

# Crutch to Catalyst? The International Commission Against Impunity in Guatemala

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## Table of Contents

Executive Summary.....	i
Recommendations.....	iii
I. Introduction .....	1
II. CICIG’s Evolving Mission.....	2
A. Consolidation and Controversy .....	2
1. Carlos Castresana .....	2
2. Francisco Dall’Anese .....	4
B. Targeting Corruption – Iván Velásquez .....	5
III. Scandal and Protest.....	7
A. “La Línea”.....	7
B. The Civic Awakening.....	9
C. The New Generation .....	9
D. New President, Same System .....	11
IV. Unfinished Agenda .....	13
A. Budget Woes .....	13
B. Pending Legislation .....	14
1. Electoral reform .....	14
2. Reform of the Judiciary and the Public Ministry.....	15
C. Institution Building .....	16
V. Conclusion .....	18
APPENDICES	
A. Map of Guatemala .....	19
B. Glossary of Abbreviations .....	20
C. Timeline of 2015 Political Earthquake .....	21
D. About the International Crisis Group .....	23
E. Crisis Group Reports and Briefings on Latin America since 2013 .....	24
F. Crisis Group Board of Trustees .....	25

## *Executive Summary*

Guatemala – one of Latin America’s most violent, unequal and impoverished countries – is enjoying a rare moment of opportunity. A new president, Jimmy Morales, bolstered by a landslide victory, has taken office promising to end corruption. The old political elite is in disarray. Emboldened citizens are pressing for reforms to make justice more effective and government more transparent. Behind these changes is a unique multilateral experiment, the UN-sponsored International Commission Against Impunity in Guatemala (CICIG), whose investigators work with national prosecutors to dismantle criminal networks within the state. CICIG is not a permanent fix, however. Guatemala will lose its opportunity unless national leaders assume the fight against impunity as their own, approve stalled justice and security sector reforms and muster the financial resources to strengthen domestic institutions.

CICIG began operations in 2007 to investigate clandestine security groups that continued to operate within the state following the 1996 accords that ended 36 years of intermittent armed conflict. Such groups still undermine the state, though their main goal now is economic power, not elimination of political opponents. International support and financing guarantee the commission’s independence, though it operates under Guatemalan laws. Unlike traditional capacity-building efforts, it not only trains, but also works side by side with national prosecutors and police, providing them with the necessary technical expertise and political autonomy to hold powerful suspects accountable before the law.

CICIG has promoted and helped implement legislation to create a witness protection program, tighten gun controls, establish rules for court-ordered wiretaps and asset forfeiture and institute high-risk courts for the trial of particularly dangerous defendants. At the same time, it has carried out complex, high-profile probes that resulted in charges against a former president for embezzlement, an ex-minister and other top security officials for extrajudicial executions and dozens of additional officials and suspected drug traffickers for fraud, illicit association and homicide.

The commission has faced significant setbacks and limitations, however. Some high-profile cases have ended in acquittal. Key reforms, such as a judicial career law, have stalled in Congress. While it has helped strengthen certain specialised prosecutorial units, the public prosecutor’s office remains overstretched, even absent, in much of the country. Other institutions essential for combatting impunity – notably the civilian police and judiciary – are still weak, vulnerable to corruption and largely unaccountable.

The most dramatic blows it has delivered against impunity came in 2015 with the arrest of almost 200 officials for corruption, including a multi-million dollar scheme to defraud customs. Working with national prosecutors, CICIG collected and analysed massive amounts of evidence. The evidentiary trail, according to prosecutors, led to President Otto Pérez Molina, who resigned (though denying any criminal activity) and now awaits trial in a military prison.

Much of CICIG’s recent success is due to the determination and persistence of its current commissioner, Iván Velásquez, a jurist known for uncovering the links between politicians and paramilitary structures in his native Colombia. CICIG cannot function, however, without the close collaboration and support of Guatemalan pros-

ecutors. Very different attorneys general – Claudia Paz y Paz, a former human rights activist, and Thelma Aldana, a veteran jurist – have shown the independence and courage to pursue complex, controversial cases against powerful suspects.

A crucial ingredient is popular support. Both the commission and public prosecutors enjoy wide approval among citizens exhausted by violent crime and corruption. The investigations spawned a broad civic movement for justice reform and government transparency. In a country long polarised by ideological, economic and ethnic differences, the anti-corruption crusade has at least temporarily united groups ranging from business associations to labour unions, urban professionals to indigenous leaders.

Anger over government fraud holds this movement together, rather than any clear agenda for change. Elected leaders should channel discontent into positive action by initiating a national debate on the reforms needed to strengthen justice and encourage accountability. Morales, a former television comedian, campaigned as the anti-politician. He has yet to put forward a clear reform program, including new legislation to guarantee the independence of judges and prosecutors, toughen campaign-financing laws and create honest, professional civilian police. Moreover, a weak, underfunded state needs to enact fiscal and tax reforms so that its justice institutions have the resources needed to pay good salaries, provide decent working conditions and extend their coverage across the country.

CICIG's mandate ends in September 2017, though the president wisely has proposed extending it. International assistance cannot last indefinitely, however. The commission is Guatemala's best opportunity for genuine justice reform, and it should not be wasted, but the government must start planning for its departure by fortifying its own capacity to fight crime and corruption.

## *Recommendations*

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

### **To the Guatemalan government:**

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

### **To the Guatemalan Congress:**

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

### **To the Guatemalan judiciary:**

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

### **To the Guatemalan Public Ministry (MP) and CICIG:**

9. Expand cooperation to transfer capacities to specialised prosecutors working on complex cases, such as those investigating organised crime, money laundering and human trafficking.
10. Strengthen the MP's internal affairs office to identify, sanction or remove officials guilty of misconduct.

11. Work jointly on a strategy to build a professional corps of investigative police.
12. Promote accountability within the MP and CICIG by devising measurable goals and benchmarks.

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

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

**Guatemala City/Bogotá/Brussels, 29 January 2016**

# Crutch to Catalyst? The International Commission Against Impunity in Guatemala

## I. Introduction

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Guatemalan democracy survived political earthquakes in 2015. Investigations into massive fraud at the customs agency and social security institute ensnared nearly 200 suspects, including top officials and business people. Wiretaps and other evidence led prosecutors to Vice President Roxana Baldetti, then President Otto Pérez Molina, both now in prison awaiting conspiracy and fraud trials.<sup>1</sup> Prosecutors in separate probes have charged judges with accepting bribes, lawmakers with hiring phantom employees and politicians with violating campaign rules. All this sparked an anti-corruption social movement, as protestors poured into the streets to demand justice, and took place during an election campaign in which voters unexpectedly elected Jimmy Morales, a political outsider, by a landslide.<sup>2</sup>

The catalyst for these changes is a unique multilateral experiment: the UN-sponsored, donor-funded International Commission Against Impunity in Guatemala (CICIG, for its Spanish initials). Created in 2007 to combat powerful clandestine networks that had penetrated state institutions, it is empowered to initiate and conduct investigations in cooperation with national prosecutors. Under the leadership of Iván Velásquez, formerly an investigating magistrate with the Colombian Supreme Court, and in collaboration with Attorney General Thelma Aldana, it has enabled Guatemala to do more, more quickly to combat corruption than any other country in the region.

But CICIG and the public prosecutor's office cannot transform Guatemala without political support for further legal and institutional change. In his 14 January inaugural speech, President Morales asked the public to stay united against corruption, which he promised his government would "not tolerate".<sup>3</sup> He has been vague about his policies, however. Whether he has the political will and influence to push reforms through a divided Congress remains unclear.

This report explores CICIG's unique justice sector reform model, analysing achievements, setbacks and challenges. It looks first at its evolution under three very different commissioners, then examines the 2015 cases that shook the political system and the social movement they generated. Finally, it discusses the reforms needed to sustain progress. Research in Guatemala (April 2015-January 2016), included more than 40 interviews with officials, analysts and activists.<sup>4</sup>

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<sup>1</sup> For the charges, see "Dictan orden de captura contra Otto Pérez Molina", *Prensa Libre*, 2 September 2015; and Henry Pocasangre & Sara Melini, "MP acusa a Baldetti de defraudar Q28 millones al Estado", *Prensa Libre*, 3 December 2015.

<sup>2</sup> For a timeline, see Appendix C.

<sup>3</sup> "Discurso de Jimmy Morales en frases", *Prensa Libre*, 14 January 2016.

<sup>4</sup> For more on CICIG's origins and first years, see Crisis Group Latin America Report N°36, *Learning to Walk without a Crutch: An Assessment of the International Commission Against Impunity*, 31 May 2011, pp. 2-5.

