Stalling, her son, Ortiz, and the lawyers in the firm that had allegedly arranged the payments—which came to be known as the "Impunity Law Firm." Mendizábal remains a fugitive.<sup>181</sup>

It took until August 3, 2017—*more than two years*—for the preliminary hearing, to determine whether the case would go to trial, to start.

Five recusal petitions and the repeated rescheduling of hearings were to blame for this delay. Less than two weeks before the preliminary hearing was scheduled to start, on

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<http://www.cicig.org/index.php?mact=News,cntnto1,detail,0&cntnto1articleid=593&cntnto1returnid=67> (accessed August 30, 2017).

<sup>179</sup> "Press release 017. Members of scheme The Impunity Firm related to 'La Línea' charged" ("Comunicado de prensa 017. Ligados a proceso miembros de estructura Bufete de la Impunidad relacionada con 'La Línea'"), CICIG, May 11, 2016, <http://www.cicig.org/index.php?mact=News,cntnto1,detail,0&cntnto1articleid=593&cntnto1returnid=67> (accessed August 30, 2017).

<sup>180</sup> Human Rights Watch interviews with prosecutor (name withheld), Guatemala, May 3 and 23, and June 23, 2017.

<sup>181</sup> *Ibid.*



January 15, 2016, Sierra de Stalling replaced her lawyer with a new one, who then petitioned the sitting judge to recuse himself on the grounds that there existed a “grave enmity” between himself and the judge, alleging that the judge had recused himself for that reason previously.<sup>182</sup> Both the judge<sup>183</sup> and an appeals court accepted the recusal.<sup>184</sup> The appeals court took *six weeks* to notify the first instance court of this decision.<sup>185</sup> In mid-March, the case went to a new judge, who recused himself because he was friends with one of the suspects,<sup>186</sup> and then to a third judge in April—*more than three months* after the initial motion was presented.<sup>187</sup>

Two further recusal petitions delayed the case for another *four months*. In November, the defense team sought the recusal of a substitute judge—who was filling in while the original judge was on vacation—on the grounds that they had “heard in the corridors of the tribunal” that the substitute was biased.<sup>188</sup> The judge rejected the petition for recusal,<sup>189</sup> as did an appellate court,<sup>190</sup> but only after *two-and-a-half* months (instead of the five days the law provides as a maximum)<sup>191</sup>—a full month after the main judge had returned from vacation. Two days after the appellate court transmitted notification of its rejection of the petition, the original judge (back on the case) recused himself on the grounds that a newspaper column had suggested he might be biased.<sup>192</sup> He sent this recusal for consideration to an appellate court, which rejected the recusal and returned the case to

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<sup>182</sup> Recusal petition presented by lawyer Jaime Hernández against the Eleventh Court of First Instance for Criminal Matters, Drug-Trafficking and Environmental Crimes (Juzgado Undécimo de Primera Instancia Penal, Narcoactividad y Delitos contra el Ambiente), Case 01017-2015-00210, January 12, 2016.

<sup>183</sup> Eleventh Court of First Instance for Criminal Matters, Drug-Trafficking and Environmental Crimes (Juzgado Undécimo de Primera Instancia Penal, Narcoactividad y Delitos contra el Ambiente), Case 01017-2015-00210, January 13, 2016.

<sup>184</sup> First Chamber of the Court of Appeals for Criminal Matters, Drug-Trafficking and Environmental Crimes (Sala Primera de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos contra el Ambiente), Case 01017-2015-00210, January 29, 2016.

<sup>185</sup> Human Rights Watch review of case files, Case 01017-2015-00210, May 29, 30, and 31, 2017.

<sup>186</sup> Second Court of First Instance for Criminal Matters, Drug-Trafficking and Environmental Crimes (Juzgado Segundo de Primera Instancia Penal, Narcoactividad y Delitos contra el Ambiente), Case 01017-2015-00210, March 18, 2013.

<sup>187</sup> Human Rights Watch review of case files, Case 01017-2015-00210, May 29, 30, and 31, 2017.

<sup>188</sup> Recusal petitions presented by defendants Ruth Emilza Higueros Alay and Roberto Eduardo Stalling Sierra against the judge of the Second Court of First Instance for Criminal Matters, Drug-Trafficking and Environmental Crimes (Juzgado Segundo de Primera Instancia Penal, Narcoactividad y Delitos contra el Ambiente), Case 01017-2015-00210, November 7, 2016.

