



Breaking the wave: critical steps in the fight against crime in Guatemala

Ivan Briscoe
Marlies Stappers

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Abbreviations

CARSI	Central American Regional Security Initiative
CICIACS	Commission for the Investigation of Illegal Groups and Clandestine Security Organizations in Guatemala
CICIG	International Commission Against Impunity in Guatemala
DEIC	Special Division of Criminal Investigations (part of PNC)
DIGICI	General Directorate of Civil Intelligence
EU	European Union
FECI	Special Prosecution Office Against Impunity
GANSEF	High-Level Group for Border Security
INACIF	National Institute of Forensic Sciences
MINUGUA	The United Nations Verification Mission in Guatemala
MP	Public Prosecutor's Office
OECD	Organisation for Economic Co-operation and Development
PDH	Office of Human Rights
PNC	National Civil Police
PP	Patriotic Party
SAAS	Secretariat of Administrative and Security Affairs
SICA	System of Central American Integration
SIE	Secretariat of Strategic Intelligence
UEFAC	Special Prosecution Unit Attached to the CICIG
UN	United Nations
UNE	National Unity of Hope (political party)

Executive summary

The new government led by retired General Otto Pérez Molina that is to take office in Guatemala on January 14, 2012 will encounter a familiar set of torments in its in-tray. Whether measured in terms of murder rate, possession of firearms, or the extent of territory under the supposed control of armed criminal groups, this Central American nation stands at the forefront of a crisis of insecurity, in a region that is one of the most violent and lawless in the world.

But the portrayal of a country that is a victim to the intrusion of Mexican cartels and is unable to provide basic justice to its citizens no longer represents the whole picture. For over four years, the Commission Against Impunity in Guatemala (CICIG), a UN body, has spurred a series of criminal investigations compromising some of the country's most powerful figures – despite occasional setbacks. A new head of the national prosecution service has managed to shape an extraordinary turnaround, ordering the arrest of several 'untouchable' druglords, as well as a former president and general accused of atrocities during the civil war. Drug interdictions have soared; the murder rate has fallen, albeit slightly; even impunity rates for serious crimes are down.

This progress cannot hide the dilapidation of the country's security and justice institutions, notably its police and prisons, nor the acute fear of crime that is felt by many Guatemalans. But in combination with the Central American region's determination to address its vulnerabilities to transnational crime, it does offer some reason to believe that the crisis may be contained.

Pérez Molina, head of the right-wing Patriotic Party, has also made security the overriding imperative for his government. For the moment, however, both Guatemalan civil society and foreign governments are waiting to see how this veteran of military intelligence and the 1980s counter-insurgency – a particularly brutal period of the country's 36-year civil war – will behave once in power. He pledged repeatedly during the campaign to assign inter-institutional 'task forces' to combat major criminal phenomena. His concern over territory that is under the

control of drug traffickers may also see much deeper involvement of the armed forces in crime-fighting operations. At the same time, there is uncertainty as to whether the new president will respect recent reforms in the police and prosecution service, honour the mandate of the CICIG, or reappoint veterans of the counter-insurgency to key posts in the security apparatus.

Even if the president avoids militarizing the country's security strategy, he will still have to deal with the chronic flaws in the country's criminal justice system – weaknesses that have emerged time and again since the 1996 peace accords, and have scuppered previous efforts at reform and modernization funded by the donor community. Part of this vulnerability can be attributed to the character of Guatemala's political system, which has proved extremely permeable to business and criminal interests. Even the outgoing president, Álvaro Colom, failed on several occasions to live up to his commitments to a stronger security system, either by appointing shady operators, cutting security budgets, or by ignoring the CICIG.

In addition to political issues, this paper discusses in depth three chronic weaknesses in the criminal justice system that together pose major obstacles to successful reform.

- Efforts to strengthen criminal justice have so far failed to keep up with the rapid evolution of criminal behaviour, particularly in narco-trafficking and in the composition of local protection rackets.
- Reforms have not managed to introduce effective systems of internal discipline and oversight in security and justice institutions, which have been repeatedly infiltrated by criminal activity.
- They have not latched on to a credible approach towards ensuring they are sustainable over the long term – either through proper donor coordination, tax reform, constitutional change or genuine public support.

On the basis of these three major flaws, the report ends by outlining a comprehensive strategy for security and justice reform that would incorporate each of these issues by stressing the need for greater investigative sophistication, tighter internal controls, and, over the longer term, a route-map towards fiscal, constitutional and social change. The proposal is also grounded in a pragmatic understanding of Guatemalan institutions, emphasizing the need to support bodies that perform well, thereby spreading good practice by example rather than by rhetoric.

These recommendations acknowledge, however, that in the short term the priority will be to preserve the modest and fragile progress made in the last few years. For the CICIG, the United Nations and other leading donors, the immediate concern will be to resist excessive dependence on the military, continue to undermine clandestine groups in the state, and build up the capacity of criminal justice institutions. At a crucial time for Guatemala, they will be anxious to see whether the new president serves these goals or imperils them.

1. Introduction

The new government led by retired General Otto Pérez Molina that is due to take office in Guatemala on January 14, 2012 will encounter a familiar set of torments in its in-tray. Whether measured in terms of murder rate, possession of firearms, or the extent of territory under the supposed control of armed criminal groups, this Central American nation stands at the forefront of a crisis of insecurity, in a region that is one of the most violent and lawless in the world. On its own, a crisis of these proportions would pose acute problems for any incoming government. When aggravated by corruption and misrule across the public sector and political system, an extremely low tax burden, and the economic and social legacies of a stratified society that was at war with itself for most of the second half of the 20th century, then a comprehensive and consensual solution to this crisis would appear even more elusive.

However, this gloomy prognosis should not obscure the progress that has been made in designing and putting into practice plans to reduce Guatemala's crime rate. Numerous initiatives are now underway in a bid to stem the rates of violence across the isthmus and the neighbouring Caribbean, and halt the region's permeability to transnational crime. One landmark event came in the shape of a conference staged by the Central American Integration System (SICA) in Guatemala City in June last year as a means to attract interest and 950 million US dollars in funds for a multi-tiered, regionally-owned programme of crime fighting and prevention.

Within Guatemala itself, the shortcomings, setbacks and erratic course of outgoing President Álvaro Colom's security policy have become evident, and are frequently commented upon by experts in the field. At the same time, his administration is due to end with the principal institutions of justice and security functioning soundly at the highest levels, and with a series of successes in criminal investigations. The 2009 National Accord on Security and Justice may lie, as one European observer put it, in 'pharmacological coma,'¹ but this accord itself still

1 Interview, Guatemala City, 12 February 2011.

stands out as a clear and credible route to a stronger security system. A host of other national pledges, accords and laws also mark a clear route to improvements in the rule of law.²

The role played by the international community in goading and galvanizing these improvements cannot be underestimated. One recent estimate suggests that 1.5 billion dollars was spent by donors on Central America security programmes between 2008 and 2010.³ In the case of Guatemala, having already invested 188 million US dollars in security and justice from the signing of the peace accords in 1996 to the withdrawal of the UN monitoring mission (MINUGUA) in 2004,⁴ foreign donors are now spending on these areas a rising share of 400 million dollars in yearly aid to the country.⁵ The most prominent initiatives have included the creation in 2007 of the UN-backed Commission Against Impunity in Guatemala, or CICIG, which has entered its fifth year of existence, the establishment of the US-backed Central American Regional Security Initiative (CARSI), as well as a host of smaller, targeted programmes generally aimed at strengthening institutions and run by the European Commission, bilateral donors and multilateral agencies.

Paralysis, progress and the new government

This profusion of donor-backed initiatives, alongside institutional improvisations by national authorities, have generated problems of their own, such as fragmentation, poor coordination, and a heavy dependence on the skills and trustworthiness of a few valued reformers. Concerns such as these were reported around the time of the peace accords of 1996, when systemic overhauls were undertaken across the security and judicial system through the creation of the National Civil Police (PNC) and the establishment of the Public Ministry (MP), Guatemala's prosecution service. Following the post-conflict dismantling of the main institutions of intelligence-gathering and counter-insurgent warfare, the new police and prosecution service went on to become in the first decade of the 21st century nerve centres for the preservation of impunity for powerful licit and illicit actors, and for the establishment of criminal networks with strong links to the state.

These setbacks in new institutions turned out to be pivotal moments in the development of the country after the end of its 36-year civil war. However, coordination failures between national and international efforts to strengthen the criminal justice system no longer seem to be a primary cause for the country's levels of insecurity. As stated earlier, there is now substantial evidence that these institutions are working rather more efficiently: murder rates dropped

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- 2 See in particular the detailed description of key national strategic documents regarding security and justice in Rosada-Granados, Héctor. 2010. *Guatemala, 1996-2010: hacia un Sistema Nacional de Seguridad y Justicia*. Guatemala City: UNDP.
 - 3 Meyer, Peter and Seelke, Clare. 2011. *Central American Regional Security Initiative: Background and Policy Issues for Congress*. Washington DC, p. 28.
 - 4 Figures based on UNDP statistics. See Instituto Universitario de Iberoamérica. 2005. *Perfil de Gobernabilidad de Guatemala*. Salamanca: Ediciones Universidad de Salamanca, p. 132.
 - 5 Figures from the OECD indicate that aid funding for programmes in Guatemala is over one third of the total. Unfortunately, the amount that is dedicated to security and justice programming alone is not specified. Furthermore, the aid budget also fails to include security assistance emanating, for example, from the US State Department through CARSI, or from the US Defense Department.

slightly in 2010 (a fall of approximately five percent), as did the rate of impunity in homicide cases.⁶

Interior Minister Carlos Menocal and Claudia Paz, attorney general and head of the MP since December 2010, have been heralded for the momentum they have given to the criminal justice system. Compared with the lengthy and circuitous routes taken by the emblematic criminal investigations of the post-conflict era, particularly the case of the murder of Bishop Juan José Gerardi in 1998, the most serious crimes reported in 2011, from the bombing of a Guatemala City public bus in January, to the beheading of 27 farm workers in Petén in May and the murder of celebrated Argentine folk singer Facundo Cabral in July as he was travelling to the airport, have resulted in arrests within a matter of days. Over the past year, the Guatemalan state appears to have overcome a long history of inaction by arresting a number of renowned local drug barons, as well as taking the first strides towards prosecuting those responsible for wartime atrocities. By the end of 2011, a former military president and a general involved in the 1980s counter-insurgency were both set to face trial.

The irony of contemporary Guatemala is that these improvements in performance have so far not been translated into greater public confidence in the judicial system, or to any reduction in fear of crime. The country still reports one of Latin America's highest rates of crime: 23.3 percent reported having been victims in 2010.⁷ Perceptions of insecurity have been affected by the spreading influence of transnational narco-trafficking cartels in peripheral regions on the Atlantic and Pacific coast, and, as in northern Mexico, the systemic corruption of local authorities. A new sort of criminal violence that seems to have been copied from Mexican cartels has become common, geared towards maximum visibility, public impact and atrocity. Despite improvements in some state institutions, the failure of landmark court cases against senior political figures such as former President Alfonso Portillo, the embedded corruption of front-line judicial and security services and the obscure interests that guide political responses to the crime wave stir continued public anxiety.

Perhaps the clearest sign of this unease came in the victory of Pérez Molina in the second round of elections on November 6, with 53.7 percent of the vote, over his rival Manuel Baldizón. Having stood for president in 2007 and lost in the second round to Colom, Pérez Molina has continued to cultivate an appeal based on tough anti-crime policies and on his own military background dating from the time of the country's civil war. In an interview during the campaign, Pérez Molina made clear that his priority in government would be security, and that his first step upon taking office would be to organize *fuerzas de tarea*, or task forces, in which intelligence, police, and prosecution bodies would pool personnel to fight the most notorious crimes – extortion rackets, car theft, paid assassins and kidnapping.⁸

His military experience, while a consolation to some citizens, has generated deep concern over the abuses of human rights or legal norms the new president might tolerate.⁹ Civil society

6 Mendoza, Carlos. 2011. 'La Tasa de asesinatos se redujo un 7% en los últimos años.' *Plaza Pública* 25/08/11; interview with Marco Antonio Canteo, director ICCPG, 9 February 2011.

7 Azpuru, Dinorah. 2011. *Political Culture of Democracy in Guatemala, 2010*. Nashville: LAPOP-Vanderbilt University, p. 74.

8 *Prensa Libre*. 2011. 'Otto Pérez: 'Es improbable que perdamos las elecciones.' 29/08/11.

