



WOLA

THE INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA

A WOLA REPORT ON THE CICIG EXPERIENCE



REPORT

6/2015

THE CICIG: AN INNOVATIVE INSTRUMENT FOR FIGHTING CRIMINAL ORGANIZATIONS AND STRENGTHENING THE RULE OF LAW

THE WASHINGTON OFFICE ON LATIN AMERICA

KEY FINDINGS:

- **CRIMINAL AND PARALLEL POWER NETWORKS HAVE ROOTS IN THE INTELLIGENCE AND PARAMILITARY FORCES THAT OPERATED DURING THE 1960-1996 ARMED CONFLICT.** The Guatemalan state did not dismantle these counterinsurgency forces after the 1996 peace accords, allowing for their evolution into organized crime and organized corruption. These transformed entities co-opted state institutions to operate with impunity and achieve their illicit goals. They continue to threaten Guatemalan governability and rule of law.
- **THE INFLUENCE OF ILLEGAL NETWORKS WITHIN THE STATE APPARATUS IS NOT A PHENOMENON UNIQUE TO GUATEMALA.** These parallel structures of repression have morphed into organized crime groups in many countries that have endured armed conflicts.
- **THE INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA (*LA COMISIÓN INTERNACIONAL CONTRA LA IMPUNIDAD EN GUATEMALA, CICIG*) IS A UNIQUE MODEL OF COOPERATION FOR STRENGTHENING THE RULE OF LAW.** In contrast to other international mechanisms, the CICIG is an independent investigative entity that operates under Guatemalan law and works alongside the Guatemalan justice system. As a result, it works hand in hand with the country's judiciary and security institutions, building their capacities in the process.
- **IN ITS NEARLY EIGHT YEARS OF EXISTENCE, THE CICIG HAS ACHIEVED TRANSCENDENTAL RESULTS.** The CICIG has passed and implemented important legislative reforms; provided fundamental tools for the investigation and prosecution of organized crime that the country had previously lacked; and removed public officials that had been colluding with criminal and corrupt organizations. Through emblematic cases, the Commission has demonstrated that with the necessary political and technical support, the Guatemalan justice system can investigate complex cases and bring to justice actors once considered untouchable.
- **THE POLITICAL WILL OF THE CICIG'S COUNTERPARTS HAS NOT BEEN UNIFORM OVER THE YEARS.** Because the CICIG works hand in hand with the Guatemalan government, its success or failure depends on the political will of the leadership of its counterpart institutions: the Public Prosecutor's Office (*Ministerio Público, MP*), the National Civilian Police (*Policía Nacional Civil, PNC*), the judiciary, and the legislature.
- **THE CICIG IS AN INNOVATIVE SYSTEM FOR STRENGTHENING THE RULE OF LAW THAT OTHER COUNTRIES IN SIMILAR SITUATIONS SHOULD CONSIDER AS A MODEL.** WOLA believes that the governability problems in Honduras and El Salvador, including the high rates of violence and the shortcomings of their justice and security systems, underscore the importance of considering similar mechanisms for these countries.
- **THE GOVERNMENT OF GUATEMALA SHOULD FACILITATE THE CONDITIONS FOR THE EFFECTIVE FULFILLMENT OF THE CICIG'S MANDATE.** WOLA applauds the recent decision of the Guatemalan President to extend the mandate of the Commission. Despite the CICIG's significant progress, there is still much work to be done to dismantle criminal and parallel power structures and to consolidate the justice system. As the Commission has made progress in its investigations and prosecution of emblematic cases, these networks and their allies have sought to regain lost ground to guarantee their impunity and to counteract the CICIG's work.

INTRODUCTION

Many countries around the world suffer from weak or failed judiciary and security institutions. In the best of cases, these institutions function but are weak and overpowered by external forces. In other cases, the institutions exist as government formalities but do not function whatsoever. This tends to happen in societies in transition from an authoritarian regime to a democratic one or from conflict to post-conflict, as well as in those in which corruption and/or organized crime have a substantial and influential presence (or in some combination of the above). In these societies, the weakness of the state is commonly preceded or accompanied by a hijacking or infiltration of the institutions by parallel power structures that render the institutions dysfunctional or inoperative. These structures may be civil, military, intelligence, public, or private; they may stem from a previous armed conflict, or not; or may have connections to local or transnational crime.

The political ability and will of the authorities to modify this status quo is often lacking in these states. These deficiencies make the justice and security institutions unable to ensure that citizens can effectively enjoy their fundamental rights or find peaceful means of using the law to resolve controversies. As a result, these controversies are resolved with violence and corruption, producing a vicious cycle. While this can make conflict endemic or, in some cases, transform it, it cannot end it, thereby impeding peaceful coexistence in these societies.

Central America is a good example of a region in which weak justice and security institutions, along with their corruption by criminal entities and politicians, have rendered the state unable to respond to violence or crime, or address the structural factors behind them. The armed conflicts that raged across the region during the Cold War officially ended two decades ago, but the violence continues. Honduras, El Salvador, and Guatemala (the so-called Central American Northern Triangle) form the most violent sub-region in the world. In 2012, the homicide rate in Honduras was 90 murders per 100,000 residents, 40 in Guatemala, and 41 in El Salvador. In comparison, the rate that same year was 6.5 in Afghanistan, 8.0 in Iraq, 21.5 in Mexico, 25.2 in Brazil, 28.3 in the Democratic Republic of Congo, 30.8 in Colombia, and 31.0 in South Africa.¹ According to statistics from the United Nations, 40 percent of the victims of violence in the Northern Triangle are

women and children. The situation constitutes a true humanitarian emergency.²

In contrast to previous eras, the current violence is not associated with an ideological confrontation, but rather the continued prevalence of the same causes that instigated the internal conflicts years ago, including extreme poverty, inequality, and social exclusion. In fact, it appears that the use of ideology is merely a tactic to preserve the status quo. This, combined with common and organized crime, endemic levels of corruption and impunity, and a lack of access to justice, has exacerbated the governments' inability to attend to its citizens' basic demands. It has also made it impossible to develop solid, transparent, and trustworthy democratic institutions that are responsible and at the service of its citizens.³

The international community has been experimenting with different mechanisms and tools to help governments and societies overcome these kinds of problems. These mechanisms have included everything from traditional technical assistance (focused on providing training and equipment to strengthen institutions), to the creation of international or mixed criminal tribunals, or in particular cases, the establishment of investigation committees. Several different models have been tried with varying degrees of results. Since September 2007, one of these mechanisms has been operating in Guatemala. The International Commission against Impunity in Guatemala (*La Comisión Internacional contra la Impunidad en Guatemala*), or CICIG, is a sui generis hybrid initiative to strengthen the rule of law. It was established with the support of the United Nations, at the request of the Guatemalan government, to help domestic institutions investigate and dismantle illegal groups and clandestine security structures (*cuerpos ilegales y aparatos clandestinos de seguridad*, CIACS). These groups were formed as part of the counterinsurgency apparatus during the 1960-1996 armed conflict. Because they were not dismantled after the peace accords, they transformed into a highly sophisticated and complex criminal phenomenon that has co-opted democratic institutions to reconfigure the power structure within the state.⁴

The fusion or transmutation of official or quasi-official intelligence and security structures into criminal networks is a complex but little understood phenomenon. In the absence of any control, these structures use their political, military, and intelligence connections, along

with corruption and violence, to manipulate the system. Their actions enable them to subvert the operation of legitimate state institutions to evade responsibility for their crimes and to guarantee that they can continue to operate freely. In doing so, they weaken the rule of law and erode respect for human rights.

The CICIG's mandate is unique among these kinds of rule of law mechanisms. In addition to the more traditional forms of cooperation and technical assistance, the Commission was endowed with the ability to bring criminal charges as a complementary prosecutor in Guatemalan courts.⁵ In addition, it has the power to propose public policies, including judicial and institutional reforms aimed at eradicating the CIACS. It also has the power to request disciplinary procedures against any public official that fails to cooperate or obstructs the CICIG's work. In sum, it is an international organization established to investigate and support the prosecution and dismantling of criminal networks under Guatemalan legislation and within Guatemala's justice system, whose goal is to build capacity in local state institutions.

The current report aims to analyze Guatemala's experience with the CICIG over the past eight years, including its advantages, challenges, and principal achievements. It seeks to examine this hybrid model of an international organization investigating and prosecuting crimes within the national justice system of a particular state to identify the principal lessons learned from this innovative experiment in strengthening the rule of law. At the same time, it seeks to offer recommendations to ensure that the Commission's mandate is fulfilled. Lastly, it makes suggestions for a future application of the model in other countries confronting similar governability problems and justice and security systems failures.

BACKGROUND ON THE CREATION OF THE CICIG

In the early 2000s Guatemala faced escalating problems of governability and violence, particularly an increase in threats and violent attacks against certain sectors of civil society and their leaders. Local human rights leaders in Guatemala asked WOLA to document the very issues that would subsequently bring about the creation of the CICIG. The result was the 2003 investigation, *Hidden Powers in Post Conflict Guatemala*.⁶

In the investigation, WOLA attributed the majority of these violent acts to members of illegal armed groups, also known as clandestine groups, which act at the behest of hidden powers in the country. The study revealed how these groups, acting in informal and amorphous networks, used their positions and connections in private and public spheres to enrich themselves with illicit activities, sometimes related to state resources (corrupting customs officials, corruption in lucrative public contracts, and bribery). At the same time, the report described how these groups sought to manipulate and co-opt the justice and security systems to control them and guarantee their impunity.

The study identified the armed conflict as these groups' point of origin. Far from disappearing with the signing of the 1996 peace accords, these groups continued to operate in post-conflict Guatemalan society.

At the same time, the study warned that the activities of these groups were undermining the justice system and perpetuating a climate of insecurity, propagating violence, corruption, and organized crime. The report also detailed the influence of these clandestine groups on state actors and their ability to infiltrate government institutions. It documented the effects on the competence of Guatemalan authorities to effectively investigate and dismantle the groups and how this was producing a serious deterioration of state institutions and the rule of law.

The report noted the concern of a diverse group of actors from civil society and the international community, and concluded by exhorting the Guatemalan government and the international community to support the creation of an international commission to investigate the clandestine groups.

For civil society groups in Guatemala, it was clear that the government lacked the ability to carry out an effective investigation and criminal prosecution of these groups precisely because of the level of influence and control they exerted within government institutions. What was needed was an international and independent entity with the ability to work alongside local government actors.

This proposal, originally put forth by members of Guatemala's civil society groups, took shape in January 2004 with the signing of an agreement between the United Nations and the Guatemalan government to create

the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations (*Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad*, CICIACS).⁷

CICIACS, however, never came to fruition. Months after the agreement was signed, the Guatemalan constitutional court ruled that the accord violated the constitution by endowing an international entity with powers of criminal prosecution that Guatemalan law reserves for the Public Prosecutor's Office.⁸

Nevertheless, civil society groups sustained their pressure as the violence continued. The administration of President Óscar Berger (2004-2008) renewed the negotiations with the UN,⁹ which ended on December 12, 2006 with the "Agreement to Establish the International Commission against Impunity in Guatemala, CICIG" (*Acuerdo Relativo al Establecimiento de una Comisión Internacional Contra la Impunidad en Guatemala*).¹⁰ Guatemala's congress ratified the agreement in August 2007, and it went into effect in September 2007.

Evolution of Illegal Groups and Clandestine Security Structures

In March 1994, in the midst of the civil war, the Guatemalan government and the Guatemalan National Revolutionary Unity (*Unidad Revolucionaria Nacional Guatemalteca*, URNG) signed the "Comprehensive Agreement on Human Rights" (*Acuerdo Global sobre Derechos Humanos*). On December 29, 1996, the "Agreement on a Firm and Lasting Peace" (*Acuerdo de Paz Firme y Duradera*) brought to an end three decades of internal armed conflict. During the conflict, 45,000 people were disappeared and 200,000 more were killed, most of whom were civilian Maya.¹¹

The Comprehensive Agreement of 1994 committed the Guatemalan government to the dismantling of the illegal groups and clandestine security structures (CIACS).¹² Some of these groups were established during the armed conflict as part of the state's repressive counterinsurgency apparatus. Others arose as private entities set up by elite members of society to eliminate political opponents and defend the status quo, while yet others were made up of a combination of public and private sector elements. The breakup of these groups was so vital, it was an issue of constant concern in the reports from the United Nations Verification Mission in Guatemala (*Misión de Verificación*

de las Naciones Unidas en Guatemala, MINUGUA).¹³ Yet, in spite of identifying the matter as highly important, these groups were never dismantled.

