

Open Society Justice Initiative

# AGAINST THE ODDS

# CICIG

IN GUATEMALA

YO  
CICIG



**ACKNOWLEDGMENTS****3 EXECUTIVE SUMMARY****15 INTRODUCTION****19 THE VORTEX OF GUATEMALAN POLITICS**

- 19 Background: Formal State, Informal Elite Control
- 21 Guatemala's Oligarchy in Transition
- 22 The Peace Accords and Challenges to the Old Order
- 25 New Competition and New Instability
- 26 Portillo and the New Politics

**28 FROM CICIACS TO CICIG**

- 29 Human Rights NGOs Seek Help
- 30 The UN Proposes an Alternative
- 31 Guatemala and the UN Negotiate CICIACS
- 32 Congress and Court Reject the Proposal
- 33 A Slow Revival
- 33 Negotiating a New Model
- 36 Back to the Congress for Ratification
- 37 The Phoenix Finally Rises

**38 CICIG IN GUATEMALA: 2008-2016**

- 39 The Castresana Years
- 54 Dall'Anese and CICIG's Decline
- 70 Ivan the Terrible and CICIG's Resurrection

**87 CICIG: AN ASSESSMENT**

- 88 The Strategy Challenge
- 96 Structure and Oversight
- 100 Working with the Office of the Public Prosecutor
- 103 Overcoming Obstacles in the Judiciary
- 104 Legislative and Constitutional Reform
- 104 The Role of the International Community
- 106 The Fragility of Success

**109 THE CICIG MODEL AND ITS CHALLENGES**

- 111 Understanding the Problem
- 112 Solving the Constitutional Issues
- 113 Getting the Mandate Right
- 113 Getting the Structure Right
- 115 Ensuring Government Commitment and a National Coalition
- 116 Finding a Way to Work with National Institutions
- 117 Preparing for Blockages
- 119 Pursuing a Broader Role for the International Community

**120 CONCLUSION****122 ENDNOTES**





YO ❤️ CIGIG

RENU  
LA VO  
HIND  
CA DA  
N TR  
ME  
MO  
DE  
JUL  
CA M  
POO

Renun

YU  
VIE  
Y VIE

# EXECUTIVE SUMMARY

**The International Commission against Impunity in Guatemala (CICIG) began with a Guatemalan civil society proposal in 2002 for an international commission to investigate threats from the remnants of the military's counterinsurgency intelligence networks against organizations investigating crimes committed during the country's 36-year internal conflict.** The United Nations transformed the proposal into an international prosecutor's office empowered to independently investigate and prosecute under Guatemalan law. It did so because it saw broader, and graver, menaces to state stability from rapidly growing national and transnational organized crime groups overwhelming frail, and often-compromised, state institutions. The Alfonso Portillo government signed an agreement to create the International Commission Against Illegal Security Groups and Clandestine Security Organizations (CICIACS) in 2003. However, the Guatemalan Congress and the Constitutional Court subsequently rejected the agreement—Congress was hostile to international meddling, and the Court considered the power to prosecute the unique province of the country's Office of the Public Prosecutor.

Nevertheless, a year later, a new government led by conservative Óscar Berger, concerned about the continuing growth of organized crime, approached the United Nations again for help. Again working with Guatemalan civil society, they negotiated a version of CICIACS without the sovereignty-encroaching independent prosecutorial capacity. This version, CICIG, also met with strong political opposition from Congress, but was finally approved after a tumultuous ratification process in late 2007. It began work in early 2008.

CICIG faced a formidable task in Guatemala. Since the colonial era, a small economic elite—whose agricultural and early-industrial wealth were built on the labor of the majority indigenous population—had dominated the state. But this dominance had frequently been challenged, particularly by the military, including during the 1960-96 conflict. Since the 1990s, both organized crime and an emerging elite using the tools of electoral democracy and embedded clientelistic practices to compete for influence in state institutions gained significant political influence. The fault lines generated by this marriage of past and present—political and economic competition centered on state capture, a lack of incentives for major political and economic actors to support structural political reforms—left CICIG with little firm ground upon which to work.

## THE FIRST EIGHT YEARS

### **THE COMMISSION ENTERED GUATEMALA IN LATE 2007 TO MUTED EXPECTATIONS.**

CICIG was a novel experiment with no roadmap, and its capacity to promote change in the judicial sector without the ability to prosecute on its own was uncertain. CICIG struggled to organize and implement a strategy to respond to systemwide resistance to its work—resistance that came from the justice sector, Congress, and political and economic actors protecting vested interests threatened by CICIG’s investigations. Nonetheless, the Commission would produce important, but chronically uneven and often isolated, results over much of its eight years in Guatemala. These results improved dramatically in 2015 when CICIG’s third commissioner, Iván Velázquez, pulled together the strands of his predecessors’ legacies and launched a series of corruption investigations that served as a catalyst for significant political change.

Carlos Castresana, CICIG’s first commissioner, faced enormous challenges building CICIG from scratch. At the same time, he faced resistance from prosecutors and judges as he edged the Commission into investigations. In response, he discovered the efficacy of cultivating a powerful public persona, using the media to shed light on impunity and challenge those impeding the Commission’s work. CICIG’s spectacular resolution of the *Rosenberg* case saved the government of President Álvaro Colom from murder charges that would have led to its collapse. CICIG also participated in the conviction of former-President Portillo for corruption and unearthed an illegal security operation carrying out targeted killings and social cleansing run by President Berger’s interior minister, Carlos Vielmann. Guatemala had never witnessed battles against impunity waged this publicly, or on this scale, before. Castresana established CICIG’s focus on investigations, even if these were more opportunistic than strategic; established a model for working with the Office of the Public Prosecutor and the Ministry of Justice; obtained the tools needed for effective investigations; launched a broad



set of legal reform proposals; and opened the door to the appointment of an outstanding attorney general, Claudia Paz y Paz. But his crusading style, opportunistic alliances, growing list of opponents, and an uncooperative government caught up with him in mid-2010, and he resigned in frustration.

Castresana's replacement, Francisco Dall'Anese, brought a different approach to CICIG's work. Graced with a strong, independent, reform-oriented attorney general, he shunned the spotlight his predecessor had sought, dropping CICIG's media profile in deference to the Public Prosecutor. Nonetheless, a 2012 controversy over the handling of the *Vielmann* scandal and frustrations with a series of judicial setbacks on CICIG cases forced him into the public eye. Skirmishes with the judiciary—fought through the media—compromised his position, and he reduced emphasis on independent CICIG cases, withdrew from public activities, and focused on planning for the closure of the Commission in 2013. The Commission struggled for relevance, strategically adrift. By the time a CICIG letter defending the integrity of the Ríos Montt trial gave the government the excuse it needed to push for his ouster, Dall'Anese was left with few friends and no political leverage in Guatemala or New York. He was forced to resign in 2013.

CICIG had produced an ambiguous record in six years. Its achievements—the major cases, the pressure on impunity networks in the judiciary, the reform agenda—were notable. Nonetheless, CICIG had made little visible progress describing or mapping the criminal networks and organized criminal structures at the heart of its mandate. It had been distracted by tangential

Carlos Castresana, CICIG's first commissioner, faced enormous challenges building CICIG from scratch. At the same time, he faced resistance from prosecutors and judges as he edged the Commission into investigations.

cases, such as bus extortions, illegal adoptions, and garden-variety embezzlement. NGOs, the press, and the international community hailed CICIG's involvement in the process of electing judges as a contribution to transparency, but it had too often relied on opaque evidence to build its cases and had lost some ability to fruitfully engage with the courts.

Iván Velázquez inherited CICIG at perhaps its lowest moment. President Otto Pérez Molina insisted that the commissioner focus on strengthening national institutions, not new investigations, as the Commission prepared to close. At the same time, traditional and emerging elites and their clientelistic networks were organizing to ensure control over the 2014 judicial sector elections in time for presidential and congressional elections in 2015. Velázquez overcame early slips, particularly a proposal to organize a national conference on judicial reform repudiated by the president, and avoided open confrontation with the government until he, too, was forced to publicly respond—in the end, to no avail—to the overt manipulation of the 2014 judicial sector selections, including the ouster of Claudia Paz y Paz as attorney general.

But Velázquez focused on ending CICIG's drift, and developed a new strategy, proactively targeting the nexus between political corruption and criminal activity in Guatemala's compromised state institutions. CICIG produced a series of astonishing corruption cases implicating the president, vice president, and senior administration officials, as well as a report on illegal campaign financing that proved explosive. President Pérez Molina and Vice President Roxana Baldetti resigned and were promptly indicted and imprisoned. The cases provoked widespread revulsion and a national protest movement of a scale and intensity unique in Guatemalan history, a "Guatemalan spring" that upended the 2015 presidential elections and raised hope for fundamental political change.

## CHALLENGES AND RESPONSES

**WHILE THE COMMISSION'S MANDATE HAS NOW SPANNED FOUR GUATEMALAN PRESIDENCIES**, its three commissioners faced a common set of challenges implementing the mandate and responding to institutional and political blockages: (i) developing a strategy; (ii) confronting judicial sector opposition; (iii) working with the Office of the Public Prosecutor; and (iv) pushing legal and judicial reform through Congress. Each commissioner adapted CICIG to these challenges in different ways, to varying effect.

### Evolving Strategy and Tactics

Each commissioner had to produce a coherent strategy to implement CICIG's mandate, to take cases as they arose or develop strategic lines of investigation, and to define the Commission's targets broadly or narrowly. A lack of clarity about CICIG's purpose and scope produced a variety of often-discordant targets. Should it map the influence of criminal-political networks or assist the government in tackling organized crime groups? Should it pursue a few key paradigmatic cases or seek to provoke major reform? Carlos Castresana hoped to focus on illegal structures within the security institutions, political mafias in the judicial sector, and the nexus between political corruption and organized crime, but his targets seemed scattershot. The paradigmatic

*Vielmann* and *Portillo* investigations were accompanied by organized crime violence, bus extortions, and illegal adoptions schemes—cases responding to a logic of opportunity, driven by the need to gain experience and visibility and show progress under a tight two-year mandate. Francisco Dall’Anese followed through on his predecessor’s cases but provided little novelty while lowering CICIG’s profile in deference to the leadership of the attorney general, prioritizing capacity building and the transfer of skills to the Office of the Public Prosecutor.

While Castresana’s ambiguous strategic focus is perhaps understandable, given CICIG’s urgent start-up challenges, collision with impunity structures in the judiciary, the demands of *Rosenberg*, and the political whirlwind that led to his resignation, Dall’Anese’s strategic drift was less so. He inherited the fallout from Castresana’s mandate, and stumbled into the *Vielmann* controversy, but also had better tools, experienced investigators, an established reputation, and an ideal attorney general that his predecessor had not had. This should have been an opportune moment to rethink CICIG’s strategic targets in light of the experience and knowledge gained during Castresana’s three years. It was clear then that CICIG, with a cooperative attorney general, could uncover and dismantle criminal groups and networks and corrupt state officials; it was equally evident, however, that the systemic practices supporting impunity continued largely unabated.

It was Iván Velázquez who moved CICIG’s focus away from the collection of cases he inherited to a targeted set of probes into the sources of political corruption in the administration, Congress, and rural municipalities, and the links among the embezzlement of state resources, illegal campaign finance, and organized crime in the context of a weak judiciary and security sector. The new strategic focus proved effective when an unexpected confluence of events—major corruption cases, strong U.S. support, and a population fed up with corruption—produced a political earthquake in 2015.

The evolution of CICIG’s mandate and strategic targets since 2003—from war-era military intelligence structures threatening human rights defenders to political-criminal networks and organized crime to political corruption—was neither predictable nor planned. It responded to the mutation and fragmentation of the longstanding military-criminal networks into a broad range of organized crime activities and powerful narco-trafficking clans. It also evolved in response to its own improved understanding of the connection between political corruption—the glue holding Guatemala’s clientelistic political order together—and the state’s chronically weak judiciary and security institutions. Dall’Anese’s CICIG had analyzed these changes but did not refocus its work. It was Velázquez, again, who openly recognized the change, describing the new military-criminal networks as “illicit political-economic networks,” essentially “groups of persons who secretly collaborate to exercise political control and generate profitable business.” He was, in effect, describing Guatemala’s neopatrimonial political system.

CICIG’s work in 2015 suggests that focusing on the sources of political corruption—in parallel with or as an alternative to a broader array of cases from a variety of sectors—is probably a much more effective way to address impunity than traditional judicial reform approaches. Although CICIG’s initial foray against sources of political corruption was successful in 2015, it remains too early to measure the longer-term impact on political reform.



## Management and Oversight

Although the Commission is nominally a creature of the United Nations, it quickly evolved into a fully independent organization managed entirely by a commissioner subject to almost no oversight. While this freedom from UN review and oversight brought great advantages for CICIG—including freedom from burdensome UN budgetary and administrative procedures, slow recruitment, unfamiliarity (and serious discomfort) with the standard techniques of prosecutorial investigation, and the ability of Guatemalan actors to pressure CICIG through New York—it also raised a number of concerns.

The first, and perhaps most important, is the principle of legal and political oversight of prosecutorial discretion, a check to ensure that a prosecutor's zeal does not overstep accepted boundaries or violate rules of conduct governing UN officials. Second, CICIG's commissioners are able to modify CICIG's structure and staffing with no oversight, to determine CICIG's political, as well as prosecutorial, strategy with no UN input, spend the Commission's \$15 million budget with only internal procedural constraints, and carry on negotiations with Guatemala and other governments without UN involvement. Finally, while the UN had no control over CICIG's activities, and almost no influence on its work, it had to handle management or operational failures or crises. The problems surrounding the Castresana and Dall'Anese resignations were the most visible examples of the oversight risks affecting the Commission's credibility and capacity to function effectively in Guatemala.

Castresana used all methods at his disposal: he asked the president to dismiss an uncooperative attorney general and other officials, requested a new attorney general who would dismiss uncooperative prosecutors, denounced judges and prosecutors in the press, and used CICIG's mandate to file complaints and then co-prosecute judiciary officials charged with malfeasance or corruption.

## Dealing with a Difficult Judiciary

Each commissioner had to determine how to overcome resistance and blockages erected by recalcitrant prosecutors and judges, CICIG's necessary partners. Castresana used all methods at his disposal: he asked the president to dismiss an uncooperative attorney general and other officials, requested a new attorney general who would dismiss uncooperative prosecutors, denounced judges and prosecutors in the press, and used CICIG's mandate to file complaints and then co-prosecute judiciary officials charged with malfeasance or corruption. He joined with civil society organizations to address the opaque, politicized election process for senior judiciary officials with criticisms of the process and evaluations of candidates. Although Castresana was criticized for his methods—many claimed he denounced judges, prosecutors, and other officials without adequate evidence—these efforts shed light on the clientelistic practices underpinning impunity structures, while also improving the quality of appointed candidates in a number of cases.

By contrast, both Dall'Anese and Velázquez chose to reduce CICIG's profile when evaluating judicial candidates, collecting objective information for assessment reports for judiciary nominating committees, but with little success in changing election outcomes. Eventually, Dall'Anese's frustration with judicial decisions that were undermining CICIG's cases spilled over into the media and a very public, and often excessive, conflict with the courts, and he produced a sometimes thinly sourced report accusing 18 judges of supporting impunity.

Velázquez preferred a less confrontational relationship with the courts and he, too, provided assessments of judiciary candidates based on publicly available data and CICIG information. But with a less visible role producing no improvements, Velázquez took a very public position in asking for a suspension of the highly problematic 2014 judiciary elections, to no avail. Velázquez recognized the validity of his predecessors' critiques of the judicial evaluation processes, but saw no benefit in public combat with the courts. He responded to judicial malfeasance and corruption by opening investigations with the Public Prosecutor's Office and pursuing removal through formal legal channels.

The results of eight years of clashes over judiciary elections were meager and frustrating. CICIG and civil society efforts to improve the appointments process failed to change the clientelistic practice of negotiated deals for new judges, and measures to remove corrupt judges remained cumbersome. The creation of special high-risk courts for CICIG's cases helped reduce problems in major trials, but only one judge was removed for malfeasance.

## Learning to Work with the Office of the Public Prosecutor

CICIG had to find a way to work with its principal partner, the Office of the Public Prosecutor, itself permeated by influence-peddling networks. Castresana established the foundations, clearing the way for a link with the Office of the Public Prosecutor by pushing President Colom to appoint an attorney general with whom he could work, jointly establishing an independent unit within the institution dedicated to working with CICIG, and building analysis, security, and wiretapping units. The CICIG unit established within the Public Prosecutor's Office was critical

for the Commission, allowing it to work with a vetted team, on a confidential basis, isolated from the rest of the ministry.

Attorney General Claudia Paz y Paz was CICIG's ideal partner. Independent of the traditional judiciary mafias, she initiated limited but well-targeted reforms that transformed the Office of the Public Prosecutor into a more effective, more independent institution whose director came to overshadow CICIG's commissioner. While Dall'Anese's deference to Guatemalan leadership pleased those uncomfortable with his predecessor's tendency to sit at the head of the table, CICIG lost some of its public dynamism under Dall'Anese. Its focus shifted from pursuing its own mandate-related cases to providing institutional help to the Office of the Public Prosecutor.

Velázquez faced a different challenge with Paz y Paz's replacement, Thelma Aldana, whose appointment under the cloud of a political arrangement with President Pérez Molina raised concerns about the continuation of the partnership between CICIG and the Office of the Public Prosecutor. But the new attorney general proved both careful and politically astute, supporting CICIG's cases and sustaining Paz y Paz's reforms as the conflict over the extension of CICIG's mandate intensified in early 2015. Although the Commission was careful in its joint work on politically sensitive investigations, Aldana fully supported the major corruption cases that led to Pérez Molina's imprisonment, with the Public Prosecutor's Office carrying out much of the investigation once the indictments were announced. In another break with Dall'Anese's approach, Velázquez greatly reduced the seminar-oriented knowledge and skills-transfer programs in favor of transferring capacities through joint investigations.

## Pending Legislative and Constitutional Reform

CICIG presented four packages of proposals for legislative and constitutional reforms to Congress between 2008 and 2010, urging procedural and normative changes that would give the Public Prosecutor's Office and CICIG greater capacity to combat organized crime and political corruption. The Commission added a set of constitutional reforms in 2011 to strengthen the independence of judges and the Public Prosecutor.

While Congress has approved a number of measures to increase the Office of the Public Prosecutor's investigative and trial capacity (including high-risk courts, plea bargaining for collaborating suspects, asset forfeitures, strengthening organized crime norms, and an illegal enrichment law), the approvals came slowly and with much difficulty. The legislature has remained stubbornly reluctant to address reforms that would strengthen the independence of the Public Prosecutor and the judiciary.



## THE SUM OF THE WORK

**CICIG'S SUCCESS IN SHEDDING LIGHT ON THE STRUCTURES AND PRACTICE OF POLITICAL CORRUPTION** has overshadowed organizational challenges, questionable strategic choices, case management mistakes, and commissioner resignations across eight years of work. But CICIG's overall results have been remarkably positive, primarily as a result of the 2014-15 cases.

CICIG's resolution of the *Rosenberg* murder and indictment of former-President Portillo and former-Interior Minister Vielmann demonstrated that a large, well-funded, well-equipped, well-secured prosecution entity could hold the "untouchables" accountable. These results alone would have been enough to justify CICIG's \$15 million average annual budget. In addition, the Commission publicly challenged the election of judges it categorized as unfit to serve on Guatemala's highest courts, orchestrated the dismissal of two attorneys general, facilitated the appointment of an outstanding chief prosecutor, and successfully pushed for the removal of some 1,700 police officers. CICIG prepared and lobbied for an extensive set of constitutional and legislative reforms. Its use of wiretapping and sophisticated forensic technologies demonstrated the potential for dramatically increasing Guatemala's criminal investigation capacity.

CICIG has exposed criminal networks and bands of assassins working in the national police, sometimes under the direction of very senior officials. The Commission's investigations of the criminal structure run by Byron Lima (the former army captain convicted of murdering human rights activist Bishop Juan Gerardi), massive corruption in the customs service (which led to the indictment of a sitting president and vice president), and embezzlement by members of Congress and mayors, were achievements unimaginable ten years earlier.

Ongoing strife with the judiciary has kept the unsavory side of clientelistic politics in the public eye, a potent reminder of the still-unredeemed state of the courts. The Office of the Public Prosecutor, under solid leadership for much of the last five years, has greatly improved its investigative capacity. Guatemala's legal framework is better, homicides are declining, and small, select police and prosecution units have demonstrated the ability to work effectively on high-profile cases with CICIG and, increasingly, independently.

The cumulative pressures of CICIG's interventions, often in collaboration with the newly dynamic Public Prosecutor's Office, and a citizenry sufficiently fed up with corruption to take to the streets, have helped Guatemalans reach a juncture where major political reform has become a real possibility for the first time since the signing of the Peace Accords 20 years ago.

But CICIG's achievements did not come easily, and an assessment of CICIG's work would have been much more ambiguous had the Commission closed in 2013. The Commission overcame difficult start-up challenges, struggled to manage a polemical relationship with the courts, faced criticism (sometimes valid) for excessive zeal in criticizing judges and for uneven management of its cases, lost visibility and dynamism during periods of strategic drift, failed to organize coherent capacity building programs, and endured the forced departure of two of its three commissioners.

Nonetheless, CICIG found a way to survive long enough, and arrive at 2015's critical juncture with the right team in place, to take advantage of unanticipated developments and play an important role in provoking political change.

## THE FRAGILITY OF SUCCESS

### **CICIG'S 2015 SUCCESSES HIGHLIGHT THE CONTINGENT NATURE OF CICIG'S**

**ACHIEVEMENTS.** CICIG's emblematic high-impact cases may have jolted Guatemala's political mafias and political-criminal structures, but the old behaviors continue in a state incapable of occupying the spaces that CICIG and Public Prosecutor had temporarily cleared. CICIG staff note that corruption networks continue in the customs services, Byron Lima's organization continues to operate in the prison system, new organized crime groups quickly move into vacuums through arrests by the Public Prosecutor, and private contractors with government connections still take advantage of state contracts. The country's clientelistic interest group networks continue to function as usual, rebounding, for example, from seven years of CICIG and Public Prosecutor prosecutions, to remove Claudia Paz y Paz from the Office of the Public Prosecutor, control the judicial elections of 2014, and block major reforms before the conclusion of the 2015 national elections.

The Commission will have at least four additional years to work with a reinvigorated and popular Public Prosecutor to unravel the clientelistic political-criminal networks suffocating

The CICIG model emerged out of five years of difficult negotiations across two government administrations, its final contours shaped by the confluence of local political, constitutional, and historical events. Once established, the Commission faced blockages at every turn.

Guatemala's institutions, and to push forceful judicial, security, and political reform agendas. It has broad public trust and support. It has a full docket of cases from two years of investigations. Its staff and their counterparts in the Office of the Public Prosecutor are fully occupied addressing illegal campaign finance, the congressional and municipal manipulation of state resources, and corruption in the customs service. And all of this must happen while pursuing the prosecutions of Pérez Molina, Baldetti, and the dozens (or perhaps hundreds) of state actors and private parties implicated in 2015's corruption cases.

Given the deeply entrenched nature of Guatemala's clientelistic political practices, the challenges are enormous. The immediate tasks are to sustain the momentum of the 2015 corruption cases, carry through the investigations, and organize robust prosecutions. The Commission must push for long-pending reforms in the judiciary, a new political party, campaign finance laws, and greater capacity in oversight ministries. The possibilities for this reform agenda remain uncertain: the combination of a new, inexperienced president with a narrow political base and a new, splintered Congress could provide a recipe for stalemate in the face of highly organized interest groups.

The larger challenge, however, remains the most difficult, and least understood: how to begin to change the interests driving clientelistic behavior throughout the state (and much of the private sector). In the context of a common threat from corrupt political and powerful organized crime networks, neither the traditional landed nor business elites have shown an interest in forming coalitions with other sectors to strengthen security and justice institutions or in submitting themselves fully to the rule of law. Encouraging elites to embrace the state is a parallel challenge requiring the kind of innovative thinking that produced CICIG a decade ago. It is a principally a challenge for Guatemalan actors, but international partners, particularly the United States, must also play a role.

## CICIG AS A MODEL FOR OTHER STATES

**CICIG HAS BEEN DISCUSSED AS A MODEL FOR STATES STRUGGLING TO CONTROL SOCIAL AND CRIMINAL VIOLENCE** with frail, and often corrupt, judicial and security institutions. Actors from three of Guatemala's neighbors—Mexico, Honduras, and El Salvador—have expressed interest, and the United States and a number of Central American governments have floated the possibility of a regional CICIG to deal with organized crime.

The Guatemalan experience, however, suggests caution, and a need for realism in assessing the conditions necessary for a CICIG-like entity to contribute to significant change. The CICIG model emerged out of five years of difficult negotiations across two government administrations, its final contours shaped by the confluence of local political, constitutional, and historical events. Once established, the Commission faced blockages at every turn. Only its ability to take advantage of fortuitous political events, and the support of the United States allowed it to work effectively.

CICIG's modest leverage comes from its capacity to investigate and co-prosecute cases under



Guatemalan law. Such leverage requires a national constitution whose penal law norms would permit an international organization to exercise quasi-prosecutorial power; for CICIG, using this authority effectively required a cooperative attorney general. Employing the CICIG model elsewhere would also require a modern normative framework (including laws to combat organized crime and corruption) and appropriate investigation tools (wiretapping, special courts, witness protection, plea bargaining). It would need national allies and strong international support, such as that which the United States provided in Guatemala. A mandate of several years—not CICIG’s painful two-year cycle—and a budget of some \$10-15 million per year would improve on the CICIG model.

Another CICIG with these characteristics would be worth the effort. This is the lesson from Guatemala. But officials in states like Honduras—who rightly see an effective international interloper with the heft to dismantle clientelistic structures as a threat to their economic and political positions—are unlikely to create such institutions. Indeed, CICIG’s very success—as exemplified by a Guatemalan ex-president languishing in a prison cell—is likely to harden resistance.

The central challenge, therefore, for any future CICIG is to find a creative way to adapt the Guatemala experience to a different country’s history and political dynamics without losing the core elements of CICIG’s effectiveness: its ability to independently investigate and assist with the prosecution of cases. While CICIG itself struggled for months and in some cases years to obtain the institutional support and legal tools needed for effective investigations, any new entity should seek to minimize these roadblocks by ensuring government commitment to providing a basic operational framework at the outset. This might, for example, involve a phased introduction, with a team to assist the government in establishing the needed framework preceding the arrival of the full investigative capacity.

# INTRODUCTION

**Appalling levels of social and political violence have troubled Central America's Northern Triangle since the end of the 20th century's civil wars.** Post-conflict judicial and security institutions proved ineffective against street gangs (*maras*) and powerful organized crime groups. Enmeshed in clientelistic, elite-based politics that survived the regional conflicts largely intact, governments proved unable or unwilling to undertake the political changes necessary to effectively manage political-criminal threats to state authority. An unholy trinity of drugs, political corruption, and frail institutions batters deeply poor populations and undermines political stability across the region.

Guatemala sits at the heart of this maelstrom. Its 36-year conflict was the longest and deadliest in the region, resulting in 200,000 dead. Its peace accords called for far-reaching political reforms to change the elitist, exclusionary, and repressive structures underlying the war. In 1994, the UN established a peacebuilding mission to help end the war and then to assist the government as it restructured the state. Nonetheless, neither the UN presence and broad donor investments nor intense political pressure from the United States, Europe, and Latin America was able to prevent setbacks to the peace

accord reforms in 2000. When the UN closed its peacekeeping mission at the end of 2004, security and judicial reforms remained stymied, while violence escalated and organized crime groups expanded their already-extensive influence. Traditional aid for institution building proved ineffective as donors demonstrated far more interest in reform than did Guatemalan political and economic elites.

In 2002, a group of Guatemalan human rights organizations asked the UN to participate in a national commission to investigate threats from shadowy remnants of the state's civil war-era counterinsurgency intelligence networks. The UN was skeptical about the efficacy of an investigation commission, but took advantage of the opportunity to propose an international prosecutor with the authority to investigate and prosecute under Guatemalan law. The UN wanted rule of law support with teeth because it saw the surging presence of organized crime and its capacity to penetrate the state as a threat to stability. But the proposal for an International Commission Against Illegal Groups and Clandestine Security Organizations (CICIACS) collapsed in 2004 in the face of widespread opposition and an unfavorable constitutional review. The proposed model was too powerful, too invasive, trampled national pride and sovereignty, and threatened too many interests.

Pride and interests could not constrain the rise in organized crime and violence, however, and the Guatemalan government returned to the UN in late 2005 looking for a more constitutionally and politically palatable model. The legally impugned (and most powerful)

The UN was skeptical about the efficacy of an investigation commission, but took advantage of the opportunity to propose an international prosecutor with the authority to investigate and prosecute under Guatemalan law.



elements of the plan were excised, the mandate reworked, and CICIACS was reborn at the end of 2006 as CICIG, the International Commission against Impunity in Guatemala. The new version, though less threatening than the original proposal, also faced a tempestuous ratification process, but violence, a scandal, and a presidential election race provided the pressure needed to for ratification.

CICIG began its start-up phase in Guatemala in late 2007. Although less robust than CICIACS would have been, CICIG attracted much international attention because it represented a new approach to judicial and security sector problems. After years of mixed reviews and cycles of important, sometimes spectacular, cases followed by controversy and torpor, CICIG finally realized its founders' hopes with a remarkable set of corruption investigations in 2015. Widely lauded as a rare "success story" in a field littered with failed technical assistance projects, CICIG has become a potential model for other states.

This report evaluates CICIG's impact in Guatemala from two complementary perspectives. The first assesses the Commission as an instrument of international assistance for fragile states challenged by criminal violence. This analysis draws upon current understandings of the sources of institutional weakness and the historical conditions driving change toward more robust and stable states. It uses this framework to ask about the theory of change underlying CICIG's mandate: how was the Commission expected to contribute to managing violence and strengthening state institutions in Guatemala's fragile environment?

The second perspective evaluates CICIG's performance on its own terms, in light of its mandate, strategic goals, and experience on the ground; its ability to catalyze change in the justice sector; and its impact on structures of impunity and organized crime. The descriptive material is fairly detailed, comprising the bulk of the first half of the report. The detail is important because it both highlights the complexities and ambiguities of CICIG's role and provides important insights for the United Nations and other policymakers seeking to replicate the organization in other contexts.

The two perspectives merge in the assessment material comprising the second half of the report. Although most of the analytical work on CICIG has focused on the very different dynamics provoked by the policies and practices of its three commissioners, structural patterns embedded in Guatemalan politics have shaped much of the Commission's activities. The report emphasizes the interplay between the limitations imposed by these structural features and CICIG's strategic and tactical choices.

The report is organized into six chapters. Section II sets the stage for CICIG's arrival, offering an interpretation of the Guatemalan political world, the sources and nature of the practices embedding structures of impunity in the fabric of political competition among sectors and interest groups. These structures, most with deep historical roots, have shaped the limits of CICIG's ability to maneuver. Section III then describes CICIG's origins and its long road to ratification. The fourth section continues the story after ratification, highlighting in some detail the Commission's work since 2008. It follows its internal challenges of organizing and developing a strategy, its case selection and management, and chronicles its struggles with

the judiciary. It attempts to capture the Commission's rise on the wings of the *Rosenberg* and *Portillo* cases and Carlos Castresana's discovery of the media bully pulpit; the tumult over Castresana's resignation and the shock and scandal of the *Vielmann* cases; the controversial efforts of CICIG's second commissioner, Francisco Dall'Anese, to ease the Commission from the spotlight in deference to the work of the Public Prosecutor's Office (*Ministerio Público*); Dall'Anese's troubled term ending with his de facto resignation and CICIG hitting its nadir in mid-2013; and the unexpected revival by its third commissioner, Iván Velázquez, when the Commission's investigations unveiled major corruption scandals leading to the resignation and indictment of the president and a national protest movement upending the 2015 congressional and presidential elections.

Section V turns to an assessment, examining the evolution of CICIG's plans and tactics, its legal and political choices in the face of persistent obstacles, and the extent to which its investigations have both illuminated the scope and nature of the impunity problem and highlighted strategies to address its sources. These observations are then sifted through our current knowledge about the process of state building, the factors that might encourage change in fragile states like Guatemala, might encourage economic elites and political actors to accept greater rule of law in exchange for improved human security, and the extent to which CICIG's work might contribute to this process. The section also looks at the role of CICIG's international partners, particularly the United States, in CICIG's achievements.

Section VI steps back from Guatemala to look at CICIG more abstractly, as a potential model for other states in light of the Guatemalan experience.

# THE VORTEX OF GUATEMALAN POLITICS

**CICIG was an initiative to assist a state in crisis,** a state unable to manage violence and threats to democratic stability from political corruption and organized crime. The crisis is rooted in the structure of Guatemala's institutions, which, in turn, are products of a long, complex history shaped by the interests of and incentives facing the country's most powerful political, military, and economic actors.<sup>1</sup>

## BACKGROUND: FORMAL STATE, INFORMAL ELITE CONTROL

**GUATEMALA IS A STATE WITH FORMAL DEMOCRATIC POLITICAL AND ADMINISTRATIVE INSTITUTIONS** functioning according to a logic of informal, interest-based networks.<sup>2</sup> Political stability is maintained by networks of elite groups working together to restrict access to the country's economic and political resources.<sup>3</sup> These resources sustain patron-client relationships, allowing governing coalition elites to reward members of their groups and ensure commitment to the political system. The elite networks are based upon identity and status: members come from a defined set of families and ethnic or socioeconomic groups whose leaders know each other and can guarantee their group's commitment to the terms of an inter-elite agreement. In order to remain stable, this coalition must be able to limit the growth and power of organizations outside the control of the coalition.

In this context, the role of the state is to ensure the distribution of economic rents to regime allies, control opposition groups, and block legal or other threats against coalition members. Membership within the coalition often shifts in response to demands from internal actors for a greater share of rents (due to changes in the relative economic, political, or military strength among coalition members) or challengers from new, outside actors. Stability depends on the ability of the elite coalition to manage these challenges.