9 Naveda, Enrique. 2011. 'Por sus actos lo conocerás.' *Plaza Pública* 10/09/11.

groups are worried that the government might take the opportunity to appoint counter-insurgent veterans in key security and intelligence posts, or be swayed by an emerging movement of military veterans and media operators who appear intent on undermining the work of the MP, and, above all else, on removing Paz from her post.¹⁰

Meanwhile, for the international community the prospect, sooner or later, of an end to the presence of the CICIG in Guatemala has focused thinking on what a future aid strategy might involve. Already the Commission appears to have stirred deep and powerful antagonism within the country, including from the economic elite, the judicial sector and parts of the political establishment. The first commissioner, the Spaniard Carlos Castresana, resigned in June 2010 after it emerged that a newly appointed attorney-general was emasculating the special team of prosecutors that had been vetted and approved by the CICIG for work on highly sensitive criminal cases. Although the Commission might expect its mandate to be extended once again in 2013, for a further two years, Guatemala's rule of law institutions will be expected at some stage to carry out their work without international oversight and intervention.

It is possible that in this interim period some alternative supervision mechanism may be devised, such as a strengthened system of peer-based regional review through the offices of SICA, or an enhanced role for other UN agencies in the country. But until this happens, the fear remains that the Commission's eventual withdrawal will increase Guatemala's exposure to criminal intimidation, open the doors to corruption and capture of institutions, or pave the way for a brutal and militarized campaign against suspected criminals. In this respect, it is salutary to note that the most precipitous rise in murder rates, fear of crime, and narco-trafficking activity occurred in the three-year period between the withdrawal in 2004 of the UN peace monitoring mission (MINUGUA) and the creation of the CICIG.

Structure of the paper

This paper directly addresses these concerns by probing the terrain of Guatemala's criminal violence, and analyzing the achievements as well as the limitations of the reforms undertaken by national and international authorities. It suggests in chapter 2 that the work of the CICIG and domestic reformers has made important contributions, but argues that in three key areas there is a need for much more rigorous and far-reaching approaches over the coming years. These three issues may be regarded as the lodestone for progress to a more peaceful country, and the *sine qua non* for successful security and justice reform.

Adaptability and responsiveness to new criminal phenomena, internal monitoring and discipline in key judicial and security institutions, and the sustainability of improvements in capacity as well as in the broader political and constitutional context must stand at the heart of the reform agenda. Obstacles, lacunae and loopholes in these areas have created a fertile ground for criminal networks to entrench themselves, while key institutions have remained

10 See, for example, Wirtz, Nic. 2011. 'Otto Pérez Molina and the Guatemalan Justice System.' *Americas Quarterly* 21/12/11; Stone, Hannah. 2011. 'Guatemala's Crime-Fighting Prosecutor's Job is Safe, For Now.' *Insight Crime* 08/12/11; Hernández, Oswaldo J. 2011. 'La marcha de los veteranos.' *Plaza Pública* 15/11/11.

impervious to a durable clean-up. Model reforms funded to the tune of millions of euros may once again end up in failure and waste unless these issues are heeded.

Having identified and analysed these weakness in chapters 3 to 5 , the paper goes on to review some of the new proposals being considered by Guatemalan political leaders and foreign donors, before sketching out the ideal bases for an integrated approach to the country's security crisis. Chapter 6 draws substantially from a separate paper of policy recommendations that has previously been submitted to the Dutch Ministry of Foreign Affairs.¹¹

Field research for this paper, involving interviews with officials from all of the country's main security and justice institutions, UN agency heads and ambassadors posted in Guatemala City, as well as visits to judicial offices in Quetzaltenango and San Marcos, was carried out in February 2011 in a collaborative venture involving the Clingendael Institute's Conflict Research Unit, the NGO Impunity Watch and the Dutch Platform Against Impunity in Guatemala. As mentioned above, this research also formed the basis for a policy paper designed to assist in the formulation of future donor strategy in the country. This paper, on the other hand, aims to provide a rather broader and clearer understanding of how dynamic systems of violence reproduce, adapt and entrench themselves in the weak institutions of Guatemala. With this in mind, it hopes to offer some indications as to the merits of the programmes that are now being unveiled by authorities to combat the country's crime wave.

11 See Impunity Watch, Conflict Research Unit-Clingendael Institute and the Dutch Platform Against Impunity. 2011. *An integrated strategy to combat insecurity in Guatemala*. The Hague-Utrecht: CRU-IW. See <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2011/08/29/an-integrated-strategy-to-combat-insecurity-in-guatemala.html>

2. The faltering path of reform: CICIG and the government of Álvaro Colom

Following massive foreign support and investment in the immediate aftermath of the peace accords, Guatemala's system of law and order underwent a progressive weakening that began at the end of the administration of Álvaro Arzú (1996-2000), intensified under Alfonso Portillo (2000-2004), and reached its nadir under the centre-right administration of President Óscar Berger (2004-2008) – by which time the UN rapporteur on extra-judicial execution, Phillip Alston, discovered to his alarm a country in which security and judicial institutions appeared thoroughly dilapidated, inactive, and tolerant of social cleansing. 'A lack of political will and of resources allocated to criminal justice has made effective crime control impossible.'¹²

Using the total number of murders as a rough and ready measure of the levels of criminal violence in the country, this trend can be traced from 1999, when 2,655 people were murdered, to 2006, when 5,885 were killed. After a brief dip this upward movement continued in the first years of Álvaro Colom's government, climbing to an historical maximum of 6,498 in 2009, only for the death-toll to fall back in 2010, reaching 5,960 murders.¹³ Initial figures for 2011 indicate this figure has dropped again, to 5,618.

This is merely a superficial measure of a much more complex process of criminal accumulation and empowerment in Guatemala. Comprehensive analyses of the crime wave in Central America point to a security crisis across the region that is rooted in the social legacies of war, the effects of highly unequal economic distribution, limited job opportunities and the

12 Alston, Phillip. 2007. *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Mission to Guatemala*. New York: UN, p. 24.

13 Figures from UNDP. 2007. *Informe estadístico de la violencia en Guatemala*. Guatemala City: UN, p. 19 and Office of Human Rights (PDH). 2011. *Informe Anual Circunstanciado*. Guatemala City. Annex A.2-1

spread of gang culture from the United States.¹⁴ Such is the extent of impunity for crime in Guatemala, which reached 98.6 percent of murder cases at the time of Alston's visit – and stretches to an extraordinary 99.75 percent for all crimes according to statistics from the Supreme Court¹⁵ – that it is also possible to argue that the country is suffering a pandemic of crime derived from the ease with which perpetrators escape justice. Crime is common, in other words, because there are so many opportunities to break the law and remain unpunished.

However, the sustained rise in murder rates and in perceptions of insecurity, which dates from several years after the signing of the peace accords, suggests that rising criminal violence in Guatemala cannot merely be ascribed to a pre-existing basket of regional conditions, but was also triggered by concrete historical causes. Three influences stand out in this respect. The first derives from the re-cycling of key actors and organizations from counter-insurgent warfare into organized crime. A number of cadres or cliques of military officers are believed to have extended their complicity with criminal actors into peacetime, and to have deepened their links with the state and security forces upon retirement.¹⁶ A clique based in military intelligence and known as the *Cofradía* (brotherhood) initiated its criminal activities in wartime as a result of its strategic control of border posts, and the recruitment of local informants: according to the account of a former colonel, 'at some point, the whole process got perverted with the engagement of certain individuals in corruption, contraband was allowed, and those positions became strategic for drug trafficking.'¹⁷ It is worth noting that Guatemala's drug barons first became allied to the military during the armed conflict: the Mendoza family in Petén took over land previously occupied by the Dos Erres village, 200 members of which were massacred by the army in 1982,¹⁸ while the Zacapa-based trafficker Juan José 'Juancho' León graduated from a military academy in his home town.¹⁹

Later on, this military clique grew close to political power under the aegis of President Alfonso Portillo (2000-2004). Since then, it has reputedly metastasized through its evolving quasi-state networks into a kind of 'structural mafia' that co-ordinates and facilitates the work of organized crime across the country.²⁰ While evidence for this supervisory role in Guatemalan crime is limited, the massive increase in private security firms in Guatemala offers *prima facie* evidence of the continuing relevance of retired military and police officers to the way public

14 The best two comprehensive analyses of crime in Central America can be found in UNODC. 2007. *Crime and Development in Central America*. Vienna: UN, and UNDP. 2009. *Informe sobre Desarrollo Humano para América Central 2009-2010*. Bogotá: UN.

15 Office of Human Rights, op. cit., p. 32.

16 See, for example, Beltrán, Adrian & Peacock, Susan. 2003. *Hidden Powers in Post-Conflict Guatemala*. Washington DC: WOLA; Goldman, Francisco. 2007. *The Art of Political Murder*. New York: Grove Press; Briscoe, Ivan. 2009. *The Proliferation of the Parallel State*. Madrid: FRIDE; and Brands, Hal. 2010. *Crime, Violence and the Crisis in Guatemala: A Case Study in Erosion of the State*. Carlisle, PA: Strategic Studies Institute.

17 López, Julie. 2010. *Guatemala's Crossroads: Democratization of Violence and Second Chances*. Washington DC: Woodrow Wilson Center, p. 15.

18 Anonymous. 2011. *Grupos de Poder en Petén: Territorio, política y negocios*. Guatemala City, p. 80

19 López, Julie, op. cit., p. 19.

20 For background on the *Cofradía*, and the history of its supposed leader, retired General Francisco Ortega Menaldo, see Beltrán, Adrián and Peacock, Susan, op. cit., pp 14-17. The most recent and complete account describing the rise of this structural mafia working through alleged sleeper cells throughout the military and public administration can be found in Zamora, José Ruben. 2011. 'El tenebroso cartel de los 'Durmientes''. *El Periódico* 12/07/11. Zamora has received numerous death threats, and been kidnapped and nearly killed as a result of his previous investigations.

security issues are perceived and handled.²¹ The presence of military officers in instances of criminal activity is also striking: major crimes and high-profile killings, including the 8-million-dollar Guatemala airport heist of 2006, the murder of lawyer Rodrigo Rosenberg in 2009 as well as the bombing of a public bus in January 2011 (discussed in the next chapter), engaged former military officers in prominent operative roles. The Zetas drug gang, meanwhile, is originally from Mexico, but is widely reported to recruit from the Guatemalan special forces, or *kaibiles*.²²

A second, and closely linked development has been the diversion of the principal route for trafficking of Andean cocaine to North America from the Caribbean and towards Central America, through which 97 percent of drugs destined to the US from South America is now estimated to pass.²³ Local drug barons in Guatemala had been associated with the trade for several decades before the recent boom, notably Arnoldo Vargas, mayor of the town of Zacapa in the 1980s and a courier for the Colombian cartels.²⁴ But a sharp increase in the volume of trafficked drugs, a rise in the power of local criminal bosses, and evidence of widening networks of corruption in the state can all be dated from the start of the millennium – coinciding with the shift in major trafficking routes to the isthmus. In this respect it is important to note that Guatemala was briefly decertified by the US State Department for its apparently lacklustre campaign against narco-trafficking in 2003, while reported confiscations of drugs and number of arrests surprisingly dropped again in 2006. Colom's presidency, for its part, has generated record highs in confiscated drugs²⁵ and a sharp increase in arrests of major traffickers over the last year.

Thirdly, and most significantly, Guatemala suffered in this period a relentless degradation of its institutional culture, with a particularly corrosive effect on the criminal justice system. The police force, or PNC, having emerged from a 45-million-dollar restructuring under the guidance of the Spanish Civil Guard, offers one particularly sorry tale of decline. It was unsettled first by repeated changes in leadership, and thereafter by a string of corruption cases involving counter-narcotic units and commanding officers.²⁶ A so-called Anti-Kidnapping Unit run by Víctor Rivera, a Venezuelan intelligence specialist, emerged as a parallel police force under the administration of President Berger – allegedly, with the aim of carrying out extra-judicial executions for the protection of rich, paying clients – and was closely involved in the scandalous events that surrounded the murder of three Salvadorean politicians and their driver in 2007.²⁷ Following international uproar over these killings, massive purges of the police force

21 Argueta, Otto. 2010. *Private Security in Guatemala: The Pathway to its Proliferation*. Hamburg: GIGA working paper.

22 Newman, Lucia, 2011. 'Guatemala's feared special forces.' Al Jazeera online: <http://blogs.aljazeera.com/americas/2011/08/15/guatemalas-feared-special-forces>

23 *The Miami Herald*. 2011. 'US official: Drug traffic may return to Caribbean.' 09/11/11.

24 López, Julie, op. cit., pp 10-11.

25 Grupo de Apoyo Mutuo. 2010. *Informe sobre el combate al Narcotráfico y Crimen Organizado durante el Periodo 2000-2010*. Guatemala City.

26 Stanley, William D. 2007. 'Business as Usual? Justice and Policing Reform in Postwar Guatemala,' pp 132-137. In Call, Charles (ed.). *Constructing Justice and Security After War*. Washington DC: USIP.

