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## Guatemala: Country Report

Second Quarter, June 2017

### 1 Executive summary

“There is never a dull moment in Guatemala” was once stated by a former U.S. Ambassador in the region. His words continue to ring true today. On the positive side, Congress approved and President Morales deposited this month Guatemala’s instrument to ratify the Convention on Mutual Administrative Assistance in Tax Matters with the Organization for Economic Co-operation and Development (OECD) Secretary-General Angel Gurría. This action underscores Guatemala’s strong commitment to greater transparency and international cooperation in tax matters. On October 2017, when the convention enters in full-force, Guatemala will no longer be part of the “gray list” of tax havens of the OECD.

This will be a great opportunity to attract foreign direct investment, as many countries levied a high tax on any capital that was returned from Guatemala. This instrument sends a clear message of the Government’s commitment towards transparency and Rule of Law.

Another positive recent development is the Constitutional Court resolution to re-establish operations of the Oxec Hydroelectric Power plant, detailed in our last Country Report. The Court mandates that Congress create a legal framework so that the consultation process included in Convention 169 of the International Labour Organization on Indigenous and Tribal People can finally be implemented over the coming months.

The “cleansing” process has reached practically every sector of the Guatemalan elites, from politicians, to labour leaders, to banks, to media, etc. While the overall quest to cleanse ourselves of corruption is celebrated, over 370 high-profile cases are underway with practically no convictions to speak of. The general perception is that recent cases no longer have the investigative depth of the original corruption cases and seem to be guided increasingly by political motivations. President Jimmy Morales is now awaiting the Supreme Court’s decision to see if he will be stripped of political immunity.

Political instability, regulatory risk and judicial uncertainty do not bode well for a country in desperate need to attract foreign investment. With the lowest investment as a percentage of GDP in the entire region, Guatemala must take corrective measures if it is to create an environment conducive to growth. Such an environment would not only generate the jobs necessary to reduce poverty, it would preclude thousands from embarking on the treacherous journey to find better opportunities in USA.

## 2 Political Risk and Governance

**As this report was being edited, President Jimmy Morales awaits the resolution of the Supreme Court in response to the Attorney General's request to strip President Morales of his political immunity and face criminal charges for allegedly being responsible for the deaths of 42 minors that lost their lives in the "Hogar Seguro" orphanage<sup>1</sup>.**

General public opinion is that the criminal justice system in Guatemala is increasingly acting on political and media pressure, rather than technical criteria. High impact political cases like the Hogar Seguro case have received attention from the media and human rights groups. The pressure leads to a "fast-track" and "media heavy" approach, whereby the process stipulated in the Criminal Procedure Code is bypassed.

The plaint filed against the President was signed by two deputies from the far-left Convergencia political party, Sandra Morán and Leocadio Juracán. These deputies have leveraged the Hogar Seguro Case for political gain, seeking greater acceptance among urban middle-class constituents.

This high impact case has now become the main topic in Guatemala, just two days before the meeting in Miami with high government officials from the USA, Mexico and the other countries of the Northern Triangle of Central America.

**President of Mexico Enrique Peña Nieto visited Guatemala. This sends an important message to the commitment of both Governments to work together in order to generate opportunities and tackle root causes that push people to migrate to the US<sup>2</sup>.**

President Peña Nieto made what might have been his final visit to Guatemala as President, as elections in Mexico are to be held in 2018.

The visit held on June 5-6 has important significance as the Northern Triangle of Central America will be the topic of the Conference on Prosperity and Security that is being organized both by the Government of the US and Mexico, and that will be held in Miami from the 14th to the 16th of June.

President Peña Nieto was accompanied by a delegation of Mexican private sector representatives who had the opportunity to meet with Guatemalan private sector organizations such as the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) and Fundesa, to understand the opportunities and challenges of investing in Guatemala. President Jimmy Morales commented that the Government of Guatemala will be working with Mexican authorities to improve eight border checkpoints and increase investment in the Western Highlands.

