

An integrated strategy to combat insecurity in Guatemala

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Abbreviations

CARSI	Central American Regional Security Initiative
CC	Constitutional Court
CIACS	Illegal groups and clandestine security bodies
CICIG	International Commission Against Impunity in Guatemala
DEIC	Special Division of Criminal Investigations (part of PNC)
DIGICI	General Directorate of Civil Intelligence
INACIF	National Institute of Forensic Sciences
MP	Public Prosecutor's Office
OJ	Judicial Organism (aka the Guatemalan judicial system)
PARLACEN	The Central American Parliament
PNC	National Civil Police
PP	Patriotic Party
SICA	System of Central American Integration
UEFAC	Special Prosecution Unit Attached to the CICIG
UNE	National Unity of Hope (political party)

Part I: Introduction

Fifteen years after the formal end of its civil war, Guatemala is now one of the most violent countries on the planet. Alongside its neighbours in the “northern triangle” of Central America, Honduras and El Salvador, the end of war has not brought the onset of civil peace. Murder rates in Guatemala are extraordinarily high, reaching approximately 50 times that of the Netherlands, and even higher in particularly violent regions such as the Atlantic coast or the capital city. Surveys repeatedly reveal the intensity of public anxiety over insecurity, while the effects of this crime wave on the stability of the democratic system and on economic growth are becoming increasingly evident.

Tackling this explosion in violence is by no means an easy task. In the case of Guatemala, it is now widely accepted that a history of inequality, authoritarianism, civil war and weak state institutions have provided the fertile ground for impunity. But the sheer complexity of the current crime wave also points to the influence of numerous recent trends. Gang violence has afflicted the big cities since the mid-1990s. Former military officers have been involved in major rackets that profited from links with the state. More recently, and most notoriously, drug-trafficking has penetrated the country, first through a number of local mafia, and nowadays in the shape of major Mexican cartels. With them has come the horrors of the “theatre of violence”: bombings, carjackings and mutilations.

Guatemalan society, however, cannot be considered an innocent victim of these developments. Prominent cases have shown the ease with which hit-men can be employed, or criminal goods purchased. Lynching is still practiced in certain communities, though many citizens simply find it easier to retreat from public space and ignore the violence in their midst. No constituency, and least of all the business community, seems eager to increase the extremely low tax rates so as to fund better, more efficient security forces and a functioning judicial system.

For a number of years after the end of the Central American civil war, the region fell off the map of global concerns. But the sharp upturn in violence, and the way it has spread down from the Mexican border with the United States to previous sanctuaries of peace such as Costa Rica, have caused the international community to refocus on the isthmus.

Numerous international efforts are now underway to support the fight against insecurity in Guatemala. The insignia effort of the United Nations, the Commission against Impunity in Guatemala (CICIG), will celebrate its fourth year of existence in September this year. A recent visit to Guatemala City by UN Secretary General Ban Ki Moon, meanwhile, 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 US dollars. The United States is supporting the fight against crime through the Central America Regional Security Initiative (CARSI), 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 the System of Central American Integration (SICA), took place in June 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, run intense bilateral support programmes in this field.

The interest in Guatemala, and Central America more generally, stretches far beyond programmatic support. The latest edition of World Bank's *World Development Report* turns to the case of Central America as emblematic of the ways violence transforms over time – and how the international community must rethink its strategies of intervention as a result. Numerous organizations are simultaneously turning their attention to the region: the International Crisis Group has prepared two reports on Guatemala ahead of this year's elections. Major reports on the country have recently appeared across the leaders of the world media, including *The Economist*, *The New Yorker*, the BBC and Al-Jazeera.

At the same time, this rise in interest has been accompanied by reductions in bilateral engagement in Guatemala itself. To date, a core group of countries has been engaged in efforts to strengthen security and justice in close cooperation with, and support of, local state and civil society actors. There is nevertheless a tendency towards downscaling, and in some cases, complete withdrawal. At this moment in Guatemala, when certain positive dynamics are emerging in key security institutions, sustained bilateral engagement by influential international actors plays an essential role. It is only by integrating their international-level interventions with bilateral monitoring of, and engagement with, political realities on the ground that they can support these still vulnerable transformations.

The purpose of this paper

Growing concern over the future of Guatemala and the regional spread of criminal violence has not so far translated into the emergence of an effective policy response. The national government is stymied by a lack of financial resources and political commitment. And while major advances have been recorded by international actors, notably through the CICIG's involvement in high-profile criminal cases and legislative reform, there is a widespread sense that donors' programmes are fragmented, over-reliant on support for personalities rather than institutions, and lacking in long-term impact.

The knowledge that at some stage or other the CICIG will no longer be present in Guatemala must now sharpen the focus of international attention. As this paper will show, a significant window of opportunity is now open in the country; reforms are possible across the breadth of the judicial and security system. But at the same time, it is vital that the international community provide support that is well-targeted and coherent, and do so in a way that is supportive of an integral reform process.

In order to frame a structured policy for the reform of Guatemala's security and justice institutions, the research team¹, under assignment from the Dutch Ministry of Foreign Affairs, carried out an extensive desk review and conducted two weeks' of fieldwork in February 2011 in Guatemala (in the capital, Quetzaltenango and San Marcos). Interviews

¹ Made up of Ivan Briscoe (research fellow in the Conflict Research Unit of the Clingendael Institute); Marlies Stappers (head of the NGO Impunity Watch); and Anabella Sibrián (the Dutch Platform Against Impunity).

were carried out with embassies and UN agencies, heads of key institutions in the country's judicial system, leading figures in the security forces, analysts of criminal trends, NGO and human rights experts, and officials in the prosecution service and police forces.

Throughout this research, an emphasis was placed on three issues that should guide future Dutch policy in the country. These are:

- Analysis of the impact of the CICIG, and its possible future strategy ahead of a phased withdrawal;
- Assessment of how the capacities and effectiveness of Guatemalan institutions of security and justice can best be strengthened, and the role that the international community should play in this process;
- Exploration of the emerging trends of criminality in Guatemala, and the effectiveness of current and future responses to these dynamics.

Our aim in developing this paper has also been to explore more broadly how, through its cooperation, the international community as a whole can contribute to improving the delivery of security and justice in Guatemala. Having noted a lack of coordination among international actors, we hope that this document can serve as a tool for the Dutch Ministry of Foreign Affairs to encourage a more integrated, focused and coherent approach. To this end, initial consultations with diplomatic representatives in Guatemala have shown that considerable interest in such an initiative exists.

Structure of the paper

The paper starts by examining the context of Guatemala's current security crisis and the circumstances that led to the creation of the CICIG. Special consideration is given in chapter two to the country's political landscape in an election year, and the way different political forces view international support for the Commission and other initiatives aimed at strengthening security and justice

Chapters three and four turn the focus to recommendations for the international community, firstly by addressing the emerging priorities for the CICIG, and secondly through a series of operational proposals based on a holistic framework for strengthening the rule of law in Guatemala, and focused in particular on the creation of centres of excellence and on the consolidation of a genuine state policy to combat rising crime. The last chapter looks more closely at possible Dutch contributions to these efforts.

Part II: The challenges for Guatemala

A panorama of insecurity

According to a survey carried out in February 2011 by the Guatemalan Chamber of Industry and the Marketing Group, 83 percent of Guatemalans live in fear.² This result would have been expected during the country's civil war, which lasted more than 30 years, but more than a decade after the signing of peace, and with €2,400³ million provided in official development assistance between 1996 and 2006, it begs the question: what went wrong?

According to UNDP estimates, the cost of violence in Guatemala in 2005 exceeded €1,800 million, more than double the resources allocated to the ministries of health, education and agriculture in the same year.⁴ The most recent figures on violent deaths show that 5,960 people were killed in 2010,⁵ including 720 women and 465 children. When this is added to the 6,132 individuals reported wounded in violent attacks, the number of victims comes to more than 12,000, 85 percent of whom (more than 10,000) were attacked with firearms.

A survey carried out by the newspaper *el Periódico*, published on March 29, 2011, indicates that the five main problems perceived by citizens are: the economic situation (24 percent), unemployment (17), poverty (12), insecurity (11) and the cost of living (9). Those interviewed hope that the next president – to be elected at the end of the year – will provide more employment (23 percent) and combat insecurity (22).

This is no easy task for the next government. There are indications that criminal groups linked to money laundering, drug trafficking and human trafficking⁶, are growing stronger and taking control of entire villages in the countryside. These groups have embarked on a battle to gain territorial control, with strategies that include armed confrontation, selective

² This represents an increase in relation to December 2010, when the measurement stood at 76 percent. Situations when fear is higher include: when leaving home, returning home, walking in one's neighborhood, inside one's home at night, at work or at school, on the bus, walking on pedestrian bridges, while driving or during one's daily routine. See: <http://industriaguatemala.com/noticiascig/index.php/comunicados/615-presentacion-del-indice-de-confianza-del-consumidor>

³ In terms of donor groups, member countries of the OECD-DAC accounted for 66 percent of the total. The European Union, including 15 Member States and the European Commission, assigned 39 percent. Multilateral organizations (not including the contribution made by the European Commission) contributed 3.5 percent of the total, and the United Nations, 3.4 percent. With regard to bilateral donors, the United States is the country with the highest contribution, 14.6 percent of the net total, followed by Japan with 13.6 percent and Cuba with a contribution standing at 9.6 percent. The European Commission is the largest source of contributions within the European Union with 8.9 percent, followed by Spain, which contributed 7.2 percent. Germany provided 6.9 percent and the Netherlands 6 percent of the total. Morales López, Henry. 2007. *¿Por qué tanta frustración? La cooperación internacional en la década de la agenda de la paz en Guatemala*. Editorial de Ciencias Sociales, Guatemala, pp. 59-84.

⁴ UNDP. 2006. *El costo económico de la violencia en Guatemala*. PNUD, Guatemala, p.16

⁵ Data provided by OACNUDH, at the time of presenting its 2010 report in Guatemala.