<sup>189</sup> Second Court of First Instance for Criminal Matters, Drug-Trafficking and Environmental Crimes (Juzgado Segundo del Ramo Penal, Narcoactividad y Delitos contra el Ambiente), Case 01017-2015-00210, November 9, 2016.

<sup>190</sup> Fourth Chamber of the C First Instance for Criminal Matters, Drug-Trafficking and Environmental Crimes (Sala Cuarta de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos contra el Ambiente), Case 01017-2015-00210, January 16, 2017.

<sup>191</sup> Code on Criminal Procedure, art. 150bis.

<sup>192</sup> Third Court of First Instance for Criminal Matters, Drug-Trafficking and Environmental Crimes (Juzgado Tercero del Ramo Penal, Narcoactividad y Delitos contra el Ambiente), Case 01017-2015-00210, January 27, 2017.

the judge, but only after another *six-week* delay,<sup>193</sup> when it should have only taken 48 hours.<sup>194</sup> The case was returned to the court in mid-March 2017.<sup>195</sup> The preliminary hearing would be held on May 31, 2017, but on that day, upon request of the defense attorneys, the judge rescheduled the hearing for August 3, 2017, producing another *two-month* delay.

Parallel to these proceedings, in June 2016, the attorney general petitioned the Supreme Court to transfer the case from the ordinary pretrial court to a High Risk Court, which handles cases that may involve heightened security risks for those involved.<sup>196</sup> Making this determination should be a quick process: the law requires the Supreme Court’s Criminal Chamber to hold a single hearing and then immediately decide whether to grant the request or not.<sup>197</sup> However, it took *more than a year* for this hearing to be held, as each time it was about to take place, one of the defendants petitioned to remove one of the justices from the Criminal Chamber (a different defendant and a different justice each time).

The initial hearing was scheduled for July 19, 2016. Two days before, a lawyer sought the recusal of a justice because he alleged that that justice had fired him from a job several years before, thus producing “grave enmity.” Yet the only evidence the defendant presented was a letter showing that he had resigned from that previous job, not that he had been fired.<sup>198</sup> Both the justice and the court rejected the recusal on July 28 and rescheduled the hearing for September 29—*two months* later. Then, on September 17, another defendant filed a petition for recusal of another justice because she had previously worked for CICIG.<sup>199</sup> The justice rejected the petition but decided to remove herself from the case anyway.<sup>200</sup> Official notification of this recusal took more than *six months*—until January 27, 2017.<sup>201</sup> The court then scheduled the hearing for March 23—*two months* later. But two days before the hearing, yet another defendant presented a recusal petition against a third justice because in 2015, that justice had sat on a commission that

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<sup>193</sup> Fourth Chamber of the Court of Appeals for Criminal Matters, Drug-Trafficking and Environmental Crimes (Sala Cuarta de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos contra el Ambiente), Case 01017-2015-00210, March 2, 2017.

<sup>194</sup> Law on the Judicial Organism, art. 126.

<sup>195</sup> Human Rights Watch review of case files, Case 01017-2015-00210, May 29, 30, and 31, 2017.

<sup>196</sup> Petition presented by the Attorney General on June 8, 2016.

<sup>197</sup> Law on Criminal Jurisdiction in High Risk Proceedings (Ley de Competencia Penal en Procesos de Mayor Riesgo), Decree No. 21-2009, August 4, 2009, art. 4.

<sup>198</sup> Recusal presented by lawyer Julio Carlo Xamanek Castañeda Maza against Justice Nery Medina, July 17, 2016.

<sup>199</sup> Recusal presented by Marta Sierra de Stalling against Justice Delia Dávila, September 17, 2016.

<sup>200</sup> Justice Delia Dávila, September 27 and 29, 2016.

<sup>201</sup> Human Rights Watch review of case files, Case 01017-2015-00210, June 22, 2017.

evaluated whether CICIG's mandate should be extended.<sup>202</sup> This recusal was rejected *a month* later and the hearing was planned for June 22, adding a delay of *two months*.<sup>203</sup> Then, on June 20, Sierra de Stalling presented a recusal petition against a fourth and fifth justice, alleging that they had expressed an opinion in this case because they had voted in favor of stripping her immunity so she could be investigated.<sup>204</sup> This recusal was rejected on July 4—*two weeks* later.<sup>205</sup>

*More than a year* after the attorney general had filed her request for the case to be transferred to a High Risk Court, the hearing finally took place. The Criminal Chamber rejected the request,<sup>206</sup> and CICIG's and the Attorney General's Office's subsequent appeal of that decision was also rejected.<sup>207</sup> The Attorney General's Office presented an *amparo* petition against that decision in August 2017, which was still pending in September 2017. The case remained before the regular court.

