

Weak Judicial Systems and Migration in the Northern Triangle

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Smoke and flames billowed out of the windows of the Guatemalan Congressional building on November 21, 2020, as Guatemalans protested against the government. The protests were over a hastily and sneakily passed budget that cut funding for education, health care, anti-hunger initiatives, and the judiciary, but also spoke to larger, structural issues such as corruption, weak rule of law and institutions, and poor governance. Among the issues provoking demonstration: the country's weak judicial system, whose budget had just been slashed.

The countries of Central America's Northern Triangle—Guatemala, Honduras, and El Salvador—are plagued by many issues that have created a hostile environment and fostered underdevelopment, driving migrants north to the United States. Above all, the region's weak judicial systems and rule of law pose the greatest challenge. Underfunded, undertrained, and understaffed, the Northern Triangle's judicial systems are not properly equipped to respond to the insecurity, corruption, and economic obstacles preventing the region from achieving prosperity. Their lack of transparency and independence similarly hinders efforts to develop the region. These failures contribute to a vicious cycle that desperately needs to be stopped. Earnest investment in the judicial system will be necessary to expand reach and access to courts, while further autonomy and transparency must be achieved in order to create space for the judicial system to function properly without impediment. The United States can primarily help through conditional aid and technical assistance, but maintaining an active voice and presence in the region in support of good policy will similarly be important. Strengthening the judicial systems of the region, if successful, should in turn strengthen the fabrics of society and reduce push factors for migrants. In the long-term, the United States must adapt its migration system to increase access to economic migration

and bolster the asylum system to respond more equitably and inclusively for Central Americans. Decisive action must be taken for the betterment of the region and all those pushed to migrate to the United States.

The Northern Triangle's Weak Judicial Systems

The single greatest challenge facing the Northern Triangle is the region's weak judicial systems and rule of law. Impunity reigns supreme in the region, from small-scale extortion to government corruption to homicide; all three Northern Triangle countries ranked in the bottom third of the Latin American and Caribbean region in the World Justice Project's Rule of Law Index for 2020. All three countries are additionally below the region's average for the Index's Due Process of Law indicator, and are among the region's worst for the Criminal Justice indicator. While El Salvador is close to the regional average for the Civil Justice indicator, Honduras and Guatemala are among the region's worst.¹ The Northern Triangle's judicial systems are systemically weak, and unable to appropriately respond to the violent and impoverished contexts of the region that incite northbound migration.

Furthermore, the Northern Triangle struggles with a lack of transparency. Each of the three countries rank around or below the Latin American and Caribbean average for the Open Government indicator of the Rule of Law Index, with Honduras placing 27th out of 30.² Researchers at the Washington Office on Latin America have reported difficulty in accessing official information and data from all three countries for the construction of the organization's Central America Monitor.³ Faltering transparency thus represents an obstacle to holding systems accountable and producing research aimed at improving them.

¹ "World Justice Project Rule of Law Index 2020," World Justice Project, 2020.

² Ibid.

³ "Central America Monitor: Evaluating Progress," Washington Office on Latin America.

The region's judicial systems fail most blatantly in their underinvestment and lack of reach. The countries of the Northern Triangle are among the world's most violent and homicidal, but their judicial systems are not equipped to respond to this issue. Globally, nations average 17 judges per 100,000 inhabitants—in 2017, Guatemala, Honduras, and El Salvador recorded 6, 8, and 9 judges per 100,000, respectively. The region additionally suffers from a dearth of prosecutors and public defenders, as well as burdensome and inefficient caseloads.⁴ Budgets play a large factor in this: judicial institutions do not receive proper funding. In Guatemala, for example, Congress halved the budget requested by the Institute of Criminal Public Defense in 2017.⁵ In Honduras, the constitutional requirement for 3% of the national budget to be dedicated to the Judiciary is not met, and funding increases are disproportionately allocated to defense and policing.⁶ Although the various facets of El Salvador's judicial system receive slightly more robust funding than their counterparts in Honduras and Guatemala, personnel remain overburdened and distributed poorly. Critically, a very limited and insufficient proportion of personnel are dedicated exclusively to criminal matters, with far too many roles geared towards administrative work.⁷ There is an inefficiency and lack of quality in the judicial system's staffing across the board. Moreover, poor distribution of personnel is particularly impactful for those in rural areas—a common theme across the region. Rule of law and strong judicial systems are not prioritized in the Northern Triangle, and inequities are even more pronounced away from the region's urban centers.