This form of political order has three notable structural characteristics that influence political stability. First, it is highly personalistic: access to political and economic goods, whether provided by state institutions or the private sector, often depends upon personal, family, religious, or party affiliations. The state is not viewed as neutral—it does not treat all citizens equally—thus increasing the importance of connections to networks with influence in public institutions.

Second, the possibilities for political change are limited because political institutions—from political parties to government ministries—organized around individuals and a cadre of loyal senior officials produce short-term policies likely to shift after the election of a new set of actors.

Third, the state's control of economic resources, including patronage jobs, government contracts, concessions, monopolies, access to cash-rich state enterprises, tax exemptions, and loans, provides the glue holding the elite governing coalition together.

The combination of these three factors produces “corruption with impunity”:

**It comes in various forms. At the top it is manifested as siphoning off government funds, using political influence to win and award favors, accepting bribes, rigging elections. Civil servants will award themselves contracts (for example, for supplying stationery, computers, vehicles to their ministries) and run private businesses using public resources. Privatized parastatals, released public land, and new Internet and communication opportunities are often dominated by people close to power. At the lowest levels, teachers take money to provide students with answers to examinations, repair men take bribes to connect phone lines, while police accept backhanders from drivers caught in their traffic nets. Corruption has been democratized from the top down.<sup>4</sup>**

This manner of organizing political and economic relations excludes most of the country's population, despite the existence of formal democratic institutions, including reasonably fair elections. The poor may vote, but limited access to education, employment, and social services leaves most with few resources to organize or otherwise influence political life. They are thus vulnerable to the forms of social control established by powerful elites (often in a pre-democratic era).

These systems endure because they have been relatively successful in controlling violence as human societies grew in size and complexity from clans and tribal networks to large, multi-group states. They are often described as inefficient, repressive, or corrupt, but they operate according to a logic that provides stability; pursuant to that logic, corruption is an inherent part of the social order. Robust, independent institutions and competitive democratic politics are not compatible with this form of politics—indeed, by unmooring access to economic resources from patrimonial networks, they may threaten stability if elites feel compelled to resort to violence to protect rents.<sup>5</sup>

## GUATEMALA'S OLIGARCHY IN TRANSITION

### GUATEMALA WAS NEVER GOING TO BE EASY FOR CICIG.

It arrived at a moment when the old political order, dominated by a small number of economic and political elites and the military, had come under severe stress. For more than 300 years, a small land-owning oligarchy and its military allies controlled a principally indigenous labor force necessary for the extraction of oligopoly rents from an agro-export economy. Business elites utilized the façade of the state to establish monopolies, exploit natural resources, obtain state contracts to provide supplies and services, and receive favorable export credits and other financing.<sup>6</sup>

In the early 20th century, the military consolidated a monopoly on violence and staked a claim to political hegemony as the guardian of national interests.<sup>7</sup> Its control of the countryside facilitated the extraction of economic rents from public lands, customs, and contraband, including smuggling, and it established its own businesses, at that time competing directly with traditional elite enterprises. These sectors produced “an agricultural state with a weak internal market, an overwhelmingly rural population, a small central bureaucracy modestly taxing elites through trade tariffs, a state offering few social services and marginal contributions to the economy with municipal government in the hands of local elites.”<sup>8</sup>

The 1929 depression and political demands from a growing middle class produced a liberal democratic opening between 1944 and 1954. However, labor and land reforms favoring the indigenous majority threatened the interests of the landowning oligarchy and U.S. agro-business multinationals, provoking a U.S.-backed coup and the subsequent installation of a repressive “counterinsurgency state” managed by the military to contain a guerilla insurgency launched in the early 1960s.<sup>9</sup> The agricultural and industrial sectors supported the military’s “authoritarian development state” between the early 1960s and the early 1980s. However, that support grew uneasy as the armed forces moved into new business sectors.<sup>10</sup> The oligarchy created a lobbying organization—the Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations (CACIF)—which served as its “general staff” shaping state economic policy.<sup>11</sup> Inside the army, conflicts overflowed into back-to-back coups in the early 1980s during the military’s brutal scorched-earth campaign in the indigenous highlands that produced most of the war’s 200,000 principally civilian deaths.

International political winds shifted in the 1980s as the Cold War wound down and economic liberalization marked by privatization, open markets, and deregulation drove the state to the sidelines. Guatemala’s politics shifted as well, moving toward a military-controlled democratic transition and eventual peace negotiations. While the traditional landed oligarchy resisted political liberalization and peace talks, the industrial export sector helped to push the military toward a controlled democratization in the early 1980s.<sup>12</sup> The military itself intended to remain in control but out of the political limelight under the doctrine of a “supervised electoral democracy,” in which political competition would be limited and the military’s “official” party was assured to win presidential elections.<sup>13</sup> But the peace process slowly pushed the military out of the center of political life; by the mid-2000s, its size and budget were cut in half and its troops withdrawn from much of the interior it had dominated for over a century.



## THE PEACE ACCORDS AND CHALLENGES TO THE OLD ORDER

**THE 1996 PEACE ACCORDS USHERED IN A PERIOD OF RAPID CHANGE**, capping a political transition underway for some time, prodded by the post-1985 democratic opening (a new constitution and elections), the end of the Cold War, and economic globalization.<sup>14</sup> Most importantly, the pendulum swung back in favor of the landed and business elites, who recovered many of the economic spaces lost to the military in the 1980s.<sup>15</sup> The accords did not directly affect their economic interests. They were able to block land and labor reforms, measures to bring the country's long-marginalized indigenous populations into political and economic life, and tax increases to expand social services.<sup>16</sup> Nonetheless, the new democratic rules shifted the formal determination of political leadership into the hand of unpredictable voters, a "novelty" for the dominant elites because for the first time "it became possible for them to lose."<sup>17</sup>

While the military remained an important actor in the 1990s, its institutional control waned as it downsized, withdrew from control of the interior, and ceded its role in economic and social policy to civilian actors. The military's principal concerns were to manage its reorganization, protecting as many of its privileges as possible, and avoid judicial accountability for war crimes. It would remain influential, though, as retired officers moved into politics, allying with existing or forming new political parties, taking seats in Congress, and assuming important ministerial roles in every post-accords government. Many also moved into illicit activities, including drug trafficking. Concerns about "re-militarization" would raise alarms when President Alfonso Portillo brought senior officers, many with shadowy pasts, into his 2000-2004 administration, and would come to a head in 2010, when a retired general, Otto Pérez Molina, won the presidency.

The democratic transition opened the door for the emergence of two new sets of actors capable of challenging traditional elite economic and political interests. The first was a group originating in the lower and middle classes moving into the professions, business, and politics over the last 20 years, commonly described as "emerging capital"; and the second was national and transnational organized crime groups.<sup>18</sup> They have been joined by the more diffuse impact of greater indigenous participation in voting (providing the decisive margin for Álvaro Colom's 2007 presidential victory, for example) and greater activity from labor unions, campesino groups, and other civil society actors, many characterized by anti-elite perspectives.

While the sociological contours of the "emerging capital" are still vague, its members come from one of three broad groups: successful entrepreneurs building companies able to compete in sectors dominated by the traditional business groups, businessmen-politicians who build companies and capital through access to state contracts, and organized crime. Most moved up from working-class families to obtain professional degrees from non-elite universities; many are the first to access higher education in their families. Many come from the provinces, the children of merchants and small business families; some have become wealthy running

a range of medium-size enterprises.<sup>19</sup> They work as lawyers, notaries, accountants, teachers, and state employees, including prosecutors and judges.<sup>20</sup> In the new democratic era, these actors are able to compete with the traditional elites in electing presidents and deputies, and then influencing government appointments and the distribution of state contracts. The efficacy of access, in turn, depends upon the ability to influence key actors in the judiciary sector to defend commercial and political interests, block legal maneuvers by elite sectors, and deflect corruption investigations.<sup>21</sup> They, too, therefore, have no interest in stronger, more independent state institutions less permeable to influence peddling—such a move toward greater “rule of law” would only reduce their influence and cement the great economic advantage enjoyed by the traditional elites.<sup>22</sup>

Organized crime takes many shapes in Guatemala.<sup>23</sup> Julie Lopez suggests viewing organized crime as a “three-legged stool” comprising overlapping networks of national criminal clans, foreign cartels seeking local partners, and corrupt government officials.<sup>24</sup> These structures include “highly-organized kidnapping and extortion networks with smaller infrastructures than large-scale organized crime, but with the ability to engage in multiple operations.” They depend upon corruption among low- or mid-level government officials without having to “necessarily rely on open cooperation from high-level government officials.”<sup>25</sup> All engage in various forms of money laundering to transfer illicit cash into real estate or business properties or move funds out of the country.

Organized crime takes many shapes in Guatemala. Julie Lopez suggests viewing organized crime as a “three-legged stool” comprising overlapping networks of national criminal clans, foreign cartels seeking local partners, and corrupt government officials.

Larger Guatemalan organized crime families grew powerful in the 1980s and 1990s as Andean drug cartels increased shipments through Central America. Their relationship to the state remains both complex and obscure. It seems probable that the military used the trade as a source of extra-budgetary resources during the internal conflict, complementing the funds available from the state treasury, particularly when the United States began to reduce military assistance in the 1980s.<sup>26</sup> But as the military withdrew from the countryside after 1996, leaving a security vacuum and even fewer state services for the rural, principally indigenous, poor, the local dominance of several Guatemalan crime families became clearer. The Mendozas in Izabel and Petén; the Lorenzanos in Zacapa, El Progreso, Jalapa, and Chiquimula in Petén; the Ponces in the east; the Zarcenos along the south Pacific coast; and the Chamale network in the southwest comprised the “five families” commonly cited as the predominant forces in organized crime in the country.<sup>27</sup>

The local crime families operated according to a similar pattern: minimize violence; impose control through a combination of intimidation and the provision of security and social services; and finance candidates for local, regional, and national office.<sup>28</sup> These practices produced local political arrangements in which populations unhappily accepted the influence of the crime families in exchange for a manageable level of violence.<sup>29</sup> A telling statistic indicates the degree of acceptance of these arrangements: no major crime family leader was ever indicted in a Guatemalan court before 2014.<sup>30</sup>

The local crime families operated according to a similar pattern: minimize violence; impose control through a combination of intimidation and the provision of security and social services; and finance candidates for local, regional, and national office.

## NEW COMPETITION AND NEW INSTABILITY

### **AFTER THE PEACE ACCORDS, THE NEW ACTORS, TRADITIONAL ELITES, AND REMNANTS OF THE MILITARY MET AT THE CENTER OF A VERY VULNERABLE POLITICAL SYSTEM**

unable to manage increasing competition in the face of overwhelming reform challenges and surging social and criminal violence. The vulnerability had three principal sources. First, the Peace Accords did little to change the de facto power of the traditional elites to block significant threats to their economic and political hegemony. Second, the post-1996 democratic rules were built on fallow ground. The 1985 Constitution was drafted by representatives of conservative parties hoping to maintain a small, stable state impermeable to concentrations of power that could challenge the political order. This produced a recipe for instability: a single-term presidency (too short for major reform projects); weak parties (only 25 percent of congressional deputies elected from national party lists); constitutional due process protections limiting the state's investigative powers and facilitating lengthy trial delays; and corporatist election procedures for the judiciary and the attorney general (opening selection of the top ranks of the courts to two levels of political bargaining).

Finally, the military had repressed political parties, social movements, unions, and civil society organizations—particularly those of the left—during its three decades of rule, impeding the development of a culture of political competition around robust political organizations. The political parties contesting the presidency and Congress during the military-directed transition from 1984 to 1996 were tightly controlled and allied to the traditional elites and the military itself.<sup>31</sup>

The result is a formula for limited governability. Political parties are little more than shells for the election of ambitious individuals. With no robust party machinery or stable social base, both presidential and congressional candidates must raise campaign funds for the most expensive (on a per capita basis) elections in the Americas.<sup>32</sup> The three-quarters of deputies elected from departments, not national party lists, must seek local financial and political support, leaving principal loyalties with local financiers and powerbrokers and not the party under whose nominal banner they run.<sup>33</sup> Presidential and congressional candidates have been accused of accepting illegal campaign donations from the traditional business elites, state contractors, and organized crime, these funds serving as the glue holding political corruption networks together.<sup>34</sup>

Once elected, deputies are free to switch, or vote independently of, parties at any time. They have every incentive to exchange public jobs and contracts for support in their home districts. Since presidents can rarely count on the full support of their own parties even if they have a congressional majority, they must negotiate to form working majorities on every major bill. The currency of this bargaining is often government posts—particularly those regulating important economic sectors with large budgets and personnel lists—or a larger share of the infrastructure budget. The alternative is a stalled government agenda or the loss of a notional governing majority.<sup>35</sup> As one expert has noted, the strong relationship between “corporate groups with enormous financial resources and political parties with enormous financial needs is the primary limitation on genuine representation of the interests of the lower economic classes.”<sup>36</sup>

## PORTILLO AND THE NEW POLITICS

**THE IMPLICATIONS OF GUATEMALA'S MULTIPLE SOURCES OF INSTABILITY BECAME CLEAR SHORTLY AFTER THE SIGNING OF THE PEACE ACCORDS.** Traditional elites resisted such reforms as the restructuring of the military, land redistribution, and the tax increases to fund socioeconomic and reparations programs. Álvaro Arzú, the conservative president whose National Advancement Party (PAN) signed the final peace agreement, proved unable to manage a legislature divided between center-right parties and the populist, anti-elite Guatemalan Republican Front (FRG). The FRG leader, Efraín Ríos Montt, was unwilling to risk his party's political base on the right by pressing for implementation of socioeconomic and tax reforms. More egregiously, Arzú watched as the Peace Accords' key provision—a referendum to anchor structural changes in the constitution—failed at the polls. Eighteen months of bargaining with congressional factions had produced an incoherent special interest piñata of 50 amendments, all of which failed under a barrage of late attacks from business elites.

The sense of dismay increased as Arzú mismanaged the creation of a new civilian national police, staffing the initial class with senior officials and many line officers from the incompetent and repressive military police agencies. The new force proved ineffective, corrupt, and abusive. It has never recovered citizen confidence.<sup>37</sup> The organization of an extensive judicial reform machinery proceeded more smoothly, but the performance of the Public Prosecutor and the courts did not notably improve, in spite of the development of professional standards and

Portillo ordered the army back into the streets to patrol with the police. His four-year term was turbulent, torn by fractious political infighting in a Congress unable to muster majorities to approve economic, agrarian, and fiscal reforms; an unflagging security crisis; economic turmoil provoked by falling coffee and other commodity prices; fierce resistance from the economic elite and NGOs; and corruption scandals.



open, merit-based selection/promotion criteria for judges, the modernization of criminal and procedural codes, and the creation of dozens of new courts in rural areas.<sup>38</sup>

Arzú's effort to placate his party's political base, and deflect a challenge from the FRG, failed to make a difference with voters. In the 1999 national elections, the FRG's presidential candidate, Alfonso Portillo, ran on a populist, anti-elite platform, taking advantage of popular dismay with increasing crime and violence to crush Óscar Berger, Arzú's successor as head of the PAN. The traditional elites lost the presidency, and significant influence in Congress, for the first time in the post-military era.

Portillo opened the doors of the state to new, "emergent" actors eager to gain access to the political and economic resources accompanying government control. Portillo and Ríos Montt brought an array of ex-military officers (some connected to military intelligence and the counterinsurgency campaigns of the 1980s) into government posts. Several ex-military officers formed political parties (or joined existing groups) and entered Congress. Portillo ordered the army back into the streets to patrol with the police.<sup>39</sup> His four-year term was turbulent, torn by fractious political infighting in a Congress unable to muster majorities to approve economic, agrarian, and fiscal reforms; an unflagging security crisis; economic turmoil provoked by falling coffee and other commodity prices; fierce resistance from the economic elite and NGOs; and corruption scandals. Ultimately, Portillo, Vice President Juan Francisco Reyes, and several senior government and military officials would stand accused of corruption.<sup>40</sup> To the dismay of the United States, anti-narcotics efforts collapsed.<sup>41</sup> The FRG ignored the National Civil Police, turning to the military for security, while starving the judiciary of funds, further debilitating both institutions.

The tumultuous FRG years ended with the 2003 national elections, when a center-right coalition, the Grand National Alliance (GAN), led by Óscar Berger, and a left-center candidate, Álvaro Colom of the National Unity for Hope (UNE), finished ahead of the FRG leader and presidential candidate, Ríos Montt, in the first round after a fractious and violent campaign.

Berger won the second round, bringing the PAN and its traditional elite allies back into government in 2004.

The GANA coalition, however, only controlled some 30 percent of congressional seats, and Berger would struggle to marshal majorities to support his priority programs. His government stemmed the creeping re-militarization of Guatemalan politics and launched investigations into the major corruption scandals of the Portillo administration, but was unable to unite its diverse coalition partners (his cabinet, for example, included former military officers and a human rights activist) behind a coherent security or development program. While Berger was finally able to complete the restructuring of the military, he was unable to significantly increase revenues to address poverty or halt institutional deterioration of the police force.<sup>42</sup> As his administration entered its last year in 2007, violence continued to climb, and worries about the spread of organized crime reached alarming levels.<sup>43</sup>

# FROM CICIACS TO CICIG

**After the signing of the Peace Accords at the end of 1996, several human rights organizations aggressively pushed the judicial system to investigate the massacres, assassinations, and disappearances documented in UN and Catholic Church truth commission reports.<sup>44</sup>**

The 1998 murder of Bishop Juan Gerardi, director of the Church report, was the most serious of 13 attacks between 1997 and 2000. Evidence from the Gerardi investigation, and the ongoing inquiry into the 1990 murder of the anthropologist Myrna Mack, demonstrated the involvement of military intelligence, particularly the Presidential Security Guard (*Estado Mayor Presidencial*), in surveillance and assassinations.<sup>45</sup> The Peace Accords had included a provision requiring the government to dismantle the military's counterinsurgency intelligence networks, but the United Nations Verification Mission in Guatemala (MINUGUA) continued to document the presence of intelligence agents and methods in human rights cases through its final human rights report in 2004.<sup>46</sup>

The number of reported threats and attacks against human rights defenders mushroomed to 374 (including 49 killings) between 2000 and late 2003, a period of intense political turmoil following the release of the truth commission reports, the failure of the 1999 Peace Accords referendum, and the election of populist, anti-elite President Alfonso Portillo.<sup>47</sup>

## HUMAN RIGHTS NGOS SEEK HELP

**IN LATE 2001, SEVERAL HUMAN RIGHTS NGOS MET TO DISCUSS A RESPONSE TO THE RISE IN THREATS AGAINST ORGANIZATIONS SEEKING JUSTICE FOR CRIMES COMMITTED DURING THE WAR.** By the end of 2002, they had agreed to pursue an ad hoc investigatory commission modeled after the 1992 El Salvador *Grupo Conjunto para la Investigación de Grupos Armados Ilegales con Motivación Política*.<sup>48</sup> The Grupo Conjunto was a joint UN-Salvadoran body that investigated the rise of death squads targeting alleged supporters of the left after the 1992 agreement ending El Salvador's civil war. Its public report described the reasons for the rise of the death squads and their methods. A confidential appendix identified leaders and members to the government. No individuals were ever publicly investigated or tried; nevertheless, the government made changes in the military and police, and the killings ended.<sup>49</sup>

The Guatemalan NGOs' proposal for CICIACS would have created a three-member commission with representatives from the government, the UN, and the Organization of American States (OAS), with a six-month mandate to investigate the structures threatening human rights defenders and describe their relationship to the state. The proposal envisioned a commission that would investigate illegal or clandestine activities carried out by state and private security organizations, and any links between these illegal associations and organized crime. The commission would produce: (i) a public report of its general findings; and (ii) confidential reports to the Public Prosecutor's Office with detailed information suitable for opening formal criminal investigations or administrative processes to remove implicated officials from public service.<sup>50</sup> The NGOs persuaded the United States and other international embassies to support the initiative and the Human Rights Ombudsman announced the proposal in January 2003.

The Portillo government initially vacillated in its response, but gradually endorsed the CICIACS approach. The administration was struggling with a battery of crises. It faced confrontations with conservative opposition parties freezing the work of Congress, corruption scandals, and protests against criminal violence. At the same time, it was also coming under intense criticism from the elite-supported press, civil society, MINUGUA, and the international community over stalled Peace Accord reforms and the military's presence in the government. Support for the proposal was a low-cost gesture to the international community and human rights NGOs. The government's foreign minister, Edgar Gutierrez, previously an investigator for Bishop Gerardi's truth commission, assumed responsibility for the proposal and formally invited the OAS and UN to participate.

## THE UN PROPOSES AN ALTERNATIVE

**THE UN, CHASTISED BY MINUGUA'S INABILITY TO ADVANCE THE KEY TENETS OF THE PEACE ACCORDS AFTER THE FAILURE OF THE 1999 REFERENDUM, DID NOT BELIEVE THAT A COMMISSION REPORT COULD PRODUCE SIGNIFICANT CHANGE.**

Yet it did not want to withdraw support after assisting Guatemala's peace process for more than a decade. UN officials proposed, instead, to send a group of experts to evaluate the proposal. Seven internationals, including Carlos Castresana, a Spanish prosecutor who would, four years later, become the first CICIG commissioner, visited Guatemala in July.

The assessment mission concluded that the Guatemalan proposal was not sufficiently robust to effectively address the problems it highlighted. It noted that the war-era intelligence structures targeted by the NGOs had morphed into criminal networks that used counterintelligence techniques (including phone tapping, spying, threats, disinformation campaigns, intervening with the justice system to block investigations and end trials) to ensure immunity while engaged in extortion, kidnapping, human and drug trafficking, and money laundering. It emphasized, however, that these networks had been overshadowed by the growing presence of powerful and violent organized crime groups, some regional and transnational in scope, that existed alongside these networks.

The UN assessment report also described Guatemala's security and justice systems as too weak and compromised to address the remnants of the old intelligence structures or organized crime. A lack of normative and investigative tools undermined all phases of the criminal justice system, from investigations through trials. Thus, the UN assessment found that the investigation proposed by the NGOs would likely be blocked at the implementation stage.<sup>51</sup>

To address these broader challenges, the UN proposed to establish an autonomous UN-run prosecutorial agency with the capacity to carry out investigations and prosecute cases in Guatemalan courts. It concluded that only an independent UN entity "with teeth" stood a chance of strengthening the country's judicial sector.<sup>52</sup>

The proposal was bold in scope and innovative in design: it gave international lawyers the right to act, when necessary, as national prosecutors under Guatemalan law, independent of the Public Prosecutor's Office or the National Civilian Police, both of which were riddled with influence-trafficking networks. Its principal targets were illegal security groups growing out of the 1980s-90s military intelligence structures, and organized criminal groups and their links to state institutions.

The UN assessment mission recognized that the proposal would face serious obstacles. It would constitute an unparalleled international intrusion and clash with national criminal law and procedural norms and the role of the Public Prosecutor. The Constitutional Court might reject any proposal that appeared to infringe on the Public Prosecutor's constitutional role. Guatemalan lawyers offered a solution for the constitutional difficulty: an agreement drafted as an international human rights treaty would have the force of law under Article 46 of the Guatemalan Constitution, and its provisions would supersede any domestic legal norms in conflict with the CICIACS mandate.<sup>53</sup> Addressing the other implementation difficulties

would depend upon the commitment of national lawmakers: Guatemala would need to adopt legislative reforms to create a modern normative framework for the investigation of state corruption and organized crime. The assessment mission also recognized the critical importance of a CICIACS relationship with the Public Prosecutor's Office, suggesting that the attorney general might appoint a special prosecutor to work with the UN entity and manage investigative and trial procedures.<sup>54</sup>

## GUATEMALA AND THE UN NEGOTIATE CICIACS

### **THE UN'S ASSESSMENT MISSION PRODUCED ITS FINAL REPORT IN SEPTEMBER 2003, AND THE UN FORWARDED A SUMMARY TO FOREIGN MINISTER GUTIERREZ IN OCTOBER.**

The government and the NGOs were surprised by the dramatic change in the reach of the proposal, but after a detailed review of its constitutionality, agreed to the changes.<sup>55</sup> Formal negotiations between the UN and the government began in late October. The parties hoped to conclude an agreement by early December in order to present a text to Congress before the end of the year. Gutierrez assured the UN that Portillo and the FRG had an agreement with the other political parties to approve CICIACS before the congressional term ended on January 14.<sup>56</sup>

The timing was important because of the political context. The highly unpopular Portillo-FRG administration was in its last year, the mandate of both the president and Congress ending in mid-January 2004. The country was in the final throes of a contentious and violent national campaign in which Ríos Montt had finally maneuvered an FRG-dominated Constitutional Court to approve his presidential bid. The three-way race between FRG's Ríos Montt, GANA's Óscar Berger, and UNE's Álvaro Colom ended on November 9, when Berger and Colom outpolled Ríos Montt in the first round. Berger went on to defeat Colom at the end of December. However, Berger's GANA coalition won only 49 seats in the 158-member Congress, portending a challenging four years of constant coalition-building with the FRG (41 seats) and UNE (30 seats), and a range of smaller parties.

The public reaction to the CICIACS proposal in November had been more muted than expected, perhaps because the election had distracted the country. The most conservative and nationalistic sectors, already fierce enemies of the Portillo government, denounced the agreement on sovereignty grounds or as a back-door maneuver to investigate the war.<sup>57</sup> Much of the business elite joined a range of commentators raising constitutionality concerns, but others hedged their bets, viewing CICIACS as a potential check on Ríos Montt were he to win the presidency. Nonetheless, both presidential campaigns had assured the UN of support for CICIACS and the diplomatic community lobbied the political parties, presidential candidates, and the press for swift approval.

The negotiations concluded just before the end of the year. The Portillo government and the UN signed the CICIACS agreement on January 7, 2004, just seven days before the installation of incoming president Óscar Berger and the new Congress. The agreement was transmitted to the legislature for ratification, but the outgoing Congress ended its term without considering the proposal.



## CONGRESS AND COURT REJECT THE PROPOSAL

**THE COMPOSITION OF THE NEW CONGRESS LEFT THE PROSPECTS FOR CICIACS UNCLEAR.** It was difficult to envision FRG support, and GANA was a collection of strong individuals with equally strong conservative views, not susceptible to firm executive control. The center-right PAN's traditional elite supporters were ambivalent, and PAN was a junior partner in GANA's coalition. The 30-member UNE delegation would likely support CICIACS, but the proposed treaty would need 80 votes for normal passage and 105 votes for ratification under "national emergency" procedures.

Congress first considered the proposal in late January, but chose to send it to two congressional committees (Human Rights and Interior) for review, rather than attempt a "national emergency" ratification. President Berger was ambivalent, leaving his government's efforts in the hands of Vice President Eduardo Stein and Frank La Rue, director of the President's Human Rights Council.<sup>58</sup> The NGO Coalition for CICIACS, the United States, and several other countries lobbied intensely for the proposal. But in May, after three months of growing critical press coverage, both congressional committees recommended rejection of the agreement on the grounds that it unconstitutionally usurped the authority of the Public Prosecutor in the prosecution of criminal cases and undermined Guatemala's sovereignty. CICIACS lost in the Human Rights Committee by a vote of 7-2, with delegates from all the major parties—including the new president's—rejecting the measure.

The government withdrew the treaty from Congress and sent it to the Constitutional Court, requesting an advisory opinion on the provisions Congress found wanting, hoping that a favorable opinion would salvage the proposal. On August 6, the Court—still controlled by judges elected under the Portillo government—concluded that the agreement would not constitute a human rights treaty and therefore the granting of independent investigative and prosecutorial powers to CICIACS and privileges and immunities to Guatemalan citizens violated the charter.<sup>59</sup> The ruling foreclosed any possibility of Congressional approval.

In the end, the ratification failed for several reasons. Most importantly, its national support base had been very narrow from the beginning: human rights NGOs, the Human Rights Ombudsman, a handful of deputies and ministers, a few media outlets. The U.S. embassy, State Department, and several members of the U.S. Congress, as well as most embassies in Guatemala, joined international legal and human rights organizations in a strong campaign urging adoption of the proposal. But the international pressure only seemed to reinforce the conservative view that CICIACS was another MINUGUA, an effort to keep Guatemala under international tutelage just as the peace operation was preparing to close at the end of 2004. The landed and business elites allergic to any hint of international interference were comfortable opposing CICIACS now that Portillo had been deposed, the FRG reduced, and an ally of the aristocracy elected to the presidency.

## A SLOW REVIVAL

**THE CICIACS PROPOSAL LAY FALLOW FOR MORE THAN A YEAR.** After failing to identify a strategy capable of reviving the proposal, the NGOs focused on lobbying for the establishment of an office of the UN High Commissioner for Human Rights in Guatemala after MINUGUA's departure.<sup>60</sup> The Berger administration had other priorities.<sup>61</sup> It was distracted by bargaining with its fractious congressional coalition and divided cabinet over security strategy and financing social and development programs.

But Berger turned out to be wrong about his government's ability to curb political corruption and criminal violence without international assistance. By late 2005, Vice President Stein, who would later claim that organized crime cartels had gained effective control of six of the country's 22 departments, sought a national commission to replace CICIACS.<sup>62</sup> He was interested in strengthening the state's ability to combat organized crime through an entity the executive could organize without returning to Congress. He worked with Helen Mack (sister of the slain anthropologist Myrna Mack); other NGO members of the Coalition for CICIACS; constitutional experts; and the head of the president's human rights council, Frank La Rue, to explore options. By December 2005, the group had agreed to develop two national mechanisms: a CICIACS focused on illegal groups and attacks on NGOs, and a new commission to focus on organized crime. The Commission to Investigate Organized Crime was to work under the umbrella of the *Procurador de la Nacion*, but when an official suspected of corruption was appointed to lead it, the initiative was dropped.<sup>63</sup>

With national alternatives frustrated, Stein turned back to the UN at the end of 2005. A small government team supported by the NGOs labored to design a model free of CICIACS's constitutional flaws. They proposed a CICIACS shorn of its strongest asset: the ability to investigate and prosecute cases independently of the attorney general. Conscious of the lobbying mistakes of 2004, the government consulted with Guatemalan political leaders and civil society actors in early 2006 to obtain substantive comments and build a broader support base. Stein wanted to ensure that the proposal was presented as a government, not NGO, initiative, and restricted the lobbying to a small group.<sup>64</sup> The results of the consultations were constructive, but mixed: there was support for an investigative body working with the Public Prosecutor's Office and the police, but concerns about the constitutional issues, and ambivalence about the levels of real political support. The NGOs were deeply divided: many opposed the initiative because it was too weak, while others sought any available international help for the security crisis. The critics, though, agreed not to oppose a new CICIACS in public.<sup>65</sup>

## NEGOTIATING A NEW MODEL

**THE GOVERNMENT PROVIDED A FIRST DRAFT TO THE UN IN MARCH, AND NEGOTIATIONS OVER THE DETAILS OF THE NEW ACCORD CONTINUED UNTIL SEPTEMBER.** The discussions focused on four central issues: (1) retaining a modest prosecutorial role for CICIACS, even as a private prosecutor supporting the Public Prosecutor (a position supported by both the UN and the government); (2) including organized crime in the mandate (both agreed on a human rights focus

without mentioning organized crime); (3) extending UN privileges and immunities protections to Guatemalan staff (rejected on constitutional grounds by the government, which nonetheless made a general commitment to ensure the protection of all staff); and (4) establishing CICIACS as an independent or UN body (although the parties initially agreed on a UN body, the Commission ended up as an independent entity). The commission was given a new, shorter name—the International Commission against Impunity in Guatemala (CICIG)—to reflect its new, narrower mandate. Its budget would depend primarily on international donors, with a small, in-kind contribution from Guatemala.<sup>66</sup>

The final operational language in the mandate was both brief and somewhat abstruse. The agreement asked CICIG to:

- (a) determine the existence of illegal security groups and clandestine security organizations, their structures, forms of operation, sources of financing, and possible relation to State entities or agents and other sectors that threaten civil and political rights in Guatemala;**
- (b) collaborate with the State in the dismantling of illegal security groups and clandestine security organizations and promote the investigation, criminal prosecution, and punishment of those crimes committed by their members; and**
- (c) recommend to the State the adoption of public policies for eradicating clandestine security organizations and illegal security groups and preventing their re-emergence, including the legal and institutional reforms necessary to achieve this goal.<sup>67</sup>**

The agreement defined “illegal security groups and clandestine security organizations” as “those groups that: (i) commit illegal acts in order to affect the full enjoyment and exercise of civil and political rights and (ii) are linked directly or indirectly to agents of the State or have the capacity to generate impunity for their illegal actions.”<sup>68</sup>

The mandate was drafted this way to accommodate three challenges.

First, the language of the agreement had to persuade the Constitutional Court that its primary objectives focused on human rights issues, not ordinary criminal or political matters. As a human rights treaty, provisions in the agreement establishing CICIG would rank above any contrary domestic norms. This was crucial for its effectiveness, ensuring that domestic legislation could not restrict the Commission’s right to carry out investigations, request and receive information from (and freedom of access to) all state institutions, join cases as a private prosecutor, submit constitutional and legislative reforms to Congress, and file complaints to launch both criminal and administrative proceedings.

Second, a more-detailed mandate would have multiplied the potential sources of disagreement from Guatemalan political and civil society actors and the courts. While broadly worded, the mandate clearly excluded investigations of crimes committed during the civil war (a concern for the military and conservative sectors) and did not mention the systemic political corruption supporting clientelistic practices and neutralizing the justice sector (a provision that would have produced a strong negative reaction from political actors).