27 These allegations have been the subject of numerous journalistic investigations (see, for example, *El Periódico*. 2010. 'Marzo 2010: Naciones Unidas recibió denuncia contra Castresana por incumplimiento de deberes y abuso de poder.' 29/11/10), and have motivated a CICIG probe, based on the murder of seven prisoners at the Pavón jail in 2006, which led to the issuing of 18

were carried out over the next two years, resulting in the dismissal of around 3,000 officers. However, reports indicate that none of these sacked officials faced any legal sanctions.²⁸

The deterioration in the workings of the police force is an extreme case of what can be found elsewhere in the Guatemalan state. From its inception in colonial times, the state has acted in the service of powerful class interests. While the peace accords sought to bring an end to this partisan, feudal and discriminatory system of power, a number of constraints within the post-conflict settlement ensured that state institutions were gravely underfunded, subject to meddling by politicians and interest groups (particularly those representing the economic elite), and open to corruption.²⁹ As mentioned above, the prosecution service, or MP, has been infiltrated by the trafficking of interests, as has the Interior Ministry. Despite their good intentions, standing state bodies such as the Comptroller-General's Office (*Contraloría General*) and the Office of Human Rights (*Procuraduría de Derechos Humanos*), which should in principle act as brakes on the executive and watchdogs over officials, are debilitated by the same pressures. Efforts to reform these and other state institutions, meanwhile, have tended to depend on the appointment of individuals trusted by the president for their exceptional abilities, rather than the formation of broad political coalitions and the approval of new legislation. Tax reform, for its part, has been blocked repeatedly.

The contribution of the CICIG: high points and grey areas

The origins and achievements of the CICIG have been studied in depth, with particular emphasis being given to the unusual hybrid quality of the Commission as an international investigative body that can only proceed with criminal cases through Guatemala's national legal system, including its prosecutors and courts.³⁰ Although this working method is weaker than the independent investigative and prosecutorial role envisaged under the proposal for a special UN body made in 2003 by the government of President Portillo, the so-called CICIACS, it still affords a considerable margin of liberty and prerogative to the Commission. In the words of former Vice-President Eduardo Stein, anything less robust would have trapped the body within the same clandestine influences as all other Guatemalan institutions: 'it would have been like tying a dog up with sausages.'³¹

arrest warrants against former officials and senior policemen in August 2010. A Guatemalan judge struck down the CICIG's probe in March 2011.

28 International Crisis Group. 2011a. *Learning to Walk Without a Crutch: An Assessment of the International Commission Against Impunity in Guatemala*. Guatemala City-Bogotá-Brussels: ICG, p. 8.

29 A much fuller account of the pressures on the Guatemalan state is provided in Briscoe, Ivan and Rodríguez Pellecer, Martín. 2010. *A state under siege: elites, criminal networks and institutional reform in Guatemala*. The Hague: Clingendael Institute-CRU.

30 Impunity Watch-ICTJ-Dutch Platform Against Impunity. 2010. *Cambiar la cultura de la violencia por la cultura de la vida: los primeros años de la Comisión Internacional contra la Impunidad en Guatemala*. Guatemala City: F&G; Hudson, Andrew and Taylor, Alexandra W. 2010. 'The International Commission against Impunity in Guatemala.' *Journal of International Criminal Justice* 8: 53-74; International Crisis Group, 2011a, op. cit.

31 Interview with Eduardo Stein, February 7 2011.

Since its creation in 2007, the Commission has concentrated its efforts on a number of paradigmatic judicial cases, which have been intended to expose the methods and concealed structures of criminal activity across the country. At the same time, it has worked towards strengthening the judicial apparatus for prosecution of major criminal cases. This has involved, most importantly, the creation of a vetted unit of prosecutors, now known as the FECI (formerly the UEFAC), to work with international CICIG investigators on high-profile cases, as well as lobbying for stronger legislation to deal with organized crime, and supporting the creation of a phone-tapping unit in the prosecution service.

A third, and no less crucial role of the Commission has been slightly more diffuse, informal and subject to each commissioner's interpretation. Its aim is to galvanize reformist coalitions within Guatemala, principally within civil society, the media, the judicial and security system and the political establishment. From the very start of its existence, the Commission has thus played a lobbying and campaigning role,³² with the avowed aim of supporting institutional resilience through the promotion of like-minded individuals, while also bringing to light abuses of power that do not necessarily qualify as criminal acts.

One example of this approach can be found in 2009, when former Commissioner Castresana denounced on the basis of alleged ethnical improprieties six candidates to become Supreme Court justices. The same commissioner's sudden resignation in June 2010 in response to the appointment of a new attorney-general, and his successor Francisco Dall'Anese Ruiz's combative reactions to a series of court verdicts that struck down CICIG-led and assisted investigations, are also illustrative of the Commission's nature as both an investigative body, and an alternative internationally-approved authority that directly challenges the legitimacy of political and legal practices within Guatemala.

This broader approach is undoubtedly crucial to any lasting improvement in Guatemala's institutional culture, where, according to one leading political analyst, 'there is a structural tendency towards using impunity as a form of exercising power.'³³ The revelations from the cases spearheaded by CICIG have been enormously telling in this respect, showing the ease with which members of the economic elite recruit paid assassins or engage with local mafia (as shown by the 2009 case involving murdered lawyer Rodrigo Rosenberg), or the chronic corruptibility of institutions as varied as the police, the prosecution service, or even, in the case of illegal adoptions, midwives. Perhaps the most incendiary case of all, which now appears to have been stalled by the courts, intended to prove the involvement of senior officials from President Berger's administration in a plot to execute a number of prisoners from the Pavón jail, possibly as part of a broader campaign of extra-judicial executions.³⁴

However, a number of factors serve at the same time to imperil the CICIG's role as an alternative source of legal legitimacy. The breadth of the mandate, particularly in terms of its definition of what constitutes a clandestine group,³⁵ affords substantial space for the

32 Impunity Watch et al., op. cit., pp 43-45.

33 Interview, 9 February 2011.

34 See footnote 27 above.

35 According to the CICIG mandate (signed 12/12/06, see <http://cicig.org/index.php?page=mandato>), a clandestine group is defined as a group that carries out illegal acts which undermine civil and

commissioner's discretion in case selection. Resource constraints, limited mobility across the country, and the need to tend to political and media considerations in the Commission's work all serve to increase this quota of discretion, and entail the risk in a highly polarized political environment that accusations of partisanship and favouritism will be made against the CICIG's work.³⁶ These charges were notably aimed at Castresana in his last months as commissioner, particularly as regards his alleged failure to issue charges related to the Pavón incident and his alleged bias towards the interests of traditional business elites.³⁷ One result is that the new commissioner appears to have chosen a more subdued leadership style, and to have supported a more prominent role for the new attorney-general, Claudia Paz.

President Colom: commitment and backsliding

Álvaro Colom won the second round of the presidential elections in November 2007 at the end of a tight contest with the leader of the right-wing Patriotic Party (PP), retired General Pérez Molina. The nature of this contest, in which Colom's emphasis on poverty reduction and social welfare contrasted sharply with Pérez Molina's fixation on a tougher approach towards crime (*mano dura*), went on to shape the president's approach towards security matters. While international and domestic concerns over rising insecurity in Mexico and Central America have compelled Colom to be constantly engaged with this issue, it has often seemed that the president's main political objective, as well as that of his former wife and intended successor Sandra Torres,³⁸ has been improving basic social services as part of a plan to construct a strong, vertically integrated social democratic movement.

As a result, Colom's support for strengthening his country's justice and security system has proved ambivalent and erratic. At key moments, his backing for reform has been unambiguous: his government twice backed extensions of the CICIG's mandate, appointed human rights activist Helen Mack as the police reform commissioner in 2010, and acted rapidly to declare a 'state of siege' in two regions heavily affected by the presence of narco-trafficking cartels. Speaking in an interview with the Spanish division of Radio Netherlands in 2010, Colom declared that 'if you ask me what really keeps me awake at night, it's everything to do with security and justice.'³⁹

Colom's administration has pushed for an increase in the size of Guatemala's armed forces to over 20,000 troops as a means to block the free movement of drugs through the country, and

political rights, and which is linked directly or indirectly to state agents, or can generate its own impunity. This definition could apply to almost any criminal faction in the country.

36 On the subject of discretion in case selection, see International Crisis Group. 2011a, op. cit., pp 10-11. See also Gutiérrez, Edgar, 2010. 'Crónica de nuestro mundial.' *El Periódico* 14/06/10.

37 A book written by El Salvadorean journalist Lafitte Fernández and published in 2011 (*Crimen del Estado*. Guatemala City: F&G editores) denounces an alleged failure on the part of the CICIG under Castresana to investigate fully the possible involvement of senior Guatemalan government officials in the murder of three Central American Parliament deputies from El Salvador and their driver in February 2007.

38 Torres' bid to stand in the 2011 elections was blocked by the Constitutional Court in August of that year.

39 See interview with José Zepeda of Radio Nederland Español, 30/06/10: <http://www.rnw.nl/espanol/video/alvaro-colom-%E2%80%9CGuatemala-necesita-a-la-cicig%E2%80%9D>

has similarly approved an increase in the size of the police force by a process of rapid recruitment and training in the Police Academy. In fact, there have been more new police graduates under Colom (a total of 8,600) than under any other president over the past 12 years.⁴⁰ Furthermore, his willingness to host the SICA conference on regional security in June 2011 is seemingly indicative of his desire to assume a leadership role in tackling criminal violence across Central America.

However, close study of these and other initiatives suggests that the pressures exerted by interest groups, tactical alliances and streams of political funding on the workings of the Guatemalan state have also played a significant role in deflecting Colom's security commitments. Accommodation of diverse groups and interests – as well as the presidential couple's goal of constructing a broad-based popular movement to support the future campaigns of Colom's party, the UNE – have weighed heavily across the administration as a whole, as is demonstrated by the written account provided by Colom's former finance minister, Juan Alberto Fuentes.⁴¹ At the very beginning of his mandate, the president allegedly expressed little interest in combating criminal violence.⁴² A number of his appointments to key posts, such as his first head of presidential security (SAAS)⁴³, as well as various interior ministers and police chiefs,⁴⁴ have indicated a striking disregard for background checks on key personnel or basic policy continuity. In particular, his appointment of Salvador Gándara as interior minister in January 2009 appeared to contradict the administration's efforts to create a stronger institutional apparatus for criminal justice and improve basic police procedure. Gándara was fiercely criticized by human rights organizations for his alleged authoritarian approach, and for his suspected involvement in a number of extra-judicial executions in the municipality of Villa Nueva. It is even alleged that his appointment followed the suggestion of security expert Luis Mendizábal, who was briefly employed by Colom as an adviser in 2009 despite being renowned for his links to right-wing death squad activity in 1980s Central America.⁴⁵

40 Information from Grupo de Apoyo Mutuo (GAM), November 2011.

41 Fuentes, Juan Alberto. 2011. *Rendición de Cuentas*. Guatemala City: F&G.

42 Interview with presidential adviser, January 2009.

43 Carlos Quintanilla was head of the SAAS from January to September 2008, whereupon he was found to have placed espionage equipment in the president's offices. One recent article has suggested that Quintanilla was in the pay of drug trafficking organizations (see Brands, Hal. 2011. 'Crime, Irregular Warfare and Institutional Failure in Latin America: Guatemala as a Case Study.' *Studies in Conflict & Terrorism* 34, p. 233.). He was nevertheless acquitted in 2010.

44 President Colom has had five interior ministers and five heads of the PNC during his administration. Of the ministers, one died in suspicious circumstances (Vinicio Gómez in June 2008), two have been remanded in custody on criminal charges (Salvador Gándara and Raúl Velásquez), and a fourth has also been accused of malfeasance in a procurement case from 2006 (Francisco Jiménez). Colom's last interior minister is Carlos Menocal, a former journalist. Of the police chiefs, two have been charged with criminal offenses involving links to drug trafficking (Porfirio Pérez Paniagua and Baltazar Gómez, though the former was acquitted in February 2011), and two were dismissed from their posts (Isabel Mendoza Agustín and Marlene Blanco). The current head of the PNC, in charge since June 2010, is Jaime Otzín.

45 Mendizábal's relationship with Colom soon soured, to the extent that Mendizábal played a key role in producing and distributing the video made by the lawyer Rodrigo Rosenberg days before his murder in May 2009. For more detail, see Grann, David. 2011. 'A Murder Foretold.' *The New Yorker* 04/04/11.