On August 16, 2017, the judge decided not to send the case to trial, ruling that the prosecution had not presented sufficient evidence to prove the suspects' involvement in the alleged criminal acts. The judge ordered the Attorney General's Office to present new accusations for the charges of traffic of influences (*tráfico de influencias*) and bribery (*cohecho activo y pasivo*), and scheduled the hearing to discuss that new accusation for November 28, 2017.<sup>208</sup> CICIG and the Attorney General's Office presented an appeal against the judge's decision. On October 10, one of the suspects sought the recusal of a judge from the court that would consider the appeal. The suspect alleged bias because the judge had received reimbursements from the Supreme Court, which had rejected the suspect's earlier *amparo* petition in the case. Moreover, he alleged that the judge's appointment, as a substitute judge to that appellate court, had been irregular.<sup>209</sup> The

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<sup>202</sup> Recusal presented by Roberto Stalling Sierra against Justice Josué Felipe Baquix, March 22, 2017.

<sup>203</sup> Criminal Chamber of the Supreme Court of Justice (Cámara Penal de la Corte Suprema de Justicia), April 25, 2017.

<sup>204</sup> Recusal presented by Marta Sierra de Stalling against Justices Josué Felipe Baquix and José Antonio Pineda Barales, June 20, 2017.

<sup>205</sup> Criminal Chamber of the Supreme Court of Justice (Cámara Penal de la Corte Suprema de Justicia), July 4, 2017.

<sup>206</sup> Criminal Chamber of the Supreme Court of Justice (Cámara Penal de la Corte Suprema de Justicia), July 4, 2017.

<sup>207</sup> Supreme Court of Justice, August 2, 2017.

<sup>208</sup> The judge also dismissed the charges of malfeasance (*prevaricato*) against the judge and criminal conspiracy (*asociación ilícita*) against all suspects. Third Court of First Instance for Criminal Matters, Drug-Trafficking, and Environmental Crimes (Juzgado Tercero de Primera Instancia Penal, Narcoactividad y Delitos contra el Ambiente), Case 01017-2015-00210, audio recording, August 16, 2017.

<sup>209</sup> Recusal presented by Francisco Javier Ortiz Arriaga against judge Elisa Victoria Pellecer Quijada, Case 01071-2015-00210, October 10, 2017.

hearing to consider the recusal was scheduled for November 6—almost a *month* after the recusal had been presented, instead of the maximum of five days established by law.<sup>210</sup> The appeal remained pending.

## Phantom Jobs Case

In June 2015, the Attorney General’s Office and CICIG announced they were pursuing corruption charges against a former president of Congress, Pedro Muadi. According to prosecutors, the congressman had run a scheme in which his office created “phantom” jobs so he could pocket the wages of the people who supposedly occupied them.<sup>211</sup> Muadi’s secretary and chief of security were tried and convicted for their role in the embezzlement scheme in June 2016.<sup>212</sup> Yet a trial against Muadi himself, as well as the 30 other suspects, has still not started.

Muadi was a member of former President Otto Pérez Molina’s Patriot Party (*Partido Patriota*). When he took office in 2012, it was his first term as a congressman. He was president of Congress in 2013.

Between June 2013 and June 2015, when CICIG and the Prosecutor’s Office asked the Supreme Court to strip Muadi’s immunity, Muadi’s office allegedly kept 30 people on the Congressional payroll who never performed any work for Congress at all or were already paid by another employer; they had only lent their name and signature for these contracts with Congress. Muadi’s secretary—who worked for his private company—deposited the wages for these “phantom” workers, who had positions in Muadi’s office, the presidency of Congress, or the congressional delegation of the Patriot Party, in the bank accounts of corporations allegedly owned by the congressman and paid the “phantom workers” a relatively small amount of that money in cash.<sup>213</sup> With this scheme, prosecutors allege that

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<sup>210</sup> Code on Criminal Procedure, art. 150bis.

