



NEWSLETTER

**PREVENTIVE  
DETENTION**

**CICIG PARTICIPATES IN PROPOSAL TO  
REFORM THE PREVENTIVE DETENTION  
LEGAL SYSTEM IN GUATEMALA**

## CURRENT SITUATION



In Guatemala, the adoption in 1992 of an accusatorial system of criminal justice meant a transition towards a more streamlined and efficient administration of justice, respectful of human rights. Ten years later, the United Nations Verification Mission in Guatemala (MINUGUA) pointed out the need to implement “*modern systems that avoid custodial sentences for minor crimes and misdemeanors as well as unnecessarily long pre-trial detention*”<sup>1</sup>. However, the number of people in pre-trial detention -- as well as its duration -- has since increased steadily, to the extent that today the number of people in pre-trial detention exceeds the number of people serving sentences.

This situation is partly explained by an increase in the efficiency of criminal investigations conducted by the Attorney General’s Office (MP), which leads to a proportional increase in the number of inmates. Of note, it is for the judge to decide on the coercive measures imposed on those prosecuted, under the rule that “freedom must only be restricted when it is absolutely necessary to ensure the presence of those prosecuted in the criminal proceedings.” Under the current legislation, pre-trial detention must only be applied when there is a risk that those prosecuted might escape or obstruct the investigation, in addition to those cases specified under article 264 of the Code on Criminal Proceedings.

The International Commission against Impunity in Guatemala (CICIG) assists in investigating powerful criminal structures which have a strong influence in Guatemalan institutions and society. In these cases, the Attorney General’s Office and CICIG request that those prosecuted be sent to pre-trial detention the cases described above under Guatemalan law. Currently, more than 60 per cent of those prosecuted in the cases investigated with assistance from CICIG enjoy alternative measures or house arrest.

The Guatemalan Code on Criminal Proceedings mandates that the individual must be released from imprisonment, among other reasons, when a year has elapsed since the person was in pre-trial detention. However, the Code also establishes that pre-trial detention can be extended by the courts “as many times as necessary”, which in practice results in extended periods of pre-trial detention. In a context of institutional weakness and few institutional controls, there is a high risk of abuse of such extensions. Moreover, the justice system faces an extensive practice of malicious litigation used by some defense attorneys, which aim to unduly and frivolously delay the criminal proceedings and the eventual sentencing of the accused.

There is a perception that pre-trial detention constitutes a kind of “anticipated sentence” due to the delay in criminal proceedings and the lack of convictions. This problem is aggravated by the deplorable conditions of the penitentiary system. The strengthening of the justice system has not been mirrored by an expansion and modernization of prison facilities.

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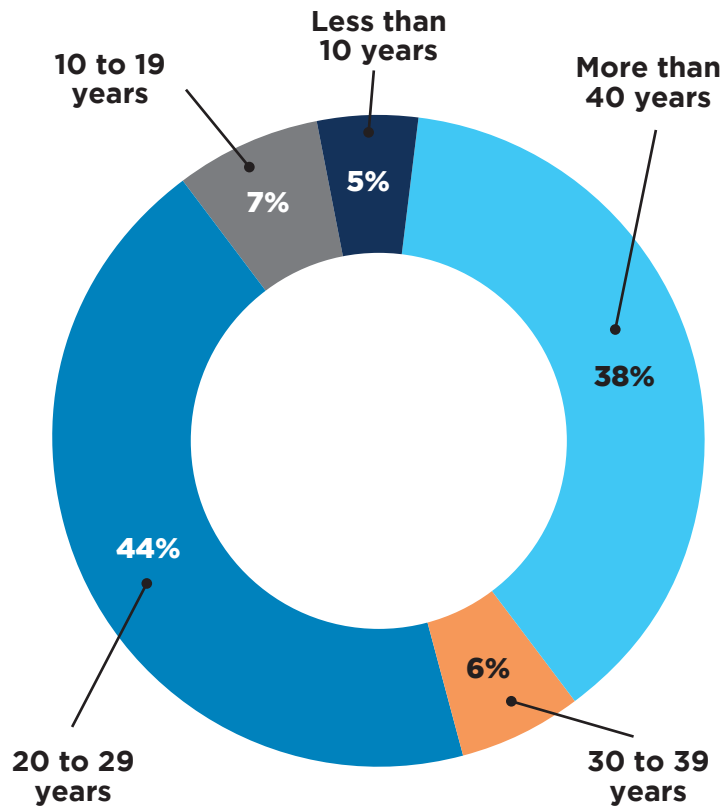
<sup>1</sup> MINUGUA Report about Guatemala for the Consultative Group, January 2002.

