



A Glimmer of Hope in Central America

By Eric L. Olson

Despite decades of United States assistance to strengthen the administration of justice and promote the rule of law in Central America's Northern Triangle—Guatemala, El Salvador, and Honduras—the region continues to lag in reducing corruption and impunity. According to Iván Velásquez¹, head of the International Commission against Impunity in Guatemala (CICIG), it would take approximately 15 years to process all existing homicide cases in the country even if no new cases were opened. Roughly 85 percent² of Guatemalan municipalities have no resident prosecutor.

In El Salvador, prisons are at 330 percent of capacity³. Many detained for minor offenses—mostly youths accused of gang involvement—languish in detention facilities for months or years awaiting trial, and to survive they join prison gangs and get trapped in a life of crime and violence. Last year El Salvador had the world's highest homicide rate at 103 killings per 100,000 inhabitants⁴. In Guatemala and Honduras, as well, backlogged justice systems have led to prison overcrowding.

In Honduras, political and economic elites have stolen an estimated \$300 million⁵ from the country's public health system, causing a shortage of medicines and allegedly contributing to

the deaths of a dozen or more patients. A former president of Honduras was recently extradited to the U.S. for his role in the world soccer federation (FIFA) scandal, which allegedly netted him millions. A former vice president of Honduras and members of his family have been designated by the US Treasury as “specially designated narcotics traffickers”⁶ for their role in laundering money for Central American drug trafficking organizations.

Corruption and weak rule of law in the Northern Triangle also harm Mexico, the Caribbean, and the United States, which confront the ensuing migration and transnational criminal activity. When scarce resources for infrastructure, schools, and healthcare are siphoned off by corrupt politicians tied to criminal networks, economic development is undermined and poverty worsens. Poverty and lack of opportunity contribute to increased violence and the sense of desperation that drives people to migrate. Additionally, the lack of rule of law and social disintegration are catalysts for more crime that, in turn, perpetuates the problems of economic decline and greater violence, and ultimately contribute to more migration.

A Glimmer of Hope in Guatemala

Against this dismal backdrop it is difficult to find even a glimmer of hope. But that is exactly what appeared on September 2, 2015, when Otto Pérez Molina, the sitting president of Guatemala, was forced to resign⁷ amid allegations of participation in a multimillion dollar corruption scandal. A day earlier, a reluctant congress had stripped President Pérez Molina of the immunity⁸ from prosecution he enjoyed as an elected official, and forced him, in his own words, to “continue with the due process and . . . submit to justice.”

Submitting to justice had been the missing ingredient in efforts to promote the rule of law in Central America. For decades, the United States, European stakeholders, and multilateral

donors poured millions of dollars⁹ into modernizing legal systems, rewriting laws and writing new ones, and, in some cases, improving courts' physical infrastructure and administration. International assistance trained thousands of prosecutors, police, investigators, forensic experts, and judges. Foreign assistance also helped countries to establish special anti-corruption commissions, convene judicial and police reform councils, and invite international experts to study, evaluate, and recommend improvements to justice systems.

The impact of all these efforts is blunted, however, where the politically or economically powerful can sidestep responsibility for their actions. An anti-corruption commission is useless if its members simply ensure that political and economic elites are exempt from investigation. Trained prosecutors and judges are effective only if they are allowed to act independently from elites who seek impunity. Enacted laws, whether new ones or revisions of old ones, do not guarantee rule of law if a president or cabinet minister can place a phone call to the judge or prosecutor he or she appointed to redirect an investigation or threaten to replace the appointee.

But in Guatemala in September 2015, President Pérez Molina's resignation culminated a five-month movement in which ordinary Guatemalan citizens took to the streets in outrage over a corruption scandal involving a network of corrupt officials in the country's tax and customs office. Known as "La Linea,"¹⁰ the network that allegedly took bribes and kickbacks from would-be importers to Guatemala extended all the way into the president's and vice president's offices.

The investigation, undertaken by the CICIG working alongside Guatemala's attorney general, amassed extensive evidence. What was significant was not the discovery of corruption—Guatemalans view their government as very corrupt, and the country is ranked by Transparency International¹¹ as 123rd out of 168 in the perception of government corruption.