⁴ "Guatemala's Justice System," Washington Office on Latin America and Fundación Myrna Mack, June 2019; "Honduras' Justice System," Washington Office on Latin America, Universidad Nacional Autónoma de Honduras, and Instituto Universitario en Democracia, Paz y Seguridad, September 2019; "El Salvador's Justice System," Washington Office on Latin America and University Institute for Public Opinion, August 2019.

⁵ "Guatemala's Justice System."

⁶ "Honduras' Justice System."

⁷ "El Salvador's Justice System."

The International Commission against Impunity in Guatemala (CICIG) once represented a beacon of hope for the region, with the UN-backed institution providing invaluable assistance to the Guatemalan Attorney General's Office, and driving a path forward for robust anti-corruption and anti-impunity initiatives that even took down former president Otto Pérez Molina. The Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH), a similar program with support from the OAS, also showed reason for positivity. Both efforts, however, were recently dismantled by political elites and the countries' presidents. Following CICIG's shutdown by his predecessor, President Alejandro Giammattei has introduced a new Presidential Commission Against Corruption, but it has received criticism for a lack of independence and been labeled by some as a "smokescreen."⁸ MACCIH, meanwhile, has not been replaced, and the future looks dim in Honduras. Many of the same politicians that sought to shut down the initiative had been investigated by the Attorney General's Office with MACCIH's assistance.⁹ In El Salvador, President Nayib Bukele introduced his own commission, the International Commission Against Impunity in El Salvador (CICIES), but it has been widely criticized as insufficient and weak. The Due Process of Law Foundation notes that CICIES serves "as an extension of the executive branch" with little independence; it also suffers from a lack of transparency and oversight, and has not been constructed with input from civil society, which had been a key strength of both CICIG and MACCIH.¹⁰ CICIES thus far seems to have been created more for show and for the personal, political gain of Bukele than for any structural, effective change.

The Impact of Weak Judicial Systems

⁸ Zachary Goodwin and Héctor Silva Ávalos, "Guatemala's New Anti-Corruption Body: a Mere Smokescreen?" InSight Crime, July 21, 2020.

⁹ Héctor Silva Ávalos and Seth Robbins, "A Death Foretold: MACCIH Shuts Down in Honduras," InSight Crime, January 22, 2020.

¹⁰ "From hope to skepticism: The International Commission Against Impunity in El Salvador (CICIES)," Due Process of Law Foundation, April 1, 2020.

The Northern Triangle’s weak judicial systems and rule of law have serious implications for security. Impunity is endemic: 95% of homicides are left unsolved in the region,¹¹ and Honduras has the second-highest level of impunity in the world according to Universidad de las Américas Puebla’s Global Scale of Impunity for 2020.¹² The lack of personnel and funding for the region’s judicial systems causes an inability to dispense justice, and produces little accountability. When criminal deeds go unpunished, there is scant incentive to avoid criminality, thus contributing to a pervasive culture of violence and impunity in which brutal gang violence, extortion, sexual violence, homicide, and more are normalized. In addition, it causes massive backlogs of cases, with several thousand people in prison awaiting trial in each of the countries. In El Salvador, pre-trial detention makes up almost a quarter of the total prison population; in Honduras and Guatemala, it makes up roughly half.¹³ Gangs commonly use prisons as a hotspot for recruiting, increasing their numbers by offering protection to inmates. As a result, the slow-moving, underfunded legal system helps gangs prosper and grow in the region. The weak judicial systems of the Northern Triangle struggle to dish out justice, and further mire the region in violence and insecurity. When violence goes unpunished, people see migration as their only option for safety.

The region’s economies, too, suffer grave consequences due to weak judicial systems. The countries of the Northern Triangle already suffer from underdevelopment and high youth unemployment, pushing many to migrate north, and weak judicial systems exacerbate these issues. Weak institutions, impunity, and corruption—which creates added business expenses—deter investors, preventing an amicable investment climate. This, in turn, reduces economic growth and

¹¹ Suchit Chavez and Jessica Avalos, “The Northern Triangle: The Countries That Don’t Cry for Their Dead,” InSight Crime, April 23, 2014.

¹² “Escalas de impunidad en el mundo. Índice Global de Impunidad 2020,” Fundación Universidad de las Américas, Puebla, August 2020.