Some formal changes were made, however. The Civil Self Defense Patrols (*Patrullas de Autodefensa Civil*, PAC)—paramilitary forces established during the war to help the Guatemalan army in its counterinsurgency efforts—were demobilized and its members subsequently recognized as ex-combatants and compensated for their service. The Presidential General Staff (*Estado Mayor Presidencial*, EMP), an entity established to provide protection, logistical support, and counsel to the president and that simultaneously served as a center for military intelligence and undercover activities, was replaced in 2003 by the Secretariat for Administrative Matters and Security (*Secretaría de Asuntos Administrativos y de Seguridad*, SAAS). Military Intelligence, another agency deeply involved in counterinsurgency actions and numerous human rights violations, remained in place, but many of its functions were formally assigned to the newly formed civilian intelligence agency called the Secretariat for Strategic Analysis (*Secretaría de Análisis Estratégico*, SAE).

Despite these formal changes in the years after the signing of the peace accords, the clandestine organizations continued to exist.¹⁴ They transformed into groups that, depending on the administration in power and on which party held the majority in congress, were either visible and ostentatious or in stand-by mode.¹⁵ Invariably, however, they became increasingly dedicated to criminal activities. What started as common and petty crimes soon became organized criminal activity, including drug trafficking; trafficking of persons; contraband of arms, alcohol, and fuel; and money laundering.¹⁶ By the beginning of the new century, Guatemala had been reorganized, as Amnesty International described it in 2002, into a "corporate mafia state" built on an alliance between traditional sectors of the oligarchy, new entrepreneurs, police and military officials, and common criminals.¹⁷

Permissive or even colluding authorities support these informal and renewed organizations, as they are mostly made up of members and ex-members of the military and the police. But they have also broadened their membership and influence into civil society, business circles, academia, political circles, media, and state institutions, particularly the judiciary and security agencies.

Over the years, these networks have co-opted nearly all spaces of state power to use the institutions for their own interests and foment and cover up their illicit activities. They use their connections with political figures and influential individuals, as well as corruption, intimidation, and violence to protect their lucrative, illegal enterprises and ensure impunity for their aims.

According to a prominent Guatemalan think tank, The Association for Research and Social Studies (*Asociación de Investigación y Estudios Sociales*, ASIES), it is clear that illegal organizations and clandestine structures, which originated as fundamental instruments for repression during the internal armed conflict,

[h]ave transformed and adapted to the current circumstances. They have converted themselves into a sophisticated machinery at the service of organized crime. They debilitate the state by fomenting corruption at every level and taking advantage of political institutions and their funds to generate immense wealth with complete impunity.¹⁸

Over the years, these networks have co-opted nearly all spaces of state power to use the institutions for their own interests and foment and cover up their illicit activities.¹⁹ They use their connections with political figures and influential individuals, as well as corruption, intimidation, and violence to protect their lucrative, illegal enterprises and ensure impunity for their aims.

This problem is not unique to Guatemala. In all of Latin America, illicit networks exercise a high level of influence over the state.²⁰ This influence is exercised through different types of relationships with the state apparatus.

Some criminal networks have managed to penetrate deeply into state institutions. Drug traffickers have done this in many countries in the region, as have kidnapping and extortion groups and other large criminal enterprises.

Some criminal networks, on the other hand, have originated within the state itself. This is the case in many post-conflict societies, wherein illegal armed groups, paramilitary forces, and clandestine security structures—established as part of counterinsurgency policies—have transformed into criminal networks or merged with outside criminal groups as a way of adapting to changing circumstances. This is the case in El Salvador, where the Joint Group for the Investigation of Illegal Armed Groups with Political Motivation in El Salvador (*Grupo Conjunto para la Investigación de Grupos Ilegales con Motivación Política en El Salvador*), an entity created at the end of 1993 by the Salvadoran government and the United Nations, determined that changes in the country's internal dynamics had forced the death squads to undergo a process of “mutation and atomization,” morphing into more decentralized organized criminal structures both at regional and national levels.²¹

One variation on this pattern can be seen in Colombia where some demobilized paramilitary groups shifted into organized crime. The paramilitary forces were not a direct creation of the state. Rather, they emerged from the small self-defense groups established by powerful business and landowner elites and from the death squads created by drug traffickers. Even though the paramilitary groups did not emerge from a state-sponsored counterinsurgency strategy, sectors of the state tolerated and even cooperated with them.²²

BYRON LIMA OLIVA

After graduating in 1987 as an official in the 108th class of the Army's Polytechnic School (*Escuela Politécnica*), Byron Lima Oliva entered the "Kaibil" school that trained the army's elite counter-insurgency forces. He later graduated from the School of Intelligence at the Military High Command (*Escuela de Inteligencia del Estado Mayor de la Defensa Nacional*) and went on to form part of former President Álvaro Arzu's security detail.²³

In June 2001, Captain Byron Lima Oliva, his father, Colonel Byron Disrael Lima Estrada, and Sergeant José Obdulio Villanueva, were convicted for the 1998 murder of Bishop Juan José Gerardi. Gerardi was killed two days after he presented a report on human rights violations during Guatemala's armed conflict.²⁴ The Third Sentencing Court (*Tribunal Tercero de Sentencia*) sentenced Lima Oliva, Lima Estrada,²⁵ and Villanueva²⁶ to 30 years in prison—later reduced to 20—for the crime.²⁷

Despite his sentence, Lima made use of his contacts within the military and the government to continue his criminal activities from within prison. In the 13 years that he has been in prison, he has constructed a powerful and lucrative empire that enjoys the protection of the penitentiary system. He has enjoyed numerous privileges, including the use of telephones and computers with which he has been able to maintain his Facebook page, Twitter account, and newspaper column in the *Metropolitano*. In 2010, he founded within the Pavoncito prison the Torre Fuerte sewing cooperative, which makes clothing, including for the Ministries of Defense and the Interior. The factory also made T-shirts for the Patriot political party (*Partida Patriota*) during the presidential campaign.²⁸

In 2010, Lima Oliva made the news again after local media revealed information found in notebooks that had been confiscated during a prison search. According to these reports, he had recorded in his notebooks payments of thousands of Quetzals for vehicles and real estate as well as names and emails of alleged drug traffickers. The notes also included information about purchases of weapons and bulletproof vests.²⁹



Captain Byron Lima Oliva, alleged leader of a corruption ring within the penitentiary system.

Three years later, in 2013, Lima Oliva was captured a few miles outside of prison. According to Minister of the Interior Mauricio López Bonilla, Byron Lima left prison, "routinely, as he pleased, with contacts from within the prison system and in private vehicles."³⁰ During the hearing on the matter, Lima Oliva admitted having been authorized to leave prison 37 times in the previous year.³¹ Luis Alberto González, the Director General of the penitentiary system, and the prison director both lost their jobs over the affair. The judge who handled his case later dismissed it and, through appeals, Lima Oliva was able to block his transfer to a maximum security prison and remain in Pavoncito.

According to news reports, the Public Prosecutor's Office has opened 12 investigations against Lima Oliva since he entered the penitentiary system for crimes ranging from falsifying documents, to threats, blackmail, and drug trafficking.³² None of them made it to court, as they were either dismissed or declared to be lacking sufficient evidence.³³

In September 2014, his reign was finally cut short. After more than a year of investigations, the CICIG broke up the corruption ring Lima Oliva directed from jail—a network that reached the highest levels of the penitentiary system.³⁴ The director of the prison system, Édgar Josué Camargo, the ex-deputy director, Edy Fisher, and 12 others were also charged.

According to the investigation, Lima Oliva received money and goods in exchange for "selling" an array of benefits to other prisoners that included cell phones, food, home appliances, conjugal visits, and transfers to other prisons.³⁵ According to the CICIG, the payment for a transfer to another prison, the network's principal activity, cost as much as \$100,000, of which the prison system director received at least \$6,000.³⁶

Lima Oliva admitted that he had contact with various officials and public figures while in prison.³⁷ His relationships with high-level officials are documented on his social network accounts, where he has posted photos of himself with various officials, including the Patriot Party congressman Juan Pablo Urrea and the Ambassador of Taiwan.³⁸ “You only need to see his Facebook account to appreciate the power he has,” said the CICIG’s Commissioner, Iván Velásquez.³⁹

According to media reports, Lima Oliva’s influence was so great that in 2011 he supposedly sent the Minister of the Interior a list of people he believed should hold important positions within the penitentiary system.⁴⁰ During the first trimester of 2012, the Pérez Molina

administration hired 35 people, more than half of whom Lima Oliva had allegedly endorsed.⁴¹

The relationship between Lima Oliva, Camargo, and Fisher dates back to their army days. All three were members of the 108th graduating class of the Polytechnic School. López Bonilla taught all three during their time there.⁴²

These connections between military members and public officials reveal the collusion that enabled Lima to build his empire. According to Velásquez, “Lima was the real authority to many prisoners. They went to him to request transfers, favors, and rights. Lima’s influence within the prison system is unquestionable.”⁴³

In other countries, the creators of these criminal networks are political figures in the highest levels of corrupt governments. Taking advantage of their positions and influence, they are able to manipulate state institutions. At times they can attain near absolute control of the political system to guarantee their power, advance and protect their illegal activities, and ensure their protection from the law. This was the experience of Peru during the Alberto Fujimori regime.⁴⁴

In Guatemala’s case, there is a process by which the state is co-opted by both illicit and legitimate individuals and groups that use coercion, alliances, and agreements to manipulate state institutions and obtain long-term economic and legal benefits and social legitimacy.⁴⁵ To co-opt the state, illicit and legal networks take advantage of certain institutions—such as political parties and the legislative and judicial branches—to infiltrate the nucleus of the state. The money laundering case involving José Armando Llorca Quinteño, the director of Guatemala’s National Mortgage Credit Bank (*Crédito Hipotecario Nacional*, CHN), during the administration of President Alfonso Portillo is a good example of the capture of a state institution. In this case, the relationships and agreements between criminal actors and high-level public officials allowed for massive and systematic money laundering.⁴⁶ It was the use of this network that made possible the national and international transactions that laundered at least \$20 million dollars—something that might not have been possible through simple bribes and coercion.⁴⁷ The impact of the infiltration of members of criminal organizations into the state has been devastating. Their

actions have drained state resources, undermined the law, and eroded respect for human rights.

As will be described in more detail in the pages that follow, the CICIG has had an impact on criminal networks. Many of them have sought to shift their power in the political system, adopting and evolving in response to the pressure the Commission has exerted on them. The third chapter describes some of the ways in which these criminal networks have sought to regain their control of the Guatemalan justice system.

The Agreement for the Creation of the CICIG

The agreement for the creation of the CICIG was signed with the United Nations on December 12, 2006 at the request of the Guatemalan government.⁴⁸ In May of the following year, the Constitutional Court ruled favorably on the agreement’s constitutionality. The ruling came just days after Guatemalan police murdered three Salvadoran congressmen and their driver in a crime that brought renewed national and international attention to Guatemala’s problems. In mid-July, after its approval process stalled in Congress, the proposal suffered what at the time appeared to be a fatal blow. The Guatemalan congressional international relations committee voted against the Commission, citing sovereignty concerns. The committee’s vote caused much consternation among many sectors of Guatemalan society and the international community. Nonetheless, after a highly polarized debate, Congress finally ratified the agreement on August 1. The Commission’s mandate began on September 4, 2007.

Much like an international prosecutor's office, the CICIG was primarily designed to strengthen and improve the judicial system in country where impunity had long reigned. (According to official statistics, 96 to 98 percent of murders went unpunished at the time the Commission was founded.⁴⁹) At the same time, the CICIG was conceived of as a political actor whose goals went far beyond those of traditional mechanisms of international cooperation: it was set up to promote much needed reforms to provide Guatemala with effective justice and security systems, which had been pending since the end of the armed conflict.

With this in mind, the agreement established the CICIG as an independent entity to support the Public Prosecutor's Office (*Ministerio Público*, MP), the National Civilian Police (*Policía Nacional Civil*, PNC), and other state institutions in the investigation of crimes committed by illegal groups and clandestine security structures, in order to help dismantle them.