The surprise came from the holding accountable, *while still in office*, of a powerful politician and former military leader. Most corrupt officials, if they are prosecuted at all, face justice only after they leave office and lose immunity. And often only the unlucky few, the scapegoats, face justice.

The CICIG's unique dual role made possible the case against a sitting president. As an international body, the CICIG had the financial and political independence to create a buffer between the attorney general's office and corrupt officials who might try to impede the investigation. As an agency comprised of highly skilled investigators, partnered with the Guatemalan attorney general, the CICIG had the capacity to conduct a complex, technically sound investigation. When each successive finding was announced by the CICIG and the attorney general, the popular outcry across the political spectrum grew louder, with poor Mayans from the Guatemalan highlands joining middle class professionals from the big cities in public protest. The call for justice transcended political and social divides¹², leading Guatemalans of all stripes to demand an end to corruption and call for an honest and accountable government.

The Glimmer Spreads

The reverberations of Guatemala's historic case were felt in Honduras and El Salvador almost immediately. In major Honduran cities, a spontaneous movement of students and professionals took to the streets in April 2015, demanding the formation of a CICIG-like mechanism. The marchers became known as the "Indignados," or the indignant ones, because of their outrage over scandal in the public health system.

The Honduran government asserted, however, that it could create its own anti-corruption system¹³, without outside intervention, and that the CICIG in Guatemala had undermined official

institutions by assuming state functions. But the CICIG had not had independent prosecutorial authority of its own—under Guatemalan law it was able to be a “co-prosecutor” by working alongside Guatemalan authorities¹⁴ to investigate allegations of corruption and bring a case before a magistrate. The CICIG’s outsider status offered, however, a political firewall that let Guatemalan prosecutors undertake cases involving the country’s most powerful. The CICIG’s political and technical assistance improved the capacity of Guatemalan prosecutors to analyze criminal networks, conduct phone taps within legal parameters, develop scientific evidence, guarantee the evidentiary chain of custody, and create a witness protection program. All these advances, and more, today have a chance to take root because of the role the international community played in creating the political space for Guatemala’s justice system to grow and strengthen.

Ultimately Honduras, in a compromise, sought out the Organization of American States to develop a mechanism of support for its anti-corruption efforts, known as the MACCIH (in English, Support Mechanism to Confront Corruption and Impunity in Honduras). While the MACCIH may not have all the authority of the CICIG, it includes, due to OAS efforts in the negotiations, an international body of experts that can select cases to be investigated, establish a new anti-corruption prosecution unit whose members are vetted and supervised by the MACCIH.¹⁵ The MACCIH will be formally launched on February 22, 2016, under the leadership of a former Peruvian prime minister and diplomat, with the hope that it can have an impact in Honduras like the CICIG’s in Guatemala.

Finally, El Salvador recently announced that it is negotiating with the UN Office on Drugs and Crime (UNODC) to create a mechanism¹⁶ to fight corruption. Details have not been

reported, but the message is clear: the fight against corruption is gaining momentum in Central America, and the international community is watching.

Support from abroad, as well as from a country's own citizens, is needed to combat corruption and impunity where criminal interests have penetrated justice systems and the rule of law has succumbed to the machinations of political and economic elites. That support must meet the threats to independent justice systems and resist the power of elites while strengthening the capacity of local institutions. This is the glimmer of hope for the rule of law in Central America. Such initiatives, if nurtured, may reverse the cycle of violence and state failure afflicting Central America and many other countries across the globe.

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¹ Byron Rolando Vásquez, “CICIG: Impunidad Actual Tardaría 15 Años en Erradicarse,” *Prensa Libre*, February 4, 2016, <http://www.prensalibre.com/guatemala/justicia/ivan-velasquez-dice-que-en-15-aos-se-puede-eliminar-la-impunidad>.

² *Crutch to Catalyst: The International Commission Against Impunity in Guatemala*, Latin America Report N°56 (Washington, DC: International Crisis Group, January 29, 2016), [http://www.crisisgroup.org/~media/Files/latin-america/Guatemala/056-crutch-to-catalyst-the-international-commission-against-impunity-in-guatemala.pdf](http://www.crisisgroup.org/~/media/Files/latin-america/Guatemala/056-crutch-to-catalyst-the-international-commission-against-impunity-in-guatemala.pdf)

³ *Citizen Security with a Human Face*, Regional Human Development Report 2013-2014 (New York: United Nations Development Programme, November 2013), http://hdr.undp.org/sites/default/files/citizen_security_with_a_human_face_-_executivesummary.pdf.