The task is especially difficult in many Guatemalan departments bordering Mexico. Lack of infrastructure, low skilled workers, and weak State institutions, avert investment. A region with



President Peña Nieto and President Morales  
Picture by: Government of Guatemala

<sup>1</sup> <http://www.soy502.com/articulo/estos-son-motivos-jimmy-podria-perder-inmunidad-63338>

<sup>2</sup> <https://elperiodico.com.gt/nacion/2017/06/06/guatemala-y-mexico-acuerdan-reforzar-atencion-a-emigrantes-deportados/>

high levels of poverty and indigenous communities who in many cases have no information about the benefits of investment, is a complicated area in which to work and generate opportunities.

The Plan for the Alliance for Prosperity in the Northern Triangle has to focus on new ways to invest in infrastructure as the Government of Guatemala is committed to address infrastructure in different regions of the country, via multiple congressional committees and executive agencies, and funding sources are essentially non-existent. This creates an opportunity for Guatemala to create new institutions that can focus on infrastructure.

### **Guatemala strengthens international tax cooperation and ratifies the Convention on Mutual Administrative Assistance in Tax Matters<sup>3</sup>**

A delegation from the public and private sector participated in the Business France meeting at the OECD as well as the Forum on Latin American and the Caribbean that was held on June 9 in the City of Paris, France.

The President of Guatemala, Jimmy Morales closed the event with the good news of the ratification by Congress of the Convention on Mutual Administrative Assistance in Tax Matters. This commitment was signed by Guatemala at the OECD in 2012, and was pushed back in Congress until this year, when Minister of Finance, Julio Héctor Estrada and the Foreign Relations Minister, Carlos Raúl Morales were able to receive the necessary support in Congress, through a public-private strategy, in order for Guatemala to enter the process of receiving technical assistance to be part of the OECD countries. This long-term agenda is now an excellent opportunity to increase the capacity of State institutions with the support of the IDB that also joined the event, and the OECD.

The news was received with great expectation by the international business community that were part of the event, as well as by CACIF and Fundesa that also participated in the forum. A high level director of CACIF interviewed for this report said “he hopes this convention can set the country back on track and open the country for business, as foreign direct investment is crucial for economic growth”.

**Corruption persists in the Guatemalan Justice System, as parallel structures of power continue to wield influence over the judiciary.** A clear example is the case of former Supreme Court Magistrate Blanca Stalling, she is being accused of pressuring Judge Carlos Ruano Pineda into giving her son a more lenient sentence for his involvement in the La Linea case<sup>4</sup>. Although she is now standing trial, the presiding Judge Adrian Chávez has excused himself from the case without giving clear justification for doing so.

While the motivations of Judge Chávez to step down from the case remain unclear, the development is suggestive of the influence Magistrate Stalling continues to wield over her peers<sup>5</sup>. Indeed, even though Magistrate Stalling, has been removed from her post, she continues to receive a government salary and maintains her political connections which can be used to intimidate and influence the judiciary.

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<sup>3</sup> <http://www.oecd.org/tax/exchange-of-tax-information/guatemala-strengthens-international-tax-cooperation-ratifies-the-convention-on-mutual-administrative-assistance-in-tax-matters.htm>

<sup>4</sup> <http://www.insightcrime.org/component/content/article?id=8541:magistrate-arrest-signals-battle-guatemala-judiciary>

<sup>5</sup> <http://www.prensalibre.com/guatemala/justicia/juez-se-excusa-en-proceso-contra-blanca-stalling>

**As one of the key cases in the La Linea scandal, the proceedings thus far underline the challenges in securing convictions against those involved.** Judge Chávez stepping down is expected to prolong case proceedings, and result in a lighter sentence for Magistrate Stalling. The new Judge taking over the hearing is unlikely to have the same level of resolve to ensure that Magistrate Stalling receives a sentence which is proportionate with the allegations made against her.<sup>6</sup>

