

The Fight against Corruption in Guatemala

Advances and Challenges

Claudia Paz y Paz Bailey

In recent years, we have witnessed unprecedented advances in the fight against corruption in the hemisphere. Important national and international corruption plots have been discovered that have brought more than one president in the Americas to jail. The most emblematic case has been Odebrecht, but it is not the only one. Advances in the fight against corruption have been uneven and although there are countries in which the corruption plots have reached political and economic elites, in others, the reports have not gone beyond the front pages of newspapers.

It is for this reason that the initiative by The Inter-American Dialogue and the Inter-American Development Bank, (IDB) to analyze this theme in a series of events, among them "Processing corruption in the Americas, a comparative analysis" is extremely timely. I have been asked to explain why in Guatemala, the fight against corruption has made progress, and what political, technical, national or international factors have proved crucial for the success of the Public Ministry and the International Commission against Impunity in Guatemala, CICIG¹.

A prior clarification is that no case involves isolated factors or institutions that act alone. Impunity for corruption unfolds in spaces where justice institutions are weak, systems have been normatively and institutionally adjusted to favor impunity, in which the vast majority of criminal acts remain without sanction. That is why, in order for cases of grand corruption to advance, it is necessary for a set of factors to converge and for the political will of different institutions to converge. It is a kind of "star alignment" that must act during a sustained period of time. It is therefore about processes in the medium and long term.

Next, I describe the normative, institutional and social factors that facilitated the advancement of criminal cases against corruption in Guatemala. I end with an alert about the great challenges that are still pending and those obstacles that must be considered if progress is to be sustainable and translated into institutional transformations.

Suitable legal norms

A necessary factor for the advancement of these cases is to have legal norms that consider an appropriate typification of criminal behavior, criminal frameworks proportional to the seriousness of the crime and efficient investigation tools that help uncover corruption schemes, those responsible and the destination of the ill-gotten goods. Although Guatemala has been part of the Inter-American Convention against Corruption since 2001², it was not until a decade later that it reformed its criminal legislation to categorize crimes such as illicit electoral financing, influence peddling or illicit enrichment and to adapt

¹ The International Commission against Impunity in Guatemala, CICIG, is an international body independent of the United Nations that was installed in the country in 2007 to support national authorities in the effort against impunity. Among other functions the CICIG works as an international prosecutor before national judges.

² On March 29 1996, the Inter-American Convention Against Corruption by the Organization of American States (CICC), which entered into force on March 6 1997, was opened for signature.

penalties for crimes committed by public officials to the seriousness of the damage caused by their actions.

Before these reforms, committing a crime against the public patrimony was almost an act of privilege. That is to say, the misconduct by public officials against the patrimony of the State receives less penalties than the equivalent ones carried out between individuals. The reforms of 2010, *Illicit Electoral Financing*³ and, 2012, *Law against Corruption*⁴, doubled penalties, excluded criminal benefits and allowed the inquiry of these behaviors with the special methods used for the investigation of organized crime⁵. Likewise, they authorized the confiscation of the assets obtained by corruption in favor of the state.

Independent and capable institutions

The political will, in other words, the desire of the highest authorities responsible for criminal prosecution to advance these investigations, is indispensable. If there is no will from the institutional to pursue these cases, it is extremely difficult for a prosecutor to investigate them alone. The intervention of CICIG, in various ways, facilitated the replacement of Guatemala's Attorney General, Magistrates of the Supreme Court of Justice, and officials of the Ministry of the Interior, with professionals with greater independence and desire to carry out these investigations.

However, political will is not enough. It is necessary to have multidisciplinary financial units specialized in the investigation of this type of case. Investigating corruption is complex in a different way investigating a homicide or, even, crimes related to organized crime. In these cases, the work of auditors and financial analysts is fundamental, as well as the capacity and technology to systematize and analyze large volumes of information.

These investigating units must understand how a specific criminal phenomenon works: in this case, corruption. They must not wait for reactive investigations, or denunciations that come from other organs of the administration, but instead identify those relationships where the most serious behaviors occur and design strategies to investigate these cases concretely. In Guatemala, for example, customs has historically been a space for smuggling and corruption at the highest level. From this knowledge, the investigation called "La Línea" was launched, which reached the president at the time, the vice president and other high government officials⁶.

Prosecutors should not only be independent of external influences that may obstruct or limit the progress and scope of the investigations, but should also be able to carry out autonomous investigations that do not depend on the performance of other control agencies. In other words, to start a case you should not need other entities of the public administration such as Comptroller of Accounts etc., which may be susceptible to interference or obstructions.

³ Decree 4-r2010 of the Congress of the Republic.

⁴ Decree 31-2012 of the Congress of the Republic.

⁵ Among others, wiretaps and necessary cooperators or informers, Article 46 of Decree 31-2012 of the Congress of the Republic.

⁶ <https://www.cicig.org/casos/caso-la-linea/>.

Likewise, there must be at least one circuit of independent judges, appointed by merit and with greater security measures. For example, the judges against corruption in Honduras, or the high risk court judges in Guatemala.

Independent Press and A Demanding Society

In societies where impunity is the rule, an independent press plays a fundamental role in investigating and reporting corruption cases. In Guatemala, many cases started through investigative journalism. Likewise, independent media has played a fundamental role in denouncing harassment of prosecutors, witnesses, judges and experts, or attempts to pass laws that benefit corruption perpetrators.

What are the limits? In societies where corruption is the way to obtain and preserve state control and privileged access to public business, it is not isolated individuals who are involved in these crimes, but rather a grand part of the political and economic elite. As investigations in corruption advance, they reveal how public matters are usually handled, elections are illegally financed and public positions are obtained without merit and by nepotism. The investigations will also identify those who will oppose the investigations, attempt to undermine inquiries and try to avoid the collapse of that their privilege system at all costs.

When the investigations reach the political and economic leadership, the penal system cannot advance alone. Judges and prosecutors must be accompanied by enormous social support. Society as a whole must support the findings by responding with institutional reforms that avoid setbacks and that gradually consolidate what has been achieved.

This is the battle that has taken place in Guatemala during the last two years. In 2015, the entire citizenry turned to the square and achieved the resignation and prosecution of the president at the time. Currently, in 2019, the sectors that found themselves exposed as corrupt by CICIG have been able to recalibrate themselves and have managed to weaken CICIG and the efforts in the fight against corruption. In the end, the burden to banish the scourge of corruption continues to be on the shoulders of citizens. However, we cannot permit this enormous setback.