¹³ “El Salvador: World Prison Brief data,” World Prison Brief; “Honduras: World Prison Brief data,” World Prison Brief; “Guatemala: World Prison Brief data,” World Prison Brief.

job opportunities, which are key push factors for migration. In fact, all three countries rank in the bottom half globally of the World Bank’s Ease of Doing Business Index, and in the bottom third for the Enforcing Contracts indicator—Guatemala ranks an abysmal 176th out of 190 in the category.¹⁴ The region’s weak judicial systems and frameworks are obstacles to economic development opportunities and disincentivize investment. Impunity for corruption comes at a high cost fiscally: in Honduras, corruption is estimated to have cost almost 13% of the country’s GDP in 2018, with the price rising steadily as a percentage of GDP for at least five years straight.¹⁵ And lack of enforcement on taxes has resulted in criminally low tax revenues. The Northern Triangle countries raised an average of 13.6% of their GDPs in taxes in 2015, whereas Latin America’s seven largest economies raised an average 24.4%.¹⁶ Low tax revenue diminishes much-needed funds for social services and economic programs, showing that weak judicial systems have wide-ranging effects that inhibit economic development and make life more difficult for potential migrants.

Moreover, the lack of strong judicial systems allows corruption to thrive in the region: elites are free to do as they wish, and there is minimal confidence in institutions and the state. A recent poll by the Atlantic Council found that three out of four poll participants in the region believed judges could be paid off, with less than 30% reporting trusting judges and prosecutors.¹⁷ While data suggests Guatemala saw significant increases in public trust of the Justice System amid CICIG’s successes,¹⁸ the commission’s poorly-received end does not bode well for continued trust,

¹⁴ “Ease of Doing Business in El Salvador,” World Bank; “Ease of Doing Business in Honduras,” World Bank; “Ease of Doing Business in Guatemala,” World Bank.

¹⁵ Gabriela Castellanos, et al. “Estudio: la estimación del impacto macroeconómico de la corrupción en Honduras,” Consejo Nacional Anticorrupción, 2020.

¹⁶ Richard Lapper, “Central America Is As Violent As Ever. What Would it Take to Change?” *America’s Quarterly*, April 11, 2016.

¹⁷ John Negroponte, et al. “Building a Better Future: A Blueprint for Central America’s Northern Triangle,” Atlantic Council, May 2017.

¹⁸ “Guatemala’s Justice System.”

and the region's current anti-corruption initiatives do not inspire confidence. Mistrust of the state is rampant across the Northern Triangle, which gives license to illicit actors and flashes warning signals to firms and entrepreneurs. This further feeds into the insecurity and economic issues pushing migration, and ensures a vicious cycle of underdevelopment, violence, and weak state presence that is difficult to break.

Without a strong judicial system and rule of law, efforts to combat economic underdevelopment will struggle, with investors shying away from possible ventures, and corruption limiting sustainable growth. Efforts to combat insecurity, too, will falter, as the institutional infrastructure will not exist to effectively reduce violence and bring about justice. Without strengthening the judicial system first, efforts to broach other issues will be hindered. Weak judicial systems create profound effects on widespread insecurity and underdevelopment, thus driving migrants north to the United States. This challenge must be addressed in order to improve societies in the Northern Triangle.

Policy Recommendations for Northern Triangle Countries

For substantial, durable transformation to occur in the Northern Triangle, the Northern Triangle itself must lead the charge. To strengthen the region's judicial systems, the governments must grant them adequate independence and authority, modeled after the successes of CICIG, yet adjusted in consideration of its failures. Expanded transparency and committed, effective investment in the judicial system are likewise needed.

Grant Independence and Authority to Judicial Systems

Large emphasis should be placed on granting autonomy to judicial institutions and attorneys general, and seeking to replicate the successes of CICIG. CICIG's existence coincided with a period of substantial, positive change for Guatemala, with impunity, corruption, and

insecurity all decreasing. As regional peers saw homicide rates increase on average by 1% each year over the time frame (2007-2018), Guatemala's homicide rate fell annually by an average of 5%.¹⁹ This change was in large part due to the efficacy of CICIG as an independent body that was able to conduct investigations and support the work of the Attorney General's Office. Moreover, CICIG was a robust partnership with the United Nations, which gave it strong international, institutional backing.

