

# JUSTICE DELAYED

*Guatemala may have made progress in trying to hold people to account for abuses of power, but with so many tragic cases languishing in the courts, Mira Galanova explores what's getting in the way of justice.*

# IS JUSTICE DENIED

**O**n 8 March 2017 Guatemala woke up to the news that a state-run home for vulnerable children was on fire. Nineteen girls died at the scene and 22 others later in hospital. Fifteen survived with life-changing injuries.

The girls had been locked inside the 48-square metre classroom overnight, following their failed escape from the home. In a desperate attempt to be released, one teenager is said to have set fire to a mattress. The flames raged inside the room for nine minutes before help came.

The tragedy, which took place in San José Pinula, a town about 23 kilometres from Guatemala City, shocked

the world. The government declared three days of national mourning, then President Jimmy Morales gave a press conference and assured that those responsible would be punished.

A few days after the fire the director of the shelter and two senior public officials were arrested, along with nine others in the following months. There were numerous pre-trial hearings and it seemed that justice would be done swiftly.

But as the public outcry over the tragedy faded, the legal process stalled. Over the last six years, the case known as *Hogar Seguro* (Safe Home), has seen more hearings cancelled than held.

## **Dither and delay**

The trial against eight of the accused had already been moved nine times by the time it was postponed again on 19 January 2023 – this time because the sound system inside the court failed. Previous reasons had included a change of defence lawyer, a retiring judge, the lack of a big enough court room and a lawyer coming down with Covid-19. The families of the 56 girls who were injured or died in the fire felt they were being laughed at.

Vianney Hernández, the mother of Ashly, could hardly contain her anger. 'It is not fair what they are doing to us mothers,' she says. 'They cancel one hearing after another.'<sup>1</sup>



*Relatives of the victims commemorate the fourth anniversary of the Hogar Seguro fire on 8 March 2021 in San José Pinula. Last on the right is Esmeralda Salguero, holding a photo of her daughter Keila.*

MIRA GALANOVA

On 26 January, Lucinda Marroquín and Luis Armando Pérez Borja, two accused police officers, came to court without lawyers and proceedings were postponed again. The judge ordered for their legal representatives to be replaced and on 7 February, Pérez Borja used it as a reason to have the judge removed.

While the pending decision on the judge's withdrawal has stalled the trial, another appellate court ordered all charges against former social welfare undersecretary Anahy Keller to be dropped.

According to Alejandro Rodríguez, a lawyer and researcher at the non-profit Impunity Watch Guatemala, this was a part of the plan of the so-called Pact of

the Corrupts, with ex-President Jimmy Morales pulling the strings: 'This is the trial that suits them – limited to the mid-level officials. Like this, it will not go any deeper into what happened in Hogar Seguro.'

Another defendant's lawyer was offended when plaintiffs suggested that they were 'playing dirty' to hold up the trial. 'All procedural parties should be informed that criminal proceedings are long,' Víctor Pérez said to the judge. 'In a well-attended process, both the defence and the plaintiffs present appeals. In large cases, this results in delays.'

He gave an example of the *La Línea* (The Line) case, a celebrated

accomplishment of the International Commission Against Impunity in Guatemala (CICIG). It took almost eight years to convict former President Otto Pérez Molina and Vice President Roxana Baldetti of defrauding the state of millions in customs duties. Just like with Hogar Seguro, hearings in the La Línea case were repeatedly cancelled.

### Stalling strategy

Delays like this have plagued Guatemala's courts for many years. In 2017, Human Rights Watch analyzed several cases and concluded that although the country had made 'dramatic progress' over the past decade in promoting accountability for abuses of power through the work of the CICIG, too many cases were now stalling in the courts.<sup>2</sup>

Their report found that defence lawyers can easily derail criminal proceedings, and that they often do so knowing that it may take months or years to get the case back on track. They file repeated – and often unfounded – motions challenging court rulings or seeking the removal of judges hearing their cases.

But, as Human Rights Watch highlighted, justice is only delayed because the courts allow it. Higher courts often miss legal deadlines and judges routinely fail to quickly re-schedule the proceedings – all adding up to long delays. Effective sanctions for lawyers who intentionally sabotage criminal proceedings, or judges who allow or cause unjustified delays, don't exist and the consequences are heartbreaking for the people at the centre of the cases.

