

## Guatemala

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1. Organised crime and drug trafficking are penetrating the public political life in Guatemala to the extent that, some analysts fear, the country may turn into a 'narco-State'. Accusations that criminal organisations fund political parties and electoral campaigns have been made since 1996. Information on these cases shows that the main sources of illicit funds in campaigns are proceeds from drug trafficking activities and corruption networks that embezzle funds from state institutions. Several government authorities including the Vice President, the Interior Minister, and the Presidential Commissioner for Human Rights have warned of the risk that drug traffickers will have an impact on the 2007 elections, providing campaign funds, or even running their own members as candidates.

There are three factors that increase the risk of criminal organisations penetrating the political system through party/campaign funding:

- I. The increase in the scope, dimension and type of organised crime activities;
- II. The weakness of political parties; and
- III. The corrupt and politicised character of some sectors of the police and the military.

These conditions are described below in sections I, II, III. Sections IV, V, and VI, respectively, describe the legal framework for campaign funding, the social response to existing laws and social advocacy for reform, and the recent incidence of corruption and illegal funding.

### **I. The Increase in the Scope, Dimension and Type of Organised Crime Activities**

2. The security situation in Guatemala has declined alarmingly as reflected in a **high murder rate** estimated at 40 per 100,000 inhabitants in 2004. In 2005, there were 5,500 homicides, the highest total since the end of the civil war in 1996 (Freedom House, 2006).

3. Together with Honduras and El Salvador, Guatemala is one of the countries suffering the most from **gang-related crime**. Gang membership is estimated at 70,000 by the United States (US) government and 100,000 by the Guatemalan government (Bagley, 2004). There is general agreement that gangs are both a social and a security problem as they are becoming increasingly involved in drug and arms trafficking. Deportation of criminals from the US has added an element of complexity to the problem. About 24 percent of total criminal deportees to Central America are Guatemalans (DHS, 2004).

4. In 2006, the US Department of State included Guatemala on the list of 'primary concern locations' for **money laundering activities**, which are defined as countries where 'financial institutions engage in transactions involving significant amounts of proceeds from all serious crime'. The classification reflects that money laundering has become widespread.

5. According to the United Nations Office on Drugs and Crime (UNODC, 2006), Guatemala is reported in the high range as a country of origin for **human trafficking** to the US and also as a transit point for victims trafficked to Mexico and the US. Several networks smuggling Ecuadorians and Chinese to the US have been dismantled in Guatemala.

6. According to the US Department of State, 'Guatemala is a preferred transit point in Central America for **onward shipment of cocaine** to the United States'. A significant portion of the estimated 100 tones of cocaine that move through Central America to the US passes through Guatemala. Guatemalan drug cartels have grown as they have adopted more sophisticated transportation techniques to serve Mexican and Colombian drug cartels and internal distribution networks. Furthermore, although Guatemala is not a major producer of drugs, there is concern that opium cultivation is growing.

## II. The Weakness of Political Parties

7. The party system in Guatemala is very fragmented. There are about 41 parties recognised at the national level, but between 1997 and 2000 an average of only 2.7 parties were effectively voted into public office (CIDE, 2001).<sup>1</sup> Parties are short lived, usually operating for less than 20 years, while electoral volatility makes the political system very unstable. This is the consequence of the use of parties as vehicles for self-promotion during election times (Carter Center, 2004). Parties have weak structures, with little in the way of organisation or ideology to control individual politicians and are therefore very susceptible to illegal funding.

8. Weak parties increase Guatemalans' distrust for democratic institutions. According to the Latinobarometro, support for democracy has declined 19 percent between 1999 and 2005. Turnout in elections is below 50 percent of registered voters and is even smaller if calculated on the basis of the total voting age population. Democratic indicators have deteriorated since 2000. In 2004, Guatemala was considered the fifth Latin American country where institutions are most at risk (Latin American Newsletters, 2004).