Honduras should introduce a new anti-impunity and anti-corruption initiative to replace MACCIH, while CICIES in El Salvador and the Presidential Commission Against Corruption in Guatemala must be revamped. These new initiatives must not be tied to the Executive, and instead should be independent with international support, much like CICIG was. Finding backing from a renowned, multilateral institution such as the United Nations would be ideal. Furthermore, they should be given the ability to conduct their own investigations to support the work of their respective countries' offices of the attorney general. CICIG's ability to investigate was crucial for its success, while MACCIH's inability to do so hindered its efforts in Honduras. CICIG helped take down former presidents, politicians of all stripes, and organized crime, and should serve as a model for new initiatives in the region.

It is vital, however, to also learn from CICIG's failures. President Jimmy Morales was able to legally shut down CICIG due to the commission's mandate requiring renewal. And pending renewals in the past had previously resulted in pressure on the commission, as well. In Honduras, MACCIH suffered similar challenges. These common renewals beholden to political elites were a structural vulnerability to the groundbreaking, successful initiatives. To avoid the same mistake, new initiatives should be given longer-term mandates, potentially eight or ten years long. They

¹⁹ "Saving Guatemala's Fight Against Crime and Impunity," International Crisis Group, October 24, 2018.

would then be eligible for a renewal by popular referendum. In this, the power over judicial systems would lie in the hands of the people instead of political elites whose interests are not concurrent with those they ostensibly represent.

A common issue cited by critics of CICIG and similar institutions is that they infringe upon sovereignty. Critics fear that the countries of the Northern Triangle would become dependent on foreign actors and feeble, incapable of taking care of themselves and controlling their own destinies. These are valid concerns, but it must be recognized that CICIG was by no means all-powerful: it had no prosecutorial powers and thus was incapable of taking decisive, unilateral actions. Furthermore, the unpleasant reality is that the region's institutions and judicial systems are simply not strong enough. Until serious change is made, they need some level of independence from the entrenched status quo; guidance and assistance from multilateral institutions can set them on the track to success. In the long term, they will need to be able to function on their own and not become dependent on foreigners, but to reach that point, they will require assistance. As Mark L. Schneider, former Vice President of the International Crisis Group, has noted, not ceding a limited degree of sovereignty to an institution like CICIG means ultimately ceding a greater degree of sovereignty to organized crime and corrupt actors instead.²⁰

Across the board, the Northern Triangle's judicial systems must be granted the independence and authority to do their jobs. In Honduras, a recent reform "prevents the Attorney General's Office from carrying out surprise searches of suspects. According to Joaquín Mejía, a Honduran analyst who studies these legal reforms, the change will make it easier for those under investigation to destroy evidence."²¹ Attorneys General and judicial systems must be given the

²⁰ Mark L. Schneider, "Anti-Corruption in the Americas: What Works?" Center for Strategic and International Studies, February 2020.

²¹ Héctor Silva Ávalos, "Honduras' New Criminal Code Will Help Impunity Prosper," InSight Crime, June 29, 2020.

space to operate freely without unnecessary obstacles. With that being said, the level of autonomy to be granted to prosecutors, judges, and members of the judicial system needs to be calibrated so as to avoid creating a lack of accountability. Countries should develop independent bodies to publicly review—with the utmost outward-facing transparency—the activities of members of the judicial system and any CICIG-like initiatives that are created. Then, should problems of hubris or illicit activity occur, it will be well-documented so that charges may be filed appropriately and legally if need be, and the public may judge the system’s functionality as it sees fit.

Capacity-building and strengthening of the justice system through measures such as training for judges, prosecutors, forensic scientists, and others is often cited as a catch-all solution, but is not enough on its own. A more structural approach is essential. In fact, “training on its own has proven to be a poor strategy for improving capacity because even highly competent and highly trained officials continue to work within institutions where their skills cannot be put to effective use.”²² The capacity to build capacity must be achieved first by strengthening the institutions that constrain these actors, and this can only be accomplished when the judicial system is given the space and independence to succeed.

These changes will be politically difficult to implement; politicians are incentivized to keep institutions weak and, at times, are the very same people who are benefitting from high levels of impunity. Although these initiatives are less popular among the political elite, they enjoy high levels of popularity amongst the people: “according to a public opinion survey released just six months before it was shuttered, 72 percent of respondents expressed support for the work of CICIG. A November 2019 public consultation conducted by the Institute for Peace, Democracy, and Security at Honduras’s National Autonomous University found that 75 percent of respondents

²² Jeff Ernst, et al. “US Foreign Aid To The Northern Triangle 2014–2019: Promoting Success By Learning From The Past,” Wilson Center, December 2020.

believed MACCIH should continue to operate.”²³ There is a high level of public support and demand for these types of institutions which can be mobilized to motivate their implementation and maintenance. Grassroots pressure from civil society and the general public is key: politicians must be shown that they will not survive the next election cycle if they do not seek change.