## II. CICIG's Evolving Mission

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CICIG emerged to address unfulfilled promises of the 1996 peace accords that ended Guatemala's 36-year armed conflict. Among the agreements negotiated during a lengthy, internationally monitored peace process was a commitment to dismantle the clandestine CIACS (Cuerpos Ilegales y Aparatos Clandestinos de Seguridad), illegal groups directed by former or current members of the military, intelligence and police forces.<sup>5</sup> After debate over the type of intervention and under pressure from civil society, the government finally signed an agreement in 2006 with the UN that created a unique hybrid mechanism: an international investigative commission operating under Guatemalan law.<sup>6</sup>

While the commission's principal mission is to break up CIACS, it has other important attributes. It can publish reports on issues relevant to its mandate and recommend policy reforms; request that the government act to protect witnesses and victims; and denounce public employees who interfere with its work before administrative authorities, participating as a third party in disciplinary proceedings.<sup>7</sup> It also has an important capacity-building function. CICIG is financially and politically independent of the government, depending on donors for its expenses.<sup>8</sup> The UN Secretary-General names the commissioner, who chooses his own staff, though Guatemala's president can decide whether to extend its mandate.<sup>9</sup>

CICIG's influence depends largely on perceptions of its leaders. The commissioners are its public face and subject to intense media scrutiny. The three it has had – Carlos Castresana, Francisco Dall'Anese and Iván Velásquez – have defined and approached the CIACS issue with different priorities and methods. Two attorneys general from different backgrounds have worked closely with it since 2010, though this has not always been the case with judges.

### A. Consolidation and Controversy

#### 1. Carlos Castresana

CICIG began in September 2007 under a Spanish jurist known for high-profile domestic corruption investigations and the case against ex-Chilean dictator Augusto Pinochet. He started it “from nothing. There was no structure, no system”, said a former CICIG consultant. “Without Castresana, CICIG would never have been implement-

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<sup>5</sup> The agreement defines CIACS as groups that “i) commit illegal acts in order to affect the full enjoyment and exercise of civil and political rights and ii) are linked directly or indirectly to agents of the State or have the capacity to generate impunity for their illegal actions”. Agreement between the UN and Guatemala on the establishment of an International Commission Against Impunity in Guatemala (CICIG), 12 December 2006 (henceforth Agreement), Article 1d (i-ii).

<sup>6</sup> CICIG works with the Public Ministry as a *querellante adhesivo* (complementary prosecutor) in cases presented to Guatemalan judges. “Preguntas frecuentes sobre la Comisión Internacional contra la Impunidad en Guatemala”, [www.cicig.org](http://www.cicig.org).

<sup>7</sup> Agreement, Articles 2 (c), 3 (d) and (e).

<sup>8</sup> CICIG is financed by a trust fund administered by the UN Development Programme (UNDP), which receives donations from the U.S., European Union (EU), Sweden and others. The UN Department for Political Affairs (UNDPA) provides political monitoring and advice. CICIG carries out its own administrative processes, including contracting staff. Crisis Group interview, Igor Garafulic, UNDP country director, 29 September 2015.

<sup>9</sup> Agreement, Article 5 (1) (a). Article 14 provides that the agreement's duration is two years but that it may be renewed. It has been extended four times, most recently in 2015.



ed”, said a veteran human rights activist.<sup>10</sup> During his almost three years, he hired staff and negotiated establishment of a special prosecutor’s office within the Public Ministry (MP for its Spanish initials).<sup>11</sup> This office is the crucial link with the legal system, litigating in court and processing requests for search or arrest warrants, witness summons and other legal instruments.<sup>12</sup>

Under Castresana, CICIG championed reforms that have given prosecutors essential tools to enhance criminal prosecution and combat organised crime, including legal wiretaps and use of “defendant-informants”, which allows them to negotiate for information. It helped set up the first witness protection program, in collaboration with Colombian prosecutors and the U.S. Marshals Service, and promoted legislation on high-risk criminal proceedings.<sup>13</sup>

During its first three years, the commission also assisted investigations of drug-related killings and of a former president for embezzlement.<sup>14</sup> Its most notorious case involved a Guatemalan lawyer, Rodrigo Rosenberg, who staged (or was manipulated into staging) his own murder to discredit the president. It sparked protests that threatened to bring down the Colom government, until CICIG’s investigation used cell-phone records, security-camera footage and other evidence to show that Rosenberg had plotted his own death.<sup>15</sup> It was one of the first cases to use plea-bargaining (defendant/informant testimony). It was, presiding judges later said, “unlike any other in Guatemala’s history ... using scientific and technical methods of investigation to solve a crime”.<sup>16</sup>

Castresana’s term ended in controversy.<sup>17</sup> He clashed with President Colom over appointment of Conrado Reyes as attorney general, accusing him of ties to organised crime (Reyes denied the allegations).<sup>18</sup> The Constitutional Court annulled the ap-

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<sup>10</sup> Biography of Castresana, “El debate: participantes”, *El País*, 7 October 2011. Crisis Group interviews, David Bahamondes, ex-CICIG legal coordinator, 17 August 2015; Helen Mack, president, Myrna Mack Foundation, Guatemala City, 12 August 2015.

<sup>11</sup> Created as The Special Prosecutorial Unit in Support of CICIG (Unidad Especial de Fiscalía de Apoyo a la CICIG, UEFAC) within the MP in 2008, it became the Special Prosecutorial Office against Impunity (Fiscalía Especial contra la Impunidad, FECI) in 2011. FECI prosecutors are Guatemalan; CICIG staff is both Guatemalan and international. In 2015, CICIG had a staff of 148, of which 80 were Guatemalan. Internationals came from thirteen countries. See “Informe de la [CICIG] con ocasión de su octavo año de labores”, 13 November 2015, p. 6.

<sup>12</sup> “Convenio de Cooperación Bilateral entre el Ministerio Público y la Comisión Internacional Contra la Impunidad en Guatemala-CICIG”, 29 February 2008. It is at [www.cicig.org](http://www.cicig.org).

<sup>13</sup> “Dos años de labores: un compromiso con la justicia”, CICIG, 1 September 2009, pp. 6, 19, 23. “The International Commission”, Washington Office on Latin America (WOLA), p. 14. Sophie Beaudoin, “Guatemala opens a new court to hear cases related to grave crimes”, *International Justice Monitor*, Open Society Justice Initiative, 4 November 2015.

<sup>14</sup> For summaries of the cases, see “Tercer Año de Labores”, CICIG, 1 September 2010, pp. 14-18. Ex-president Alfonso Portillo was acquitted in May 2011 but later extradited to the U.S., where he pled guilty to money laundering. He returned to Guatemala in 2015. “Guatemalan ex-president returns home after release from U.S. prison”, Reuters, 26 February 2015.

<sup>15</sup> David Grann, “A murder foretold: unraveling the ultimate political conspiracy”, *The New Yorker*, 4 April 2011.

<sup>16</sup> “Tribunal de Apelaciones confirma la sentencia condenatoria en contra de los autores materiales en el caso por el asesinato Rodrigo Rosenberg Marzano”, press release, CICIG, 3 November 2010; “Caso Rosenberg, Sentencia condenatorio”, cited in “Tercer Año de Labores”, CICIG, 1 September 2010, p. 2.

<sup>17</sup> Castresana said his enemies within Guatemala spread slanderous rumours and were even plotting his murder. Jesús Duva, “Había una trama para matarme en Guatemala”, *El País*, 24 October 2010.

<sup>18</sup> “Guatemalan attorney general sacked”, BBC News, 11 June 2010.

pointment on procedural grounds, but after Castresana had resigned. “Nothing of what was promised [by the state] is being fulfilled”, he said later. “At a personal level I feel I can do nothing more for Guatemala. I am more useful outside than in”.<sup>19</sup>

## 2. Francisco Dall’Anese

The UN Secretary-General named Francisco Dall’Anese, former Costa Rican attorney general, as Castresana’s successor in June 2010, within weeks of his resignation. His tenure coincided with that of Attorney General Claudia Paz y Paz, a prominent human rights lawyer chosen after the Reyes debacle.<sup>20</sup> CICIG’s major achievement from 2010 to 2013 was helping to professionalise the MP under Paz y Paz’s leadership. The new attorney general expanded the criminal analysis unit, building databases capable of accessing police records, vehicle registrations and telephone and video information. The objective was to cross-reference evidence in order to identify and dismantle criminal structures, not just individuals.<sup>21</sup>

CICIG lent experts to work directly with prosecutors on money laundering and financial analysis, while advising on creation of specialised units, such as one dealing with human trafficking. It also strengthened the “Special Methods Unit”, which oversaw communications intercepts and was credited with preventing 231 murders in 2013 alone, and created and monitored protocols for the fledgling witness protection program, which provided security, social assistance and/or relocation benefits.<sup>22</sup> Though these joint efforts may not generate headlines, they are among CICIG’s most important contributions and laid the groundwork for collaboration with the MP on the corruption cases of 2015. “There is no better way to transfer capacity than by working within the prosecutor’s office on a daily basis”, said the head of the MP’s special office against impunity. “It’s also sharing capacity, because CICIG has learned from us too”.<sup>23</sup>

By September 2012, CICIG had investigated and/or charged more than 200 individuals, but its setbacks often received more publicity than its achievements.<sup>24</sup> Perhaps the biggest blow came in 2011, when judges acquitted former President Portillo of embezzling \$15 million from the defence ministry.<sup>25</sup> CICIG asserted that prosecutors had presented “conclusive” evidence and urged society to demand “an impartial, fair and independent justice system”.<sup>26</sup>

CICIG ran into more opposition over its investigation into the killings of seven inmates during an operation to take control of Pavón prison. Prosecutors accused

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<sup>19</sup> “Renuncia Carlos Castresana, jefe de la CICIG”, *Noticias de Guatemala*, 7 June 2010.

<sup>20</sup> Crisis Group Report, *Learning to Walk without a Crutch*, op. cit., p. 14.