When 33-year-old Cristina Siekavizza disappeared in 2011, her husband Roberto Barreda soon became the prime suspect. His mother, former Supreme Court president Beatriz Ofelia de León, allegedly used her influence to help him escape to neighbouring Mexico.<sup>3</sup>

Two years later Barreda was captured, extradited to Guatemala and charged with Cristina's murder, and his mother with obstruction to justice.

On 22 August 2016, after a barrage of motions that sought to suspend the hearing, Judge Miguel Ángel Gálvez reproached de León: 'With all due

respect, how is it that a professional who was a magistrate lends herself to causing delays!'

Barreda died of Covid-19 in August 2020, without disclosing where he had hidden Cristina's body. The goal of his stalling tactics was hardly to wait for his death, but anti-impunity campaigners have accused his family of delaying the legal process until the circumstances were more favourable; if they were to wait it out, perhaps the case would get a more malleable judge. Cristina's family believes that Barreda's parents – both lawyers – met with the Constitutional Court magistrates to influence their decisions.

Attempts to suspend a hearing and delay cases can be obvious, such as when Barreda fired his lawyer after all the other strategies, including getting the judge removed more than once, had failed. But in many cases there could be innocent explanations, such as in the case of technical problems, illness of key people in the case or the sheer number of trials clogging up the courts.

Judges told Human Rights Watch that they were assigned heavy caseloads that made it impossible to meet all deadlines.<sup>2</sup> Although the number of judges and prosecutors is only just below the average in the Americas, Guatemala has double the rate of murders and about triple the corruption cases.<sup>4</sup>

### Pulling the strings

It's easy to understand why many Guatemalans see a conspiracy behind the problems in the justice system.

The 2014 election of Supreme Court and Appellate Court judges was allegedly the result of a power-sharing deal cut between Guatemalan politicians Manuel Baldizón and Alejandro Sinibaldi.<sup>5</sup> At that time, they were both hoping to become president.

Baldizón described, in a letter to CICIG, how 13 soon-to-be-elected magistrates had gathered in the presidential suite of a luxury hotel and swore to protect the politicians from any future criminal charges.<sup>5</sup> Those magistrates, elected for a five-year term, continue in their posts despite the fact that the mandate of the current courts was

## The families of the 56 girls who were injured or died in the fire felt they were being laughed at

supposed to expire in October 2019. The election of their successors has been halted after another scheme to influence the process, this time led by powerful political operator and businessman Gustavo Alejos, was revealed.<sup>6</sup>

In Guatemala, shadowy groups have long been pulling strings behind the scenes. Collectively known as Illegal Clandestine Security Apparatuses (*Cuerpos Ilegales y Aparatos Clandestinos de Seguridad* or CIACS), they emerged during the country's 36-year civil war, as a part of the state's repressive counterinsurgency apparatus. Many of them grew from state intelligence and military services.<sup>7</sup>

Following the 1996 peace accords, these groups were transformed into highly sophisticated criminal networks that have penetrated and co-opted state institutions at every level. They use their political, military and intelligence connections, along with corruption and violence, to generate immense wealth with complete impunity.

In 2007, CICIG was created to help the Attorney General's Office dismantle these 'hidden powers'. More than a dozen corrupt judges and thousands of police officers were ousted and powerful drug traffickers were detained. Guatemala's homicide rate, one of the highest in the world, fell by over 40 per cent.<sup>8</sup>

The anti-corruption drive hit the highest levels of the government, leading to the prosecution of members of Congress, ministers and two former presidents. In 2015 the sitting president and vice president resigned over the La Línea scandal.

Guatemalans slowly started to trust the judiciary. The number of those who believed that the wrongdoers would be punished jumped from 29 per cent to 43 per cent between 2010 and 2017.<sup>9</sup>

But the country's corrupt elite wanted a return to the pre-CICIG's state of affairs. After the UN-backed body began to investigate the family of then-President Jimmy Morales, he ended CICIG's mandate in 2019.

