

Presentation (as prepared) by Mark L. Schneider, Senior Vice President, International Crisis Group on “*Crutch to Catalyst? The International Commission Against Impunity in Guatemala*” at Woodrow Wilson Center for Scholars

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I want to extend my appreciation to Woodrow Wilson’s Latin American program and my good friend Cindy Arnson and especially today Eric Olson for moderating today’s panel and for his kind introduction. At the outset, I also want to thank my co-panelists, all respected colleagues of long-standing in trying to assist the citizens of Central America in achieving their legitimate desires for greater justice, equity, prosperity and democracy.

We all wear different hats during our brief careers and I am pleased to say that I have worn the hats of each of the organizations that my colleagues current wear==the State Department, the United Nations and the Inter-American System. However, today I wear the hat of an independent, international, non-governmental organization the ICG.

The International Crisis Group is generally recognized, by the DAC and others, as a leading independent conflict prevention organization providing analysis and policy advice to governments and intergovernmental bodies. Our board of trustees currently includes former heads of state and international leaders,; board chairman Lord Mark Malloch-Brown, Presidents Ricardo Lagos, Micheline Calmy-Rey and Prime Minister Wim Kok; former foreign ministers Celso Amorim, Carl Bildt, Jonas Gahr Støre, Par Steinack and Javier Solana; former Treasury Secretary Lawrence Summers; former Senator Olympia Snowe, Ambassador Thomas R. Pickering, and well-known author Alma Guillermoprieto. Our president is Jean-Marie Guéhenno who served as the United Nations Under-Secretary-General for Peacekeeping Operations from 2000-2008, and in 2012 as Deputy Joint Special Envoy of the United Nations and the League of Arab States on Syria.

Since the day that I joined the organization 15 years ago, we began to pursue its global mission of preventing conflict, protecting citizens, and pursuing justice in Latin America. Our focus has been on ending Colombia's decades-old conflict, on alerting to the challenges to democracy in Venezuela and Haiti and on seeking to arrest the rising tide of homicides and violence along the drug trafficking routes through Central America to the U.S. market.

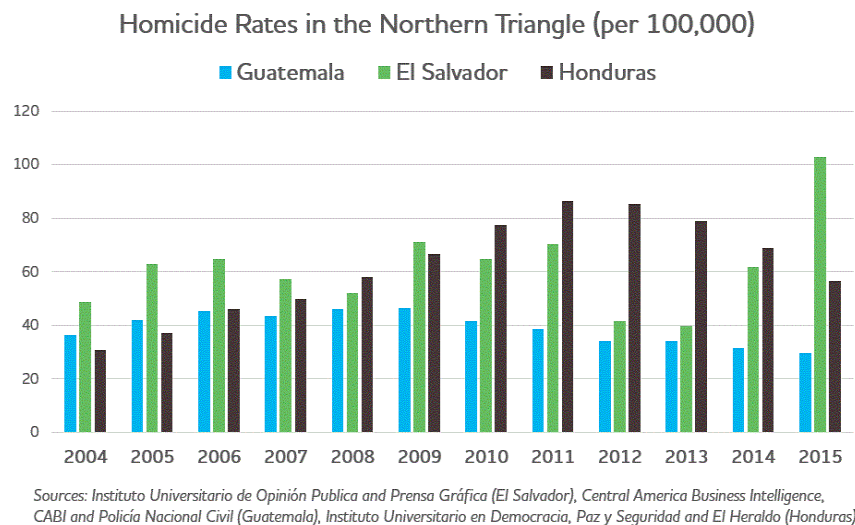
Let me just mention that we look at CICIG in Guatemala within the larger context of a complex reality in Central America.

- **In the first decade of the 21st century, El Salvador, Guatemala and Honduras essentially had no reduction in the numbers of people living in poverty. They also are among the countries, according to CEPAL, with the very worst levels of income disparity.**
- Secondly, in the past five years, the United States and Mexico have apprehended almost 1 million people who fled from the Northern Triangle of Central America and have deported more than 800,000 of them back to those countries. Many of these were children. And far too little information was provided to the countries

on who was being deported and far too little help to avoid their being returned to their original violent neighborhoods.¹

- Last year, ICE also deported to another 235,000 to Mexico and Central America last year, sending 21,920 to El Salvador; 33,249 to Guatemala, 20,309 to Honduras and 146,132 to Mexico.²
- Finally in the past three years, some 48,000 individuals were murdered in those three countries, slightly more than the number of homicide victims in the U.S even though they have one tenth of U.S. population.³

These two charts show the levels of homicides in the three countries.