In focusing on the CIACS, the agreement identified these groups and their illegal acts as the primary challenges to the full enjoyment and exercise of civil and political rights. Doing so also suggested that the CIACS possess direct or indirect ties to state agents and have the ability to generate impunity for their illegal activities.⁵⁰

The agreement granted the CICIG the ability to investigate the CIACS at will. It assigned the Commission with the task of collaborating with state entities and promoting investigations, prosecutions, and punishments to dismantle the illegal groups. It gave the CICIG the power to act as a complementary prosecutor⁵¹ in court proceedings and to promote administrative disciplinary processes against any public officials associated with these groups.⁵² The Commission also has the power to recommend public policies and legal, judicial, and institutional reforms to prevent the resurgence of the CIACS.⁵³

The CICIG is a hybrid mechanism of international cooperation without precedent anywhere in the world. It is an international and independent criminal investigative entity that operates under Guatemalan law and that relies upon the Guatemalan justice system. While the Commission investigates and participates in a limited

PHOTO: AP/MOISES CASTILLO



Former Vice-President Eduardo Stein (left); Former Ambassador to the United Nations Gert Rosenthal (center); and former Director of the CICIG Carlos Castresana (right) during the inauguration of the Commission on Friday, January 11, 2008 in Guatemala City.

number of complex cases, it also works on building the capacity of Guatemalan justice institutions.⁵⁴

THE CICIG EXPERIENCE

The CICIG began its mandate in September 2007 in an ideologically divided country with a skeptical civil society. Its population was fearful and had gone from suffering political violence during the armed conflict to enduring common crimes and the increasing presence and influence of national and international organized crime syndicates. Indeed, the rates of violent crime during peace times were twice those during the war.

The CICIG emerged from the need for a mechanism to support and strengthen the rule of law in the post-conflict country. Guatemala needed help controlling illegal groups and clandestine security structures that had the ability to ensure impunity for their crimes because of their direct and indirect links to government officials. The CIACS that remained after the end of the armed conflict and the signing of the peace accords transformed themselves to adapt to a new context and remained active. The existing justice system lacked the ability and the will to protect and ensure citizens' effective enjoyment of their rights. In the face of the flagging abilities of the authorities and the absence of the political conditions

By systematizing the modus operandi of the criminal networks, investigators have been better able to ascertain their structures, how they operate, and their geographic range, which has led to convictions that have resolved many violent homicides attributable to the same group and even the arrest of entire structures.

to confront the problem, the government of Guatemala asked for the UN's collaboration. The CICIG was thus born as an international organization working within the Guatemalan legal system and other national institutions to make them functional. Various international instruments have established access to justice, reparations, and judicial protection as fundamental rights each state must guarantee. Consequently, as other states have done either out of their own accord or at the behest of civil society, Guatemala recognized its limitations and the deterioration of the rule of law in the country, and sought the support of the international community to build capacity.

Rather than recount the past nearly eight years of the CICIG's work, the following report will analyze some of its principle achievements and the challenges it faces as it works to build capacity and political will and to combat and dismantle criminal organizations deeply entrenched in the state apparatus.

Building State Capacity

A Joint Approach to Criminal Investigations

The CICIG adopted a learning-while-doing work method with the Public Prosecutor's Office and the National Civilian Police to leave them with a skill set before the Commission's mandate ends.⁵⁵ In February 2008, the Commission signed a bilateral cooperation agreement with the Public Prosecutor's Office to support their investigations and prosecution of crimes committed by the CIACS.⁵⁶ The accord provided for the creation of a Special Prosecutor's Office, initially known as the Special Prosecution Unit Assigned to CICIG (*Unidad Especial de Fiscalía de Apoyo a la CIGIG, UEFAC*). The name was changed in 2011 to the Special Anti-Impunity Prosecutor's Bureau (*Fiscalía Especial contra*

la Impunidad, FECI). This bureau handles investigations against the CIACS on a case-by-case agreement between the Attorney General and the Commissioner. The coordinated investigative activities are carried out in accordance with the Guatemalan criminal code, allowing the CICIG to legally request summons, searches, and other pertinent proceedings, including requests for subpoenas; the calling of witnesses, experts, or defendants; and inspections or search warrants.

Newly appointed Attorney General Amílcar Velásquez Zárate created the FECI in September 2008. It included three prosecutors' bureaus and was staffed with career prosecutors that the CICIG chose and trained.⁵⁷ The Commission trained this unit in investigative techniques, personnel development, and the legal and human rights frameworks applicable to investigations. It also helped with the security and mobilization of some of the agents and assistant attorneys until the Public Prosecutor's Office was able to secure its own resources for these activities.

In addition to creating the FECI, the CICIG restructured the Analysis Unit of the Public Prosecutor's Office. In doing so, it played a fundamental role in building capacity to gather information needed to design a criminal prosecution strategy.⁵⁸ This included the adoption of a new investigative methodology oriented at group investigations of criminal networks as opposed to case-by-case investigations. By systematizing the modus operandi of the criminal networks, investigators have been better able to ascertain their structures, how they operate, and their geographic range, which has led to convictions that have resolved many violent homicides attributable to the same group and even the arrest of entire structures.

EXTRAJUDICIAL KILLINGS AT THE HANDS OF A NETWORK OF SECURITY OFFICIALS

In August 2010, as a result of a CICIG investigation, the First Criminal Court (*Juzgado Primero de Instancia Penal*) issued arrest warrants for high-level officials in President Óscar Berger Perdomo's administration (2004-2008) for their participation in the extrajudicial killings of ten prisoners. Among them were the Director of the National Civilian Police, Erwin Sperisen, the Deputy-Director of the Criminal Investigations Division of the police, Javier Figueroa,⁵⁹ the Chief of the Criminal Investigations Division of the police, Victor Hugo Soto, the Director of the Penitentiary System, Alejandro Giammattei,⁶⁰ and the Minister of the Interior, Carlos Vielmann.⁶¹

According to the CICIG, its investigation revealed that high-level officials, police, and military members had created a parallel structure within the Ministry of the Interior and the General Directorate of the National Civilian Police. The group allegedly operated between 2004 and 2007 to assassinate escapees and prisoners who resisted orders.⁶² The investigation revealed that this structure was also involved in murders, drug trafficking, money laundering, kidnapping, and extortion, among other illegal activities.⁶³

The investigations concerned two operations allegedly formulated at the highest levels of the Ministry of the Interior and the National Civilian Police. The first, known as "Plan Gavilán," took place after the escape of 19 prisoners from the high-security prison El Infiernito in Escuintla on October 22, 2005. According to the CICIG's investigation, on November 3, 2005, the police executed one of the prisoners after he was caught earlier that morning. Nearly a month later, two more prisoners were located, captured, and executed by members of the unit Soto commanded.⁶⁴

Later, on September 25, 2006, the Ministry of the Interior, the National Civilian Police, and the penitentiary system carried out a second operation ("Pavo Real") to take back control of the Pavón prison from the prisoners, during which seven prisoners were killed. Officials maintained that the prisoners died during a violent confrontation with prison authorities. In December of the same year, a report from the Human Rights Ombudsman indicated that



PHOTO: PUBLINEWS

From Left to Right: Alejandro Giammattei, Erwin Sperisen, Javier Figueroa and Carlos Vielmann.

the seven prisoners had been victims of extrajudicial executions.⁶⁵ The CICIG's investigations concluded that the seven prisoners had been selected for execution in an operation designed to regain control of the prison.⁶⁶ The Commission determined in both cases that there was hierarchical responsibility for the killings.⁶⁷

As a result of the investigations, the First High Risk Court B (*Tribunal Primero de Mayor Riesgo B*) on August 8, 2013 sentenced Víctor Hugo Soto, former Chief of the Crime Investigation Division of the police, to 33 years in prison for his participation in the extrajudicial killings of ten prisoners.⁶⁸ Three more individuals were convicted, while four others were declared not guilty. The Supreme Court in January 2015 upheld Soto's conviction, overturning an appeals court ruling that had previously overturned the original sentence.⁶⁹

Of the high-level officials implicated in the parallel criminal structure, Alejandro Giammattei was the only one to be tried in Guatemala. In May 2011, the First High Risk Court dismissed the case against him for lack of evidence, and he was acquitted in July 2012.⁷⁰ The other three officials made use of their double nationalities to leave Guatemala—Figueroa to Austria, Sperisen to Switzerland, and Vielmann to Spain.

The CICIG and the Public Prosecutor's Office requested the application of existing reciprocity agreements between Guatemala and the three European countries. In November 2013, an Austrian court declared Figueroa not guilty of complicity in the murders of the Pavón prisoners.⁷¹ A year later, in

June 2014, a Swiss court sentenced Spiersen to life in prison for his participation in the Pavón operation.⁷² Citing a lack of evidence, the court found him not guilty in the executions at El Infiernito. The Spanish National Court began proceedings against Viemann

in June 2013 for his alleged participation in the killings of the ten prisoners. In March 2014, the court confirmed that the ex-minister could stand trial in Spain given sufficient evidence of his participation in the chain of events.⁷³

The Public Prosecutor's Office investigates the cases with the assistance of the CICIG. When the form or size of the criminal structures involved and the crimes they commit make a case too complex, the Commission, out of its own accord or in response to a request from the Attorney General, transfers the case to the Special Prosecutor's Bureau. As such, the CICIG has established a system of gradual intervention in the criminal process with the aim of strengthening the capabilities of the Public Prosecutor's Office to exercise its functions.

As part of this capacity building, the CICIG also worked with the National Civilian Police to create police units to support the Special Prosecutor's Bureau and the Commission. The Ministry of the Interior in 2008 assigned 30 police officers to these units, of which 20 were chosen and trained by the CICIG.⁷⁴ Even though they represent a small fraction of the police force, the CICIG's work with the National Civilian Police demonstrates that significant changes in police culture can be achieved. This is especially important given that many experts consider the police to be among the most corrupt institutions in the country.⁷⁵ The sustainability of these efforts, however, has been limited by scant progress in the reform of the police force.

Legislative Reforms and Public Policy Proposals

The CICIG's mandate enables it to make recommendations for legislative reforms and to propose public policies that can improve the performance of institutions—such as the police, the Public Prosecutor's Office, the judiciary, the prison system—in the fight against organized crime. Among these are a set of proposals that seek to provide better investigative tools and enhance criminal prosecutions and sentencing. The Commission has provided national institutions with many legal instruments essential for combating criminal groups (See box on p. 13). Guatemalan institutions previously lacked many of these legal instruments, allowing criminal structures to take advantage of these

weaknesses. This partly explains why the CIACS have not yet been dismantled. These new tools have been used in investigations undertaken by the FECCI and by other prosecutor bureaus, such as those specializing in drug trafficking, organized crime, human trafficking, and corruption of the public administration. Their implementation has resulted in a noticeable difference in the prosecution, sentencing, and conviction of members of criminal organizations.

Nonetheless, it should be noted that, to date, Congress has approved only four of the CICIG's legislative reform proposals it presented in October 2008 and June 2009.⁷⁶ Evidently, enacting these changes is the responsibility of the state, and while the Commission can recommend reforms, their approval ultimately hinges on state authorities.

The existence of an adequate judicial framework would affect not only the reach of the CICIG's investigations but also the state's ability to confront local and transnational criminal threats. Some very important proposals that would have a great impact on the fight against impunity have yet to be approved. These include proposals to reform the banking secrets law and the laws for legal protection (*leyes de amparo*)⁷⁷ and immunity, which would limit the use of said measures and prevent their abuse. Many experts agree that the impasse on these proposed reforms is owed primarily to a lack of solid political support and the failure of the executive branch to present and promote the reforms as stipulated in the CICIG agreement. Without consensus and political support among different political factions, these reforms, as well as other more substantial and essential ones, will not come to fruition. Without these legal and constitutional instruments, it will be difficult to take on the illegal structures that have infiltrated state institutions, and it will be even more difficult to take on transnational organized crime. Among the much-needed reforms is the establishment of a long-term criminal policy and changes

to the procedures for the selection of magistrates to the Constitutional Court, Supreme Court, Courts of Appeal, and the Public Prosecutor's Office. The levels of violence the criminal networks continue to use, the collusion

between these groups and authorities, their infiltration of the state, and the protection they continue to enjoy underscore the need for these reforms.