⁶ According to US Air Force General Douglas M Fraser, as quoted in an article dated 31/03/10, published on <http://www.globalsecurity.org/military/library/news/2011/03/mil-110331-afps03.htm>, international criminal organizations that operate in the northern triangle of Central America (Guatemala, El Salvador and Honduras) obtain global earnings (including from outside the region) of between \$300 and \$400 billion.

killings and support for their preferred candidates in the local elections to be held in September. According estimates from Guatemalan experts, around 40 per cent of the country is under the control of organized crime.⁷

The state and clandestine groups

The Guatemalan state has been custom-built for its elites since the end of the 19th century, securing for them privileged use of the best lands in the country and cheap labour (even forced labour at the beginning of the 20th century). Extreme inequality and the absence of genuine democratic space gave rise, during the second half of the last century, to an armed conflict that lasted more than three decades, during which the army and clandestine counter-insurgency groups committed crimes against humanity.

Years later, with international support, the truth over what happened during this conflict started to emerge. But former members of the army and elements of the clandestine structures continued to exert social control and repression with total impunity, and were protected by their connections within the state.⁸ Once the peace was signed in 1996, only a few voices from civil society continued to report on the resilience of these groups and their capacity to undermine the rule of law, but they were barely heard: it was time to invest in the future. The international community placed its trust in the governments that followed the signing of the 12 peace accords.

Thus, the clandestine structures – which had already diversified at this stage - continued to fulfill multiple functions, such as preserving the privileges of groups with economic power, curbing social resistance in the countryside, resolving conflicts among elites, controlling political opposition, and occupying new spaces for illicit enrichment. Meanwhile, the international community decided to promote partial reforms of the security and justice systems, based on the modernization of laws and institutions and the development of technical capacities, but without prior vetting and purging of key state institutions. This strategy of modernizing the system while overlooking its underlying vices led, a decade after peace was brokered, to a system-wide increase in impunity and corruption, and a major weakening of the state.

The origin of the CICIG

Even though the CICIG has its origin in the Global Human Rights Agreement⁹ signed in 1994, it was not until 2000 – at the beginning of the government of the *Frente Republicano*

⁷ According to a document leaked by Wikileaks, former CICIG commissioner Carlos Castresana estimated that criminal control could reach sixty (60) percent of the country. See: http://www.elpais.com/articulo/internacional/Cable/EE/UU/Castresana/le/comunica/Guatemala/control/narcotraficantes/elpepuint/20110215eIpepuint_19/Tes. It is important to mention that these numbers are not very scientific, and often confuse quasi-state control of a territory with more indirect influence through the cooption of key politicians and public officials.

⁸ Two key documents regarding this issue, with plenty of data on the operations of these groups, are: Beltrán, Adriana and Peacock, Susan. 2003. *Hidden Powers in Post-conflict Guatemala*. Washington DC: WOLA; Goldman, Francisco. 2007. *The Art of Political Murder*. Grove Press: New York

⁹ Paragraph 4: Commitment that there are no illegal security forces and clandestine machinery (...) 4.1 In order to maintain unlimited respect for human rights, there must be no illegal security forces nor any clandestine security machinery. The Government of Guatemala recognizes that it has an obligation to combat

Guatemalteco (FRG)¹⁰ party - that Guatemalan civil society organizations devised an agenda for combating impunity by dismantling the illegal groups and clandestine security bodies (CIACS in Spanish) that threatened the work of human rights defenders. They proposed the establishment of an independent international investigative commission that would provide support to the Guatemalan state in dismantling the CIACS, and whose work would be complemented by the United Nations through the Office of the High Commissioner for Human Rights.¹¹ Embraced by the FRG government, the first formal proposal for the establishment of such a commission – called the CICIACS - was declared unconstitutional in 2004 because of the powers it would have held to initiate criminal prosecutions independently of the state. This authority is exclusively held by the Guatemalan Public Prosecutor’s Office (*Ministerio Público*, or MP).

The agreement that created the CICIG, signed in December 2006, overcame these constitutional hurdles at the expense of its power to initiate proceedings independently before the courts. The CICIG was conceived as a mechanism to tackle and dismantle structures embedded within the state, prosecute them through Guatemalan institutions, and use administrative routes to sanction public officials who, by action or omission, obstruct the course of justice.¹² It was evident that a task of such magnitude could not be carried out without the support of the United Nations: the deeply infiltrated state had already demonstrated its inability to do this itself.

CICIG’s mandate allows the commission to investigate independently, even though criminal prosecution depends on the work of national authorities. The role of providing direct assistance to the MP in its proceedings against clandestine groups has been preserved, thanks to the CICIG’s ability to participate in criminal proceedings as a *querellante adhesivo* (joint plaintiff). The CICIG’s dependence on the national system for criminal prosecution has become both its weakness and its strength: its weakness, because its progress and results depend on the response of Guatemalan institutions (which are infiltrated by clandestine security apparatus and other organized crime structures); and its strength, because this model prevents it from becoming an international prosecutorial body that indicts a few criminals but which, after its withdrawal, leaves no improved capacity within Guatemalan state institutions to combat impunity more effectively.

any manifestation thereof. 4.2 The Government of the Republic of Guatemala reiterates its commitment to continue with the purification and professionalization of the security forces (...)” The verification of compliance with this commitment, as well as all the commitments established in the Accord corresponded to MINUGUA, with the understanding that it was an issue directly connected with human rights violations and threats.

¹⁰ The leader of this party, Efraín Ríos Montt, has been accused of genocide. When this party took power in 2000, national and international human rights organizations requested more international monitoring of the country.

¹¹ Since, by that time, the United Nations Verification Mission in Guatemala (MINUGUA, in Spanish) had ended its mandate (1994-2001) and an increase in human rights violations under the FRG government was feared.

¹² For a more detailed description regarding the origin and mandate of CICIG, see IW, ICTJ, Dutch Platform against Impunity in Guatemala. 2010. *Cambiar la cultura de la violencia por la cultura de la vida; los primeros dos años de la Comisión Internacional contra la Impunidad en Guatemala*. Ciudad de Guatemala.

CICIG's activities

By the time the first commissioner of the CICIG, Carlos Castresana, began his work, illegal security forces and clandestine groups had notched up more than 20 years infiltrating the state apparatus. In the first stage of its mandate, the CICIG's strategy focused on identifying these structures through different criminal cases, finding out those that had infiltrated the state and prosecuting them. Parallel to that, a "counter-infiltration" strategy to "recover state institutions" was employed, with the aim of filling strategic positions within the justice institutions with trustworthy professionals, dedicated to serving justice independently and in accordance with the law.

Reliable counterparts within the MP and National Civil Police (PNC, in Spanish) have been crucial for the CICIG. For this reason, the Commission made use of its political resources to urge the replacement of the Attorney General in 2008, investigated and supported the dismantling of criminal groups within the PNC, and promoted the introduction of reputable officers within both institutions. In 2009 and 2010, Castresana followed these actions by taking an active role in the elections to replace the highest authorities in the justice system, publicly pinpointing the deficiencies in the electoral systems and how they were helping interest groups exert influence and control over judicial institutions. In more than one public presentation, Castresana encouraged Guatemalans to initiate a national debate over this appointments system, and resolve the issue through constitutional reform.

Under Castresana's leadership, the CICIG managed to stir public debate on issues formerly considered taboo, in many cases with the support of civil society leaders. However, its high public profile also brought about its progressive weakening. Increasingly, the CICIG faced attacks on its work and on Castresana personally. As a result, the United Nations appears to have advised the commissioner to tone down his strong and confrontational profile in the public sphere. In June 2010, Castresana carried out his last high-impact public act, condemning a process of counter-reform in the MP a few days after the new Attorney General took office.¹³ Almost immediately afterwards, he resigned.

The new commissioner, Francisco Dall'Anese, began his administration under different conditions: the CICIG was already a renowned institution in the country, with a proven capacity to prosecute criminals (there are currently 36 cases under investigation¹⁴), and substantial weight in national political life. In addition, the CICIG's work was increasingly attracting international interest thanks to its "hybrid" prosecutorial model. Soon after Dall'Anese's appointment, the Commission received the support of the UN General Assembly. At present, the CICIG's main counterpart, the Attorney General's office, has a trustworthy leadership, and there are expectations of reform in the security forces under the command of Helen Mack, president of the Myrna Mack Foundation and an outstanding figure in the fight against impunity in Guatemala. Meanwhile, progress in the reform of key

¹³ Conrado Reyes, appointed by the Guatemalan President at the end of a very controversial process. Reyes was dismissed shortly after Castresana's resignation.

¹⁴ Information from the UEFAC. There are other cases at the MP that receive CICIG assistance, and cases still in their preliminary stages – commonly the most sensitive – that are left in the hands of CICIG.

units of the police and the MP last year led to a slight reduction in the rate of homicides and impunity for crimes against life.¹⁵

These signs of progress in insulating the criminal justice system against infiltration have most recently been manifested in the joint operations carried out by the MP and PNC, working with the assistance of the US Drug Enforcement Administration (DEA), to arrest two major local drug barons: Juan Ortiz López and Waldemar Lorenzana. Both of these faced extradition orders from the United States, and are accused of having strong links to the most powerful Mexican narco-trafficking network, the Sinaloa cartel.

However, the structural threats to the work of the CICIG persist: powerful groups, both licit and illicit, regularly manipulate the judicial system for their own convenience, and pursue strategies that aim to limit the scope of the CICIG's work and impact. Civil society groups and the attorney general have denounced such manipulation in the sentence that acquitted former Guatemalan President Alfonso Portillo and two former ministers of fraud in May, despite abundant evidence presented in court by the CICIG and Guatemalan prosecutors.¹⁶

Meanwhile, political parties refuse to assume official commitments by the state. The business community opposes increases in tax rates. The government does not assign sufficient resources for security and justice institutions, and this year's elections endanger the continuity of reliable public officials and the results of the CICIG itself. Meanwhile, criminality in the country continues its expansion and reconfiguration, generating greater capacity to penetrate state institutions at the central level and throughout the country, and carrying out terrifying acts of extreme violence.¹⁷

Today's criminal threats

The criminality that Guatemalans face today mirrors the trends across Central America, particularly in the region's northern triangle (Honduras, El Salvador and Guatemala), where, in the breeding ground of social exclusion, criminal threats multiply, taking advantage of the fragility of security and justice institutions.