Finally, the wording provided the interpretive flexibility needed to bridge the interests of human rights NGOs and the government. The former was focused on illicit security structures within the state (principally military and civilian intelligence and the National Civil Police), while the latter sought help combatting organized crime.<sup>69</sup>

The final round of negotiations took place in November, now under a growing sense of urgency because of Guatemala's electoral calendar. The Berger administration was ending the third year of its four-year term, and political parties and candidates were already maneuvering for the national elections scheduled for November 2007. Vice President Stein wanted to complete the negotiations as early as possible to avoid the distractions of the 2007 electoral season, when deputies would abandon congressional work for the campaign. The UN also faced its own internal pressures: Secretary-General Kofi Annan's mandate ended in December, and much of his senior staff needed for the final CICIG approval would be gone before the holidays. Bringing a new secretary-general, Ban Ki-Moon, and his new staff up to date on CICIG's history and purpose would probably have delayed the signing well into 2007. Thus, both the government and the UN needed an agreement signed in December.

The rush to sign had one serious, unhappy consequence. For reasons that still remain unclear, CICIG slipped, almost imperceptibly, from the status of a UN organ to an independent treaty-created entity with no one in Guatemala or at the UN fully appreciating the operational implications. While the UN and Guatemala had assumed in 2004 that CICIACS would have the

For reasons that still remain unclear, CICIG slipped, almost imperceptibly, from the status of a UN organ to an independent treaty-created entity with no one in Guatemala or at the UN fully appreciating the operational implications.

status of a UN political mission (like MINUGUA), the UN's Office of Legal Affairs characterized the less-robust CICIG as a "research mission," essentially a technical-assistance mechanism not requiring UN-organ status. The secretary-general could sign such an agreement without a General Assembly resolution.<sup>70</sup> Consequently, as the proposal wound its way through the UN Secretariat for approval, the principal concern of the reviewing departments was to ensure that the UN would have no financial, administrative, security, or other legal obligation toward CICIG. At the same time, Guatemala expressed some ambivalence about asking the General Assembly for the resolution necessary to create CICIG as a UN organ, wanting a strong mandate yet concerned that some member states might balk at the precedent of creating an intrusive judicial mechanism.<sup>71</sup>

Guatemala and the UN signed the agreement of December 12, 2006, in New York. Berger sent Vice President Eduardo Stein, Attorney General Juan Luis Florido, and Interior Minister Carlos Vielmann to the signing ceremony to demonstrate the commitment of CICIG's principal government partners to the new project.<sup>72</sup>

## BACK TO THE CONGRESS FOR RATIFICATION

### **WITH THE AGREEMENT OFFICIALLY IN HAND, THE CHALLENGE OF CONGRESSIONAL RATIFICATION LOOMED AGAIN, HAUNTED BY THE GHOSTS OF THE CICIACS FAILURE.**

Much had changed: Berger had replaced Portillo, and a new, less polemical Constitutional Court had been elected. But parallels to 2004 were nonetheless evident: the administration was outwardly supportive, but inwardly ambivalent, with Vice President Stein driving the process in the shadow of an uninterested president. A number of the same conservative and right-wing deputies unfavorable to CICIACS still held seats in Congress. The ratification debate was also, again, taking place in a volatile election year.

The Berger government, for all its promises, stalled on CICIG. It did not forward the treaty to Congress for ratification until late February. It did so only after an international uproar over the kidnapping and brutal killing of three El Salvadoran members of the Central American Parliament (Parlacen) and their driver while en route to Guatemala City on February 19. When a group of Guatemalan police officers were arrested for the crime, and then executed inside a maximum security prison, the involvement of an illegal structure inside the National Civil Police seemed likely. Berger sent the CICIG agreement to Congress on February 27, requesting its immediate ratification as a matter of national emergency.

Congress, however, did not attempt to muster the two-thirds majority (105 votes) needed for a fast-track vote that would supersede the regular legislative process. The treaty was sent to the Foreign Relations Committee (where the FRG controlled seven of 11 positions) for review. Congress then requested an advisory opinion from the Constitutional Court on March 6, a move likely to delay a ratification vote for two months. While the treaty languished in Congress, the vice president lobbied the business community, the press, and the political parties; Frank LaRue managed contacts with the NGOs and embassies; and the U.S. and human rights NGOs maintained a low profile to avoid provoking the ideological splits that had undermined CICIACS.

The political and press debates mirrored those around CICIACS. The conservative critics claimed the proposal was a violation of national sovereignty, a form of unwanted foreign interference, or a backdoor effort by the Guatemalan left to carry on the ideological battles of the internal conflict. Supporters aligned with Stein and LaRue stressed the need for outside assistance to combat organized crime, and emphasized CICIG's commitment to strengthening state institutions.

## THE PHOENIX FINALLY RISES

**CICIG SUPPORTERS RECEIVED GOOD NEWS IN MID-MAY** when the Constitutional Court issued an advisory opinion concluding that the proposal qualified as a human rights treaty and finding no constitutional fault with its provisions. The Foreign Affairs Committee, however, did not react, allowing the proposal to languish until May 22, when congressional leadership demanded a committee report within eight days. When the Foreign Affairs Committee continued to stall, claiming an inability to muster a quorum, congressional supporters attempted to transfer the treaty from Foreign Affairs to Human Rights, but were rebuffed by FRG and the Unión del Cambio Nacionalista party. Finally, the Foreign Affairs Committee issued a negative opinion on July 19, arguing that certain provisions violated the constitution, in spite of the Constitutional Court's opinion.<sup>73</sup>

The Foreign Affairs Committee vote provoked a firestorm, particularly since its UNE representative, César Fajardo, voted against CICIG, creating a very awkward position for UNE presidential candidate Álvaro Colom. Press allegations linking Fajardo to criminal mafias translated into attacks against Colom. Reeling under the criticism, the candidate removed Fajardo and expressed his full support for CICIG. He further guaranteed that all UNE deputies would support ratification and challenged the other candidates to do the same. In response to Colom, all of the presidential candidates guaranteed congressional support for CICIG. Congress scheduled a vote on the Foreign Affairs Committee's report on August 1 in the presence of the presidential candidates.<sup>74</sup> Congressional leadership assumed the deputies would vote to reject the report and send the treaty to the more favorable Human Rights Committee. With CICIG supporters now openly insisting that a "no" vote was a vote for organized crime, pro-CICIG deputies demanded that the chamber approve the measure as a "national emergency." Supporters failed to muster the needed 105 votes on the first try; but after a break for intense lobbying, a second effort garnered the approval of 110 deputies.<sup>75</sup>

Thus, six years after human rights NGOs asked for international help to counter threats from illegal security structures, four years after the UN responded with CICIACS, and three years after CICIACS was rejected on political and constitutional grounds, Guatemala ratified CICIG. The victory owed less to a change in the political climate than to a "perfect storm" of "extraordinary and unrepeatable events": a presidential campaign, an intense lobbying process, the international outrage and national concern provoked by the Parlacen killings, and the "Fajado factor."<sup>76</sup> CICIG was the unexpected beneficiary of Guatemala's politics of "short-term decision and accidents."<sup>77</sup>



# CICIG IN GUATEMALA: 2008-16

**The long, fraught campaign for CICIG's ratification exposed the nature of the external challenges CICIG would face throughout its mandate.** It would enter Guatemala with little political support beyond human rights NGOs, the UN, the United States, and other donor countries. It would face outright opposition, quiet resentment, and broad suspicion about its real purpose.

But CICIG's initial challenges were internal: it had to determine its organizational structure, prioritize among the possibilities of its mandate, and develop an overall strategy. It would have to develop working relationships with Guatemalan government institutions and the country's economic and social sectors. CICIG would need the support of the Public Prosecutor's Office and the National Civil Police to carry out investigations, but quickly realized that both institutions would either actively impede its work or lacked relevant capacities. The investigative tools available to CICIG were also antiquated: Guatemalan legal norms did not permit wiretapping, provide access to emails or bank records, or allow investigators to offer defendants reduced sentences for cooperation. The country had no modern anti-organized crime framework or anti-corruption laws, no witness protection program, and no special courts for high-risk cases.

CICIG's three commissioners would find themselves frustrated by the currents of Guatemala's clientelistic politics, turning to sometimes-clumsy efforts to outmaneuver opponents, and watching the country's highly resilient, deeply embedded political-criminal structures rebound from important investigations, indictments, and convictions to strike back at CICIG itself. Strategy and tactics would matter greatly, as the differences between the opportunistic, broad case selection methods of Castresana and Dall'Anese, and the narrower strategic focus of Velázquez would suggest. But strategy and tactics required a purpose, and here, too, CICIG's evolution over eight years would prove instructive, moving from addressing illegal structures and operations within particular institutions, particularly the National Civil Police and the

Interior Ministry, to tackling the practices sustaining the political corruption undermining all state institutions.

As late as 2014, it did not seem to matter how many cases CICIG and the Office of the Public Prosecutor mounted against corrupt presidents, ministers, military officers, government employees, mayors, members of Congress, police, judges, or lawyers. Nor did it seem to matter how many organized crime leaders were arrested. Those disgraced would be replaced by others: a new administration, a new arrangement of political parties, new cartels or crime families; the temporary vacuums would be filled by new actors eager to bend the country's deeply ingrained clientelistic structures and practices to their benefit. Across seven years, CICIG would swerve from minor irritant to major danger, from disturber of the established political order to almost-irrelevant, and back again. CICIG could boast of a handful of dramatic cases, impressive numbers of arrests and removals of corrupt officials, and having supported the emergence of a more robust Office of the Public Prosecutor. Yet it seemed set to leave Guatemala fundamentally unchanged, with the culture and structures of impunity intact.

This pattern persisted until the events of 2015 produced a series of politically important cases whose repercussions—while still emerging—offer Guatemala its best hope for change in 20 years.

## THE CASTRESANA YEARS

**CICIG ARRIVED IN GUATEMALA JUST AS ÁLVARO COLOM, LEADER OF THE CENTER-LEFT UNE, DEFEATED FORMER GENERAL OTTO PÉREZ MOLINA TO WIN THE 2007 PRESIDENTIAL VOTE.**

Colom was elected on the strength of rural indigenous and poor voters (indeed, he was the first candidate to win the presidency while losing Guatemala City) attracted by his commitment to reducing poverty through rural development programs. He was also the first candidate from the left to win a national election since the beginning of the democratic era. Both factors presaged an oppositional relationship with the landed oligarchy and business elites. Colom would also have to negotiate with a divided legislature in which his own fractious party did not have a working majority, bargaining with the larger benches to form a governing coalition supportive of his anti-poverty agenda. Although the new president expressed strong support for CICIG, his priorities were elsewhere, on the social programs necessary to establish a durable rural base for his party; his attention to justice and security issues would prove ephemeral, and costly, both for himself personally and CICIG.

### The Trials of Starting Up (2008)

The initial organizational challenges proved more daunting than anyone had imagined possible. The ratification of the CICIG agreement in August 2007 had taken its supporters, and the UN, by surprise; indeed, the UN had effectively halted planning for the commission by June. An under-resourced Department of Political Affairs had to gear up quickly to organize and install a mission whose two-year mandate began in September, the month after ratification. Fortunately, the UN had a candidate for the first commissioner close at hand. Carlos Castresana, a Spanish prosecuting attorney known for working with the Spanish team

that indicted Augusto Pinochet in 1998, had worked for the UN Office on Drugs and Crime in Mexico.<sup>78</sup> He had joined the technical mission evaluating the CICIACS proposal in 2004 and provided advice to the UN Department of Political Affairs (DPA) in 2006 and 2007 as CICIG moved forward. The UN secretary-general appointed him in September, and he put together a small team of national and international consultants to begin organizing the commission with funds cobbled together from ad hoc UN and donor sources.

The Commission found an office by January: a large, high-walled, multi-building compound in the capital, formerly occupied by a contingent of U.S. Marines. But the effort to install administrative systems, recruit staff, and obtain specialized equipment and supplies hit an unanticipated obstacle. Because CICIG had been formally established as a non-UN organ, the UN Secretariat insisted it had no legal basis to provide security, administration, finance, or other resources for the start-up phase.<sup>79</sup> CICIG staff would not be able to hold UN contracts. Consequently, weak administrative and security support, muddled procedures, staff contract issues, a lack of UN travel documents, and a lack of privileges and immunities for national employees would continue to trouble CICIG, as well as strain relations with New York, for three years. CICIG was forced to build its administrative systems largely from scratch, eventually with the support of the United Nations Development Programme (UNDP). Although plagued by these start-up problems, by mid-2008 the organization had created a basic structure, filled key posts, and begun substantive work.

Financing proved a smoother process even though CICIG depended entirely on donor contributions to a UNDP-managed trust fund. The Commission began operations with borrowed funds. Castresana spent considerable time fundraising his first two years, assisted by the UN resident coordinator. By mid-2008, commitments were in place to cover 90 percent of CICIG's two-year budget.<sup>80</sup> The donor response was almost uniformly positive, and member state generosity reliably offset occasional cash flow problems. The initial budget, estimated at \$10 million per year, quickly grew to \$20 million by 2009 before budget cuts necessitated by the global financial crisis dropped it to \$15 million near the end of 2011. Funding levels would vary between \$11 and \$15 million per year from 2012 through 2015.<sup>81</sup>

Initial recruitment of staff, on the other hand, was difficult. Prosecutors and police investigators with the requisite background and skills were scarce commodities, and CICIG had to accept some less-than-ideal candidates until professional-quality recruitment systems were established.<sup>82</sup> The inability to issue UN contracts until 2011 made it difficult to attract UN staff. Nonetheless, a functioning core of professional staff was in place by mid-2008, and the Commission rapidly grew over the next three years, from 109 (including 41 security officers) at the end of September 2008 to some 200 (including 80 security officers) in late 2011.<sup>83</sup> Staffing levels would subsequently drop with budget reductions, leveling out at around 140 posts (including 70 national and international professionals).

From the outset, Castresana intended to structure CICIG as a prosecutor's office, although his organizational plan seemed fluid in the early months. He considered creating five functional units (civil and political rights, transnational organized crime, forensics, financial investigation, and legal) but ended up establishing five fairly traditional sections instead: litigation, legal and

investigation units, and administration and security departments.<sup>84</sup> The early CICIG operations plan did not include an analysis unit, political affairs department, or a media/public education capacity. A small information and analysis section was eventually established in late 2008 and a press spokesperson hired.<sup>85</sup>

## THE SEARCH FOR A STRATEGY

Determining how to operationalize CICIG's mandate proved no easier than the administrative start-up challenges. Castresana had participated in the development of both the CICIACS and CICIG models and knew enough about Guatemala to recognize that CICIG's principal targets would lie at the nexus of narcotrafficking, organized crime, and political corruption. But he faced the challenge of building a novel prosecutorial organization with no blueprints and a mandate broad enough to permit a range of investigative approaches and priorities, from investigating and mapping organized crime structures to selecting and working through old or new cases broadly related to the mandate.

While the approaches were not exclusive, the commissioner always intended to work through cases presented to CICIG by the public or state institutions. He consulted broadly during CICIG's first months, receiving varying, and sometimes contradictory, advice on initial case targeting. Human rights NGOs offered files of information from judicial cases about the military intelligence structures and criminal networks inside the PNC. Former-President Berger and his vice president recommended bank fraud and customs scandals from the Portillo era. Attorney General Florido urged attention to the February 2007 murders of three members of the Central American Parliament. The American ambassador mentioned the murder of the son of a human rights activist.<sup>86</sup> In March 2008, the commissioner signed an agreement with the Social Work Secretariat of the office of Sandra Torres, the wife of President Colom, to investigate a rash of targeted killings of women.

By March 2009, CICIG had opened investigations into six cases, some responding to earlier requests. These included the murders of bus drivers on popular transportation routes, apparently victims of extortion rackets, and the murder of the son of a human rights activist. Victor Rivera, an advisor to the head of the Interior Ministry during the Berger administration, had been killed in April 2008. A shootout between rival drug cartels in Zacapa had left 11 dead in March 2008. Five transit police were implicated in a car theft ring. In the case that had played such an important role in CICIG's ratification, three Central American Parliament (Parlacen) deputies had been murdered in 2007. Although the Parlacen and Rivera cases hinted at the possibility of criminal structures in the Interior Ministry and the National Civil Police, it was difficult to discern a strategic thread linking the others to CICIG's mandate.<sup>87</sup>

Nonetheless, the commissioner told the U.S. ambassador that his immediate goal was to "fix the Public Ministry" by asking the president to replace Florido, getting five or six defense lawyers "out of the way," and "dismantling the structures within the Public Ministry that made successful prosecution of influential people almost impossible." These remarks at least implied that Castresana had a broad and ambitious strategy, although he did not disclose its details.

He said he planned to “indict a number of corrupt senior former government officials, and with their cooperation go after serving officials in the police, ports, army and others in league with Mexican and Colombian drug cartels.”<sup>88</sup>

Castresana would not reach most of these targets during his three years with the Commission. He would participate in the indictment of a former president and senior defense officials for corruption, dismantle police groups engaging in criminal activity, uncover illegal adoption networks, manage investigations into illegal police structures in President Berger’s Interior Ministry, and force out large numbers of corrupt police officers and judiciary actors. But he was besieged by the challenges of dealing with recalcitrant prosecutors and judges, the need to direct resources to the *Rosenberg* case, opposition from a growing list of enemies, and the blowback from his style and methods. He would resign before the Commission had established robust strategic lines of inquiry.

### **STRUGGLING TO FIND GUATEMALAN PARTNERS**

The inauguration of President Colom in mid-January produced changes at the top of most government ministries. In the security and justice areas, Colom appointed Vinicio Gómez as the new interior minister but retained National Civil Police Director Isabel Mendoza and Attorney General Juan Luis Florido. Castresana signed an agreement with Florido in January

By mid-March, Castresana had become convinced that the influence of organized crime and corruption in law enforcement institutions was “worse than he had anticipated.”

outlining the bases for cooperation between CICIG and the Public Prosecutor, including, crucially, the creation of a special vetted unit in the Office of the Public Prosecutor to work with CICIG on high-impact cases. CICIG established solid relations with Interior Minister Gómez, relying on National Civil Police security during the Commission's first months, and began training a group of young police officers to work with its investigators and the Public Prosecutor in July.

By mid-March, Castresana had become convinced that the influence of organized crime and corruption in law enforcement institutions was "worse than he had anticipated." He feared that neither the attorney general nor the interior minister were in control of institutions "riven by rivalries and lack of communication," and led by senior officials with "private agendas which include crime and corruption."<sup>89</sup> He had concluded that "law enforcement in Guatemala was essentially nonexistent" and that CICIG was carrying out "an autopsy of collapsed institutions."<sup>90</sup>

By the beginning of the summer, CICIG's relationships with the government had begun to fray. CICIG investigators complained of poor cooperation, and perhaps deliberate stonewalling, from prosecutors in the *Parlacen* and *Rivera* cases. But the attorney general ignored CICIG requests to reassign staff.<sup>91</sup> By May, Castresana had concluded that Florido had no interest in a serious working relationship and asked President Colom to remove him. Florido resigned in July. José Amilcar Velázquez, the chief prosecutor for the Guatemala City region, replaced him on a temporary basis.<sup>92</sup> Six prosecutors followed Florido out of the Office of the Public Prosecutor in August.<sup>93</sup> CICIG persuaded the new attorney general to open a formal investigation of Álvaro Matus, the head prosecutor for organized crime and corruption, accused by Castresana of intentionally obstructing investigations into the *Rivera* and *Parlacen* killings.<sup>94</sup> Efforts to develop a working relationship with the Interior Ministry slowed when Minister Vinicio Gomez died in a tragic helicopter crash in June.

The removal of Florido improved CICIG's working relationship with the Office of the Public Prosecutor. Velázquez and CICIG immediately moved to establish the special vetted unit contemplated in the January cooperation agreement, the *Unidad Especial de Fiscalía de Apoyo a la CICIG* (UEFAC) (now known as the *Fiscalía Especial contra Impunidad*, FECI). Castresana took aim at corruption in the PNC in July, sending a list of police officers and senior leaders implicated by CICIG in criminal activities.<sup>95</sup> Then in late September, the president and Velázquez announced the abrupt retirement of PNC Director Isabel Mendoza and appointed Marlene Blanco as Guatemala's first female police head. She promptly dismissed 15 senior commanders in an announced effort to address corruption.<sup>96</sup>

On the legislative front, CICIG presented a set of proposals to Congress and the Supreme Court (CSJ) seeking modifications to the draft Arms and Munitions and Amparo Laws then under discussion in Congress. CICIG also submitted a package of reforms to the Code of Criminal Procedure and Organized Crime and Pretrial Proceedings Laws designed to equip CICIG and the judicial systems with the legal authority as well as modern investigative and forensic techniques and practices needed to effectively confront organized crime.<sup>97</sup>



## LOOKING FOR VISIBILITY

Apart from the occasional press story, CICIG was not very visible in 2008, and for understandable reasons. The demands of building the foundations of an organization; raising funds; hiring staff; developing working relationships with the police, the Office of the Public Prosecutor, and the judiciary; and working on an investigation strategy absorbed most of the organization's time. Investigations were underway in a number of cases, but none had reached the stage where information could be shared with the public. In June, however, the National Civil Police publicly credited CICIG's support in its arrest of four police officers, christened the "Mariachi Locos," for stealing drug shipments and robbing money changers.<sup>98</sup> This minor case was said to be the product of Castresana's concern to produce visible "easy wins" to establish CICIG's reputation.<sup>99</sup>

Nevertheless, the lack of visibility produced increasing concerns about the lack of a CICIG impact halfway through its first two-year mandate.<sup>100</sup> The U.S. ambassador told Castresana that "the Commission needed to show more results before consideration is given to extending its mandate," including "successful prosecutions of organized crime groups."<sup>101</sup>

Castresana was aware of the time pressures and the need to produce results in 2009 if CICIG's mandate were to be extended beyond two years. He had sought to augment CICIG's growing, but still limited, investigation and intelligence capacities by forging working alliances with NGOs, the U.S. embassy (and the Drug Enforcement Agency, Department of Justice, and FBI), and members of the business community and press who could provide him with information on corruption networks, help with investigations, and provide political support for the Commission. He drew upon a small group of Guatemalan advisors outside of CICIG to help map clandestine structures and benefitted from intelligence assistance provided by new National Civil Police Director Marlene Blanco for investigating sensitive cases.<sup>102</sup>

As the year drew to a close, CICIG's visibility rose. On October 7, ex-president Portillo, under indictment in Guatemala for embezzlement during his 2000-2004 administration, was extradited from Mexico. CICIG announced it would join the case.<sup>103</sup> In November, the bodies of 15 Nicaraguans and a Dutch citizen were found burned to death in the remains of a charter bus en route from Nicaragua to Guatemala City. The high-profile killings appeared to be related to a conflict between narco-trafficking groups, and the president asked CICIG to assist the Public Prosecutor with the investigation.

The Colom administration reached the end of its first year battered but standing, with its signature social programs—a cash transfer project called My Family Progresses, Solidarity Baskets of soil and seed for vegetable gardens, and soup kitchens—led by Sandra Torres's Social Cohesion Council. Colom had been able to cobble together a working majority with the center-right GANA and FRG deputies to secure his legislative agenda, but was heavily criticized for the nature of the deals required for their support. The president endured relentless barrages from the business elites accusing the administration of a lack of transparency and corruption in its social programs.<sup>104</sup> CACIF, the business lobby, successfully blocked significant tax increases to fund Colom's social projects, a costly loss as the impact of the 2008-9 global financial crisis sharply slowed Guatemala's economic activity and inflation

ballooned to 19 percent. However, Colom failed to focus with the same intensity on the security crisis even as the homicide rate climbed to 48.8 per 100,000 inhabitants and some 6,200 people were murdered during the year.

## CICIG Rising (2009)

Although CICIG entered its second year with its profile slowly growing through its connection to the Nicaraguan bus and *Portillo* cases, it would end 2009 as one of Guatemala's most visible and important political actors. Carlos Castresana found a media platform that transformed him into one of the country's most recognizable television and radio figures while the political crisis unleashed by the Rosenberg murder would give CICIG an opportunity to demonstrate its capacity and value. The increased visibility and political influence led Castresana to play a highly contentious role in the selection process for Supreme and Appellate Court judges late in the year, a bruising encounter that alienated many political and judicial actors but left CICIG highly popular among the general population, NGOs, and business sectors.

None of this was evident at the beginning of the year, though. No prosecutions were imminent, and doubts about CICIG's work continued to circulate. Its role was overshadowed by new changes in Colom's security cabinet in January. Francisco Jiminez had replaced Vinicio Gomez after the helicopter crash in June 2008, but was now shifted from interior minister, after just six months, to head the National Security Council. He was replaced by Salvador Gándara, a former vice minister in Arzú's Interior Ministry and, most recently, member of Sandra Torres's Social Cohesion Council.<sup>105</sup> The rapid rotation of interior ministers—three in Colom's first year of in office—undermined CICIG's ability to establish a coherent working relationship with the government's security team.

## ICARUS TAKES FLIGHT

CICIG's quiet image changed in February 2009. The Commission had encountered persistent reluctance from the Interior Ministry, Office of the Public Prosecutor, and judiciary on a number of high-impact cases. On February 3, the Public Prosecutor indicted Álvaro Matus at CICIG's request, but dropped the two most serious charges, and the trial court judge released Matus on bail. Castresana was furious. While CICIG's prosecutor on the case characterized the Public Prosecutor's action as "a stab in the back," Castresana went on a popular morning radio show the next day. In an "explosive interview," he blasted organized crime's penetration of the state, blaming "criminal structures in the institutions" for Guatemala's "98 percent impunity rate," described Matus's alleged obstruction of justice in the Rivera murder, and demanded an explanation from the attorney general.<sup>106</sup>

The subsequent radio and press coverage launched Castresana into the Guatemalan media firmament. Indeed, according to one journalist, "The days in which the director of CICIG...remained quietly in his corner had ended."<sup>107</sup> His habit of speaking with sweeping, undiplomatic bluntness about corruption and organized crime in state institutions transformed him into a unique actor in the annals of contemporary Guatemalan public life. Castresana's new media pulpit had immediate effects. The attorney general backed down and

agreed to reinstate the charges against Matus while confirming that “coordination with CICIG will continue.”<sup>108</sup> National and international human rights NGOs rallied to CICIG’s defense.<sup>109</sup> And Colom announced in March that he would seek an extension of CICIG’s mandate, since CICIG “had shown itself more active recently by seeking judicial proceedings against Álvaro Matus for blocking investigations” into the Rivera killing.<sup>110</sup>

The *Portillo* embezzlement case returned to the surface in March when the National Civil Police and Public Prosecutor arrested Portillo’s army chief, retired general Efraín Ríos Montt, and several other serving and retired senior officers, as co-conspirators with Portillo in the theft of Defense Ministry funds in 2003. The attorney general, joined by CICIG, formally filed charges against the former president in July, but *Portillo* delayed the case by filing successive appeals, including against the participation of CICIG.<sup>111</sup> The Portillo trial court granted Portillo’s request to deny CICIG private prosecutor status in the case, and CICIG appealed the decision while denouncing the judge for obstruction of justice.<sup>112</sup>

## **CICIG’S MOMENT ARRIVES: THE ROSENBERG CRISIS**

Then, on May 10, 2009, Rodrigo Rosenberg, a Guatemalan lawyer, was shot to death while riding his bicycle in Guatemala City. Rosenberg was a member of the capital’s business and legal elites, a respected attorney with master’s degrees from Cambridge and Harvard. He had served as the director of the Guatemalan Chamber of Commerce and was a vice dean of Guatemala’s Landívar Law School. Although initially perceived as another victim of random violence, Rosenberg returned from the grave on the day of his funeral with a message that threatened to bring down the Colom government. The lawyer had left a video, now mysteriously circulating in public, in which he accused the president, the first lady, and Colom’s closest advisor of organizing his assassination. Although the charges in the video were not fully coherent, Rosenberg claimed that the president had ordered the killing of a client who had threatened to expose a financial scandal involving the banks Sandra Torres used for her social programs. The businessman in question, Khalil Musa, had been murdered along with his daughter, and Rosenberg had been seeking those responsible.<sup>113</sup>

The accusations were explosive, quickly steamrolling into calls from conservative sectors for the president’s resignation.<sup>114</sup> Colom denied the charges, but soon found himself facing large protest marches in the capital and media demands that he step aside pending an investigation.<sup>115</sup> The charges spiraled into a political crisis in which Colom’s political opponents rallied to bring down his government. In the midst of an increasingly polarized country, Colom asked CICIG to carry out an investigation of the Rosenberg killing, gambling that the use of the UN organization to ensure an independent investigation would ease tensions until the case had been resolved.<sup>116</sup> Under strong pressure from the international community, the major political parties agreed to end the calls for Colom’s resignation, pending the outcome of CICIG’s investigation.

Although the crisis almost brought down Colom’s government, it also produced a climate that prodded Congress to move forward on important, long-stalled legislation. The first bill, adopted in May, established new procedures for selecting senior judges, the attorney

general, and other senior justice sector officials. The new process created a set of minimum professional and character requirements for judicial posts. Selection committees were to review each candidate's qualifications before submitting recommendations to Congress or the president. The new law also invited public review of the candidates.<sup>117</sup> Congress followed in August with one bill creating high-impact courts for organized crime cases and another establishing plea-bargaining norms.<sup>118</sup>

The scandal also helped persuade the Congress to approve a two-year extension of CICIG's mandate, to September 2011.<sup>119</sup>

While the *Rosenberg* investigation continued, the Colom administration changed its security sector leadership again. Interior Minister Salvador Gándara abruptly replaced National Civil Police Director Marlene Blanco on June 8, and she shifted to the Vice Ministry for Community Support.<sup>120</sup> Porfirio Pérez Paniagua, a retired officer, was brought back to head the force and promptly replaced several members of the police leadership with his own team. Paniagua, however, only lasted two months in office; in August, CICIG and the Public Prosecutor accused him of participating in a criminal structure within the National Civil Police that carried out a spectacular robbery of 300 kilos of cocaine and \$300,000.<sup>121</sup> He was replaced by Baltazar Gómez who, in turn, was later arrested in the same case.

By the middle of 2009, CICIG had moved from the margins to the center of Guatemalan politics. Castresana had become a media star, a bold, daring, outspoken prosecutor unafraid

Rosenberg returned from the grave on the day of his funeral with a message that threatened to bring down the Colom government. The lawyer had left a video, now mysteriously circulating in public, in which he accused the president, the first lady, and Colom's closest advisor of organizing his assassination.

to speak bluntly about political corruption. He now seemed to be everywhere at once, pursuing the Portillo case, and increasingly haranguing judges and prosecutors he accused of obstructing investigations. The future of the Colom government hung on the results of his investigation of the Rosenberg killing. Press criticisms became more muted.<sup>122</sup> The American ambassador suggested that Castresana had assumed “an informal role as the country’s conscience, demanding that leaders do better in providing security and justice.”<sup>123</sup>

But another storm awaited Castresana and CICIG in the fall of that year.

## THE CONFLICT OVER SUPREME COURT ELECTIONS

Guatemala’s five-year cycle of justice sector appointments and elections was scheduled to begin anew in 2009 with elections for a new CSJ and the Appellate Courts late in the year. The appointments for attorney general and Constitutional Court bench would follow in 2010. Judicial elections produced intense political maneuvering and bargaining among political actors and social sectors. The government wanted judges sympathetic to its political goals and willing to block legal attacks from opponents—the business elite challenging tax policy, for example—and investigations of administration personnel. This election was of particular interest to the Colom government because Sandra Torres would need the approval of the courts, particularly the Constitutional Court, to run as the UNE candidate in the next presidential contest.<sup>124</sup> Four political parties—GANA, FRG, PP, and UNE—and their principal allies formed an alliance to divide the CSJ and Appellate Courts, each negotiating for a quota from an agreed-upon list of lawyers.<sup>125</sup>

The new rules modifying the role of the commissions in recommending candidates for judicial sector gave civil society actors—and, as it turns out, CICIG—the opportunity to comment on the qualifications of candidates, conduct independent evaluations, and make recommendations to the commissions. It was not clear, however, how much the new openness would affect the traditional behind-the-scenes bargaining that produced the lists of names from which Congress would select judges and magistrates.

Civil society was certainly poised to try. For the first time in Guatemalan history, actors from across the political spectrum collaborated to review judicial candidates and oversee the transparency of the elections process. *Convocatoria Ciudadana* served as the umbrella group for 49 organizations (institutes, think tanks, human rights defenders, business chambers); *Guatemala Visible* organized a website with extensive information on the process.<sup>126</sup> CICIG joined these groups to review the qualifications of the 254 candidates for the 13 CSJ vacancies and 851 applications for 90 Appellate Court posts. The coalition shared its candidate assessments with the two nomination committees and the public.<sup>127</sup>

As the focus on the elections intensified in September, Castresana sharply criticized the process in the press. He denounced the “open secret” that members of the CSJ nominations committee were involved in under-the-table negotiations. He claimed that several candidates were linked to illegal adoptions or represented narcotraffickers. He accused lawyer and businessman Roberto López Villatoro of manipulating the election of magistrates.<sup>128</sup> He

claimed that Villatoro had been co-opting judges for several years to control the judiciary. He linked him to lawyers involved in illegal adoptions and defense law firms whose clients included narcotraffickers and military officers involved in corruption and human rights violations.<sup>129</sup>

It was unclear whether the CSJ nominations commission reacted to Castresana's public charges. It duly presented a slate of 26 candidates—two for each Supreme Court seat—to Congress. Then, on the eve of the CSJ election vote, Castresana publicly denounced eight of the candidates as unfit for appointment and requested a temporary suspension of the election.<sup>130</sup> The Commissioner provided only minimal justifications for his objections. Congress, led by the president's party, ignored the attempted 11th hour intervention and elected a new court that included six of the eight of the candidates denounced by Castresana. CICIG then filed an appeal with the Constitutional Court on the basis that the deputies had failed to evaluate the "honorability" of each of the candidates—a qualification enumerated in the Constitution—before voting. The Constitutional Court suspended the election and Congress revoted on October 7 after evaluating the questioned candidates under the "honorability" criteria. Three of the six challenged candidates were reelected.<sup>131</sup>

Congress began the process of electing 90 Appellate Court judges and 60 replacements. After the turbulence of the CSJ process, the elections went comparatively smoothly. None of the 20 candidates to which CICIG raised objections were elected.<sup>132</sup>

While the campaign may have produced a better CSJ and more competent set of Appellate Court judges, it also left a set of troublesome ambiguities in its wake.<sup>133</sup> Castresana was denounced for attacking the integrity of nomination commission members with broad, undocumented claims, and even friends of the Commission asked to see the evidence supporting his charges.<sup>134</sup> The process embittered the relationship between CICIG and important actors in the government, the political parties, the bar, and the judiciary. The public, however, was appreciative of CICIG's pressure on the long-discredited judiciary. In an October poll by Vox Latina, 83 percent expressed support for the work of Castresana and 91 percent said they believed Congress acted improperly by supporting candidates CICIG had criticized.<sup>135</sup>

CICIG continued to clash with the judiciary throughout the remainder of the year, with the new president of the CSJ openly sparring with Castresana.<sup>136</sup> CICIG did not hesitate to criticize judges for poor decisions or obstruction of cases, and announced its own investigations of three magistrates.<sup>137</sup> Castresana also announced that CICIG would investigate 31 lawyers, including six members of the CSJ, who obtained master's degrees in Sevilla in 2007 and 2008, allegedly paid for by Roberto López Villatoro.<sup>138</sup> Finally, CICIG challenged the judges presiding over the *Portillo* and *Amatitlan* cases, and the CSJ opened investigations to determine whether their immunity should be lifted.<sup>139</sup>

## THE END OF A WILD YEAR

The end of 2009 found CICIG in a very different position from its largely invisible 2008 inauguration. Early in the year, Carlos Castresana had surged into the public limelight on the



back of the Nicaragua bus killings, the *Portillo* investigation, and forceful criticisms of political corruption provoked by the attorney general's soft indictment of Álvaro Matus. By midyear, the Rosenberg case had moved CICIG to the center of Guatemalan politics, with the fate of the Colom administration hanging on the results of its investigation. Castresana did not hesitate to deploy CICIG's new political leverage, rebuking and censuring judges ruling against CICIG positions, plunging into the contentious and controversial election of magistrates to the Supreme and Appellate Courts, and railing against mafias in the police and judiciary while insisting on the need to purge corrupt state officials.