To grant independence and authority to the region’s weak judicial systems, it is vital to place emphasis on economic incentives. An independent and stronger judicial system will stimulate higher levels of foreign direct investment and opportunities for economic growth, which are both financially and politically beneficial for decision makers. The economy is the pillar on which societies and individuals stand, and the opportunities for enhanced development due to reforms could be an effective inspiration for change. Although popular and economic incentives will be imperative to encourage change, the harsh reality is that political will and virtue will be necessary to enact these reforms. Genuine change will require genuine leaders.

Transparency and Openness

The governments of the Northern Triangle must also work to increase transparency and open access to information for the region’s judicial systems. Access to information on cases and proceedings needs to be expanded, as it is sorely lacking. In Honduras, the Judiciary has “not publicized information on their institutional web pages as required by law.”²⁴ Freedom of Information requests and public-facing websites can be tricky to navigate and frustrating to engage with. This is a stumbling block for public accountability and continued growth of the judicial system. Increasing digitization and consolidation of resources and public information will help individuals, businesses, and researchers alike.

²³ Ibid.

²⁴ “Transparency in Honduras,” Washington Office on Latin America, Universidad Nacional Autónoma de Honduras, and Instituto Universitario en Democracia, Paz y Seguridad, September 2019.

The lack of transparency in the selection of judges in the region is troubling. Judges are more typically chosen based on corrupt political interests than actual qualifications, thus weakening the judicial system. Guatemalan judges are selected through a complex process in which commissions vet and choose candidates that are ultimately selected by Congress. This process, however, is often conducted behind closed doors and quietly overtaken by corrupted interests without full citizen participation.²⁵ In 2020, fifteen candidates chosen by the Nominating Commissions “were implicated in improperly influencing their own selection process.”²⁶ In El Salvador, too, issues have arisen around the selection of judges. In 2018, “legislators openly admitted that the months of negotiations were meant to ensure that each party got someone they felt served their interests.” And there is a complete lack of transparency in candidate selection processes for a variety of other positions, including Attorney General.²⁷ These processes need to be made more transparent, with documents and information made available online for public access. Otherwise, the opaque status quo will continue, and the region’s judicial systems will remain weak.

Increasing transparency helps facilitate accountability, as well as research and understanding of how the judicial system functions. This better positions civil society organizations and other actors to advocate for policy and improve the system. Moreover, increased transparency and openness helps facilitate regional coordination and best practice sharing between the countries of the Northern Triangle and their neighbors. Learning from each other’s successes and failures is incredibly important, and by improving transparency, the countries of the Northern

²⁵ “La epidemia de la corrupción en el sistema de justicia guatemalteco,” Due Process of Law Foundation, May 13, 2020.

²⁶ “Guatemala: Congress Assaulting Judicial Independence,” Human Rights Watch, November 17, 2020.

²⁷ Geoff Thale and Kevin Amaya, “El Salvador Makes Mixed Progress in Strengthening Rule of Law,” Washington Office on Latin America, December 21, 2018.

Triangle can extend opportunities for growth and development of judicial systems in a mutualistic, effective manner.

Committed and Effective Investment

Justice in the Northern Triangle is dispensed inefficiently and ineffectively due to understaffing and a lack of reach. The judicial system is overburdened, and committed investment will be necessary to ensure appropriate caseloads and that access to the judicial system is achieved equitably and inclusively. While the Alliance for Prosperity called for investment focused on economic development, and was mainly funded by the Northern Triangle countries themselves, a similar level of internal buy-in and investment must be made by the region for efforts to strengthen the judicial system. Investing in their own progress ensures the governments are committed to this end.

High levels of case backlogs are a major contributor to insecurity and impunity, and are in need of greater investment. Funds should be devoted to hiring more personnel across the board, with particular emphasis placed on hiring staff dedicated to criminal justice matters and reducing prison overcrowding caused by pre-trial detention. Guatemala's implementation of a "twenty-four hour courts" system has been instrumental in reducing backlogs,²⁸ and hiring and dedicating personnel to similarly-styled efforts should be introduced across the region. That said, funding should not be solely devoted towards the urban areas with the highest levels of crimes. Considering rural areas and making efforts to prioritize the zones with the least equitable distribution of prosecutors, judges, and public defenders is paramount for inclusivity and overall efficacy of funding.