These doubts over continuity and consistency resurfaced in Colom's treatment of a series of reform plans. The National Accord on Security and Justice, supported by civil society and signed by a variety of public institutions in April 2009 in an endeavour to seal a broad social pact to tackle crime, has largely been neglected, and barely appears in current debates; its action plan of 101 points, however, is still being used by international donors and UN agencies as a template for supporting justice and security reforms. A National Intelligence System was created in 2008, but its central clearing body, the Secretariat of Strategic Intelligence (SIE), complains of a lack of resources and chronic institutional fragmentation.⁴⁶ Police reform under Mack, meanwhile, has been seriously undermined by the reallocation of resources from the PNC and the Interior Ministry towards other parts of government. In 2010, for instance, the police budget was cut by some 207 million quetzals (18 million euros).⁴⁷ Authorities in the Commission of Police Reform observe that the pressure to divert the police budget to other parts of government was particularly vigorous in the run-up to the 2011 elections.⁴⁸

As regards the CICIG, Colom's firm support for the body's mandate – and his undoubted relief at the findings of its investigations into the murder of lawyer Rodrigo Rosenberg, who had accused Colom of planning to kill him in a video – cannot obscure his apparent indifference to some of its recommendations. Most strikingly, the former commissioner Castresana indicated that the president ignored repeated warnings as to the actions of the new attorney general, Conrado Reyes, who was appointed by Colom in May 2010.⁴⁹ These moves, including the efforts by Reyes to hire individuals with a criminal past, as well as his blatant interference in the workings of the unit of special prosecutors attached to the CICIG, finally prompted Castresana's resignation.

Similar discrepancies in Colom's behaviour can be found elsewhere. Congressional deputies from Colom's UNE party, as well as most other parties, voted for the creation of CICIG, as well as the first extension of the Commission's mandate in July 2009. Four bills of reform have also been passed, including initiatives such as the Law on Organized Crime and the Law on High-Risk Proceedings, which have together shaped the improved record in criminal investigations by establishing reduced sentences for informers and making special provisions for high security trials in the capital.⁵⁰ However, UNE deputies conspicuously refused in September 2009 to observe the Commission's call to discard all possible Supreme Court appointees reputed to be morally dubious.⁵¹ In the words of the party's former speaker of Congress (who has since split to form his own congressional group), Roberto Alejos, 'between the UNE and the CICIG there are certain differences because the official party is always going to work to ensure its members occupy posts. We have to improve the relation between the

46 Interview with SIE, 16 February 2011.

47 Grupo de Apoyo Mutuo, op. cit., p. 3.

48 Interview 9 February 2011.

49 'I had repeatedly asked the president not to appoint this person [Conrado Reyes]. After appointing him, I asked very strongly that he be dismissed. The president never dismissed him.' *El País*. 2010. 'Había una trama para matarme en Guatemala.' 24/10/2010.

50 International Crisis Group. 2011a, op. cit., pp 13-14.

51 Castresana told Guatemala's Congress in September 2009 that eight of the 26 candidates for the Supreme Court's 13 posts has in one form or another sullied their professional reputations. In spite of his declaration, six of the eight names he mentioned were elected to the Court following a congressional vote.

UNE and CICIG. I think there should be more communication, and they should get to know each other better.⁵²

Signs of a chill in relations between the former ruling party and the CICIG have been hard to ignore since then. A second extension of the CICIG's mandate, in 2011, was arranged without any participation from Congress; furthermore, no new legislation specifically demanded by the Commission has been approved over the past two years, although laws on confiscating criminal assets and regulating private security were passed in 2010.⁵³

Challenges under a new government

Having at first made rapid progress in gaining a foothold in prominent criminal cases, shaping the legislative agenda and influencing the political and media establishment, the CICIG has more recently witnessed challenges to its work and legitimacy. Economic crisis in its main European partners appears to have already weakened the Commission's donor base.⁵⁴ Its current strategy instead aims at a more subdued profile, in which the emphasis has shifted to supporting and supervising reforms to national judicial and security institutions, above all the prosecution service.

This greater dependence on local counterparts, however, runs the sort of risks that have become evident under President Colom. Despite good intentions, the political reality of Guatemala – marked by weak parties, the imperative of forming coalitions in Congress and the excessive influence of interests groups on all institutions – appears to have persuaded the outgoing president to adopt a series of tactical compromises. The issue of budget reallocation shows that the rhetorical commitment to improving security has not always trumped the priority of consolidating political power.

At the same time, President Colom appears to have placed ever greater trust in the armed forces as a means to combat the threat of organized crime. Although there were elements of bluster and theatre in the two states of sieges declared under his presidency, in Alta Verapaz and Petén,⁵⁵ there is little doubt that an aggressive military approach towards organized crime has been embraced across the Guatemalan political spectrum. Furthermore, recent surveys have shown that the army now stands out as the state institution with the highest level of public legitimacy.⁵⁶ In the words of one leading political analyst, the spirit of the official and public response to crime is now 'authoritarian, repressive and militaristic.'⁵⁷

52 Interview, February 2011. Background research paper prepared by Rodríguez Pellecer, Martín. 2011.

53 The current state of CICIG's legislative agenda is provided by the Commission on its website. See <http://cicig.org/index.php?page=reforma-legales>

54 *El Periódico*. 2011. 'CICIG disminuye su personal por reducción de presupuesto.' 20/11/11.

55 Interview with UN agency head in Guatemala City, 16 February, 2011.

56 Azpuru, Dinorah, op. cit., p. 114. However, it should be noted that non-state institutions such as the Protestant and Catholic Churches, the media and the CICIG enjoy higher legitimacy ratings than the army.

57 Interview, 9 February 2011.

The incoming president, Pérez Molina, is very likely to mark an entrenchment of this approach. His immediate priority, as mentioned above, is to institute a series of inter-institutional task forces aimed at combating different criminal phenomena. Although Pérez Molina downplayed the rhetoric from his 2007 presidential bid, in which he pledged to establish ‘states of exception’ reminiscent of the legal voids in which the army operated during the counter-insurgency, his emphasis remained on ‘operative’ approaches and practical solutions – shorthand, in the Guatemalan political argot, for the use of force. As a result, he has also emphasized his intention of reinforcing military initiatives to seize control of territory that is considered to have been ‘lost’ to narco-traffickers, in a campaign that would involve Guatemalan special forces (*kaibiles*), paratroopers, collaboration with the US Southern Command, and shared surveillance systems with Mexico and Colombia.⁵⁸

Indeed, in one interview he asserted that his role model would be the former Colombian president Álvaro Uribe.⁵⁹ At the same time, his medium to long-term security agenda includes many of the plans laid out in the 2009 National Accord, and differs very little from the programmes supported by the international community and backed by Colom: strengthening border control; backing pan-regional security co-operation and institutional efficiency; pushing through essential legislative reform; and cleaning up the justice system.⁶⁰ Crucially, Pérez Molina has also pledged not to remove Paz from her post.

The security crisis will undoubtedly stay at the heart of the new government’s concerns. However, official support for a consistent approach towards security policy that seeks to make the most of the expertise of the CICIG is likely to be weakened at crucial moments by differences between the new government and the Commission over strategy (such as the role of military operations), as well as demands of political expediency similar to those encountered by Colom’s administration. A security adviser for the PP, Jorge Herrera, has already expressed reticence over the Commission’s cultivation of a high media profile and its continuing direct involvement in criminal cases.⁶¹ Criticisms of the Commission, or the national prosecution service, are all the more probable when targets of criminal investigation are allies or supporters of the governing party, or are liable to cause the government some embarrassment.

In addition, the route towards greater security laid out by Pérez Molina will also need to negotiate the obstacles that have systematically undermined a series of reform programmes throughout the post-conflict era. The following three chapters explain what may be considered the three recurrent and endemic weaknesses in the country’s criminal justice system, and their role in confounding the expectations of governments and donors.

58 Núñez, Rogelio. 2011. ‘Guatemala: Pérez Molina, contra los cárteles y la inseguridad.’ *Infolatam* 23/11/11.

59 Rodríguez Pellecer, Martín. 2011. ‘Quiero que alguien me demuestre que hubo genocidio.’ *Plaza Pública* 25/07/11.

60 Patriotic Party (PP). 2011. *Agenda del Cambio. Plan de Gobierno 2012-2016*. Guatemala City, especially chapter 1. See:

http://issuu.com/manuelsolis6/docs/agenda_patriota?viewMode=magazine&mode=embed

61 Rodríguez Pellecer, Martín, op. cit.

3. The new criminal trends: complexity and collusion

By far the most complex feature of Guatemala's escalating violence is the astonishingly rapid evolution of criminal phenomena. Crime, particularly organized crime, is anything but static. While presenting a comprehensive report on Guatemala's illegal adoption racket, CICIG commissioner Dall'Anese observed that the information would be absorbed by illicit networks, who would then adapt themselves immediately so as to avoid detection. Likewise, the effects of the CICIG and other partial reforms in Guatemala's security and justice systems have combined with other exogenous developments in Central America to displace crime, rearrange the constituent elements of criminal groups, and, most disturbingly, alter the methods employed. By the first half of 2011, Guatemala appeared to have become victim to a creeping intrusion of theatrical violence designed to provoke maximum public alarm, most atrociously in the killing and beheading of workers on a Petén farmstead.

Unpicking these dynamics, and the combination of clandestine actors involved, is arduous. Whereas the pursuit of front-line Guatemalan criminals involved in murders has been greatly enhanced by the use of new technologies – particularly wiretaps, as well as surveillance via mobile phone records, bank transactions and closed circuit television footage – and on a deliberate reduction in the use of witness testimony, information on the deeper organizing structures that guide and coordinate criminal 'cells' is scant.

For instance, the first arrests connected with the bombing of the Rutas Quetzal bus on January 3 2011, in which nine people died, were made two days after the attack. Those arrested and now facing trial include two gang leaders accused of heading an extortion racket against transport firms (one of whom operated out of a high security jail in the capital), a former director of the bus firm involved in the racket, a 63-year-old woman in charge of handling the extortion payments, and her granddaughter, who is accused of planting the bomb.

The rapid success of this operation, co-ordinated exclusively by the special unit of the prosecution service that deals with organized crime, would have been startling had it occurred before the arrival of the CICIG. However, authorities in the prosecution services are doubtful

whether the arrests constitute all the culprits connected to the crime, or merely those involved directly in the flows of money from the protection racket. In particular, the fact that one of the racket leaders, 29-year-old Gustavo Adolfo Pirir García, aka ‘The Hammer’, served for two years in the army’s Presidential Guard, has raised suspicion of possible links to current or former military officers involved in criminal activity.

For the moment, use of relational mapping or social network analysis, which seeks to establish stable connections and acquaintanceships between suspected criminal actors so as to penetrate to the highest reaches of organized crime, remains in its infancy in Guatemala. During the preparation of this report, the researchers witnessed the use in a local prosecutor’s office of one such mapping programme, which had been downloaded without a proper licence from the Internet. Three externally contracted experts carry out data-mining for the FECI’s criminal investigations, but due to their employment status the evidence they amass cannot be used in trials.⁶² Linkages between the different branches of Guatemala’s intelligence community are notoriously poor, while out of close to 25,000 officers in the police force, only an estimated 700 to 800 are reportedly involved in serious criminal investigations.⁶³ Dall’Anese, for his part, has emphasized that a sweeping cultural change is required in Guatemalan criminal probes so as to orientate them away from immediate ‘targets’, such as arrests and drug confiscations, towards establishing the real dimensions of criminal activity. ‘The sentence for a crime is not the objective, but the medium,’ he says.⁶⁴

Different opinions exist as to how these sophisticated capacities for knowledge and research could best be nurtured in Guatemala’s criminal justice system, and particularly within the police force. Whereas Dall’Anese has lobbied for the creation of an elite team of university graduates to form the basis for a new investigative corps, able to handle forensic, genetic, biological and technological evidence, and based outside the current PNC,⁶⁵ the Police Reform Commission under Helen Mack is insisting that the current structures of the police must be maintained and respected so long as there is not enough money and commitment to create an entirely new division. Pérez Molina, for his part, has spoken of supporting the work of the Reform Commission while also pushing for a ‘refoundation’ of the force and creation of a new police academy.

For now, it is clear that the complexity of relations and associations within the country’s criminal groups, and the prosecution of figures who co-ordinate illicit activities at a distance, demand skills that are hard to find in Guatemala. This capacity gap is made all the more serious and urgent by the rapid emergence of new criminal trends.

New and old criminal structures

The start of Colom’s government and the creation of the CICIG coincided with a high-point in Guatemala’s crime wave, as gauged by the murder rate and the levels of impunity for murder. The partial restoration of judicial and security institutions has improved the

62 Interview with FECI prosecutors, 16 February 2011.

63 Estimate provided by criminal justice expert, 9 February 2011.

64 Interview with Dall’Anese, 11 February 2011.

65 Ibid.

performance of the criminal justice system, but has in the process abetted a process of adaptation and reconfiguration in criminal activity.