**Nonetheless, the Appeals Court is standing firm in asserting its independence from political interference and intimidation.** On April 18, the defense team of Former President Otto Pérez Molina sought to have Judge Miguel Ángel Gálvez removed from the case through a process of cross-examination which sought to characterize him as unsuitable to preside over the trial of the former President. However, international support and the reputation of Judge Gálvez was a clear message to the Supreme Court magistrates as they resolved unanimously that he should continue to preside over all legal proceedings of this high impact case.<sup>7</sup>

**Stall-tactics, shallow prosecutorial talent and rattled judicial system do not mix well and lead to limited results.** 1 Ex-president, 1 ex vice-president, the Brother and Son of the current President, 8 ex members of cabinet, 2 secretaries, 22 members of congress, 3 Magistrates, 1 President of the Welfare System, 1 President of the National Bank, 27 government suppliers, 21 renowned members of the business community, 39 intervened businesses. The list adds up to 370 accused parties and practically no convictions (One judge was sentenced and her case is currently on appeal).

**Traditionally a time of heightened levels of violence and citizen insecurity, this year's Easter Holiday was the safest in several years.** In a meeting with the presence of the Vice-president, the Minister of Communications and Infrastructure, the Director of the National Tourism Board and other government officials, the Minister of Interior communicated that this year the number of homicides was reduced by 19.14% from 94 homicides to 76 during the national Easter Holiday.<sup>8</sup>

According to the Minister of the Interior, support from the Bureau of International Narcotics and Law Enforcement Affairs (INL) in technical training programs for the Civil Police, has had a significant impact on levels of violence. This is the clearest sign yet of the beneficial effects of supporting the government security forces with new procedures, technical training, technology and clear investigation processes.

**Nonetheless, high levels of insecurity remain a major challenge, affecting business operations and citizen security.** In a public statement, Interior Minister Francisco Rivas noted the inadequacy of policing in many departments outside the Metropolitan area, and the need for improved training. This comes despite a further reduction in the national homicide rate, from 27 per 100,000 in January 2017, down to 26 homicides per 100,000 people.

Urban departments with weak institutions outside the Metropolitan area still lack the necessary investments in technology and very low capacity of police officers. The homicide rate in Escuintla, the department where sugar is produced (one of Guatemala's most important export),

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<sup>6</sup> <http://americasquarterly.org/content/meet-5-latin-americas-bravest-judges>

<sup>7</sup> <http://www.prensalibre.com/guatemala/justicia/otto-perez-molina-caso-la-linea-juez-miguel-angel-galvez>

<sup>8</sup> <https://www.publinews.gt/gt/guatemala/2017/04/17/ministro-gobernacion-semana-santa-menos-violenta.html>

was still 64 per 100,000 people in December 2016, down from 79 per 100,000 in December 2015.

**Recognizing the lack of State capacity, private sector donors are attempting to fill the void, providing funding for security programmes outside the Metropolitan Area.** For instance, private sector companies have given funds to the *Mejoremos Guate* initiative for a programme called the Coalition towards Security and Justice.<sup>9</sup> According to a brewery executive interviewed for this report, such efforts are putting the country on the right track to strengthen security and justice.

**A recently published study into the cause of homicides in Guatemala's most dangerous areas highlights the need for improved use of data and training to address the drivers of violence.** The two-year study by Insight Crime was financed by USAID through the Central American Regional Security Initiative (CARSI), and analysed homicides in the department of Chiquimula and Zona 18 of Guatemala City, with the intention of establishing what proportion of homicides were related to organized crime, and what proportion had other social, interpersonal or economic motivations.

In Chiquimula, the study found that only 28% of the cases could be reasonably attributed to organized crime. Meanwhile, in Zona 18, approximately 40% of homicides were found to be related to gang violence, which matches the government's own estimation.

**Law enforcement measures required to address high levels of violence are likely to take place over the long term, meaning that businesses can expect the current security risks to persist.** The key finding of the report was the extreme limitations of the current data available, and the need for law enforcement to more rigorously record data at the crime scene and during the investigation following a murder. The report concludes that only this will enable law enforcement and donor agencies to target their resources and funding more effectively to address the underlying drivers of violent crime in the country.