²⁸ Negroponte, et al.

In addition, it is important that the governments of the Northern Triangle protect their investments: judges, prosecutors, and members of the region's judicial systems often experience harassment, threats, and even outright violence as a result of the vital role they play in administering justice. Last year, the Inter-American Commission on Human Rights—an autonomous institution of the OAS—was forced to take precautionary measures to protect five Guatemalan judges, as they had received violent, criminal threats as a result of their work.²⁹ Providing protection is necessary to ensure these actors' work is not obstructed and justice may be achieved, and the onus is on the region's governments, themselves, to supply it. The countries of the Northern Triangle need to insure their investments and efforts to strengthen the region's weak judicial systems.

Policy Recommendations for the United States

Although ultimately it is up to the countries of the Northern Triangle to take action and control their own destinies, the United States can play a guiding role in strengthening the region's weak judicial systems. Conditional aid and other forms of assistance, such as training and technical support, are instrumental. Applying pressure on governments and maintaining a vocal presence in the region, too, should play a role in US policy vis-à-vis the Northern Triangle's judicial systems.

Conditional Aid for the Northern Triangle's Judicial Systems

Conditional aid is the name of the game, and should be a pillar of US policy in the region. The United States can help the governments of the Northern Triangle invest in their judicial systems, helping provide funding for any needed equipment and technology. This is a particularly salient need given the remote nature of work amid the COVID-19 pandemic. Moreover, aid from the United States can help fill in the gaps for hiring personnel and alleviate the burdens placed on

²⁹ “Guatemala: CIDH dicta medidas cautelares a favor de jueces amenazados,” VOA Noticias, October 28, 2019.

understaffed and underfunded judicial systems in the region. In the past, the United States promised over \$50 million to CICIG over ten years, and helped fund anti-corruption and anti-impunity initiatives. US officials have noted that “CICIG and MACCIH represented among the most cost-effective investments in the region for the United States to combat impunity and corruption, and their dismantlement is a setback for US objectives.”³⁰ Helping fund new initiatives modeled after CICIG would be an excellent use of money.

Funding, however, must not come without strings attached: special emphasis should be placed on strict conditionality. If the governments of the Northern Triangle fail to maintain a committed approach to anti-corruption and anti-impunity, funding should be suspended until action is taken. This applies similarly to other issues such as human rights abuses and anti-democratic and authoritarian behavior. Currently, 50% of aid to Guatemala is conditioned upon the State Department certifying that Guatemala’s government is “cooperating with commissions against corruption and impunity.”³¹ But this conditionality must not be a bluff: it must be a committed, legitimate conditionality that is strictly upheld by the US government. While threats to cut development aid are not typically effective since most of the funds are provided directly to NGOs and private firms instead of the government, aid for security and military assistance is given directly to host governments, and proves an exception to this rule.³² As a result, linking conditional aid cuts to military and security funding will be a more persuasive method.

Assessing the impact of aid is also quite important. Diving into the numbers to examine the strength of the judicial system is an effective way to measure results and recalibrate approaches. Some statistics that should be highlighted in analyses are personnel per 100,000 inhabitants,

³⁰ Ernst, et al.

³¹ “Cardin Leads Colleagues, Including Leahy, In Urging Greater U.S. Leadership To Combat Guatemalan Corruption, Support CICIG,” Office of US Senator Patrick Leahy, September 27, 2018.

³² Ernst, et al.

average caseload per prosecutor and judge, impunity rates, and average time it takes for a defendant's trial from the filing of charges to ruling and sentencing. Quantitative methods are not enough, though: qualitative analysis should also be conducted by interviewing members of the judicial system, members of the general public, and writing reports on the impact of aid. Although impact should be considered on a year-to-year basis, it is crucial the United States employs a long-term lens in its analysis. Structural, institutional change does not have an instant, transformative effect, but rather sets the stage for greater, more impactful change in the long run. Long term outcomes should not be sacrificed for short-term interests.

Other Forms of Assistance

Conditional, financial assistance is not the only form of backing the United States can provide: technical and logistical support are crucial. The United States has already established many efforts to provide technical support and training for the region's judicial systems in the past, and should look to double down on these existing programs. Training of prosecutors, forensic scientists, and other members of the judicial system has been a key component of US policy, particularly within the contexts of CICIG and MACCIH.³³ Any new CICIG-styled initiatives would be in great need of US assistance to get up and running and start implementing change. Furthermore, creating mentorship opportunities for young people pursuing the legal field could be a productive way of investing in future generations that will uphold the region's judicial systems.