As a result, a strengthened system of justice now faces the challenge not only of dealing with groups whose activities are relatively well-known, such as urban gangs, or which were previously unpunished, like the ‘hidden powers’ of the immediate post-conflict era, but also emerging transnational groups, new combinations between existing criminal groups, and the novel use of extreme violence and co-option of state officials. An overview of Guatemalan crime indicates that four principal areas of activity can now be distinguished.

Bureaucratic collusion

Favouritism by public officials towards certain social and business groups is a legacy of Guatemala’s feudal-capitalist state, which was later transformed under the developmental experiments of the 1960s and 1970s and the ensuing counter-insurgent state into more systemic corruption. Offices in the public administration can be connected to external private interests for very long periods: one interior minister under President Colom reported that he had discovered under his authority a network for the illegal provision of casino licenses that had lasted for 26 years.⁶⁶ Frequent reports and allegations of abuses in the state public works programme (*Listado geográfico de obras*), in private contracting by the state, in the handling of government trust funds, and in the provision of social welfare (particularly the programmes run by President Colom’s ex-wife, Ms Torres), indicate the susceptibility of Guatemalan bureaucrats to political pressure and economic enticements.

A detailed criminological study by the UN’s Commission Against Impunity in Guatemala (CICIG) of one of the most prominent bureaucratic networks, involving the provision of illegal child adoptions to foreign families, points to the mixture of passivity and personal economic advantage in the actions of lawyers and state officials.⁶⁷ Although abuses of the adoption law were initiated by the military during the armed conflict, a radical expansion in the practice – leading to the ‘export’ of 20,000 Guatemalan children between 2000 and 2007, 90 percent of them to the United States – came about through the formation of a lengthy criminal chain. This connected ‘pushers’ (who bought or stole babies from poor families), child minders, local notaries, who on the basis of a law in 1977 could approve adoptions without judicial oversight, and private lawyers. Despite legislation introduced in 2003, the State Prosecution office charged with overseeing all cases since that year has no files on any adoption process from 2004 to 2006. Each part of this chain took a cut from the estimated 40,000 US dollars spent by aspiring foreign parents on acquiring a child.

Local ‘protection’

A chronic form of criminal activity involves collusion between urban gangs, estimated to contain around 14,000 members, criminal operatives and local police forces, particularly in the capital and the country’s populous south-west – the two areas of Guatemala that suffer the

66 Interview with former interior minister, January 2009.

67 CICIG. 2010. *Informe sobre actores involucrados en el proceso de adopciones irregulares en Guatemala a partir de la entrada en vigor de la Ley de Adopciones*. Guatemala City: UN.

highest rates of crime and of public perceptions of insecurity.⁶⁸ This collusion is largely geared towards criminal heists, kidnapping, and most importantly, the establishment and maintenance of protection rackets. One notorious effect of these extortion networks' efforts to gain control over the main public transport routes in these regions has been the frequent murder of bus drivers, who now stand out as the leading victims of homicide in the country on the basis of professional occupation (155 killed in 2010). A total of 71 bus passengers and 54 ticket inspectors were also killed in the same year.⁶⁹

The power to initiate and control criminal activity in these largely urban areas is fluid and context-specific. Gangs, such as the *maras*, will often run a monopoly of violence in their own neighbourhoods, and demand protection money from all local businesses. However, a poll-based survey of gang activity across Central America also revealed the leading role played by police officers in overseeing gangs and profiting from their criminal work, such as the theft of mobile phones, intimidation and small-scale drug sales.⁷⁰

More improvised connections between *maras*, hit-men, and former military and police officers in carrying out particular criminal operations have been confirmed by a number of judicial investigations. The nine-member assassination squad that was paid 40,000 US dollars to murder the lawyer Rodrigo Rosenberg was composed almost entirely of former and serving police officers, in addition to a retired military officer. Meanwhile, recent evidence from El Salvador has suggested deepening involvement of gangs not only in local drug sales, but also drug trafficking to the north.⁷¹ *Maras* are bound to their gangs, and are reportedly only allowed to leave on two conditions: either they begin a strictly non-criminal lifestyle, or they join the ranks of organized crime.⁷² In the latter case, they may graduate into a role that eventually gives them functional authority over corrupt local police forces.

Criminal territory

One of the greatest concerns regarding Guatemala's governance, and a source of acute anxiety for Pérez Molina's incoming government, is that the state has 'lost' control over its territory to organized crime, primarily in the shape of drug traffickers. The 'loss', however, is something of a misnomer. Territories where drug trafficking is notorious, such as Alta Verapaz and Petén – both sites of internecine cartel conflicts, and both brought under temporary 'state of siege' control in 2010 and 2011 – in fact contain dense and extended political networks, which major national parties seek to co-opt so as to ensure local electoral victories.

At the same time, these networks, which are based on patronage and privileged access to state resources, are connected to criminal groups, which themselves operate both licit and illicit businesses. In the case of Petén, an extremely detailed study based on relational mapping reveals numerous overlaps between regional power groups, including that of Pérez Molina's rival for the presidency, Manuel Baldizón, and reputed criminal groups: these include joint

68 Azpuru, Dinorah, op. cit., pp 79-82.

69 Statistics from Office of Human Rights (PDH), op. cit., p. A-2-13.

70 Demoscopia. 2007. *Maras y pandillas, comunidad y policía en Centro América*. Guatemala City.

71 Dudley, Steven S. 2010. *Drug Trafficking Organizations in Central America: Transportistas, Mexican Cartels and Maras*. Washington DC: Woodrow Wilson Center, p. 20.

72 López, Julie. 2011. 'Baile entre criminales, muerte al que pierda el paso.' *Plaza Pública* 19/07/11.

involvement in companies and NGOs contracted by the state⁷³, personal and family relations, and financial ties between politicians and criminal actors (including a long-standing mayor and various congressional deputies). One municipality in the region, Sayaxché, has faced a more singular attempt at direct political control by criminal groups. This is certainly not without precedent: the precursor of Guatemalan drug barons was Arnoldo Vargas, mayor of Zacapa before being extradited to the United States in 1992.

The rising power of these local druglords can be traced from the late 1990s, when narco-trafficking flows were redirected from the Caribbean as a result of strengthened maritime controls. Within the space of three years, from 2002 to 2005, drug trafficking generated sufficient revenue and clandestine influence to have thoroughly corrupted the country's counter-narcotic police service twice. The principal figures in this trade were local families: the Mendoza family in Izabal and Petén, the Lorenzana family and Juan José 'Juancho' León in Zacapa and the border area with Honduras, the Overdick family in Alta Verapaz, and Juan Alberto Ortiz López in the Pacific coastal region of San Marcos.⁷⁴ Although each family tended to establish stable relation with transnational cartels, they maintained their autonomy to act as sub-contracted couriers and guardians to whoever wished to move drugs across the country. 'No cartel ruled nor interfered with another,' is the description offered by a convicted expert in cocaine processing and refinement, interviewed in a jail in the region of Suchitepéquez.⁷⁵

Local drug lords in Guatemala can be seen as having achieved two social contracts, helping to generate the relative impunity in which they operate. The first of these is with the local population, for whom they have provided a certain amount of welfare and economic opportunities.⁷⁶ The second is with the local political and economic establishment (including the local land-owning elite), and increasingly with political actors in the capital city through financing for electoral campaigns. In the words of Edgar Gutiérrez, former Guatemalan foreign minister and now a leading security analyst, the resulting pact meant that 'until now, over the course of half a century of narco-trafficking, the state and the narcos have never fought.'⁷⁷

However, a series of arrests of local druglords and record interdictions appear to have severed this pact. By the time of the second round of presidential elections in November 2011, five of the suspects cited on the US country list of most-wanted traffickers (the so-called Specially Designated Narcotics Traffickers) had been arrested by Guatemalan authorities over the previous two years – among them key accomplices of Mexico's Sinaloa cartel.⁷⁸ An alarming tide of inter-cartel violence has also raised the prospect of a change in the privileged status of these criminal domains. The long-standing social contract between local drug traffickers and populations appears to be under threat from the Zetas, whose model of civil control is more

73 Anonymous. 2011, op. cit., p, 124.

74 Details of the activities of these families and clans can be found at <http://insightcrime.org/criminal-groups/guatemala/juan-chamale>

75 Martínez, Oscar. 2011. 'Guatemala se escribe con zeta.' *Fronterad* 08/08/2011.

76 International Crisis Group. 2011c. *Guatemala: Drug Trafficking and Violence*. Bogotá/Brussels, pp 12-20.

77 Email correspondence with author, September 2011.

78 EFE. 2011. 'Un ministro pide a Pérez Molina seguir el trabajo iniciado por Colom contra los narcos.' 09/11/11. See also International Crisis Group. 2011b, op. cit., pp 15-16.

grounded in paramilitary terror and targeted corruption, and whose strategy may compel the central state to adopt a more combative approach, or alternatively, reach a new sort of pact.

Penetration of the central state

The area in which these various circuits of criminal activity tend to overlap and seek their highest level of protection in Guatemala is that of the central state and judicial system. Institutions such as the Interior Ministry, the prosecution service, the Supreme Court and parts of the executive and legislature have all provided privileged access to the economic elites, protection and impunity to suspected criminals, and façades for the work of parallel state organization such as the *Cofradía*, or for the sort of police vigilantism associated with the work of Anti-Kidnapping Unit chief Víctor Rivera. The goal of dismantling these power structures was the principle reason for the creation of the CICIG, and remains the Commission's chief concern.

A certain amount of progress has been made towards this goal, as discussed in the previous chapter. At the same time, the pretexts for the creation of alliances and complicities between private interests and state and judicial officials remain unchanged. In the first place, the emphasis on a repressive security policy, in which measures may be taken outside the law, has underwritten networks of impunity by obfuscating the legal responsibilities of senior officials and politicians. The gravity of the current security crisis has entrenched this extra-legal inclination at the heart of Guatemalan politics.

Second, the diversification and dimensions of campaign funding – Guatemala is reported to score amongst the highest campaign spending per capita in Latin America⁷⁹ – create numerous obligations on incoming governments in terms of staff appointments, ties to businesses and future policy. The lack of any right to a permanent position for senior judicial and civil servants seriously undermines the counterweight of professional integrity.

Finally, key institutional posts are still decided on the outcome of a process of political horse-trading in which achieving support among parties in Congress, along with satisfying other ancillary political concerns and constituencies, are the government's main objectives. The eventual appointees to bodies such as the MP, the Office of Human Rights and other institutions of oversight may thus find themselves beholden to a constellation of vested interests, as appears to have been the case of Attorney General Juan Luis Florido between 2004 and 2008, whose management of the MP has been described by insiders as a reign of terror in which cases were blocked in order to service numerous favours.⁸⁰

Future challenges: collaboration and trust

The ability of Guatemala's authorities to track and decipher criminal networks, unravel the threads that link one crime to another – for instance, the use of money acquired in drug

79 International Crisis Group. 2011b. *Guatemala's Elections: Clean Polls. Dirty Politics*. Brussels/Bogotá: ICG.

80 Interview with assistant prosecutor, January 2009.

trafficking to finance other illicit enterprises⁸¹ – or connect the actions of one group to the involvement of senior-level bosses, possibly in the central state, is extremely limited. Rising complexity and more volatile combinations in the country's criminal phenomena have not been matched thus far by anything but technical improvements in the capacity of police and investigators.

Also missing from the criminal justice apparatus is the sort of co-ordinated regional response that would appear essential to combating transnational organized crime. Some ad hoc progress has been made in this direction: the prosecution service now has a permanent office to swap information with foreign agencies, while a body called GANSEF⁸² provides a forum for technical co-operation between Mexico and Guatemalan security agencies. Mexican President Felipe Calderón established to some fanfare a platform for information exchange on criminal matters between Mexico, Colombia, Panama and Guatemala in 2009. Communication with police forces in Honduras and El Salvador around their borders is described as fluid by police chief Jaime Otzín,⁸³ and Guatemalan police may now enter El Salvador in hot pursuit of criminals. Close collaboration with the US Drug Enforcement Administration has also been evident in the spate of arrests of Guatemalan druglords.

The proposals made as part of the SICA package would push much further in the direction of strong regional co-ordination. Of the 22 priority projects listed, for example, one would involve the creation of a Central American platform for real-time information exchange, while another would ensure greater capacity to intercept criminals by air, sea and land.⁸⁴ Similar moves to greater co-operation can also be expected a result of the current programme of US support to the region. However, a first obstacle to progress in these areas is to be found in the differences between each country's legal and police procedures.

A much more serious problem lies in an underlying lack of trust. Access to more sensitive information on the Mexican Platform, for instance, is denied to Guatemalan police. Building up a system for rapid intelligence and information exchange only works so long as each part of the networks trusts the others. As the next chapter shows, the history of Guatemala's security and justice institutions suggests there are strong reasons for neighbouring countries to be wary.