<sup>211</sup> “Press release 030. Request to strip Congressman Pedro Muadi of immunity. Two people who work for him were arrested.” (“Comunicado de prensa 030. Solicitud de antejuicio contra diputado Pedro Muadi. Se capturó a dos colaboradores del diputado”), CICIG, June 25, 2015, <http://www.cicig.org/index.php?mact=News,cntnto1,detail,0&cntnto1articleid=607&cntnto1returnid=67> (accessed September 6, 2017).

<sup>212</sup> In that case, only one appeal was filed (and retracted) by the defendants. Human Rights Watch review of case files, Case 01071-2015-00306, June 21 and 22, 2017.

<sup>213</sup> Each person that participated benefited economically from the scheme. Most received between 1,000 quetzals (US\$135) and 2,500 quetzals (US\$340) per month, while the three people who helped Muadi launder the money received considerably more—some as much as 13,500 quetzals (US\$1,850) per month. Human Rights Watch interviews with CICIG investigator

Muadi oversaw the embezzlement of more than 4.7 million quetzals (US\$645,000) from the Guatemalan Congress in two years.<sup>214</sup>

The investigation of the corruption ring allegedly led by Congressman Muadi turned up evidence implicating other members of Congress in similar embezzlement schemes involving “phantom jobs.” Sixty-five people have been charged, including nine former congressmen who made up Congress’ governing board (*junta directiva*) in 2014 and 2015 and a former director-general of Congress. Two current and two former members of Congress are at large, and one still has immunity. They are from at least six different political parties.<sup>215</sup>

In Muadi’s case, two people have already been convicted: his secretary and his chief of security were given prison sentences of 17 and 11 years, respectively. Proceedings against them started right after their arrest in June 2015, the trial commenced in January 2016, and the two defendants were convicted in June 2016.<sup>216</sup>

Muadi was prosecuted separately from these two because it took the Supreme Court from June to October 2015 to lift the immunity that he enjoyed as a member of Congress.<sup>217</sup> An additional 30 suspects, whose alleged involvement emerged in subsequent investigations, have been named as his co-defendants. These suspects include Muadi’s staff that prosecutors accuse of having helped execute this scheme, as well as the people who allegedly signed the contracts for these “phantom” jobs.

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(name withheld), Guatemala, May 5 and June 21, 2017, and email correspondence, May 8, June 23, July 20 and 25, and August 17, 2017.

<sup>214</sup> Human Rights Watch email correspondence with CICIG investigator (name withheld), July 25, 2017.

<sup>215</sup> “Press release 070. Phantom jobs: Congressman Christian Boussinot charged. Sent to pretrial detention.” (“Comunicado de prensa 070. Plazas fantasma: Ligan a proceso a diputado Christian Boussinot. Enviado a prisión preventiva”), CICIG, September 1, 2017, <http://www.cicig.org/index.php?mact=News,cntnto1,detail,o&cntnto1articleid=838&cntnto1returnid=67> (accessed September 6, 2017).

<sup>216</sup> Seventh Sentencing Tribunal for Criminal Matters, Drug-Trafficking and Environmental Crimes (Tribunal Séptimo de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente), June 7, 2016.

<sup>217</sup> Jerson Ramos, “Supreme Court strips former president of Congress of immunity” (“CSJ retira inmunidad a ex presidente del Congreso”), *Prensa Libre*, October 21, 2015, <http://www.prensalibre.com/guatemala/justicia/csj-retira-unmunidad-a-expresidente-del-congreso> (accessed September 6, 2017). CICIG and the Attorney General’s Office had requested that all people charged would be tried together, but the judge declined their request and moved forward with the case against Muadi’s secretary and chief of security. Although Congressman Muadi and the other 30 defendants are part of the same case, the proceedings against them are thus in a different stage. Human Rights Watch interview with CICIG investigators (names withheld), Guatemala, May 8, 2017.