¹[Migrants Deported from the United States and Mexico to the Northern Triangle: A Statistical and Socioeconomic Profile](#) (Migration Policy Institute September 2).

²[FY 2015 ICE Immigration Removals](#) (ICE, 2015)

³[The Northern Triangle: The Countries That Don't Cry for Their Dead](#). (Insight Crime, 2014)



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Pope Frances reminded us all that we all are migrants or the children, grandchildren or great grandchildren of migrants and we all want the same for our own children—safe homes; decent schools; opportunity. If we want those things for our children, why are we surprised that fathers and mothers in San Salvador or Tegucigalpa or Quetzaltenango who see their children threatened with death or coerced to kill want the same for their children. Ending those levels of violence in part involves ending impunity in the countries of the Northern Tier.

The Obama administration sought a \$1 billion package of reforms to assist the Northern Triangle countries in responding to the violence that not only undermines their societies but is at the core of propelling migrants fearful for the lives toward the U.S.. The bi-partisan approval of about three quarters of that request in the omnibus appropriations bill is a plus but it is critical that the each nation meet the conditions of doing their share in prioritizing poverty reduction, job creation, and inclusive economic growth—moving toward the regional average in tax revenues and addressing transparency, justice, police and political reform.

Learning the lessons of CICIG and incorporating them in El Salvador and insuring that the OAS Mission to Support the Fight Against Corruption in Honduras (**MACCIH**) does the same, particularly by having significant support from independent international prosecutors would be a good first step.

So with that introduction, this report, entitled, “*Crutch to Catalyst? The International Commission Against Impunity in Guatemala*” is an assessment of the concept and work of CICIG. It is available in both Spanish and English on our website—and by the way—you can subscribe for nothing to receive alerts of our new reports. I am pleased to say that we, along with many in this room, advocated for the CICIG concept even before the UN-Guatemalan agreement was signed in December 2006.

All of us had watched in horror year after year following the December 1996 signing of the peace accord as CIACS, “Cuerpos ilegales y aparatos clandestinos de seguridad”, (In English, Illegal Security Forces and Clandestine Security Organizations), had evolved into omnipresent criminal structures with local, regional and national power and influence.

The report describes the evolution of CICIG under three very different commissioners—Spanish judge Carlos Castresana; Costa Rica attorney general Francisco Dall’Anese and current commissioner former Colombian Supreme Court Investigating Judge Ivan Velasquez. An Appendix gives you a timeline on key moments in that history. Then it details the 2015 corruption cases led by #juevesCICIG that helped precipitate a political revolution. Finally it outlines the reforms that remain if the work of CICIG, of courageous Guatemalan prosecutors and of a population that organized itself to demand an end to corruption are to be sustained.

The lessons of CICIG—as a hybrid independent international prosecutorial force—are there to be learned as well by Honduras, El Salvador and every other country where corruption and impunity deny justice and the protection of the rule of law to their citizens.

In its first three years, CICIG probably saved the country from a manipulated attempt to force the resignation of former president Colom. Its authors had falsely alleged his government's responsibility for the death of a Guatemalan lawyer Rodrigo Rosenberg. During those years, it also most importantly created a special prosecutorial office within the Public Ministry where CICIG prosecutors worked side by side with the FG prosecutors.

It set up the first witness protection program, legal wiretaps, plea bargaining for information, and the start to forensic and other scientific means to bring criminals to justice. It also established "high risk" courts to handle serious and complex crimes where protection was assured and the best judges named. And it prevented a very bad appointment as attorney general, which led to a very good one—Claudia Paz y Paz, who then essentially used CICIG as the point of her lance in reforming the PM and going after the CIACS.

Under its second commissioner and the MP under Claudia Paz y Paz, CICIG helped the MP expand its criminal data analysis unit, create a special unit on human trafficking, strengthen its investigation and prosecution of money laundering and bolster a "Special Methods Unit" which oversaw communications intercepts. If this all sounds technical, that unit was credited with preventing 231 murders in a single year.

Even the failure to secure a conviction in the bribery case against former president Alfonso Portillo in 2011 was only a partial setback. It produced the evidence that resulted in Portillo's having to pay a significant fine in Guatemala and later to be extradited to the US where he was convicted and sentenced to five years in prison for money laundering.