While the *Rosenberg* and *Portillo* cases dominated CICIG's investigative work, the Commission continued to work on the Parlacen, Pavon, and Rivera killings, and push the Matus obstruction of justice case forward in the courts. It was acting as a co-prosecutor with the Public Prosecutor in the Zacapa narco-firefight, *Matus*, *Mariachi Loco*, and *Portillo* cases. In October, Castresana promised to add the murders and disappearances of labor and campesino leaders to CICIG's docket.<sup>140</sup>

A number of the year's most important advances occurred in the legislative arena, where prosecutors (including CICIG) finally gained access to modern forensic investigative tools. CICIG and the Public Prosecutor's Office successfully lobbied Congress to authorize wiretapping, controlled drugs deliveries, undercover operations, plea bargaining, streamlined extradition procedures, and video testimony for court proceedings. The CSJ authorized the use of secure courts for high-impact, dangerous cases. The Office of the Public Prosecutor improved under Attorney General Velázquez; cooperation with CICIG was difficult but the special unit set up to work with the Commission was gaining experience and confidence. However, CICIG's other partners, the Interior Ministry and the National Civil Police, remained deeply troubled. Colom had already moved through four interior ministers as 2009 drew to a close, with his third, Salvador Gándara, who was appointed at the beginning of the year, ousted in July while under fire from human rights organizations and opposition political parties. Raul Velázquez would be the fourth; but he, too, would leave under a cloud of corruption allegations at the end of February 2010.<sup>141</sup>

The Colom government reached its halfway mark in disarray. The administration's social democratic agenda for Guatemala's poor, rural, indigenous majority would have been difficult in the best of times in a culturally conservative state hobbled by incoherent political institutions. And this was not the best of times. The UNE was governing without a majority in Congress, in the face of staunch opposition from the business elite and escalating social and criminal violence. Guatemala was hit hard by the steep recession in the U.S. Colom had attempted to maneuver around institutional blockages by creating social service projects managed directly by the executive and the first lady. These projects' opaque financial and delivery mechanisms provoked persistent charges of financial corruption and political manipulation. The tenor of Colom's clientelistic politics, maneuvering for short-term votes while building a base for a 2011 Sandra Torres presidential run, had already shuffled an array of officials through key institutions, particularly the Interior Ministry and the National Civil Police. The murder of Rosenberg had derailed the administration's agenda halfway through its second year, and it would never recover its early momentum.

## From the Mountaintop to the Valley (2010)

CICIG's fortunes, on the other hand, were rapidly rising. They would reach a pinnacle early in its third year. However, even as Castresana was nominated for *Prensa Libre's* 2009 Person of the Year award, several concerns about the Commission's strategy and methods—including Castresana's political alliances, the use of the press to confront opponents, the accumulation of political enemies, and questions about case selection and management—were simmering just below the surface. They would, a few months after resolution of the Rosenberg killing, surface in the heat of two crises: the election of a new attorney general and the investigation of several senior government officials for extrajudicial executions in the Berger administration. A range of CICIG opponents, including many members of the business elite, maneuvered against Castresana, and a decision by the president to appoint a questionable attorney general led him to resign abruptly at midyear. His successor, former Costa Rican Attorney General Francisco Dall'Anese, immediately stumbled into a highly charged indictment against Berger's interior minister, a paragon of the business elite, plunging CICIG into controversy over the political management of the case that should have defined its mandate.

### **CICIG TRIUMPHANT: THE ROSENBERG FINDINGS**

CICIG reached its high point of the Castresana era with its spectacular resolution of the murder of Rodrigo Rosenberg. Castresana organized a press conference on January 10 to announce that, after years of trying to link the government to the killings of Musa and his daughter, Rosenberg had actually arranged his own killing in an effort to destabilize the government. Colom, his wife, and their inner circle were vindicated, and the threat of an impeachment action against the president was removed.<sup>142</sup>

The conservative political and economic sectors who had hailed Rosenberg as a martyr and hero, and used his death to attempt to bring down the government, were stunned, and not just because of the political fallout. The case revealed elite practices usually hidden from the public. Rosenberg had asked the Valdez Paiz brothers—relatives, well-known owners of a pharmacy chain, members of CACIF—to help him eliminate an “extortionist,” and they easily arranged to hire and pay a band of killers, most from the National Civil Police, who successfully carried out the request. But the “extortionist” turned out to be Rosenberg himself. The murder also unveiled illicit competition for a state contract for the issuance of national identity documents between a close Colom advisor and a Rosenberg relative and client.

Castresana had marshaled all of the Commission's resources to resolve the case in six months. The highly effective use of new investigation and forensic tools—telephone wiretapping, GPS car tracking, phone call triangulation, surveillance cameras, plea bargaining for cooperation—astonished the legal community.<sup>143</sup> The quality and presentation of the evidence were convincing enough to persuade a Guatemalan public chronically subjected to unprovable conspiracy theories that Castresana's stranger-than-fiction tale of assisted-suicide-staged-as-murder was true. The press conference in January 2010 at which Castresana revealed the inquiry's findings while the president and his entourage anxiously waited for the verdict made for irresistible theater.<sup>144</sup>

## CONFLICTS WITH NATIONAL INSTITUTIONS RESUME

CICIG's triumphs with Rosenberg and Portillo did not silence challenges from the judiciary. The Commission and the NGO alliance (*Convocatoria Ciudadana*) that supported it were caught off guard when Congress elected a new director of the Public Defenders Institute who had several serious complaints against him when he served as a judge and at the Institute. CICIG and the NGOs strenuously objected, and CICIG provided background information that persuaded Congress to annul the election. As the CICIG challenges to traditional bargaining practices in the judiciary continued, the president of the CSJ criticized Castresana's attacks on magistrates, rejected CICIG's offer to provide security for judges in high-impact cases, and warned the Commissioner to avoid launching last-minute public attacks on the integrity of candidates for the upcoming appointment of a new attorney general.<sup>145</sup>

As relations with the judiciary approached a nadir, CICIG's most tenuous partner, the Interior Ministry, was forced to endure another change. At the end of February, Colom dismissed Raul Velázquez when he was accused of involvement in the theft of gasoline destined for the National Civil Police.<sup>146</sup> He was replaced by Carlos Menocal, the Interior Ministry's then-liaison to CICIG. Menocal greatly improved the ministry's working relationship with CICIG, and by remaining at the head of the ministry until the end of the Colom administration, he provided the stability needed for greater coordination among CICIG, the National Civil Police, and the Public Prosecutor. Shortly thereafter, CICIG asked for an indictment against former interior

By the spring, pressure on Castresana was mounting from several sides. He had earned the enmity of Portillo's supporters for his dogged pursuit of the ex-president, of powerful judicial and legal actors for his criticism of their efforts to preserve impunity, and of political parties whose judicial bargaining had been thwarted by CICIG.

minister Salvador Gándara for the theft of government vehicles, including armored cars destined for the CICIG-supported witness protection program.<sup>147</sup>

## FROM TRIUMPH TO TRAGEDY: CASTRESANA RESIGNS

By the spring, pressure on Castresana was mounting from several sides. He had earned the enmity of Portillo's supporters for his dogged pursuit of the ex-president, of powerful judicial and legal actors for his criticism of their efforts to preserve impunity, and of political parties whose judicial bargaining had been thwarted by CICIG. Sectors of the elite were unhappy with the outcome and revelations of the *Rosenberg* case and not-yet-public investigations linking top officials in the Berger administration to the murders of prison inmates by an illegal police network that was carrying out targeted killings and "social cleansing" operations.

Castresana's last battle arrived in May with the selection process for CICIG's closest partner, the attorney general. *Convocatoria Ciudadana* and CICIG regrouped to assess the qualifications of the candidates submitting applications to the nominations committee. Once again, civil society actors and the Commission produced a list ranking candidates and identifying those who should be disqualified. Once again, the nomination commission sent a list of six finalists to President Colom from which he would appoint the new Public Prosecutor. Once again, Castresana accused the commission of negotiating the final recommendations with political actors in secret when four of the candidates disqualified by CICIG showed up on the final list.<sup>148</sup>

On May 24, President Colom selected Conrado Reyes, one of the disqualified, as the new attorney general.<sup>149</sup> Castresana insisted that Reyes was connected to networks engaging in illegal adoptions and lawyers defending narcotraffickers.<sup>150</sup> Furious, he abruptly resigned on June 7, claiming that the Guatemalan government had failed to support CICIG's mandate as evidenced by the Reyes appointment.

One week later, Castresana held a press conference to share evidence of a conspiracy by the Valdéz Paiz brothers, members of the business elite, and their judiciary contacts to destroy evidence in the *Rosenberg* case incriminating the brothers and to undermine CICIG. He said the evidence described financing arrangements for national and international media campaigns to discredit him personally.<sup>151</sup> Finally, Castresana insisted that wiretaps played for the press linked the new attorney general, Conrad Reyes, to the group.<sup>152</sup>

The resignation and subsequent media storm shamed a stunned Colom. He moved to withdraw the Conrad Reyes appointment in the face of intense criticism, but had to rely upon the willingness of the Constitutional Court to bend legal norms to remove Reyes. The appointee had, in the meantime, begun to dismantle the reforms to the Office of the Public Prosecutor initiated by Velázquez, reassigning staff and seeking case files on high-impact cases. On June 9, the Court annulled the election, citing defects in the selection process, and ordered a new vote.<sup>153</sup> Candidates were to file applications by September 30. Colom appointed Maria Encarnación Mejía García in the interim to head the office until the new election.

## DALL'ANESE AND CICIG'S DECLINE

### **A NEW COMMISSIONER, FRANCISCO DALL'ANESE, A FORMER COSTA RICAN ATTORNEY GENERAL, REPLACED CASTRESANA AT THE BEGINNING OF AUGUST.<sup>154</sup>**

Castresana had recommended Dall'Anese, who had gained a reputation as a fearless anti-corruption campaigner by successfully prosecuting two former Costa Rican presidents for embezzlement. The United Nations, hoping to move quickly to avoid a long transition, accepted the recommendation without carrying out a wider search for a new commissioner.<sup>155</sup> President Colom accepted New York's proposal with an equally cursory review of Dall'Anese's background.<sup>156</sup>

### The New Commissioner and the Vielmann Hurricane (2010, Part 2)

Dall'Anese had barely settled in when CICIG prosecutors requested an indictment for the arrest of 18 individuals for the execution of seven prisoners at Pavon prison in September 2006. CICIG asserted that four senior officials in the Berger government had organized the killings: the ex-interior minister, Carlos Vielmann; the ex-director of the National Civil Police, Erwin Sperisen; the subdirector general of criminal investigations, Javier Figueroa; and the ex-director of the Penitentiary System (and candidate for president), Alejandro Giammattei. They allegedly ran a parallel security structure within the Interior Ministry engaged in extrajudicial killings, "social cleansing" operations, money laundering, drug trafficking, extortion, and drug thefts. CICIG linked the structure to the Pavon and Infiernito prison killings, the Rivera murder, and the Parlacen killings.<sup>157</sup>

The accusation against Vielmann, a powerful member of the traditional elite, provoked a torrent of criticism from conservative sectors, including the business actors long supportive of Castresana. Members of the Berger government were apoplectic, particularly former-Vice President Eduardo Stein, who accused CICIG of overstepping its mandate and called on the UN to provide greater oversight and supervision.<sup>158</sup> CACIF members traveled to the United States and hired a Washington lobbyist in an effort to rein in CICIG and replace the recently arrived Dall'Anese.<sup>159</sup> The indictments provoked a heated debate in the press over the willingness of traditional elites to subject themselves to the same rule of law they demanded for Portillo and the anti-elite mafias who threatened their influence in state institutions.<sup>160</sup>

With none of the four accused in Guatemala—Vielmann, Sperisen, and Figueroa had moved to Europe, and Giammattei sought asylum in Honduras—CICIG and the Public Prosecutor pursued extradition. Vielmann was arrested in Spain on October 4. Days later, he was released, apparently due to Guatemala's failure to send the documents justifying the extradition request promptly.<sup>161</sup> Worried about the reliability of the Guatemalan judiciary, CICIG officials traveled to Madrid and filed a complaint against Vielmann for crimes against humanity. Sperisen held Austrian, and Figueroa Swiss, nationality, and neither state permits extradition of citizens. Both states began criminal investigations based on the CICIG charges and evidence. Meanwhile, in Guatemala, the business sector financed a campaign in the press and social media defending Vielmann as a patriot unjustly driven from Guatemala by unscrupulous prosecutors.

The storm intensified when a Costa Rican prosecutor and former CICIG investigator, Gisele Rivera, accused Castresana of blocking the *Vielmann* investigation for political reasons.<sup>162</sup> She had investigated the Pavon and Infiernito prison executions, and developed the theory linking those killings to Parlacen and a security structure in the Interior Ministry. She claimed that Castresana refused to pursue her argument, insisting that it was not the right “political moment” to go after the interior minister. She asserted that the former commissioner’s alliances with powerful business groups inhibited his capacity to bring charges against their members.<sup>163</sup> Rivera said she requested the UN to investigate Castresana’s conduct; the UN denied receiving a complaint.<sup>164</sup> Her arguments, supported by many confidential CICIG documents, appeared in a book published in 2006 by an El Salvadoran journalist investigating the Parlecan murders.<sup>165</sup> The bizarre case took new twists as Dall’Anese lifted Rivera’s immunity and the Public Prosecutor obtained an arrest warrant for disclosing confidential information and obstruction of justice.<sup>166</sup> Rivera refused to return to Guatemala, and CICIG obtained a default judgment against her.<sup>167</sup>

The repercussions of the case followed CICIG through the end of the year as newspaper columnists both challenged and defended its work in light of the *Vielmann* revelations.<sup>168</sup> The Human Rights Ombudsman asked Dall’Anese to carry out an evaluation of his predecessor.<sup>169</sup> An accusation of sexual harassment against Pedro Diez, the head of CICIG’s Investigations Unit, also hurt CICIG’s reputation. A CICIG committee did not find enough evidence to request an investigation of the allegations by the Public Prosecutor, but Diez left CICIG at the end of December.<sup>170</sup>

The year ended, however, on an unexpectedly happy note. CICIG gritted its way through the *Vielmann* controversies to join with *Convocatoria Ciudadana* once again to oversee the postponed nomination process for a new attorney general in December. CICIG took a new approach under Dall’Anese, collecting and analyzing all available information on the 40 applicants, preparing charts comparing formal qualifications, highlighting the six most qualified, and submitting the information in a report to the nominations committee without a high-profile media campaign.<sup>171</sup> The list of six candidates forwarded to the president on December 3 included the three highest scores of the applicant pool, led by Claudia Paz y Paz, a human rights lawyer directing the Institute for Comparative Penal Law.<sup>172</sup> Dall’Anese, civil society actors, the United States, and other embassies quietly lobbied Colom to appoint one of the top candidates.

Colom interviewed the six finalists on December 8. Faced with the political wreckage of the first process, the president decided to appoint the candidate with the highest evaluation score, and suddenly Guatemala found itself with an unknown head of the Office of the Public Prosecutor who would quickly become the country’s finest attorney general of the democratic era: Claudia Paz y Paz.<sup>173</sup>

And in one of its final sessions of the year, Congress adopted the Assets Seizure Law (*Extincion de Dominio*), permitting the state to use property seized as a result of organized crime and corruption convictions for the support of state security and judicial institutions.<sup>174</sup>

CICIG’s tumultuous 2010—the striking resolution of the Rosenberg murder, the resignation of Castresana, and the controversies ignited by the *Vielmann* cases—led one newspaper columnist to name CICIG “Political Actor of the Year.”<sup>175</sup>



## CICIG in the Shadow of a New Attorney General (2011)

The new commissioner's baptism by fire did not end with 2010; the new year proved just as contentious, even as another conflict-ridden national election moved to the center of political life. Dall'Anese continued to feel the sting of criticisms spawned by Castresana's resignation and the *Vielmann* controversy.<sup>176</sup> The commissioner's competence would be questioned as CICIG and the Public Prosecutor suffered a series of painful legal defeats in the *Portillo* and *Pavon* cases, followed by the joint decision not to prosecute Vielmann in Guatemala. Although Dall'Anese's low-key participation in the review of candidates for the Constitutional Court in 2011 would prove effective, he was forced to take to the airwaves to defend CICIG's credibility. The rancorous battles with the courts grew more heated as the commissioner publicly criticized judges ruling against CICIG and the Public Prosecutor, leading to another nadir when the Association of Judges formally asked the UN to remove him. Finally, although CICIG's mandate was extended again (to September 2013) Dall'Anese would end the year preparing to transition skills and resources to the Public Prosecutor in anticipation of CICIG's closure.<sup>177</sup>

The governing party, Colom's battered UNE, hoped to extend its hold on the presidency, and solidify its social-democratic project, with Sandra Torres's long-expected candidacy. But the economic crisis, the *Rosenberg* debacle, relentless corruption scandals, incessant attacks from the business elite-controlled press and, above all, intractable violence, hobbled Torres's

CICIG's greatest advantage entering 2011 was the presence of Claudia Paz y Paz as the new attorney general. The availability of a staunch reform partner led Dall'Anese to adopt a strategy veering away from his predecessor's media-centric protagonism, and instead deferring to the leadership of the Office of the Public Prosecutor.

prospects. The Patriot Party's founder, retired general Otto Pérez Molina, running on the crime issue with an indefatigable "*mano dura*" message, established a strong early lead in the polls and never let go. Torres's hopes to repeat Colom's 2007 strategy by winning rural and indigenous Guatemala foundered when she eventually lost the anticipated legal challenges to her candidacy. Her disqualification opened the door for Manuel Baldizón, former UNE member, now the head of his own party, Libertad Democrática Renovada (LIDER), and scion of a wealthy family widely rumored to have accommodated Petén's organized crime groups.<sup>178</sup>

## **CLAUDIA PAZ Y PAZ**

CICIG's greatest advantage entering 2011 was the presence of Claudia Paz y Paz as the new attorney general. The availability of a staunch reform partner led Dall'Anese to adopt a strategy veering away from his predecessor's media-centric protagonism, and instead deferring to the leadership of the Office of the Public Prosecutor. CICIG would assist Paz y Paz's program to reform and strengthen the investigative and prosecution capacities of the Public Prosecutor's Office while continuing to provide support on cases within its mandate.

Paz y Paz's quiet manner masked a steely determination to focus her office on a new set of national priorities, including streamlining the processing of cases to reduce the enormous backlogs, address impunity structures, and unblock cases related to crimes committed during the internal conflict.<sup>179</sup> She was under no illusions that this would be easy; she estimated that an overhaul of the Office of the Public Prosecutor would take a decade.<sup>180</sup> Reform would also pose a challenge as Congress's refusal to appoint members of the governing board overseeing the attorney general's work restricted her ability to maneuver within the ministry, particularly her ability to remove prosecutors and investigators.<sup>181</sup>

Paz y Paz knew that her past as a human rights lawyer and work on genocide and war crimes cases would alienate conservative military circles and much of the traditional business elite, and would revive the specter of the left-right ideological debates of the postwar years.<sup>182</sup> They would move against her throughout her four-year mandate, finally succeeding in removing her and blocking her efforts at reappointment in early 2014. In her time in office, however, she would increase greatly the capacity and credibility of the Public Prosecutor.

Demonstration of a new spirit and capacity began immediately in 2011. The attorney general built a solid working relationship with Colom's final interior minister, Carlos Menocal, and moved forward on several fronts. Together, they were able to capture five of the previously "untouchable" organized crime heads in Guatemala (and extradite them to the United States), arrest dozens of members of the Mexican Zeta and Sinola cartels operating in the country, and solve major murders, such as the killing of folk singer Facundo Cabral. All of these were accomplished in record time by adeptly using new electronic forensic capacities.<sup>183</sup> More controversially, the Public Prosecutor also moved forward on genocide and war crimes trials against former senior military leaders, most prominently former dictator and head of state Efraín Ríos Montt.

## A CAMPAIGN AGAINST DALL'ANESE

An effective attorney general could not slow the continuing attacks on Dall'Anese and CICIG carrying over from 2010, however. In February, the commissioner denounced "an international campaign against CICIG" managed by business interests who had hired a Washington, DC, lobbyist to undermine the Commission before the U.S. Congress and predicted that the campaign would include the loss of important cases in the Guatemalan courts. He said the attacks originated from "powerful sectors" affected by CICIG's actions.<sup>184</sup> A widely circulated rumor that the commissioner had resigned followed.<sup>185</sup> The murky campaign also took advantage of criticisms emerging from Guatemalan civil society about the new commissioner's management of CICIG, in particular his decision to lower the organization's public profile and reduce its case focus in order to support the attorney general and her renovation of the Office of the Public Prosecutor.<sup>186</sup>

Concerned about the incessant attacks, more than 100 NGOs joined a group of diplomats on March 3 to reiterate their "unconditional support" for CICIG in response to what they claimed was a campaign to discredit the Commission undertaken by several unnamed "sectors."<sup>187</sup>

## STRUGGLING WITH THE CASES

Whether Dall'Anese was prescient or just well informed, the cases began to turn against CICIG. The CSJ denied CICIG's request to transfer the *Portillo* trial to one of the new high impact courts, arguing that embezzlement was not a high-risk crime.<sup>188</sup> In February, an appeals court confirmed a trial court decision to dismiss the charge of extrajudicial execution against Alejandro Giammattei, former director of the Penitentiary System, indicted by the Public Prosecutor and CICIG for participating in the *Pavon* executions.<sup>189</sup>

Then in May of 2011, the *Portillo* trial court reached a verdict, declaring the ex-president and his ex-ministers of finances and defense not guilty of embezzlement. The court was divided, with one of the three judges voting to convict. The majority rejected the evidence offered by the prosecution.<sup>190</sup> The same day, a trial judge closed the *Giammattei* case in the wake of a Constitutional Court decision barring his prosecution for extrajudicial execution.<sup>191</sup> Two more rounds of appeals left the case suspended.<sup>192</sup> Finally, on June 24, an appeals court confirmed a trial court decision that CICIG and the Public Prosecutor had not proved Giammattei's involvement in extrajudicial executions and ordered his release.<sup>193</sup>

The string of legal setbacks revived the criticism of Dall'Anese's stewardship. The comparisons with Castresana were expected, and unfavorable. Some lamented a CICIG "loss of efficiency," as Dall'Anese seemed to be losing cases that Castresana had prepared, in part because Dall'Anese "acted as if he were still working in civilized Costa Rica and not in the Guatemalan den of wolves," refusing to follow his predecessor's strategy of "actively pressuring" the courts and "acting firmly before public opinion and Guatemala's powerful elite circles."<sup>194</sup>

The controversy over Castresana's alleged politicization of the *Vielmann* cases revived with the publication of a book on the Parlacen murders, *Crimen de Estado*, by El Salvadoran journalist

Lafitte Fernandez. The book amounted to a confusing collection of journal pieces, clarifying little about the case, and was largely based on information provided by Gisele Rivera.<sup>195</sup>

The case against Álvaro Matus, the face of prosecutorial obstruction, also struggled. The Public Prosecutor had filed charges against Matus in February 2009. Matus's lawyers then filed a series of challenges—the first claiming that the ex-prosecutor was entitled to an administrative review before a criminal charge could be filed against him—paralyzing the proceedings for months.<sup>196</sup> Finally, in April 2010, a judge determined that the Public Prosecutor and CICIG had presented enough evidence to send the case to trial.<sup>197</sup> Hearings continued until June 2011, when CICIG and the Public Prosecutor requested a transfer to a high-impact court—in principle because an organized crime network was involved but in practice because this trial court had just absolved ex-president Portillo and three other defendants in another of CICIG's paradigmatic cases.<sup>198</sup> In March 2012, an appeals court granted a request from Matus to remove the high-impact trial judge presiding over his case because the judge had already seen the evidence against him when she presided over the trial of the Rivera assassins.<sup>199</sup> The case was postponed again.

Although CICIG was struggling with high-profile defendants, several less-known CICIG cases did produce favorable verdicts. Defendants were convicted for the killings in the Zacapa narco shootout, Victor Rivera assassination, Khalil and Marjorie Musa murders, and a National Civil Police firefight. CICIG and the Public Prosecutor also won a conviction in the Maskana fraud case.

Although CICIG was struggling with high-profile defendants, several less-known CICIG cases did produce favorable verdicts.

Nonetheless, these achievements were overshadowed by a joint CICIG–Public Prosecutor decision in July to withdraw the request for extradition for Viemann and leave the investigation and trial for the Spanish judiciary.<sup>200</sup> The string of 2011 setbacks undoubtedly contributed to the extraordinary decision to forego the prosecution of CICIG’s most important case. Four years after CICIG’s arrival, the withdrawal was a highly negative statement about the rule of law in Guatemala. Even with a reform-minded attorney general leading the Office of the Public Prosecutor, CICIG did not believe the judiciary could withstand the pressures from the traditional elite to exonerate Viemann.<sup>201</sup>

## ANOTHER WAR WITH THE JUDICIARY

Relations with the judiciary remained difficult, particularly as more courts ruled against motions brought by CICIG and the Public Prosecutor in important cases. CICIG publicly denounced several judges for adverse rulings, claiming they were obstructing justice and protecting the impunity of prominent public officials.<sup>202</sup> CICIG claimed that judges were rejecting proof without justification and then using the lack of proof to absolve defendants; holding conferences with defendants and their lawyers without involving the Public Prosecutor and then granting bail; revoking preventative detention even though circumstances had not changed; misapplying the law in favor of defendants; and denying CICIG private prosecutor status using an arbitrary definition of “clandestine groups.”<sup>203</sup>

On June 8, CICIG accused Judge Veronica Galicia of abuse of authority and partiality in favor of the accused in the *Maskana* (theft of National Civil Police petrol) and *Fraijanes II* (fraud in contracting for prison repairs) cases because she refused to place the accused in preventative detention, and asked for her removal.<sup>204</sup> The judge replied that the problem was not the court’s ruling but rather the poor quality of CICIG’s work, claiming, for example, that CICIG had filed its papers late and tried to persuade the clerk to backdate the documents. Dall’Anese accused her of lying to “hide her own inefficiency” and threatened criminal actions against her.<sup>205</sup>

The CSJ rejected Dall’Anese’s request for an investigation of Galicia because CICIG had produced no concrete charge against her. On June 16, the CSJ held an extraordinary meeting to discuss the alleged pressuring of judges who had issued decisions unfavorable to CICIG and called on the Commission to respect judges and avoid interfering in their work.<sup>206</sup>

The Association of Judges and Magistrates issued a statement asking Dall’Anese to stop interfering in judicial decision-making and litigating cases in the media, and to follow the formal legal procedures for filing charges against judges.<sup>207</sup>

The battle with the judges continued well into the summer. When Dall’Anese stated that CICIG would create a team to investigate judges, the Association of Judges and Magistrates replied that CICIG was mandated “to investigate parallel groups and not judges,” and demanded respect from the Commissioner (who had called judges “ignorant”).<sup>208</sup> The judges sent a letter to the UN secretary-general demanding an evaluation of Dall’Anese’s work, insisting that he should be removed if his attacks on the judiciary overstepped his mandate.<sup>209</sup> Not surprisingly, the CSJ rejected a CICIG security plan for judges in high-risk cases, claiming it would undermine the independence of the court, particularly since CICIG appears as a party in high-risk cases.<sup>210</sup>

## CONSTITUTIONAL COURT ELECTIONS

In March, CICIG weighed in on the last of the election processes for the judicial sector, the election of magistrates to the Constitutional Court. Following procedures established for the second round of the election of the attorney general, CICIG prepared an analysis of the qualifications of each of the candidates and submitted the information to the members of the nomination committee.<sup>211</sup> Although the selection process was particularly politically sensitive, since the court would have to rule on the eligibility of Sandra Torres to run for president in the second half of 2011, the elections went relatively smoothly, as Congress did not select any candidates the Commission had criticized.<sup>212</sup>

## ANTICIPATING THE END OF THE MANDATE

Although CICIG's mandate had been extended a second time by the Colom government, and would now stretch until September 2013, the Commission began in late 2011 to consider its strategy for its last two years. The priority was supporting the Public Prosecutor. CICIG sought to take advantage of the new attorney general's commitment to reform, including strengthening and expanding the special prosecution units in the FECl; creating an International Relations Office; expanding the Office for the Protection of Witnesses and Victims; strengthening the Analysis Unit; creating a police unit specialized in criminal investigation; strengthening the Special Investigations Methods Unit; and creating a Police Information Platform.<sup>213</sup>

CICIG also proposed to use its last two years to look at cases outside the capital. In August, the *Comite de Unidad Campesina* asked CICIG and the Public Prosecutor to investigate the expulsions of campesinos from a farm in Alta Verapaz, claiming that paramilitary groups in the pay of the farm's owners were responsible for destroying and burning eight houses, injuring two people with gunshots, and intimidating families.<sup>214</sup> The Commission agreed to explore the possible existence of illegal structures protecting large landholders. It also hinted it might investigate whether the killings of community leaders between October 2010 and February 2011 reflected the presence of clandestine networks linked to narco trafficking, business, and political interests in Petén.<sup>215</sup>

## THE SHADOW OF THE NATIONAL ELECTIONS

The September 2011 national elections had shaped up all year as a contest among Sandra Torres, candidate of the UNE-GANA coalition; Manuel Baldizón, head of LIDER; and former general Otto Pérez Molina of the Patriot Party (PP). Torres's disqualification by the Constitutional Court left Pérez Molina and Baldizón competing for the presidency, and their parties seeking a working majority in the 158-member Parliament.

The choice between a hardline former general alleged to have committed war crimes during the civil war and an anti-elite businessman with obscure connections to Petén's organized crime groups disconcerted many as the campaign reached its climax in September. The

race was closer than anticipated, with Baldizón picking up much of Torres's support in the countryside. Nonetheless, Pérez Molina won a plurality in the September round (36 percent to 23 percent) and went on to win the runoff in November with a comfortable 54 percent majority. His party only won 27 percent of the congressional seats, however, just slightly ahead of a UNE-GANA alliance (23 percent), presaging another divided, and rocky, government.

Pérez Molina's victory raised the specter of a decidedly negative shift in the fortunes of CICIG and the attorney general over the next four years. The return of a former military officer to the presidency threatened to provoke an ideological conflict, with, the "gale force" of Claudia Paz y Paz's indictments of former military officers running up against a "rising storm of right-wing outrage and resistance."<sup>216</sup>

The relationship between the Public Prosecutor and CICIG on the one hand, and the president-elect and his party on the other, had been difficult since 2010, as Pérez Molina and his military supporters were critical of the attorney general's prosecutions of military officers involved in the civil war. After Pérez Molina's victory, the military launched a public campaign against the attorney general.<sup>217</sup> Many of the national actors who had supported the Public Prosecutor went silent as the attacks intensified, while the president-elect remained noncommittal about retaining Paz y Paz. The Office of the Public Prosecutor was left with its core allies, including the United States and the diplomatic community, CICIG, and the NGOs. Under tremendous international pressure, Pérez Molina met with the attorney general and pledged not to

The electoral outcome left a deep sense of uncertainty over CICIG's future as 2011 ended. The advances made since the arrival of Claudia Paz y Paz were now hostage to the presidential transition and the unknown policies of the new president preparing to assume office in January 2012.



seek her resignation “as long as she continues to do her job well.”<sup>218</sup> The president-elect’s expression of support eased, for the moment, the campaign against her.

The president-elect also said he would ask CICIG to supply a “work plan” for its final two years, negotiated with the government’s security and justice sector institutions, outlining a strategy and timetable for meeting a set of goals to reduce impunity and strengthen state institutions before its planned 2013 departure.<sup>219</sup>

The electoral outcome left a deep sense of uncertainty over CICIG’s future as 2011 ended. The advances made since the arrival of Claudia Paz y Paz were now hostage to the presidential transition and the unknown policies of the new president preparing to assume office in January 2012. Storm clouds were gathering on the horizon.