## III. The Corrupt and Politicised Character of the Police and the Military

9. Guatemala's dictatorship and the civil war made the military a central actor in political processes. The military used political parties during the dictatorship as formal vehicles to create a veneer of democracy (Torres and Aguilar, 1998). Additionally, during the war, the military formed intelligence apparatuses for counter-insurgency operations that increased both their formal and informal power.

10. The transition to democracy and the signing of peace accords in 1996 reduced the prevalence of the military by documenting abuses of army and security forces, calling for de-militarisation, and opening up social participation (Jonas, 2000). Although the militarisation of the society decreased in the years following the peace accords, it increased again after 2000 (BICC, 2005). Nowadays, rejection of military rule among Guatemalans is only slightly above 50 percent, in fifth place from the bottom in Latin America (Latinobarometro, 2004). This trend signals the still pervasive role of the military and the willingness of the population to accept military intervention in exchange for security.

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<sup>1</sup> The major parties are the Guatemalan Republican Front (*Frente Republicano Guatemalteco*, FRG), the National Unity of Hope (*Unión Nacional de Esperanza*, UNE), the National Advance Party (*Partido de Avanzada Nacional*, PAN), the Christian Democracy (*Democracia Cristiana*, DC) and now the National Innovation and Unity Party-Social Democratic (*Partido Innovación y Unidad Social Demócrata*, PNIU-SD).

11. The military still plays an important role in politics even if it is not as active as it was in the 1980s and 1990s when more army officers formed parties and competed as candidates. The Guatemalan Republican Front (*Frente Republicano Guatemalteco*, FRG), created in 1988, was organised around the figure of ex-dictator General Efraín Ríos Montt, who supported Alfonso Portillo's run for president in 1999. Other parties such as the defunct National Unity Front (*Frente de Unidad Nacional*, FUN) promoted the presidential candidatures of current or former generals. In 2002, General Otto Pérez, one of the signatories of the peace accords, created the Patriot Party (*Partido Patriota*, PP).

12. There are proven links between wide sectors of the military and the police with drug trafficking networks. Between 1989 and 1995, the US Drug Enforcement Administration (DEA) formally accused at least 11 Guatemalan military officers of drug trafficking (Smyth, 1995). In 2005, a US Federal Bureau of Investigation (FBI) classified report stated that ex members of the Guatemalan Special Forces (*Kaibiles*) were training drug traffickers in paramilitary tactics in Texas (Smyth, 2005). The same report noted that the training, tactics and clandestine structures the military acquired during counter-insurgency operations facilitated their successful involvement in drug trafficking. Corruption has been also pervasive among anti-narcotics police. In 2002, more than 80 percent of the members of the Department of Anti-Narcotics Operations (DOAN) were fired after accusations that officers were stealing confiscated cocaine. The scandal led to de-certification by the US and later to the closure of the DOAN. Theft scandals emerged also in the newly created Anti-Narcotic Analysis and Information Service (*Servicio de Análisis e Información Antinarcótica* (SAIA)).

#### IV. Legal Framework of Campaign Funding

13. The 1985 Law on Political Parties and the Electoral System provides the framework for party funding. It was partially reformed in 2004.

##### Provisions of the 1985 Law

14. The government provides **direct public funding** after the election, in the form of a cash reimbursement of US\$0.26 per vote obtained for parties with more than four percent of the vote.

15. The government provides **indirect public funding** for all political parties through free postal service and 30 weekly minutes on state television and radio during campaign periods.

16. The Law assigns the Supreme Electoral Court (*Tribunal Supremo Electoral*, TSE) the responsibility of auditing reports on the use of public funding. The TSE, created in 1983, is non partisan in nature and is generally well respected for its autonomy and impartiality.

##### Shortcomings of the 1985 Law

17. Public funding does not represent a significant share of campaign costs. Indirect funding does not work well because public services operate poorly and parties recur to private services for effective advertising (Marroquin, 2004).

18. Absence of regulations on **private contributions, transparency and disclosure, expenditures limits** and **access to private media**.