81 International Crisis Group. 2011c, op. cit., p. 7.

82 Interview with Mexican authorities in Guatemala, 8 February 2011.

83 Interview with head of PNC, 10 February 2011.

84 Central American Integration System (SICA). 2011. *Perfiles de Proyecto*. San Salvador: SICA.

4. Internal discipline and oversight

Diversification and a shift towards more horizontal relations between groups involved in illicit activities have pushed Guatemala's criminal business towards a much higher level of complexity. As discussed in the last chapter, the capacity to track the nexus of inter-related groups that are involved in crime, and carry out the transnational trade in narcotics, is severely limited. However, even were investigative capacity to be strengthened through new investment, upgrading and pan-regional co-operation, as appears to be underway following the creation of the CICIG and the approval of the SICA's Central American security initiative, a chronic flaw in the country's security and judicial systems would still have to be repaired.

Efforts to curb the corruption and links to the criminal underworld in Guatemala's public and legal institutions have repeatedly been undermined by the failure to establish any viable mechanisms for internal discipline. Following the signing of the peace accords, a domino set of different institutions have become notorious for harbouring corrupt staff. Military intelligence was closely linked with illicit activities and human rights violations, particularly in the years leading to the dissolution of the Presidential High Command (*Estado Mayor Presidencial*, EMP) in 2003. The Defence Ministry under President Portillo, as well as the MP and the Interior Ministry under President Berger, have all wrestled with accusations of fraud, graft and influence trafficking.

Police corruption

Within years of the creation in 1997 of a new police force, the PNC, signs of serious internal degradation were apparent. Over 40 million US dollars were invested by donors in police restructuring between 1997 and 2002, but historical accounts of this reform process emphasize that the Spanish Civil Guard, which led the reorganization, tended to elect speed over deeper change to the existing institutional culture. New recruits received very basic training, while the entire senior officer corps was drawn from the old police hierarchy. Furthermore, little attention was paid from the start on entrenching a culture of internal oversight and

accountability. The new police code made no provision for reporting misconduct of superior officers, failed to establish an independent investigative body, and did not make clear how complaints from the public would be acted upon.⁸⁵

An Office of Professional Responsibility (ORP), part of the police's General Inspectorate (*Inspectoría General*), has recorded some extraordinary busts, and initiated the investigation which led to the arrest of police chief Porfirio Pérez Paniagua and a number of senior police officers in August 2009 on charges of stealing 300 kilogramme of cocaine and 350,000 US dollars in separate incidents.⁸⁶ However, the work of these oversight offices is reported to be limited by a culture of 'passive resistance' in police ranks to efforts to instil greater accountability, and by the difficulties in clearing a growing backlog of internal investigations.⁸⁷

Flaws in the set-up of internal controls were aggravated soon after the police force's creation by mismanagement, and a string of politically-minded appointments under President Portillo. The rise in criminal opportunities dating from the turn of the millennium, especially when contrasted with the poor working conditions and low wages of most officers (currently around 4,000 quetzales a month, or 370 euros), also played a crucial role: by 2002, there were 1,500 cases of serious criminal misconduct filed against officers in a force of approximately 20,000.⁸⁸ The purge of officers in 2007 and 2008, the arrest of two police chiefs under President Colom on charges of criminal complicity,⁸⁹ and the seeming close complicity between police officers and the Zetas drugs cartel in Alta Verapaz, have pointed to a systemic vulnerability across the force to collusion with illegal activities.

According to one journalistic account, the intimacy in Alta Verapaz between drug cartels, the police and the judicial system had grown to extraordinary heights. On the day before the government declared a state of siege in the region in December 2010 in response to the threat posed by narco-trafficking, 'there was a football game in which some Zetas played alongside police officers, prosecutors and municipal employees, at the end of which they killed and grilled a cow before saying goodbye.'⁹⁰

The prosecution service

Following a pattern that is to be found in other public institutions, the 350 police officers in Alta Verapaz were not sacked or charged with malfeasance, but distributed to other police

85 Stanley, William D., op. cit., pp 132-127.

86 Pérez Paniagua was later acquitted in early 2011 on charges relating to the drug and cash theft, although four former senior police officers were found guilty in the case of the stolen cocaine. In a press interview following his release, Pérez Paniagua depicted a murky world of corrupt networks at the highest levels of the police and the Interior Ministry, which co-operate in profiting from confiscated goods. He also argued that the case against him was supported by the then head of the CICIG, Carlos Castresana, despite the reticence of other senior investigators in the Commission. See *El Periódico*. 2011. 'Lo que calló Porfirio.' 06/05/11.

87 Interview with senior members of Police Reform Commission, 9 February 2011.

88 Stanley, William D., op. cit., p. 136.

89 Along with the case of Pérez Paniagua, the former police chief Baltazar Gómez was arrested in March 2010 on charges of involvement in the attempted robbery of cocaine in April 2009, in an operation which ended with the killing of five counter-narcotic police officers.

90 Martínez, Óscar, op. cit.,

stations around the country.⁹¹ Indeed, mass dismissals and rotation of staff, often involving recycling suspect officials to outlying regional offices, have proved to be among the few options available to discipline personnel.⁹² Neither remedy is perfect: dismissals will tend to be indiscriminate or manipulated by senior officers, while staff rotation spreads corrupt practices instead of containing them.

The paucity and weakness of whatever safeguards and firewalls have been erected to monitor the behaviour of staff are not confined to the police. Within the judicial system, boards of control are controlled by vested interests within the institution, or are simply unable to deal with the complex procedural burdens of handling cases, or establishing preventive mechanisms rather than feeble reactive punishments. The head of the prosecution service, Claudia Paz, has identified the weakness of internal controls as a central concern, and has called for help from the CICIG to reform the Internal Affairs Unit so as to be able to track the influence of organized crime inside the organization.

Guatemala's prosecution system has, like the police, been blighted since its inception in 1994 by political meddling and criminal infiltration. One survey carried out at the turn of the millennium found that 87 percent of prosecutors reported that they had been pressured by superiors or 'influential parties'⁹³ – a tendency that reached an extreme, according to the accounts of insiders, under Attorney General Florido. However, serious disciplinary or legal proceedings against prosecutors are extraordinarily rare: it has been reported that only 21 criminal complaints against prosecutors were received by the current internal affairs office from 2006 to September 2011.⁹⁴ The one outstanding investigation against a prosecutor in recent years involves the case against Álvaro Matus, former head of the Crimes against Life division, who is accused of obstructing evidence following the murder of the Anti-Kidnapping Unit chief, Víctor Rivera.

In light of the policy of recycling suspect prosecutors to outlying parts of the country, it is not surprising to learn that the special prosecution unit working alongside the CICIG in Guatemala City finds it particularly difficult to work with regional departments. Co-operation with the regions is largely confined to logistical matters, and as few details as possible are released from sensitive investigations. At the local level, meanwhile, the differences in the behaviour and expectations of prosecutors varies enormously. One prosecutor in San Marcos, the capital of a Pacific region bordering Mexico that is reputedly infiltrated by narco and human trafficking cartels as well as being a centre for opium poppy cultivation, expressed his conviction that crime levels in the region were low ('the most common crimes are fights'), and that demands from headquarters in the capital for higher numbers of criminal accusations were cumbersome and distracting.⁹⁵ According to a local civil society activist, the inertia of local prosecutors 'could be down to a number of factors: neglect, agreements or a pact.'⁹⁶

91 Interview with UN agency head in Guatemala, 16 February 2011.

92 Interviews with Claudia Paz, head of the MP, and Helen Mack, commission for police reform, in February 2011.

93 Stanley, William D., op. cit., p. 131.

94 *Prensa Libre*. 2011. 'Procesos no avanzan en MP.' 19/09/11.

95 Interview in San Marcos prosecution office, 14 February 2011.

96 Interview with civil society activist in San Marcos, 14 February 2011.

In the city of Quetzaltenango, 50 kilometres to the east of San Marcos, the local prosecution office has undergone a reorganization in the name of greater specialization, analytical capacity and efficiency. However, its prosecutors state that their efforts to improve performance must be jealously protected: police are deployed on raids without prior information so as to prevent leaks, while it is impossible, in their opinion, to expect any regional office to prosecute successfully a case of serious organized crime.⁹⁷

A judicial barrier

Progress towards stricter oversight of Guatemala's judiciary is possibly the most difficult challenge of all. Discontent with the work of the judiciary was publicly voiced by CICIG's Dall'Anese in July, when he declared that the Commission would begin to investigate and if necessary try to purge a number of judges following a series of adverse rulings in landmark cases, most notably those surrounding former President Portillo, as well as in the case of the extra-judicial executions in Pavón jail under former President Berger. A vituperative reaction from the national Association of Judges insisted that Dall'Anese himself should be investigated by the UN and, if necessary, dismissed.

The judicial system, like the police, benefited from major foreign investments and a steep increase in public spending following the peace accords. The number of judges and magistrates doubled from the mid-1990s, wages rose, and extraordinary efforts were made – and continue – in broadening access to justice for indigenous and marginalized communities.⁹⁸ Domestic legislation reinforced this tide of progress through the creation of a legal aid system, merit-based competition for posts and a system for oversight and discipline grounded in the Judicial Career Law (*Ley de Carrera Judicial*), approved in 1999. Between 1995 and 2002, expenditure on the judicial system quadrupled,⁹⁹ while an estimated 61 million dollars of foreign aid flowed into the sector between 1997 and 2004.¹⁰⁰

However, this same judicial system has given rise to numerous abuses, and there is mounting evidence of a systematic accommodation between judges and outside interests, whether from politics, business life or organized crime. The rulings denounced by Dall'Anese, the political fracas over the appointment of a new Supreme Court in 2009, and the evidence of inertia in dealing with serious criminal cases suggest that judges frequently act out of strategic and self-interested motives. 'Judges can last for 20 years in their posts,' explained one Supreme Court justice, 'but to do so they have to be nice to every Supreme Court, political party and dominant power around.'¹⁰¹

At the heart of this corrosion of standards are the appointment and evaluation systems of the judiciary. The appointment system, which was strongly criticized by the UN's rapporteur on

97 Interview in Quetzaltenango prosecution office, 14 February 2011.

98 Stanley, William D, op. cit., p. 128.

99 Instituto Universitario de Iberoamérica. 2005. *Perfil de Gobernabilidad de Guatemala*. Salamanca: Ediciones Universidad de Salamanca, p. 125.

100 Ibid, p. 132. This represents the largest share of an estimated 188 million US dollars in foreign aid for the judicial and security sectors between 1996 and 2004.

101 Interview, 11 February 2011.

judicial independence for leading to the nomination of Supreme Court justices on the basis of ‘subjective criteria and the political inclinations of the candidates,’¹⁰² is anchored in Article 215 of Guatemala’s Constitution, which applies as well to the Appeals Court and, in a modified form, to a number of other judicial posts. This system is fundamentally corporatist in design: appointment boards are formed out of university rectors, law faculty deans, and representatives of the Bar Association, and submit their lists of candidates to Congress. The powerful Constitutional Court, meanwhile, has a total of five members, each of which is an appointee of a different part of the Guatemalan establishment: Congress, the President, the Bar Association, the University of San Carlos, and the Supreme Court.

While appearing to guarantee the voice and presence of a broad cross-section of society, the system has succeeded instead in reinforcing the dependence of judges on the support base of several key groups and bodies. The contest for power within these same organizations, as well as a committee appointment process for senior judges that is open to manipulation by political operators, served to produce both the scandal over the new Supreme Court in 2009, and more alarmingly, the election of Conrado Reyes as a short-lived attorney general in May 2010. However, mending this nomination system would require a change to the Constitution, risking a possible repeat of the failed referendum on constitutional reform in 1999.

Greater possibilities for improving controls may be found in the current system of discipline under which judges outside the Supreme Court operate. The Council of the Judicial Career, the Judicial Discipline Board and a law that allows for special Investigating Judges to probe alleged criminal acts by judges appear to offer a strong structure for oversight. Once again, however, closer analysis reveals that the disciplinary panels are themselves run by judges, and tend to act with extreme reluctance against the accused; stronger measures, including criminal charges, may only be filed if the Investigating Judge’s report is approved by the Supreme Court. The UN rapporteur, meanwhile, found numerous loopholes in the appointments systems for lower court judges that mean performance evaluations count for little, challenges to new appointments are impossible, and discretionary choices are the norm.¹⁰³

Changing these disciplinary and vetting systems requires legal modifications, but unlike abolition of the appointments system to the high courts, no constitutional amendment. At the same time, the paralysis in the congressional agenda pushed by the CICIG over recent years, and a general party fragmentation in Congress, make it uncertain whether any reform would emerge in the way initially intended. Furthermore, activists on judicial reform are as yet unconvinced by radical reform measures – such as a special committee to purge corrupt judges, proposed by Dall’Anese, or the proposal for a special department of the prosecution service to probe judges. Their understandable fear is that these measures ignore the existing legal tools, and could, in the wrong hands, undermine judicial independence to an even greater extent.¹⁰⁴

102 Despouy, Leandro. 2009. *Informe del Relator Especial sobre la independencia de los magistrados y abogados*. United Nations, p. 10.