<sup>21</sup> “Sixth Report of Activities of [CICIG] (September 2012–August 2013)”, CICIG, pp. 24–26. Also Crisis Group interview, Juan Francisco Solórzano Foppa, director of criminal analysis, MP, Guatemala City, 12 August 2015.

<sup>22</sup> “Memoria de Labores 2013”, Public Ministry, p. 38. According to a prosecutor, investigators monitoring wiretaps would sometimes overhear gang members plotting a killing and send police to prevent it. Crisis Group interview, Guatemala City, 20 June 2015. “Sixth Report of Activities of [CICIG] (September 2012–August 2013)”, CICIG, pp. 24–26. See also “Justicia para todos: boletín informativo de la CICIG”, 1 August 2013.

<sup>23</sup> Crisis Group interview, Juan Francisco Sandoval, Guatemala City, 18 August 2015.

<sup>24</sup> “Report on the Fifth Year of Activities”, press release, CICIG, 11 September 2012.

<sup>25</sup> “Ex-Guatemala president found not guilty of embezzling millions from government”, *Tico Times*, 9 May 2011; Geoffrey Ramsey, “After Portillo’s Acquittal, a Challenge for Judicial Reform in Guatemala”, *InSight Crime* ([www.insightcrime.org](http://www.insightcrime.org)), 13 May 2011.

<sup>26</sup> “Sentencia Caso Portillo”, press release, CICIG, 10 May 2011.

the government minister, the national prison director and top police, among others, of extrajudicial executions. The courts convicted the head of the investigative police but acquitted the former prison director. Other defendants, including the government minister, fled the country.<sup>27</sup> In its annual report, CICIG cited the “double standards” of a judicial system that quickly convicted gang members while allowing the “master-minds of extrajudicial killings” to avoid punishment through “frivolous or inadmissible” petitions. “Most of the cases investigated by CICIG are currently stagnant”, it stated, “due to a number of legal remedies that prevent criminal prosecutions from continuing”.<sup>28</sup>

To address judicial malfeasance, CICIG issued a report accusing eighteen magistrates of decisions “contrary to the law ... and favourable to criminal networks”. However, nothing reached a court.<sup>29</sup> Dall’Anese fuelled further controversy with a CICIG statement on the trial of former dictator Efraín Ríos Montt for genocide and war crimes during the armed conflict in the 1980s. It was neutral on the merits but called for a halt to a media campaign against the process and reportedly infuriated President Pérez Molina, who had publicly repudiated the genocide charges. A month later Dall’Anese, in conflict with both the judicial and executive branches, announced he would leave in September 2013 for “personal reasons”.<sup>30</sup>

### B. *Targeting Corruption – Iván Velásquez*

When the UN Secretary-General announced appointment of the new commissioner in August 2013, CICIG’s future was in doubt. Some supporters saw it as weakened and complained it spent too much time and resources on relatively minor cases and had failed to win some major ones, such as that against ex-President Portillo.<sup>31</sup> Pérez Molina made clear his opposition to extension of the mandate, which would expire in September 2015, and told reporters CICIG should “transfer capacities to Guatemalan institutions” rather than opening new investigations.<sup>32</sup>

The new commissioner, Iván Velásquez, was uniquely qualified to investigate political corruption, however. As an investigating judge on Colombia’s Supreme Court,

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<sup>27</sup> See Crisis Group Report, *Learning to Walk without a Crutch*, op. cit., pp. 10-13. The suspects were also charged in the killing of three more inmates at El Infiernito prison. Government Minister Carlos Vielmann fled to Spain, where he was arrested in October 2010 and still awaits trial. Ángeles Vásquez, “La Audiencia juzgará la represión en Guatemala”, *El Mundo*, 15 November 2015. Erwin Sperisen, the former police chief, was convicted in Switzerland. “Erwin Sperisen es condenado en Suiza por muerte de diez reos”, *Prensa Libre*, 12 May 2015.

<sup>28</sup> “Report on Fifth Year of Activities”, CICIG, 11 September 2012, pp. 13, 39.

<sup>29</sup> “Entregan informe ‘Jueces de la Impunidad’”, press release, CICIG, 29 November 2012. Alexis Batres, “Desestimado todos los antejuicios contra ‘Jueces de la Impunidad’”, [www.soy502.com](http://www.soy502.com), 11 December 2013.

<sup>30</sup> The government denied it asked for his removal, though a delegation visited the UN in April to complain that CICIG had denigrated prominent people. “Francisco Dall’Anese dejará la CICIG en septiembre”, Centro de Reportes Informativos sobre Guatemala (CERIGUA), 29 May 2013.

<sup>31</sup> Crisis Group interview, Helen Mack, Guatemala City, 12 August 2015. For a sympathetic view of CICIG, see “El valioso trabajo de la Cicig”, *Plaza Pública*, 6 September 2013. For criticism, see “Evalúan trabajo del jefe de CICIG y analizan motivos de su salida”, *Emisoras Unidas*, 29 May 2013; and James Bargent, “Last Rites for Guatemala’s Anti-Impunity Crusaders CICIG?”, *InSight Crime*, 6 September 2013.

<sup>32</sup> Gerson Ortiz, “Gobierno se opone a que la CICIG abra nuevos casos”, *elPeriódico*, 2 September 2013.

he had probed the links between politicians and paramilitaries.<sup>33</sup> Unlike his predecessors, he came from a violence-wracked country where powerful criminal groups had penetrated the state. “It was easier for Velásquez to understand the social dynamic in Guatemala because it was very similar to what he lived through in Colombia in the 1980s and 1990s”, said an expert on security and justice reform.<sup>34</sup> He understood the “type of criminal he was dealing with because he had seen it before”, said an prosecutor and government ministry adviser. He also understood the political implications, “that these cases would grow into a snowball that no one would be able to stop”.<sup>35</sup>

Velásquez focused on five priorities: contraband, administrative corruption, illegal campaign financing, judicial corruption and drug trafficking/money laundering. He maintained that CIACs had become conspiracies to secure and exercise power by economic means and called them RPEIs (Spanish initials for Illicit Political-Economic Networks). “Our objectives did not change”, he said. “The CIACs changed. The RPEIs are their updated version”.<sup>36</sup> This conceptual revision allows case selection based on a strategy to erode impunity’s economic underpinnings.

In his first two years, Velásquez and the MP delivered blows against criminal conspiracies in each priority area. In September 2014, investigators dismantled an extortion ring allegedly led by Byron Lima, an ex-army captain imprisoned for a role in the 1998 assassination of Bishop Juan Gerardi. Prosecutors accused him and accomplices (including the national prisons director) of selling protection and favours, including transfers, cell phones and conjugal visits.<sup>37</sup> Two months later, a CICIG investigation led to the arrest of Haroldo Mendoza, reputedly a leader of one of the most powerful drug trafficking families, for operating a “private army” in eastern Guatemala and responsibility for multiple homicides, disappearances, land theft and other crimes. In both cases, CICIG said it was going after “parallel” powers: criminal syndicates that had taken over state institutions.<sup>38</sup>

Under Velásquez, CICIG has investigated nine members of Congress, five judges and a prosecutor. Among the alleged crimes uncovered are schemes to falsify passports and sell “ghost jobs” in Congress and illegal enrichment through bribes.<sup>39</sup> CICIG also issued a report on illegal campaign financing. Its most prominent case, however, was an investigation into customs fraud that became a scandal that brought down a president and ignited an unprecedented social movement.

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<sup>33</sup> On the Colombian investigations, see “Breaking the Grip? Obstacles to Justice for Paramilitary Mafias in Colombia”, Human Rights Watch, October 2008, pp. 87-125.

<sup>34</sup> Crisis Group interview, Lorena Escobar, Guatemala City, 21 July 2015. Escobar coordinates the Department of Legal Studies at the Association for Research and Social Studies (ASIES).

<sup>35</sup> Crisis Group interview, Juan Pablo Ríos, Guatemala City, 31 July 2015.

<sup>36</sup> Crisis Group interview, Iván Velásquez, Commissioner, CICIG, Guatemala City, 11 November 2015.

<sup>37</sup> Marguerite Cawley, “Bishop’s killer ran bribery ring in Guatemala”, InSight Crime, 4 September 2014.

<sup>38</sup> Byron Vásquez, “Testigos acusan a red Mendoza pese a temor”, *Prensa Libre*, 5 February 2015. “Informe de la [CICIG] con ocasión de su octavo año de labores”, 13 November 2015, pp. 44-45.

<sup>39</sup> “Informe de la [CICIG] con ocasión de su octavo año de labores”, op. cit., pp. 16-46.