⁴ David Gagne, "InSight Crime's 2015 Latin America Homicide Round-up," InSight Crime, January 14, 2016, <http://www.insightcrime.org/news-analysis/insight-crime-homicide-round-up-2015-latin-america-caribbean>.

⁵ Tracy Wilkinson, “Scandals in Guatemala, Honduras, Threaten to Further Destabilize Region,” *Los Angeles Times*, June 1, 2015, <http://www.latimes.com/world/mexico-americas/la-fg-central-america-scandals-20150602-story.html>.

⁶ “Kingpin Act Designations: Specially Designated Nationals List Update,” U.S. Department of the Treasury Office of Foreign Assets Control, October 7, 2015, <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20151007.aspx>.

⁷ Azam Ahmed and Elizabeth Malkin, “Otto Pérez Molina of Guatemala is Jailed Hours After Resigning Presidency,” *New York Times*, September 3, 2015, http://www.nytimes.com/2015/09/04/world/americas/otto-perez-molina-guatemalan-president-resigns-amid-scandal.html?_r=0.

⁸ Elizabeth Malkin and Azam Ahmed, “President Otto Pérez Molina is Stripped of Immunity in Guatemala,” *New York Times*, September 1, 2015, <http://www.nytimes.com/2015/09/02/world/americas/guatemala-votes-to-strip-its-president-of-immunity.html>.

⁹ For an in-depth look at U.S. spending in Central America under the Central America Regional Security Initiative (CARSI), see: Cristina Eguizábal, Matthew C. Ingram, Karise M. Curtis, Aaron Korthuis, Eric L. Olson, and Nicholas Phillips, *Crime and Violence in Central America's Northern Triangle: How U.S. Policy Responses are Helping, Hurting, and Can be Improved*, Woodrow Wilson Center Reports on the Americas #34 (Washington, DC: The Wilson Center, December 2014), https://www.wilsoncenter.org/sites/default/files/FINAL%20PDF_CARSI%20REPORT_0.pdf

¹⁰ Arron Daugherty, “Guatemala’s Big Corruption Scandal, Explained,” InSight Crime, July 20, 2015, <http://www.insightcrime.org/news-analysis/guatemala-la-linea-customs-scandal-explained>.

¹¹ *Corruption Perceptions Index 2015* (Washington, DC: Transparency International, January 27, 2016), http://www.transparency.org/whatwedo/publication/cpi_2015.

¹² Rafael Romo, “Guatemala Protests: Thousands Call for President Otto Pérez Molina to Resign,” CNN, August 27, 2015, <http://www.cnn.com/2015/08/27/americas/guatemala-protests/>.

¹³ Eric Olson and Katherine Hyde, “Nine Questions and Observations about Honduras’s New Anti-corruption Mechanism,” The Wilson Center Latin American Program, October 5, 2015, <https://www.wilsoncenter.org/article/nine-questions-and-observations-about-hondurass-new-anti-corruption-mechanism>.

¹⁴ Eric Olson and Katherine Hyde, “Strengthening the MACCIH: Next Steps in Honduras’ Fight against Corruption and Impunity,” The Wilson Center Latin American Program, November 4, 2015, <https://www.wilsoncenter.org/article/strengthening-the-maccih-next-steps-honduras-fight-against-corruption-and-impunity>.

¹⁵ Eric Olson and Katherine Hyde, “Putting Teeth in the MACCIH Agreement,” Wilson Center Latin American Program,” The Wilson Center Latin American Program, December 10, 2015, <https://www.wilsoncenter.org/article/putting-teeth-the-maccih-agreement>.

¹⁶ “Fighting Corruption in El Salvador: Prevention, Investigation, and Prosecuting Corruption,” United Nations Office on Drugs and Crime, January 25, 2016, https://www.unodc.org/ropan/en/IndexArticles/fighting-corruption-in-el-salvador_-prevention--investigation-and-prosecuting-corruption.html.