These conditions have proved particularly inviting to criminal groups at a time the US-backed campaigns against narco-trafficking in Mexico and Colombia has put pressure on drug cartels in those countries, leading to the displacement and re-concentration of their operations in Central America, and to a steep increase in violence and corruption levels in the isthmus.

It is estimated that around 250 tons of cocaine flow through Guatemala each year, and that connections between drug lords, local military officers and heads of Mexican cartels are

¹⁵ Today, the effectiveness rate of these cases – or, the proportion of cases that end with final verdicts – is between 5 and 6 percent. In the past, the rate was less than 2 percent.

¹⁶ Portillo was acquitted on charges of defrauding the Guatemalan state of 15 million US dollars on May 10, 2011. Extraditions proceedings against him related to a money laundering case in a US court are ongoing.

¹⁷ Most notably, the beheading of 27 workers in a farm in the Petén region in May 2011 (the murders appear to have been linked to a feud between drug cartels), and the gun murder of celebrated Argentine folk singer Facundo Cabral as he travelled to the airport in Guatemala City on July 9, 2011.

becoming deeper¹⁸: the Sinaloa cartel controls the Pacific coast (Escuintla, Suchitepéquez, Retalhuleu and San Marcos), whereas the *Franja Transversal del Norte*, which connects the Atlantic coast with Mexico (Izabal, Alta Verapaz, Quiché, Huehuetenango and Petén), appears to be dominated by the Zetas, a paramilitary offshoot from the Gulf cartel. These new criminal relationships (*geocriminality*)¹⁹ are built on the basis of negotiations and schisms between transnational cartels and local druglords (which can reach visible peaks, such as the massacre of members of a local mafia by the Zetas in Zacapa in 2008).

Like their local predecessors, transnational criminal groups in Central America have managed to take control of areas abandoned by the states of the region, and have turned themselves into providers of social services, governors, judges and executioners.²⁰ They impose their order and systems of loyalty, especially among the younger population. Meanwhile, in the cities, the influence of gangs and urban criminality has expanded under the apparent influence of networks operating with opaque strategic purposes. Acts of violence with a strong public and media impact have become more common: murders of bus drivers, bombs in public transportation buses (particularly the attack on January 3, 2011 in Guatemala City, when seven people died in a bomb attack) and beheadings are increasingly frequent.

In these conditions, public support for democratic governance and the rule of law has weakened markedly. In the interior, people vote increasingly for criminals or for the candidates they finance for posts in local government, while in the cities, they opt for heavy handed policies and “zero tolerance”.²¹

Government responses to the new challenges of criminality in the region tend towards the adoption of more aggressive approaches against marginal groups, including the use of the military in internal security matters and the toughening of judicial frameworks to combat juvenile crime. Meanwhile, there has been little progress in the coordination of strategies among different countries in the fight against crime. The United States assigned US\$260 million for regional security between 2008 and 2010, with an emphasis on providing support to police and military forces. A similar amount of investment is proposed for 2011 to 2012. At the same time, Washington expects the countries of the region to show significant progress in social and institutional reform, as well as in their rates of tax collection and allocation of their own resources.

European proposals in Guatemala have leaned more toward addressing the social causes of violence: the fight against exclusion and marginalization, and support for civil society initiatives aimed at highly vulnerable sections of the population. Resources have been used

¹⁸ There are multiple sources of information regarding the growing connection between local mafias and transnational cartels. See: López, Julie. 2010. *Guatemala's Crossroads: Democratization of Violence and Second Chances*. Washington DC: Woodrow Wilson Centre.

¹⁹ Term used by Commissioner Dall'Anese on February 4, 2011.

²⁰ Briscoe, Ivan and Rodríguez Pellecer, Martín. 2010. *A state under siege: elites, criminal networks and institutional reform in Guatemala*. The Hague: Clingendael Institute, chapter 5.

²¹ 40 percent of Guatemalans feel that the government can operate outside the law to combat criminality. LAPOP-Vanderbilt University. 2010. *La cultura política de la democracia en Guatemala*. Vanderbilt University, p. 97.

for the reform and professionalization of justice and security institutions, but in an erratic and uncoordinated fashion.

The domestic response

Rising crime across the country can only be controlled and reduced by improving the Guatemalan state's capacity to respond. But a chronic and worsening lack of resources, in addition to the traditional concentration of state activities in the capital city, makes it extremely difficult to ensure a full state presence in the more peripheral regions, where the most vulnerable populations live. According to the United Nations, the state is almost entirely absent in many parts of the country.²²

Obviously, one significant factor explaining the rise of criminal groups is the ease with which they can operate in Guatemala, where levels of impunity are extremely high, and the justice system is ineffective. Many reasons have been advanced to explain this poor performance, including:

- A lack of financial, human, scientific and technical resources in the security and justice institutions;
- A lack of political will to assign those resources, both from the economic elites that oppose higher taxes and the political leaders that do not allocate the necessary funds;
- A lack of technical and professional capacities among the staff of justice and security institutions;
- A lack of transparency and controls, both of which spur corruption;
- Cooption, by different parts of Guatemala's elites, of officials in high level positions within the main institutions responsible for enforcing and guaranteeing security and justice (PNC, MP, CSJ and CC).

Over the last 15 years, international cooperation has focused its support in the areas of security and justice on the first three sets of obstacles: large projects were implemented in order to increase geographical coverage, modernize regulations and create new institutions (for example, the PNC). Donors assigned substantial resources to these programmes, supported a national debate on tax reform, implemented programmes to train personnel and modernize the MP and judicial system, and promoted the creation of the National Police Academy.

However, as indicated above, little or nothing was done to purge infiltrated state institutions at different levels, or to control excessive political manipulation of appointments to senior positions in these services. Political interference in these appointments, and the provision of special favours in return by these officials, is undoubtedly one of the main causes undermining the rule of law: according to a Guatemalan expert in the area of security interviewed for this report, "the country has a structural tendency towards the use of impunity to exercise power." One measure of the success of the CICIG in complying with its mandate will be whether it succeeds in modifying these patterns of behaviour, which is a

²² UNDP. 2010. *Informe Nacional de Desarrollo Humano de Guatemala 2009/2010*, PNUD, chapter 6, graph 6.17, p.132

prerequisite to taking firmer steps to eradicate impunity and strengthen security and justice institutions.

According to Dall'Anese, impunity must be understood as a political problem that needs to be clearly distinguished from the low rate of convictions, which is a judicial problem.²³ In making this distinction, he stresses that the root of impunity in Guatemala is found in the existence of judicial “untouchables,” whose privileged status is the result of a tacit pact between political groups. As a result, it is essential to analyze the country’s possible political futures, and the protagonists who may shape the CICIG’s work.

Political scenarios²⁴

Any progress in the combat of impunity in Guatemala depends fundamentally on the political support the CICIG and other reform institutions and officials receive. This dependency is a reflection of the hybrid character of the CICIG, making progress in prosecuting key cases or modernizing legislation relating to the judicial system conditional upon the cooperation it receives from prosecutors and congressional deputies.

Yet the nature of the Commission’s work also depends on a deeper form of cooperation, since it is attempting to induce a lasting change in the political class in terms of the way it manages power through impunity or through privileges for powerful groups (which could be referred to as the CICIG’s “demonstration effect”). However, it is clear that the criminal prosecution of high-level politicians undertaken last year by the Commission, the high fragmentation and competitiveness of the Guatemalan political system (there are currently 24 parties), and the polarization that an electoral year entails – with the subject of insecurity at the core of political debates – are generating volatile and even negative opinions towards the Commission and international assistance in general.

Until now, the relationship between political parties and the CICIG has been somewhat unpredictable, although at crucial times – either out of conviction or fear, and sometimes with unexplained delays – these parties have provided their support through parliamentary votes or other means. During the last eight years, it has been the politicians, whom few in Guatemalan society trust, who have turned the CICIG from a blueprint into reality.

However, this relationship suffered a setback, in the words of Castresana, on January 26 2010, when the CICIG helped the MP to capture the former president, Alfonso Portillo. Since then, politicians have sensed that any one of them could become the subject of a CICIG investigation, and the approval of laws requested by the CICIG has slowed down dramatically. The fact that the next extension of the Commission’s mandate, at the

²³ Conversation with the Commissioner on April 13, 2011.

²⁴ This section comes from a special report written by Martín Rodríguez Pellecer and Enrique Naveda. For this analysis an interview was conducted with **Jorge Herrera**, principal security strategist and a possible candidate for Minister of Interior in an eventual Otto Pérez Molina administration; **Roberto Alejos**, president of Congress, and **Orlando Blanco**, former peace secretary and chief strategist for Sandra Torres of the Unidad Nacional de la Esperanza (UNE); and **Harold Caballeros**, presidential candidate of Visión con Valores (VIVA) and Encuentro por Guatemala (EG, the party of congresswoman Nineth Montenegro).

beginning of 2011, was made through an exchange of letters between the government and the Office of the UN Secretary General, is an illustration of this weakened relationship.

The two main political parties: PP and UNE

For the next two years of its mandate, it is likely that the current trend in the relationship between the political parties and the CICIG will continue. The two main political parties in Congress in 2011, the Patriotic Party (PP) and National Unity of Hope (UNE), both guarantee that they will continue to support the work of the CICIG under its current mandate, both with regard to the prosecution of paradigmatic cases and capacity building in the MP and PNC.