### III. Scandal and Protest

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#### A. “La Línea”

On 16 April 2015, CICIG and the MP revealed that they were investigating a network of senior officials who had allegedly conspired to defraud the state of customs revenues. Early that morning 21 suspects were arrested, including the current and former heads of the superintendency of tax administration (SAT). Juan Carlos Monzón, private secretary to Vice President Roxana Baldetti, was accused of orchestrating the fraud; he was abroad when the arrests were announced and remained a fugitive for almost six months.<sup>40</sup> CICIG and the special prosecutor’s office had been investigating for more than eight months, collecting massive evidence, including financial records, some 66,000 intercepted telephone conversations and more than 6,000 electronic messages.<sup>41</sup> Other CICIG-trained offices also took part: the special methods of the investigation unit did wiretaps and the criminal analysis unit worked with CICIG’s foreign experts to process evidence, including analysis of financial documents. This gave prosecutors physical and scientific evidence, a break with practices that had relied largely on witness testimony or confessions.<sup>42</sup>

The inquiry had started nearly a year earlier, when investigators began to suspect that a group of importers was conspiring with customs agents to secure illegal discounts on duties. Prosecutors dubbed the case “La Línea” for the phone line used to negotiate illegal benefits and kickbacks.<sup>43</sup> According to prosecutors, conspirators manipulated shifts so that agents participating in the fraud were in certain ports or border crossings at specific times. Customs supervisors used a parallel tax table to determine the duties owed by their “clients” after fraudulent verification of their containers’ contents. CICIG maintained, moreover, that the plot extended beyond the SAT, that other officials instructed customs agents how to deploy personnel, apply fake duties and collect bribes.

The arrests forced the president, who had opposed extending CICIG’s mandate despite international pressure, to make an about-face.<sup>44</sup> Revelations about possibly massive fraud within the customs agency touched a nerve, uniting civil society groups across the political spectrum. “It’s an issue [about which] no one feels divided into left and right”, said a sociologist. “No one is likely to openly defend the corrupt”.<sup>45</sup> Powerful interests lined up behind CICIG. The Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF, an umbrella body of the main business groups), which had been critical of the commission, joined longtime supporters including the Catholic Church and human rights organisations in calling

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<sup>40</sup> Monzón was with Baldetti in South Korea and did not return, raising questions whether he knew of the impending arrests. José Manuel Patzán, “Baldetti dice que desconoce paradero de su secretario privado”, *Prensa Libre*, 19 April 2015.

<sup>41</sup> “Desmantelan red de defraudación aduanera”, press release, CICIG, 16 April 2015.

<sup>42</sup> Crisis Group interview, Iduvina Hernández, executive director, Seguridad en Democracia, (SEDEM) Guatemala City, 17 July 2015.

<sup>43</sup> See CICIG’s slide show on the case, “Corrupción en el sistema aduanero “la Línea”, (www.cicig.org), 16 April 2015.

<sup>44</sup> Michael Lohmuller, “Mandate Renewed, But CICIG Will Not Save Guatemala”, *Insight Crime*, 23 April 2015.

<sup>45</sup> Crisis Group interview, Luis Mack, researcher/professor, Latin American Faculty of Social Sciences (FLACSO), Guatemala City, 27 May 2015.

for CICIG to stay.<sup>46</sup> A justice-sector panel (previously viewed as likely to oppose or condition any renewal) also issued a favourable report.<sup>47</sup> Two days later, the president said he would ask the UN for a new two-year mandate, beginning in September 2015.<sup>48</sup>

La Línea was a game changer. The case not only assured CICIG's future; it also exposed allegedly historic patterns of corruption. "The structures of customs fraud arrested today", Velásquez said, "have operated since the Moreno network", referring to a conspiracy to defraud customs allegedly directed by ex-military officers in the 1990s.<sup>49</sup> According to CICIG, these networks "moved between the public and private realms, between governmental and entrepreneurial domains, between licit and illicit grounds".<sup>50</sup> The scandal also reached the judiciary. Prosecutors later accused the judge in charge of the case of releasing six suspects from pre-trial detention on bail in exchange for bribes. Powerful defence lawyers working for "law firms of impunity" (*bufetes de la impunidad*), CICIG said, were colluding with judges to subvert justice.<sup>51</sup> Wiretaps detected the allegedly illegal negotiations.<sup>52</sup>

Over the next months, CICIG and the MP continued to uncover apparent administrative, judicial and Congressional corruption. In May, prosecutors announced seventeen arrests linked to a scheme to defraud the national social security institute (IGSS) by awarding, in return for kickbacks, a \$15 million kidney dialysis treatment contract to a firm without adequate experience, possibly contributing to thirteen deaths. The arrested included IGSS board members, such as the president of the central bank and President Pérez Molina's ex-private secretary.<sup>53</sup>

As cases multiplied – including separate investigations involving a prosecutor, judges and lawmakers – citizens began to look forward to "CICIG Thursdays" (#juevesdeCICIG), when the commission was expected to lob another judicial bombshell.<sup>54</sup> A new wave of activists, unburdened by memories of repression and radicalism that had shaped their elders' politics, took their demands to the streets.

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<sup>46</sup> "Importante señal: empresarios guatemaltecos piden continuación de CICIG", *Estrategia y Negocios*, 21 April 2015.

<sup>47</sup> On the panel's decision to recommend an extension, see "Por unanimidad recomiendan ampliar mandato de la Cicig", *Siglo21*, 22 April 2015. On its earlier positions, see Byron Rolando Vásquez, "Instancia buscaría condicionar a Cicig", *Prensa Libre*, 5 April 2015.

<sup>48</sup> Lohmuller, "Mandate Renewed", op. cit.

<sup>49</sup> Named after ringleader Alberto Moreno, the network altered customs forms and even seized containers, returning them only after payment. Susan C. Peacock and Adriana Beltrán, "Hidden Powers in Post-Conflict Guatemala", WOLA, 2003, pp. 29-32; Bill Barreto, "La Línea: una red de corrupción y una crisis política", *Plaza Pública*, 19 April 2015.

<sup>50</sup> "Desmantelan red de defraudación en aduanas", CICIG, Prezi presentation, 16 April 2015.

<sup>51</sup> Julio Juárez, "Espionaje telefónico detecta 'bufetes de la impunidad' tras fianzas otorgadas por jueza a La Línea", *elPeriódico*, 8 May 2015.

<sup>52</sup> "Antejuicio contra jueza Marta Sierra de Stalling y estructura criminal de Bufete de la Impunidad", CICIG, 8 May 2015.

<sup>53</sup> "Capturan a Presidente y Directivos del IGSS por Contrato Irregular", press release, CICIG, 20 May 2015; "Cicig: Funcionarios habrían cometido homicidio culposo", *Siglo21*, 20 May 2015. The drug company said many patients were already terminal, and none died from poor treatment. Nic Wirtz, "Corruption Network in Guatemalan Health System Exposed", *Americas Quarterly*, 22 May 2015.

<sup>54</sup> "Hoy es jueves de Cicig' se populariza en las redes", *Siglo21*, 17 July 2015. "Informe de la [CICIG] con ocasión de su octavo año de labores", op. cit., pp. 20-36, 33, 40-41.

## B. *The Civic Awakening*

The customs case produced indignation and support for CICIG. The magnitude of the fraud – prosecutors said each conspirator may have received up to \$5 million a year – mobilised citizens long infuriated by corruption but powerless to confront it. Activists soon began gathering in the capital’s Constitution Plaza to demand an end to impunity and “punishment for the thieves”.<sup>55</sup> Tweeting #*RenunciaYa!* (Resign now!), they called for a peaceful protest on 25 April.<sup>56</sup> Several thousand people, including students, middle class professionals, indigenous and human rights advocates – demanded that the vice president leave. Her resignation two weeks later, far from deflating the movement, helped fuel weekly Saturday protests. On 16 May, more than 40,000 demanded that the president resign – *Otto te toca* (Otto it’s your turn) – along with other corrupt politicians. By early June, the tag was #*JusticiaYa!*, as demonstrators called for the trial of corrupt politicians, officials and the business people who paid them off. Protests spread to regional capitals, Quetzaltenango, Cobán, Chiquimula, Huehuetenango, Escuintla and others.<sup>57</sup>

The high point came in August, after prosecutors announced they were arresting ex-Vice President Baldetti and petitioning for withdrawal of the president’s immunity.<sup>58</sup> Students and other activists called for a general strike to demand Pérez Molina’s resignation. Breweries and other factories suspended operations; shops and restaurants, including large fast-food chains – from Guatemalan-owned Pollo Campero to international franchises like MacDonalD’s – shut their doors. CACIF urged members to allow employees to attend the demonstrations, reversing its opposition to any disruption of transit or commerce.<sup>59</sup> Tens of thousands came to Constitution Plaza on 27 August, while thousands more gathered in regional capitals, summoned now by the tag #*NoTengoPresidente* (I don’t have a president).<sup>60</sup>

## C. *The New Generation*

For those who lived through military governments and the armed conflict, the peaceful protests were unprecedented. There had been nothing like it “since 1962”, said a security consultant, referring to protests against the then-military government’s electoral fraud, which ended in repression.<sup>61</sup> The 2015 protests were massive, peaceful

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<sup>55</sup> Ibid. Bill Barreto, “El clamor de una manifestación: #RenunciaYa”, *Plaza Pública*, 26 April 2015.

<sup>56</sup> Evelyn Boche, “Así surgió #RenunciaYa”, *elPeriódico*, 9 November 2015.

<sup>57</sup> José Elías, “Miles de personas piden en la calle la renuncia del presidente Otto Pérez”, *El País*, 17 May 2015. A. Rojas, I. de León and A. Barrios A., “Miles de guatemaltecos manifiestan durante más de 18 horas contra corruptos”, *Prensa Libre*, 31 May 2015.

<sup>58</sup> Andrea Orozco, “Pérez Molina y Baldetti los cabecillos de *La Línea*, según MP”, *Prensa Libre*, 21 August 2015; “Capturan a ex Vicepresidenta Ingrid Roxana Baldetti Elías y solicitan antejuicio contra Presidente Otto Fernando Pérez Molina”, press release, CICIG, 21 August 2015.