### Justice as a matter of power

Over the past four years, the justice system in Guatemala seems to have been on a downward spiral. The Attorney General Consuelo Porras, appointed by

Morales in 2018, has transferred or fired unbribable prosecutors. Others have been jailed on trumped-up charges. Her office has opened seemingly arbitrary investigations into independent judges.

With little faith that they would get a fair trial, dozens of high-profile anti-corruption crusaders have fled the country, including former Attorney General Thelma Aldana and Special Prosecutor against Impunity Juan Francisco Sandoval. Among the last to give in was Judge Gálvez. 'I now understand that justice is a matter of power, not control of power,' he says in the video announcing his resignation in November 2022.<sup>10</sup>

Following the sacking of Sandoval and exit of CICIG the cases it investigated have been gradually closed, and the perpetrators released from prison.

'With the passing time, the public clamour for justice diminishes,' says Rodríguez. 'When Otto Pérez Molina resigned, the public wanted to burn him. Eight years later, people are asking: "Might he be innocent? Did CICIG overreach their mandate?" It makes it easier for the justice system to acquit powerful perpetrators.'

In the Hogar Seguro case, the delays might prevent the truth about what caused the tragedy and its high death toll from coming to light. There had been complaints about the living conditions at the home, abuse against children, as well as allegations of corruption and human trafficking.<sup>11</sup>

Shortly after the tragedy, the court recorded testimonies of eight out of the fifteen survivors. Two other girls did not have their accounts recorded until 2021. Five have still not testified. Meanwhile, a lawsuit was filed in 2019, accusing all 15 survivors of damage to state property and the death of the other 41 girls.

'It is a glaring intimidation. What are these girls going to reveal, if they are threatened with a criminal investigation?' says Paula Barrios of Women Transforming the World, a non-profit representing some of the Hogar Seguro victims.

Lawyers have reported that back in 2017 girls were pressurized and threatened before they gave their testimony.

The protracted legal battle over the Hogar Seguro case has worn out the

families as well as their legal teams. Only the most persistent journalists still cover the hearings.

On 19 January this year Elida Salguero had been hopeful that the trial would finally begin. Her voice breaks when she speaks of her daughter Keila, who died in the fire just a week after she turned 17.

It was a rare occurrence that Elida had been able to attend court at all. Until recently, she lived in Puerto Barrios, on the Caribbean coast of the country, about 290 kilometres from Guatemala City where hearings are held. Even though she now lives closer to the capital, Elida is unemployed and the \$6 for the journey to the tribunals is hard to find. Many of the victims' families live in poverty or extreme poverty.

Elida only made it to court that day because a Guatemalan-American filmmaker had given her money for the trip after interviewing her the previous day for a documentary.

After an hour of waiting, the hearing was cancelled. Elida didn't come for the next one. ●

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<sup>1</sup> Asier Vera, [video], Twitter, 19 January 2023, nin.tl/video <sup>2</sup> Mirte Postema, 'Running out the clock', Human Rights Watch, 13 November 2017, nin.tl/clock <sup>3</sup> Ministerio Público, 'Caso Siekavizza...!', 6 July 2016, nin.tl/hearing <sup>4</sup> United Nations Office on Drugs and Crime, dataUNODC, dataunodc.un.org <sup>5</sup> CICIG, 'Denuncia No. 1 Comisiones Paralelas II', August 2019, nin.tl/denuncia-1 <sup>6</sup> Ministerio Público, 'Comisiones Paralelas 2020: Fase 1', 2021, nin.tl/parallel <sup>7</sup> InSight Crime, 'Guatemala: CIACS', 9 March 2017, nin.tl/ciacs <sup>8</sup> The World Bank, 'Intentional homicides...', nin.tl/homicides <sup>9</sup> Dinorah Azpuru, Mariana Rodríguez and Elizabeth J. Zechmeister, 'Cultura política de la democracia...', March 2018, a.nin.tl/culture <sup>10</sup> Miguel Ángel Gálvez Aguilar, [video], Twitter, 15 November 2022, nin.tl/resign <sup>11</sup> Mira Galanova, 'Children's home fire...', BBC, 9 August 2021, nin.tl/abuse