It also was a period when the MP brought an indictment for mass crime and genocide against president Rios Montt that remains pending. While unsuccessful in terms of producing a definitive outcome, what it did was demonstrate two things; first, that the mass atrocities committed during the 30 years of Guatemala's civil conflict were not closed to justice; and second, that CICIG had the back of those in the Guatemalan justice system, like Claudia Paz y Paz, and after her, FG Thelma Aldana who were willing to

confront the most powerful symbols of impunity. And now she has indicted 18 ex-military for crimes against humanity during that conflict.

CICIG then and particularly now under commissioner Velasquez has done something deemed unimaginable in years past. It has ended the perception of absolute impunity of the “intocables”—the untouchables, the political, economic and criminal networks whose influence and power corrupted Guatemalan institutions.

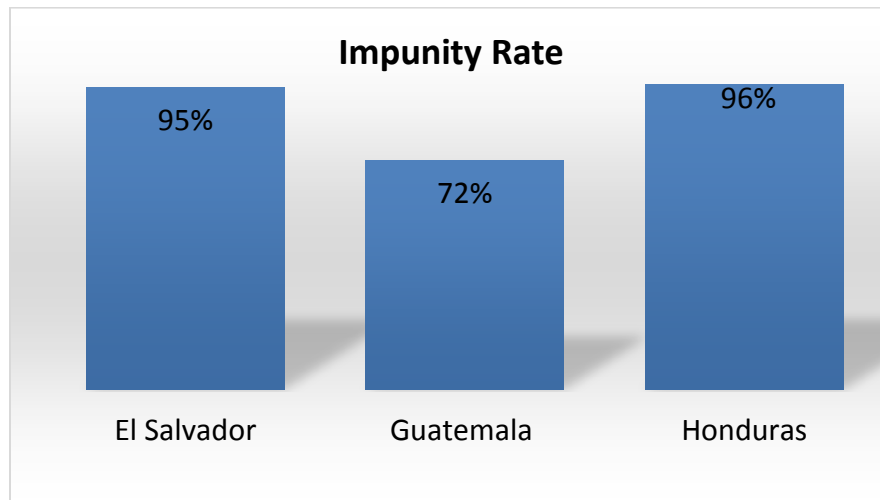


Figure 1: Impunity rates in Northern Triangle from Wilson Center report⁵

At this moment, the former president of Guatemala—a former general--his Vice President; both of their private secretaries; former directors of the customs bureau, of Guatemala’s IRS, of its social security system, of the national prison system, of the national police and five judges, nine members of Congress and a prosecutor are either being pursued, in jail and awaiting trial, or convicted.

Velasquez and the MP have had five priorities: contraband, administrative corruption, illegal campaign financing, judicial corruption and drug trafficking/money laundering. Having experienced the Colombian history of links between politicians and paramilitaries and their evolution into economic networks siphoning resources from the licit economy by buying or coercing state agencies to do their will. He was able to identify Illicit Political-Economic Networks (RPEIs) as the new incarnation of CIACS.

⁵ [Crime and Violence in Central America’s Northern Triangle](#). (Wilson Center, Latin America Program, 2015).

In his first two years, Velasquez took action in every one of those areas. We single out three: the first was demonstrating that Byron Lima, an ex-army captain, imprisoned for 20 years for his role in the 1998 assassination of Bishop Juan Gerardi was running one of those criminal networks from inside the prison system, bribing prison authorities to let him leave prison when he wanted, even recommending people to be appointed to the prison system administration. This story is not ended with charges still pending. I should add, Lima reportedly still has a computer and the ability to send emails which one would have thought would have been forfeited by his past actions.

The second is a story of a throwback to a family- owned criminal structure that bears a close resemblance to the “Godfather” in Eastern Guatemala sitting astride the Guatemala- Honduran border. We reported on it two years ago in the “*Corridor of Violence*” and soon after were pleased to see the patriarch Haroldo Mendoza indicted, arrested and extradited to the US for trial and others in the family also charged. Again, the story is not ended. In fact, a judge last week added another charge of murder against him.

The third of course is “La Linea”—the massive corruption scandal that refers to the old fashioned telephone line but this one for the purpose of enabling a series of firms to avoid customs duties by arranging kickbacks to customs and port officials reaching several million dollars each. Phone calls allegedly went to the highest officials in the land, and those officials now sit behind bars. However, President OPM denies the accusations and at least several of those charged remain at large, including six La Linea defendants who were released on bail, after a judge allegedly accepted bribes to release them. The judge is now under arrest as well.