In the opinion of the security adviser to the PP, led by retired General Otto Pérez Molina²⁵, if the PP wins, their government, as the CICIG's counterpart, would continue providing support to the Commission, but would expect the CICIG to focus on "profound and not media-dominated matters, which would result in institutional strengthening and the solution of cases (... and) make deep changes in legislation." The PP administration would expect international cooperation to be "comprehensive, in order to strengthen the administration of justice and criminal investigations," and be focused "on guaranteeing state synergy between the CICIG, MP and PNC."

In addition, the PP would lay down conditions for supporting the new attorney general, Claudia Paz, and the commissioner for police reform, Helen Mack. "(Paz) has to demonstrate that she has not only plans, but also political will." Regarding Mack, the adviser stated that the PP was the party that "supported the reorganization of security institutions." Instead of reform, they prefer "the option of reorganizing so as to create a new police force, with an emphasis on the development of a police career."

Congressional president and UNE leader Roberto Alejos and the party's chief strategist, Orlando Blanco, have given assurances that a second UNE administration would, without hesitation, provide its support to the CICIG. Blanco goes even further by saying that: "during these two years, the CICIG should focus fully on its work and mandate. Although some people talk about the transfer of methodologies, I feel that the focus should be on full compliance with its central mandate, including the paradigmatic cases before the courts and national training. International donors should continue their support to the CICIG, MP and PNC".²⁶

Other political forces

The party that could end up third in the presidential race, Visión con Valores (VIVA), has been more sceptical in its support, and has focused mainly on the transfer of professional

²⁵ Pérez Molina is currently leading Sandra Torres by up to 30 percentage points in opinion polls.

²⁶ It should be mentioned that President Colom's support for the CICIG has been inconsistent (for example, regarding the votes of his party's deputies in favor of candidates for the Supreme Court who were classified as dubious by the CICIG), but generally positive. In addition, it is believed that Torres, UNE's presidential candidate, has maintained indirect associations with interest groups in the judicial system.

capacities. Harold Caballeros, a former evangelical priest and Harvard graduate, who has forged an alliance with the well-known congressional deputy Nineth Montenegro and convinced a part of the elite to provide him with economic support, applauds the creation of the CICIG and its work, but stresses that the CICIG should not be seen as an eternal fixture in the country. Is it notable that Caballeros makes use of parts of the discourse of conservative sectors that do not fully trust the Commission.

He states: “Guatemala must take advantage of every opportunity to improve its institutions and the administration of justice; in this sense, the support of the United Nations is fundamental, and can represent a great contribution to the country. The CICIG has shown that, with the right tools - economic support and technical training - it is possible to achieve results in criminal investigations and improve the administration of justice.” This argument has been used by libertarian conservative groups (although this does not imply that Caballeros fully agrees with them), who downplay the success of the CICIG, arguing that it has been successful merely because of its economic resources.

Caballeros stresses that “the CICIG should maximize the time it will remain in the country to share and transmit its knowledge to the institutions that receive its support, making local institutions responsible for the investigation of important cases in the country. It is not good or convenient for institution-building if the CICIG’s mandate is extended indefinitely. The Guatemalan government must now take steps to strengthen and develop the foundations established by the CICIG.” This point of view contradicts the position that the CICIG should be asked to stay in the country for a decade so that it can make sure its accomplishments are not dismantled. It is also the stance that is criticized by Blanco for promoting capacity building and the transfer of skills at the expense of forging ahead with paradigmatic cases in the courts.

In short, the main right-wing political forces maintain that conditions should be imposed on the CICIG, with a strong emphasis on what they understand as the transfer of capacities. With the exception of the UNE, which explicitly supports the work of the Commission in paradigmatic criminal cases, politicians do not appear to be disposed to promoting the CICIG’s role in advancing the cases it has undertaken, nor in dismantling illegal clandestine security apparatus.

Part III: The CICIG's progress and pending tasks

The Commission's achievements

According to both national and international observers, among the main contributions of the CICIG to date have been its proposals for legal reform,²⁷ which have helped to expedite proceedings in a number of cases and combat emerging phenomena of criminality.²⁸

The attorney general, Claudia Paz, stated that the CICIG had shown that genuine justice does not allow for privileges.²⁹ This remark has been echoed by columnists and civil society leaders, who also highlight the importance of the quality and effectiveness of the CICIG's investigations. These favorable opinions can be attributed to three of the paradigmatic cases of the CICIG.

First, the Rosenberg case, which revealed for the first time in Guatemala the power of scientific evidence in comparison to verbal testimony, and at the same time showed how, within the private sector, it is common practice to use illegal groups (hit men) to control or eliminate threats.³⁰ Second, the Portillo case, which despite the eventual acquittal of the former president exposed the mechanisms utilized by clandestine networks associated with high-ranking army officers and government officials to secure funds, part of which served to keep illegal activities unpunished. In the third place, the Pavón case, which has provided striking revelations as to the work of state bodies run by clandestine security forces close to the country's economic elite, which are accused of committing extrajudicial executions of marginalized people.

Another contribution made by the CICIG to the strengthening of Guatemalan institutions, as emphasized by national and international actors interviewed for this report, has been to initiate a public debate on the formal mechanisms that enable key positions in the judicial system to be controlled by interest groups. It has shown that there is an urgent need to amend the Constitution to stop the trafficking of influence in the election of judges to the Supreme Court, Courts of Appeal and the Constitutional Court, and in the appointment of the attorney general. This is the only way to break the inertia that this perverse system has maintained over the last two decades.

²⁷ This concerns reforms of the *Ley de antejuicio* (a law that relates to the immunity enjoyed by state officials), the *Ley de amparo, exhibición personal y constitucionalidad* (a law that provides certain recourse to defendants who consider their constitutional rights to have been violated by officials), the Regulation on Irregularities in Criminal Procedure, and the Regulation on the Disciplinary Regimes of the MP, OJ and PNC.

²⁸ Reforms to the use of audiovisual methods in the statements of witnesses and experts in criminal proceedings; the change of identity and relocation of witnesses and those who collaborate in criminal proceedings; the effective collaboration and regulation of benefits and protection mechanisms in the Law against Organized Crime; the laws on firearms and ammunition, human trafficking and illegal trafficking of migrants; criminal measures against corruption, including the typification of illicit enrichment and other crimes; international legal cooperation in criminal matters; the Confiscation of Assets (*extinción de dominio*) Law; and the law that regulates private security services.

²⁹ Interview with Claudia Paz, Guatemala February 11, 2011.

³⁰ Rodrigo Rosenberg planned his own death in May 2009, requesting the assistance of his cousins to eliminate an alleged extortionist. They did not know that the victim would be Rosenberg himself.

The CICIG has also contributed, although more recently, to the strengthening of Guatemalan civil society: circuits of impunity, pointed out in the past by human rights organizations, have been exposed. In addition, thanks to its credibility, the CICIG has been able to bring together the views and support of a number of strategically significant personalities from different social strata and from across national political spectrum.

In conclusion, we have identified four categories of contributions made by the CICIG to date:

- Reform, through legislation and procedures, of justice and security institutions, particularly in their capacity to overcome old vices that favor impunity and to adapt to the new challenges posed by criminality.
- Through criminal prosecution, to prosecute members of illegal structures, dismantle them and expose their operations so that their crimes and offenses are not repeated.
- Contribution to the purging of institutions and strengthening of the state.
- Actions that strengthen Guatemalan civil society.

Three pending tasks

A number of tasks are still pending. The short duration of the CICIG's mandate is insufficient for a country where judicial proceedings against clandestine structures can take up to 15 years to reach a verdict, as in the case of the assassination of anthropologist Myrna Mack Chang. According to a high-ranking officer in the CICIG, one of the criteria for selecting cases is the probability of success during the lifetime of the commission.³¹

How many clandestine security forces can actually be investigated, prosecuted and dismantled, in the process identifying their associations within the state apparatus and their sources of financing? Many feel that this should not be a matter of numbers, but of method. If the CICIG is able to show – by example and joint work with the Guatemalan state – the way to carry out this task, and leave Guatemalans with the institutional capacity to continue the job, then the most fundamental part of its mission would be accomplished. Its final contribution would be to shield these investigations through reforms aimed at strengthening the legislative framework and state and judicial institutions. The opinions of several Guatemalan political leaders, analyzed in the previous chapter, also support this approach.

However, there is a high risk involved in accelerating the withdrawal of the CICIG without first considering with some care the factors that should protect and sustain its legacy. In light of the volatile and transnationalized criminality of Central America, as well as the persistence of local networks of impunity, there are sound reasons to suspect that a hurried withdrawal of the Commission would be followed by a return of the old vices of a corrupted judicial sector.

³¹ Interview with Thomas Pastor, February 11, 2011.

The first essential condition for strengthening the country's institutions is the development and consolidation of greater capacity within the CICIG's Guatemalan counterparts. This expectation is frequently expressed in discussions about the desired legacy of the CICIG. However, to date, no clear ideas have emerged regarding the areas where the CICIG should focus its capacity-building efforts, nor has the way to achieve this been discussed. In our opinion, this is not the exclusive responsibility of the Commission. Achieving this result requires a series of conditions, which will be referred to in the following chapters, and which will depend on the full co-operation of the state and economic elites, as well as the support of the international community, around a set of clear objectives and specific proposals.

A second condition, also essential, is to guarantee the ability of the justice and security systems to respond not only to known cases of crime and impunity, but also to emerging forms of violence. The Commission needs to promote a modernization process that generates the technical and analytical skills that are currently impossible to find within the PNC and in most parts of the judicial system. This process should also lead to the consolidation of intelligence exchange systems that are reliable and impossible to infiltrate.³²

In the CICIG's selection of new cases, a planned emphasis on crimes with high social impact – the murders of public bus drivers, for example, and collective extortion rackets – would be a valuable way of trying to decipher the new hierarchies of violence and territorial control. Human rights leaders have also indicated the importance of drawing up a map of criminal structures, including their sponsors and accomplices, as established in the agreement that created the Commission; the best example of this so far has been the report on illegal adoption networks, published in 2010.