## Navigating Otto Pérez Molina’s First Year (2012)

The new president, taking office in mid-January, wasted no time confounding both supporters and critics. As expected, he divided his government’s ministries among former senior military officers and representatives of the traditional business elite, the two principal sectors supporting his candidacy. He said he would focus his administration’s efforts in three key areas: security and justice, social and rural development, and economic development. He introduced the “Zero Hunger Pact”—a restructuring and repackaging of his predecessor’s rural assistance programs—to address poverty and hunger in the interior. He announced reforms to increase tax revenues and promote employment, transparency, and competition.<sup>220</sup> He committed to change “the existing model of a clientelistic and corrupt administration for a model that generates results.”<sup>221</sup>

On the security front, Pérez Molina launched a policy to use joint army and police “task forces” to tackle social and criminal violence and organized crime, even though the military’s involvement in policing activities in the past had proved dangerous.<sup>222</sup> He visited the attorney general, reiterating his support for her work, and promised a budget increase for 2012. The new minister of interior, Mauricio López, a former military official from Pérez Molina’s intelligence world, developed a solid working relationship with the attorney general, and the two institutions would work together throughout the year.<sup>223</sup>

While these proposals produced the sense of dynamism at the outset of the Pérez Molina presidency, the momentum would not last long. The legislature soon reverted to its fractious ways.<sup>224</sup> The militarization of security matters would fail at midyear when army elements repressing a demonstration in the interior killed seven unarmed protesters. The new government also quickly found itself facing corruption charges when allegations surfaced that two ministers had benefited from large purchases of fertilizers and medicines without the required public tender or competitive bidding.<sup>225</sup> And, finally, relations with the attorney general and CICIG grew strained as the Public Prosecutor moved forward on war crimes and genocide trials against former military leaders, particularly former general Ríos Montt.

Indeed, the indictment of Ríos Montt on genocide charges in January launched a heated debate across Guatemalan society, erupting once again around the unfinished business of responsibility

for the terrible crimes of the war years. It pitted the military, traditional elites, the hard right, and the Pérez Molina government against the attorney general, human rights organizations, victims' organizations, the left, and international organizations and governments supporting transitional justice efforts. The conflict would simmer throughout the year as the attorney general warded off attacks while preparing the case for trial. It would then explode into a political maelstrom around the trial itself in mid-2013, leading directly to the departure of Dall'Anese in September 2013 and indirectly to the end of Paz y Paz's tenure in early 2014.

### **CICIG'S STRATEGY TOWARD TRANSITION**

The president's initial approach toward CICIG was constructive. Although the Commission's mandate was not due to expire until September 2013, he surprised the UN with a request for an extension until the end of his administration in September 2015. He wanted CICIG to use the additional time to transfer capacities, particularly to help train a new police investigation unit.<sup>226</sup> The CICIG extension request was not his last surprise, as the new president rattled national and international actors by calling for serious consideration of the decriminalization of drug use as a central strategy against transnational organized crime.<sup>227</sup>

Dall'Anese had assumed that CICIG's wind-down phase would begin in 2012 with an intensive focus on transferring knowledge, skills, and CICIG technical resources to the Public Prosecutor before closure in September 2013. This plan still seemed attractive in early 2012, with the Public Prosecutor functioning better and the Interior Ministry and president supporting additional reform efforts. The commissioner thought that international priorities should shift toward the establishment of a regional Central American database, prosecutor, and court for organized crime cases.<sup>228</sup>

Paz y Paz, however, favored a longer mandate, through the end of Pérez Molina's presidency. The attorney general valued CICIG's ability to provide political protection against government efforts to restrict its work. The Pérez Molina presidency was just a few months old, and the level of the president's support for CICIG would not be clear for several months. The attorney general also believed that CICIG should turn its attention to reform of the judiciary and the National Civil Police, because without serious changes in these institutions, the Public Prosecutor's reforms were unlikely to survive. Paz y Paz believed she had a two-year window of opportunity to launch new reforms in those institutions before the Pérez Molina government lost influence and maneuvering began for the 2015 national elections.<sup>229</sup>

Donors, too, appeared ready to press CICIG for greater clarity about its work if the mandate were to be extended. Many expressed concerns about the Commission's direction, particularly the absence of a clear plan to provide support to the National Civil Police, Public Prosecutor, or judicial sector over the next three years. Some were looking for a "compact" between CICIG and each of its government partners outlining agreed reforms and specific commitments from the national institutions before agreeing to finance an extension.<sup>230</sup>

That "compact," such as it was, materialized when CICIG presented its plans for 2012-13 in New York at a high-level meeting that included Vice President Baldetti and representatives from all of the justice sector institutions. Dall'Anese presented a plan to: (i) reduce the level of impunity by

improving police investigative, criminal, and financial analysis; (ii) provide capacity training and knowledge transfer; (iii) implement strategies to eradicate and prevent the return of criminal-political networks through congressional briefings and recommendations on necessary legal reforms; and (iv) distribute widely reports on the impact of impunity, CICIG's annual work, and elections of judicial sector officials.<sup>231</sup> The president, the attorney general, the president of the Congress, the president of the CSJ, and the interior minister all signed an agreement to support the plan.

## **CICIG'S FADING PROTAGONISM**

With both Dall'Anese and the government now committed to a CICIG transition plan, CICIG's focus appeared to shift away from high-impact investigations. The Commission continued work with the attorney general on its legacy slate of cases throughout the year, gaining a number of convictions in five trials in which it supported the Public Prosecutor (two illegal adoptions investigations, two murders of social/cultural leaders, and a corruption case involving a state official tied to a drug organization).<sup>232</sup> At the same time, it struggled to maintain its presence in a number of prosecutions, including the trial of the Valdez Paiz brothers, indicted for arranging the murder of Rodrigo Rosenberg; the judge had removed CICIG from the case.<sup>233</sup> However, CICIG won an appeal of its removal from a case involving fraud in the contracting for issuance of a national identity card (RENAP), requested that the Public Prosecutor indict another judge involved in illegal adoptions, and joined the Public Prosecutor in the long-anticipated arrest of former police chief Marlene Blanco.<sup>234</sup>

CICIG assisted the Public Prosecutor and National Police in the arrest of the leaders of a criminal organization involved in narco trafficking, and in the dismantling of a band of extortionists accused of participating in at least 14 murders and extortion of bus drivers, moto taxis, and businesses.<sup>235</sup> The Commission supported the investigation and arrest of former-Attorney General Carlos de León Argueta for money laundering; however, de León was promptly released by a judge who claimed that none of the evidence linked him to a crime. This unusual decision prompted the CSJ to transfer the judge and open an administrative process against her while the Public Prosecutor and CICIG appealed.<sup>236</sup>

CICIG fulfilled a late 2011 commitment to indigenous and labor leaders by opening new investigations into violence and land conflicts in the interior, responding to long-standing requests for the Commission to expand its work outside the capital and focus on illegal structures affecting the lives of indigenous populations. The Commission pursued allegations that illegal security structures were providing protection to large landowners and investors exploiting natural resources (particularly mines and hydroelectric dams) in largely indigenous areas. CICIG investigated the March 2011 killing of a peasant farmer during an eviction by the National Civil Police, the execution of seven peasant farmers during an eviction in Retalhuleu, and the murders of two community leaders and human rights defenders preventing the removal of peasant farmers in Petén. Finally, the Commission opened a new investigation into the smuggling of fuel across Guatemala's land borders with the involvement of customs officials and the National Civil Police.<sup>237</sup>

Nonetheless, the absence of major new arrests or indictments greatly reduced the public

perception of CICIG's dynamism, and Dall'Anese himself minimized both his presence on the public stage as well as consultations and contacts with the Commission's allies.<sup>238</sup> The UN expressed exasperation with his growing remoteness.<sup>239</sup>

The Commissioner's persistent campaign against judges and judiciary sector actors "favoring impunity" also seemed muted much of the year, but CICIG did surface to evaluate the ten candidates to head the National Secretariat for Asset Forfeitures, noting that eight of the ten had "black marks" on their records, moving the government to postpone the election for one week. The candidate who was eventually appointed, Miguel Enrique Catalán Orellana, successfully addressed the concerns raised earlier by CICIG and received the support of the attorney general.<sup>240</sup>

In June, Dall'Anese turned again to problems with the courts, indicating that CICIG was investigating "at least" 12 judges for malfeasance in the performance of their duties.<sup>241</sup> He followed up with a formal pronouncement in August that the Commission would soon issue a report called "The Impunity Judges" analyzing the decisions of an undetermined number of judges and magistrates, allegedly made in contradiction to the law.<sup>242</sup> That report was issued at the end of November and named 18 sitting judges whose decisions, in the words of the Commissioner, "favored criminal networks," including judges involved in adoption cases and the *Portillo* prosecution.<sup>243</sup> Many judges and magistrates criticized the report for attacking the judiciary actors without formal evidence and without filing formal complaints.<sup>244</sup> The attorney general indicated that the Public Prosecutor's Office would review CICIG's allegations.<sup>245</sup>

Prosecutors gained convictions against a former police chief for crimes against humanity and forced disappearance, the highest-ranking police official to be sentenced for war crimes in Guatemala. The *Dos Erres* trial continued with the conviction of a fifth former Special Forces soldier for participating in the 1982 massacre.

## THE PUBLIC PROSECUTOR AND THE MILITARY TRIALS

While CICIG's star seemed to fade, and its commissioner attracted increasing criticism for his low profile as the year progressed, the attorney general moved forward on a range of high-profile cases and internal reforms, garnering extensive international praise for her work. *Forbes* named her as one of the "most powerful women changing the world in politics and public policy." *Newsweek* named her one of the 150 most fearless women in the world. She would be nominated as a candidate for the Nobel Peace Prize.

The Office of the Public Prosecutor appeared to have escaped unscathed from the 2011 year-end tumult. It had established solid relations at the highest levels of the National Civil Police, Interior Ministry, and the presidency. But the attorney general and her team faced enormous pressure from critics, the military, traditional economic elites, and conservative political sectors for the ongoing war crimes and genocide cases.<sup>246</sup>

The criticism mounted as trials concluded. Prosecutors gained convictions against a former police chief for crimes against humanity and forced disappearance, the highest-ranking police official to be sentenced for war crimes in Guatemala. The *Dos Erres* trial continued with the conviction of a fifth former Special Forces soldier for participating in the 1982 massacre. And five former members of Guatemalan right-wing paramilitary organizations were found guilty of participating in a separate 1982 massacre in Plan de Sanchez.<sup>247</sup>

Meanwhile, trials continued against retired generals Héctor Mario López Fuentes, a former defense chief of staff, and José Mauricio Rodríguez Sánchez, a former head of Army Intelligence. The most visible, controversial, and anticipated legal proceeding, a genocide charge against Ríos Montt, trudged through pretrial activity and would finally reach the trial stage in early 2013.<sup>248</sup>

CICIG's institutional strengthening work with the Office of the Public Prosecutor inched forward: the Commission's Analysis Unit was finally moved to the Office of the Public Prosecutor, but its installation was slow. Support for the Department of Security (providing protection for prosecutors) and the Witness Protection Program remained solid, and joint work on cases seemed to be improving after years of tension between the two institutions at the working level.<sup>249</sup> Joint work investigating and dismantling street gangs (*maras*) helped strengthen the Public Prosecutor's move from case-by-case investigations to a broader strategic criminal prosecution approach (tackling networks and organizations rather than single crimes). The Law against Illegal Enrichment and governmental decree creating the Directorate for Criminal Investigation (*Dirección General de Investigación Criminal* [Digicri]) improved the prosecutor's investigative and anticorruption capacities.<sup>250</sup>

## Dall'Anese Forced Out as CICIG Hits Bottom (2013)

CICIG's inconspicuousness would end early in its sixth year, swept up in the political debates provoked by the formal indictment of retired generals Efraín Ríos Montt and José Maricio Rodríguez at the end of January. An isolated Dall'Anese, bereft of supporters, would be

forced out by midyear, as the government and CICIG's opponents took advantage of a letter defending the integrity of the genocide trial. Attacks against the weakened Commission would continue even after the appointment of a new Commissioner in September as President Otto Pérez Molina insisted that CICIG would close in August 2015.

The Pérez Molina administration joined Dall'Anese in facing a troubled year. First, corruption continued to plague the government, with the president forced to close the National Fund for Peace (Fonapaz), a product of the 1996 Peace Accords supporting development projects in rural areas, only to watch its replacement, the Social Development Fund, succumb to the same vice.<sup>251</sup> The president was also forced to ask the military to investigate serious customs collections shortcomings in the Superintendencia de Administración Tributaria (SAT, Guatemala's national taxation authority). At the same time, a major newspaper questioned the sources of the wealth implied by Vice President Roxana Baldetti's ownership of multimillion-dollar homes and luxury goods.<sup>252</sup> Second, Guatemala's homicide rate remained stubbornly high, and social and criminal violence remained dismaying.<sup>253</sup> And third, social security and development programs made little headway against Guatemala's high rate of extreme poverty, and national economic indicators showed only modest progress, not enough to affect the struggling poor.<sup>254</sup>

## **A DECEPTIVELY CONSTRUCTIVE BEGINNING**

The year began on a constructive note for CICIG, as the UN formally notified Guatemala that it would extend the Commission's mandate, as requested, until September 2015.<sup>255</sup> In February, the CSJ announced that it would lift the immunity of eight of the 18 judges cited by CICIG in its November report, "The Impunity Judges."<sup>256</sup> CICIG would add three more judges to the list in April, including a magistrate from one of the high-risk courts dealing with serious and dangerous cases.<sup>257</sup> And in February, CICIG joined with the attorney general, interior minister, and head of the National Civil Police to announce the re-arrest of Byron Lima Oliva, who was serving his sentence in Pavoncito prison for the murder of Bishop Gerardi, but who was captured while traveling in Guatemala City outside the prison. The interior minister stated that Lima Oliva had established a structure within the prison system that allowed him to control the movement of prisoners, operate profitable businesses, and engage in illicit activities outside the prison. The director of the Penitentiary System and the head of Pavoncito prison were dismissed, and CICIG announced it would launch an investigation to determine the reach and functioning of Byron Lima Oliva's organization.<sup>258</sup>

## **THE RÍOS MONTT CONTROVERSY**

However, the ongoing trial proceedings against former generals Ríos Montt and Mauricio Rodríguez dominated the justice sector news, and national and international press coverage, from February through May. The trial presented the expected drama. Ríos Montt had dismissed his legal team and hired a new attorney just before the trial; the lawyer was expelled from the courtroom when he spent the first morning raising objections. When Ríos Montt refused to make a decision about new counsel, the trial court asked attorneys for

Ríos Montt's co-defendant to represent him as well. Ríos Montt's legal team returned on the following day.<sup>259</sup> Scores of families and victims went on the stand to speak about the army's 1982-83 campaign in public for the first time. One witness surprised the court—and apparently the prosecutors—by stating he had seen Pérez Molina in the highlands during a massacre.<sup>260</sup>

Twelve former senior government officials, including two vice presidents, published a statement in the major Guatemalan papers on April 16 warning of serious consequences for Guatemala if the retired generals were convicted of genocide. They argued that the genocide claim would fall “against the state of Guatemala as a whole,” implying “serious dangers for [the] country, including a deepening of social and political polarization, upending the peace achieved until now.”<sup>261</sup> Pérez Molina expressed support for the letter the next day.<sup>262</sup>

Two days later, Dall'Anese replied, noting that while the Commission had maintained a distance from the proceedings, it was important to call for a calm response to the trial's eventual verdict. In the Commissioner's view, “the warning issued by the signatories, all individuals whom in another time embodied the flag of human rights and enjoyed the confidence of the international community,” was “an unjustifiable threat against the tribunal.”<sup>263</sup>

The government reacted strongly to the letter. It protested to the UN, asking for Dall'Anese's resignation for commenting on “the opinion of Guatemalan citizens concerning the Ríos Montt trial, and while the process is ongoing.” The government lobbied for the resignation behind the scenes, with the outcome reaching the public on May 29 when Foreign Minister Fernando Carrera announced that Dall'Anese had resigned. In an awkward turn of events, the commissioner made no public statement, but the CICIG spokesperson clarified that Dall'Anese had decided not to renew his contract for “personal reasons” when it expired at the end of August.<sup>264</sup>

Meanwhile, political tensions exploded on May 10 when Ríos Montt was found guilty of genocide and crimes against humanity and sentenced him to 80 years in prison. The historic decision was the first of its kind in Guatemala. However, in an equally stunning reversal, the Constitutional Court overturned the decision 10 days later, declaring a mistrial and sending the case back to the trial court for retrial.<sup>265</sup>

The commissioner had been in a precarious position at the time the government demanded his resignation. He had few supporters remaining in Guatemala beyond the attorney general, the UN was unhappy with his performance, and no diplomatic actors were willing to push to maintain him at the head of CICIG.<sup>266</sup> The three months between the May announcement and his September departure allowed the UN to carry out a serious search for his successor, but also left CICIG drifting in a leadership vacuum. Opponents launched new criticisms in the press, including raising a two-year old claim that Dall'Anese's chief of staff in 2011 had pressured a Constitutional Court judge in the *Portillo* case.<sup>267</sup> In the wake of the criticisms, and demands from conservative actors to close the Commission before its current mandate expired, President Pérez Molina reiterated that CICIG would finish its work in September 2015.<sup>268</sup>

In reaction to the attacks, defenders of CICIG reminded the Guatemalan public of the Commission's achievements.<sup>269</sup> One noted that the attacks appeared to be “an operation managing public opinion with the objective to rid the country of the Commission as quickly as possible” in order to



avoid a CICIG role in the upcoming 2014 judiciary elections for the Supreme Electoral Tribunal, the CSJ, Appellate Courts, the Constitutional Court, and the attorney general.<sup>270</sup>

The UN attempted to address the leadership vacuum during Dall'Anese's last three months, sending a seasoned diplomat, Enrique ter Horst, to Guatemala as "deputy commissioner" in June to manage the transition during the search for CICIG's third commissioner.<sup>271</sup> Not surprisingly, CICIG's work slowed considerably during this period. Nonetheless, CICIG's staff continued to work on cases with the Office of the Public Prosecutor. These included the arrest of a leader of a Mara Salvatrucha gang, and a major investigation of municipal corruption in the town of Antigua. CICIG and the Public Prosecutor also achieved convictions of individuals in the Pavon-Infiernito scandal (and continued to support prosecutions of Viemann, Sperisen, and Figueroa in Europe) and National Civil Police officials for customs contraband fraud in the Gasofa case.

Dall'Anese formally left Guatemala at the end of August, leaving behind a demoralized Commission, its dynamism lost and credibility squandered. In his last public address, presenting CICIG's fifth annual report, the exiting commissioner assured the president that, contrary to rumor, CICIG was not working on any "mega case" involving officials of his government.<sup>272</sup>

But that would soon change.

## IVAN THE TERRIBLE AND CICIG'S RESURRECTION

**IN AUGUST, THE UN SELECTED IVÁN VELÁZQUEZ GOMEZ, A FORMER MAGISTRATE OF THE CSJ OF COLOMBIA,** to replace Dall'Anese and serve as CICIG's third commissioner.<sup>273</sup> Velázquez brought with him extensive experience as a prosecutor investigating narco-trafficking—including Pablo Escobar's Medellín Cartel—in the 1990s and as a Supreme Court judge overseeing the investigations of members of Congress tied to paramilitary structures in the 2000s. A number of these experiences would find echoes in the Guatemalan context: both countries had been wracked by civil war and years of fearsome violence, both plagued by political-military structures embedded in state institutions, organized crime families dominating regions in the interior, and a congress tainted by political corruption.<sup>274</sup>

He faced the challenge of reviving CICIG's credibility, reinvigorating its staff, and refocusing its mandate and priorities for the Commission's last two years. He also had to work in the shadow of a president adamant that his sole mission was to transfer capacities to Guatemalan institutions and leave Guatemala in mid-2015.<sup>275</sup>

### Reassessing CICIG's Strategy (2013, Part 2)

Velázquez arrived in Guatemala on October 1 to take up CICIG's reins. He began an internal assessment of the Commission's mandate and structure and reviewed its prosecutorial and political strategies. He launched a broad array of consultations across Guatemalan society in both the capital and the interior to identify areas of priority interest and recommendations for

investigations. In the middle of November, he indicated a willingness to take on a number of new cases “if deemed necessary to combat impunity.” CICIG would continue working on the 20 active cases left by his predecessor, but would decide about new cases in early 2014.<sup>276</sup>

Velázquez also noted the challenges of creating an independent judiciary in Guatemala, particularly the lack of independence of judges and magistrates. Nonetheless, he surprised many by criticizing the “Judges of Impunity” report, asserting that “in many of those cases [the Commission] acted based on rumors, information very difficult to verify, in addition, [the report] created many contradictions, specifically with the judiciary.” He went on to state that the report “will be analyzed to determine if due process was respected,” and added that “only in those cases with sufficient evidence” would CICIG implicate judges.<sup>277</sup>

While the new commissioner remained open to adding investigations, the government moved to quash any new CICIG ambitions. Vice President Baldetti said the Commission would not have enough time left in its mandate to open new cases and suggested that CICIG (ironically, it turned out) concentrate on customs fraud.<sup>278</sup> Two days later, the president said CICIG should concentrate its efforts on the connections between mayors and narco-trafficking.<sup>279</sup> With the government pushing for CICIG’s closure, the main opposition party, Manuel Baldizón’s LIDER, suggested the opposite approach: broaden CICIG’s mandate to include (ironically, it turned out) the financing of political parties and the connections between mayors and organized crime.<sup>280</sup>

## Edging into the Swamp (2014)

CICIG’s seventh year would prove decisive for its long, turbulent efforts to challenge impunity structures. Velázquez would need to develop a strategy for a struggling organization facing concerted criticism. The Pérez Molina government and Guatemalan sectors bruised by the Commission’s investigations and reports prepared to use a new cycle of judicial sector elections to regain control over the principal mechanisms of self-protection in Guatemala’s clientelistic political system. They also sought to reduce CICIG’s caseload and focus on a 2015 departure.

The biggest loss would arrive first—the denial of an extension of Claudia Paz y Paz as attorney general—followed by CICIG’s inability to impede negotiations among the political parties for agreed slates of judicial appointments. Tensions would mount in the second half of the year as national and international NGOs, the United States, European embassies, and several Guatemalan media outlets increased pressure for an extension of CICIG’s mandate beyond 2015. CICIG’s effort to organize a national conference on judicial reform at the end of the year without consulting the president only seemed to harden Pérez Molina against renewal.

The outcome of the showdown between the government and CICIG and its allies would be determined by the Commission’s refocused strategy in 2014 and its work on, and luck with, a handful of high-impact cases. Two major investigations announced late in the year hinted at a CICIG willing to press ambitious cases with important political repercussions. But late in the year may have been too late: the calendar for developing new high-impact cases was running up against the calendar for CICIG’s closure.

That drama would play out in 2015. At the beginning of 2014, no one foresaw the upheavals to come; all assumed that CICIG was entering the final 21 months of its mandate.

### **VELÁZQUEZ'S GAMBIT: A FEW STRATEGIC INVESTIGATIONS**

Velázquez had arrived in Guatemala in late 2013 determined to carry forward CICIG's core mandate—investigate and assist the Public Prosecutor to identify and dismantle impunity structures—regardless of the government's view that the Commission should focus on winding down and closing. His consultations across four months reinforced that view. He would work with CICIG senior staff, buttressed by additions he brought from Colombia and Claudia Paz y Paz's office, to reorient the Commission away from individual cases toward a small set of strategic investigations where successful prosecutions might produce important impacts for Guatemalan society.<sup>281</sup>

The investigations targeted a number of the structural features supporting Guatemala's clientelistic political culture: the links between illegal political contributions from organized crime and business sectors and political-criminal corruption and impunity; the theft of state funds by elected officials and appointed administrators and distribution of state contracts among political actors; narco-trafficking and money laundering; and judicial corruption.<sup>282</sup> The actors and networks in these areas would often overlap; they also shielded themselves from arrest and/or prosecution through contacts in the judiciary and Office of the Public

Velázquez had arrived in Guatemala in late 2013 determined to carry forward CICIG's core mandate—investigate and assist the Public Prosecutor to identify and dismantle impunity structures—regardless of the government's view that the Commission should focus on winding down and closing.

Prosecutor. Velázquez thus tied targeted, systematic investigations into political-criminal networks to CICIG's anti-impunity mandate.<sup>283</sup>

The Commissioner reorganized CICIG internally to implement the new strategy, consolidating the Castresana and Dall'Anese proliferation of departments and sections into two pillars—investigation and litigation on one side, and administration (and security) on the other. He created several investigation units, each comprising investigators, lawyers, police, finance, and other specialists, each unit working in one strategic area. The strategic investigations would be proactive: CICIG staff carefully reviewed past cases and internal databases and used open source and confidential informant information to develop investigation proposals, then worked with the Office of the Public Prosecutor to develop investigations and follow information leads with wiretaps and other forensic tools. In October, CICIG laid out its strategy and telegraphed its targets in its 2014 annual report.<sup>284</sup>

Velázquez would have to work, at least initially, from cases already in CICIG's portfolio. The customs services and SAT were longstanding targets for bribery, illegal commissions, and tax fraud, and CICIG happened to have a number of customs fraud investigations already on its docket. The commissioner announced that CICIG would produce a detailed report on the links between campaign finance and political corruption, but gave no indication that indictments would follow. CICIG would also focus on political-criminal structures in the interior affecting the country's majority indigenous populations: the organized crime families dominating a number of regions and the security structures and political linkages behind the conflicts over land ownership and the development of mining, hydroelectric, and agro-industrial projects.<sup>285</sup>

Given the high probability that the president would reject a mandate extension, CICIG would work on a tight timetable. CICIG investigators were asked to develop as many high-impact cases as possible in 2014 and early 2015, in time to allow the commissioner to share the results of those investigations with the Guatemalan public in the months before CICIG's closure.<sup>286</sup> CICIG would then leave the further investigation and prosecution of its remaining cases with the Public Prosecutor before leaving Guatemala in September.

Velázquez's approach would take time to show results; indeed, CICIG produced few cases of significance during the first eight months of 2014. But with judicial elections coming up again, the new commissioner would face his initiation into the bruising nominations processes that had so frustrated his predecessors.

## **A NEW ROUND OF JUDICIARY ELECTIONS**

The process for judicial nominations began in January with the appointment of the nominations commission for the justices of the Supreme Electoral Tribunal, followed by the CSJ and Appeals Courts in the summer, and ending with the attorney general in December. The procedures remained unhappily familiar: a scramble among interest groups to obtain appointments to the nominating commissions and then backroom negotiations among the commissions and political actors to produce agreed slates of candidates.<sup>287</sup> Calls for openness and transparency and selections based upon merit would once again fall on deaf ears.

The nominations commission for the Supreme Elections Tribunal, whose new members would take office in March, began to review the applications of some 128 applicants for the court's five posts (and five alternates) in January.<sup>288</sup> CICIG reviewed the candidates, raising objections to 70, but characterized the short list of 40 names sent to the Congress in February as "positive," even though the seats were allocated via quotas negotiated among the larger political parties.<sup>289</sup>

The judiciary appointments schedule was due to pause until July, when the nominations commissions for the CSJ and the Courts of Appeals would be selected. However, Ricardo Sagastume, a conservative businessman/lawyer close to the army who had filed a suit against Paz y Paz in late 2012, filed an *amparo* with the Constitutional Court on January 9. He claimed that the attorney general's term should end in May on the date Conrad Reyes' appointment would have ended, and not December, four full years after her appointment.<sup>290</sup> Although several Guatemalan actors criticized the legal basis for the *amparo*, a muddled technical issue, the Constitutional Court unanimously granted the request and ordered Congress to immediately appoint a nominations commission (even before reviewing the attorney general's appeal).<sup>291</sup> Congress struggled to respond to the unexpected development, failing to approve a list on the first try, and finally swearing in the commission on February 10.<sup>292</sup>

The attorney general nomination process was predictably controversial. As might be expected, the composition and impartiality of the nominations commission were challenged.<sup>293</sup> Paz y Paz applied for re-appointment in the face of clear indications that political and judicial actors intended to support selection of a new head of the Office of the Public Prosecutor.<sup>294</sup> After public pressure, CICIG was asked by the nominations commission to review the qualifications of the 26 candidates applying for the post.<sup>295</sup> The Commission raised objections to 13 for connections to cases involving human trafficking and human rights violations.<sup>296</sup>

At the end of April, the nominating commission completed its work and sent its list of six finalists to the president. Claudia Pay y Paz, the most effective attorney general in Guatemala's democratic era, was not on the list even though she obtained the second-highest evaluation score.<sup>297</sup> In May, Pérez Molina appointed Thelma Aldana, a member of the CSJ, as the new attorney general.<sup>298</sup>

The decision worried Guatemalan reformers and the international community, both because of the unexpected loss of Paz y Paz and rumors surrounding the new attorney general. Some observers suggested that Aldana had ties to both the president's political party and Ríos Montt's Guatemalan Republican Front, raising fears that she might reverse the changes launched by Paz y Paz, restrict further genocide and war crimes cases, freeze investigations threatening the interests of senior government officials and powerful economic and political actors, and circumscribe CICIG's role.<sup>299</sup> Some saw the orchestrated outcome, combined with the mistrial in the Ríos Montt case, as "a harsh call to return to the status quo" with "judges living in fear, hidden negotiations, and elite networks ensur[ing] 'justice' remains in line with corrupt interests."<sup>300</sup>

In July, maneuvering began over the nominations commissions and candidate lists for appointments for 13 Supreme Court and 126 appellate posts.<sup>301</sup> Congress swore in 34 commission members. CICIG and a congressional committee had drafted a guide for the

nominations commissions to improve the selection process, but the commissions rejected the guide in favor of the old procedures manual.

Again under public pressure, the commissions included CICIG among the list of institutions from which they solicited information on the 885 candidates for these posts. On September 16, Iván Velázquez called for a pause in the selections to address the “external influences on the commissions’ work or the groups who are organizing the elections from behind the scenes, the creation of law schools with no students [to obtain posts on the commissions], the lack of ethics of those commissioners who want to be candidates, and the extra-official negotiations that have coopted these processes.”<sup>302</sup> The president of the nominations commission for the Supreme Court rejected Velázquez’s criticisms and insisted that CICIG “is not the policeman of either the commission or Guatemalan democracy.”<sup>303</sup> Ignoring the criticisms, the two largest parties in Congress reached a political deal on a list of magistrates for the Supreme Court and the Courts of Appeals on September 25.

Unhappy with a clear lack of transparency in the work of these commissions, 43 NGOs and CICIG met with the Constitutional Court in August, arguing that the commissions were not assessing the “suitability” and “honorability” of the candidates but rather negotiating lists with political actors. Civil society organizations and some 45 judges, including newly appointed magistrate Claudia Escobar Mejía—who claimed that Deputy Gudy Rivera had pressured her to issue an *amparo* in favor of Vice President Baldetti in exchange for support

At the end of April, the nominating commission completed its work and sent its list of six finalists to the president. Claudia Pay y Paz, the most effective attorney general in Guatemala’s democratic era, was not on the list even though she obtained the second-highest evaluation score.

for her re-election—clamored for a review of the nominations process.<sup>304</sup>

In October, the Constitutional Court suspended the election of high court magistrates, temporarily granting five appeals filed by NGOs. The Court held a day of hearings on the processes in November, but ended up supporting the election of the new judges on a 3-2 vote.<sup>305</sup>

The highly contentious judicial nominations process confirmed again the urgent need for a profound reform of the judicial sector, and CICIG proposed to organize a national forum on the topic for November, supported by a wide range of civil society organizations.<sup>306</sup> However, the government objected to CICIG's organizing the event without the participation of the president and forced the Commission to postpone the forum until January 2015.<sup>307</sup> Once postponed, it disappeared from the government's agenda.<sup>308</sup>

## SHOTS ACROSS THE BOW

Although CICIG's casework seemed to be hibernating over the first half of the year, a number of legacy trials moved forward. In May, former-President Alfonso Portillo was convicted in the U.S. of money laundering, while trials began in Guatemala against his two former security chiefs, Napoléon Rojas and Jacabo Salán Sánchez, who were accused of participating in the fraud and money laundering scheme. Another 21 individuals, including 18 employees of the Department of Migration and the National Registry of Persons, were arrested in the ongoing RENAP investigation involving illegal immigration into Guatemala and false passports. In the long-running *Pavoncito* case, a Geneva court convicted Erwin Sperisen, former head of the National Civil Police, for the murder of prisoners in 2006.<sup>309</sup>

In March, CICIG announced that it would transfer full responsibility for 35 cases (including illegal adoptions, money laundering, forced disappearances, and corruption) to the Public Prosecutor's Office in an effort to reduce its docket during its last two years.

Then two high-impact cases were announced late in the year. In September, Byron Lima Oliva, a former army captain serving 20 years for the murder of Bishop Gerardi in 1998, was formally indicted for extortion, money laundering, and running an illegal enterprise while incarcerated. CICIG had launched an investigation of Lima Oliva in February after he had been caught moving in a convoy in Guatemala City outside the prison.<sup>310</sup> The director of prisons and other prison officials and members of the government were accused of acting in complicity with the Lima Oliva and were arrested.

The Lima Oliva charges were important because the former military officer's past stretched deep into the army's intelligence structures—the very structures that led to the creation of CICIG in the first place. Efforts to indict and convict him for extortion and other illegal activities over his 15 years in prison had always failed. He maintained close contact with a range of conservative political actors, including the president's party and—according to many—the president himself, and viewed himself as “untouchable.”<sup>311</sup>

CICIG and the Public Prosecutor then arrested a second “untouchable” in November, Haroldo Mendoza Matta, the head of an organized crime structure long dominating areas of Izabal



and Petén. Mendoza represented far more than narco trafficking; his family and organization maintained significant control over political actors in the two regions, including mayors and congressional deputies, and the police and regional and local governments.<sup>312</sup>

CICIG also continued its investigations of judicial corruption. In October, the commissioner and the attorney general announced the arrest of two individuals who worked jointly with Appeals Court Judge Erick Gustavo Santiago de León and collected up to Q10 million (US \$ 1.3 million) as a bribe from a businessman to ensure a favorable decision in a case involving his company.

