

Executive Summary

The independent report tracking the implementation of the Inter-American Convention Against Corruption in Guatemala, for the third round of analysis, was drafted by a group of civil society organizations composed of: *Acción Ciudadana*, Guatemalan chapter of Transparency International, *Asociación Guatemalteca de Investigadores del Presupuesto* (AGIP), *Fundación Myrna Mack* (FMM), *Grupo de Apoyo Mutuo* (GAM), *Red Nacional por la Integridad* (RNI) and the *Dirección de Incidencia Pública de la Vice-Rectoría de Investigación y Proyección de la Universidad Rafael Landívar* (URL). This report was delivered to the Secretary of the Follow-Up Mechanism of the Inter-American Convention Against Corruption (MESICIC), of the Organization of American States, in August of 2010.

The topics considered in the III Round of Evaluation are the following:

- **LAWS THAT DENY FAVORABLE TAX TREATMENT FOR ANY INDIVIDUAL OR CORPORATION FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS OF THE STATE (ARTICLE III, PARAGRAPH 7 OF THE CONVENTION)**

The Republic of Guatemala has not adopted laws that specifically deny or impede favorable tax treatment for expenditures made in violation of anticorruption laws. Nevertheless, there are laws that regulate the conditions under which an individual or juridical person can obtain tax benefits in specific cases, and their limitations. The present report recommends the establishment of objective criteria by the President of the Republic to consider for the exoneration of fines and other charges in favor of contributors, and their publicity. Additionally, statistical information is necessary to present the results and apply the mechanisms that contribute to the prevention or sanction tax benefits obtained in violation of anticorruption laws. Finally, it is necessary to use the information contained in the judicial files of cases with a ruling on corruption crimes, to determine if a favorable tax treatment existed, derived from the acts product of corruption.

- **DETERRENTS TO THE BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III, PARAGRAPH 10 OF THE CONVENTION)**

Guatemala has adopted rules and mechanisms to ensure that publicly held companies and other types of associations maintain books and records that, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts. The present report recommends the strengthening of control systems, verification, detection, and sanction by the Tax Administration, regarding bribery of domestic and foreign public officials by private companies; the creation of specific data regarding results obtained by the application of rules referring to the registry and control of accounting practices; ongoing strengthening and education of personnel from the Tax Administration and the Superintendence of Banks in order to improve the supervision of controls and accounting records; strengthening of the capability of the Public Ministry regarding criminal prosecution of the crimes related to accounting and financial records; and finally, the approval of the legal reforms necessary to improve the transparent operations of mercantile companies and guarantee mechanisms of criminal prosecution of individuals and juridical persons that contribute to corruption, and money laundry, such as, the elimination of bearer shares and bank secrecy.

- **TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)**

The State of Guatemala has adopted legislation referring to Transnational Bribery, specifically contained in article 442 bis of the Criminal Code, which regulates a conduct similar to that defined in article VIII of the Inter-American Convention Against Corruption. Nonetheless, there is no record of any

case prosecuted by the Public Ministry for this crime. Based on this, a legislative reform is recommended, towards article 442 bis, in order to include the following aspects: a) referrals to the contributions to campaign financing of political parties based on any act or omission of a government officer or individual which performs official functions, due that it can constitute an act of transnational bribery; b) include other types of acts or omissions (for example, bribery of judicial authorities to obtain a judgment or exoneration of the accused with exclusive political or military purposes, to cause prejudice to an enemy, competitor, etc.); c) include, other than government officials, "any person exercising public functions". Additionally, education programs for public officials that work in the justice sector must be imparted, with the purpose of learning this criminal figure, and applying it in their investigation and prosecution procedures.

- **ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)**

The State of Guatemala has not adopted the crime of illicit enrichment as part of its legislation. It is imperative to include such in the legislative agenda as soon as possible, based on the initiative which unites the proposals number 3894, 3919, and 3963 which plans to modify the Criminal Code to include the crime of Illicit Enrichment and other related crimes as acts of corruption. Jointly, the Office of Probity of the General Comptrollership of Accounts of Guatemala must be strengthened, in order to satisfy the effective mechanisms for prevention and detection of the crime of illicit enrichment, in order to consider effective means to prove review, and verify the content of financial disclosure statements. Finally, mechanisms of control must be determined for the acquisition of assets by persons who exercise a public function, or provide services to the State.

- **NOTIFICATION OF THE ADOPTION OF THE CRIMES OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT AS ACTS OF CORRUPTION (ARTICLE X OF THE CONVENTION)**

Based on the information provided by the Ministry of Foreign Affairs of Guatemala, the notification that confirms the adoption of the crime of "Transnational Bribery" was presented before the Secretary General of the Organization of American States –OAS- in letter dated September 21st, 2007.

- **EXTRADITION (ARTICLE XIII OF THE CONVENTION)**

According to the national juridical framework, the Political Constitution of the Republic of Guatemala regulates the extradition as applicable to individuals who have committed crimes in any other country. Although Guatemalan legislation doesn't specifically regulate the case referred to in the Inter-American Convention Against Corruption, it does refer to treaties and international instruments, as well as the Constitutional provision, as well as the recently approved decrees. It is recommended, that the Ministry of Foreign Affairs produce statistical data with regards to the extradition files in cases of corruption, specifically, as established by the Inter-American Convention Against Corruption. Furthermore, it is recommended that the Public Ministry, as the organ responsible for criminal prosecution, use the Inter-American Convention Against Corruption in matters of extradition for the crimes established in such.

- **ADVANCE IN THE RECOMENDATIONS ISSUED BY THE COMMITTEE OF EXPERTS IN THE SECOND ROUND OF ANALYSIS**

The Republic of Guatemala, in genera, doesn't account for significant advances on the recommendations issued by the Committee of Experts in the Second Round of Analysis, however, there are some specific advances with regards to the following recommendations: a) Strengthen the systems for the hiring of government officials in the Public Ministry, due to the fact that the "Framework of organization and function of the administrative area of the Public Ministry", and the "Handbook for the Position Classification" were issued; b) Strengthen the systems for the purchase of goods and services

by the State, due that legal reforms were promoted to the Law of Government Contracts, were important elements for direct purchase were included, as well as the obligation to respond to the unconformities with the "GUATECOMPRAS" system. Even though there are some advances in this matter, civil society is still concerned with the public purchase parallel system, throughout trusts, non-governmental organizations, and international organs, for this are contract systems manages outside of the scope of the Law of Government Contracts, and for such, are discretionary and hard to supervise.

The complete report details the compliance of the State of Guatemala to the compromises assumed by the Inter-American Convention Against Corruption, to the topics selected for the third round of analysis, and the implementation of the recommendations issued by the Committee of Experts to the previous rounds.