Again, there are issues which have not been clarified: who should see a report of this kind? Would it be a public report for all citizens to see? Or would it just be for the use of security authorities at the start of criminal investigations? There is also another factor to consider: Dall'Anese has been emphatic in declaring that criminal structures are dynamic and undergoing constant evolution; a map of structures would thus provide only a snapshot corresponding to a specific moment. Therefore, how and for what purpose would such mapping be useful?

Finally, when it comes to the CICIG's powers, there is one which has not yet been fully exploited: the power to act as an interested third party in administrative disciplinary procedures.³³ To exercise this, the Commission would require the will of the highest authorities of the institutions in which the officers in question were working. Without that will, it will not be possible to remedy flaws in internal procedures, as demonstrated by a delay – which was not satisfactorily explained - in the transfer of documentation from the Guatemalan Ministry of Foreign Affairs to Spain in the case against former Interior

³² The CICIG is supporting the creation of an Intelligence Platform, with permanent offices in the main security institutions.

³³ Article 3, paragraph "e" of the CICIG agreement.

Minister Carlos Vielman.³⁴ A different scenario can be observed at the MP, where Attorney General Claudia Paz is increasing performance controls and creating an Internal Affairs Office within that institution.

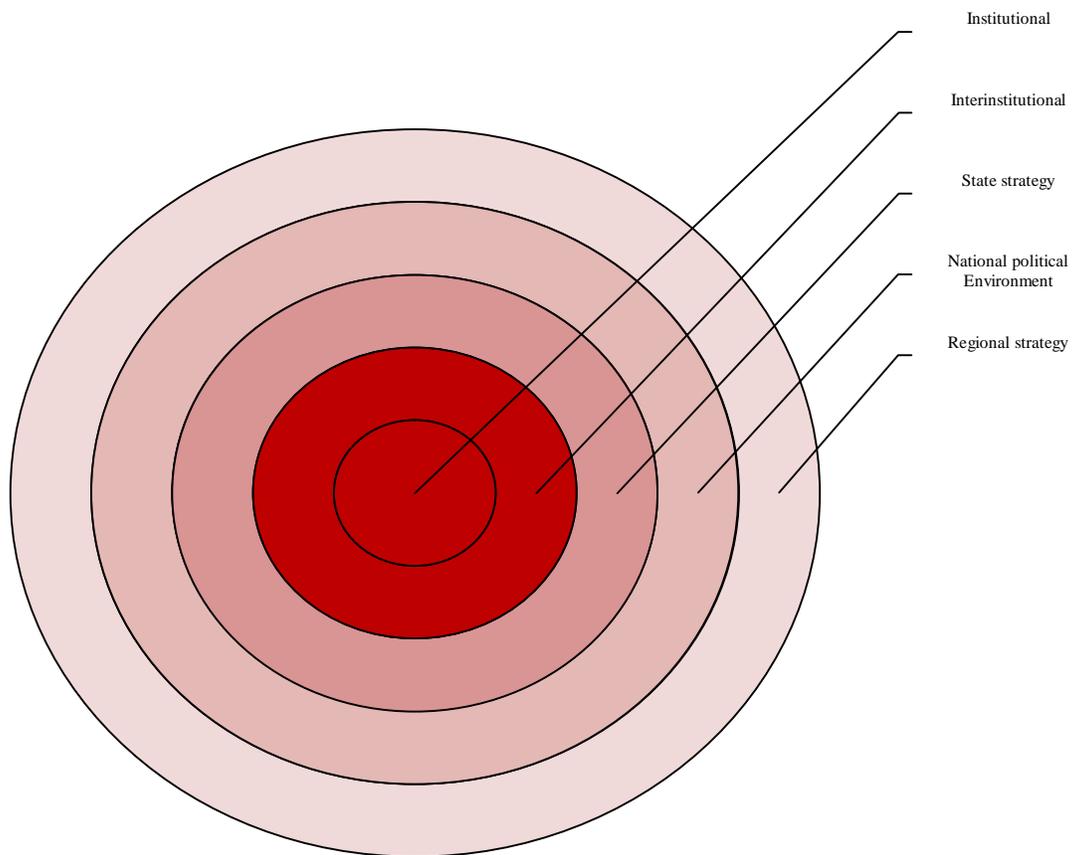
Multi-level strategy and criteria for success

On the basis of the interviews conducted for this research, and in an effort to minimize the traditional fragmentation that affects international assistance to Guatemala, this report presents the framework for a comprehensive strategy for the international community and the Guatemalan government in its efforts to combat rampant insecurity. Five intervention levels or spheres have been identified in the justice and security systems, which are intimately connected and interdependent, in addition to being reflected in the 2009 National Accord on the Advancement of Security and Justice.

The actions that correspond to the first two levels need an immediate response, while those corresponding to the next three should be completed in the medium and long terms.

- 1) Institutional development. A standard methodology needs to be developed for criminal investigations, with a corresponding allocation of resources, as well as effective witness protection program, internal controls, permanent training programs for work teams, security for staff (especially for those located in rural areas of the country) and systems for purging corrupt employees.
- 2) Inter-institutional coordination. Justice and security institutions need to establish reliable mechanisms and systems for the exchange of information and permanent coordination.
- 3) Security strategy. This should start with a diagnosis of the most important challenges, which will contribute 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.
- 4) High-level political agreements. Agreement among political parties is needed, 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 (which inevitably requires fiscal reform and amendment of the Constitution).
- 5) The development of a regional security strategy. Due to the great challenges imposed by international crime trends, the fight cannot be limited to the domestic sphere. It is increasingly urgent that a regional strategy is developed, with a comprehensive and multilateral approach, to address transnational criminality. The development of this level will imply analysis and debate regarding regional priorities, with a certain margin of independence from US security policies.

³⁴ Explain providing detailed dates and terms.



Support from the international community for addressing pending tasks at these five levels should follow certain principles:

- a) Holistic approach: success is not possible if attempts to reform in part or via poorly-coordinated interventions continue (as has been typical to date of the cooperation assigned to the Guatemalan security and justice systems). 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
- b) Sequencing is vital: everything cannot be done at once.
- c) Planning is essential: before talking about a “withdrawal strategy” for the CICIG, a clear idea of the minimum acceptable success threshold is needed.
- d) Active support: progress at all levels requires coordinated pressure from the international community and civil society to maintain the commitment of the government.
- e) Emphasis on practice: legal positivism must be avoided, meaning blind faith in the creation of new institutions and the approval of laws.

Part IV: The bases for sustainability

The roadmap

As indicated in the previous pages, in this chapter we develop proposals for concrete action in relation to the five levels of intervention, aimed at complementing or strengthening the progress made by the CICIG.

These proposals represent the bases for building a more solid security and justice system. In the recommendations, our proposals are targeted at the national government, political parties, civil society and the international community. This division of responsibilities is based on the understanding that the success of cooperation in combating impunity and improving security and justice in Guatemala depends on a combination of complementary efforts involving these different actors, even when the main responsibility clearly lies with the Guatemalan government.

In the short term

The main activity of the CICIG, as indicated above, is to support criminal investigations that help to dismantle structures of impunity controlled by clandestine criminal groups. However, in an electoral year, the international community needs to provide over the short term unwavering support to the work of the Commission and the reforms implemented within the security and justice systems.

Today, there is no doubt that rejection of the work of the Commission is on the rise within certain parts of the political and business communities, especially as a result of the investigations that have touched the highest political spheres (the Portillo and Pavón cases, discussed in the previous chapter). The country's main donors must, in the first place, seek guarantees from candidates over their support for the work of the CICIG before the elections take place. Secondly, the arrival of a new president and government entails the risk of massive changes in senior posts in the security and justice systems; in the case of the MP, the replacement of the Attorney General based on alleged "poor performance" is clearly allowed by the law governing the prosecution service.

In light of the incipient progress made in recent years, it is essential that donors, through the G-13 donor coordination group of which The Netherlands is a prominent and proactive member, present a united and open stance regarding cooperation with the new government, conditioned upon its respect for donor investments already made in strengthening the rule of law.

In the medium and long terms

The CICIG should contribute in a parallel and complementary way to strengthening national capacities in the security and justice systems, so as to ensure that Guatemalans are

able to continue this task independently in the future. This entails providing the Commission with the means to establish a strong basis for capacity development across the field of criminal investigation and prosecution.

Grounded in the principles of a holistic approach, vital sequencing, planning, active support, and an emphasis on practice, these proposals envisage interventions at different levels, building on successful experiences currently underway such as the commitments of the National Accord for the Advancement of Security and Justice, and the agenda proposed by the CICIG in September 2010. Should these proposals be implemented, we would expect the Guatemalan system to have, within a period of two years, a range of centers of excellence, and a comprehensive state strategy to address criminality.

Within a maximum period of five years, these basic changes should be consolidated through the greater availability of national resources for investment in security and justice (obtained through tax reform), and the establishment of solid career systems within the MP, the PNC and the judicial system (OJ in Spanish). This would require, in the case of the MP and the OJ, a constitutional amendment.

We have divided a total of ten pillars of reform into two parts: the first deals with support for centres of excellence, while the second part addresses the creation of a genuine state policy to combat crime in all its forms.

Centres of excellence

How will the CICIG put into place improved state capacities? How can its model of “learning by doing” be expanded? We believe this is possible, based on the combined interventions of the CICIG, the government and international donors, following a model of developing and expanding “centers of excellence”, which would require action at the first and second levels (institutional and inter-institutional). In other words, the reforms would be grounded in an essentially pragmatic approach: supporting institutions that work well, while giving under-performing institutions the opportunity to make sharp improvements.

Based on close observation of what currently works well, although such examples are limited in number,³⁵ certain conditions for effectiveness can be identified: good 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. We believe that, by adding to these a standard methodology for criminal investigations, good 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 created to generate and multiply centers of excellence with the potential to expand across the MP and the National Civil Police.

³⁵ We have found such examples at UEFAC, 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.