Proposed Legal Instruments for Combating Criminal Networks

Wire Tapping: One of the criminal investigative tools that the CICIG has championed is the use of legal wiretaps. Up until 2008, there were no laws allowing for a judicial order to green-light wiretaps to monitor calls or text messages, trace calls, or obtain information on the owners of a phone line.⁷⁸ Both public and private security agencies wiretapped illegally for illicit or criminal purposes, which violated the civil rights of the population. It is ironic that the Public Prosecutor's Office and the National Civilian Police, the only entities that should be able to do this legally, lacked the power, equipment, programs, and personnel needed to use this investigative tool.

Through an agreement with the Public Prosecutor's Office, the National Civilian Police, and the Ministry of the Interior, the CICIG developed the legal design of a system for the wiretapping of phones and other means of communication and created a Wiretapping Unit (*Unidad de Métodos Especiales de Investigación*, UME) within the Public Prosecutor's Office. With the support of the international community, particularly investigative agencies from the United States and Canada, the Commission equipped, selected, and trained the unit's personnel. The UME began its work in June 2009.

The Confidential Informant: The figure of the confidential informant allows members of organized crime groups to receive legal benefits in exchange for information that is relevant to an investigation and that could lead to the dismantling a criminal organization. The figure of the confidential informant has existed in Guatemala since 2006, but the law did not allow for its application to members of organized crime groups who were responsible for murder. In Guatemala, this meant that the measure was virtually inapplicable given that all relevant groups were involved, to a certain extent, in homicides. (In fact, the law had never been applied until the CICIG was created.) The CICIG proposed

modifications to the Law against Organized Crime (*Ley contra la Delincuencia Organizada*) that introduced the figure of the confidential informant without these restrictions, enabling its use in organized crime cases.

⁷⁹ The law is similar to laws in many countries that face similar problems with organized crime. It is incredibly important to establish appropriate procedures for the usage of this instrument to prevent its abuse.

Controlled Delivery Operations and Undercover Agents: Among the special investigation techniques that the CICIG recommended is the use of controlled delivery operations. Within a framework of combating organized crime, this technique allows for competent authorities to supervise the circulation of illegal or suspicious remittances (money, drugs, weapons, etc.) inside and outside the country that are part of alleged criminal activities in order to investigate crime and identify those involved in commissioning them. Such a controlled delivery is a technique used by law enforcement around the world that requires adequate oversight and monitoring mechanisms for its proper implementation. Nonetheless, this tool has not been properly put to use because of budgetary constraints of Guatemalan counterparts and the failure of the Ministry of the Interior to provide trained police officers for these functions.

The CICIG also proposed the legal authorization of electronic and other forms of surveillance as well as the use of undercover agents with the prior approval and under the strict control of the Public Prosecutor's Office.⁸⁰

Witness Protection Program: The implementation of the Witness Protection Program is one of the most valuable initiatives the CICIG has promoted. Guatemala had a law regulating the protection of witnesses and collaborators,⁸¹ but this system was not well-regulated and lacked the economic and logistical resources

needed to train agents and run the program. Safety problems in protecting high-risk witnesses while transporting them to trial were common, and the accused were often able to identify witnesses, making their relocation necessary. All this created a situation in which the safety of the witnesses and their families could not be guaranteed.

The CICIG supported the design of a new structure for the Witness Protection Program.⁸² It wrote regulations, protocols, and a best practices manual, and it provided support in identifying safe lodging. With the support of Colombian prosecutors specialized in witness protection and the Witness Security Program operated by the United States' Marshals Service of the Department of Justice, it trained security officials from the program. The Commission was able to ensure the support of the international community for this program, which allowed it to promote accords with the diplomatic missions of Spain, Canada, and Holland for the relocation of witnesses and their families to other countries in the highest risk cases.

The CICIG also recommended legal modifications to make witness protection measures more effective and swift. These included provisions for relocation and new

identities for effective cooperators, as well as the use of video-conference testimony.⁸³

Courts for High-Risk Crimes: Officials that work in the justice system in Guatemala are very vulnerable. In rural areas of the country, the presence of the state and the reach of authority are minimal, making it impossible to effectively protect them. For these reasons, the CICIG proposed the creation of Courts for High Risk Crimes, with headquarters in the capital but with jurisdiction throughout the country. A similar measure was previously in place—the so-called High Impact Crime Courts (*Tribunales de Alto Impacto*), but it failed because the laws governing the courts lacked specificity and provincial judges were overlooked in favor of those from the capital for all types of cases and matters. As a result, the High Impact Crime Courts were almost immediately inundated by their caseload.

The CICIG proposed the creation of centralized, high-risk tribunals, clearly outlining their jurisdiction and responsibilities as well as the nature and characteristics of the cases they should hear. Since their creation in 2009, the courts have heard cases of organized crime and serious violations of human rights.

Removing Political Obstacles

Among the CICIG's powers is the authority to initiate administrative proceedings against public officials who are not fulfilling their responsibilities or are blocking, by action or inaction, the work of the Commission. The CICIG can even participate as an interested third party in administrative proceedings.

Even though the CICIG has not made use of this power, it has sought to name public officials who are not doing their jobs or who are obstructing the CICIG's quest to clean up infiltrated institutions by protecting people with ties to clandestine groups. The CICIG has asked the president to remove an attorney general, to fire a dozen lead prosecutors, to revoke the appointment of the director of the Public Defender's Office, to dismiss

members of the judiciary and hundreds of members of the police, including the general director, the deputy director, and close to 50 police commissioners.

In addition, in 2009, the CICIG's work on the elections for the Supreme Court and the Appeals Courts resulted in Congress eliminating three members of the Supreme Court and 20 appeals court judges on grounds that they were dishonorable. A year later, the CICIG's actions resulted in the revocation of the appointment of the attorney general, which enabled Claudia Paz y Paz to be elected in December 2010. Under her leadership, important reforms within the Public Prosecutor's Office were put in place. These reforms improved investigative abilities, increased the success rate in fighting criminal organizations, multiplied the number of arrests in high-

The CICIG has asked the President to remove an attorney general, to fire a dozen lead prosecutors, to revoke the appointment of the director of the Public Defender's Office, to dismiss members of the judiciary and hundreds of members of the police, including the general director, the deputy director, and close to 50 police commissioners.

impact crimes, and advanced cases of human rights violations during the armed conflict. She has received abundant national and international recognition for her leadership and achievements.

There has been some debate as to whether the CICIG has had adequate documentation for all of the cases of public officials that it has sought to remove from office. It is worth mentioning that the Commission's efforts have been oriented toward cleaning up the justice and security systems in the country.

These actions have sent a strong message to the CICIG's local counterpart institutions, to Guatemalan public officials, and, most importantly, to civil society. Under positive leadership and a significantly less hostile work environment, committed officials can get their work done. Through these actions, the population has become more engaged and more trusting and supportive of the legal system.

Without these disciplinary actions, it would be impossible for the CICIG to fulfill its mandate. The Commission was designed to work within the legal and institutional framework of the state, and it is very difficult for the CICIG to accomplish its goals when illegal groups have infiltrated the institutions with which it works.

The task of removing public officials who are not fulfilling their responsibilities or otherwise obstructing the CICIG's work is still pending on the Commission's agenda. As is explored in more detail in the following pages, illegal and parallel powers have sought to rebuild their networks of influence. This became evident during the 2014 selection process for attorney general, justices of the Supreme Court and Appeals Courts, and members of the Supreme Electoral Tribunal.

Investigation and Participation in Criminal Proceedings

The most important power granted to the CICIG, without a doubt, is its ability to initiate criminal proceedings by filing charges with authorities and by serving as a complementary prosecutor on cases that fall under its responsibility. Nonetheless, this also subjects the Commission to important conditions that arise from both the agreement and from the context in which it operates.

The CICIG can present a criminal complaint at any time and without authorization from any other national or international authority. This means that the Commission can perform its own investigations, using strategic and criminal analysis capabilities. At the same time, the CICIG can serve as a complementary prosecutor, meaning it becomes a part of the proceedings and can request examination of evidence or decisions from the courts. In contrast to its other powers, this authority is subordinate to the action and consent of the Public Prosecutor's Office and the ruling of the judiciary. As with any judiciary, the judge can dismiss a case that the Commission presents for lack of grounds or rule to acquit.

As an international organization, the CICIG's actions not only carry legal weight, they also have political implications. Given this, the Commission's actions are subject to the principle of discretionary prosecution. It is not just CICIG's actions that matter, but also the context in which it performs them: how and when it exercises its actions, against whom, for which crimes, and where (only in Guatemala or when requesting assistance from the justice authorities from other countries).

Clearly, any international mechanism for strengthening the rule of law must ensure the legality of its actions and, at the same time, must preserve the democratic

governability of the receiving country. Finally, as was mentioned above, among the most important goals included in its mandate is to build a sustainable capacity in the judiciary and security systems.

The selection process of the cases investigated by the CICIG must be understood in this context, and must take into account its twin goals of combating criminal structures and strengthening Guatemala's institutions.

In its first year, the CICIG received 64 accusations, of which it selected 15 to investigate directly, the majority in coordination with the Public Prosecutor's Office. These cases included crimes of femicide, murders of bus drivers, human trafficking, and attacks on and murders of union members, activists, and human rights defenders, which the Commission believed were committed by members of the CIACS.⁸⁴

CORRUPTION CASE AGAINST PRESIDENT ALFONSO PORTILLO

Alfonso Portillo Cabrera, the Guatemalan Republican Front (*Frente Republicano Guatemalteco*, FRG) candidate, took office as President in 2000, promising to battle corruption and make the country safer. His administration, however, was plagued by numerous cases of corruption and graft.⁸⁵

Among the cases for which he stood accused was the theft of 120 million Quetzals (US\$15 million) from the Ministry of Defense. According to the CICIG's investigations, Portillo made budgetary modifications without justifiable cause. These changes were approved by the then-Minister of Defense Eduardo Arévalo Lacs and the Finance Minister Manuel Maza Castellanos. Investigations revealed that military members Jacobo Esdrás Salán Sánchez and Napoleón Rojas Méndez transported 30 million Quetzals (\$3.75 million) in cash and turned it over to José Armando Llort Quiteño, ex-chief of the National Mortgage Credit Bank.⁸⁶ The rest of the money was deposited in Portillo's personal bank accounts and in accounts belonging to his relatives.⁸⁷

In the face of widespread protests and corruption accusations, Portillo fled to Mexico after his term ended in 2004 and lost his political immunity.⁸⁸ He fled just hours before Attorney General Carlos de León announced that he would seek a judicial order to prevent Portillo from leaving the country.⁸⁹ After spending more than four years in Mexico, Portillo was extradited to Guatemala in October 2008 to stand trial. He managed to avoid prison by paying a 1 million Quetzal bail (\$131,000).⁹⁰ In 2010, in a CICIG operation, he was captured on Guatemala's Caribbean coast while attempting to flee to Belize. Guatemalan authorities also detained his accomplices Arévalo Lacs and Maza Castellanos.



PHOTO: EFE

Guatemala's former President Alfonso Portillo captured in a joint operation by the CICIG and Guatemalan authorities on January 26, 2010.

In May 2011, the Eleventh Tribunal for Drug Trafficking and Environmental Crimes (*Tribunal Undécimo de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente*) found Portillo, Arévalo Lacs, and Maza Castellanos not guilty of embezzling 120 million Quetzals (\$15,694,480).⁹¹ While two of the three judges on the case ruled in their favor, their judgment was widely questioned after security camera footage surfaced showing one of Portillo's defense lawyers meeting with the husband of one of the two judges.⁹² The CICIG appealed the ruling in 2013 and, after numerous delays caused by the judges' refusals to accept the appeal, the Third Appeals Court for Criminal Cases (*Corte de Apelaciones del Ramo Penal*) upheld the original ruling.⁹³

In May 2013, Portillo was extradited to the United States at the request of the Attorney's Office for the Southern District of New York for laundering \$70 million through U.S. banks.⁹⁴ In March 2014, Portillo pled guilty after acknowledging that he laundered \$2.5 million from the government of Taiwan. He

also admitted to laundering money through the International Bank of Miami before ultimately depositing it in his relatives' bank account in Paris.⁹⁵ By pleading guilty, he was able to reduce his sentence. In May 2014, he was sentenced by a federal court in Manhattan to five years and 10 months in prison and ordered to return the \$2.5 million.⁹⁶ Portillo returned to Guatemala in February of this year because the years he served after his arrest in 2010 were considered a part of his sentence.