## **MANDATE EXTENSION, AGAIN**

The debate over CICIG's mandate extension intensified as the year moved toward its end. The president had maintained a consistent position against renewal since his inauguration, vocally supported by much of Congress and important conservative business and political sectors, and appeared in no mood to change his mind. The ouster of Claudia Paz y Paz and successful political negotiations for appointments to the Supreme Electoral Tribunal, Supreme Court, and the appellate courts demonstrated the ability of the traditional clientelistic structures to maintain the old order. CICIG's departure appeared to be next on the list.

Nonetheless, pressure from several sides mounted in the fall, particularly after the revelations about Byron Lima Oliva's influence over the management of the penitentiary system confirmed the ongoing vitality of corrupt structures with links to the security apparatus of the 1990s. On September 5, LIDER, the principal opposition party, announced that it would introduce a bill requesting the extension of CICIG's mandate until 2019, and a few days later the head of the Chamber of Industry expressed concerns about the ability of the Guatemalan judicial system to manage organized crime without CICIG's assistance.<sup>313</sup> Leaders of a majority of the opposition parties, major newspapers, and the president of the Supreme Court also expressed support for extending the Commission's mandate.<sup>314</sup> The president and vice president remained emphatic, however, that it was time for Guatemalan justice institutions to assume their responsibilities without CICIG, and the president insisted that the international community would not finance yet another extension.<sup>315</sup>

The international community begged to differ. The German and other European Union ambassadors highlighted the importance of CICIG's work for Guatemalan institutions and indicated a willingness to finance another two years.<sup>316</sup> The U.S. and British ambassadors confirmed that the U.S. and the international community would continue to support CICIG if the government requested an extension.

Responding to the intense national and international pressure, the vice president indicated in September that the government was prepared to consult with judicial and security sector actors for views on CICIG's future role to inform the president's decision. The president followed up with a proposal to ask Guatemala's justice sector actors to carry out an "objective evaluation" of the need for CICIG's continued presence and report back to him early in 2015.<sup>317</sup>

## *La Linea* and the Guatemalan Spring (2015)

In the early months of 2015, no one could have foreseen the tumult that lay ahead. The Pérez Molina administration was limping into its final 12 months. Murders, kidnappings, and extortion were growing again. Powerful organized crime families still held sway in the countryside. Charges of corruption battered the highest levels of the administration. Worrying levels of poverty and hunger persisted. National and international pressure to renew CICIG's mandate until 2017 was enormous.

Two things did seem easy to predict, though: first, the year would be dominated by the September elections to replace the Pérez Molina government and Congress; and second, CICIG seemed destined to depart Guatemala, leaving behind clientelistic structures that were bent but not broken, despite eight years of CICIG and Public Prosecutor efforts.

### THE RENEWAL CONFLICT HITS ITS CRESCENDO

The debate over CICIG's extension opened the New Year. The drum beat for renewal began with press articles, joined by a block of political parties (CREO, Encuentro por Guatemala, Todos, LIDER), the U.S. ambassador, and, for the first time publicly, the attorney general.<sup>318</sup>

The president pushed back, reiterating his insistence that "CICIG's work phase has finished; the Commission will surely not be able to accomplish in one or two years what it has not been able to accomplish in eight."<sup>319</sup> He failed to even mention the Commission, or the fight against corruption, in his January 14 annual report to the nation. He responded to the mounting pressures for a CICIG extension by formally asking the *Instancia para el Fortalecimiento del Sector Justicia*, composed of the heads of the justice sector institutions, to review CICIG's seven years of work and recommend the whether the president should grant an extension.<sup>320</sup> The president indicated he would make his decision in April, after reviewing the *Instancia's* report.

While the *Instancia* undertook its evaluation, inviting views from all Guatemalan sectors and the CICIG commissioner, pressure for extension continued to increase. Some 32 civil society organizations paid for an advertisement in the national newspapers, echoing the view of the Catholic Archbishop of Guatemala in favor of CICIG.<sup>321</sup> The Chamber of Commerce, a member of CACIF, polled its 740 members, and 70 percent of respondents supported a CICIG extension.<sup>322</sup> The Group Garantor G-4 (the National Human Rights Office, Catholic Church, Evangelical Alliance, and University of San Carlos) added its support, followed by five presidential candidates, including favorites Manuel Baldizón and Sandra Torres.<sup>323</sup> Indeed, even ex-president Alfonso Portillo, recently returned from two years in a U.S. prison, believed that Iván Velázquez's management of CICIG had been "positive" for the country.<sup>324</sup> By the end of February, many of Guatemala's most important "churches, universities, civic organizations, and business sectors had publicly expressed support for CICIG's continuation, in a decisive moment for the country."<sup>325</sup>

The most decisive pressure, however, would come from outside the country, from the north.

Although the United States promoted democracy, rule of law, and development in Central America, it was organized crime, narco-trafficking, and migration that were its central concerns and shaped its financial and technical support and political strategies for the region's states. Narco-trafficking and illegal migration had been American priorities in Guatemala for two decades, and CICIG, in conjunction with the Office of the Public Prosecutor under Claudia Paz y Paz, and now under Thelma Aldana, had proved effective allies in the arrest and extradition of major drug traffickers. The U.S. did not want to lose those "assets" in Guatemala, and had begun sending increasingly strong public and private messages in support of CICIG's extension to the Pérez Molina government in 2014 and 2015.

The U.S. leverage was a new Central American assistance program, the Alliance for the Prosperity of the Northern Triangle of Central America, offering some \$1 billion in aid for security, good governance, and economic growth programs to address the causes of migration.<sup>326</sup> The plan had become urgent after some 40,000 unaccompanied Central American minors flooded the U.S.-Mexican border in 2014. Vice President Joe Biden delivered the message when he arrived in Guatemala at the beginning of March for an Alliance for Prosperity summit with the presidents of Honduras, El Salvador, and Guatemala. Biden moved from noting that CICIG's work was "important" for Guatemala to conditioning Guatemala's receipt of Alliance for Prosperity aid on an extension of the Commission's mandate.<sup>327</sup> The U.S. House Foreign Affairs Committee and State Department subsequently joined the campaign.<sup>328</sup>

President Pérez Molina was predictably irritated by Biden's comments and insisted neither Guatemala nor other Central American governments would accept "impositions" from the U.S.; Guatemala and the region would produce development programs "with or without the United States."<sup>329</sup> He remained defiant as pressures for an extension increased into mid-April, the date he was to decide on CICIG's fate, insisting that he would not be "blackmailed" into continuing the Commission while ridiculing the idea that he feared CICIG would investigate him in the future if he extended its term.<sup>330</sup>

The public debate moved toward its final crescendo in April, as the national and international lobbying campaigns in favor of a CICIG extension pulled in a last round of international endorsements: the Open Society Foundations, the Washington Office on Latin America, longtime CICIG advocates, representatives of the U.S. Congress, the U.S. Under Secretary of State for Latin America and the Caribbean, and a delegation of visiting German parliamentarians.<sup>331</sup>

Nevertheless, the president appeared prepared to defy all outside pressure, including threats from the U.S., and announce the end of CICIG's mandate. He reasonably counted on the support of the *Instancia* and a negative recommendation. He did not foresee, however, that CICIG itself might turn the tide just in time with a new corruption case that would soon drive him from office.

## **MASTER CASE, MASTER STROKE: LA LINEA BREAKS THE IMPASSE**

Velázquez's strategy, announced in late 2013, effectively narrowed CICIG's principal focus to high-impact corruption cases. CICIG and the Public Prosecutor had since announced the results of two major investigations: the unravelling of Byron Lima's network in the penitentiary

system and the arrest of key leaders of the Haroldo Mendoza criminal organization in Petén in late 2013. CICIG and the Public Prosecutor had been able to advance prosecutions in the RENAP (illegal passports), Portillo (ex-military officials indicted for theft and money laundering), and judicial corruption (Gudy Rivera, Erick Santiago) cases, but otherwise the first four months of 2015 had been quiet on the prosecutions front.<sup>332</sup>

Nonetheless, the commissioner indicated in March that CICIG had developed new cases that would be ready by the end of June, and was working on reports on campaign financing, human trafficking, and violence against women.<sup>333</sup> The Commission had already begun requesting information from political parties about their financing, including from Manuel Baldizón's LIDER.<sup>334</sup>

But Velázquez's cases came sooner than expected, and the first proved explosive. On April 16, the commissioner and the attorney general revealed the existence of an enormous corruption scheme in the customs service involving the Superintency of Tax Administration (SAT) and the National Civil Police. They accused Vice President Baldetti's private secretary, Juan Carlos Monzón, of leading the scheme, which became known as the *La Línea* case. The announcement of the ongoing investigation immediately raised suspicions about the role of the vice president and president.<sup>335</sup> Between April 16 and the end of June, the *La Línea* case was followed by the capture of 20 police officers allegedly involved in extrajudicial executions, an appalling scandal in the Guatemalan Institute of Social Security (IGSS) in which a corrupt contract for renal disease medications allegedly contributed to some 36 deaths, and the publication of CICIG's elections financing report.

But Velázquez's cases came sooner than expected, and the first proved explosive. On April 16, the commissioner and the attorney general revealed the existence of an enormous corruption scheme in the customs service involving the Superintency of Tax Administration (SAT) and the National Civil Police.

*La Linea* was the result of a one-year CICIG investigation targeting the oldest source of state corruption in the contemporary era: control of the movement of goods through Guatemala's principal customs ports, which was dominated by Guatemalan military mafias from the 1970s through the early 2000s, until the gradual "democratization" of political-criminal activity during the Portillo administration.<sup>336</sup> While the Public Prosecutor suggested the case began in May 2014 when the Public Prosecutor's Bureau of Economic Crimes grew suspicious after not receiving any reports of contraband in customs from the tax authorities in over a year, it was principally the result of a targeted CICIG probe following leads from prior cases.<sup>337</sup> CICIG, with the support of the Public Prosecutor, particularly for wiretaps and other forensic information, discovered a network of low-level "fixers" stewarding container trucks through two customs ports. The fixers contacted importers to arrange for drastically reduced customs duties in exchange for "commissions" using a telephone number they called "the line." Investigators tapped the fixers' mobile phones and traced calls across and up an ever-expanding network to reveal a large, hierarchical structure reaching the vice president's office.<sup>338</sup>

As CICIG and the Public Prosecutor announced the case, 20 individuals were arrested, including the current and former SAT directors. While the vice president's personal secretary disappeared, two actors from Guatemala's dark past resurfaced: a fixer from the Moreno network (a structure involved in customs contraband in the 1990s) and Luis Mendizábal, a private security/intelligence operator with a shadowy presence in Guatemala's political-criminal networks for decades, most recently as an actor in the *Rosenberg* murder case.<sup>339</sup>

From April through August, CICIG and the Public Prosecutor revealed additional details, and indicted additional government officials, as the investigative bodies worked through the results of some 89,000 wiretapped conversations, 5,900 emails, 17 residential and office searches, 650,000 documents, and financial reports on 100 individuals and 22 companies.<sup>340</sup> The arrests themselves provoked additional indictments; when the judge hearing the case released the four senior members of the network on bail, CICIG and the Public Prosecutor accused the judge of releasing the four in exchange for a bribe.<sup>341</sup> CICIG and the Public Prosecutor also moved to dismantle a structure they called the "Lawyers Office for Impunity" (*El Bufete de la Impunidad*), a group of attorneys with links back to the Moreno network hired to use contacts and bribes to defend members of political-criminal groups arrested for illegal activities.<sup>342</sup>

On Saturday April 18, 2015, some 60 individuals—organized through social media—met in front of the National Palace and called for the resignation of the president and vice president because of the corruption scandal.<sup>343</sup> The following Saturday, a call for new protests brought thousands of demonstrators from all walks of Guatemalan life to the plaza in front of the National Palace, sparking a series of huge weekly protests, first in the capital and then across the country—a massive national outpouring rejecting the Pérez Molina government. The spontaneous movement, characterized by many as a "Guatemalan spring," would maintain its size, intensity, and demands for the resignation of the president and vice president for the next 20 weeks.<sup>344</sup>

The walls began to close in on the vice president. After the April 16 arrests, two congressional deputies filed a petition with the Supreme Court to launch the process for lifting her immunity.<sup>345</sup> On May 6, as national protests continued for a third straight week, CACIF called

for her resignation, threatening a national strike if the vice president remained in office. The Supreme Court did not challenge the immunity petition, and forwarded the request to Congress.<sup>346</sup> Two days later, after the Constitutional Court denied her appeals, Vice President Roxana Baldetti resigned.<sup>347</sup>

On April 21, the *Instancia Coordinadora* forwarded its report to the president, unanimously recommending the renewal of CICIG's mandate on the basis of the Commission's performance in the Byron Lima and *La Linea* cases.<sup>348</sup> CACIF finally abandoned the president and expressed support for the renewal of CICIG's mandate.<sup>349</sup> Cornered, Pérez Molina "swallowed a bitter pill" and announced he would ask the UN to extend CICIG until 2017.<sup>350</sup>

## **A GUATEMALAN SPRING: THE ANTI-CORRUPTION WAVE BREAKS**

As if *La Linea* were not enough, CICIG and the Public Prosecutor announced a second scandal on May 20. The Guatemalan Institute of Social Security (IGSS), responsible for managing Guatemala's public health and social support services, had approved an illicit contract for medications for patients with serious kidney problems. The contract had gone to a front company that had no experience in the field. The medications procured allegedly led to the deaths of 36 individuals. The Public Prosecutor indicted the head of the IGSS, a former first secretary of the president, for leading a group establishing and benefiting from the fraud.<sup>351</sup> Two days later, a congressional deputy filed a criminal complaint against the president, alleging his responsibility for the corruption cases emerging under his administration. The complaint moved to the Supreme Court for a decision on whether the petition should be forwarded to Congress.<sup>352</sup> As five cabinet members resigned, the winds began to shift against the continued survival of the Pérez Molina administration.

Corruption allegations implicating senior administration officials continued to flow from CICIG and the Office of the Public Prosecutor. The two organizations brought to light three influence trafficking cases in the energy sector involving the president's son-in-law, an ex-vice minister of energy, and the former head of the SAT.<sup>353</sup> In a third scheme, within the National Civil Police, a group of senior officers bilked the organization out of some \$7 million on contracts for repairs to police vehicles and premises that were never carried out.<sup>354</sup>

The president and his administration were not the only targets of CICIG that spring: the Commissioner and the attorney general had also investigated corruption in Congress and among mayors in the interior. The results of those inquiries now produced indictments of Deputy Baudilio Hichos, accused of influence peddling and fraud in the IGSS scandal, and Pedro Muadi Menéndez, ex-president of Congress, for embezzling funds from phantom posts in the legislature.<sup>355</sup> They charged four LIDER deputies with seeking jobs and contracts from the Ministry of Development in exchange for kickbacks for the head of the department.<sup>356</sup> A mayoral candidate running for re-election on the Patriot Party ticket was arrested for helping narco-traffickers import precursor chemicals through customs.<sup>357</sup>

In a major blow to Manuel Baldizón, the presidential frontrunner, CICIG and the Public Prosecutor dismantled an international money laundering ring supported by Édgar Barquin

Durán, the LIDER vice presidential candidate, when he was president of the Central Bank and the Monetary Board. Two deputies receiving campaign financing from the ring were among a dozen other suspects also arrested.<sup>358</sup>

Baldizón, not surprisingly, reacted strongly to the indictment of his vice presidential candidate, accusing the CICIG of participating in a plan to destroy his political party. He followed a well-trodden path to Washington to share his CICIG complaints with the Organization of American States and any U.S. officials who would listen.<sup>359</sup> In the end, he would publicly support CICIG's extension, but without Iván Velázquez as commissioner.<sup>360</sup>

The new revelations intensified the already-historic protests.<sup>361</sup> The “river of indignation flooding its banks” now turned its ire fully on the president, demanding his resignation and serious constitutional and legislative changes to address the structural problems facilitating the corruption made evident by the *La Linea* and IGSS cases.<sup>362</sup> A broad National Platform for the Reform of the State worked to produce consensus proposals on the way forward.<sup>363</sup> The Platform focused on reforms to the Law on Elections and Political Parties and prepared draft legislation to submit to the Supreme Electoral Tribunal for review and forwarding to Congress. The Platform recommended postponing elections until November and December to allow for the adoption of a new elections law and new campaigns conducted under tighter norms.<sup>364</sup>

The proposals for quick electoral reform, however, provoked strong negative reactions, with the Supreme Electoral Tribunal, the president, much of Congress, CACIF, and the U.S. embassy opposing any elections delay.<sup>365</sup> The Organization of American States adopted a resolution calling for “electoral continuity.”<sup>366</sup> The U.S. strongly supported “stability,” arguing that the president should finish his term and reforms should be the agenda of the next government.<sup>367</sup> Manuel Baldizón and his 62 deputies in Congress, gambling that support for the embattled president would pay electoral dividends from his major supporters and avoid a delay in the elections that could hurt the party's chances, continued to postpone discussions of the lifting of the president's immunity and electoral reforms.<sup>368</sup>

In June, the Supreme Electoral Tribunal presented a reform package to Congress that did not contemplate an election delay. Political parties appeared divided enough over the content of the reform proposal and the timing for adoption to ensure that no reform would move forward before the elections in September. After the euphoria of April and May, the frustrated civil society efforts to capitalize on the unprecedented national protests represented, for many, “the victory of the system.”<sup>369</sup>

Then, on July 16, CICIG finally released its report on the financing of Guatemalan elections.<sup>370</sup> It summarized broadly-known political party and campaign financing practices, but usefully aggregated funding sources across business elites (25 percent), suppliers and contractors for state construction and services (50 percent), and organized crime (25 percent). Velázquez argued that most of the financing came from unreported sources (business elites, state contractors) or organized crime.<sup>371</sup> The report outlined how funds are solicited and collected at the national and local levels, naming as examples a number of powerful individuals in the Colom government and recent cases against members of LIDER. It also identified the use of the funds, primarily in purchasing media (television, cable, and radio) and paying for



consultants, campaign teams, and events. In addition, Velázquez noted the predominant role of the media monopolies in supporting favored candidates. In all of these cases, contributions were made in anticipation of business and personal returns. For Velázquez, the report demonstrated, once again, that “corruption is the unifying principal of the Guatemalan political system.”<sup>372</sup>

## THE LAST DAYS OF THE PRESIDENT

Meanwhile, the president and his opponents engaged in political maneuvering around the Supreme Court, Constitutional Court, and Congress over the May 23 request by a congressional deputy to lift Pérez Molina’s immunity to permit an investigation into his involvement in the *La Linea* and IGSS cases. The Public Prosecutor forwarded the request to the Supreme Court for review two days later. On June 10, the Supreme Court forwarded the complaint to Congress, which, in turn, created a five-member investigation committee (three from LIDER and two from the president’s party), and the committee immediately began taking testimony.

However, on June 17, the process stalled when the Constitutional Court granted a provisional *amparo* to Karen Fischer, a lawyer connected to the president (the *amparo* was heavily criticized because the lawyer had no direct interest in the case) on a 3-2 vote.<sup>373</sup> With the validity of the third-party claim uncertain, the president filed an *amparo* on his own behalf

The final blow was delivered by judicial action. On August 21, CICIG and the Public Prosecutor’s Office hosted yet another dramatic news conference in which Velázquez announced “without a doubt” that additional evidence gleaned from wiretaps and seized documents demonstrated that President Pérez Molina and Vice President Baldetti were the leaders of *La Linea*.

on June 27, but the Court refused to grant provisional relief, moving to a full review of his claim. On July 1, the Court denied Fischer's provisional amparo on another 3-2 vote, and the congressional investigation committee finished its work, recommending lifting the president's immunity. On July 14, the Court definitively denied Fischer's *amparo* claim, and ruled against the president's appeal two weeks later.<sup>374</sup> After the president of the Constitutional Court complained that "the legal process [was] being decided politically," the fate of Pérez Molina rested in the hands of Guatemala's highest political body.<sup>375</sup>

Congress initially rejected the recommendation of its investigation commission to lift the president's immunity, after members of the president's party scheduled the vote at a time when 44 of the 158 deputies were absent, resulting in an 88-26 vote in favor, which was short the 105 votes needed for approval.<sup>376</sup>

The final blow was delivered by judicial action. On August 21, CICIG and the Public Prosecutor's Office hosted yet another dramatic news conference in which Velázquez announced "without a doubt" that additional evidence gleaned from wiretaps and seized documents demonstrated that President Pérez Molina and Vice President Baldetti were the leaders of *La Linea*.<sup>377</sup> The demands for the president's resignation surged again, and even his last supporters, including CACIF, surrendered.<sup>378</sup> LIDER and the Patriotic Party, struggling in the national election campaign, in part because of their dogged support of the president, led a vote in Congress on September 1 to lift the president's immunity.<sup>379</sup> The Public Prosecutor immediately requested the president's detention. Pérez Molina resigned on September 2 and was arrested, arraigned, and imprisoned the following day.<sup>380</sup>

## THE AFTERMATH

The scandals changed the dynamics of the national elections. By early August, Baldizón, once considered unstoppable in his quest for the presidency, watched his lead drop from 31 percent to 25 percent. Sandra Torres remained stalled at 15 percent, and Jimmy Morales, a former television comedian with no political experience (running on the slogan "neither corrupt nor a criminal"), came out of nowhere to move into second position with the support of 16 percent of likely voters.<sup>381</sup> By September 6, the day of the first round poll, Baldizón had fallen to third place. Jimmy Morales continued his ascent, capturing 24 percent of the vote while Sandra Torres (18 percent) edged Baldizón by a few thousand ballots to earn the right to challenge Morales for the presidency on November 25.<sup>382</sup> To little surprise, Jimmy Morales, the outsider untainted by political corruption, won the runoff election in a landslide, defeating Sandra Torres with 67 percent of the vote.<sup>383</sup>

The day after the elections, Guatemala entered unknown territory. A massive social movement, composed of citizens fed up with decades of violence, corruption, and poor governance, provoked by a wave of corruption scandals unveiled by CICIG and the Public Prosecutor, had brought down a president who had fought with all of the tools at his disposal to remain in office. Congress had been purged of many of its tainted old guard, and the leading presidential contender was chosen because he had no exposure to the political system.

A revolution had been proclaimed, but the hardest work had yet to begin. Efforts to launch transformative electoral and judiciary changes before the national elections foundered on tactical disagreements among the large number of reform coalition participants, an intransigent Congress, and the opposition of powerful actors, including the United States. The presidential finalists had not inspired confidence in any sector. Morales displayed no talent for issues or policy and drew his support from the conservative military and business sectors—the same pillars that had served as a base for the ousted president.<sup>384</sup> Torres represented the old order, an able negotiator and manipulator of contemporary political rules and customs.<sup>385</sup> Many feared a despairing road ahead, a choice between a partial “restoration” of the former regime with Morales or a “reconfiguration” of the current model with Torres at the helm.<sup>386</sup>

For CICIG, the year had vindicated the (until then largely unrealized) hopes accompanying the mission’s founding eight years before. Iván Velázquez’s strategy—focus on high-impact cases targeting the key structures and practices of political corruption sustaining Guatemala’s clientelistic system—benefited from a strengthened Public Prosecutor’s Office and a completely unexpected citizen revolt to produce a remarkable impact. The Commission became the most trusted institution in Guatemala and the earnest, modest, deliberate Iván Velázquez became a rock star.<sup>387</sup>

But Velázquez was not CICIG’s first media star, and Carlos Castresana’s fall just months after the heights of the *Rosenberg* case served as a reminder of the difficulties ahead in managing the unexpected contours of Guatemalan politics. CICIG’s mandate had been extended for another two years, giving it the opportunity to continue its work “opening the sewers” with a solid attorney general and an extraordinary level of support from the Guatemalan population and international community. President-elect Morales expressed strong support for both CICIG and the attorney general, and said he would request an extension of CICIG’s mandate until the end of his administration in 2020.

# CICIG: AN ASSESSMENT

**CICIG was a novel, innovative, and risky United Nations response to Guatemalan appeals for help against powerful political-criminal mafias enmeshed in state institutions.** It began modestly in 2008, with muted expectations, looking for a few cases that would define its mandate. It entered 2015 with much broader ambitions, targeting the structural sources of the political practices undermining the state's capacity to govern, particularly its ability to address organized criminal violence. A handful of high-impact cases unveiled a set of appalling fraud and embezzlement schemes, bringing down the Pérez Molina presidency, unexpectedly provoking an unprecedented national movement against political corruption, and earning CICIG praise as "one of the most innovative programs in the UN's toolbox" producing "transcendental results."<sup>388</sup>

In the seven years between its modest beginning and the events of 2015, however, the Commission's record was much more ambiguous. It had moments of striking effectiveness, including working with an improving Office of the Public Prosecutor to indict a former president for corruption, saving a sitting president by resolving a bizarre murder, and unveiling the Interior Ministry's use of the police for targeted killings and social cleansing. But there were also long stretches where it was outflanked by resilient clientelistic mafias or stymied by internal dysfunction. Had the Commission ended its mandate in mid-2014, no one would have described its results as "transcendental," and the UN would have been reluctant to try the experiment again.

CICIG's achievements and disappointments were determined to an important degree by the way each commissioner managed a common set of internal challenges and the outside factors aiding, or impeding, the Commission's work. The first, and perhaps most important, factor was internal: the need to wrestle a coherent, targeted strategy and operational methods out of a broad mandate and cacophony of demands for assistance. At the same time, each commissioner had to strike a balance between CICIG's role as a visible political actor, a protagonist in the complicated currents of Guatemalan politics, and a prosecutor hewing to the circumspection of judicial methods and timetables. The Commission relied heavily on Guatemalan civil society, particularly the human rights and justice NGOs responsible for its creation, and the indispensable (if often controversial) support of the United States.

Contingency and political luck, both outside the reach of even the most gifted commissioner, intervened at crucial moments. The *Rosenberg* case arrived when CICIG was seeking to make its early mark. The unexpected appointment of Claudia Paz y Paz as attorney general and unexpectedly strong performance of her successor, Thelma Aldana, provided invaluable partners. And luck with its cases (such as the willingness of corrupt political actors to continue using tapped mobile phones) and the unexpected rising of a population fed up with political corruption contributed to CICIG's 2015 achievements.

## THE STRATEGY CHALLENGE

### **THE EVOLUTION OF CICIG'S MANDATE AND STRATEGIC TARGETS—FROM WAR-ERA MILITARY INTELLIGENCE STRUCTURES THREATENING HUMAN RIGHTS DEFENDERS**

to political-criminal networks and organized crime embedded to political corruption—was neither predictable nor planned. CICIG responded to the mutation and fragmentation of the political-criminal networks into a broad range of organized crime activities, the growth of powerful narco-trafficking clans, and a clearer understanding of the connection between political corruption—the glue holding Guatemala's clientelistic political order together—and the state's chronically weak judiciary and security institutions.

This last element proved to be critically important. Guatemala's judiciary and its security institutions were chronically troubled because powerful political and economic actors preferred weak state institutions unable to challenge their interests. These preferences crossed sectors and ideologies: business elites avoiding taxes or seeking monopoly

advantages; members of Congress or mayors building financial capital and political loyalty with revenues provided by state contracts; national and transnational organized crime networks protecting customs fraud schemes or drugs and human trafficking routes. While actors in these sectors often fiercely competed against each other, all shared a common goal: blocking reforms that would reduce their ability to influence ministries important to their respective interests, particularly the judiciary.

CICIG immediately faced the dilemma posed by this dynamic: every investigation within its mandate would threaten the interests of one or another of these sectors. Targeting customs fraud, criminal gangs, illegal adoptions, bus extortions, land and agrarian violence, embezzlement in state ministries, or organized crime groups might lead to the dismantling of individual, often opportunistic, structures using the state for private ends, often with connections in the judiciary to escape prosecution. Demonstrating that these criminal networks could be prosecuted, while strengthening Public Prosecutor's capacity, would prove to be an important CICIG contribution. But these cases would not affect the overall structures of impunity, the deeply embedded clientelistic practices undermining the judiciary and security institutions, and the cycle of similar cases was destined to continue. Without concrete political steps to consolidate the gains of the last three years—particularly a stronger Public Ministry, but also necessarily a more independent judiciary—CICIG's longer-term impact would likely prove limited.

Addressing this challenge was clearly beyond CICIG's limited capacity. Moving toward a more stable, inclusive, less corrupt and violent political order would take years of work by Guatemalan society, sustained by the broad national support for change expressed by the 2015 protests. At the same time, CICIG's commissioners, particularly Iván Velázquez, would ask if the Commission might be able to focus its work in a useful way on the political structures sustaining impunity. How to work effectively in this context was never clear, and for good reason.

## Background: The Mandate and the Knowledge Gap

The UN and international donors face a knowledge problem when encouraging political reform in fragile states, a gap they have been attempting to fill over the last decade with both historical and contemporary research on the sources of instability and violence. This is particularly true concerning rule of law issues: how do societies come to subject powerful elites to a common set of rules and practices under which competition and conflict are mediated by independent institutions?<sup>389</sup> This has been Guatemala's central problem since the 1960s, to encourage (or induce) powerful elites to move toward more inclusive political and economic arrangements—in effect, to subject themselves to the rule of law. This is the question the 1996 Peace Accords were meant to answer.

No one knows how to do this in practice. The broad historical record provides no clear policy prescriptions for promoting short-term political change. The international community has yet to demonstrate that it can meaningfully accelerate the process of institutional reform and rule of law consolidation. The developments in Europe leading to the liberal democratic states of the European Union took over 300, often violent, years. The experience of 20th century states moving out of poverty suggests that major institutional changes usually require decades, if

not generations, of advances and setbacks, “virtuous” and “vicious” cycles, and often the right decisions at “critical junctures.”<sup>390</sup>

Convincing elites to concede hegemony and build a stronger, more inclusive state is not likely without reliable institutional guarantees. They must be able to trust commitments from competing actors to follow new rules under which the costs of losing political power or economic benefits will be reasonable. While “efficient institutions can provide solutions to the security, political, and economic motivations by serving as tools for bargaining across groups,” the institutions must be credible and independent enough to assure the parties of fair outcomes. If not, “weak institutions create the conditions for the rational adoption of violent strategies.”<sup>391</sup> In the short- to medium-term in Guatemala, the institutions most capable of providing guarantees for inclusive economic and political arrangements are the Public Prosecutor and the judiciary—anchors of the rule of law in contemporary democratic societies, and the institutions at the heart of CICIG’s mandate.

However, the contemporary rule-of-law field is equally hindered by a knowledge gap. Modern rule of law assistance grew out of three broad strands, the first focusing on legal and judicial system reforms, beginning with the 1960s’ “law and development movement,” a failed U.S. strategy to equip the legal profession to promote social progress in Latin America.<sup>392</sup> Its “revival” in the 1990s assumed a deep connection between judicial systems, effective economic growth, good governance, democracy, and conflict management.<sup>393</sup> As in the

CICIG was, in principle, different precisely because it could act independently, providing some leverage on judicial institutions, and would focus on contemporary institutional weaknesses and criminal structures, not atrocity crimes of the past.



1960s, the flood of lawyers washing up on the shores of post-Cold War Eastern Europe, post-authoritarian Latin America, and post-conflict Africa and Asia to draft liberal democratic constitutions and construct independent courts created a vast new development market but produced less-than-stellar results, certainly outside Europe.

The reformers suffered from three problems. The first was a limited historical understanding of rule of law's social context: donor country norms and institutional experiences were often disconnected from the very different social structures and patterns of behavior of poor states. Second, rule of law aid avoided political issues and focused on technical assistance for legal codes, judicial and security sector training and administrative modernization.<sup>394</sup> The third problem proved the most troubling: correlations between the presence of robust rule of law institutions and economic growth, conflict and violence, and democracy were weak. Perhaps not surprisingly, the rule of law reform record has been disappointing.<sup>395</sup> Nonetheless, it remains at the center of international development models.<sup>396</sup> Technical assistance is the preferred mode of support even in light of donors' growing understanding that rule of law's absence is a symptom, not a cause of state weakness.

Rule of law efforts related to international criminal justice gained traction after the Cold War. The international community responded to atrocities in the Yugoslav wars and Rwanda by creating international tribunals to prosecute those most responsible for the violence. As these tribunals proved slow, cumbersome, and expensive, the UN turned toward hybrid tribunals, sharing the burden with national judiciaries, hoping for a faster, cheaper, politically relevant approach that might, as a side benefit, leave stronger local courts behind.

Here, too, the results have been modest. The tribunals removed a number of warlords, such as Charles Taylor, from national politics, and convicted many responsible for terrible violence, opening space for less violent political contestation and shedding light on responsibility for civil war violence. But victims have been disappointed; many actors implicated in war violence remained in power, and the trial processes left limited new capacities for national courts. Post-conflict national authorities, often implicated in the conflicts that produced the tribunals, limited their reach or undermined their effectiveness. The most recent international response to atrocity crimes, the still-young International Criminal Court, has also struggled with many of the limitations hindering the hybrids: slow, expensive cases, with two convictions in 13 years, political manipulation and resistance by powerful states, the reluctance of others to arrest and transfer suspects, and limited capacity.<sup>397</sup>

CICIG's design reflected, in large part, the inheritance of these international efforts, the frustration with ineffective technical assistance programs, and the limited impact that international and hybrid tribunals had on national judicial capacity and political change. The UN's Department of Political Affairs was aware that most technical assistance programs for security and rule of law reform fail because they provide support to already-captured institutions and cannot address the broader political structures subjecting these institutions to elite interests.<sup>398</sup> CICIG was, in principle, different precisely because it could act independently, providing some leverage on judicial institutions, and would focus on contemporary institutional weaknesses and criminal structures, not atrocity crimes of the past. This last point was crucial

for Guatemala and CICIG's role in rule of law and political change: a mandate focusing on the sources of judicial failures in the present tangential to the bitter judicial and political conflicts over crimes committed during the 36-year internal conflict. At the same time, a strengthened, more independent Public Prosecutor would have greater capability to deal with the past as CICIG-assisted reforms improved the judicial sector as a whole.