This proposal coincides with that of the CICIG³⁶ regarding the creation of elite prosecution offices to combat organized crime. Centers of excellence would provide the opportunity for staff trained at the UEFAC, working alongside staff from the CICIG, to spur wider processes of change.³⁷ Within the MP, the reform process should begin with key offices for the prosecution of clandestine criminal structures that promote impunity, such as the specialized public prosecutor's office for organized crime, corruption, the laundering of money and other assets, human trafficking and drug trafficking. The success of these reforms rests upon six pillars:

- Standard methodology for criminal investigations
- Internal control mechanisms
- Quality information
- Special resources
- Security
- The best staff

1. Standard methodology for criminal investigations

Commitment number 46 of the National Accord for the Advancement of Security and Justice calls for the implementation of an urgent programme to strengthen criminal investigation capacities, focused particularly on the DEIC³⁸ unit within the PNC. In the process of fleshing out this commitment, the Accord's Technical Secretariat oriented it towards the strengthening and implementation of a model of investigation.

An intervention of this kind will fail to live up to expectations if it does not establish a standard methodology for criminal investigation, with clear action protocols based on the

³⁶ Mentioned in www.CICIG.org, the six proposals of the Commissioner were presented at the event organized by the International NGOs Forum, (FONGI, in Spanish), "Changing the culture of impunity: the CICIG seen from the outside", held on September 13, 2010 in Guatemala City. During this event, the report "*Cambiar la cultura de la violencia por la cultura de la vida; los primeros dos años de la Comisión Internacional contra la Impunidad en Guatemala*" (Changing the culture of violence for the culture of life: the first two years of the CICIG in Guatemala) was presented.

³⁷ The Special Prosecutor's Office attached to the CICIG is composed of a group of young Guatemalan prosecutors, women and men, who, working next to members of the Commission, have received training in investigation of different crimes: human trafficking, money laundering, organized crime, illegal adoptions and corruption.

³⁸ Special Division of Criminal Investigations of the National Civil Police. These are police officers assigned to carry out criminal investigations. There have been many reports of corruption inside the DEIC, but also some achievements, such as the investigations of attacks against human rights defenders, which have since 2007 provided support to the Analysis Unit of Attacks against Defenders, in which representatives from government institutions and civil society organizations, both national and international, take part. The Investigative Unit of the DEIC assigned to the Office for Crimes against Human Life of the MP (with financial support from Spain) has also received positive assessments.

respective roles of prosecutors, investigators and the INACIF.³⁹ Implementation of this methodology could begin within the police and prosecutorial centers of excellence.

Recommendations for leading roles by actor	
CICIG	Develop a proposal for a standard methodology for criminal investigation and its corresponding protocols.
International community	Support the publication of guides for its implementation and training regarding its use.
The government	Secure the legal and institutional framework for implementation of the standard methodology for criminal investigation.

2. Internal control mechanisms

After the initial purging of institutions, the establishment of effective mechanisms to control performance and corruption must follow. It is vital to change the prevailing practices within the PNC, the MP and the OJ. The new policy has to go beyond the recurrent purges of the police force: massive layoffs of corrupt officers and agents lead to a rotation in the leadership of criminal structures, but do not change the bad practices that keep those structures alive and ready to adapt.

The Attorney General has requested support from the CICIG to create an Internal Affairs Unit within the MP. However, it is also necessary to strengthen the systems for controlling police officers who carry out criminal investigations. These systems are still based within the PNC and are under the aegis of the Inspector's Office, which would have to adopt systems similar to those promoted at the MP.⁴⁰ Talks are also underway, albeit with less enthusiasm, on improving the supervision and prosecution of judges suspected of criminal conduct or participating in crimes. This is a matter that needs attention, but requires analysis to ensure that there would be no interference with judicial independence.

Recommendations for leading roles by actor	
CICIG	Advise the MP and PNC on the establishment of internal controls to be applied either by the Office of Internal Affairs of the MP or the Inspector's Office of the PNC. Provide support during the first stage of internal investigation proceedings against staff.
International community	Provide support in the selection of staff responsible for internal controls (psychological, psychometric evaluations, etc). Allocate resources for the security of staff responsible for

³⁹ The *Instituto Nacional de Ciencias Forenses* (National Institute of Forensic Sciences) is an institution created to support criminal investigations by contributing scientific and forensic evidence.

⁴⁰ The Commission for Police Reform has stated its interest, but the form in which the CICIG could contribute to this is not clear yet. Last year, the Commission supported a series of polygraph tests, with the assistance of the Mexican government, for all 125 members of the police's senior command.

	internal controls.
The government	Establish the legal and institutional framework for the implementation of internal controls.
Civil society	Support the authorities in the implementation of controls, addressing the resistance of organized members of the workforce who oppose the control of corruption and the application of disciplinary measures.

3. Quality information

Once a good criminal investigation methodology has been established, a platform for police information, as proposed by the CICIG, is required. This implies the digitalization of all police information, using software validated in other regions of the world, to facilitate access to information by investigators in different regions of the country, allowing them to identify common elements in terms of criminal presence, activities and networks for mobilizing or collaborating with others, thus providing vital input for strategies aimed at fighting crime. The use of this platform also involves working towards improved coordination between institutions responsible for criminal investigations.

This kind of information platform, at the national level, could become the basis for the exchange of regional information – as long as, from the very beginning, it is equipped with safeguard protocols and access controls. Complementary to this would be the establishment of an International Relations Office within the MP, which would have the job of relaying information to other countries, as proposed by the CICIG. This office would allow the exchange of information between prosecutor’s offices all over the world, in real time, in order to minimize the reaction times enjoyed by organized crime groups.

Recommendations for leading roles by actor	
CICIG	Provide an advisory service for the development of the information platform and its control systems. Provide support during the first stage of implementation.
International community	Provide information regarding experiences in this area, and those which are currently successfully underway in other countries. Provide support for the procurement of the necessary software and hardware. Provide support for training activities regarding its use.
The government	Select ideal staff. Provide physical facilities. Allocate the budget for its operation. Establish an International Relations Office within the MP.

4. Special resources for investigations

Since its inception, the CICIG has emphasized the need to take advantage of special resources when conducting criminal investigations, and has shown that it is possible to

resolve cases with the use of technical and scientific information alone. It is essential, in this regard, to strengthen the Special Methods Unit of the MP, and to make sure it has the capacity to meet the demands of criminal prosecutors across the entire country.

Some resources recognized in the Palermo Convention should be implemented, and the implementation of others should be strengthened, because, even though they already exist in the Guatemalan legal system, they are not used, such as controlled deliveries and undercover agents. There has been some progress, thanks to the CICIG, in telephone surveillance (approved by parliament since 2006). But according to Commissioner Dall’Anese, a further step is needed to establish a national centre of communication surveillance, covering the entire country, and working under constitutional safeguards and with the due supervision of judges.

A debate is still ongoing, which will be concluded in Congress, regarding the nature of a new investigative police unit and its institutional position: while the CICIG supports the creation of an elite unit (composed of college graduates) within the Ministry of Interior, the Police Reform Commission prefers to cultivate the capacities that already exist within the PNC. Whatever the final decision may be, it is important to highlight that, without the legal framework and a budget for a new institution, the government will have to establish a transition stage making the best possible use of its current resources, first forcing them through a purge and then keeping them under the new system of internal control. The new institution must comply with at least two essential requirements: a high level of professionalism, and strict independence from political powers.

Recommendations for leading roles by actor	
CICIG	Provide an advisory service in the development of special investigation methods. Support prosecutors and police officers during the initial implementation stage.
International community	Provide information to Congress regarding experiences of using special methods and cooperation between prosecutors and the police. Political support is needed to ensure the best initiative for the country is chosen. Provide support for the procurement of necessary equipment. Provide support for training activities regarding its use.
The government	Select ideal personnel. Provide physical facilities. Allocate the budget for its operation. Discuss in Congress police initiatives for criminal investigations and the state’s commitment to the implementation of the selected initiative, guaranteeing protection against possible political interference.
Political parties	Commit to respecting the agreements made by the state on this issue.

5. Security

Since its establishment, the CICIG has insisted on the need to protect victims, witnesses and justice operators with appropriate protocols, diagnosis of risk levels and comprehensive protection provided by the state. In order for centers of excellence to operate effectively and independently, it is essential to guarantee the protection of their personnel. This includes the UEFAC, which should not merely offer protection to their staff on working days and during working hours, but at all times. The challenge lies in exploring new mechanisms – in accordance with different risks – that are not limited to bodyguards (in other countries, for example, bracelets or other accessories with “panic buttons” are used by people at risk).

In the specific case of protecting judges, Guatemala has had, since 2009, a High Risk Court located in Guatemala City. Supported by the CICIG, this Court was created to provide stronger security guarantees to judges and prosecutors in high-impact cases, who could be subjected to pressure or threats. The court has issued judgments in cases such as that of a Mexican citizen and eight Guatemalan citizens responsible for the murder of two police officers and wounding of two others in 2009; it handed down sentences of up to 210 years in prison to those implicated in the murder of Salvadorian congressmen, members of PARLACEN and their driver, which took place in February 2007; and it gave a 38-year sentence to those responsible for the murder of Rodrigo Rosenberg in May 2009. However, one court alone is not enough for this kind of case in a country like Guatemala. It is necessary not only to establish new high-risk courts, but also to locate two at the regional level, in areas of the country with a larger government presence and the conditions required to guarantee security.

Recommendations for leading roles by actor	
CICIG	Issue recommendations for the implementation of effective protection measures.
International community	Provide information regarding security mechanisms and resources used in their countries. Provide financial support. Provide support for staff training.
The government	Select ideal staff. Allocate a budget that allows the Ministry of Interior to comply with its responsibility to provide security.
Private sector	Increase payment of taxes to provide sufficient resources to the state.