The prosecution of Muadi and these 30 has been stalled in the pre-trial phase due largely to dubious motions filed by the defense and the subsequent delay in deciding them. In one petition to recuse the judge filed in November 2015, Axel Pérez, a defendant who worked for Muadi and cashed various checks for the “phantom” jobs, questioned Judge José Eduardo Cojulun’s impartiality on the grounds that the judge had refused to release him from pretrial detention and had allegedly granted most motions presented by CICIG.<sup>218</sup> The judge rejected the petition and sent the case to an appellate court, which rejected the appeal but took *four months* to do so,<sup>219</sup> despite the fact that Guatemalan law required it to issue a ruling in five days.<sup>220</sup> Two defendants filed *amparo* petitions before the Supreme Court in May 2016, challenging the appellate court’s decision.<sup>221</sup> Under Guatemalan law, the Supreme Court should have resolved it within a maximum of 31 days.<sup>222</sup> Instead, more than *nine months* passed before the Supreme Court issued a ruling, in February 2017, rejecting the petition.<sup>223</sup> In all, the recusal petition held up the case for a *year and three months*.

The preliminary hearing was rescheduled for March 2017, but just days before it was finally to take place, Muadi’s lawyer submitted a new petition to recuse Judge Cojulun. The grounds for questioning Cojulun’s impartiality were, first, that the judge had—during the arraignment—asked the prosecution whether it wanted to add any additional charges, and second, that the judge had once denied the defense an extra opportunity to explain something.<sup>224</sup> The appellate court should have reached a decision in five days,<sup>225</sup> but the issue was only resolved *two months* later, when Muadi’s new lawyer withdrew the petition. It then took the appeals court more than a *month* to notify the court of first instance,<sup>226</sup> even though this should have been done within five days.<sup>227</sup> Only on June 19

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<sup>218</sup> Recusal presented by Axel Estuardo Pérez Pérez, Case 01071-2015-00306, November 27, 2015.

<sup>219</sup> First Chamber of the Court of Appeals for Criminal Matters, Drug-Trafficking and Environmental Crimes (Sala Primera de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos contra el Ambiente), Case 01071-2015-00306, decided in hearing of March 28, 2016.

<sup>220</sup> Code on Criminal Procedure, art. 150bis.

<sup>221</sup> Amparos 701-2016 and 702-2016. Supreme Court of Justice, “Consultation of amparos” (“Consulta de amparos”), <https://www.oj.gob.gt/consultamparos/> (accessed September 7, 2017).

<sup>222</sup> Time limits as established in Amparo Law, arts. 33-41, plus time for notifications.

<sup>223</sup> Amparos 701-2016 and 702-2016. Supreme Court of Justice, “Consultation of amparos” (“Consulta de amparos”), <https://www.oj.gob.gt/consultamparos/> (accessed September 7, 2017).

<sup>224</sup> Recusal presented by lawyer Héctor Manfredo Maldonado Gramajo, Case 01071-2015-00306, March 6, 2017.

<sup>225</sup> Code on Criminal Procedure, art. 150bis.

<sup>226</sup> Human Rights Watch review of case files, Case 01071-2015-00306, June 21 and 22, 2017.

<sup>227</sup> Law on the Judicial Organism, art. 142bis.

could the case continue.<sup>228</sup> Muadi's withdrawn recusal petition had stalled the case for another *three-and-a-half months*.

The preliminary hearing finally started on July 25, 2017. On August 1, the judge decided to send Muadi and the additional 30 suspects to trial. However, on August 18—three days before the final hearing before the pre-trial judge—a defendant presented another recusal petition against Judge Cojulun because he considered that the judge had not sufficiently required the Attorney General's Office to substantiate the charges against him.<sup>229</sup> The hearing to consider the recusal petition was scheduled for November 13—*almost three months* after the petition was presented, instead of within the five days established by law.<sup>230</sup> In the meantime, the case remained suspended.

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<sup>228</sup> Human Rights Watch review of case files, Case 01071-2015-00306, June 21 and 22, 2017.

<sup>229</sup> Recusal presented by Juan Carlos Porras Celis, Case 01071-2015-00306, August 18, 2017.

<sup>230</sup> Code on Criminal Procedure, art. 150bis.

## Past Cases

The pattern of repeated, excessive delays documented in the six cases described above were also evident in previous efforts to prosecute cases involving human rights violations, including the extrajudicial killing of anthropologist Myrna Mack and the Dos Erres massacre. In both cases, the Inter-American Court of Human Rights found that the Guatemalan state had violated the right to judicial protection and a fair trial.

### Myrna Mack Case

Myrna Mack was a Guatemalan anthropologist who was murdered on September 11, 1990 by agents from the Presidential General Staff,<sup>231</sup> a military intelligence unit.<sup>232</sup> While an army sergeant was convicted of the crime in 1993, it would take **12 years** to prosecute a senior officer for ordering the assassination.