### Background to the 2004 reform

19. The reform derives from the report 'Guatemala, Paz y Democracia' issued in 1998 by the Electoral Reform Commission (*Comisión de Reforma Electoral*, CRE) created after the peace accords. The report proposed regulating time for parties on private media, prohibiting anonymous contributions and making parties register and publicise their donations. The proposal was reworked during several discussions in the Congress (Carter Center, 2004) and was approved in April 2004 with improvements to the original proposal, but eliminating some provisions on disclosure and reporting. The reform was adopted with the support of an alliance that President Oscar Berger established with the National Unity of Hope (*Unión Nacional de Esperanza*, UNE) and National Advance Party (*Partido de Avanzada Nacional*, PAN) parties. The President's own party, Grand National Alliance (*Gran Alianza Nacional*, GANA), did not fully support the approved text and hoped to introduce an immediate amendment to the Law. However, in May 2004 the alliance broke apart. It is now unlikely that there will be any change to the Law.

### Provisions of the 2004 reform

20. Increases **public funding** with a reimbursement of US\$2 per vote, as well as the voting threshold to access these funds from four to five per cent of total votes.

21. Sets a **limit on campaign spending** at US\$1 per registered voter. This limit can be changed before elections by political parties in negotiation with the TSE.

22. Assigns **broader responsibilities to the TSE** to enforce new reporting obligations of parties on contributions and overall expenditures.

23. Creates a **limit on private contributions** of 10 percent of the total campaign spending. Establishes that all contributions should be channelled through parties or civic committees, which in turn are responsible for reporting. Non-compliance will carry administrative and criminal sanctions provided for in penal laws.

24. Introduces **limits on the maximum amounts of private media time** and propaganda to be used in campaigns, and states that these need to be contracted on an equal basis by all parties. The reform obliges media to register fees and to sell airtime to all parties in order to counter-balance the existent monopoly on private media that makes it difficult for parties to have equal opportunities (Carter Center, 2004). Media have to provide the TSE with free time slots to be distributed to parties and used for voter education and information.

### Shortcomings of the 2004 reform

25. The reform is an improvement on the 1985 Law but, as the Carter Center highlights, it presents several enforcement problems. The power attributed to political parties for changing the limit on campaign expenditures politicises and gives great leeway to parties. It is very likely that parties will try to change the amount established by the TSE for the 2007 elections in US\$5,500 million, approximately (US\$1 per each of the 5,370,505 registered voters).

26. The limit on expenditures is very low compared to real spending, according to calculations made by *Acción Ciudadana* (AC) on media spending in the 2003 elections. Parties can evade the limit on campaign contributions by dividing large contributions into small amounts.

27. The provisions on free media access are unclear and difficult to enforce. In July 2006, the TSE clarified that media cannot provide free time slots as they would constitute anonymous contributions prohibited by the Law.

28. The lack of clarity in the contents and timing of financial reports (Carter Center, 2004) undermine the effective use of disclosure provisions.
29. Increased public funding would augment the burden on government expenditure in a country that faces budgetary constraints and a deficit calculated at US\$1.2 billion in 2005.
30. Recent problems within the TSE such as the difficulties with voter registration in 2003 and management irregularities denounced by the Controller in 2006 constitute a potential risk for the enforcement of the Law and undermine the high credibility of the TSE.
31. The effective introduction of sanctions depends on the approval of a reform in the penal code that has been discussed but not approved by Congress.

## V. Social Response to Existing Laws and Social Advocacy for Reform

32. *Acción Ciudadana*, the national chapter of Transparency International in Guatemala, has been the most active non-governmental organisation (NGO) regarding the issue of transparency in parties and campaigns. In 2003, AC asked parties to provide information on their finances, monitored the amount of time used by parties in press, radio, and television and consulted media organisations about their fees, in order to estimate the amounts spent by parties on mass media. It was the first real effort to make parties financially accountable and it resulted in an accurate calculation of campaign funding. Currently, AC is working on the creation of a Transparency Index for parties and the use of a banking body – Special Verification Intendancy of the Banking Superintendence (*Intendencia de Verificación Especial de la Superintendencia de Bancos*) - to monitor contributions upon parties' request if they have doubts about the origin of the funds.