In the short term, the United States can additionally help by providing food and humanitarian assistance in response to the COVID-19 pandemic and the devastating Hurricanes Eta and Iota. The region is suffering and in need of help feeding its people, providing health care, and rebuilding housing and infrastructure. By providing this assistance, the United States can

³³ Ibid.

create flexibility for the governments of the Northern Triangle. This will make it easier for them to devote more of their own attention and funding towards strengthening judiciaries and institution-building, which will reap the greatest benefits in the long run. Amid a plethora of issues, efforts must be made to guarantee that the region's weak judicial systems are prioritized.

The United States can also help the Northern Triangle by wielding its immense power in the international sphere for the betterment of its smaller neighbors. With this, the United States can advocate for the interests of the Northern Triangle countries in international organizations and multilateral institutions; this could include pushing for low-interest loans and possible debt forgiveness. It is important to stress economic incentives for the region's political elites in order to ensure they take action to strengthen judicial systems, and as a result, the financial leverage the United States holds in the global area could be an influential "carrot" factor.

Applying Pressure

The United States must be a vocal actor and apply pressure on the governments of the Northern Triangle to keep them committed to the task at hand. Pressure from the United States has been instrumental in the past, and even helped stymie former Guatemalan president Pérez Molina's attempts to impede a CICIG investigation of himself.³⁴ But the Trump administration has stayed silent, and CICIG and MACCIH were able to shut down more easily due to a lack of concerted pressure from the United States. The United States needs to play a pivotal role in incentivizing the implementation of CICIG-like initiatives and strengthening of judicial systems in the region. Presently in El Salvador, CICIÉS and the Salvadoran Attorney General's Office have looked to hold the Bukele administration accountable for possible corruption related to the use of emergency

³⁴ Ibid.

pandemic funds, but Bukele seeks to shut them up.³⁵ The United States must become more vocal, advocating for independence and the continuation of investigations.

Targeted sanctions against individuals is another tool that can be utilized to create pressure, and can be particularly effective against the global elite of the Northern Triangle. Whereas sectoral sanctions or developmental aid cuts have the potential to create adverse effects for the general populace, utilizing the Magnitsky Act and a range of other diplomatic tools to apply pressure on individuals can be a more constructive form of coercion. In addition, the United States can engage the greater international community, calling for other actors to apply pressure on the governments of the Northern Triangle, both through multilateral targeted sanctions and increasing rhetorical, soft-power pressure.

Supporting civil society on the ground in the region can also be an incredibly effective way of applying pressure. This can take the form of funding civil society organizations, as well as giving them larger-scale platforms to spread their message. Currently, USAID's efforts in governance include "five projects supporting civil society organizations to engage in public policy advocacy," and the agency has overseen the expansion and development of civil society in the region over the last 15 years.³⁶ The United States should expand this funding in order to help facilitate the continued development of a vocal and influential civil society that can effectively advocate for the strengthening of the region's judicial systems. One failure of the Alliance for Prosperity Plan was that it sidelined and ignored civil society in an attempt to produce a quick response to US pressure for an answer to the unaccompanied child migrant crisis. At the time, the United States did not appropriately direct pressure towards including civil society in decision-

³⁵ Alex Papadovassilakis, "With Pandemic Raids, Bukele Government Faces Major Investigation in El Salvador," InSight Crime, November 23, 2020.

³⁶ Ernst, et al.

making. In the future, the United States should seek to adopt bottom-up approaches. Something as small as a tweet from a ranking US official can make front page news in the countries of the Northern Triangle, and amplifying the voices of indigenous civil society will grant them more power and sway. It is vital that civil society and the general populace provide grassroots pressure on their government, and the United States can play a role by supporting them—the United States can help create conditions for the region’s civil society to thrive.

Migration

If these policy recommendations are put into place effectively and the judicial systems of the Northern Triangle are strengthened, this would help reduce insecurity and economic underdevelopment in the region. Ultimately reducing violence and promoting economic growth through a greater focus on creating more robust judicial systems would thus strengthen the societies of the Northern Triangle and reduce the push factors for migration. Migration flows from the Northern Triangle to the United States would likely be diminished, and become less heavily composed of asylum seekers. While economically-driven migration would have less incentives, it would still remain relevant, and need to be addressed.