In June 2014, a Guatemalan court sentenced Salán Sánchez and Rojas Méndez, the two members of the military, to five years and three months in prison for their participation in the embezzlement of public funds.⁹⁷

The CICIG also investigated eight high-level Ministry of Defense officials for the theft of public funds from the

ministry (ex-General Enrique Ríos Sosa, Miguel Ángel Salguero Torres, Luis Alberto Gómez Guillermo, Sergio Hugo Cárdenas Sagastume, Randolph Leonel Chacón Álvarez, Pedro Adolfo Catalán Muñoz, Moisés Eduardo Galindo Ruíz and Luis Catarino Estrada Valenzuela). A judge closed the case in September of 2013. The Commission and the FECCI appealed the ruling, and an appeals court in March 2015 ruled that the eight military members should stand trial because there "existed the potential to demonstrate that they took part in the diversion of funds."⁹⁸

The CICIG investigations revealed acts of corruption in the highest levels of the Guatemalan government. They exposed the ways in which networks operate to protect members of corruption rings and demonstrated how they abuse legal recourses to benefit sectors of the military that use their public offices for personal enrichment.

By the end of August 2013, the CICIG had investigated approximately 150 cases, including crimes of drug trafficking, altering and stealing evidence by state agents, corruption and murders linked to powerful individuals, and money laundering. It had also participated as a complementary prosecutor in more than 50 cases.⁹⁹

Among the most paradigmatic were the assassination of lawyer Rodrigo Rosenberg (See box on p.19), the case against President Alfonso Portillo for corruption (See box on p.16), the extrajudicial killings by a network with ties to security institutions (See box on p.11), the case against the Mendoza Matta mafia for murders, disappearances, usurpation of land, and other crimes in the departments of Izabal and Petén (See box on p.28), the case against the criminal network in the prison system directed by Captain Byron Lima Oliva, with the participation of high-level public officials (See box on p.7), and most recently, the case against a tax-fraud ring that implicated high-level officials including the vice president's personal secretary (See box on p.22).

Creating a Political Consensus

International mechanisms for strengthening the rule of law are often established in complicated political contexts. Even though national authorities request the collaboration of the international community, these same

authorities often have complicated or even contradictory perspectives on the role they expect the international mechanism to play. This can make the mechanism's work challenging as the success of any international mechanism seeking to strengthen the rule of law depends on the collaboration of national authorities.

Political consensus did not exist when the CICIG was created, nor has it always been present since then. Strong congressional opposition existed even before the agreement was ratified in Congress on August 1, 2007.¹⁰⁰ Numerous observers maintain that its eventual approval was largely due to the murders in Guatemala of three Salvadoran congressmen from the Central American Parliament (*Parlamento Centroamericano*, PARLACEN), which led to a public and media outcry and renewed the push to reform the security apparatus. Strong support from the international community also played a role in the agreement's approval.

Since its inception and during different periods of its work, the CICIG's initiatives have faced institutional and political resistance from certain sectors. The ability to overcome resistance and build the consensus needed to carry out its mandate has required advocacy and raising awareness with all of the relevant social sectors. The support of the diplomatic community in the country has also been

essential. The Commission has invested much effort in educating the citizenry about its work and winning the support of diverse sectors of Guatemalan society.

In the best of cases, the international mechanism should be able to count on the active participation of the institutions and organizations behind its creation. It should build a partnership with the national and international counterparts in charge of implementing its mandate, and in the same way, it should seek active and public collaboration from the counterparts that signed the agreement. This could involve public meetings, joint communications, and multilateral events to analyze and evaluate the experience, the mechanism's performance, and its results, with the permanent participation of the donor states, civil society, and relevant sectors.

In the case of the CICIG, this collaboration has not always been present or has occurred only to varying degrees. This has affected the Commission's work. An instrument like the CICIG cannot function in an isolated manner. It requires the political will of its counterparts, especially the Public Prosecutor's Office, the police, and the judiciary.

Mobilizing Civil Society: The Importance of a Communications Strategy

The CICIG's experience demonstrates the importance of civil society support. On the one hand, it has shown the role that a mechanism of this kind can play in increasing public awareness of the impact that criminal networks can have on democratic institutions and on everyday life, which has generated national demand for a stronger rule of law. On the other hand, it has delineated the importance of a proactive communication strategy and a participating society for the success of a mechanism such as this.

The CICIG's public presence and engagement with society gave force to the popular movement that coalesced around the Commission in its first years of work. On June 2, 2009, in a public act called *Convocatoria Ciudadana* (Citizen Gathering), 35 civil society organizations, private sector groups, indigenous movement groups, progressive and conservative NGOs, environmentalists, feminists, human rights groups, and university and religious organizations gathered together to express their unconditional support for the CICIG, the judiciary, and the fight against impunity.

Convocatoria Ciudadana, Guatemala Visible (an initiative to make transparent the process of naming members to the judiciary), the youth movement,¹⁰¹ and the tireless efforts of human rights groups were decisive in correcting in 2009 the course of the selection process for the appeals courts and the Supreme Court magistrates in 2009. They also helped push Congress to reform the law governing the nominating committees and to remove three congressionally elected Supreme Court judges—steps the CICIG had recommended and supported.

While the CICIG's media presence produced immediate positive effects, the absence of a professionally designed media strategy during the early period of the Commission's work had negative consequences. Groups and sectors that opposed the CICIG were able to take advantage of the situation to launch a media campaign against the Commission, and in particular, against the Commissioner. The campaign managed to divert attention away from a debate about the problems that gave rise to the CICIG and its efforts to investigate and dismantle criminal structures.

The Demonstration Effect¹⁰²

A mechanism like the CICIG will never have the time, budget, personnel, mandate nor authority to make all of the changes to the justice and security system that are necessary in a country like Guatemala, with its weak institutions and powerful clandestine organizations. What is essential is to regain citizens' faith in the national institutions that are obligated to serve them. To achieve this, the mechanism must work jointly with local authorities—especially the Public Prosecutor's Office or its equivalent—to select cases that will dismantle currently operating clandestine structures, and at the same time, strengthen the performance of its Guatemalan counterparts. This will demonstrate that no one is above the law.¹⁰³ For these efforts to be sustainable in the long term, the prosecutors and the Commission need to win convictions, preferably in Guatemala's own courts. This does not preclude resorting to foreign courts when it is both feasible and when the accused are using their power to ensure their impunity at home.

The CICIG and the Public Prosecutor's Office have launched 204 investigations involving 33 criminal structures and 161 government officials.¹⁰⁴ Among its results are the convictions against a former president of

the country; various former defense and interior ministers; former directors and other high-ranking members of the National Civilian Police; retired generals and other high-ranking members of the armed forces; officials from the penitentiary system; politicians; businessmen; members of national and transnational criminal organizations; hit men; drug traffickers; and others.

Through its actions, the CICIG has made Guatemala's justice system function, demonstrating that justice can be served using Guatemala's laws in its own courts. While there is still a long way to go, the Commission has demonstrated that it is possible to build a Guatemalan justice system in which no one is above the law or exempt from prosecution.¹⁰⁵

Among the most important turning points for this demonstration effect and for Guatemalan public opinion were the investigation of the murder of the lawyer Rodrigo Rosenberg, which helped to safeguard the political stability of President Álvaro Colom's administration; the arrest in January 2010 of former President Alfonso Portillo while he was trying to flee to Belize; the dismantling of the corruption ring that operated out of the Pavoncito prison, which was a big blow to Captain Byron Lima Oliva's criminal empire; and, more recently, the uncovering of a massive tax fraud ring in Guatemala that implicated officials in the highest

levels of government, including the vice president's private secretary.

THE HIJACKING OF THE JUSTICE SYSTEM BY CRIMINAL PARALLEL POWERS

Despite the CICIG's significant progress in dismantling criminal networks and strengthening the judiciary, there is still much work to be done. Unsurprisingly, as the Commission made headway with its investigations and prosecutions, criminal networks and their allies sought to regroup and recover lost ground to counteract the CICIG's work and safeguard their impunity.¹⁰⁶ This is an important lesson. Once they came under attack, the criminal networks sought to respond and adapt. Dismantling these groups is not an easy task in Guatemala or in other countries facing similar challenges.

The quest of criminal and parallel powers to adapt to a changing landscape is evident in their attempts to control and co-opt the judiciary and justice system. Their infiltration of state institutions is not coincidental, as many of these networks do this to secure impunity for their present and past crimes, including those perpetrated during the armed conflict. The political-criminal infiltration has spread to other institutions, including universities and the Bar Association, which play an important role in nominating key personnel to the judiciary and the Public Prosecutor's Office.¹⁰⁷

THE KILLING OF RODRIGO ROSENBERG

On May 10, 2009, Rodrigo Rosenberg Marzano, a prestigious Guatemalan lawyer, was murdered while riding his bicycle in a residential Guatemala City neighborhood.

Days before he was shot, Rosenberg had recorded a video in which he blamed his murder on then-President Álvaro Colom, his wife, Sandra Colom, and their inner circle.¹⁰⁸ In the video, Rosenberg said that his death was related to the murder of his client, businessman Khalil Musa, and his daughter, Marjorie Musa, after the former had presumably discovered acts of corruption in a local bank.¹⁰⁹

The video, which was first seen at Rosenberg's funeral and later uploaded to *YouTube* and broadcast on



PHOTO: YOUTUBE

Video of Rodrigo Rosenberg Marzano recorded days before his murder.

national television, caused quite a stir in Guatemala. The severity of the accusation unleashed a political and social crisis that threatened to topple the Colom administration.

The Guatemalan government, diverse sectors within the country, and the international community asked the CICIG to investigate the case. The Commission assigned more than 300 officials, including lawyers, analysts, police investigators, and security personnel to the UEFAC's investigation. In September 2009, the Guatemalan police arrested individuals suspected to be the material authors of the crime. The suspects were members of a criminal organization that included ex-police, an ex-military officer, and members of a gang.¹¹⁰ Eight months later, in January 2010, the CICIG announced the results of its investigation. In an unexpected turn, the investigation revealed that Rosenberg had planned his own death.¹¹¹

In a nationally televised speech, then-Commissioner of the CICIG Carlos Castresana revealed that Rosenberg had asked for help from his cousins, businessmen

Francisco and Estuardo Valdés Paiz, to assassinate a man who Rosenberg claimed was extorting him.¹¹² According to the investigation, the Valdés Paiz brothers asked one of their bodyguards to hire a band of hit men to execute the extortionist not knowing the target was Rosenberg himself. By complying, they converted themselves into the intellectual authors of the crime.¹¹³

The CICIG's investigations demonstrated what can be achieved with resources and with the use of scientific evidence, including, in this case, security camera footage, phone records, photographs, and wiretaps. The unexpected results of the Commission's investigation contributed to restoring political stability in the country and opened a window into the culture of violence and complicity within certain sectors of Guatemala's most privileged class.

This objective to hijack and restructure the state appears in advanced and complex contexts of corruption. In these situations, licit and illicit actors, through legitimate or illegitimate actions, seek to manipulate the state from within its institutions and influence the development, modification, and implementation of public policies.¹¹⁴

In Guatemala's case, one of the first victims of this process was Attorney General Amílcar Velázquez Zárate, who was known for running a more efficient Public Prosecutor's Office. Velázquez became Attorney General in August 2008 after his predecessor failed to cooperate with the CICIG. Velázquez Zárate's arrival brought about a coordinated working relationship with the Commission that facilitated the creation of the special prosecutor's office (FECI), the Wiretapping Unit, the restructuring of the Analysis Unit, the provision of technical support for investigations in a few specific cases, and the first actions against prosecutors who were obstructing justice.¹¹⁵ These actions sent a positive signal for change within the Public Prosecutor's Office.

In spite of his efforts, the Nominating Committees—key entities in the selection of high-level justice officials—made his reelection impossible after they left his name off the list of six candidates presented to the President in 2010.¹¹⁶ Despite the implementation of various tools to ensure a more transparent election, many organizations maintained that most committee members voted for a list

of candidates that had previously been agreed upon and without debating the honorability of the nominees.¹¹⁷

In May 2010, President Álvaro Colom named Conrado Arnulfo Reyes Attorney General. As soon as he took office, Reyes appeared to attempt to block the CICIG's investigations. For instance, he removed prosecutors and investigators working with the Commission.¹¹⁸ The CICIG made public statements about Reyes' connections to parallel power structures and, after only 17 days in office, he was stripped of his duties.¹¹⁹ In June 2010, the Constitutional Court repealed his election on procedural grounds.