New President Jimmy Morales has recognized that CICIG constitutes his strongest ally in preventing his administration from being tainted with corruption and wisely announced that he will seek an extension of CICIG’s mandate in Guatemala beyond 2017. Whether that is through his administration or beyond, what is clear is that CICIG will need to accelerate the transfer of capacity to the MP in a clearly defined roadmap over the next years.

CICIG also will have to help Morales consolidate the reforms of the full justice system writ large, from the cop on the beat to prosecutors to judges to prison officials. Ultimately Guatemala—citizens, private sector, government—will have to act to strengthen justice reform—system wide and demand government accountability and transparency.

Crisis Group has made 14 recommendations, all designed to translate anticorruption promises into clear actions plans and prepare for a time when CICIG is no longer needed.

Let me just mention a few:

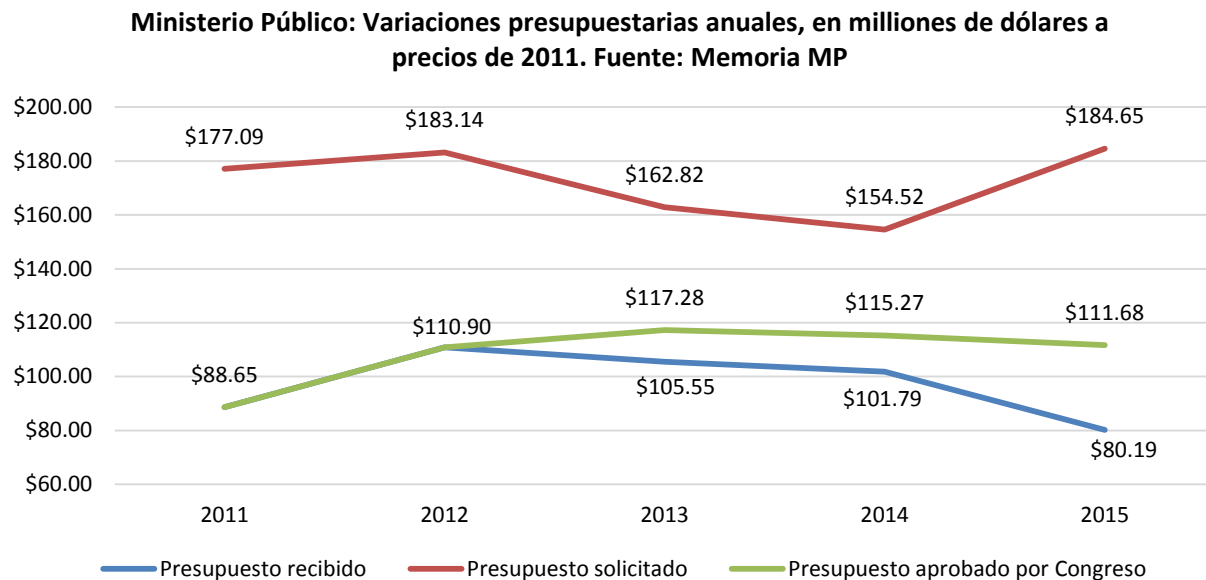
First, judicial reform requires extending judges' terms beyond the current five year limit that applies to all judges, and potentially compromises their independence. A judicial career law is pending and needs approval that lengthens at least some of those terms, strengthens internal disciplinary mechanisms, separates judicial administration from the judges themselves and provides for rational judicial selection and promotion.

Perhaps the most important judicial selection process is coming up in the next two months, for Guatemala's Constitutional court. President Morales should ask CICIG to vet the candidates that will be proposed to insure that they do not have links to CIACS or to other corrupt networks. And it would not hurt for the US, the UN, and the OAS to encourage him to do that.

Re-establishing a national commission on justice reform and anti-corruption with civil society and the private sector and with CICIG's participation could also be a way to tap into the enthusiasm and commitment of last year's uniquely powerful citizen movement.

Second, the organic law of the MP needs to be reformed to regulate careers and strengthen independence. The process for recruitment, evaluation and promotion within the MP needs to be more transparent. The FG currently serves a four year term but no previous MP has completed their term in office. Clearly, the grounds for a President removing the FG need to be far less vague and the process for selecting the FG far more transparent.