**An arrest warrant issued for a former education union leader is illustrative of corruption in the public sector, and the reputational risks posed to businesses and NGOs who fail to do background checks on such individuals.** The warrant was issued against former education union leader, Bernardo Caal, after he was allegedly indicted of failing to show up to work at his school in Alta Verapaz (the department with the highest poverty rate of 80%) for nearly two years, despite accepting a government salary. Mr. Caal had also accepted donations from NGOs and human rights organizations due to his involvement in campaigning against the development of the Oxec I and II hydroelectric projects.

This highlights the reputational risk to businesses and NGOs who donate to local unions or civil society activists without knowing the background of the individuals they are supporting.<sup>10</sup> Moreover, while the issuing of an arrest warrant is rare, such absenteeism and corruption is not uncommon among union and civil society leaders and happens across several public-sector institutions, including Health, Communications, Agriculture and Economy.

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<sup>9</sup> [www.mejoremosguate.org](http://www.mejoremosguate.org)

<sup>10</sup> <http://www.prensalibre.com/guatemala/justicia/bernardo-caal-tiene-orden-de-captura-por-estafar-al-estado>

### 3 Economic Risks and Growth Outlook

**Despite ongoing concerns regarding the rule of law, Fitch maintained its credit risk evaluation at BB with a stable perspective, due to the stable macroeconomic environment.** According to Fitch, Guatemala's primary asset with regards to its business climate is its robust Central Bank which maintains an independent monetary policy. The report presented to the authorities by Fitch, summarises the actions that Guatemala must embrace to improve its evaluation, including the need to broaden the tax burden to invest in social services, and to improve human development, governance and the rule of law.<sup>11</sup>

**International organizations have also highlighted the need to address the lack of tax increase, but are not forthcoming with technical assistance.** The recommendations from Fitch match closely those presented by the IMF in the meetings that took place on April 21 with Ministers of Finance from several countries. Citing a tax burden to GDP ratio of 10.4%, the IMF characterised Guatemala as a country where many people do not pay taxes. While the Ministry of Finance acknowledged the findings, a well-known political analyst interviewed for this report criticised the IMF for the lack of practical solutions and technical assistance provided to Guatemala by the organisation to broaden the tax base effectively.

The political analyst commented that it is unlikely that the Government or opposition will be able to identify a comprehensive policy to broaden the tax base in the current political climate as the entire political system is currently preoccupied with the ongoing corruption cases led by CICIG (International Commission against Impunity in Guatemala).

### 4 Business and Investment Environment

**While the Government is addressing the ease of doing business in the country, infrastructure gaps remain a substantial challenge to businesses and continue to lag.** The National Competitiveness Program (PRONACOM) and the newly appointed Minister of Economy are leading an initiative that is in discussion in Congress to reduce the number of days and cost to open a business. This is part of the Doing Business agenda that the World Bank has set for countries and that competitiveness programs all over Latin America and other countries are following, as a clear strategy to make things easier for investors as they search for investment destinations.

One key reform is an initiative to change the Commercial Code of Guatemala, which would have an important impact on cutting down red tape for new businesses to establish in the country.<sup>12</sup> Despite these improvements, logistical bottlenecks, and the cost and time to transport personnel and products across the country remains a major inhibitor to business competitiveness.

**Ongoing revelations regarding corruption involving public works are deterring investment in infrastructure.** As mentioned in the previous Country Report, the ongoing deluge of corruption investigations has resulted in an underspend of budget allocations by procurement officials, who fear being swept up in new corruption cases. Revelations involving Odebrecht and

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<sup>11</sup> [http://www.banguat.gob.gt/Publica/Prensa/20170419\\_Comicado\\_Informe\\_Fitch\\_Ratings.pdf](http://www.banguat.gob.gt/Publica/Prensa/20170419_Comicado_Informe_Fitch_Ratings.pdf)

<sup>12</sup> <http://elperiodico.com.gt/inversion/2017/04/24/bm-recomienda-reformas-a-guatemala-para-mejorar-en-el-doing-business/>

the family of former Minister of Communications, Alejandro Sinibaldi have further compounded this issue.<sup>13</sup>

According to a high-level business leader from the Construction Chamber interviewed for this report, corrupt practices do persist within the Ministry of Communications, Infrastructure and Housing, as several mid-level bureaucrats involved in past corruption remain in place.