Policy Recommendations for Long-term Changes to the US Migration System

Although violence and insecurity are likely to fall as a result of focusing on the challenge of the region’s weak judicial systems, the United States should still expand access to asylum to include those fleeing generalized violence. Central American migrants fleeing insecurity are in desperate need of protection, and it is highly unlikely this need will diminish entirely. The current definition for asylum outlined in the Immigration and Nationality Act fails to properly respond to this major push factor, and should be expanded.

The asylum process and immigration system should be made more equitable and inclusive. Beyond more short-term changes, such as immediately rolling back highly restrictive policies from the Trump administration like Remain in Mexico and Safe Third Country Agreements, there are many structural changes that the United States can make in the long run. For one, expanding opportunities for community sponsorship of refugees would help refugees assimilate in the United States and facilitate protection for asylum seekers from the Northern Triangle. President-elect Biden has already advocated for growing access, stating “I will pursue policies that increase opportunities for faith and local communities to sponsor refugee resettlement.”³⁷ More needs to be done to support migrants in the process of seeking asylum and avoiding deportation. Migrants are not constitutionally entitled to legal counsel, and, as a result, less than 40% of immigrants have legal representation during their removal cases.³⁸ Many migrants are unable to pay for legal services, and without representation they are less likely to receive a just verdict. The United States should provide access to counsel to all those seeking asylum or in deportation proceedings so as to ensure due process of law and an equitable immigration system that does not discriminate on the basis of wealth.

Increasing access to economic migration in the long-term should be made a priority, particularly if security issues are appropriately addressed and become less relevant factors for migrants. Increasing access to work visas for persons from the Northern Triangle would be a great step to both discourage unauthorized migration and aid the US economy, with many prominent immigration experts, such as Tamar Jacoby, advocating for an employer-based immigration

³⁷ Matthew La Corte and Laura J.W. Keppley, “Support Swells for U.S. to Expand Opportunities for Community Sponsorship of Refugees,” Niskanen Center, December 8, 2020.

³⁸ Ingrid Eagly and Steven Shafer, “Access to Counsel in Immigration Court,” American Immigration Council, September 28, 2016.

system.³⁹ The Migration Policy Institute recently released a report in which they discussed temporary visas for Mexican workers and the potential to expand access for Central Americans.⁴⁰ This type of initiative should be expanded to workers in the Northern Triangle and seek to match Central American job-seekers with established sectors in the United States that lack sufficient personnel, such as the agricultural sector. Biden has committed to “(working) with Congress to increase the number of visas awarded for permanent, employment-based immigration,”⁴¹ and this should be a principal goal of his administration. In addition, expanding access to student and temporary work visas for young adults and recent graduates would facilitate lasting cross-cultural exchange and strengthen human capital within the Northern Triangle, which is essential for development. This should also include scholarships for students, which would be another form of aid to the region. The United States should look to prioritize an economics-oriented lens in its approach to future migration.

Conclusion

High levels of insecurity and economic underdevelopment have driven migrants from the Northern Triangle to the United States for years. While a comprehensive approach is certainly necessary in order to appropriately and effectively respond to the multifaceted nature of push factors for migrants, addressing the region’s weak judicial systems must be the lynchpin of any approach: without strong judicial systems, any efforts to stem migration through violence prevention or job creation will not reach their full potential. The countries of the Northern Triangle should grant further autonomy and authority to judicial systems, creating initiatives modeled after the successes of CICIG. Increasing transparency and investment in the judicial system, too, will

³⁹ Tamar Jacoby, “Guest Workers Are the Best Border Security,” *Wall Street Journal*, June 11, 2013.

⁴⁰ Andrew Selee and Ariel G. Ruiz Soto, “Building a New Regional Migration System: Redefining U.S. Cooperation with Mexico and Central America,” Migration Policy Institute, November 2020.

⁴¹ “The Biden Plan For Securing Our Values As A Nation Of Immigrants,” Biden Harris, 2020.

be vital. The United States, meanwhile, should seek to provide conditional governmental aid and other forms of assistance, such as training and humanitarian aid, in order to complement these efforts, while applying pressure and maintaining a determined voice in the region. In the long run, the United States should expand access to asylum, establish a more equitable immigration system, and increase pathways for economic migration. This is a historic moment amid the advent of the Biden administration, the spread of the COVID-19 pandemic, and frequent natural disasters such as Hurricanes Eta and Iota: the time for action is now.

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