Reyes' removal created the opportunity for Claudia Paz y Paz Bailey to become attorney general. She achieved substantial progress in the fight against impunity and organized crime and made important reforms within the Public Prosecutor's Office. In just three years, hundreds of members of the Zeta gangs and soldiers accused of human rights violations during the armed conflict were convicted. Her office was also behind the arrest and extradition of local drug kingpins who had long enjoyed impunity for their crimes.¹²⁰

Despite her achievements and numerous international recognitions, her mandate, set to end in December 2014, was cut short. Political pressure and the influence of parallel powers succeeded in ousting her in May 2014.

A new nominating committee excluded her candidacy for reelection despite the fact that, according to the evaluation criteria devised by the nomination committee itself, she was the second most qualified candidate.¹²¹

The methods criminals and political and economic sectors employ to manipulate the nomination process and secure greater control over the judiciary became clear during the more recent selection of Supreme Court and Appellate Court judges.¹²² Congress elects judges to both these courts every five years from a list of candidates selected by the Bar Association, deans of law schools, a university rector, and appellate judges. Various organizations have questioned whether this process can truly produce independent and impartial judges considering that it encourages candidates to compete for political support in order to be elected or to maintain their positions.¹²³ This makes the justice system vulnerable to special interests.¹²⁴ As a Guatemalan analyst explained, “the committees are networks woven by private interests, and they have acquired such relevance that everyone, including political parties, strives to control them.”¹²⁵

The most recent election process was subject to these very criticisms. Various international and national non-governmental organizations denounced serious irregularities at each stage of the process. They said the process was not transparent or rigorous and plagued by conflicts of interest, influence peddling, insufficient scrutiny of the candidates, and the absence of objective nominating criteria.¹²⁶ International organizations, including the CICIG,¹²⁷ the Inter-American Commission for Human Rights (*Comisión Interamericana de Derechos Humanos*, CIDH), and the United Nations Special Rapporteur for the Independence of Judges and Lawyers,¹²⁸ expressed similar concerns.

Despite these criticisms, reports indicate that the members of the Supreme Court were allegedly elected as a result of a power-sharing agreement struck between the Patriot (*Patriota*, PP) and Renewed Democratic Liberty (*Libertad Democrática Renovada*, Líder) political parties,¹²⁹ and that the agreement further led to the October 1 election of members to appellate courts.

The concerns were so serious that, in a gesture without precedent, a member who gained reelection to one of the nation’s highest courts resigned over the corruption and irregularities she believed occurred during the

PHOTO: PLAZA PÚBLICA



Former Attorney General of Guatemala Claudia Paz y Paz Bailey.

selection process.¹³⁰ In a press conference, Judge Claudia Escobar Mejía said that the “irregularities in the selection and election processes for judges place the judicial independence of all judges at grave risk.”¹³¹ Escobar also denounced having been pressured by Congressman Gudy Rivera to rule in favor of the Vice President in a case she was observing in exchange for her reelection.¹³²

Days after her resignation, the Constitutional Court suspended the elections because it believed the accusations, which came from diverse sectors, to be serious.¹³³ A month later, the court validated the election of the judges.

Establishing a functional, impartial, and independent judicial system is an essential element of democratic governance. It has also been one of Guatemala’s greatest challenges. The influence that criminal organizations continue to exert is particularly serious and it is a central obstacle to the construction of the rule of law. These processes have proven that there is still much more to be done to consolidate the progress made in the justice system and underscores the need for the CICIG to remain in the country.

THE UN, THE PROMOTION OF THE RULE OF LAW, AND THE CICIG EXPERIENCE

Promoting the rule of law is one of the United Nations’ principal areas of work.¹³⁴ While there is no internationally agreed upon definition of the concept, UN Secretary General, Ban Ki-moon, described the rule of

law as:

[a] principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

In addition to the activities and programs on the rule of law that UN missions and agendas around the world carry out, the organization supports various rule of law mechanisms. These mechanisms take different forms, such as the International Court of Justice, the

international criminal tribunals for Rwanda and former Yugoslavia, the tribunals for Sierra Leone, Cambodia, and Libya, and various investigative commissions. Among these, the CICIG is an unprecedented, UN-sponsored, hybrid mechanism that has a broad mandate for investigating organized crime and its ties to state institutions.

As a hybrid mechanism, the CICIG is an international apparatus that helps strengthen and assist Guatemalan institutions in investigating and dismantling criminal networks. Its goal is to *complement*, and not temporarily *replace*, national security and justice institutions. The Commission's experience represents a new method of strengthening the rule of law. It allows the international community to work hand in hand with local institutions while at the same time enjoy a certain level of independence and authority to promote changes in their performance.

LA LÍNEA SCANDAL

On April 16, 2015, the CICIG and the Guatemalan Public Prosecutor's Office uncovered a massive corruption network within Guatemala's tax collection agency, the Superintendencia de Administración Tributaria (SAT). The network, dubbed "The Line" (*La Línea*), allegedly involved officials in the highest levels of government, including the current and former head of the SAT, and Vice President Roxana Baldetti's personal secretary, Juan Carlos Monzón, who is said to have led the tax-fraud ring.

CICIG commissioner Iván Velásquez explained that the network, which made millions of dollars off tax fraud at customs posts, reportedly operated out of three ports, Quetzal, Central, and Santo Tomás.¹³⁵ Businesses that imported goods to those ports could call a phone number (*La Línea*) to negotiate a deal: the importer would pay 40 percent of standard import taxes to the state, deliver 30 percent to the tax fraud ring, and keep the remaining 30 percent.¹³⁶ In this way, *La Línea* defrauded the government 60 percent—an estimated \$120 million (940 million Quetzales)—of due tax revenue from the containers that entered under the illicit agreement.¹³⁷



From left to right: Vice President Roxana Baldetti's personal secretary Juan Carlos Monzón Rojas, former head of the SAT Carlos Enrique Muñoz Roldán, current head of the SAT Álvaro Omar Franco Chacón. The graphic above explains how *La Línea* operates: First, the shipping container arrives at the port for inspection. If the importer has a relationship with the network, the customs surveyors flag the container and call *La Línea* to alert them. The importer declares the value of the container, pays the reduced import tax, and delivers the bribe to the network. The contents of the container are then free to enter the country, but the state loses 60 percent of due tax revenue on the import.

Over the course of eight months, the Special Anti-Impunity Prosecutor's Bureau (*Fiscalía Especial contra la Impunidad*, FECI), the CICIG, and the Ministry of the Interior monitored over 66,000 phone calls and 6,000 emails between the members of the tax-fraud ring.¹³⁸ The evidence they found implicated at least 24 people in the scheme, including customs surveyors, middle to high-ranking members of the tax collection agency, and others outside the agency.¹³⁹ The current superintendent of the SAT, Álvaro Omar Franco Chacón, and the former superintendent, Carlos Enrique Muñoz Roldán, were both implicated in the scandal, although according to the CICIG, the evidence suggests that it was Monzón who supposedly gave the commands.¹⁴⁰ Monzón reportedly also played a role in ensuring that Franco succeeded Muñoz as head of the SAT after Muñoz failed to meet the tax collection quota in 2014.¹⁴¹

The network's alleged second in command was Salvador Estuardo González Álvarez, president of a news corporation that owns Guatemalan newspapers *Siglo 21* and *AIDía*.¹⁴² Other prominent members of *La Línea* purportedly included Luis Alberto Mendizábal Barrutía, who filmed and distributed the video of Rodrigo Rosenberg in 2009 (see p.19), and Francisco Javier Ortiz Arriaga, alias "Lieutenant Jerez." Ortiz is a former member of the Moreno network, an illicit crime ring composed of military and government officials that carried out similar tax fraud and smuggling activities in the 1990s.¹⁴³

On April 13, three days before the CICIG went public with the investigation, Monzón left the country to accompany Vice President Baldetti on a trip to South Korea. According to reports, this was the first time Monzón had traveled internationally with the Vice President.¹⁴⁴ When news of the scandal broke, Monzón was nowhere to be found. Baldetti claimed that her secretary had left hours before the news reached her and had not seen him since.

Revelations of the scandal within the Pérez Molina administration sparked widespread protests and thousands of Guatemalans poured into the streets of the nation's capital to demand the resignation of Vice President Baldetti and President Pérez Molina. Although Baldetti denied any connection to the corruption

scheme, on May 6 the Guatemalan Supreme Court unanimously ruled that Congress could revoke her political immunity to allow for her investigation. After losing an appeal to overturn the ruling, Baldetti stepped down as vice president. President Molina made the announcement in a historic press conference on May 8, stating that her resignation was a "personal decision."¹⁴⁵

Further investigations into the tax-fraud scheme led to arrest on May 8 of three lawyers for allegedly running a "Law Firm of Impunity" (*Bufete de Impunidad*), which connected clients to judges who were willing to rule in their favor.¹⁴⁶ In the case of the tax-fraud scandal, the judge implicated was Marta Josefina Sierra González de Stalling, sister-in-law of Blanca Aída Stalling Dávila, President of the Criminal Chamber of the Supreme Court (*Corte Suprema de Justicia*, CSJ).

On April 21, Judge Marta Sierra de Stalling sentenced 16 of the 22 tax-fraud defendants to pretrial detention in prison, while the other six defendants, including key players Francisco Javier Ortiz Arriaga and Salvador Estuardo González Álvarez, were given house arrest and a reduced bail.¹⁴⁷ Judge Sierra de Stalling did not offer an explanation for why she considered the situation of these six defendants to be any different from the rest of the group.

According to phone intercepts from the CICIG investigation, Mendizábal Barrutía had contacted one of the lawyers of the *bufete*. The lawyers allegedly arranged for three of the defendants—Salvador Estuardo González Álvarez, Francisco Javier Ortiz Arriaga, and Miguel Ángel Lemus—to pay off the judge in exchange for a reduced sentence.¹⁴⁸

The CICIG and the FECI filed an appeal against Judge Marta Sierra de Stalling, but the judge cannot be investigated unless the Supreme Court decides to strip her of judicial immunity.¹⁴⁹ The phone intercepts also mentioned Sierra de Stalling's sister-in-law, Blanca Aída Stalling Dávila, although the Supreme Court magistrate denies any connection to the case. Several judges and magistrates recently called for Blanca Stalling to resign, but no formal appeals have been filed against her.¹⁵⁰ She recently requested a one-month, unpaid leave of absence.

As a hybrid mechanism, the CICIG model allows for the analysis of international cooperation on the rule of law aimed at creating national will and capabilities where they do not exist. An examination of the Commission can reveal whether it is possible to establish a functioning collaboration between the international community and authorities of a particular state that allows the former to train and provide the latter with needed equipment and legal instruments. It presents an opportunity to determine whether the international community can help local authorities eliminate political obstacles that obstruct actions aimed at protecting fundamental citizen rights.

The nearly eight years that the CICIG has been operating in Guatemala allows for the identification of some lessons learned from this innovative experience to combat organized crime rooted in state institutions. These lessons should be considered for the creation of future rule of law mechanisms in countries that are in similar situations.

Lessons Learned from the CICIG Experience

Creating and Establishing the Mechanism

Need for Prior Analysis

Prior to the creation of the CICIG, two missions from the UN Department of Political Affairs visited Guatemala. The first, in 2003, studied the possible creation of the CICIACS. The second, in 2006, analyzed conditions for the creation of what would become the CICIG.¹⁵¹ On these visits, the missions sought opinions from various representative sectors of society and government, including the executive branch, Congress, the justice system, the Constitutional Court, the Human Rights Ombudsman, the National Civilian Police, the Army, political parties, unions, private sector organizations, media, human rights group representatives, indigenous organizations, and of course, the diplomatic community in the country.

The United Nations found itself faced with an innovative and unprecedented proposal. In retrospect, there are preliminary measures that, had they been taken, could have strengthened the CICIG's work from the very start. To play it safe, the Commission mandate was set for two years with an option for renewal, but such a limited time period was not sufficient for the investigation and dismantling of complex criminal networks, thus creating uncertainty for the future of the CICIG from the very start. In addition, it would have been beneficial to conduct a more thorough analysis of the current legal system in

Guatemala to determine the legislative changes needed for the effective implementation of the Commission's mandate. This could have allowed the United Nations to determine whether or not it is necessary to include specific obligations in the agreement for the collaboration of Guatemalan institutions.