<sup>59</sup> “Empresas se solidarizan con manifestantes en paro”, *Prensa Libre*, 27 August 2015. Rosa María Bolaños, “Cacif ahora exhorta a las empresas a dar facilidades para ir a manifestar”, *Prensa Libre*, 27 August 2015.

<sup>60</sup> “Guatemala se une en Paro Nacional para exigir renuncia de Otto Pérez”, *Estrategia y Noticias*, 27 August 2015; “En la marcha más grande de su historia, Guatemala grita: #NoTengoPresidente”, *Nomada*, 28 August 2015.

<sup>61</sup> Crisis Group interview, Juan Ramón Ruiz, consultant/justice and security expert, Guatemala City, 18 December 2015. The 1962 protests were against fraudulent elections organised by General Miguel Ydígoras Fuentes, whose brutal repression sent some student organisers into the insurgency. “1962: Exigen renuncia de Ydígoras Fuentes”, *Prensa Libre* photo essay, 19 June 2015.

and non-partisan. Protestors condemned corruption without waving party banners. Perhaps most importantly, the organisers were largely young and unknown. “There was a bit of everything at the plaza”, said a human rights leader, “but the leadership was young. It began with social media and came together naturally”. “Finally the new post-conflict generations are emerging”, said an academic. They don’t share our generation’s fear of speaking out”.<sup>62</sup>

Though the protests took place during an election campaign, “there were no platforms and no microphones for politicians”. Organisers banned masked or hooded protestors, as possible provocateurs. Instead of avoiding police cameras, some youths mugged for them and publicised their participation through social media.<sup>63</sup> Volunteers kept order and collected trash at the end of each rally.

Established but somewhat dormant coalitions joined, demanding that the anti-corruption crusade also address electoral and institutional reform. The Group of Four (G4, representing the Catholic and Evangelical Churches, the human rights ombudsman and San Carlos, the public university) called for a “citizen’s coalition” to push for electoral reforms to address a “crisis of legitimacy”.<sup>64</sup> Business associations voiced support for CICIG and the Supreme Electoral Tribunal (TSE), calling for strict enforcement of electoral rules.<sup>65</sup> On the left, the Social and Popular Assembly, indigenous, peasant farmer and human rights groups, demanded that authorities suspend the vote until reforms guaranteed the participation of native peoples, women and youth.<sup>66</sup> Though the authorities did not postpone the vote, the groups did not disrupt the campaign, which, despite the upheaval, was less violent than those in 2011 and 2007.<sup>67</sup>

On 2 September, Pérez Molina resigned, after Congress withdrew his immunity. Four days later, TV comedian Jimmy Morales eliminated the favourite, Manuel Baldizón, in the presidential election’s first round.<sup>68</sup> The protestors had won their main objective, to oust the president and force him to face trial. Until the general strike, Congress seemed unlikely to desert the president, who sought support from former adversaries in the opposition.<sup>69</sup> The defiance of a broad spectrum of citizens

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<sup>62</sup> Crisis Group interviews, Helen Mack; Miguel Castillo, political science professor, Universidad Francisco Marroquín, both Guatemala City, 16 December 2015.

<sup>63</sup> Crisis Group interviews, Eduardo Stein, former vice president; Miguel Castillo, Universidad Francisco Marroquín, both Guatemala City, 16 December 2015.

<sup>64</sup> Andrea Orozco, “G4 llama a crear coalición ciudadana”, *Prensa Libre*, 16 May 2015. G. Contreras and E. Pitán, “G4 pide reformas electorales antes de las elecciones generales”, *Prensa Libre*, 4 August 2015.

<sup>65</sup> Carmen Quintela, “El CACIF apoya al TSE y le preocupan acciones de Líder”, *elPeriódico*, 18 July 2015.

<sup>66</sup> “Declaración de la Asamblea Social y Popular”, 1 June 2015, available at [www.cuc.org.gt](http://www.cuc.org.gt).

<sup>67</sup> According to Mirador Electoral, an NGO that monitors elections, about twenty people had died in campaign-related violence by mid-October 2015. During the 2011 campaign, more than 30 died and in 2007 nearly 70. See “Escenarios de conflictividad y violencia en la 2da vuelta electoral”, Mirador Electoral, 16 October 2015, p. 9. Grecia Ortiz, “Proceso electoral 2011: 37 asesinatos, 65 personas amenazadas ¿Qué esperar en el 2015?”, *La Hora*, 19 March 2015; “PDH teme que violencia electoral supere 68 muertes de la campaña 2007”, *Emisoras Unidas*, 18 June 2011.

<sup>68</sup> Baldizón, candidate of the Renewed Democratic Liberty Party (Líder), lost to Pérez Molina in 2011. A conservative businessman, he spent heavily to win in 2015. Elizabeth Malkin, “Guatemala comedian wins first round of presidential vote”, *The New York Times*, 7 September 2015.

<sup>69</sup> On the president’s efforts to find allies in Congress, see Juan Andrés Oliva, “Líder y PP, el escudo de Otto Pérez Molina”, *GuateVisión.com*, 27 August 2015; Willverth Girón, “Antejuicios y alianza con PP en el Congreso, causa de la caída de Baldizón”, *Siglo21*, 8 September 2015; “Pérez Molina queda sin inmunidad”, *Prensa Libre*, 1 September 2015.



put the political elite on the defensive; the peaceful nature of the protests helped avert any violent response by security forces. The movement also set a precedent that political leaders are unlikely to forget. “The population has a short fuse” regarding corruption, said a former vice president. “Citizens in general are not going to give the new government six months or even 100 days of grace”.<sup>70</sup>

#### D. *New President, Same System*

Morales defeated former first lady Sandra Torres in the run-off on 25 October, 67 per cent to 33 per cent.<sup>71</sup> It worked to his advantage that he ran as the candidate of a small, relatively unknown party: his better-financed opponents led parties under investigation for violating electoral law.<sup>72</sup> Scandal-weary voters were “searching for a political virgin, and that virgin is Jimmy Morales”, said a commentator.<sup>73</sup> Rather than a vote for a candidate or platform, the election was a rejection of politics as usual. “The vote for Jimmy was anti-Baldizón in the first round and anti-Sandra Torres in the second-round”, said the political scientist.<sup>74</sup>

With Pérez Molina’s resignation and a relative unknown to take office, the reform movement seemed to lose steam. “The elections were the perfect way to oxygenate the system so there could be changes but no real change”, said the consultant.<sup>75</sup> Whether new lawmakers, without the pressure of popular protests, would take up the reform agenda was unclear. Congress was divided into more than a dozen blocs, as the members of defeated parties changed affiliation.<sup>76</sup> The president-elect’s lack of experience or program left some reformers wondering whether they had won the battle to oust a president but lost the struggle for genuine change. Morales’s ties to military veterans of the armed conflict, including opponents of justice for victims, moreover, made human rights defenders uneasy.<sup>77</sup>

Some reformers worry anger at an unpopular president, not institutional change, motivated the movement. The public “is fascinated by images of a president and vice

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<sup>70</sup> Crisis Group interview, Eduardo Stein, Guatemala City, 16 December 2015.

<sup>71</sup> Results from the website of the Supreme Electoral Tribunal: resultados2015.tse.org.

<sup>72</sup> Prosecutors working with CICIG accused Baldizón’s running mate, Edgar Barquín, of laundering nearly \$100 million through a network operating along the eastern border, which he has denied. In separate cases, four members of Congress for the Líder party were accused of illicit enrichment, money laundering and influence peddling. “Cicig señala de lavado de dinero a Édgar Barquín, vicepresidente de Líder”, *Prensa Libre*, 15 July 2015; “Edgar Barquín se declara inocente pero inculpa a su hermano en el caso”, *elPeriódico*, 23 October 2015. Alex Rojas, “Cuatro diputados de Líder señalados por la CICIG”, *Prensa Libre*, 6 July 2015. Prosecutors also accused Gustavo Alejos, President Colom’s ex-private secretary, of illegal fundraising for the National Unity of Hope party (UNE). Alejos, linked by prosecutors to the case in July, was declared a fugitive in October. He turned himself in two months later, denying the charges. Gabriela Lehnhoff, “CICIG señala a Gustavo Alejos por financiamiento ilícito a UNE”, *Contrapoder*, 16 July 2015; Andrea Orozco, “Alejos | ‘Yo fui un beneficio para el IGSS’”, *Prensa Libre*, 28 December 2015

<sup>73</sup> Enrique “Quique” Godoy, an economist and journalist, quoted by Juan Montes, “Comedian wins first round of Guatemalan election”, *Wall Street Journal*, 7 September 2015.

<sup>74</sup> Crisis Group interview, Miguel Castillo, Guatemala City, 15 December 2015.

<sup>75</sup> Crisis Group interview, Juan Ramón Ruiz, Guatemala City, 18 December 2015.

<sup>76</sup> Both Baldizón’s Líder party and ex-President Pérez Molina’s Partido Patriota (Patriot Party) have fractured. As of mid-January, Congress had nineteen political groups. See “El reacomodo de las fuerzas del Congreso”, *elPeriódico*, 14 January 2016. See also Crisis Group blog, Arturo Matute, “Guatemala’s Electoral Dramas”, 5 October 2015.