103 Despouy, Leandro, op. cit., p. 12.

104 Movimiento Pro Justicia. 2011. ‘La lucha contra la impunidad y la depuración del sistema de justicia: Dentro de los límites de la constitucionalidad y la legalidad.’ Guatemala City.

Conclusions

In all the areas that are crucial to improving criminal justice in Guatemala, the post-conflict failure to generate solid oversight procedures has been aggravated by the spreading influence of special interest and criminal groups, resulting in heavy doses of institutional corruption. Efforts are now underway to improve the mechanisms of oversight, but faces numerous obstacles, such as the need to avoid mass purges, economic constraints, the difficulty in controlling outlying regional offices, and the impossibility of moving swiftly and securely towards either constitutional or legislative reform.

Relying on outside standing bodies to do the task may not be a solution. The principal bodies designed to oversee the workings of public organizations or politicians do not carry out their work as intended, or, in the case of the Office of Human Rights (*Procuraduría de Derechos Humanos*) and the Supreme Electoral Tribunal, are largely toothless when it comes to tackling abuses of power. Internal affairs offices, on the other hand, appear to be easily corruptible under the influence of the organizations of which they are part. Funnelling new resources to new or old institutions that do not escape these constraints would appear to be an exercise doomed to fail.

5. Sustainability in justice and security

The last major obstacle in the path of efforts to improve Guatemala's criminal justice can be found in the extremely low resilience of reform measures. Even when the international community has committed large sums of money to the task, as it did in the creation of the PNC, it has been unable to guarantee that institutional or professional capacity will be sustained. As a recent survey has shown, the police force is the country's most disreputable state institution, and has only slightly more legitimacy than political parties.¹⁰⁵

A multitude of other examples suggests this was not an exceptional case, but a chronic weakness affecting every attempt by donors to construct and buttress new security institutions. International officials interviewed for this report mentioned, among other examples, the investment in trained employees for the Witness Protection Programme who were transferred to other departments within a couple of years despite their specialized knowledge, or the difficulties faced by the EU in building up the national forensic institute, INACIF, since its creation in 2007. The EU paid to rebuild basic facilities, and is now set to extend this support to morgues operating in the regions. At the same time, INACIF has been accused of failing to meet the high demand for autopsies – a reflection of an extremely high murder rate –, and of suffering grave management problems, caused in large part by cuts to its operating budget and its failure to co-operate with the prosecution service.¹⁰⁶

Similar histories can be told of the international community's support for the moribund Accord on Security and Justice, the threat to the CICIG posed by the appointment of Conrado Reyes in 2010, and the dismantling of two US-backed special counter-narcotic units after chief officers were found to be involved in the drugs trade. In each case, a short period of optimism was dissipated, either by general indifference or by a sudden reversal in the institution's health.

¹⁰⁵ Azpuru, Dinorah, op. cit., p. 114.

¹⁰⁶ Prensa Libre. 2010. 'El INACIF está en apuros.' 19/04/10.

Donor fragmentation

Part of the blame for this backsliding in new or reformed security and justice institutions can be placed at the feet of donors who have been unable to co-ordinate their activities, or sequence them in any credible fashion.¹⁰⁷ Indeed, donors are still much more inclined to ‘cherry pick’ activities that suit their abilities and strategic interests: broadly speaking, the United States has concentrated on counter-narcotics as well as crime investigation and prevention, Spain on the police (including its current support for a homicide division that is housed separately from police headquarters), and the EU and UN on strengthening institutional performance and access to justice. The failure to apply an integrated approach was noted soon after the peace accords, when Guatemalan institutions were assailed by a disparate set of rule of law programmes and diagnostic studies run by multilateral organizations and bilateral donors.¹⁰⁸

In addition to their fragmentation, donors have tended to go about their work in accordance with local political norms by identifying and supporting individual reformist leaders rather than seeking to build durable institutions. There may be merits to such an approach in breaking down the routines of poorly performing organizations. But in the Guatemalan context, these targeted and personalized approaches are also prone to collapse for a number of reasons. First, they tend not to leave a significant institutional footprint, and may instead encourage nepotism. They are also extremely vulnerable to the electoral cycle. Given the weakness of the professional civil service and the fact that no incumbent party has retained power for a second term in the presidency, it is customary for elections to be followed by sweeping changes across the public administration. As a result, personalized reform initiatives are constantly exposed to changes in the political cycle. Heads of two civilian intelligence bodies¹⁰⁹ expressed grave concern that their organizations would be undermined and trained personnel would be dismissed after the election, while the international community had to work hard to extract promises from both presidential candidates in 2011 that Claudia Paz would remain in her post as attorney general.¹¹⁰

The dependence of criminal justice institutions on the dedication and probity of select individuals is of course worrying, and open to abuse. However, in the absence of a strict merit-based system of appointments that is patrolled by mechanisms for oversight and accountability, it at least offers the solace of establishing certain pockets of progress.

107 Gavigan, Patrick. 2009. ‘Organised Crime, Illicit Power Structures and Guatemala’s Threatened Peace process.’ *International Peacekeeping*, vol. 16, no. 1, pp 62-79; Meyer and Seelke, op. cit., p. 28.

108 Gavigan, op. cit., p. 69.

109 The Directorate General of Civil Intelligence (DIGICI) and the Secretariat of Strategic Intelligence (SIE), interviewed 16 and 17 February 2011.

110 CICIG head Dall’Anese met with both candidates in October, and insisted that the continuity of Paz was ‘fundamental’ to the reforms being undertaken. El Periódico. 2011. ‘Manuel Baldizón solicitaría ampliar mandato de la CICIG.’ 21/10/11.

Political and constitutional paralysis

The most important hurdle in the path of sustainable reform, however, goes to the heart of Guatemala's post-conflict political settlement. In the absence of generous foreign donors, the low-tax state does not have the resources to cover all the demands made upon it by its citizens. The fall in total funding for security as a portion of Guatemalan GDP from 2009 to 2011¹¹¹ indicates that other priorities were perceived by Colom's government as having a greater or equal claim on public spending, and that stagnant tax revenues limited any room for manoeuvre. This, in turn, seriously undermines the willingness of foreign donors to compensate for the state's financial paralysis. According to one EU official, 'foreign co-operation has to consider how long it's willing to support a country that will not support itself.'¹¹²

Blockages to any change of Guatemala's state finances are powerful and numerous, and are unlikely to be overcome by President Pérez Molina.¹¹³ The low tax take makes it enormously difficult for any government to invest in police equipment (68 percent of the police force's budget is spent on wages¹¹⁴), or to improve basic working conditions for personnel. Careful selection must be made of which parts of the security and judicial system can be improved, and this choice tends to leave certain parts under-funded – notably the decrepit prison service, or basic police infrastructure and training. Although the judicial system has received abundant financial support since the peace accords, and has been subject to constant monitoring both through UN bodies and home-grown standing committees,¹¹⁵ it too appears to be at risk of general decay; as in other parts of the criminal justice system, state funding fell from 2009 to 2010 even as courts face an average backlog of 10,000 cases.¹¹⁶ The latest five-year plan for the judicial system envisages further investments, but a Supreme Court justice interviewed for this report observed that the entire plan was on ice due to a lack of resources.¹¹⁷

These financial limits are compounded by the apparently impregnable nature of the Constitution. The possibility of altering the current system for the appointment of judges and senior judicial figures is severely constrained by the fear of repeating the failure of the last effort to overhaul the Constitution, defeated in a referendum in May 1999 despite the whole-hearted support of the international community, the Church and numerous political parties. Furthermore, of the 50 amendments that were voted on in that plebiscite, 37 had been introduced at a later stage by Congress and were not related to the content of the peace accords. Any attempt to open up the Constitution for reform thus risks being captured by other interest groups, particularly parties in Congress.

111 Latin American Security and Defence Network (RESDAL). 2011. *Índice de Seguridad Pública y Ciudadana en América Latina. El Salvador, Guatemala y Honduras*. Buenos Aires: RESDAL, p. 39.

112 Interview with official in EU delegation, 10/02/11.

113 See Briscoe, Ivan and Rodríguez Pellecer, Martín, op. cit.

114 Latin American Security and Defence Network, op. cit.

115 Through the National Justice Commission, also known as National Commission for Monitoring and Support to Strengthening Justice. See the commission's website, www.comisiondejusticia.org.

116 Supreme Court of Guatemala. 2010. *Plan Estratégico Quinquenal 2011-2015*. Guatemala City, p. 22 & interview with Supreme Court justice, 11 February 2011.

117 Interview with Supreme Court justice, 11 February 2011.

Lastly, the financial and constitutional limits to sustainable institutional reform have profoundly affected citizens' responses to the security crisis, cementing in the public mind an ad hoc and extra-legal approach towards dealing with crime and insecurity. Improvised and customized violence as a means of self-protection is a deep-seated Guatemalan phenomenon. Its manifestations include community lynchings (particularly in indigenous areas), vigilantism, contracting of hit-men and extra-judicial executions, with members of the public often willingly consenting to these uses of extreme violence as result of their own sense of victimhood, distrust of the state and the persistent scapegoating of certain social groups.¹¹⁸

The willingness to resort to these supposed remedies finds one of its most significant expressions in the proliferation of private security firms, which now officially number 150 and employ 51,024 people – although this number could well be under half the total, since figures from the tax authorities list 289 security firms, possibly employing over 100,000 people (over four times the total number of police officers).¹¹⁹ The composition of these firms, including former military and police personnel, and the semi-clandestine way in which some of them operate, contribute to a sense that security is a good that must be purchased, and that it tends to involve the use of violence, legal or otherwise. In his exploration of the mysteries surrounding the murder of Rodrigo Rosenberg in 2009 – investigators found that the lawyer himself commissioned the hit squad that killed him – essayist David Grann discovered an almost ubiquitous tendency to secretive, illicit and often violent behaviour among the country's elites, giving rise to a 'proliferation of counterfeit realities.'¹²⁰ The recent scandal involving the former Supreme Court Judge Beatriz Ofelia de León, who sought to save her son from arrest on the charge of murdering his wife, is indicative of a country where the impulse to protect oneself and one's close family has become deeply corrosive of public life and professional duties.

118 See Adams, Tani. 2011. *Chronic Violence and its Reproduction: Perverse Trends in Social Relations, Citizenship and Democracy in Latin America*. Washington DC: Woodrow Wilson Center.

119 The official figures are cited in RESDAL, op. cit., p. 55. The figures from the tax authorities, and estimate of possible staff levels, are to be found in Argueta, Otto, op. cit., p. 6 & 16. 2010.

120 Grann, David, op. cit.

6. A new strategic approach

Alongside the litany of national agreements and programmes aimed at rebuilding the country's security and justice system, multiple international initiatives are now underway to support these efforts. The insignia project of the UN, the Commission against Impunity in Guatemala, celebrated its fourth birthday in September last year. A visit in March 2011 to Guatemala City by UN Secretary General Ban Ki Moon marked the start of a programme of support for the country under the UN Peacebuilding Fund, with a first tranche of funding worth 10 million dollars. The United States is supporting the fight against crime through the Central America Regional Security Initiative, while the EU has unveiled a new four-year programme for institution-building in security and justice worth a total of 20 million euros. A major conference on regional security, organized by SICA, took place in June last year in Guatemala, and was attended by representatives from the US, the EU and a host of multilateral organizations. Other countries, particularly Spain, Sweden and the Netherlands, have run intense bilateral support programmes in this field, although budgets for these activities are now under threat.¹²¹

This blizzard of activity is in step with rising regional and international anxiety over Central America, sparked by the region's role as a hub for organized crime and a home to the world's highest rates of criminal violence¹²², and intensified by evidence of spillover from Mexico's drug wars. Following the lull in international engagement that followed the withdrawal of the UN monitoring mission MINUGUA in 2004, Guatemala is now back at the centre of attention - even if its falling murder rate is now lower than in neighbouring Honduras and El Salvador.

However, the country's previous experiences with donor support to criminal justice suggest there are sound reasons to be cautious. Poor coordination of programmes has long been a bugbear, and may become more extreme as new initiatives are rolled out across the region.