As a hybrid mechanism operating within Guatemala's legal framework, the instruments at its disposal for exercising its mandate were those included in Guatemalan legislation. The CICIG experience underscores the need to consider, during the process of creating such a mechanism, the inclusion of indicators of political will, such as legislative reforms.

Institutional Establishment, Prior to the Start of Operations

During its first four months of existence, the CICIG operated with a limited number of volunteers and basic resources. The recently appointed commissioner, contracted as a consultant during the first three months, was responsible for setting up the Commission's search for a team of experts.

The first few months of the CICIG's work underscored the advantages of establishing, whenever possible, a preliminary period for the preparation of an international mechanism aimed at strengthening the rule of law. This would allow time to attend to administrative and management issues, such as recruiting and hiring personnel, before the official work begins.

It is important to note that the agreement to create the CICIG was signed at the end of UN Secretary General Kofi Annan's term and Guatemalan President Oscar Berger's administration. Given these impending transitions, the Commission was implemented quickly.

UN Cooperation and Support

The CICIG's experience highlights the importance of having a department or agency within the UN that serves as a focal point for operational cooperation and direct contact with all of the UN-backed security and justice mechanisms. Such an entity could help fill gaps and provide real-time support. This operational unit could be mandated to coordinate and administer all UN-sponsored justice and security mechanisms, monitor progress, make recommendations, and provide pertinent material and best practices.

In 2012, the Secretary General of the United Nations created a system to strengthen the organization's work on rule of law. Under this new system, the on-the-ground UN officials of the highest level are responsible for guiding and supervising rule of law strategies and coordinating with local agencies. At the headquarters level, the United Nations Development Program (UNDP) and Department of Peacekeeping Operations (DPKO) were appointed as the "Global Focal Point for Police, Justice and Corrections Areas in the Rule of Law in Post-conflict and other Crisis Situations." In this capacity, UNDP and DPKO support on-the-ground missions with regards to personnel, knowledge, finance, and technical and operational advice. At the strategic level, the Rule of Law Coordination and Resource Group assumes the leadership role for all work on the rule of law.¹⁵² This new system, especially the Global Focal Point, can help future mechanisms address some of the issues that arose at the start of the CICIG's mandate.

Non-UN Agency vs. UN Body

During the final phase of negotiations between the UN and the Guatemalan government, both parties agreed that the CICIG would not be established as a UN body. This designation generated certain challenges regarding the Commission's relationship with the UN, the contracting of personnel, the protections provided to such personnel, and on an operational level. Nonetheless, its status enabled it to have a greater degree of operational independence and flexibility, which, given its investigative functions, has been essential to the implementation of its mandate.

When it comes to personnel, the CICIG's status as a non-UN entity means that its personnel are not integrated with the UN system and thus not entitled to the UN-system's pension funds and other benefits and rights. This has made it more difficult for the Commission to hire first-rate UN professionals who would like to remain within the UN system to preserve their professional benefits. Various experts who could have been candidates for the CICIG positions have long UN-system trajectories.

This status has also given rise to difficulties in acquiring security equipment and has generated delays in obtaining judicial assistance from other states, including for the relocation of protected witnesses to other countries.¹⁵³



The initiative to create the CICIG is approved by the Guatemalan Congress on August 1, 2007.

At the same time, despite the challenges that this status has created, it has given the CICIG more independence, which is essential for an international investigation body that functions as an international prosecutor. Its status has endowed it with important levels of confidentiality, flexibility, and freedom to maneuver. For instance, under its standard operating procedures, the Commission has been able to provide security to people outside the UN system, including victims.

To balance the benefits of having a UN vs. non-UN status, some experts have suggested that mechanisms similar to the CICIG should be established as non-UN entities, but they recommend that they sign an accord similar to the one that exists between the UN and the International Criminal Court.¹⁵⁴ This kind of agreement would allow the mechanism to maintain its level of independence and also receive the protection and support of the UN system that is important for the effective implementation of its mandate.

Security

Before the creation of the CICIG, the UN had never participated directly in investigating organized crime. The Commission has raised a series of important security-related issues that should be considered in the design of any similar future mechanisms. At the same time, it has highlighted the importance of having a certain degree

of flexibility, and of considering the adoption of new norms and procedures to address new and emerging security threats. From a security perspective, the most important lesson learned from the CICIG experience is the need for such a mechanism to be able to carry out functions that are uncommon within the UN system, such as the protection of witnesses, mechanisms to ensure confidentiality, and the implementation of special protocols on the use of force, among others.

Another issue to consider is the security of personnel, particularly domestic CICIG personnel who face a significant risk of physical or judicial retaliation for their work that does not end with the completion of the Commission's mandate. While international personnel can return to their home countries at the end of the mandate, the majority of the domestic personnel will remain in Guatemala without the judicial or physical protection of the Commission. This not only makes it difficult to hire local lawyers and investigators, it also has a significant effect on the lives of domestic personnel once the mandate is finished.

Local Capacity Building

Establishing a Trained Counterpart

Any mission to strengthen the rule of law should be based on the assumption that when a state signs an agreement with the UN, an international or regional organization, or another country to strengthen its security and justice systems, it does so because the state is unable to respond to an overwhelming criminal phenomenon. This is usually because of institutional weakness or political instability that affects the state's ability to govern, or in many cases, a confluence of both. As a result, the state cannot confront the problem on its own, as it lacks the technical capacity and often the political conditions, such as a legislative majority or political consensus, to do so.

In many cases, international missions will be working with a state counterpart with weak professional expertise, organizational shortcomings, and poor technical equipment and legal systems that fail to meet international standards for successful organized crime investigations. In countries with a strong presence of organized crime, endemic corruption, and high levels of social and political conflicts, state justice and security institutions are often infiltrated by these criminal organizations, or a large number of public officials have

been co-opted by interest groups. Such government institutions do not engender a sense of trust in its citizens.

The ultimate aim thus becomes creating capacity and political will where it does not exist. Yet, before being able to effectively work with the domestic counterpart, a mechanism would have to consider various issues, including: a) the selection of personnel with a history of periodic evaluations of their reliability and assessments of their standard of living to eliminate candidates whose profile does not correspond with their job or income; b) the need to reconcile the technical assistance procedures needed for the appropriate training of selected personnel; c) the provision of protection to these public servants, including their families, if necessary; and d) the provision of essential legal instruments, technical equipment, and services so the selected personnel can perform their jobs successfully and lawfully.

Proposing Legislative Reforms

One of the CICIG's exclusive powers is ability to propose legislative and policy reforms. This has enabled it to support efforts to build investigative and criminal prosecution capabilities within the state. As mentioned above, the Commission is a hybrid mechanism operating within Guatemala's legal framework whose effectiveness and ability to complete its mandate depends on the instruments made available to it. It is extremely difficult to define the goals and timeframes for the approval of legal reforms, as the process is subject to the legislative dynamic within the country. These challenges should be taken into account when determining the role of an entity like the CICIG in legislative reforms. It is imperative that the mechanism has the necessary tools to effectively combat criminal networks. A government that does not respond to proposed reforms indicates a lack of political commitment to confront criminal networks.

The Need for a Communications Strategy

The CICIG's experience emphasizes the need for any future mechanism aimed at strengthening the rule of law to have a professionally designed and implemented communications strategy. A solid communications strategy will help keep the public informed, allowing it to raise public awareness. Publicizing emblematic investigation cases will help educate the citizenry about the complexity of criminal networks and the impact they have on democratic institutions and everyday life.

Evaluation, Impact, and Results

Measuring Results

It is extremely difficult to measure the results and impact of the CICIG or any other similar mechanism. Because of the nature of the mandate of many international mechanisms, including the Commission's, to strengthen the rule of law, the number of convictions obtained is not a clear indicator of success. While one can consider tangible results like the number of investigated cases, laws passed, or corrupt officials removed from office, qualitative and political indicators should also be used to measure the impact of hybrid international mechanisms on the justice system. These intangible factors could include an increased awareness in the population of the problem of impunity and its impact on society or the existence of a renewed public demand for justice. Guatemalan society's confidence in the possibility of combating impunity and achieving justice speaks volumes to the impact of the Commission on the country.

Because of its hybrid nature, the results of a mechanism like the CICIG also depend on the will, commitment, and cooperation of the national counterparts to combat criminal networks with strength and determination.

Sustainability of Progress

The results and achievements of the CICIG or of similar bodies are not of great value if institutional progress cannot be sustained after the mechanism's mandate ends. In an attempt to achieve sustainability, state institutions should be made up of well-trained public officials who are committed to combating impunity, dismantling criminal groups, and adopting the measures needed to safeguard due process and impede the resurgence of criminal groups. The need to develop a strategy to identify and train committed public officials who will become part of the leadership team in the future justice and security system should be considered from the inception of mechanisms like the CICIG.

The receiving country's government should also display a firm commitment to maintain the progress that has been made. This means that the country should substantially strengthen the ability of the Public Prosecutor's Office and the justice system during the commission's mandate. At the same time, it means adopting and implementing the necessary instruments to protect justice and security institutions from being co-opted by criminal networks dedicated to guaranteeing impunity. Because the CICIG's

goals are long term, many of its achievements will be visible only after its mandate expires. As a result, the sustainability of its efforts is of utmost importance.

CONCLUSIONS

The International Commission against Impunity in Guatemala (*Comisión Internacional contra la Impunidad en Guatemala*, CICIG) is a unique model of cooperation for the strengthening of the rule of law. It was created by an agreement between the Guatemalan government and the United Nations in 2006. Its mission is to support Guatemalan institutions in investigating, prosecuting, and eventually dismantling the networks of criminality and corruption that continue to operate in the country. These networks have sought to embed themselves in the security and justice systems to control them and avoid being investigated or prosecuted for their crimes. The Commission also seeks to strengthen the justice system and has an unprecedented mandate to do so.

In contrast to other mechanisms of international cooperation for strengthening the rule of law, the CICIG operates within Guatemala's justice system. As such, it has the ability to conduct investigations, while working hand in hand with Guatemalan institutions. In this way, the Commission achieves lasting and substantial changes through its direct effort to strengthen state institutions.

While its trajectory has not been entirely smooth, the CICIG has achieved transcendental results. When the Commission began its work in Guatemala, illegal organizations and clandestine entities had been infiltrating and co-opting state institutions for more than twenty years. Through its actions, the subsequent mobilization of civil society, and the facilitation of political consensus, the CICIG won the approval of important legislative reforms; secured new investigative tools, principally for the Public Prosecutor's Office; and removed public officials who were compromised by or colluding with criminal organizations.

The successes of the collaboration between the CICIG, the Public Prosecutor's Office, and the international community are undeniable.¹⁵⁵ The arrest of former President Alfonso Portillo, the conviction of two of his biggest collaborators, and other convictions related to extrajudicial killings carried out by high-level officials of Oscar Berger's administration would not have been possible

without the presence and collaboration of the Commission. Without the CICIG, it is unlikely that the justice system would have been able to strike such a blow to the network of corruption within the prison system, or, more recently, to the tax fraud ring that implicated high-level officials as well as corrupt judges and lawyers who helped them. It would

have been impossible to take action against Judge Erick Gustavo Santiago de León, who is accused of belonging to a corruption ring within the judicial system;¹⁵⁶ Judge Jisela Reinoso for possible crimes of money laundering and illicit enrichment;¹⁵⁷ or against the ruling party representative Gudy Rivera for possible influence peddling.

MENDOZA MATTA'S LOCAL EMPIRE

On November 20, 2014, in an operation (“Cancebero”) coordinated by the CICIG, the Special Anti-Impunity Prosecutor’s Bureau, and the Ministry of Interior, ten alleged members of a criminal organization controlled by Haroldo Mendoza Matta were arrested.¹⁵⁸ The suspects were tied to the November 15 massacre of seven people in the department of Izabal.¹⁵⁹ The arrests, carried out simultaneously in the departments of Petén, Izabal, Suchitepéquez, and Guatemala, were a big blow to one of the oldest and most powerful criminal organizations in the country.¹⁶⁰

According to the CICIG’s investigation, the Mendoza family was able to form a private army that “patrolled, controlled access routes, and guarded borders in Petén and Izabal and committed crimes there, including murder, burning harvests, the theft and killing of livestock, raiding homes, massacres, disappearances, and land usurpation.”¹⁶¹ The family is rumored to have exerted absolute control over the department of Izabal.