The MP also needs to have the resources it needs to do the job of enforcing the law throughout the country. The MP has offices in only 53 of the country's 338 municipalities. When Thelma Aldana took office in May 2014, there was backlog of 1.2 million cases. Between May 2014 and March 2015, the MP opened 265,000 new cases only 7200 have received a verdict.



Third, there is a need for improving the quality and capacity of civilian police, particularly establishing a professional investigative police force, but also enhancing the training of the National Civilian Police to deal with complex crimes including white-collar crimes and expanding the best community policing experiments that USAID, State and others have supported.

Fourth, an electoral reform law that is pending needs to be approved to regulate parties, campaign financing rules, and establish far stronger penalties for violating those norms as well as making the entire process transparent. There is something fundamentally wrong where the country with one of the region's lowest per capita income, has campaign spending per capita among the highest—and no one knows who the contributors are.

Finally, almost none of this will be successful until Guatemala puts its fiscal house in order. For how many years have we been calling for Guatemala's wealthy elites—to pay

their fair share of taxes. Total taxes are under 13 per cent of GDP compared to a regional average of 21 per cent. There is virtually no property tax. And personal income taxes also are almost non-existent meaning most tax revenue comes from indirect value added taxes, the least progressive.⁶

A proposal for new income taxes on those earning more than \$80,000 to fund prosecutors and close the gap of municipalities who have no MP offices was defeated in December.

The result of the lack of tax revenues also means that social spending per capital was \$179 per capital (in 2013) compared to a regional average of \$777. And spending on public security was \$48 per capita compared to a Central American average of double that amount.

As the mayor of Guatemala City, former president Alvaro Arzu, said “You want a first-class country while paying third-class taxes...it can’t be done.”

Here I would challenge CACIF and the business elite of Guatemala to come out in support of these reforms, including tax reform that increased their share and the total amount that they pay to give Guatemala a chance to be first in social spending, first in spending on its law enforcement and first in spending on anti-corruption. CACIF joined students, the church and indigenous human rights groups in supporting the civil society movement that brought about the resignation of a president. Now it should take the lead in support fiscal reform as well.

CICIG cannot do it all alone.

⁶ “Fiscal Policy, Inequality and the Ethnic Divide in Guatemala” (CEQ, October 2014).

Recommendations (from report)

To translate anticorruption promises into clear action plans and prepare for the time when CICIG is no longer needed

To the Guatemalan government:

1. Promote, adopt and implement legislation and policies to further professionalise prosecutors and judges, including reform of the selection and recruitment process, longer terms to guarantee independence and new mechanisms to evaluate performance and curb corruption.
2. Revive efforts to transform the civilian police into professional forces focused on preventing violence and to revamp its investigative body to work with prosecutors on resolving crimes, including the transfer of capacities and knowledge from CICIG.
3. Give police, prosecutors and judges more resources to fight crime and impunity by carrying through tax and fiscal reform, including by challenging private sector leaders, economic experts and civil society to devise proposals for making taxing and spending more efficient, equitable and transparent.

To the Guatemalan Congress:

4. Work across party lines and with the president and civil society to devise a strategy, including tax and fiscal reform, for combating corruption and strengthening justice and security institutions.
5. Schedule promptly a final vote on the bill to reform political parties and tighten campaign-financing rules.
6. Reconvene the working group on justice reform, bringing lawmakers together with CICIG, judges and civil society to propose and debate initiatives to strengthen judicial independence and competence, as well as whether or how to limit the prosecutorial immunity of members of Congress and other public officials.

To the Guatemalan judiciary:

7. Provide additional training for judges at all levels on use of criminal analysis, scientific evidence and new prosecutorial tools, such as plea-bargaining with defendant/informants.
8. Work with the president, Congress and civil society on the career law and other initiatives to make the judiciary more independent and professional.

To the Guatemalan Public Ministry (MP) and CICIG:

9. Expand cooperation to transfer capacities to specialised prosecutors working on complex cases, such as those investigating organised crime, money laundering and human trafficking.
10. Strengthen the MP's internal affairs office to identify, sanction or remove officials guilty of misconduct.
11. Work jointly on a strategy to build a professional corps of investigative police.
12. Promote accountability within the MP and CICIG by devising measurable goals and benchmarks.

To the U.S., European Union and its member states and other donor states and institutions:

13. Continue to provide CICIG with the resources needed to conclude its work, including additional funds for capacity building.
14. Encourage other countries struggling with corruption and violence to consider an appropriate version of the CICIG international/national partnership model.