121 The Netherlands has announced that it will close its embassy in Guatemala in 2013.

122 UNODC. 2011. *2011 Global Study on Homicide*. Vienna: UN.

More importantly, these initiatives must avoid the fundamental errors of the past by providing an integrated reform strategy, rather than a series of fragmented interventions. They must respect the progress that appears to have been made in certain Guatemalan institutions, yet also address the underlying flaws identified in this paper that have bedevilled previous programmes: the rapid evolution of crime, a lack of internal controls, and limits to sustainability.

Levels of intervention

In the hope of making some strides towards just such an integral strategy, the research carried out for this report and a previous policy paper, published last year, identified five interconnected levels for intervention in the justice and security systems. Programmes that deal with the first two levels are priorities in the short-term, while those corresponding to the next three should be addressed from now to the medium and long term.

- *Institutional development.* A standard methodology needs to be developed for criminal investigations, with an appropriate allocation of resources, as well as an effective witness protection programme, internal controls, permanent training programmes for work teams, security for staff (especially for those located in rural areas of the country), and systems for dismissing corrupt employees.
- *Inter-institutional coordination.* Justice and security institutions need to establish reliable mechanisms and systems for the exchange of information and permanent coordination.
- *Security strategy.* This should start with a diagnosis of the most important security challenges, leading to the establishment of a clear division of work among justice and security institutions; the development of an inter-institutional approach to prevention and investigation; and the development of capacities to draw a map of criminality, and analyze threats and trends.
- *High-level political agreements.* Agreement among political parties is essential, as is agreement with the economic elites, over a strategy to ensure a depoliticized structure of civil management of security and justice, and the necessary funds for the operation of both systems (inevitably requiring fiscal reform and amendment of the Constitution).
- *The development of a regional security strategy.* Due to the challenges imposed by international crime, efforts cannot be limited to the domestic sphere – as has already been recognized by the SICA system. However, the mechanisms to manage and oversee this growing regional coordination remain weak, and cannot yet keep track with the evolution of transnational criminality. It is crucial that a certain margin of independence from US security policies and a focus on the needs of the region's citizens is maintained.

Principles for international support

On the basis of previous successes and failures, support from the international community should follow a number of overarching principles. These include the following:

- *A holistic approach.* Progress will be imperilled if attempts to support reform are carried out via fragmented or poorly-coordinated interventions. The complexity of today's challenges

and criminality, and the extreme seriousness of the collapse of justice and security in the country, require a multilevel approach of the sort identified above.

- *Sequencing is vital.* Not everything cannot be done at once, nor should progress in one area undermine the achievements already made in other sectors.
- *Planning is essential.* Before talking about a ‘withdrawal strategy’ for the CICIG either in 2013 or later, a clear idea of the minimum acceptable success threshold is needed.
- *Active support.* Progress at all levels requires coordinated pressure from the international community (both multilateral organization and bilateral partners) as well as civil society to maintain government commitment in the face of pressure to backslide on reforms.
- *Emphasis on practice.* Legal positivism, which in Guatemalan translates as blind faith in the creation of new institutions and the approval of laws, must be avoided at all costs. At present an estimated 24 laws and decrees relating to security and justice have been passed since the mid-1980s without being implemented.

Essential programmes

This description of the levels and principles for donor support still leaves open the question of what must be done. Priorities can be divided into the immediate and the medium term. In the short term, following the assumption of power by President Pérez Molina, it is crucial that donors, operating through the G-13 donor coordination group and making full use of the CICIG, present a united stance regarding cooperation with the new government, and insist on respect for donor investments already made in strengthening the rule of law.

The most pressing concerns will be to ensure that the new government does not backtrack on the progress made in recent years – particularly by dismissing key reformers. Careful watch must also be kept over future appointments, the use of the military in security matters, the future of police reform, and treatment of the CICIG and its most prominent criminal investigations by political and business elites as well as the judiciary. As part of this strategy, it is vital to reinforce financial and diplomatic support for the Commission.

Over the longer term, the CICIG’s role should also be refined into that of an anchor and general overseer of reform processes across Guatemala’s criminal justice system. Using the levels and principles for intervention identified above, a number of key programme areas can be outlined. These build rather than substitute for commitments and plans that are already in existence, such as those of the Accord on Security and Justice, or the agenda proposed by the CICIG in September 2010. They are also thoroughly grounded in a practical model of developing and expanding ‘centres of excellence.’ In other words, the reforms adopt an essentially pragmatic and dynamic approach: supporting institutions that are effective, while giving under-performing institutions the opportunity to make radical improvements.

Based on close observation of what currently works well, although such examples are limited in number,¹²³ specific conditions for institutional effectiveness can be identified: good

123 The authors have found such examples at UEFAC (now FECCI), in the MP; the Homicides Unit of DEIC attached to the prosecutor’s office for Crimes against Human Life (with the support of the Spanish cooperation); and the district attorney’s office of Quetzaltenango.

leadership, supervision mechanisms and internal controls, a solid criminal investigation methodology, systems for the reliable safeguarding of information, incentives for professional development and pride in a job well done. By adding to these decent salaries, job stability, staff security, resources, coordination with other institutions, an approach based on broad institutional strengthening and strong state ownership of the process, the right conditions could be put into place to generate and multiply such centres of excellence, potentially expanding good practices across the prosecution service and the police.

To do so requires focused support in a number of areas that will help support the take-up by ever larger groups of security and justice professionals of these good practices. These areas include:

- *Standard methodology for criminal investigations.* Clear protocols to be established for all criminal investigations, allocating roles to prosecutors, investigators and the INACIF.
- *Internal control mechanisms.* Policy must move beyond recurrent purges to establish well-staffed and supported internal affairs offices in the prosecution and police services. Reinforced controls on judges that do not undermine judicial independence are essential.
- *Quality information.* A national information platform is required for police work, which would later serve to exchange information across the region. The establishment in 2011 of a permanent international relations offices in the prosecution service should help spur the creation of trust-based partnerships.
- *Investigative resources.* The Special Methods Unit of the MP must be strengthened. The creation of a new investigative police unit is also essential, although there are differences of opinion over how this should be formed –whether separate from the current police force and staffed entirely by new graduate recruits, or based in the existing PNC.
- *Security.* Critical judicial, prosecution and police personnel must be adequately protected using new technologies. The creation of High Risk Courts, operating in Guatemala City under tight security, could be copied by major cities in the regions.
- *Outstanding staff.* Alongside the special police investigative unit, efforts should be made to create an elite prosecution office to combat organized crime. Pay and privileges must correspond to the responsibilities and risks of these jobs.
- *Strategic analysis of organized crime.* The different wings of intelligence activities must be fully co-ordinated. A feasible route would be to strengthen links among existing institutions and civil units with the mandate to investigate criminal activities: above all the DIGICI, the FECCI, the Analysis Unit of the MP, the Special Methods Unit and prosecutor's offices specialized in organized crime, corruption, laundering of money and other assets, human trafficking and drug trafficking.¹²⁴
- *Regional action platform.* It is vital to build and maintain a platform for combined action between Central American countries. The SICA conference in Guatemala, held in June,

124 The most important branches of official intelligence-gathering include military intelligence, the *Secretaría de Inteligencia Estratégica* (SIE) [Strategic Intelligence Secretariat], the *Dirección General de Inteligencia Civil* (DIGICI) [General Directorate of Civil Intelligence] and the *Unidad de Análisis* [Analysis Unit] of the MP, in addition to units focused on financial crimes and tax evasion (for example, the *Inspección de la Superintendencia de Administración Tributaria*, ISAT [Inspector's Office of the Department of Tax Administration] or the *Intendencia de Verificación Especial*, IVE [Special Verification Unit], in charge of prosecuting money laundering.

was a milestone, but the listed programmes and the coordination capacity will require constant attention and oversight.

- *Career officials.* Measures must be taken in the medium and long term to guarantee the independence of prosecutors and judges, and the quality of professional police officers. This will involve cross-party agreements on police reform and amendments to the Constitution regarding appointment of the attorney general and judges (magistrates) of the Supreme Court, the Courts of Appeal and the Constitutional Court.
- *Political and public support.* Public silence and fear can be combated with actions that promote increased awareness of successful prosecutions of criminals, the creation of safe public spaces in large cities, vastly improved access to judicial services, and public rejection of corrupt practices. This is a long-term undertaking, aimed at changing paradigms and practices. On the political side, it is essential to boost the civil capacity of the government regarding the planning of security policies, which in turn could spearhead the systematic strengthening of the entire penal system, including issues not covered in this paper such as further specialization in the police force (including a clear division of responsibilities between preventive police, investigative police and special forces)¹²⁵, improvement of the prison and probation service, and prevention policies for violent youth. At the same time, it is necessary to highlight once again that this will only be possible if levels of tax payment increase, and rates of tax evasion are substantially reduced.

125 For more on this issue, see Rosada-Granados, op. cit., pp 30-37.

7. Conclusions

Signs of real progress in the workings of Guatemalan's criminal justice cannot be ignored, but nor should these subtract from the intimidating scale of the challenges faced. The murder rate remains among the world's highest, and the intrusion of competing drug cartels across swathes of territory is undeniable. The paranoia and fear generated by the security crisis, moreover, has served to deepen some of the most serious flaws in the country's post-conflict settlement. It has reinforced discrimination against the poor, strengthened a view of security as a private privilege, undermined the viability of shared public spaces, and now, to the alarm of many in civil society, led to the election of a president who was intimately involved in the counter-insurgent campaigns and intelligence strategy of the country's brutal civil war.

Pérez Molina's moves towards a more moderate policy platform cannot obscure his overriding emphasis on security, his inclination towards an 'operative' approach in dealing with crime, and his association with a number of wartime veterans who could distort the goal of criminal justice reform should they end up in key positions in the state. These concerns are sure to be at the forefront of international and public attention in the coming months. Should the new president seek to dismantle the achievements of the past two years, above all in the prosecution service and (to a lesser extent) the police force, then it is likely that a serious rift will open with the CICIIG, as well as with a number of key bilateral partners.

However, it is impossible to deny that the repressive and militaristic approach the new president espouses has substantial support in the population – particularly in the most crime-affected areas of the country. His strategy of intelligence-led combat against drug cartels also echoes the invocation of the armed forces against organized and street crime that has been witnessed in Mexico, Colombia and Honduras, as well by the centre-left government of El Salvador. It seems likely that the new president will also seek to enlist US support for his approach by emphasizing the imminent threat to the state's control over its own people and territory.

In so doing, the new government will run the risk of neglecting or side-stepping many of the most important lessons from recent Guatemalan history. Ever since the peace accords were signed, reforms and initiatives have proliferated in the field of criminal justice, many of them with extensive international backing. However, the nature of the political system in the country, the short-term perspectives of leaders and the susceptibility of senior officials to the influence of financiers and interest groups have together sapped the resolve of governments – on security issues as on tax. Some administrations, such as those of Presidents Portillo and Berger, have watched over serious abuses of power in the security domain. Colom's outgoing administration has made huge strides forward while also back-sliding on numerous occasions, both by cutting police and Interior Ministry budgets, and making a number of questionable appointments.

Given Pérez Molina's renowned and long-standing links to the military establishment and the economic elite, it would come as little surprise if some of the same tensions are witnessed in the coming years. Criminals, allied to corrupt players in business and the state, will seek to defend themselves from any onslaught; the risk of criminal collusion with the military, as occurred in wartime, is high. Having compared himself with Colombia's ex-president Álvaro Uribe, it would appear that Pérez Molina regards the fight against Guatemalan insecurity as equivalent to the Colombian battle against armed insurgency. It would be a grave error, however, to underestimate the extent to which Guatemala's criminals have become inseparable from the institutions that are supposed to be fighting them.

As this paper has argued, the fate of future policies in security and justice will hinge on the way they go about dealing with the three outstanding historical flaws in previous reform processes. Efforts to strengthen criminal justice have so far failed to keep up with the rapid evolution of criminal behaviour, particularly in narco-trafficking and in the composition of local protection rackets. They have not managed to introduce effective systems of internal discipline and oversight in security and justice institutions. And they have not latched on to a credible approach towards ensuring they are sustainable over the long term – either through proper donor coordination, tax reforms, constitutional amendments or real public support.

A unique opportunity is now available to ensure these issues are fully addressed. Although donor budgets are under pressure, international commitment to dealing with insecurity in Central America remains high. The CICIG offers a possible anchor for an integral package of reform in Guatemala, which should, in principle, address the immediate security crisis while also tackling the major historical sources of institutional fallibility.

But at the same time, there are more than enough reasons to worry that the achievements of recent years may be reversed. There are serious divisions within Guatemala and abroad as to which elements of the region's security crisis are most urgent – and whether a counter-narcotic campaign matches the needs of local people. There is a strong trend towards military solutions over and above comprehensive reforms. And there are growing fears that the political and security establishments of Guatemala and its neighbours are too satisfied with the status quo, and permeated with criminal interests, for them to back the sort of sustained institutional, fiscal and ethical campaign that is required.

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