## VI. Recent Incidence of Corruption and Illegal Funding

33. In 1996, former presidential candidates Alfonso Portillo (FRG) and General Hector Gramajo admitted that their election campaigns received contributions from Alfredo Moreno, the head of a multi-million-dollar tax evasion and smuggling racket. Moreno's organisation embezzled more than US\$2.6 billion over a 15-year period, more than Guatemala's total foreign debt. Portillo and Gramajo avoided prosecution alleging that they did not know the illegal nature of Moreno's business.

34. Finishing his term as president, Portillo illegally diverted state resources to his personal accounts and from there to the FRG and UNE, using bank accounts in Panama. He funnelled money through various departments and public bodies, including the General Controller's office, the Defence Ministry and the public prosecutor, totalling almost US\$19 million. At least 10 high ranking military officers and three Defence ministers participated in the theft. In 2003, it was also revealed that public officials from the Controller's office diverted resources to the coffers of the UNE and PAN campaigns through an NGO that carried out a consultancy for the Controller's office.

35. In 2002 two former intelligence chiefs, Generals Manuel Callejas and Francisco Ortega, had their US visas revoked in connection with drug trafficking accusations. While having powerful positions during the governments of Efraín Ríos Montt, Vinicio Cerezo, Jorge Serrano and Alfonso Portillo, they built up a network involved in trafficking of drugs and migrants, and car theft. Callejas was also a main actor in the corruption network controlled by Alfredo Moreno.

36. In 2004 the authorities arrested Marco Tulio Abadio, the former director of the tax agency – Tax Administration Superintendence (*Superintendencia de Administración Tributaria*) - on charges of embezzlement and money laundering. It was reported that Abadio, who built a public career with support from the PAN and the FRG, provided funds to the UNE campaign. UNE leader Alvaro Colom admitted that he received ‘what he thought was a legitimate contribution from Abadio’ (Carter Center, 2004). One of Abadio’s sons, Junior Vinicio Abadio Carillo was deported from the US to Guatemala in December 2005 to face embezzlement charges, while another of his sons, Byron Rene Abadio Carrillo, had an arrest warrant issued on similar charges. (*Associated Press*, 16 December 2005).

37. At the local level, drug lords seem to have a huge influence on Guatemala’s congressional representatives and local mayors, particularly in coastal and frontier areas. In February 2006, the Vice Minister of Interior acknowledged that several legislators were involved in drug trafficking. A month earlier, Interior Minister Carlos Vielmann denounced that legislators had approached him, offering to facilitate drug seizures in exchange for not prosecuting drug traffickers. In December 2005, it was proved that UNE legislator Manuel Castillo participated in a drug and car trafficking network in Jutiapa. He was expelled from the party and alleged that he had contributed to Alvaro Colom’s presidential campaign.

## VII. Conclusions

38. As an institution, Guatemala’s military is more stable than its current political parties. The military has had long standing connections to politics whereas political parties *per se* lack stable structures and membership. Sectors in the military involved in criminal activities interact with individual politicians who give them access to state structures. Criminal networks are not limited to a single party as revealed by the fact that almost all corruption scandals link individuals across party lines.

39. The weakness of parties facilitates the access of criminal organisations to electoral competition. Documented cases show that personal relations prevail over organisational loyalties facilitating the inclusion of illicit proceeds in campaigns. The lack of national party structures gives more leverage to local politicians directly involved in criminal organisations.

40. Campaign funding with proceeds from crime is a manifestation of pervasive corruption networks and is not just the result of high campaign costs. The proceeds of corruption in state institutions have been used to fund campaigns in order to avoid prosecution or to facilitate money laundering through politicians’ personal accounts. At the local level, funding campaigns can help drug traffickers to buy the support and silence of the population while supporting clientelist exchanges.

41. The lack of clarity regarding who is accountable for party finances, and the lack of sanctions for violations has made it easier for those involved in scandals to avoid responsibility. Recent changes in the legal framework and government declarations supporting anti-corruption efforts (the 2006 Guatemala Declaration for a Region Free from Corruption) may represent initial steps in a different direction.

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