

COMMUNICATION FROM Loreto Ferrer, International Commission against Impunity in Guatemala

April 25, 2018

Dear Mr. Hurd,

Thank you for your email and your interest in the work of CICIG.

We have carefully considered the invitation to brief the members of the Helsinki Commission “on the role of CICIG in the case of... the Bitkov family” on the morning of Friday, April 27. We understand that the Commission has scheduled a formal hearing on this topic for that morning.

The Bitkovs were prosecuted as part of a larger criminal case known as the “Migration Case.” Within this case, in January 2018, 39 people were sentenced for participating in a criminal network that sold and obtained false identity cards and travel documents. The Migration Case, which started in 2010, is still open and under examination by domestic Courts. Currently, there are two appeals pending decision by higher Courts: a constitutional appeal before the Constitutional Court and an appeal of the conviction and sentences filed before the Appeals Court. It is therefore for the Guatemalan Courts, as independent institutions, to decide on the final outcome of the process.

Due to the specific role of this Commission in support of national institutions and, in particular, in support of the Public Prosecutor’s Office; the scope of its operations -- limited to Guatemala; and the fact that the Migration Case is still open and under examination by domestic courts, we respectfully decline the invitation to participate in the hearing. It is not for this Commission to speak on behalf of the Public Prosecutor’s Office or judicial authorities regarding details of specific cases under examination by courts. We, however, reiterate our willingness to, through the Public Prosecutor’s Office and in accordance with the requirements set under Guatemalan law regarding the sharing of information on open criminal cases, help clarify any doubts that may arise in relation to the “Migration case.” Hence, CICIG is willing to support the Public Prosecutor’s Office in providing any required information through the relevant U.S. channels. We also respectfully request that this note be included in the hearing record.

The International Commission against Impunity in Guatemala (CICIG) is an independent international body established by an agreement between the United Nations and the State of Guatemala. Its goal is to support, strengthen and assist institutions of the State of Guatemala responsible for investigating and prosecuting crimes committed in connection with the activities of illegal security forces and clandestine security organizations. Such criminal networks are entrenched in Guatemalan institutions and have links to transnational organized crime. Their activity fosters impunity and corruption, undermines democratic governance and leads to violence and serious human rights violations. CICIG plays a supporting role vis-à-vis national institutions, particularly the Public Prosecutor's Office. CICIG may not initiate criminal proceedings. These depend on the Public Prosecutor's Office, which leads all criminal proceedings at every step of the way. All CICIG's actions depend on national institutions, including the national civilian police, prosecutors and judges. The aim of the parties to the Agreement establishing CICIG was to create an international body that would strengthen justice sector institutions "on the job" by working hand in hand with local prosecutors and transferring international best practices. Any dispute between the parties concerning the interpretation or application of the agreement is to be settled by negotiation between the parties – the United Nations and Guatemala (art.12 of the CICIG Agreement).

This Commission is shocked and concerned about biased, contradictory and troubling information regarding legal proceedings affecting the Bitkov family, which do not conform to reality. We are surprised that unfounded allegations of interference by a foreign country in the conduct of criminal proceedings in Guatemala are circulating at the highest level of the U.S. Congress with no evidence. We further note that CICIG is portrayed as playing a central role in the case, omitting the fact that CICIG's role is to support the Attorney General's Office and that Guatemalan judges and courts are independent under domestic law. Allegations of foreign political interference in the domestic administration of justice are of a very serious nature and affect the whole justice system.

Re the Migration Case, referred to in your e-mail, CICIG accompanied the work of the Attorney General's Office in the identification and dismantling of criminal network acting within the General Directorate for Migration. By investigating this type of criminal organization, Guatemala seeks to prevent its territory from being

used as a refuge for foreign criminals or as an arena of operations for human trafficking networks, which are responsible for human rights violations in the region. The Public Prosecutor's Office has traditionally enjoyed an excellent cooperation relationship with the US Department of Homeland Security in working to identify and dismantle these networks. That was the case with the "Migration Case." ICE (US Immigration and Customs Enforcement) played a key role in the first phase of the investigation.

Proceedings were conducted under Guatemalan law, including all constitutional and procedural safeguards. All those prosecuted enjoyed the right to defence and were free to pursue all available actions (appeals, human rights safeguards, etc). The Attorney General's Office, with support from CICIG, fulfilled its role to file charges and provide evidence, always under Guatemalan law. In Guatemala, after hearing the defence and the prosecution, judges are independent to rule and set penalties within the limits specified in the Criminal Code. We would like to reiterate that the case remains open, currently pending two different appeals by higher courts.

The Commission acts with full independence, adherence to its mandate and respect for Guatemalan law. CICIG's investigations are not conditioned by any external entity. Please note that the Russian Federation is not -- and has not been in the past -- a donor to this Commission. Such State has never had any links to the Commission's work.

We would like to reiterate our appreciation and gratitude for the United States' continued support to the fight against impunity and corruption in Guatemala, as well as for the work of this Commission. The United States has been a key donor and crucial ally to CICIG since its establishment. The Commission has traditionally had and continues to have a fluid communication with the State Department and other US agencies, including DHS. We trust that the strong links of trust and cooperation between the United States and CICIG, as well as with other donors, will be strengthened so that we can continue to pursue our shared agenda in support of the rule of law in Guatemala.

Please find below a joint statement by the Public Prosecutor's Office and CICIG on the Migration Case and the Bitkov family. The ruling was issued by the High Risk Tribunal A in adherence to the Guatemalan Criminal Code for those offences that

the Tribunal found sufficiently proved. Under Guatemalan law, judges have independence when sentencing.

Best regards,

Loreto Ferrer
International Commission against Impunity in Guatemala