In February 1993, the direct perpetrator of the crime, a sergeant assigned to the Security Department of the Presidential General Staff (*Estado Mayor Presidencial*), was convicted and sentenced to 25 years in prison. But in that ruling, the case against three higher-level officers who had been charged with ordering and planning the assassination was dismissed for lack of evidence.<sup>233</sup> A **year** later, this decision was overturned and the case was kept open. However, it would take another **eight-and-a-half years** for the trial against them to start.

It took the Constitutional Court **nine months** to decide to keep the case against the defendants open, and another **three months** to officially notify this decision.<sup>234</sup> In June 1996, the three defendants were charged again,<sup>235</sup> but it took the courts almost **two-and-a-half years** to decide that the case would be judged in a civilian—instead of military—court

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<sup>231</sup> Inter-American Court of Human Rights, Myrna Mack Case, Judgment of November 25, 2003 (Merits, Reparation and Costs), Inter-Am.Crt.H.R., (Ser. C) No. 101 (2003), paras. 134.4-7 (Myrna Mack Case).

<sup>232</sup> *Ibid.*, paras. 134.14-18.

<sup>233</sup> *Ibid.*, para. 134.22.

<sup>234</sup> *Ibid.*, para. 134.27.

<sup>235</sup> *Ibid.*, para 134.32.



and according to the newly adopted code of criminal procedure.<sup>236</sup> The preliminary hearing, in which the defendants were sent to trial again, did not occur until January 1999.<sup>237</sup>

After at least 12 *amparo* petitions, as well as numerous recusal petitions and ordinary appeals,<sup>238</sup> the case finally went to trial in September 2002<sup>239</sup>—12 years after the assassination, 11 years after the defendants were first charged, and six years after they had been charged for the second time. A month later, in October 2002, the head of the Presidential General Staff's Security Department was sentenced to 30 years in prison. Two others were acquitted.<sup>240</sup> This ruling was overturned in May 2003, but in January 2004, the Supreme Court confirmed the earlier conviction.<sup>241</sup>

## Dos Erres Case

In 1982, Guatemalan army special forces carried out a massacre in the rural community of Dos Erres. According to the 1999 truth commission report, troops executed around 200 civilians, including women and girls who were raped before being killed.<sup>242</sup> The Attorney General's Office opened a criminal investigation into the case in 1994, and 17 former soldiers were arrested between 1999 and 2000.

The judicial proceedings in the case were marred by obstruction and delays. Between April 2000 and March 2009, the defense presented 33 *amparo* petitions, in addition to 41 other motions challenging aspects of the proceedings.<sup>243</sup> Many of these motions were heard simultaneously by different courts. However, the resolution of *amparo* petitions was particularly lengthy: the vast majority took between *one* and *two years* to be resolved. Five took *more than three years*.<sup>244</sup>

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<sup>236</sup> Ibid., paras. 134.28-43.

<sup>237</sup> Ibid., paras. 134.48-53.

<sup>238</sup> Ibid., paras. 134.26, 204, 208.

<sup>239</sup> Ibid., paras. 134.54-72.

<sup>240</sup> Ibid., para. 134.73.

<sup>241</sup> Supreme Court of Justice, Connected cassation 109-2003 and 110-2003 (Recurso de casación conexados 109-2003 y 110-2003), January 14, 2004.

<sup>242</sup> Commission for Historical Clarification (Comisión de Esclarecimiento Histórico), "Illustrative Case No. 31" ("Caso ilustrativo No. 31"), *Memory of Silence (Memoria del Silencio)*, June 1999.

<sup>243</sup> These included 19 requests for reconsideration (recursos de reposición), 19 claims for remedy (reclamos de subsanación), two motions for amendment (solicitudes de enmienda) and one constitutional motion. Inter-American Court of Human Rights, Dos Erres Case, para. 100.

<sup>244</sup> Ibid., para. 119.

The case was also delayed by the failure of the judiciary to rule within the legally-mandated time limits on the applicability in this case of the Law for National Reconciliation,<sup>245</sup> which establishes that state agents can be amnestied for political crimes<sup>246</sup> but not crimes against humanity.<sup>247</sup> It took *seven-and-a-half years*—even though the law establishes a maximum of 28 working days<sup>248</sup>—for a judge to decide that the law was not applicable.