6. The best staff

The CICIG has insisted time and again on the creation of elite prosecutor’s offices (which this paper has termed “centers of excellence”) to combat organized crime, which will require well-trained professionals, provided with good salaries and clear incentives, and able to enjoy continuing and permanent training. These would not be “privileges” as such,

but rather a fair deal to guarantee that the best personnel work on the investigation of cases and criminal prosecutions. This will require the combined interventions of the government, universities and the international community (with the support of the CICIG).

Recommendations for leading roles by actor	
CICIG	Provide an advisory service regarding procedures for personnel recruitment.
International community	Provide support for personnel recruitment. Provide financial support for scholarships in national and foreign universities.
The government	Select ideal personnel, independent of political interests. Provide adequate working facilities. Allocate a budget for paying better salaries.
Private sector	Increase payment of taxes to provide sufficient resources to the state.

Strategy to develop a state policy to combat crime

This strategy involves actions that combine the second, third, fourth and fifth levels of intervention presented in the previous chapter. The fight against crime depends upon the political will of the state, supported by political parties, business sectors, civil society, and the general public. A holistic approach, vital sequencing, planning, active support, and emphasis on practice are also principles that guide this strategy, which is grounded in an analysis of the phenomena of crime and impunity in Guatemala that stem from the country’s history, and which have been aggravated by the trends of “geo-criminality” that have emerged across the American continent and in the Central American region.

This strategy is based on four pillars:

- Strategic analysis of organized crime
- Regional action platform
- Career officials
- Political and public support

7. Strategic analysis of organized crime

Different intelligence and/or analysis systems coexist in Guatemala, although not all are focused on criminal activities: 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 *Inspectoría 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).

There is no genuine coordination or relationship of systematic collaboration between these institutions, despite the steps in this direction that are envisaged by the National Security System (introduced in 2008), although on a number of occasions their investigations have coincided. This fragmentation is enhanced and made more serious by the increasingly dispersed nature of donor support, the persistently low quality of methods for collecting information, and high levels of institutional infiltration.

One of the first actions that needs to be undertaken to overcome these weaknesses is to establish the National Platform of Criminal Intelligence. The most feasible route would be to strengthen links among existing institutions and civil units with the mandate to investigate criminal activities: DIGICI⁴¹, UEFAC, the Analysis Unit of the MP, the *Unidad de Métodos Especiales –UME* (Special Methods Unit) and prosecutor’s offices specialized in organized crime, corruption, laundering of money and other assets, human trafficking and drug trafficking. The combined work of these institutions would improve the use of resources for collecting and systematizing information, as mentioned in pillars 3 and 4.

In the longer term, the creation of capacities for a systematic response to organized crime could help provide a basis for the construction of planning centers involved in security issues within the government itself, and particularly within the Ministry of Interior. Until now, as in most countries of Latin America, the power and capacity of civil control over the security apparatus has been a continuing weakness in the official response to crime.

Recommendations for leading roles by actor	
CICIG	Provide methodological advisory services for the <i>Unidad de Análisis</i> at the MP, UME and specialized prosecuting offices, in accordance with the experience developed with UEFAC.
International community	Provide specialized software for the analysis of criminal networks, the elaboration of telephone surveillance maps, image reconstruction, etc. Provide financial support for scholarships to national and foreign universities. Monitor the appropriate use of their assistance.
The government	Provide adequate working facilities. Allocate a budget for paying better salaries. Guarantee staff security in these institutions and promotion according to merit.
Private sector	Increase payment of taxes so as to provide sufficient resources to the state.

⁴¹ The *Dirección General de Inteligencia Civil* (General Directorate of Civil Intelligence) is one of the most solid institutions, with experience accumulated during its short existence, thanks to the stability in its directorate and young, specialized staff.

8. Regional Action Platform

The criminal trends in the Central American region generate new challenges for prosecutors in each of these countries. As a result, it is important to build a platform for combined action between them. The United States is vigorously promoting and funding the Central American Regional Security Initiative (CARSI), which was created in 2008 within the framework of the Mérida Plan. The challenge for Central America is to define a regional action platform with relative independence from the US plan, a process that currently has as a milestone the SICA conference in Guatemala, held in June.⁴² Ideally, a mutually cooperative horizontal relationship should be promoted, instead of passively accepting the imposition of programmes formulated in the North.

In this regard, it is important to mention the statement made by the UN Secretary General during his visit to Guatemala in March, regarding the establishment of a regional CICIG.⁴³ The idea had already been outlined by Castresana in 2009, but then, just as today, neither the role of a regional commission nor its actual possibilities for action were clear due to variations in legal systems from one country to another.

One possibility that has been aired would be the establishment of commissions in each country of Central America's northern triangle (Cicih and Cicis⁴⁴), with these commissions receiving the support of a regional body to facilitate the flow of information and action plans. Others prefer a simpler model, involving a regional supporting body without the need for commissions in each country. The debate is not over, and its results will depend on trends in each Central American country. What is clear is the need for a mechanism - a platform - to respond collectively to the transnational criminality currently afflicting Central America.

Recommendations for leading roles by actor	
CICIG	Based on its experience in Guatemala, develop guidelines for what could become a regional action platform.
International community	Support the debate regarding a regional strategy and its actions. Provide political support at the United Nations, with a view to securing weights and counterweights among international actors with geopolitical interests in Central America.
The government	Provide appropriate facilities and the means to speed up communications. Adjust the legal framework to facilitate regional cooperation.

⁴² A draft plan prepared ahead of this meeting envisages an investment of 803 million dollars.

⁴³ International Commission against Impunity in Central America

⁴⁴ International Commission against Impunity in Honduras and another in El Salvador.

Other Central America countries	Governments should promote a well-informed public debate regarding the CICIG experience and a possible adaptation in their legal frameworks, as a way of creating sustainability for the Regional Action Platform. Develop their own spaces for debate, making the most of the new SICA initiative.
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9. Career officials

To safeguard the changes already achieved with the support of the CICIG and the backing of some Guatemalan government officials requires taking measures in the medium and long terms to guarantee the independence of prosecutors and judges, and improve the quality of the security forces. 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.

Until now, proposal and nomination mechanisms have not strengthened, but rather weakened, the possibilities of securing such positions on the basis of a career path. It is true that there was some progress in 2009, when the Nomination Commissions Law became effective, which led to greater transparency in nomination procedures. However, the underlying problem remains, since these procedures are designed in such a way that the nomination of candidates is still in the hands of interest groups.

It will be difficult to develop a judicial career if every five years Guatemala completely “beheads” the Supreme Court of Justice and the Courts of Appeal. Elected judges, within this perverse system, know that they have to make a good impression on the groups that promoted them, and that they should not affect the interests of powerful sectors which could hinder their reelection at the end of their term. A constitutional amendment must include, for example, the possibility of lifetime positions, in the case of Supreme Court judges, with clauses allowing the removal of those who are corrupt or do not comply with their mandate. There are different models that work well in other regions of the world. It is important to study them and select the one that could be best adapted to Guatemalan conditions.

Recommendations for leading roles by actor	
CICIG	Issue recommendations regarding models for the selection and appointment of the attorney general and magistrates, in accordance with experience in other countries.
International community	Provide support for a national debate regarding constitutional reforms. Provide political support for the implementation of those reforms.
The government	Promote public debate regarding constitutional reforms. Establish true career and evaluation systems to assess the performance of prosecutors, judges and magistrates.

	Establish conditions for the stability of justice operators and mechanisms for duly justified removals.
Private sector	Increase payment of taxes to provide the state with sufficient resources to pay better salaries to justice operators.