## Translating Mandate into Strategy

Transforming CICIG's mandate into an operational strategy proved difficult. Guatemalan and international actors had different views about what a "successful" CICIG would do. The Berger government, for example, wanted CICIG to help investigate and prosecute organized crime, eliminating what former-Vice President Eduardo Stein called the "worms" inside the political system facilitating impunity.<sup>399</sup> The U.S. viewed CICIG as a partner in its anti-drug efforts in Guatemala, particularly the capture and extradition of cartel leaders. Sectors of the business elite came to see CICIG as an ally against its "emerging capital" opponents (particularly those associated with former President Portillo), and their influence peddling in Congress, the judiciary, and other state institutions. Human rights and justice NGOs, on the other hand, wanted the Commission to focus on corrupt networks in the police and Office of the Public Prosecutor while mapping the evolution of the old counterinsurgency structures now scattered across state, political, and criminal organizations. Donors hoped CICIG might turn out to be an effective use of funds after two decades of reform disappointments, and a model applicable to states facing similar crises elsewhere.

The UN was under no illusion that CICIG could significantly change the behavior of the justice sector, having seen Guatemala's ability to resist international pressure after ten years with MINUGUA. Expectations were modest: a mapping of political-criminal networks connected to the state; a few major cases carried through from investigation to trial to demonstrate the possibility of and methods for dismantling impunity structures and organized crime; and the training of expert teams within the Office of the Public Prosecutor and the National Civil Police. Guatemalan NGOs were equally circumspect.<sup>400</sup> But these limited expectations belied the hope—more clearly expressed by a \$15–\$20 million annual price tag—that CICIG might turn out to be something more, a catalyst for sustainable, longer-term reform.

This lack of clarity about CICIG's purpose (to map the influence of criminal-political networks or assist the government in tackling organized crime groups) and scope (complete a few key paradigmatic cases or provoke major reform) would shadow the Commission across the arc of its first eight years.

## The Commissioners and their Targets

Carlos Castresana had the unenviable challenge of establishing CICIG's initial investigations strategy and approaches to the Public Ministry and the courts while building the Commission from scratch with limited UN support. Castresana insisted he began operations with a set of ultimate strategic targets: illegal structures in the security institutions, political mafias in the judicial sector, and the networks linking organized crime to the state.<sup>401</sup> Yet CICIG's first

investigations included a shootout between two narco-trafficking groups in Zacapa, a band of police extortionists (*Mariachi Locos*), the death of the child of a human rights defender, the drugs-related killing of 15 passengers on a bus from Nicaragua, and a rash of female homicides. The early selection represented a mix of cases requested by important NGOs, international donors, and the government, generating early support for the Commission from key partners and the public and perhaps a few “easy wins” to establish CICIG’s reputation.<sup>402</sup>

But CICIG did quickly move to investigations more closely tied to its mandate: allegations of widespread involvement of police officers in criminal activities and the existence of parallel security structures inside the National Civil Police and Interior Ministry reaching back to the Berger administration. These cases produced serious blockages from prosecutors in the Office of the Public Prosecutor and launched Castresana on a campaign to remove compromised officials.

Castresana was aware of the treacherous political dynamics facing the Commission, generated by the broad range of interests threatened by his mandate. He thought CICIG had to pursue paradigmatic cases against both actors from the right and the left. He wanted to avoid the view that he was “in the hands of” the human rights NGOs, the international community, or the Guatemalan business community, or that CICIG was responding to pressure from the U.S. to focus on drug-related organized crime.<sup>403</sup> Whether the selected cases responded to these views or not, the arrest of Portillo certainly pleased the traditional right, while the *Rosenberg* outcome left it uncomfortable, and the case against Berger’s interior minister, Carlos Vielmann, an establishment stalwart, left the traditional right furious. Sections of the “emerging capital,” particularly those whose rise had grown out of access to state contracts, criticized CICIG for defending the interests of the traditional business elites, while many judges and lawyers strongly objected to Castresana’s attacks on their credibility.

Although CICIG’s early case selection seemed “too-often improvised, without adequate regard to its long-term objective [and] fundamentally reactive rather than strategic,” Castresana’s opportunistic choices sometimes paid enormous dividends.<sup>404</sup> The *Portillo* investigation revealed a garden-variety embezzlement scheme, but CICIG’s role added to the Commission’s visibility and credibility. While the *Rosenberg* case fell outside CICIG’s mandate, the Commission was, at the time, viewed as the only actor capable of surmounting the lack of confidence in the country’s compromised judicial and security institutions and carrying out a credible investigation. CICIG’s involvement helped stem a ferocious campaign by conservative sectors to unseat the center-left Colom. But the risks were clear as well. If CICIG had been unable to conclusively determine the authors of and motives for the killing, or if the evidence had been less than impeccable, the political crisis would have reignited and CICIG’s reputation, and capacity for action, greatly diminished.<sup>405</sup>

Castresana’s controversial three-year mandate ended in the crisis surrounding his resignation. He left his successor the set of paradigmatic cases tied to what soon became known as the *Vielmann* structure, the *Portillo* investigations, *Rosenberg*, the illegal adoptions networks, *Matus*, the Nicaraguan bus killings, National Civil Police drugs cases, a corruption case involving a former interior minister, and the assassination of a labor leader and a journalist. Several provided important insights into the widespread involvement of the police in criminal

activities and the functioning of illegal groups and corruption networks at the highest levels of government, but remained without overall strategic direction.

Dall'Anese undertook no extensive strategic review after replacing Castresana, focusing instead on moving his predecessor's cases forward to the prosecution stage while reducing CICIG's public profile in deference to a newly dynamic Office of the Public Prosecutor under Claudia Paz y Paz. CICIG's case selection strategy still echoed the Castresana formula: recommendations from outside, new leads from prior investigations, evaluation of the likelihood of links with illegal groups and clandestine structures, the potential impact on impunity, and operational and tactical considerations (including resources, budgets, and risks to witnesses).<sup>406</sup>

As of early 2012, the lack of clarity about CICIG's strategy under Dall'Anese grew in the absence of information about new investigations. CICIG continued to work on political corruption, joining with the Public Prosecutor to arrest Carlos de León Argueta, Portillo's attorney general, for money laundering prior to his government service, but the trial judge promptly dismissed the case.<sup>407</sup> The Commission participated in the investigation and arrest of Marlene Blanco, a former chief of the National Civil Police, for managing illegal units inside the force that were carrying out extrajudicial executions, and the prosecution of a group selling contraband gasoline, and continued with the slow trial processes of cases on its docket since 2009.

The efficacy of a greater strategic focus became clear under CICIG's third commissioner, Iván Velázquez. He spent his first few months reassessing CICIG's work and then narrowed its investigations to a set of strategic hubs where the spokes of Guatemala's political-criminal corruption structures intersected. Neither the areas nor the structures were new or unknown—CICIG had cases in some of these areas reaching back to its first years—but the decision to focus on lines of investigations whose results might contribute to political change was new. The *La Linea*, and municipal and congressional corruption cases proved the efficacy of an approach targeting well-known, if rarely investigated, sites of political-criminal influence peddling and corruption.

CICIG's lengthy report analyzing the connections between illegal political party and campaign financing, Guatemala's clientelistic networks, and political corruption may have set the stage for future investigations of business and organized crime contributions to the impunity problem. Indeed, the report provided a number of detailed examples that could only have come from CICIG investigations—as demonstrated when CICIG and the Public Prosecutor's Office indicted one of the political fixers highlighted in the report, former President Colom's private secretary, Gustavo Alejos, for corruption.<sup>408</sup> Presidential candidate Manuel Baldizón admitted that his organization was under CICIG scrutiny—and his vice presidential running mate was subsequently indicted for money laundering—during the 2015 campaign.

## The Strategy Balance

While Carlos Castresana's ambiguous strategic focus is perhaps understandable, given CICIG's urgent start-up challenges, collision with impunity structures in the judiciary, the demands of *Rosenberg*, and the political whirlwind that led to his resignation, Dall'Anese's strategic drift was much less so. He inherited the fallout from Castresana's mandate, and stumbled into the *Vielmann*

controversy, but also inherited the foundation established by his predecessor (including better tools, experienced investigators, and credibility gained from the *Rosenberg* outcome) and would soon gain an ideal attorney general. This should have been an opportune moment to rethink CICIG's strategic targets in light of the experience and knowledge gained during Castresana's three years. It was clear then that CICIG, with a cooperative attorney general, could uncover and dismantle criminal groups and networks and corrupt state officials; it was equally evident, however, that the systemic practices supporting impunity continued largely unabated.

In fact, it seems reasonable to argue that CICIG had the information and resources to strategically attack Velázquez's targets during Dall'Anese's watch. CICIG's senior investigation team was largely the same between 2012 and 2014. Those targets—including the tax and customs services, political party and campaign financing, the use of state contracts and posts for personal and political gain, and illegal security structures—were known during Dall'Anese's time.

Dall'Anese's failure to pursue those targets is puzzling given CICIG's own assessments of the evolving connections between political corruption, organized crime, and impunity in 2011.<sup>409</sup> CICIG's analysis noted that impunity practices operated across three social domains, beginning with the traditional and emerging economic groups who use money, career opportunities, business, family, school, and other relations to co-opt members of the political parties, the executive branch and its agencies, Congress, and the media. These economic and political elites used these same connections and methods to influence judges, prosecutors, the police, and the army to procure

It was clear then that CICIG, with a cooperative attorney general, could uncover and dismantle criminal groups and networks and corrupt state officials; it was equally evident, however, that the systemic practices supporting impunity continued largely unabated.

favorable administrative or judicial decisions or to block prosecutions or investigations. For more intractable problems, they might draw upon a wide array of potential operational groups: private security organizations, narcotraffickers, former or current police or military officers, and members of criminal gangs, all working for hire. Within state institutions, including the Office of the Public Prosecutor, impunity patterns often grew out of school and office relations, a clientelistic culture of doing favors to move up within the organization. In the Office of the Public Prosecutor, a “take care of your own” mechanism ensured that those who did not win a job as a result of experience or education could do so because they owe or are owed a favor by someone else.<sup>410</sup>

In the judiciary, the observed connections between some justice officials and members of criminal groups seeking impunity operate, in most cases, in a sporadic and opportunistic manner, through the traffic of influences, common interests, corruption, but, above all, for a sense of loyalty to the person to whom they owe their jobs.<sup>411</sup>

Velázquez, too, began to speak of these corruption and impunity practices in a similar way in 2014, describing them as “illicit political-economic networks.”<sup>412</sup> While CICIG developed a somewhat-tortured definition of these networks (a not-uncommon outcome of trying to translate social phenomena into legal terms), his conclusion that these networks “are groups of persons who secretly collaborate to exercise political control and generate profitable business” largely describes Guatemala’s neopatrimonial political system.

In consequence, the commissioner turned CICIG toward the institutional skeleton girding these practices to determine where the Commission might most effectively intervene. He focused on following the money. Thus, he investigated business elites financing presidential candidates in order to win political influence. He focused on members of Congress, mayors, and other political actors using state infrastructure and contracts for personal enrichment and to fund their campaigns. He focused on narcotrafficking groups using the products of money laundering to finance control over geographic zones and buy influence with local, regional, and national political actors. And he focused on the use of state prisons as a base for lucrative criminal activity.<sup>413</sup>

CICIG’s 2015 cases suggest that targeting the sources of political corruption may be a much more effective way to address impunity and its manifestations than through traditional rule of law support. CICIG’s initial foray against these sources of corruption was successful in 2015, but it is too early to measure the longer-term impact of the investigations and prosecutions on political reform.

## STRUCTURE AND OVERSIGHT

**THE ORGANIZATIONAL STRUCTURE OF CICIG GREATLY INFLUENCED ITS WORK, DETERMINING HOW BROADLY OR NARROWLY THE COMMISSION WOULD INTERPRET AND “OPERATIONALIZE” ITS MANDATE.** Function followed form in ways not understood or appreciated at CICIG’s birth. The management and oversight links between CICIG and the United Nations, never clearly defined in the CICIG mandate, also turned out to be troubling, the problems most evident during the Commission’s political crises leading to the Castresana and Dall’Anese resignations.

## The Absence of Oversight

The CICIG agreement left decisions about the Commission's organizational structure to the Commissioner and was silent on management, oversight, and United Nations reporting issues. In large part, this was due to the series of very late policy and drafting decisions by the UN and the government, which left CICIG as an independent juridical entity rather than a UN body. Until then, the United Nations staff assumed that the CICIG-UN management relationship would mirror, to a greater or lesser degree, the management relationships common in UN field missions or develop a hybrid model to reflect CICIG's unique status as a prosecutorial entity.

When subsequent efforts to gain UN status for CICIG failed, and Castresana was forced to establish the Commission's administrative, staffing, and security structures with UN assistance but without UN resources, the Commissioner drifted away from New York. By 2010, he had positioned CICIG as a largely independent entity, informing the UN of routine developments but rarely consulting on key policy and management decisions. Castresana's ability to raise significant funds for CICIG's operations and maintain strong relationships with the diplomatic community in Guatemala reinforced the Commission's independence.

CICIG's legal independence undoubtedly provides strong advantages: the Commission is able to move creatively and quickly in an area distant from UN experience, use funds for intelligence purposes, and work efficiently with other governments to share information, arrange for witness protection, and procure arrests. It does not have to dedicate substantial resources and personnel time to justify or seek approval of the details of its budget, strategy, or operations from UN oversight committees. It could develop its own staff recruitment procedures, avoiding the UN's lengthy processes. Commissioners are free to speak out strongly without concern over the UN's institutional caution when working with member states.

Nonetheless, this independence raised a number of important concerns. CICIG's commissioners have, happily, floated free of the principle of prosecutorial oversight embedded in robust judicial systems and common in other international rule of law operations such as the International Criminal Court and special tribunals.<sup>414</sup> The commissioner oversees a prosecutor's office of some 150 staff, at least a third armed security officials, engaged in potentially dangerous investigations, and carries out de facto intelligence operations, including using CICIG funds to pay for information, all at the discretion of the commissioner.<sup>415</sup>

While the UN had little control over CICIG's activities, and almost no influence on its work, it would have to respond to any scandal or management or operational failures. Indeed, CICIG has endured its share of commissioner-related controversies where a management oversight mechanism would have been useful. UN leadership was concerned about Castresana's increasingly sharp exchanges with Guatemalan judicial actors and press critics in 2010, particularly when he was accused of "taking sides" in the contentious political competition between traditional and emerging elites during the selection processes for judges for the Supreme Court and Constitutional Court.<sup>416</sup> The UN, bereft of information on CICIG's internal decision making, and excluded from policy advice, was unable to moderate the Commissioner's role. It would, nonetheless, be forced to address the fallout from Castresana's resignation, quickly recruit a successor, and manage CICIG issues during the interim.



Dall'Anese fell into the same pattern, working in isolation from the UN until the UN was forced to intervene to manage his departure in 2014. Although the de facto resignation occurred in May, the UN arranged for the commissioner to remain until the expiration of his contract at the end of August, using up his holiday leave for much of his last months. Meanwhile, CICIG internal staff dissention and institutional paralysis forced New York to send a veteran diplomat to manage the organization until the appointment of a new commissioner.<sup>417</sup>

The CICIG-UN tensions were not all the fault of the Commission. UN officials at the highest levels failed to insist on a more robust oversight role, particularly on management and administrative issues and relationships with the international community, during CICIG's first year. The UN Secretariat could have been much more insistent on the need for "soft" oversight, the integration of some senior UN staff into CICIG's organizational chart, and participation in the discussions of internal management and broader strategic issues. Once CICIG had escaped the UN Secretariat's orbit, however, its commissioners had no interest in returning. The UN's modest proposal to add a UN diplomat (not a prosecutor) as a deputy commissioner to CICIG's senior team, to help the commissioner with UN management issues and member states' diplomatic concerns, has not prospered.

An oversight mechanism need not have been onerous and could have been built into CICIG's structure as an organ independent of the UN. An early discussion with CICIG's international supporters about an oversight board fizzled out when member states expressed reluctance to assume any direct oversight responsibility. A reasonable option would have been an independent management board (as with the hybrid Special Court for Sierra Leone) comprised of UN and diplomatic officials to whom the Commissioner would report on administrative, management, and budgetary—but not investigative or prosecutorial—issues. A management board could have served as an asset for the commissioner, providing advice and support on administrative, financial, and UN challenges. It could have also advised the commissioner on personnel or broader political concerns that might affect CICIG's reputation and organizational stability, providing the support necessary to avoid manageable problems sliding into crises.

## The Repercussions of Structure

The UN, in theory, had a number of options for the organizational structure of CICIG, each responding to an arm of the mandate: investigation and litigation (with security officers), institutional capacity building, legislative and constitutional reform drafting, public relations and education. CICIG's "mapping illegal structures" mandate and its position at the intersection of Guatemalan national politics, the UN, and other international and regional organizations called for robust political affairs analysis and drafting skills.

CICIG's first commissioner organized CICIG as an international prosecutor's office, its internal structure shaped by the compartmentalization of work and information sharing, leaving just a small core staff who possessed an overall picture of the Commission, its roadmap, case selection criteria, and investigations status. The structure responded to security concerns and the need to ensure the confidentiality of information in a dangerous environment. But the structure, which has endured across all three commissioners, had important consequences for the way its mandate has been implemented.

First, CICIG was late to establish a political affairs unit, relying on its initial core staff and the commissioner's personal contacts for political information and analysis. CICIG's political outreach to economic, political, civil society, and media actors was largely limited to the commissioners.<sup>418</sup> The Commission had limited in-house ability to produce a comprehensive analysis of impunity structures, attempt to build rule of law coalitions with highly adverse national actors, or develop policy advice on organized crime and social violence.<sup>419</sup> Senior political affairs staff might also have established formal liaison and briefing relationships with the UN, the Guatemalan Congress, and the relevant legislative and executive actors of key international donors.

Second, CICIG tarried too long in developing a public communications capacity, hiring a spokesperson late, establishing a web page only in its second year, and struggling to develop public education campaigns or outreach outside of the capital. The Commission never used social science tools such as polling data for program design, feedback assessments, or outreach strategies.<sup>420</sup> In consequence, CICIG had to rely upon the politically biased and contentious private media to portray its successes, deliver its messages about impunity, and educate the public about the nature of political-economic corruption. The Commission sometimes disappeared from the media for weeks at a time.

Third, the Commission struggled to meet its goals for institutional support, capacity-building, and skills-transfer, using internal staff or outside consultants and donors on something of an ad hoc basis. Again, CICIG might have established a unit dedicated to these tasks, providing greater coherence and continuity with both Guatemalan ministries and donors. Nonetheless, it is not clear that a dedicated unit would have been able to overcome the difficulties inherent in organizing capacity-building programs between institutions whose relationship was often tense. Many—including Commissioner Velázquez—questioned the value of traditional short-term seminars and workshops for Public Ministry staff. In consequence, Velázquez closed a unit that Dall'Anese had created to bring greater coherence to capacity building work.

Assessing CICIG's work in building the capacity of Guatemalan institutions is more complex, and requires a considered reflection on the extent to which CICIG should provide this support beyond the joint investigation/prosecution arrangements favored by Velázquez. CICIG's comparative advantage for improving the skills of Guatemalan prosecutors and police investigators is through joint investigations and prosecutions. Shifting other training tasks to outside donors may provide an appropriate distribution of capacity-building responsibilities among UN and other international organizations. This approach requires much less institutional support inside CICIG, helping to keep the model light and focused on its primary substantive tasks.

## WORKING WITH THE OFFICE OF THE PUBLIC PROSECUTOR

**THE INITIAL ENCOUNTERS BETWEEN THE COMMISSION AND THE PUBLIC PROSECUTOR'S OFFICE PRODUCED A COMPLICATED DYNAMIC** that continued throughout the relationship between the two institutions, regardless of the level of cooperation provided by the attorney general. The Commission's first views of its new partner were not entirely positive: the ministry plodded its way through cases, its sluggish prosecutors often ignored by other government institutions, its internal culture clientelistic and hierarchical, responding to the whims of attorneys general.<sup>421</sup> Prosecutors rarely managed cases aggressively, carried out limited investigations without access to the most basic forensic techniques, and were forced to rely on the vulnerable evidence of witnesses. The Commission was also in a hurry, its short two-year mandate unable to accommodate the protracted timetables of Guatemalan investigations and trials.

The Guatemalans, in turn, complained about the arrogance of CICIG's staff, an attitude that "they had come to save Guatemala." Officials in the Office of the Public Prosecutor resented the Commission's "condescending" criticisms of the knowledge, integrity, and professional skills of Guatemalan lawyers. Judges and prosecutors claimed that the quality of the Commission's lawyers varied greatly, they did not trust Guatemalan counterparts with confidential information in high-profile cases, and were unwilling (or unable to see the need) to learn the subtleties of local legal rules and judicial practices. Many of CICIG's reversals in major cases, they suggest, were due to the failure to manage them properly, in line with Guatemalan practice.<sup>422</sup> This almost-universal resentment tempered enthusiasm among the Public Prosecutor's finest lawyers and investigators for collaborating with the Commission, reinforced institutional insularity, and provoked some sympathy for Guatemalan prosecutors who fell under CICIG investigation, even in cases where a doubtful reputation was well-known.<sup>423</sup>

The creation of a special unit inside the Office of the Public Prosecutor to work with the Commission, the Public Prosecutor's Special Unit Attached to CICIG (UEFAC), produced its own set of tensions. Members of the special unit were selected and vetted by the attorney general and the Commission, and the unit worked separately from the rest of the ministry to guarantee the confidentiality of its investigations. Facing the resentment of colleagues within the Ministry for the unit's privileged status, on the one hand, and the arrogance of Commission staff, on the other, a number of its first members sought to transfer to another unit "to escape an untenable and uncomfortable situation."<sup>424</sup> The Public Prosecutor resisted the Commission's efforts to direct investigations and manage prosecution strategy in high-profile cases. Its prosecutors objected to the aggressive handling of witnesses, putting lives at risk by extending the evidence-gathering stage as long as possible. The UEFAC eventually changed its name to the Special Prosecution Unit Against Impunity (FECI) in 2010 to reflect its institutional independence from CICIG.<sup>425</sup>

Conflict between international missions and national governments are an inevitable characteristic of donor assistance, but the early CICIG-Public Prosecutor tensions seemed

excessive. The sources were predictable: Commission staff earned several times the salary of their national counterparts, worked in well-equipped offices with access to enormous financial, staff, and technical resources for high-priority cases, and enjoyed the protection of armored cars and a large security contingent—all benefits unavailable to Public Prosecutor staff. Internationals had no family members living in Guatemala subject to pressure or threat; their personal and professional relationships were not woven into the fabric of Guatemalan life and affected by the activities of the Public Prosecutor.

The two institutions, however, managed to struggle through their differences, working around changes in the leadership of the Office of the Public Prosecutor, particularly the contentious election and subsequent removal of the controversial Conrado Reyes, to forge functional working relationships on high-priority cases. Although joint work had begun to improve under Amílcar Velázquez Zarate in 2009, it took an important step forward when Claudia Paz y Paz assumed leadership of the Office of the Public Prosecutor at the end of 2011 and continued under her replacement, Thelma Aldana, appointed attorney general in mid-2014.

Paz y Paz pushed hard to launch reform projects inside the Office of the Public Prosecutor in the face of significant internal resistance and ferocious external pressure. She established a network of trusted professionals in key posts but was never able to gain full control of the ministry's prosecution units and administrative sections. She relied on CICIG, particularly its second commissioner, Francisco Dall'Anese, for political support in the face of conservative attacks and

Paz y Paz pushed hard to launch reform projects inside the Office of the Public Prosecutor in the face of significant internal resistance and ferocious external pressure. She established a network of trusted professionals in key posts but was never able to gain full control of the ministry's prosecution units and administrative sections.

for technical assistance to bolster investigative capacity. In her three years as attorney general, Paz y Paz was able to transfer CICIG's 10-person analysis unit to the ministry (and then add 130 employees), establish an internal affairs division, and add FECI-like units specialized in political corruption and organized crime. The attorney general hoped that the FECI prosecutors would be able to extend their new knowledge and other capabilities to these other units.

CICIG's most effective capacity-building work occurred through joint investigations and trial preparations with FECI investigators and prosecutors. Commission staff were able to help transfer knowledge of new methods for strategic criminal investigations, focusing on criminal networks and patterns rather than individual cases. CICIG and other specialists also helped Public Prosecutor staff with new tools provided by organized crime legislation (including wiretapping, undercover operations, plea bargaining, witness protection, and analysis of phone, computer, and banking records). CICIG-FECI teams, sometimes working together at CICIG, would co-design investigations, interrogations, searches, and case management strategies. The cooperation was not always consistent, and varied depending on the sensitivity of the case and the availability of staff resources. But the improvement in capacity was evidenced by Paz y Paz's ability to use small, highly trusted Public Prosecutor and National Civil Police cells to apprehend several top organized crime figures wanted by the U.S. without CICIG's assistance.

Iván Velázquez faced a different challenge with Thelma Adelana, whose appointment under the cloud of a political arrangement with President Pérez Molina raised concerns about the continuation of the partnership. But the new attorney general proved both careful and politically astute, supporting CICIG's cases and sustaining Paz y Paz's reforms as the conflict over CICIG's mandate extension intensified in early 2015. While CICIG carefully managed the investigations of politically sensitive *La Linea* and IGSS cases, Aldana supported the cases in the face of political pressure from the president's supporters. Indeed, the Public Prosecutor carried out much of the labor-intensive investigative operations, from wiretaps to search and seizures, in both sets of cases.

Although the CICIG-Public Prosecutor collaboration has contributed in important ways to the major growth in the attorney general's investigative and prosecution capacity over the last five years, skills transfer and capacity-building efforts have also demonstrated serious limitations. CICIG and the attorney general struggled under Dall'Anese to define an agreed set of institutional priorities and skills-transfer methodologies, and to find the resources for training seminars and workshops. While Dall'Anese suggested the problems grew out of "poor institutional coordination" and created a dedicated institutional strengthening unit within the Commission, Velázquez concluded investigation and prosecution skills could only be effectively transferred through joint work. He closed Dall'Anese's new unit and recommended that donors provide training in the specialized skills best learned through workshops.<sup>426</sup>

Both Paz y Paz and Aldana hoped for CICIG support for specialized prosecutor units outside FECI, but the Commission did not have the staff or resources to significantly expand its work inside the ministry. Aldana wanted to see the transfer of FECI skills to special prosecutors for money laundering, human rights, human trafficking, and violence against women, and thought CICIG's almost-exclusive focus on FECI had been "an error."<sup>427</sup>

While the capacity of the Office of the Public Prosecutor to investigate high-level criminal acts and organized crime has greatly improved, the ministry is still developing the knowledge and skills for investigating and prosecuting high-level political corruption under the recently adopted illegal enrichment law. The attorney general recognized that the Public Prosecutor's Office is not yet in a position to take on politically sensitive cases alone, and could not have moved forward on the *La Linea* and IGSS cases without CICIG's political support.<sup>428</sup>

## OVERCOMING OBSTACLES IN THE JUDICIARY

### **ALTHOUGH CICIG FOUND A WAY TO WORK WITH AN INITIALLY RELUCTANT PUBLIC PROSECUTOR'S OFFICE, IT HAD NO SIMILAR SUCCESSES WITH THE JUDICIARY.**

The Commission's early encounters with the courts produced a litany of complaints that remain unabated years later. Judges rejected crucial evidence without any legal basis and released defendants on bail in inappropriate circumstances. CICIG staff have also complained of weak case management in the judiciary, magnified by accomplished dilatory practices; dysfunctional oversight and disciplinary procedures; a culture of informal clientelistic practices, including judges meeting with defendants without notifying CICIG or the Public Prosecutor; and widespread influence peddling.

The commissioners' different approaches to recalcitrant prosecutors, judges, and magistrates also raised issues both troublesome and difficult to resolve. Castresana was vigorous in using all means at his disposal to sideline judicial actors viewed as impeding CICIG's investigations and prosecutions, but claims that his public condemnations were not always well founded were often valid. Castresana's use of the media, while serving an important public education function, embittered relationships with the judiciary without producing significant changes. Dall'Anese was equally combative in public, and often just as light on evidence when challenging judges, and CICIG's relationship with the judiciary remained strained. Velázquez saw no efficacy in public combat with the courts, even while recognizing the validity of the critiques raised by his predecessors, and responded to judicial misfeasance by filing complaints with the Public Prosecutor and pursuing removal through formal legal channels (as authorized by CICIG's mandate).

Significantly improving the independence of the courts will take time and a constitutional change to eliminate the current arrangements in which the senior courts are elected every five years through a corporatist nomination system heavily exposed to politics. CICIG provided valuable support to an unusually broad effort to reduce the influence of political and economic interests in judicial selections. The coalition behind this effort has continued its work across two judiciary sector election cycles and is developing proposals for substantive rule of law reforms for the next administration. Any constitutional change will require a broad consensus from the traditional and emerging elites, emphasizing again the important link between CICIG's mandate and the need for political outreach and coalition building, an outreach only possible if the Commission is perceived as independent and politically neutral and itself respects the rule of law principles central to reducing impunity.

## LEGISLATIVE AND CONSTITUTIONAL REFORM

### **GUATEMALA'S CONGRESS, THE FULCRUM OF INTEREST GROUP CONTENTION AND CLIENTELISTIC POLITICS, HAS PROVED RESISTANT TO CICIG'S CHARMS.**

Every Congress elected since 2003 has proven hostile to robust national and international programs to strengthen the national police and the independence of the judiciary, regardless of its political party configuration. The FRG-led Congress during the Portillo administration refused to debate the CICIACS proposal in its last days in January 2004. The Berger Congress, divided among three major factions, rejected CICIACS ratification in May 2004 and only approved CICIG after the proposal was resurrected by the charged politics of an election year.

CICIG presented comprehensive proposals for legislative reforms to Congress in 2008, 2009, and 2010 for procedural and normative changes that would give the Public Prosecutor and CICIG greater capacity to combat organized crime and political corruption. The Commission added a set of constitutional reform in 2011 to strengthen the independence of judges and the Public Prosecutor. The Colom Congress, also divided among three factions, grudgingly approved legislation to facilitate organized crime investigations (including special high-risk courts), make modest changes to the selection procedures for judges, regulate private security organizations, and authorize state confiscation and use of organized crime resources.

These rare gains were prompted by the pressures of an electoral season (CICIG's ratification), scandalous violence (the Parlacen killings), or political crisis (*Rosenberg*). Congress has otherwise refused to move on a broad range of legal and constitutional changes needed for deeper, sustainable reform. The Pérez Molina Congress approved a long-pending anti-corruption law, but failed to adopt any other major piece of pending CICIG proposals, either on the legislative or constitutional reform list.

Congress had become such an unreliable CICIG supporter that President Colom decided to extend the Commission's mandate from 2011 to 2013 through an exchange of letters with the UN rather than seeking congressional approval. Pérez Molina followed the same procedure when he requested the extension of CICIG's mandate to 2015, and it is likely new President Jimmy Morales will avoid Congress if he decides to extend the Commission until the end of his mandate.

## THE ROLE OF THE INTERNATIONAL COMMUNITY

### **THE COMMISSION HAS RECEIVED STRONG, CONSISTENT SUPPORT FROM EUROPEAN AND NORTH AMERICAN STATES ACROSS ITS EIGHT YEARS OF ACTIVITY.**

The United States, Spain, Sweden, and Canada have been major financial and political supporters, with strong contributions also coming from the Netherlands, Italy, Norway, Finland, Switzerland, Denmark, Germany, Ireland, and the EU.<sup>429</sup> These states were instrumental in lobbying the Guatemalan government for approval of the CICIG agreement, ensuring strong support in the UN General Assembly and Secretariat, and moving to CICIG's defense when the Commission came under attack in Guatemala. The Commission could not have functioned without this political support.



In addition, a number of Latin American countries and Spain provided short-term secondments of security and police officers during CICIG's first two years as the Commission developed the capacity to recruit its own personnel. A small number of countries provided access for witnesses in need of protection during investigations and trials.

The U.S. has been CICIG's most important and active operational partner as well as one of its largest donors. The U.S. has a range of important interests in Guatemala, led by anti-narcotics transshipments and organized crime, illegal migration, and CAFTA-supported economic investments. CICIG's mandate, then, fit well with U.S. priorities to the extent it facilitated the investigation, prosecution, and extradition of drug cartel leaders targeted by the American authorities.<sup>430</sup> The U.S. embassy facilitated links with the U.S. Department of Justice (DOJ) and Drug Enforcement Administration (DEA) to share information and resources and cooperate on operations. The U.S. has also consistently used its leverage with the Guatemalan authorities to push for support to CICIG and the adoption of legal, constitutional, and institutional reforms to strengthen the anti-corruption and organized crime legal framework, the police, and the judicial sectors.

Nonetheless, CICIG discovered, to its frustrations, that even U.S. embassy support was constrained by the bureaucratic dynamics and policy and regional priorities of the U.S. government. Carlos Castresana consistently pressed for assistance from DOJ and DEA officials on organized crime (particularly drugs and money laundering), and wanted to open a CICIG office in the U.S. to facilitate closer ties. But the DOJ principally focuses on national, not international, justice issues, and both Mexico and Colombia are greater drugs and organized crime related concerns than Guatemala, and receive much more attention and resources. CICIG eventually abandoned its plans open a U.S. office.

While the U.S. has long been a significant rule of law donor, and the Guatemalan embassy has tried to encourage business elites and other sectors to support justice sector reform, social programs, and the tax increases necessary to pay for them, it has not had much success. The business elites' insular political and economic interests and anti-state libertarianism remain too rigid, and U.S. leverage too dispersed. The State Department has little influence on U.S. economic policy in Guatemala; the U.S. Trade Representative, with a focus on opening markets for U.S. goods, is a much more important business actor, and its constituents include large U.S. corporations interested in doing business in Central America.<sup>431</sup> Guatemalan businesses are eager to establish partnerships with North American enterprises for access to northern markets, particularly in agro-business, minerals, textiles, and tourism. The interests of the U.S. political arm and its international trade arm remain separate and "stove piped," with economic leverage often unavailable to the State Department.