<sup>77</sup> Crisis Group interview, Helen Mack, Guatemala City, 16 December 2015.

president arrested for corruption”, said an economist and analyst. “Structural changes interest them very little”.<sup>78</sup> United by indignation, protestors are deeply divided on policy. The movement’s “interclass” nature is not necessarily a strength, said a sociologist. “The sectors don’t trust each other”.<sup>79</sup> A largely conservative society’s distrust of government may also hinder action. The economist called the citizen awakening “very questionable”, simply reflecting “antagonism toward the state and taxes”.<sup>80</sup> For the human rights activist, the question was “whether [young activists] recognise the need to organise for political change, which is very different from organising a demonstration”.<sup>81</sup>

Ultimately, however, the protests also seem to show consensus for more accountability. “Society”, as the consultant said, “is more vigilant, more aware, more critical, more willing to protest. The people might not take to the streets in demonstrations as massive, but the candle is still lit”.<sup>82</sup> Guatemalans are unlikely to return to passivity.

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<sup>78</sup> Crisis Group interview, Ricardo Barrientos, Central American Institute for Fiscal Studies (ICEFI), Guatemala City, 17 December 2015.

<sup>79</sup> Crisis Group interview, Luis Mack, researcher/professor (FLACSO), 27 May 2015.

<sup>80</sup> Crisis Group interview, Ricardo Barrientos, Guatemala City, 17 December 2015.

<sup>81</sup> Crisis Group interview, Helen Mack, Guatemala City, 16 December 2015.

<sup>82</sup> Crisis Group interview, Juan Ramón Ruiz, Guatemala City, 18 December 2015.

## IV. Unfinished Agenda

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CICIG begins 2016 from a position of unprecedented strength, at least in terms of popular approval. According to an August 2015 poll, it is Guatemala's most trusted institution, with a positive rating of 66 per cent, slightly above the evangelical protestant and Roman Catholic churches (both 64 per cent), and well above the army (50 per cent). Its prestige outstrips that of police (26 per cent), judges (25 per cent), Congress (12 per cent) and the presidency (11 per cent).<sup>83</sup>

But CICIG cannot fulfil its mandate alone. It depends on other institutions. National prosecutors are in charge of some 30 CICIG court cases, with success depending not only on evidence, but also ability to manoeuvre in a judicial system that does not shield judges from political pressure and gives defence attorneys tools to delay sentencing indefinitely. Moreover, that system, and government institutions generally, face severe budget pressures in a country with one of the hemisphere's lowest tax collection rates. CICIG and its allies must convince Congress to pass adequate budgets and act on legal reforms, some stalled for years. If powerful business interests continue to block fiscal and tax reforms, prosecutors, judges and police will neither enjoy the safeguards to work efficiently and honestly, free from political (or criminal) pressure, nor have the resources they need.

### A. Budget Woes

Both Attorney General Aldana and Commissioner Velásquez have warned that prosecutors need more money. "Resources are fundamental", said Aldana, whose plans to decentralise her institution by adding prosecutors have been frustrated by too few funds. The MP has offices in only 53 of 338 municipalities.<sup>84</sup> Lack of personnel contributes to a huge backlog that has grown since it was some 1.2 million cases when she took office in May 2014. Only about 3 per cent of new cases opened that month had been decided by March 2015.<sup>85</sup> Though the MP's budget has grown, it has received far less than asked. In 2015, Congress approved 60 per cent of the amount requested, though even this may not be distributed. In 2014, the MP did not receive about 27 per cent of the budget approved by Congress.<sup>86</sup> CICIG has proposed a temporary tax to fund prosecutors. The UNE's similar initiative in December 2015 to fund prosecutors with new income taxes on those earning more than about \$80,000 a year failed to receive support.<sup>87</sup>

Guatemala has one of the lowest tax burdens in Latin America: 13 per cent of GDP, compared to a regional average of 21 per cent. It also has one of the lowest social

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<sup>83</sup> "Cicig, institución mejor valorada por guatemaltecos; Presidencia, la peor", *Prensa Libre*, 12 August 2015.

<sup>84</sup> Crisis Group interview, Thelma Aldana, Guatemala City, 29 September 2015. The MP has 34 local and 23 district offices.

<sup>85</sup> These are cases that have been inactive for six years. The MP opened 265,862 investigations between May 2014 and March 2015. Of these only 7,219 have received a verdict. See the first annual report by Aldana, "Memoria Administración mayo 2014-2015", MP, p. 24.

<sup>86</sup> *Ibid.*, p. 177.

<sup>87</sup> Jessica Gramajo "Diputados reacios ante impuesto para justicia", *Prensa Libre*, 24 November, 2015.

spending rates: \$179 per capita in 2013 compared to a regional mean of \$777.<sup>88</sup> The government likewise spends less on public security: \$48 per capita in 2013 compared to an average of \$101 in Central America.<sup>89</sup>

Business leaders have fiercely opposed new taxes, arguing that the government must first tackle inefficiency and corruption, but there are some signs their opposition may be softening. Instead of rejecting new taxes outright, CACIF has proposed that revenues be discussed as part of a national security and justice plan.<sup>90</sup> Some individual leaders have directly addressed the need for more government funding. “It is true there is corruption”, wrote the vice president of an influential private foundation, “but it seems we have forgotten that the institutions that should combat it (the MP and courts) cannot carry out their jobs without resources”. “You want a first-class country while paying third-class taxes”, Alvaro Arzú, a conservative ex-president, now mayor of Guatemala City, told a business forum. “It can’t be done”.<sup>91</sup>

## B. Pending Legislation

Without the passage of key reforms in 2010 – such as laws authorising wiretaps, providing witness protection and creating high-risk courts – CICIG and the MP would not have been able to investigate and prosecute corruption in 2015. But their legislative agenda has been largely stalled since. More reforms are needed to fight corruption in the political system, make prosecutors and judges more independent, limit public officials’ immunity and expedite criminal proceedings.

### 1. Electoral reform

Per capita income is among the hemisphere’s lowest, but campaign spending per capita is among the highest.<sup>92</sup> Long, costly, poorly regulated campaigns render elected leaders vulnerable to manipulation by private, including illegal, interests. A 2015 CICIG report estimated that candidates raise most funds illegally via networks created to get influence and favours, like public contracts.<sup>93</sup> Laws regulating parties are loose, making them easy to form and leave: lawmakers and other elected officials change them opportunistically (*transfugismo*), regardless of constituent interests. Under civil society pressure, Congress has discussed a reform bill based on a TSE proposal to make parties “less like private clubs” by increasing penalties for violating electoral laws, establishing rules for election of party officials, limiting re-election, distributing more free television airtime and raising the number of required affiliates to make forming

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<sup>88</sup> Crisis Group calculations based on data published by the UN Economic Commission for Latin America ([estadisticas.cepal.org](http://estadisticas.cepal.org)). The regional mean is for eighteen Latin American countries in 2009, when the commission last compiled regional statistics.

<sup>89</sup> “Public Security Index for Central America”, RESDAL, 2013, p. 8. This is the average per capita spending on security among the five Central American countries. In the region’s northern triangle, Guatemala spends less than El Salvador (\$70) but more than Honduras (\$33) and Nicaragua (\$18).

<sup>90</sup> Manuel Rodríguez, “Empresarios se oponen a impuesto anticorrupción propuesto por CICIG”, *La Hora*, 11 November 2015; Andrea Orozco and Carlos Álvarez, “Cacif propone un plan de Seguridad y Justicia”, *Prensa Libre*, 26 November 2015.

<sup>91</sup> Salvador Paiz, “¡Cero!”, *el Periódico*, 26 November 2015. He is vice president of the Foundation for the Development of Guatemala (FUNDESA). Juan Manuel Vega, “Arzú: ‘Quieren un país de primera pagando impuestos de tercera’”, [www.soy502.com](http://www.soy502.com), 16 November 2015.

<sup>92</sup> Crisis Group Latin America Briefing N°24, *Guatemala’s Elections: Clean Polls, Dirty Politics*, 16 June 2011, pp. 12-14.

<sup>93</sup> “Informe: El financiamiento de la política en Guatemala”, CICIG, 16 July 2015, p. 105.

parties tougher. It fails to address certain issues, such as *transfugismo*, but would make elections more transparent and officials less vulnerable to influence peddling and other fraud.<sup>94</sup>

## 2. Reform of the Judiciary and the Public Ministry

The working group set up in May 2015 to discuss judicial reforms – presided over by CICIG and the representative of the UN High Commissioner for Human Rights (UNHCHR) and including representatives of the Supreme Court and the judges, among others – reached consensus on the need to fortify judicial independence but failed to send a common proposal to Congress.<sup>95</sup> At issue is how to improve the process for selecting judges and enhance judicial independence. The Supreme Court (which holds both administrative and judicial functions) chooses trial judges and justices of the peace in competitions criticised as opaque. Selection Commissions, whose deliberations are subject to intense lobbying by private interests, nominate judges for appellate courts. All judges serve renewable five-year terms, which means they have little security of tenure.<sup>96</sup>

The term length and selection process can only be changed by constitutional amendment, which requires approval by two thirds of Congress and a plebiscite.<sup>97</sup> Selection, however, could become more transparent by requiring the commissions to use more objective criteria and opening up their deliberations. Congress is also considering modifying the judicial career law, to promote fairness in recruiting and promotion, and strengthening internal disciplinary mechanisms.<sup>98</sup>

The MP's organic law needs reform to regulate careers and strengthen prosecutorial independence. The attorney general serves a four-year term and can only be removed by the president for "good cause", such as negligence, corruption or other crimes. Yet, none of the eleven attorneys general appointed since establishment of the ministry in 1994 has completed a full term.<sup>99</sup> The working group suggested measures that would limit the president's authority to oust the attorney general and strengthen the independence of prosecutors by establishing clear criteria for recruit-

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<sup>94</sup> Before Congress can pass the electoral reform law, however, the proposed text needs to be reviewed by the Constitutional Court. Crisis Group interview, Juan Ramón Ruiz, consultant, 16 December 2015. See also "Ley N°4974, un proceso accidentado", *Perspectiva*, 7 October 2015.