Reports by international organizations and research centers maintain that the Mendoza family has been operating in Guatemala since the 1980s.¹⁶² Over the years, they have acquired vast quantities of land in the Petén and have constructed a business empire that includes *haciendas* (large estates), construction companies, hotels, restaurants, gas stations, transportation companies, and agricultural product distributors, among other businesses. In a decade, these companies earned, according to the daily newspaper *El Periódico*, 74.6 million Quetzals (US\$9.8 million) in municipal government contracts.¹⁶³

The Mendoza family benefitted from political alliances with local authorities and political circles in Guatemala. Media reports suggest that the Mendoza family financed the congressional campaign of the mayor of Petén after he spent \$2 million dollars to build a soccer stadium for a team the family owned.¹⁶⁴ The reach



PHOTO: PRENSA LIBRE

The CICIG and Guatemalan security forces capture Haroldo Mendoza Matta.

and power of the Mendoza family was so great that ex-President Álvaro Colom said the Mendozas were “untouchable drug traffickers.”¹⁶⁵

After the arrest of Haroldo Mendoza, CICIG Commissioner Iván Velásquez Gómez said that the organization tried to infiltrate the state and establish relationships with local authorities. He also said Haroldo Mendoza commanded a “parallel power to the state” that operated like a private army.¹⁶⁶ This was confirmed with the discovery of a large quantity of high-power firearms and ammunition at the site of his arrest.¹⁶⁷

By December 2014, nine of those detained were still being held in jail and had been included in a criminal case,¹⁶⁸ while the tenth detainee was on parole. Among the evidence collected during months of investigations were ballistic reports, technical reports, and intercepted telephone calls. While the case’s outcome will not be known for many months, the CICIG and the Public Prosecutor’s Office investigation represents a blow to a criminal group that had vast political influence for many years.

Its contribution to resolving the Rodrigo Rosenberg case helped calm the political crisis the video unleashed and allowed President Álvaro Colom to finish his constitutional mandate. This is, without a doubt, one of the CICIG's biggest accomplishments.

The level of cooperation required between the CICIG and Guatemalan authorities, particularly the Public Prosecutor's Office, is a challenge, but it is also its greatest strength and is an essential condition for the sustainability of its achievements. Because it would be very difficult for the Commission to achieve its goals without the dedicated collaboration of the Guatemalan authorities, it could be said that this is its Achilles' heel.¹⁶⁹

The biggest challenge is and will continue to be the definitive transfer of responsibility and abilities from this international entity to national institutions; ensuring that they assume the right and responsibility to guarantee efficient justice and the sustainability of these achievements over the long term.

The experience of the CICIG has clearly demonstrated that progress is possible with political will and independent leadership. During the tenures of Amílcar Velásquez and Claudia Paz y Paz as Attorney Generals, substantial progress was made. Yet, events that occurred after these left office demonstrate the vulnerability of this progress. As was expected, illicit networks sought to react and adapt, and the duration of the Commission's mandate hasn't been long enough to consolidate this progress and steel the justice and security institutions from the influence and cooptation of these illicit entities. The challenges seen during the election of the Supreme Court and appellate court magistrates in 2014 also demonstrate that these criminal networks and parallel powers maintain the ability to act and exert their influence.¹⁷⁰ The recent setbacks should serve as a warning of the consequences of a premature exit of the CICIG.

It should be a priority to press forward with the judicial reforms the CICIG suggested, given that these will have a transcendental influence on the sustainability of the Commission's efforts and the ability of Guatemala to fight criminal entities.

Moreover, the nature of the cases the CICIG has investigated demonstrates that it is essential to reform the National Civilian Police and penitentiary system, which

are not only inefficient but also have high levels of co-optation and internal corruption.

Finally, the Guatemalan government should demonstrate its firm commitment to guaranteeing the independence and impartiality of the judicial system and the Public Prosecutor's Office. The ultimate success or failure of the CICIG depends upon these institutions as they determine which cases go to trial, under what conditions, and with which outcomes. The Commission must operate in an environment where the rule of law exists, and Guatemala is responsible for creating such an environment.

The above analysis of the CICIG and its general conclusions can be applied to other international cooperation initiatives promoting the rule of law. They can also be applied to regional and bilateral cooperative agreements on security and justice in countries with similar situations to Guatemala, such as El Salvador, Honduras, and many other countries.

Beyond Guatemala, the CICIG is, or should be, a model mechanism to strengthen the rule of law of UN member countries. It can always be improved upon and should be adapted to the characteristics of each country and situation. Its level of integration with the local justice system and its focus on promoting the prosecution of criminal cases and tools to strengthen the capacities of institutions make it an innovative model that is worthy of consideration for other countries in similar situations. In the Central American context, governability problems, deficiencies in security and justice systems, and high rates of violence in Honduras and El Salvador, underscore how helpful it would be to establish similar mechanisms in these two countries. In a global context, Trinidad and Tobago, Burundi, and the Philippines have expressed their interest to the United Nations in establishing CICIG-like mechanisms in their countries.¹⁷¹

The United Nations maintains operations and programs for strengthening the rule of law in more than 150 countries, in which some 40 UN agencies are involved. It has 18 missions for strengthening the rule of law around the world. The Rule of Law Coordination and Support Group, which assumed a leadership role in 2012, presides together with the United Nations Development Program (UNDP) and Department of Peacekeeping Operations (DPKO) over all the programs, agencies, and missions. They provide support to missions on the ground "in

terms of personnel, knowledge, finance, and technical and operational advice.” The executive office of the Secretary General also has a Rule of Law Unit.

In the future, The Rule of Law Coordination and Resource Group, along with DPKO and UNDP, which form the Focal Point for Justice, Security and Corrections, could play a crucial role in providing coordination and operational support for missions. They could provide help in planning, creating, negotiating implementing, and executing the mechanism. They could also provide support when the agreement ends, including the transfer of skills to the domestic counterpart and establishing an orderly exit strategy. The Rule of Law Coordination and Resource Group can help unify criteria and practices for all missions on the ground, centrally supervise the implementation of all the mandates, and assume responsibility for their effective execution, providing logistical and political support, supervising the fulfillment of counterpart obligations, and reporting to donor states.

RECOMENDATIONS

For Guatemala:

- ▶ The government of Guatemala should facilitate the conditions for the effective fulfilment of the CICIG’s mandate. There is a long way to go to dismantle the criminal organizations that influence, and in some cases control, a significant part of the national territory and its democratic institutions. The continued criminal activities in Guatemala call for the active presence of the international community in the country. The recent extension of the Commission’s mandate represents an important opportunity to strengthen the rule of law in the country, and to advance the adoption and implementation of important pending reforms.
- ▶ It is fundamental that the Guatemalan government is able to guarantee the independence of its justice system, which is an essential obligation implicit in the agreement. The existence of the CICIG and the effort invested by the UN and the international community in its creation and maintenance will be meaningless if Guatemala cannot guarantee that independent and impartial institutions—exclusively subject to the rule of law—will continue to resolve the criminal cases the Commission has initiated. Currently, this *sine qua non* condition for cooperation is not guaranteed, and the Guatemalan government needs to reaffirm its commitment to do so.
- ▶ It is imperative that the government make progress on the legislative reforms the CICIG proposed in order to provide the country with the instruments and legal framework it needs to confront new methods of criminality. The targets of these proposed reforms include, among others, laws and policies governing legal protection, banking secrets, and nominating committees, as well as the increase in penalties for crimes committed by officials and public employees and their disqualification from holding public office.

For Central America:

- ▶ The security situation in Honduras and El Salvador is as serious as Guatemala’s. The crime rates in the Northern Triangle of Central America are the highest in the world. It is a clear humanitarian emergency that threatens regional peace. The states’ guarantee of the fundamental rights of its citizens is practically non-existent. El Salvador and Honduras should give serious consideration to establishing a CICIG-like mechanism. Due to the transnational nature of some of these groups, any future CICIG-like bodies established in the sub-region should coordinate their activities to ensure a fluid exchange of information.

For the International Community:

- ▶ The CICIG could serve as a model (with adjustments made to suit each particular context) for other countries in similar situations. International mechanisms to strengthen the rule of law in weak states that are unable to effectively protect their citizens should be guided by the principals of complementarity and joint responsibility for guaranteeing fundamental human rights.
- ▶ Future experiences should consider the merits of a hybrid model, guided by the idea of a partnership between the international community, which provides help, and the state, which receives it. It should seek to develop a sense of ownership in local institutions. It should also have a mandate that includes the capacity and technical means to carry out investigations and criminal persecutions; the application of criminal and administrative actions; and the ability to propose legislative changes and to provide technical assistance and training.
- ▶ The adoption of a model of this nature should consider the context and specific needs of the country in

question. This requires ensuring that the mechanism has a sufficient amount of time to effectively combat organized crime. The instrument should analyze the particular context to determine the type of cooperation needed, the security conditions necessary, the current legislative framework in the country, and any changes to the local legislation that might be required to ensure an effective implementation of the mandate.

- ▶ The CICIG's experience has shown that a mechanism of this kind should include, to the extent possible, a period prior to the commencement of the mandate for the purposes of preparation, financing, recruitment, and hiring. This would help guarantee that the administrative, logistical, personnel, and security needs have been met prior to the starting date.
- ▶ The CICIG's experience has demonstrated how important it is to be able to negotiate cooperation agreements with third countries to investigate transnational crimes and cross-border issues.
- ▶ The CICIG's experience has shown how important it is to have a communications strategy and relationship with the media, civil society, the private sector, and political parties, among others. This helps raise public awareness about the impact of organized crime on people's everyday lives and on democratic institutions.
- ▶ The Commission's status as a non-UN organ has created certain limitations in terms of benefits and access to resources and personnel. At the same time, this status has allowed it a certain level of independence. For future experiences of this kind, it is important to consider ways to create a stronger relationship between the mechanism and the multilateral system that created it. This relationship could be formed by integrating the mechanism into the multilateral system, or by establishing a complementary relationship agreement that provides a framework of cooperation between the mechanism and system. Whatever the integration formula, the security of the personnel, the counterparts, and witnesses during and after the end of the mandate must be taken into consideration.
- ▶ Future experiences should consider the benefits of establishing, in a balanced and specific manner, the obligations of both parties to the agreement. In particular, they can consider the inclusion of indicators or benchmarks to evaluate progress and commitments; multilateral mechanisms for monitoring the implementation and resolution of any conflicts that arise; and procedures for the consultation and participation of information sharing with donor states. At the same time, future experiences could consider defining the circumstances in which the cooperation agreement can be terminated.

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COVER PHOTOS FROM LEFT TO RIGHT: (top) La Prensa Grafica, Diario La Hora - Guatemala, Plaza Pública; (middle) El Periódico, Diario La Hora - Guatemala, Diario La Hora - Guatemala; (bottom) El Periódico, Diario de Centro America, Prensa Libre.

ABOUT WOLA

WOLA is a leading research and advocacy organization advancing human rights in the Americas. We envision a future where public policies in the Americas protect human rights, recognize human dignity, and where justice overcomes violence. WOLA tackles problems that transcend borders and that require both domestic and international solutions. Through strategic collaborations, we partner with courageous individuals working on social change—advocacy organizations, academics, religious leaders, artists, business, and government officials—and together, we advocate for more just societies in the Americas.

ACKNOWLEDGMENTS

This study was made possible by the generous support of the Human Security Division within the Federal Department of Foreign Affairs of the Swiss Confederation and the Moriah Fund. WOLA also appreciates the program officers and directors who contributed to this study.

ABOUT THE STUDY

WOLA has monitored issues of security and justice in Guatemala for decades and has studied the creation process and work of the International Commission against Impunity in Guatemala (CICIG). This report seeks to follow up on the main findings and recommendations of the 2003 WOLA publication "Hidden Powers: Illegal Armed Groups in Post-conflict Guatemala and the Forces Behind Them." This report examines the experience of the CICIG after nearly eight years of operation in Guatemala. Based on the analysis of documents, reports, and interviews, this study examines the hybrid model of the CICIG, in which an international body of investigation and criminal prosecution works hand in hand with the domestic judicial system. The study identifies the main lessons learned from this innovative experiment to strengthen the rule of law.



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