As a result, it took more than 28 years from the date of the massacre—and *12 years* after the first arrests were made—for the case to go to trial. In 2011, four people—three former soldiers and one sub-lieutenant—were convicted.<sup>249</sup> In 2012, another former soldier was convicted.<sup>250</sup> One other former soldier and former dictator Ríos Montt are currently awaiting trial.

## Rulings by the Inter-American Court of Human Rights

In its analysis of the Guatemalan court proceedings in the Myrna Mack and Dos Erres cases, the Inter-American Court of Human Rights concluded that the defense used the “indiscriminate filing” of *amparo* petitions<sup>251</sup> to delay criminal proceedings,<sup>252</sup> and that the *amparo* petition had become “a factor for impunity.”<sup>253</sup>

The Inter-American Court identified two main reasons for this problem. First, it found that the Amparo Law is overly broad in scope, and criticized the fact that it does not oblige judges to dismiss petitions that do not meet admissibility requirements.<sup>254</sup>

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<sup>245</sup> National Reconciliation Law (Ley de reconciliación nacional), Decree No. 145-1996, December 27, 1996 (National Reconciliation Law).

<sup>246</sup> Only those that had the objective of “preventing, impeding, prosecuting or repressing” any other political (or related) crimes,” National Reconciliation Law, art. 5.

<sup>247</sup> National Reconciliation Law, art. 8.

<sup>248</sup> National Reconciliation Law, art. 11.

<sup>249</sup> “Ex-soldiers sentenced to 6,000 years in prison for Guatemalan massacre,” CNN, August 2, 2011, <http://www.cnn.com/2011/WORLD/americas/08/02/guatemala.human.rights.trial/index.html> (accessed August 30, 2017).

<sup>250</sup> The Guardian, “Guatemalan ex-soldier jailed for 6,060 years over Dos Erres massacre,” March 13, 2012, <https://www.theguardian.com/world/2012/mar/13/guatemalan-ex-soldier-jailed-dos-erres> (accessed August 30, 2017).

<sup>251</sup> Inter-American Court of Human Rights, Dos Erres Case, para. 109.

<sup>252</sup> Inter-American Court of Human Rights, Myrna Mack Case, paras. 204 and 207, and Inter-American Court on Human Rights, Dos Erres Case, para. 119.

<sup>253</sup> Inter-American Court of Human Rights, Dos Erres Case, para. 124.

<sup>254</sup> *Ibid.*, paras. 108, 109, 120, 121. When the Inter-American Court ruled on the Dos Erres case (2009), it was not possible for judges to dismiss *amparo* petitions that did not meet admissibility requirements. Even though since that time, the Constitutional Court’s Agreement 1-2013 has enabled judges to “permanently suspend” such petitions, judges are still not obliged to do so.

Second, it found that judges “permit and tolerate”<sup>255</sup> the excessive use of petitions and fail to comply with the legal time limits in disposing of them,<sup>256</sup> a situation compounded by how appeals to *amparo* rulings are processed.<sup>257</sup> The Inter-American Court of Human Rights noted that the judiciary bears responsibility for this problem and singled out the Constitutional Court, for not adequately limiting the misuse of *amparo* petitions.<sup>258</sup>

In 2009, the court ordered Guatemala to amend existing rules on the use of motions during the criminal process.<sup>259</sup> This has not yet been done. Congress discussed reforms in 2009, but these were not adopted. In 2015, CICIG, the Attorney General’s Office, and the Guatemalan Office of the UN High Commissioner for Human Rights presented another proposal, which was not taken up.<sup>260</sup> In 2017, a group of civil society organizations presented a new proposal to Congress.<sup>261</sup> In September 2017, this proposal was under discussion in Congress.<sup>262</sup>

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<sup>255</sup> Inter-American Court of Human Rights, Myrna Mack Case, para. 211.

<sup>256</sup> *Ibid.*, para. 207.

<sup>257</sup> Inter-American Court of Human Rights, Dos Erres Case, para. 111.

<sup>258</sup> *Ibid.*, para. 119.

<sup>259</sup> Inter-American Court of Human Rights, Dos Erres Case, paras. 233(e) and (f).

<sup>260</sup> “Register 5299” (“Registro 5299”), Guatemalan Congress, <http://old.congreso.gob.gt/archivos/iniciativas/registro5299.pdf> (accessed September 7, 2017).