In Guatemala, the annual effectiveness of the justice system has been steadily increasing from 3.6% in 2008 to 9.8% in 2016. In 2008, the justice system handled approximately 145,000 criminal cases and, in 2017, 370,000 cases. However, plans for building or restructuring or remodeling prisons have not progressed due to a lack of investment, deficiencies in public works bidding processes, or corruption<sup>2</sup>. Today, prison overcrowding has reached 351%. Prison centers present inhumane conditions. In addition, military bases, such as Mariscal Zavala and Matamoros, are used as detention centers, which violate international standards and breaches Guatemalan law.

In 2017, the penitentiary system had 6,809 spaces for confinement, which is clearly insufficient. In addition, detention facilities are deficient and are several decades old:

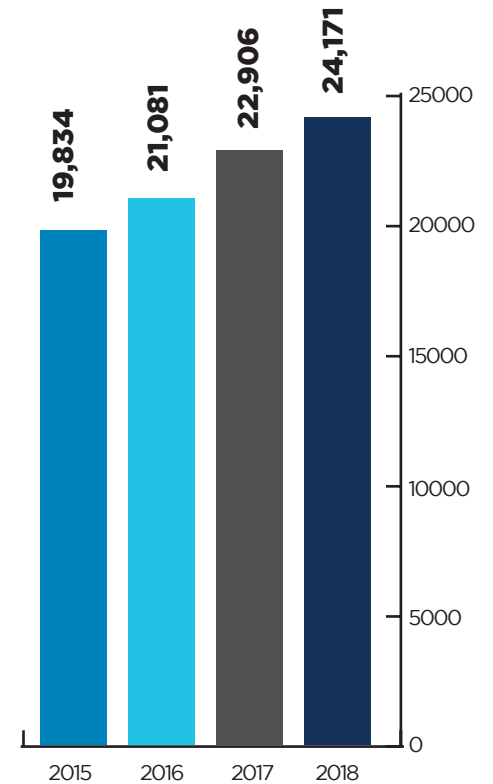
<sup>2</sup> <http://www.cicig.org/casos/declaracion-testigo-en-caso-fraijanes-ii/>

**AGE OF THE PENITENTIARY SYSTEM'S PREMISES**



Source: own elaboration with data from the DGSP.