<sup>95</sup> Crisis Group interview, Lorena Escobar, ASIES, Guatemala City, 21 July 2015. Escobar said the Supreme Court sent its own text, without consulting other members. Its main difference with other members is whether the Supreme Court should combine judicial with administrative functions, such as appointing and managing lower court judges. The working group favoured taking these duties from the Supreme Court. See also, "Propuestas a la ley de la Carrera Judicial: Mesa Técnica no fue llamada a presentar resultados", press release, CICIG, 2 July 2015.

<sup>96</sup> The candidates nominated by the commissions must then be approved by Congress. For more on the process, see Crisis Group Latin America Report N°50, *Justice on Trial: The Ríos Montt Case*, 23 September 2013, pp. 16-18; and, "Annual report of the [UNHCHR]: Report on the activities of his office in Guatemala", UNHCHR, 12 January 2015, pp. 18-22.

<sup>97</sup> Constitution, Article 280. The constitution was approved in 1985 and amended in 1993.

<sup>98</sup> Crisis Group interview, Lorena Escobar, ASIES, Guatemala City, 21 July 2015. "Propuestas a la ley de la carrera judicial", press release, CICIG, 2 July 2015.

<sup>99</sup> "Prosecutorial Reform Index for Guatemala", American Bar Association (ABA), May 2012, p. 42. A Constitutional Court decision in May 2013 cut short the term of Claudia Paz y Paz, appointed by President Colom in December 2011. Her name was not included among the finalists sent by the nominating commission to the president, though she had the second highest score among the candidates. "Annual report", UNHCHR, op. cit., p. 7.

ment, evaluation and promotion. It is likewise pushing to amend laws regulating political immunity and “*amparos*” (petitions for constitutional protection).<sup>100</sup> Both mechanisms are needed to protect fundamental political and civil rights but can be abused by suspects to avoid prosecution. Proposed reforms would expedite legal procedures for lifting immunity and make proceedings more transparent. The filing of frivolous *amparo* petitions by defence attorneys to delay or derail judicial proceedings would be liable to fines or disbarment.<sup>101</sup>

### C. *Institution Building*

CICIG’s most important achievement, according to Velásquez, is its impact on attitudes, inside and outside government. “If there was just confidence in CICIG, that would be negative”, he said. “What is important is that society now has confidence in the MP and in its own justice system. The public knows that impunity is not inevitable”. Prosecutors also have a new mindset. Before they would not touch certain investigations, not for lack of will or expertise, but because they knew the cases would never go to trial. “CICIG has given prosecutors confidence that if they do their work well, they will be able to bring their results before a judge”.<sup>102</sup> This was on display in early January, when the MP ordered the arrest of fourteen military veterans for war crimes and petitioned to lift the immunity of a new Congressman, who co-founded the president’s party, on the same charges.<sup>103</sup> This demonstrated that prosecutors working independently of CICIG are ready to take on a politically sensitive case involving some of the president’s closest allies

Whether most prosecutors, including those outside the capital, share this new mentality is not yet clear. The MP has specialised agencies, created or strengthened with CICIG support, that investigate complex cases such as extortion and human trafficking based on material evidence.<sup>104</sup> But its resources are stretched thin, especially outside major cities. CICIG collaboration with prosecutors involved in less emblematic cases has been limited. The prosecutor in charge of the recently created office on human trafficking said, “our agents have received training ... but not in a formal, systematic way. CICIG could help us build that expertise”.<sup>105</sup> Prosecutors also need to develop their courtroom skills. According to a former prosecutor, the MP lacks skilled litigators trained in oral argument, which means defence lawyers often outmanoeuvre them in the courtroom. Because judges are not trained (or objective enough) to understand complex investigations, some complicated cases may end with “miniscule” sentences despite a wealth of evidence.<sup>106</sup>

Even more serious is the lack of professional investigative police. Legislation was passed in 2012 to create a new directorate general of criminal investigation (DIGICRI),

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<sup>100</sup> “Propuestas de reformas a ley de antejuicio y ley de amparo”, press release, CICIG, 14 October 2015.

<sup>101</sup> For more on *amparo* petitions in “malicious litigation”, see Crisis Group Report, *Justice on Trial*, op. cit., pp. 14-15.

<sup>102</sup> Crisis Group interview, Iván Velásquez, Guatemala City, 11 November 2015.

<sup>103</sup> “Ex-Guatemalan officials arrested over civil war killings and abuses”, *The Guardian*, 6 January 2016.

<sup>104</sup> Crisis Group interview, Thelma Aldana, Guatemala City, 29 September 2015.

<sup>105</sup> Crisis Group interview, Alexander Colop, prosecutor, Guatemala City, 5 November 2015.

<sup>106</sup> Criminal procedure changed from an inquisitorial to an adversarial or accusatory system with oral arguments in 1994. See “Prosecutorial Reform Index”, op. cit., p. 7. Crisis Group interview, Juan Pablo Ríos, government ministry adviser, Guatemala City, 31 July 2015.

which was to operate under the government ministry, though separate from the National Civilian Police (PNC). It never received funding for more than a few employees, however, and now exists only on paper.<sup>107</sup> Meanwhile, the PNC's own investigative division needs training to deal with complex cases, especially white-collar crime.

Security sector reform, a condition of the 1996 peace agreements, remains unfinished business. Strengthening the civilian police is especially urgent.<sup>108</sup> The Pérez Molina government set up three academies in the interior, increasing the force from about 24,000 in 2011 to 37,000 in 2015.<sup>109</sup> Critics point out, however, that conditions and instruction at the academies are poor. To churn out agents quicker, basic training was reduced from a year to six months.<sup>110</sup> President Morales has said he plans to dismantle the National Police Reform Commission, citing lack of results, but he has not proposed a new strategy for overhauling the civilian forces on the front lines of the struggle against gangs and other violent criminals.<sup>111</sup>

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<sup>107</sup> "La Digicri, el proyecto que no convence a la Fiscal General", *elPeriódico*, 21 December 2015. The attorney general prefers to build an investigative police force under the MP, not the government ministry, which is more vulnerable to political pressure. Crisis Group interviews, DIGICRI official, 23 June 2015; Thelma Aldana, 29 September 2015; both in Guatemala City.

<sup>108</sup> See Crisis Group Latin America Report N°43, *Police Reform in Guatemala: Obstacles and Opportunities*, 20 July 2012.

<sup>109</sup> "Informe Final y Rendición de Cuentas de la Reforma Policial", Comisión de Reforma Policial, December 2015.

<sup>110</sup> Crisis Group interview, security sector expert, Guatemala City, 7 January 2016. On advances and obstacles to security and justice sector reform, see "Un Camino para la Justicia, estudio sobre los mecanismos, costos y desafíos para luchar contra la impunidad en Guatemala, 2014-2023", ICEFI/UNICEF, Guatemala, March 2014.

<sup>111</sup> Cindy Espina, "Morales se plantea poner alto a la Reforma Policial", *elPeriódico*, 21 December 2015. The police reform commission was established under President Colom to propose strategies for strengthening the force, but in recent years has done little to promote change. Mariela Castañón "Cien: Reforma Policial ejecuta fondos y no plantea propuestas", *La Hora*, 23 September 2014.

## V. Conclusion

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Few could have predicted the dramatic changes that upended politics in 2015. Most remarkably, the upheaval was contained within rule of law, without reigniting the bloody cycles of rebellion and repression that have characterised much Guatemalan history. The agents of change were neither soldiers nor revolutionaries but national and international prosecutors, working together through the unique CICIG experiment and bolstered by peaceful demonstrators from across the political, economic and social spectrum. Whether the shakeup will result in sustainable reform is uncertain. The hard work of building domestic institutions capable of combatting impunity without international help remains unfinished.

Though its ultimate success is unclear, the CICIG model could offer hope to other countries where corrupt, abusive public officials undermine fragile institutions from within. The Organization of American States in January 2016 signed an agreement to create a similar entity in Honduras, which is convulsed by protests over alleged corruption. Like CICIG, it is authorised to oversee and collaborate with investigators, prosecutors and judges handling corruption cases and to propose initiatives to strengthen justice system reforms and guarantee government accountability and transparency.<sup>112</sup>

Accepting international help is the easy part. President Morales to his credit has promised to extend CICIG's mandate beyond its current September 2017 end. He should also promise that his government will use the extra time to pass and implement the reforms that will enable Guatemalan institutions to combat impunity on their own. The international community, especially the U.S., has both the responsibility and interest to help build institutions capable of combating powerful criminals, including those who traffic illegal drugs abroad. Donors cannot bankroll the commission's mandate indefinitely, however. They must work with the president to make sure CICIG is not a crutch, but a catalyst for genuine change.