<sup>261</sup> The organizations that participated in these discussions were: Centro de Estudios de Guatemala (CEG), Fundación Myrna Mack (FMM), Movimiento Pro Justicia (MPJ), Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG), and Asociación de Investigación y Estudios Sociales (ASIES). “Register 5299” (“Registro 5299”), Guatemalan Congress, <http://old.congreso.gob.gt/archivos/iniciativas/registro5299.pdf> (accessed September 7, 2017).

<sup>262</sup> “Register 5299” (“Registro 5299”), Guatemalan Congress, <http://old.congreso.gob.gt/archivos/iniciativas/registro5299.pdf> (accessed September 7, 2017).

## Recommendations

Guatemalan authorities should take the following actions to strengthen Guatemala's judicial system in the fight against impunity.

The **Guatemalan Congress** should reform the Amparo Law to reduce the delays in criminal proceedings caused by the misuse of unfounded *amparo* petitions. The reform should draw upon the legislative proposal introduced in Congress on May 31, 2017 (originally submitted by Guatemalan civil society organizations in February 2017),<sup>263</sup> with special attention to the following proposals:

- Establish that *amparo* petitions challenging the acts of judges during criminal proceedings be admissible for review only after the proceedings have concluded with a verdict or dismissal—except in very limited circumstances where the harm alleged by the petitioner would be irreparable if not addressed immediately;
- Grant judges explicit authority to dismiss *amparo* petitions that fail to meet the basic requirements established by law and by the Constitutional Court;
- Establish a reasonable, fair, and effective system of penalties to sanction lawyers who repeatedly file *amparo* petitions that unambiguously fail to meet the basic requirements established by law and the Constitutional Court.

The **Constitutional Court** should take steps to end delays in cases that involve egregious abuses of power by authorities. Specifically, it should:

- Comply with legally-mandated deadlines for the resolution of *amparo* and other petitions;
- Establish clear, reasonable, and effective guidelines for lower courts to determine the admissibility of *amparo* petitions;
- Call on lower court judges to uphold the rule that criminal proceedings should only be suspended when a provisional *amparo* is issued; and

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<sup>263</sup> “Register 5299” (“Registro 5299”), Guatemalan Congress, <http://old.congreso.gob.gt/archivos/iniciativas/registro5299.pdf> (accessed September 7, 2017).

- Enforce reasonable, fair, and effective sanctions for lawyers who repeatedly file egregiously unfounded *amparo* petitions.

The **Supreme Court** should take all possible steps to end unreasonable delays in cases that involve egregious abuses of power by authorities. Specifically, it should:

- Comply with the legally-mandated deadlines for the processing and resolution of appeals related to these cases;
- Address the causes of unnecessary bureaucratic delays in criminal proceedings, including the dysfunctional notification system and the lack of standardized rules regarding the presentation of case files; and
- Ensure that the Council on the Judicial Career exercises its authority to impose effective and proportional sanctions on judges and judicial functionaries responsible for egregious and unjustified delays.

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# RUNNING OUT THE CLOCK

## How Guatemala's Courts Could Doom the Fight against Impunity

Guatemala has made dramatic progress in the fight against impunity thanks to the joint efforts of local prosecutors and the International Commission against Impunity in Guatemala (CICIG). The most celebrated accomplishments of this partnership came in 2015 when they exposed multiple corruption schemes, implicating officials in all three branches of government, and prompting the resignation and arrest of the country's president and vice president.

Yet now, more than two years after these arrests, these cases have yet to go to trial—and there is a serious risk they never will. Instead, they have joined a growing list of cases pursued by CICIG and the Attorney General's Office that have bogged down in pretrial proceedings.

*Running Out the Clock* examines the causes of delay in eight high-profile criminal cases and reveals how defense lawyers have been able to disrupt and derail criminal proceedings by filing repeated appeals—many of them apparently frivolous—to court decisions and petitions to recuse judges.

The derailing of justice in these critical cases is only possible because the country's judicial authorities allow it. The Supreme Court and the Constitutional Court could act to end the delays, but they have not, instead contributing to them by their own failure to comply with the time limits that Guatemalan law establishes for resolving petitions.

Time is running out. CICIG's mandate to operate in Guatemala ends in September 2019, while the term of the current attorney general expires in May 2018. If defense lawyers can run out the clock on the prosecutors, there is a serious risk that efforts to prosecute the cases will fail, and the forces of corruption and impunity prevail.



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