**PRISON POPULATION**



## CONCERNING THE DIFFERENT PENITENTIARY CENTERS


DEPARTMENT OF GUATEMALA	PENITENTIARY CENTER	PERCENTAGE OF OVERCROWDING (2017)
<b>ALTA VERAPAZ</b>	Preventive Detention Center for Men and Women in Cobán	<b>335%</b>
<b>CHIMALTENANGO</b>	Preventive Detention Center for Men and Women	<b>389%</b>
<b>ESCUINTLA</b>	Model Rehabilitation Center “Canada”, Escuintla High Security Prison	<b>500%</b>
<b>GUATEMALA</b>	Preventive Detention Center for Men “Matamoros” in Zone 1	<b>94%</b>
	Preventive Detention Center for Men “Mariscal Zavala” in Zone 17	<b>163%</b>
	Preventive Detention Center for Men in Zone 18	<b>327%</b>
	Preventive Detention Center for Minor Crimes for Men in Zone 18	<b>226%</b>
	Preventive Detention Center for Women “Santa Teresa” in Zone 18	<b>500%</b>
	Preventive Detention Center for Men “Reinstauración Constitucional, Fraijanes” (Pavoncito)	<b>138%</b>
	Detention Center for Men “Fraijanes II”	<b>278%</b>
	Model Rehabilitation Center “Pavón”	<b>338%</b>
	Orientation Center for Women (COF) “Fraijanes”	<b>558%</b>
<b>IZABAL</b>	Preventive Detention Center for Men and Women in Puerto Barrios, Izabal	<b>550%</b>
<b>PETEN</b>	Preventive Detention Center for Men and Women in Santa Elena, Petén	<b>310%</b>
<b>QUETZALTENANGO</b>	Model Rehabilitation Center in Cantel, Quetzaltenango	<b>342%</b>
<b>QUICHE</b>	Preventive Detention Center for Men in Santa Cruz del Quiché	<b>148%</b>
<b>SANTA ROSA</b>	Preventive Detention Center for Men “El Boquerón” in Cuilapa, Santa Rosa	<b>729%</b>
<b>SUCHITEPEQUEZ</b>	Preventive Detention Center for Men and Women in Mazatenango, Suchitepéquez	<b>485%</b>
<b>ZACAPA</b>	Preventive Detention Center for Men and Women in Los Jocotes, Zacapa	<b>535%</b>


## CICIG CONTRIBUTES TO PROPOSAL TO REFORM THE PRE-TRIAL DETENTION LEGAL SYSTEM IN GUATEMALA

To address the aforementioned challenges, the Human Rights Ombudsman's Office, the Office of the United Nations High Commissioner for Human Rights (both institutions published a report on "[Enforcement of Pre-trial detention in Guatemala: a human rights problem](http://www.cicig.org/uploads/documents/2017/Informe-prision-preventiva-ene-2017.pdf)" in December 2016, <http://www.cicig.org/uploads/documents/2017/Informe-prision-preventiva-ene-2017.pdf>), the Attorney General's Office and CICIG established a technical working group in March 2018 to develop a comprehensive proposal to reform the Code on Criminal Proceedings on issues related to pre-trial detention. The proposal, which is currently being debated, is based on international standards related to the rights of those prosecuted; safeguards the investigative activity of the Attorney General's Office without obstruction, and is formulated around the central proposal that pre-trial detention should always be a means of last resort.


CICIG is promoting the following measures as part of the interinstitutional technical working group's discussions:


Respect of the independence of the judiciary in order that the judge be the one to assess the circumstances of a given case and decide on the application of relevant coercive measures, according to the principles of reasonability and proportionality.

 A catalog of coercive measures, both custodial and non-custodial measures, including house arrest - the latter, not only as a pre-trial measure but also to serve out a sentence, along with a follow-up mechanism to monitor the proper execution of these measures.


 The use of electronic monitoring as a mechanism to strengthen coercive measures, as established in the Law on Control by Telematics in Criminal Proceedings, approved in November 2016 and pending implementation. This law establishes the implementation of

control measures through telematic devices (electronic bracelets or any other electronic devices connected via a telephone network or with a global positioning device).

 The elimination of extensions of pre-trial detentions and the immediate release of those affected when the legal deadlines expire - up to one year - unless there are frivolous delaying actions filed by the defense of those prosecuted in order to obstruct the proceedings.

 The review of the list of crimes that do not allow the implementation

of alternative measures to incarceration, removing those with sentences of less than five years and incorporating some crimes established in the Law against Organized Crime.

 The streamlining of investigations through the accurate definition of the investigative acts of the Attorney General's Office that require judicial authorization. This is necessary only when the fundamental rights protected in the Constitution are affected.

**CICIG** International  
Commission against  
Impunity in Guatemala



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[www.cicig.org](http://www.cicig.org)