The current situation is bringing the government's infrastructure agenda to a halt because investors and lenders who conduct due diligence into potential partners and government officials are concerned with their findings, as the fight against corruption has all political servants on their toes. Execution of the Ministry of Communications of the total budget is only around 14%.

## 5 Business Intelligence and Investment Opportunities

**The Ministry of Economy is conducting a feasibility study for a new Convention Centre in Zone 9 of Guatemala City, with a projected calendar to start a bidding process in 2018.** The proposed Industrial Park has the potential to become the largest convention centre in Central America. Alisson Batres, former Deputy Director of the National Tourism Institute (INGUAT) is responsible for the implementation of the feasibility study. Ms. Batres is working under the auspices of the Ministry of Economy, as part of the Ministry's strategy to increase business travel to Guatemala.

The proposed Convention Centre faces opposition from certain business leaders who hold a concession to the land dating back to the 1970s. Nonetheless, the land is considered to be government owned, and their claim is unlikely to significantly delay the government's timeframe for the feasibility study and bidding process.

## 6 International Relations and Foreign Investment

**Investment in the industrial sector has attracted Mexican companies, especially towards the production of more cement and milk in Guatemala.** Mexican cement company CEMEX has invested an additional US\$3.7 million to increase capacity in Guatemala.<sup>14</sup> According to reports, the decision by CEMEX to expand operations in Guatemala was a long-term decision, based on economic growth, rapid population growth, a young population, based upon which CEMEX analysts believe there will be demand for up to 545,000 tons of cement yearly. The investment is also an indication of the success of the government's Urban Agenda, and its attempts to attract investors.

Another company that initiated new operations in Guatemala was Grupo Lala. The new dairy plant represents an investment of US\$30 million, creating 4,000 new jobs in Escuintla, approximately 31 miles away from Guatemala City. Escuintla is also part of the Intermediate Cities that PRONACOM and Fundesa have identified through the Urban Agenda<sup>15</sup>.

<sup>13</sup> <http://www.prensalibre.com/guatemala/politica/concuo-de-sinibaldi-es-pieza-clave-en-odebrecht>

<sup>14</sup> <http://www.elfinanciero.com.mx/empresas/con-inversion-de-mdd-cemex-aumentara-produccion-en-guatemala.html>

<sup>15</sup> <http://www.dairyreporter.com/Manufacturers/Grupo-Lala-invests-30m-to-build-dairy-plant-in-Guatemala>

**A new US initiative to combat corruption will place continued pressure on Guatemala to address corrupt practices, reducing risks to investors in the long term.** The Combating Global Corruption Act of 2017 was introduced to the US Senate by Senators Ben Cardin (D-Md.) and David Perdue (R-Ga.), and has already attracted the support from Senators on both sides of the aisle.<sup>16</sup> If passed, the law would require the State Department to authorize and publicly distribute a report, similar to its annual Trafficking in Persons Report, which summarizes the extent of corruption in countries worldwide and assigns tiered classifications based on certain minimum standards of governmental efforts to combat corruption.<sup>17</sup>

Such a report would likely highlight Guatemala's attempts to challenge corruption, led by the CICIG (International Commission against Impunity in Guatemala). Under the US State Department's traditional classification system for such reports, Guatemala would likely fall into 'Tier Two', defined as countries which make significant efforts to address a certain issue, but fall short of the minimum standards required.

**End.**

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<sup>16</sup> <https://www.foreign.senate.gov/imo/media/doc/Anti-corruption%20bill.pdf>

<sup>17</sup> <https://www.cardin.senate.gov/newsroom/press/release/cardin-perdue-introduce-global-anti-corruption-legislation-with-strong-bipartisan-support>