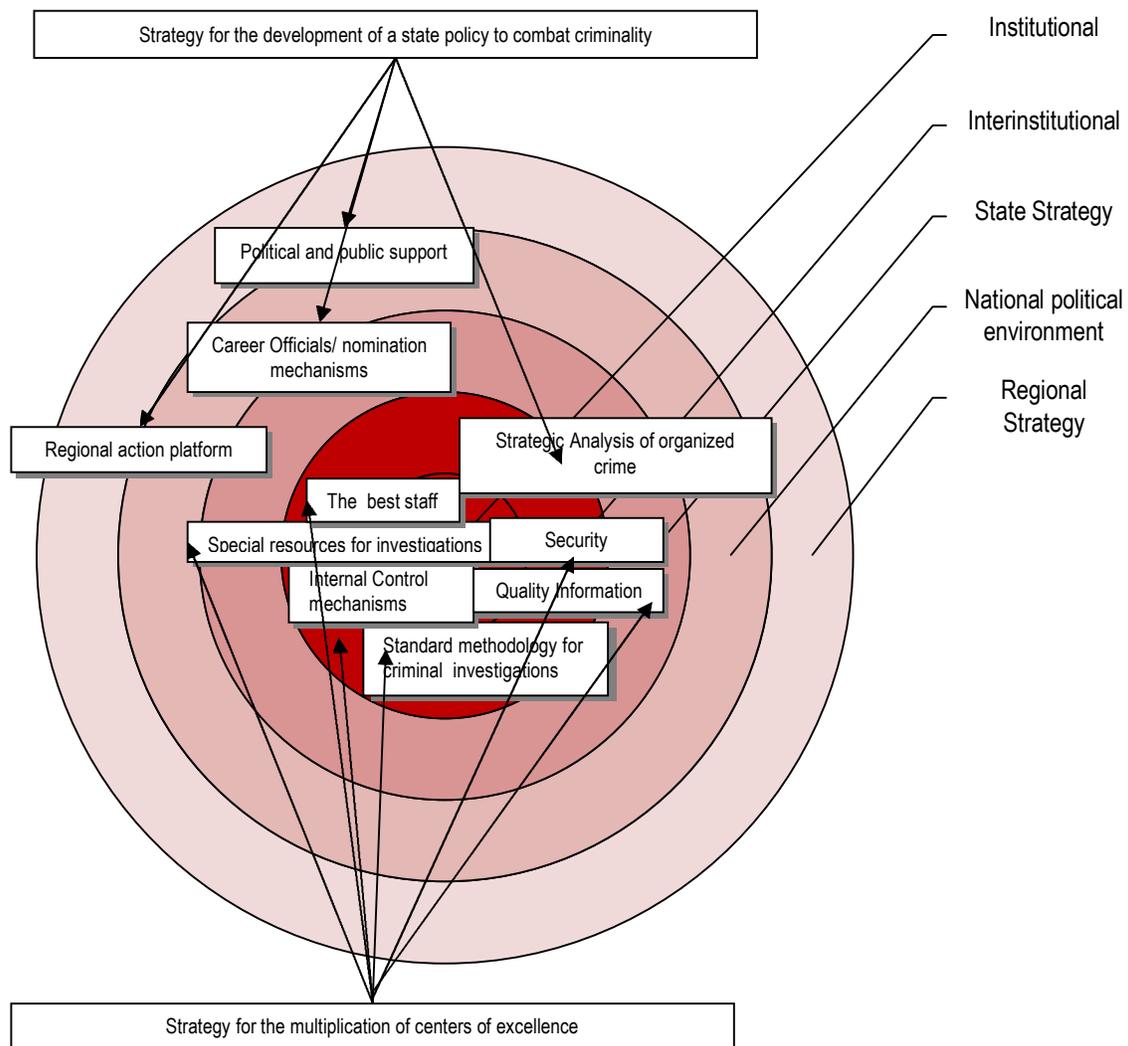
10. Political and public support

Guatemalan society should be committed to the rule of law instead of repression and the use of military responses to crime. It will be possible to defeat the public's silence and fear with actions that promote increased awareness of successful prosecutions of criminals (and which make optimal use of new information technologies to promote advancements in security and justice), 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 accepted paradigms and social practices. Those countries that have made this change know that support from citizens constitutes the most sustainable route to protecting the rule of law.

On the political side, it is essential to boost the civil capacity of the government regarding the planning of security policies (see pillar 7), 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, 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 the rates of fiscal evasion are reduced. To that end, a new social pact is needed whereby the elites, political parties and the government assume their corresponding responsibilities.

Recommendations for leading roles by actor	
International community	Support campaigns that promote a culture of legality, with emphasis on children and young adults. Support proposals to recover public spaces and their use under secure conditions. Provide political support for fiscal reform.
The government	Create safe spaces in which different social classes can meet, through recreation, culture and sport. Guarantee safe and good quality public transportation. Promote the disarmament of citizens and a state monopoly of the use of firearms. Change the paradigms of government security forces from repression to service. Increase the number of police officers and extend their coverage throughout the entire country. Encourage greater specialization in police functions Demilitarize public safety and strengthen civilian control

	<p>and capacity for strategic planning across the penal system. Promote respect for human rights. Promote anti-corruption policies and provide information on progress made, in order to recover public trust in government.</p>
Private sector	<p>Support a culture of tax payment and a system of progressive taxation. Support campaigns promoting a culture of legality. Support the creation of safe spaces to facilitate multicultural encounters among different social classes. Generate employment, suitable for the younger population.</p>



Part V: Recommendations for future Dutch policy

A history of engagement

The Dutch have long been prominent bilateral partners to the Guatemalan state and civil society, most recently through the country's inclusion from 2008 to 2011 on the official Dutch list of fragile states (List II).

The Dutch government has contributed a total of over five million euros to the CICIG, making it one of the Commission's leading bilateral partners. At the same time, it has continued to fund a host of support programmes. These have included most recently backing for programmes catering for female victims of violence, support for the MP's efforts to investigate atrocities during the internal armed conflict, and assistance for the activities of the Institute for the Comparative Study of Guatemalan Criminal Science (ICCPG) and the Myrna Mack Foundation (FMM).

The work of Dutch non-governmental organizations has complemented the government's bilateral engagement and boosted the Netherlands' profile in political circles. The Netherlands Institute for Multi-Party Democracy (NIMD) works with political parties, supporting substantive discussion of policy issues, as well as sponsoring the creation of a Socio-Economic Council for dialogue between the government, business and trade unions.⁴⁵ A range of Dutch civil society organizations have worked with Guatemalan counterparts, supporting them to provide critical oversight of the state and play a constructive part in policy-making. In addition, those Dutch organizations with an interest in the problem of impunity have organized themselves as the Dutch Guatemala platform, enhancing the complementarity of their work and their political leverage. Moreover, the Platform and the Dutch Embassy in Guatemala have been increasingly coordinating their strategies, with a view to improving the value and impact of their work in the field of impunity reduction.

The Dutch government's strategy of providing substantial institutional and political support to key civil society actors, while supporting the Guatemalan state in the areas it seeks to improve, is both innovative and effective. Since the Guatemalan state is so weak, this approach has aimed to strengthen its capacity in key areas, while also amplifying the voice of civil society in policy-making and providing oversight on security and justice issues. In the process, civil society actors have gained legitimacy and become serious partners at the negotiating table. The appointment to key roles within the state of Helen Mack of the FMM and Claudia Paz of the ICCPG is testament to the success of the Dutch approach.

These policies, alongside other activities that followed the signing of Guatemala's peace accords, have given the Dutch a unique position in the donor community. Unlike the United States and Spain, there is rarely any suspicion of a hidden agenda behind Dutch donor activities. Instead, their support is appreciated as a neutral and interest-free effort to promote sustainable institutional and political reform.

⁴⁵ Some traditional trade unions have expressed their opposition to the SEC, arguing that they have been excluded from the entire process.

Guidelines for future policy: the next year

At a time of major changes in Dutch development policy and a squeeze on resources, it is important to ask whether the partnership with Guatemala should continue in its current form. Leaving aside this political question, the research carried out for this report suggests that the Dutch embassy in Guatemala City, with the strong backing of the Ministry of Foreign Affairs in The Hague, continue over the next two years of the extended mandate of the CICIG to give its full support to the Commission's work, and seek the commitment of the new Guatemalan government which takes power in January 2012 to security and justice reforms.

With the CICIG making progress in investigating parallel structures and supporting the appointment of reformers in key positions within state security and justice institutions, attacks on the Commission's work and the institutional changes it has brought about are increasing. 2011 is an election year, and the current political circumstances suggest this trend can be expected to deepen.

As a result, the CICIG and the reforms it has prompted will require sustained support, including daily review of the actions of the new government that takes power in January and its policy of appointments. Responses to negative developments will have to be rapid and assertive. It is important to bear in mind that the encouraging changes taking place now are still heavily dependent on individual actors, with more time needed for their approaches to become institutionalized within the state.

In particular, modest improvements in the functioning of the systems of security and justice would be imperiled, and easily reversed, if the continuity of leadership and personnel in institutions such as the MP, the Commission on Police Reform, the Directorate General of Criminal Intelligence and of course the CICIG is not respected by the new government. As has been seen repeatedly in recent years, parallel structures will not hesitate to recover positions they can fill with individuals willing to protect their impunity. Moreover, after a period marked by the shaving of security budgets, pressure must be placed on a new government to restore full financial support to the police and the Interior Ministry, and if possible to sponsor a wider tax reform so as to pay for modernization of these and other organizations.

Ensuring the institutionalization of the transformations now underway therefore requires sustained international engagement and political support, something which can only be exerted through continued presence on the ground. With a tendency now emerging for diplomatic representations to downscale or leave, the scope for this is narrowing.

Here, it is important to stress the key role the Dutch have played to date in supporting positive change in the spheres of security and justice, as well as its perceived neutrality, enhancing its robust, constructive engagement in political dialogue with Guatemalan actors.

Meanwhile, it is in the clear interest of the Dutch government to take a seat at the debate over the future regional approach to crime in Central America. The SICA conference in

June, the expansion of the CARSI initiative by Washington, the proposals for a regional CICIG, and the efforts by Mexico and Colombia to extend their bilateral partnership programmes across the isthmus are all reshaping the approach to crime in the region.

At the same time, the Dutch government should be aware that the levels of violence and loss of sovereign control over territories – above all on the Atlantic Coast - will impact on the trafficking of drugs to Europe and to other Dutch territories in the Caribbean, as well as raise the possibilities of new transnational criminal alliances, with unpredictable effects on various illegal flows to Europe. It is thus in the strategic interest of the government to leverage its traditional engagement in Guatemala so as to secure a voice in negotiations over the shape of a broader regional criminal strategy.

The longer term

Should the Dutch remain committed to supporting Guatemala's efforts to combat insecurity, then its efforts would best be designed within the framework described in previous chapters. However, rather than dividing its support evenly between all ten pillars of the framework, the Dutch government should consider maximizing its impact by focusing on those areas in which it has established partnerships and high levels of trust within Guatemala. It should seek to enhance synergy between these areas and actors involved, including by recommending and facilitating systematic dialogue and cooperation among Dutch implementing agencies and its Guatemalan counterparts where these are working on similar issues. For example, the support being provided by Nuffic for the development of the curriculum of the PNC academy is certain to have greater value and impact if the Dutch government encourages and supports it to work closely with the Commissioner for Police Reform. Emphasis could also be placed on areas in which Dutch development has established a track record of excellence in other contexts.

As a result, a particular focus could be aimed at the following:

- Support for internal control mechanisms, parliamentary oversight and strengthened civilian control over the security forces, leveraging intense Dutch support and commitment to Security Sector Reform processes in various contexts and through various organizations, such as the UNDP.
- Support for the creation of national and regional intelligence platforms that combine rapidity with security guarantees (through the expertise of the Dutch police and Europol).
- Support for civil and political dialogue on constitutional reform aimed at facilitating the lifetime tenure of senior judicial posts and major changes to the judicial appointments system (particularly through the embassy and civil society organizations).
- Support for NGOs and research institutes working to change wider social understanding of the causes of crime and the most appropriate responses to insecurity.
- Deployment of Dutch presence in the EU and multilateral agencies to insist that all the conditions for sustainability are met before any withdrawal of the CICIG is

planned, particularly in light of the Netherlands' extensive investment in the Commission's work.

- Systematic support for a non-militarized solution to the criminal problems of Guatemala, and Central America more widely, so as to avoid the entrenchment of a new era of conflict and human rights abuses.