**Guatemala City/Bogotá/Brussels, 29 January 2016**

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<sup>112</sup> "OAS to establish anti-corruption body in Honduras", Reuters, 28 September 2015. "Agreement between ... Honduras and the General Secretariat of the [OAS] for the establishment of the Mission to Support the Fight against Corruption and Impunity in Honduras", Washington, D.C., 19 January 2016.



Appendix A: Map of Guatemala



## Appendix B: Glossary of Terms

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CACIF	The Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (Comité Coordinador de Asociaciones Agrícolas, Comerciales y Financieras).
CIACS	Illegal Security Forces and Clandestine Security Organisations (Cuerpos Ilegales y Aparatos Clandestinos de Seguridad).
CICIG	International Commission Against Impunity in Guatemala (Comisión Internacional Contra la Impunidad en Guatemala).
DIGICRI	General Directorate for Criminal Investigation (Dirección General de Investigación Criminal).
FECI	Special Prosecutorial Office Against Impunity (Fiscalía Especial Contra la Impunidad), formerly UEFAC (see below).
IGSS	National Social Security Institute of Guatemala (Instituto Guatemalteco de Seguridad Social).
Líder	Renewed Democratic Liberty (Libertad Democrática Renovada) political party, whose founder and 2015 presidential candidate was Manuel Baldizón.
MP	Public Ministry (Ministerio Público), the public prosecutor's office.
RPEI	Illicit Political-Economic Networks (Redes Político-Económicas Ilícitas).
SAT	Superintendency of Tax Administration (Superintendencia de Administración Tributaria).
TSE	Supreme Electoral Tribunal (Tribunal Supremo Electoral).
UEFAC	Special Prosecutor's Office in Support of CICIG (Unidad Especial de la Fiscalía de Apoyo a la CICIG) and predecessor of FECI.
UNE	National Unity of Hope (Unidad Nacional de la Esperanza) political party, which ran former First Lady Sandra Torres as its presidential candidate in 2015.

### Appendix C: Timeline of 2015 Political Earthquake

#	Date	Event
1	12 December 2006	CICIG creation agreement signed in New York by the Guatemalan government and UN.
2	1 August 2007	Guatemalan Congress ratifies CICIG agreement.
3	14 September 2007	Spanish judge Carlos Castresana appointed as CICIG's first Commissioner by UN Secretary-General.
4	15 April 2009	UN Secretary-General confirms extension of CICIG for two years, until September 2011.
5	7 June 2010	Castresana resigns as CICIG Commissioner accusing government of not honouring its promises of support.
6	30 June 2010	Costa Rican Attorney General Francisco Dall'Anese Ruiz appointed CICIG Commissioner by UN Secretary-General.
7	13 January 2011	UN Secretary-General confirms extension of CICIG for two years until September 2013.
8	28 May 2013	CICIG announces Dall'Anese's decision to leave in September.
9	31 August 2013	Iván Velásquez, former investigating magistrate on Colombia's Supreme Court, is appointed new CICIG Commissioner.
10	3 September 2014	Arrest of national prison director and other officials accused of accepting bribes from an inmate-run criminal syndicate.
11	20 November 2014	Arrest of Haroldo Mendoza and nine other alleged members of a drug trafficking clan accused of homicides, disappearances, land theft and other crimes in eastern Guatemala.
12	16 April 2015	"La Línea" scandal breaks with capture of 21 suspects, including the current and former heads of the tax agency. The vice president's private secretary is accused of coordinating the kickback scheme.
13	23 April 2015	President Otto Pérez Molina announces he will ask the UN to extend CICIG's mandate another two years.
14	25 April 2015	Thousands demonstrate in Guatemala City's central plaza demanding the vice president's resignation and expressing outrage over corruption.
15	5 May 2015	Supreme Court green-lights prosecutors' request to lift Vice President Roxana Baldetti's immunity, sending the petition to Congress for approval.
16	8 May 2015	Baldetti resigns. A judge orders her not to leave the country.
17	8 May 2015	Prosecutors ask Supreme Court to withdraw Judge Marta Sierra de Stalling's immunity, saying she released "La Línea" suspects on bail in exchange for bribes arranged through their lawyers.
18	14 May 2015	Alejandro Maldonado, a former Constitutional Court judge, is sworn in as vice president by Congress, which chose him from three candidates proposed by President Pérez Molina.
19	16 May 2015	At least 30,000 demonstrate against corruption in the capital. Other cities join the protests.

20	20 May 2015	The national social security institute (IGSS) president and board members, including the central bank head, are arrested for bribery and influence peddling. The accused allegedly charged illegal commissions for a contract to provide dialysis services.
21	10 June 2015	The Supreme Court approves a petition by an opposition congressman to lift President Pérez Molina's immunity. A few days later Congress names a committee to review accusations against him.
22	25 June 2015	Prosecutors ask the courts to lift the immunity of ruling party Congressman (and ex-president of Congress) Pedro Muadi for alleged participation in a scheme to embezzle funds by hiring "ghost" employees.
23	26 June 2015	The president's lawyers petition the Constitutional Court to overturn the Supreme Court's immunity decision. It rejects the petition three days later.
24	16 July 2015	CICIG's political campaign financing report alleges that candidates and parties raise most of their funds illegally.
25	13 August 2015	Congress rejects the congressional committee's recommendation to withdraw the president's immunity, 88-26 (44 absent). A minimum of 105 votes (two-thirds) was required.
26	21 August 2015	Ex-Vice President Baldetti arrested on corruption charges. Prosecutors ask courts to approve withdrawal of the president's immunity. Attorney General Thelma Aldana says intercepted phone calls and other evidence point to his involvement in the tax fraud scheme. Private sector leaders call for him to resign.
27	25 August 2015	The Supreme Court approves public prosecutors' petition to withdraw the president's immunity. Congress appoints a committee to consider the issue. Pérez Molina says he will remain in office and fight charges against him.
28	27 August 2015	Businesses shut their doors during a general strike to demand the president's resignation. Tens of thousands of protestors rally peacefully in the capital and other cities.
29	1 September 2015	Congress strips the president of immunity, 132-0 (26 absent).
30	2 September 2015	Prosecutors issue a warrant for the president's arrest. He notifies Congress of his resignation, saying he plans "to face justice and resolve my personal situation".
31	3 September 2015	Pérez Molina is taken into custody after a court hearing. Vice President Maldonado is sworn in as interim president.
32	6 September 2015	The first round of general elections takes place in relative calm. Jimmy Morales, a TV comedian, finishes first, followed by former first-lady Sandra Torres. Manuel Baldizón, former front-runner, is eliminated. Voters also choose 158 Congressional deputies plus mayors and council members in 338 municipalities.
33	25 October 2015	Morales wins the second-round presidential vote in a landslide, 67 to 33 per cent.
34	14 January 2016	Morales takes office as president and a new legislative period begins. No party has a majority in Congress, which is divided into more than a dozen groups.

## Appendix D: About the International Crisis Group

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Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

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**January 2016**

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*Governing Haiti: Time for National Consensus*, Latin America and Caribbean Report N°46, 4 February 2013 (also available in French).

*Totonicapán: Tension in Guatemala's Indigenous Hinterland*, Latin America Report N°47, 6 February 2013 (also available in Spanish).

*Peña Nieto's Challenge: Criminal Cartels and Rule of Law in Mexico*, Latin America Report N°48, 19 March 2013 (also available in Spanish).

*Venezuela: A House Divided*, Latin America Briefing N°28, 16 May 2013 (also available in Spanish).

*Justice at the Barrel of a Gun: Vigilante Militias in Mexico*, Latin America Briefing N°29, 28 May 2013 (also available in Spanish).

*Transitional Justice and Colombia's Peace Talks*: Latin America Report N°49, 29 August 2013 (also available in Spanish).

*Justice on Trial in Guatemala: The Ríos Montt Case*: Latin America Report N°50, 23 September 2013 (also available in Spanish).

*Left in the Cold? The ELN and Colombia's Peace Talks*, Latin America Report N°51, 26 February 2014 (also available in Spanish).

*Venezuela: Tipping Point*, Latin America Briefing N°30, 21 May 2014 (also available in Spanish).

*Corridor of Violence: The Guatemala-Honduras Border*, Latin America Report N°52, 4 June 2014 (also available in Spanish).

*Venezuela: Dangerous Inertia*, Latin America Briefing N°31, 23 September 2014 (also available in Spanish).

*The Day after Tomorrow: Colombia's FARC and the End of the Conflict*, Latin America Report N°53, 11 December 2014 (also available in Spanish).

*Back from the Brink: Saving Ciudad Juárez*, Latin America Report N°54, 25 February 2015 (also available in Spanish).

*On Thinner Ice: The Final Phase of Colombia's Peace Talks*, Latin America Briefing N°32, 2 July 2015 (also available in Spanish).

*Venezuela: Unnatural Disaster*, Latin America Briefing N°33, 30 July 2015 (also available in Spanish).

*Disappeared: Justice Denied in Mexico's Guerrero State*, Latin America Report N°55, 23 October 2015 (also available in Spanish).

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