Thus, when then-President Óscar Berger visited Washington, DC, for a meeting with then-Secretary of State Colin Powell after his election in 2006, support for CICIG was the top item on the agenda. The U.S. Trade Representative was, almost at the same time, negotiating Guatemala's entry into CAFTA. Yet the State Department could not use CAFTA as leverage with the Guatemalan government and business elites to win support for CICIG and legal and constitutional reforms—an institutional, bureaucratic irony the Guatemalans understand very well.<sup>432</sup> U.S. leverage targets security-driven (police and military) responses to drug trafficking, and almost all other issues remain secondary.

This is a discouraging, but realistic, aspect of international politics even in a region where there is just one dominant international presence. Because of its own diverse policy agenda, the U.S. cannot use its economic, financial, immigration, or trade relationships with Guatemala to pressure elites absent a priority commitment from the highest levels. Efforts by some business actors to undermine CICIG in Washington—still resplendent with conservative Republicans in Congress who supported the Central American right during the Cold War—only reinforces the difficulty of developing and delivering a coherent set of rule of law messages from powerful donor states.<sup>433</sup>

Nonetheless, when a U.S. commitment to a policy decision involving Guatemala does emanate from the highest levels of government, its lobbying pressure can be decisive. The American ambassador and State Department officials had been sending clear signals to the Pérez Molina government since 2014 that CICIG renewal was one of its top priorities. Senior officials in the State Department and the White House provided strong support to Claudia Paz y Paz—including receiving an award from Secretary of State Hillary Clinton—and sent Vice President Joe Biden to threaten to exclude Guatemala from its Central American security and development program if then-President Pérez Molina did not extend CICIG's mandate. Without U.S. pressure, he would have ended the Commission's work in Guatemala.

## THE FRAGILITY OF SUCCESS

### **THE IMPACT OF CICIG'S EIGHT YEARS OF WORK HAS BEEN REMARKABLY POSITIVE.**

The benefits of its cases in shedding light on the structures and practices of political corruption have, for most, outweighed poor strategic choices, case management mistakes, moments of stagnation, and commissioner resignations. The cumulative pressures of CICIG's interventions, often in collaboration with a newly dynamic Public Prosecutor's Office, and a citizenry sufficiently fed up with corruption to take to the streets, have helped Guatemalans reach a juncture where major political reform has become a real possibility for the first time in two decades.

Yet before the events of 2015, seven years of CICIG casework and institutional strengthening had been unable to significantly alter patterns of political-criminal networks, criminal violence, and corruption. This was evident in the ability of interest groups to ignore civil society efforts to reduce political bargaining in the selection of judges, magistrates, and the attorney general in 2014, the ongoing reluctance of Congress to adopt constitutional and legislative reforms to strengthen the independence of justice-sector institutions, and the unending wave of political corruption scandals. The most audacious scandals occurred between 2013 and 2015 with *La Linea* and the IGSS cases, both for the scope of the theft and the sense of impunity displayed by participants.

While much of 2015's success is due to contingent historical events, it was CICIG's strategy that made the difference. And that strategy, in turn, depended upon a shift in the understanding of the nature of the political-criminal networks and impunity structures at the core of CICIG's mandate. In essence, CICIG shifted its targets from illegal groups to the broader structures supporting longstanding clientelistic practices systemically undermining the judiciary and security services.

Iván Velázquez's innovation was to recognize that these political-criminal networks were more

diffuse, relationship-based, and informal than the image of “hidden” or “parallel” powers effectively controlling the state suggested. Many, if not most, of these influence networks were flexible and opportunistic, rather than rigid, hierarchical enterprises, making CICIG’s task more diffuse and difficult. It would not find many formal structures to dismantle, but rather dense circles of relations providing for sporadic opportunities in return for favors, bending to influence peddling, to ensure a promotion or make money.<sup>434</sup>

The 2015 successes, ironically, also highlight the contingent nature of CICIG’s achievements. As Iván Velázquez is the first to concede, CICIG’s emblematic high-impact cases may have jolted Guatemala’s political mafias and political-criminal structures, but the old behaviors continue in the absence of a state institutionally capable of occupying the spaces temporarily cleared by CICIG and Public Prosecutor arrests.<sup>435</sup> Corruption networks continue in the customs services, Byron Lima’s organization continues to operate in the prison system, organized crime groups quickly move into markets vacated by arrests, and state contracts still flow to the politically connected. The country’s clientelistic mafias remain intact, rebounding, for example, after seven years of CICIG and Public Prosecutor prosecutions, to remove Claudia Paz y Paz from the Public Prosecutor and gain control over the judicial elections of 2014. An unlikely confluence of business elites, the U.S., the Supreme Electoral Tribunal (its membership brokered by Pérez Molina, LIDER, and other political actors in 2014), and political parties allied to Baldizón and the old order successfully blocked a reform coalition’s efforts to reform the electoral and political parties law before the end of the 2015 elections.

The cumulative pressures of CICIG’s interventions, often in collaboration with a newly dynamic Public Prosecutor’s Office, and a citizenry sufficiently fed up with corruption to take to the streets, have helped Guatemalans reach a juncture where major political reform has become a real possibility for the first time in two decades.

The president-elect has promised to extend CICIG's mandate to the end of his term in 2020, providing the Commission an opportunity to work with the Public Prosecutor and the new administration and Congress toward the institutional, legislative, and constitutional changes necessary to secure 2015's gains. CICIG has already telegraphed where it will likely focus, combining investigations with proposals for reform in the following areas: (i) campaign finance and political parties; (ii) oversight of state contracts and state budget expenditures; (iii) business beneficiaries of customs and other state contracting fraud; (iv) powerful landowner, business groups, and narco-trafficking families using private and public security forces and other illicit mechanisms to control populations in the interior; and (v) judicial malfeasance and corruption. The Commission will inevitably support the Public Ministry with ongoing high-impact investigations and the eventual prosecutions of Otto Pérez Molina, Roxana Baldetti, and other powerful actors caught up in the CICIG-Public Ministry corruption cases of the last two years.

Another four years should give CICIG the opportunity to respond to the attorney general's need for extending FECl's capacities to other key prosecutor units, particularly those responsible for investigating and prosecuting money laundering and government corruption, and augment the Public Prosecutor's technological and modern forensics abilities. Following its focus on controlling political corruption, CICIG could profitably focus on units within the SAT (internal customs and other revenue oversight) and the Office of the Controller General (which oversees national budget expenditures), as well as the investigative and forensics capabilities of the Supreme Electoral Tribunal. The idea would be for CICIG to build on its work with FECl and other units inside the Office of the Public Prosecutor to establish joint oversight units within these other institutions central to avoiding illegal use of state funds by elected and administrative officials. This would require, of course, a notable increase in CICIG's own resources.

Much of what is known about political change suggests that the impact of major international assistance efforts is rarely significant in the absence of a substantial reform coalition among political and economic elites willing to change their own behavior. These changes are beyond the capacity of a CICIG or any similar investigative body. At most, the Commission's ongoing presence in Guatemala and reputation for political independence might—in parallel with robust judicial reform—serve as a guarantee for elites that the courts will protect their legitimate interests if they fully subject themselves to the reach of the state and the rule of law.

Guatemala's reform process would benefit from a broader international approach toward the country's elites, to lobby precisely for the emergence of a coalition able to politically complement, and thus support, CICIG's narrowly targeted efforts. Unfortunately, this form of international pressure is difficult to organize and coordinate—states have too many competing interests in a country like Guatemala. But the failure to recognize, and attempt to organize, a broader strategy, leaves individual initiatives like CICIG hemmed in by the ineluctable power of local interests.

# THE CICIG MODEL AND ITS CHALLENGES

**CICIG has been discussed as an option for states struggling to control social and criminal violence with frail, and often corrupt, judicial and security institutions.** Two of Guatemala's neighbors, Honduras and El Salvador, have expressed interest; Mexico has been mentioned by outsiders; and a number of Central American governments have floated the possibility of a regional CICIG to deal with organized crime.<sup>436</sup>

The Guatemalan experience, however, suggests caution. The CICIG model emerged out of five years of difficult negotiations across two government administrations, its final contours shaped by the confluence of local political, constitutional, and historical events. Once established, the Commission faced blockages at every turn; only its ability to take advantage of fortuitous political events and the support of the United States—the dominant political, military, and economic power in Central America—allowed it to work effectively.

The CICIG model has five central features. First, its international prosecutors and investigators have the legal authority under Guatemalan law to carry out independent investigations and participate in prosecutions as an interested third party (with the approval of the Public Prosecutor). Today, CICIG and Guatemalan prosecutors normally jointly investigate cases within CICIG's mandate (or in response to requests from the attorney general on other matters). Second, it has the authority to file complaints against and recommend the removal of public employees who are alleged to be corrupt or who interfere with CICIG's work. Third, CICIG has the capacity to propose legal and legislative reforms to the Guatemalan president and Congress. Fourth, CICIG provides institutional strengthening support to the Public Prosecutor's Office, National Civil Police, and other security sector actors. Finally, CICIG may request, and must receive immediate access to, all information it views as necessary for its investigations from Guatemalan civil and military actors.

The Commission's most important feature is its capacity to investigate and co-prosecute cases under Guatemalan law. Without this ability, CICIG's modest leverage would have been lost. Obtaining this leverage required a national Constitution whose penal law norms would permit an international organization to exercise quasi-prosecutorial power; using this authority effectively required a fully cooperative attorney general. The Guatemalan legislature modernized legal norms (regarding organized crime and anticorruption laws) and authorized new investigation tools (including wiretapping, special courts, witness protection, and plea bargaining) crucial for CICIG's effectiveness. CICIG and national actors proposed packages of legislative and constitutional reforms to strengthen the judicial sector, a road map for change that is slowly unfolding. The Commission was able to rely on the critical support of national NGOs, the United States, a group of international donors, and, eventually, a public fed up with corruption. Its mandate, painfully renewed every two years, will likely cover some 12 years by the end of President Morales's term. It has been able to raise an average of some \$13-15 million each year for its operations.

Another Commission with these characteristics would be worthwhile. This is the lesson from today's CICIG. At the same time, however, although CICIG's investigative and co-prosecutorial authority were written into its mandate, and the constitutional rank of the CICIG agreement protected it from domestic legislative efforts to constrict the scope of its work, many key commitments—including the cooperation of judicial and security institutions, new legal and forensic tools, and fundamental reforms—were difficult to obtain. Another CICIG would likely face similar challenges from national actors who have much to lose from an effective international interloper that might dismantle clientelistic structures supporting their economic and political interests. Ironically, CICIG's successes may make it more difficult to establish future CICIG-like entities, since established power structures will be aware of a robust commission's ability to threaten the status quo.<sup>437</sup>

Ideally, the UN would seek to minimize roadblocks by requiring any government requesting a CICIG to establish the necessary legal framework, forensic tools, and cooperation mechanisms before a Commission begins work. Practically, this may not be possible in many cases, given the urgency compelling a government to ask for assistance and the timetables for effective legislative and institutional reform. Building on CICIG's insights, the UN could opt for a phased installation that would secure the government commitments necessary for effectiveness

while getting the operation under way on the ground. An early team could establish basic administrative structures while working with the government and national reform actors to draft needed legislative reforms, produce cooperation agreements with justice and security ministries, build a national coalition, and undertake a public information campaign to encourage broad public participation and support. The full investigation and prosecution support team, recruited during the first phase, could then follow once the basic structures were in place.

The objective is to avoid, to the extent possible, CICIG's early operational struggles. As it began its work in Guatemala, the Commission faced a wide range of challenges for which it was not fully prepared. Much of this was due to CICIG's novelty and the resulting internal organizational and management problems, but most arose from Guatemalan institutional blockages and lack of government cooperation. The most important challenges from CICIG's experience—those likely to be faced by similar entities in the future—are highlighted below.

## UNDERSTANDING THE PROBLEM

**THE FIRST CHALLENGE IS TO UNDERSTAND THE NATURE OF THE PROBLEM A NEW CICIG WOULD BE ASKED TO ADDRESS.** CICIG was not the outcome of an ideal planning process incorporating contemporary best practices. Rather, it emerged as a second- or third-best solution to a set of Guatemalan-specific problems after years of highly political negotiations. Its novel basic premise—an international prosecution mission operating under domestic law—had no precedents that would offer organizational or operational insights. Yet even without precedents, it was clear that Guatemala's justice and security sector problems were only symptoms of broader ailments in the country's political structures and practices.

Guatemala's particular structures of impunity are similar, in important respects, to those in other countries with ineffective judicial systems: weak state institutions permeated by clientelistic social networks and influence peddling, because powerful economic and political elites prefer a small, nonthreatening state disposed to serve private economic interests. And those interests can be served only by capturing, or materially influencing, state bodies with economic and regulatory importance. In this form of political order, judicial and security institutions are crucial sites of control. The fundamental question here is whether (and how) a CICIG-like entity can contribute to national efforts to break this fragility/impunity circle by focusing principally on the judicial and security sectors.

CICIG's understanding of Guatemala's problems, and how to address them through its investigations, evolved significantly from 2008 to 2015. The Commission shifted from opportunistic investigations of illegal security structures and criminal gangs in the police and Interior Ministry and organized crime to the structures of political corruption. This move was the result of CICIG's assessment that sustainable impact was not possible without addressing the systemic practices of Guatemalan politics—the links between illegal financing of political actors through campaign contributions, embezzlement, or capture of state contracts - sustaining weak judicial and security institutions. These insights are probably appropriate for other states interested in a CICIG's assistance—in Honduras, for example, political corruption



has been the focus of months of national protests—and robust efforts against corruption may have the capacity to generate broad national support for rule of law reform.<sup>438</sup>

Any new CICIG will face something similar to the Guatemalan context: a complex social dynamic marked by the interplay among poverty, social and criminal violence, and a complex political dynamic in which a prosecution entity has a weak hand to play when the impunity problems are systemic, deeply imbedded in national political practices. The UN hoped that CICIG might provide a positive, if limited, impact on judicial performance, which would promote sustainable national reforms strengthening the government's capacity to manage criminal violence. Any new CICIG must understand the complex political dynamic of its targeted country and develop a strategy realistically responding to the difficulties of maneuvering in a fragile environment.

## SOLVING THE CONSTITUTIONAL ISSUES

### **CICIG, AND ITS PREDECESSOR, CICIACS, WERE NOVEL (AND CONTENTIOUS)**

**PROPOSALS** because they gave international actors a role in one of the core domains of national sovereignty: the power to investigate and prosecute crimes. CICIG's negotiators believed that the operative terms of its mandate, once approved by the Guatemalan Congress, had to enjoy constitutional rank to avoid courts unfavorably interpreting conflicts between CICIG's mandate and national law or congressional efforts to restrict its capacities with new legislation. The only way for CICIG to escape these threats was through Article 46 of the Guatemalan Constitution, which grants "human rights treaties" a juridical rank above all other domestic legislation. The strategy was certain to be controversial and face a constitutional challenge, but was, in the UN's view, the only way to avoid the trap of an international mission dependent upon the goodwill of institutions that were among its investigation targets.

The first constitutional gambit (CICIACS) was not successful; it failed for lack of political, as much as legal, support. Government and NGO efforts to reshape the proposal foundered on the assumption that a UN mission without independent prosecutorial powers was unlikely to produce any practical results. The Guatemalan human rights NGOs split between supporters of any international support in a dire situation and critics insisting that a watered-down CICIACS would be useless. The UN originally favored a strong, CICIACS-like mission, refusing to consider an operation with no political leverage, but, in the end, did not feel able to abandon Guatemala in the face of growing violence after supporting the country's peace and democratization process for more than 20 years. The second effort, a CICIG without independent prosecutorial authority but still understood as a "human rights treaty," was approved by Guatemala's Constitutional Court. CICIG's mandate terms still supersede any contrary national legislation, allowing the Commission to participate as a third-party "co-prosecutor" under Guatemala's rules of criminal procedure and assuring its (de facto) access to information held by state institutions.

The authors of any proposal for a new CICIG-like body would face this dual constitutional challenge: crafting an agreement responsive to constitutional concerns and then successfully defending it—politically as well as legally—against likely judicial attacks during both the ratification and implementation phases.

## GETTING THE MANDATE RIGHT

**THE TERMS OF THE MANDATE SHOULD BE DRIVEN BY THE NATURE OF THE IMPUNITY PROBLEM:** broad enough to give the CICIG-like entity the flexibility to modify strategy in the light of changing conditions, but clear enough to define its strategic lines of investigation and/or institutional support. CICIG's mandate language was vague, largely because of the need to link the Commission's work to human rights purposes in order to secure constitutional rank for the agreement's terms. That vagueness gave the Commission great latitude to modify its investigative targets and methodologies in response to its evolving understanding of national conditions and challenges. Although CICIG's initial targets were political-criminal networks, it was eventually able to address a wide array of illicit conduct—including presidential embezzlement, state contracting fraud, illegal adoptions, judicial malfeasance, and corruption—through the impunity language in its mandate.

Two years was clearly not long enough for the original CICIG mandate, and would not have been even if the start-up process had been relatively smooth. A mission of 100-200 staff, particularly with significant security requirements, requires at least six months to get organized enough to begin serious investigations. Devising political and investigation/prosecution strategies also takes time, parallel to the establishment of functional relationships with key national institutions such as the Office of the Public Prosecutor. And carrying out thorough investigations in restrictive security environments, particularly if the investigations are designed to produce evidence for prosecution, and carrying forward trials in poorly functioning courts, can easily take two or three years. Consequently, an initial mandate involving investigations and prosecutions should require at least an initial three years. The shorter period may have pushed CICIG to take on inappropriate cases to show early results in order to secure a mandate extension. The two-year renewal cycle was enormously distracting for the Commission and gave its opponents regular opportunities to lobby against an extension.

The mandate of any future CICIG-like body should also carefully address capacity building or institution reform challenges. CICIG's experience has been ambiguous; carrying out investigations and assisting with prosecutions have been resource- and security-heavy tasks not easily compatible with broad skills training and capacity building responsibilities. CICIG's latest approach—training prosecutors and investigators through joint investigations and the minimally required training seminars, transferring capacities whole (such as CICIG's analysis unit moving to the Public Prosecutor's Office), and leaving everything else to donors—seems to strike a reasonable balance.

## GETTING THE STRUCTURE RIGHT

**ONE OF CICIG'S MOST TELLING LESSONS IS THE NEED TO GET THE ORGANIZATIONAL STRUCTURE RIGHT IN LIGHT OF A STRATEGIC UNDERSTANDING OF THE COUNTRY'S IMPUNITY CHALLENGES.** This includes: (i) the status of the entity and its management as well as its oversight relationship with the UN; and (ii) the organizational and substantive structure of the mission.

The relationship issue with the UN is complex. On the one hand, were CICIG a UN organ, most of its initial organizational and recruitment problems would have been minimized, and the Commission would have been able to draw on the UN for organizational, management, financial, security, and staffing support throughout its mandate. The UN would have been able to play a stronger strategic and oversight role in the Commission's work, insisting on more substantive political and media sections, and reducing the ongoing tensions between the field and headquarters cultures. The commissioner's unlimited discretion would, in principle, have been constrained by UN bureaucratic oversight and its finances scrutinized on a regular basis.

On the other hand, a greater UN management and oversight role may have undermined one of CICIG's greatest advantages: its ability to move quickly, creatively, and flexibly in a dangerous and volatile field. The UN bureaucracy is heavy, and its reporting and oversight procedures cumbersome, slow, and often intrusive as member states review performance and budget and staffing requests. Furthermore, the UN, particularly DPA, has very limited experience organizing and managing prosecutorial missions like CICIG.<sup>439</sup> The need for secrecy, heavy security, intelligence capacities, wiretapping and other investigative technologies, unaccountable funds for informants, and prosecutorial discretion creates management challenges for which the UN is unaccustomed and currently unsuited. And of equal importance, the UN would need to accept the role of a highly visible and controversial commissioner like Castresana and the inevitably provocative impact of a CICIG on the national politics of a member state—an uncomfortable position for an organization that generally prefers staid bureaucrats at the head of its field operations.

The need for secrecy, heavy security, intelligence capacities, wiretapping and other investigative technologies, unaccountable funds for informants, and prosecutorial discretion creates management challenges for which the UN is unaccustomed and currently unsuited.

Nonetheless, if the UN is to organize another CICIG, it will have to find a balance between these two poles to provide for substantive UN support and oversight while preserving CICIG's abilities to operate effectively to investigate and prosecute cases. Castresana has correctly noted that DPA does not have the specialized knowledge or capacity to manage a field operation of this kind and has suggested that the UN create a specialized unit to manage these activities.<sup>440</sup> Dall'Anese was skeptical about country-based CICIG missions and suggested the creation of a regional Central American CICIG and a court for organized crime cases.<sup>441</sup> While it is not clear that the UN will have enough CICIG business to create a specialized unit, the concerns about DPA's capacity are valid and should compel early procedural reforms. These might include a set of protocol arrangements among DPA, the Secretariat administrative and security departments, the Department of Peacekeeping Operations, and the UN Office on Drugs and Crime to govern the establishment of a CICIG-like entity. DPA's continuing role is important to ensure that future prosecutorial missions maintain a broad, long-term political focus on the structures of impunity beyond the short-term concentration on cases.<sup>442</sup> The UN would also need to develop a streamlined set of procedures to minimize bureaucratic interference and preserve secrecy.

## ENSURING GOVERNMENT COMMITMENT AND A NATIONAL COALITION

### **THE ABILITY TO ESTABLISH AND SUSTAIN A CICIG-LIKE MODEL IN A FRAGILE STATE**

depends heavily upon the nature of the political coalition requesting support. In weak states hobbled by social and criminal violence and clientelistic politics, reform coalitions strong enough to invite, and assure political support for, an international prosecution entity capable of challenging political corruption and organized crime are rare. This was, and remains the case, in Guatemala. In order to be minimally effective, a CICIG requires a strong, reliable government institutional partner and a solid nongovernmental coalition, whether comprised of NGOs or business actors.

The CICIG experience demonstrated the risks of organizing a mission with only narrow, lukewarm government support. While the negotiations between Guatemala and the UN for the creation of CICIACS and then CICIG were led by government officials, the level of support within the Portillo and Berger administrations for the respective proposals was thin and driven in each case by the interests of a foreign minister and a vice president. The Berger government was not willing to fight for privileges and immunities for Guatemalan staff in the light of the Constitutional Court opinion, even though MINUGUA had negotiated a solution a decade earlier. Colom seemed schizophrenic about the Commission, removing officials at its request, on the one hand, then negotiating for unqualified judges and attorneys general on the other, indifferent to all but political expediency. Many of the political parties dominating the legislatures during the two administrations, including those representing the government, opposed an international commission. They were joined by the conservative oligarchy and business elites, the military, and much of the judiciary, legal, and security sectors.

CICIG's strongest allies were human rights NGOs. They negotiated the mandate and structure of the first proposal in 2002 and then garnered the support of Portillo's foreign minister and the international community in early 2003. While most political actors across three governments

and three congresses opposed an international commission, the NGOs nurtured the proposal forward, provided legal drafting support to the Portillo and Berger governments, produced explanatory brochures, and lobbied the Guatemalan Congress, the media, and the international community to secure adoption of the proposal. After CICIG's ratification, these civil society organizations provided strategic advice and information on political-criminal structures embedded in Guatemalan state institutions. They lobbied the international community to provide full political and financial support, publicly rallied to the Commission's defense when its commissioners came under attack, and brought the Commission into civil society coalitions that were working to improve transparency in the selection of judicial officials.

The lack of a politically significant support coalition beyond the NGOs and the international community produced predictable consequences. Congress has failed to move forward on many of the constitutional or legal reform proposals submitted by the Commission in 2009, 2010, and 2011. Both Presidents Colom and Pérez Molina were unwilling to submit approval of the Commission's mandate extensions to Congress, preferring the much less risky exchange of letters with the UN. Business elites have alternatively supported and then attacked the Commission, responding to the interests behind the cases on the Commission's agenda. With no solid base of support, Commissioner Castresana believed he had to maneuver CICIG's case selection and management among competing political and economic factions to avoid precisely the circumstances he brought upon himself in May 2010: strong opposition from an array of national, political, and economic interests that ultimately forced him to resign. He was correct, of course, when he charged that the government had failed to meet its obligations to CICIG, but it should also have been clear in 2007 that no Guatemalan executive had the capacity to guarantee Congressional support for ratification and, given the fractious nature of the Congress, adopt packages of legal and constitutional reforms requested by the Commission.

## FINDING A WAY TO WORK WITH NATIONAL INSTITUTIONS

**CICIG'S PRINCIPLE CHALLENGE WAS TO CREATE FAVORABLE CONDITIONS FOR PRODUCTIVE COLLABORATION** with the Public Prosecutor's Office, the National Civil Police, the judiciary, and Congress. CICIG largely abandoned efforts to work with the National Civil Police in 2008, lost the judiciary, and never made much progress with legislators. Collaboration with the Public Prosecutor's Office varied depending on the attorney general, shifting from poor under Juan Luis Florido to excellent under Claudia Paz y Paz and now Thelma Aldana. During CICIG's first year, though, the Commission created unnecessary friction with national prosecutors and investigators through an aggressive and often arrogant approach deeply resented by Guatemalan actors. It was inevitable that CICIG's international lawyers and police—many of whom were not considered stellar professionals in their own right—would find many Guatemalan counterparts' legal, analytical, and investigative skills to be limited, and their tendency to move slowly and deliberately to be frustrating. Nonetheless, this was to be expected, and the attitudes and behavior of many of the well-paid, well-resourced, and well-protected internationals were inappropriate and did little to contribute to "skills transfer" or institution building. This is an issue that any future CICIG must address at the beginning of its work and must monitor throughout the mandate.

## PREPARING FOR BLOCKAGES

**THE CICIG EXPERIENCE PROVIDES A ROUGH GUIDE** to the nature of the blockages that another prosecution entity would face in a fragile state similar to Guatemala. It offers a basis for developing early strategies to avoid or address roadblocks, gleaned from CICIG's successful and ineffective responses.

- **LACK OF COOPERATION FROM THE PUBLIC PROSECUTOR.** CICIG ran into immediate problems with muted cooperation from its principal national partner, the Public Prosecutor's Office. The attorney general proved less-than-enthusiastic about an aggressive CICIG role and failed to respond to Commission complaints about prosecutors, such as Alberto Matus, who were blocking access to case files and witnesses, and seemed to be undermining investigations. CICIG responded in three ways: asking the president to remove the attorney general and several prosecutors, filing a criminal complaint against Matus, and using the media to denounce the obstruction of justice. President Colom agreed to ask for the resignation of the attorney general, and Matus and other prosecutors left shortly thereafter. But the new attorney general agreed to indict Matus only on two minor charges, insisting that CICIG had not produced evidence to support obstruction of justice and conspiracy. It was this decision that launched Castresana's media presence, and he publicly forced the attorney general to back down. CICIG's mandate permits the Commission to file claims against prosecutors and other state officials it believes are blocking investigations. This strategy has worked when the attorney general has been cooperative; when not, CICIG has turned to the press.
- **AN UNHELPFUL JUDICIARY.** CICIG has complained throughout its mandate that progress in collaborating with the Public Prosecutor has been undermined by judicial responses to its high-impact cases. Judges have moved cases very slowly, refused to allow CICIG to participate as a private prosecutor, allowed defendants to go free on bail in the face of CICIG and Public Prosecutor objections, and exonerated defendants with selective assessments of evidence or poorly reasoned decisions. The Commission has insisted that much of this is the result of influence peddling, corruption, or political interference. Lack of legal education and reasoning skills has also been a factor, and some judges insist that CICIG lawyers have mishandled cases. Although it is difficult to measure the contribution of each element to CICIG's troubles with the courts, these obstructions are common in clientelistic judicial systems. CICIG's commissioners have responded in three ways: using the media to denounce judges defying CICIG and Public Prosecutor arguments, filing administrative charges, and asking the Supreme Court to take measures against recalcitrant magistrates. CICIG also played a role—polemical under Castresana, procedural under his successors—in the selection processes for the attorney general, and judges and magistrates for the Supreme and Constitutional Courts, joining with civil society organizations, governance institutes, and the business community to identify unqualified candidates. These strategies were only partially useful; while a number of judges were reassigned or cases transferred to new courts, many resisted CICIG pressure, and the Supreme Court proved very defensive in the face of relentless attacks on the institution.

- **WITNESS PROTECTION.** At the beginning of its mandate, CICIG and the Public Prosecutor faced constant challenges in attempting to offer protection to witnesses, to keep them alive and free from intimidation while building cases. Many of the witnesses were criminal targets who had agreed to assist the prosecution in exchange for a lenient sentence. Developing an effective witness protection program was one of CICIG's early priorities. The Public Prosecutor's Office has since established a working witness protection program, and new Supreme Court rules allowing witness testimony via video conferencing technology have added protection.
- **CONGRESSIONAL INERTIA.** The Guatemalan Congress has remained a major hurdle for CICIG since its installation in late 2007. Deputies have refused to move on two packages of legal and constitutional reforms submitted to the legislature in 2008 and 2009, although Congress did approve important changes to the Organized Crime Law and adopted a Disposition of Criminal Assets Law (both spurred by fallout from the *Rosenberg* case) that may help with judicial system financing. CICIG's commissioners have regularly lobbied Congress on these issues; they have been joined by NGOs and the diplomatic community, all to little avail. These blockages reaffirm the importance of a government commitment to undertake fundamental reforms facilitating the fight against political corruption, organized crime, and impunity before a CICIG-like entity is established. The CICIG agreement, for reasons of time, committed the Guatemalan government to undertake unspecified reforms and gave the UN the right to end the agreement if the government failed to cooperate. The leverage for these changes is greatest when UN participation is conditioned on their adoption.
- **SECURITY THREATS.** CICIG dedicated enormous resources—perhaps half of its annual budget—to security for its staff and premises, yet it was never clear that such extensive protection was necessary. It was expensive, intrusive, isolated CICIG from the public, and established a stark contrast with the minimal protection available to national prosecutors, investigators, and judges working alongside CICIG on the same cases. Security concerns limited the duration and geographic reach of investigations (daylight hours near the capital) and contributed to an oppressive atmosphere within the Commission. Any new CICIG entity should carry out a realistic threat assessment and attempt to layer security in a less heavy-handed manner.
- **MEDIA ATTACKS.** The media in Guatemala is generally highly politicized, owned by elites with strong political and economic interests. Those interests likely shaped the media's approaches to and evaluations of CICIG's work. The media did provide Castresana the pulpit he believed he needed to defend CICIG's work in public against corrupt institutions and political actors. Nonetheless, the Commission was frequently criticized and often failed to defend itself effectively. Much of this was probably inevitable, but CICIG made it worse by failing to develop a media outreach and management strategy at the beginning of its work or a campaign to educate both the public and the media on its mandate. Any future CICIG-like entity should include a robust media unit and well-funded outreach and education strategy from the outset.



## PURSUING A BROADER ROLE FOR THE INTERNATIONAL COMMUNITY

**THE INTERNATIONAL COMMUNITY HAS BEEN VERY SUPPORTIVE OF CICIG**, with embassies and donors in Guatemala lobbying national actors, issuing public statements defending the Commission against its critics, and providing some \$15-20 million per year in budgetary support. Several governments also seconded police investigators and security officials during CICIG's start-up year when the Commission was struggling to recruit staff. Nonetheless, UN member states may be able to provide broader political support by reorienting political and economic relations with Guatemala in a way that might encourage elites to negotiate the alliances for stronger rule of law institutions that would help the changes initiated during CICIG's mandate take root. The United States, for example, is Guatemala's dominant political, cultural, and economic partner, and has significant leverage with the country. Yet the U.S. has largely failed to marshal that leverage to encourage elites to support a stronger, more inclusive state, even to combat the common threat of transnational organized crime. Similarly, other donor states can do more to promote support for CICIG within Guatemala.

# CONCLUSION

**Viewed from afar, the story of CICIG appears to be one of steady progress from an uncertain and contested founding to its success in exposing the *La Linea* scheme and bringing down a president and vice president accused of corruption.** Yet as this report has sought to document, a closer view of the Commission reveals a much more complex and nuanced picture.

CICIG changed forms several times before it could even begin its work. Initially conceived as a request from Guatemalan NGOs to the UN for an international commission to investigate abuses by remnants of the military's intelligence networks, CICIG was then reconceived by the UN as an international prosecutor's office that would independently investigate and prosecute under Guatemalan law. But that idea was opposed by the Guatemalan Congress and Constitutional Court. After further negotiations, and despite ongoing opposition from Congress, CICIG finally entered Guatemala in 2007 with a limited mandate, no independent ability to prosecute cases, and no roadmap to guide its work.

For most of its existence, CICIG has faced sustained resistance from sections of Guatemalan society, including from the justice sector, Congress, economic elites, and the many vested interests threatened by the Commission's work. It is hardly surprising, then, that CICIG stumbled and struggled to make an impact, and that its first commissioner, Carlos Castresana, resigned in frustration. The Commission occasionally strayed from its mission, taking on bus extortions, illegal adoptions, and garden-variety embezzlement cases, rather than the corruption networks it was mandated to address. Yet even during its awkward early years, CICIG recorded important victories, including its resolution of the *Rosenberg* case, which proved that President Álvaro Colom had not committed murder; its participation in the conviction of former-President Alfonso Portillo for corruption; and helping to reveal an illegal security operation carrying out targeted killings run by President Óscar Berger's interior minister, Carlos Vielmann.

Despite the appointment of Claudia Paz y Paz as Guatemala's attorney general, CICIG struggled to make an impact under its second commissioner, Francisco Dall'Anese. Government pressure, particularly around the Ríos Montt trial, frequently thwarted Dall'Anese and led to his resignation in 2013.

By the time Iván Velázquez took the reins as CICIG's third commissioner, it appeared that the Commission was on its last legs, and would likely close its doors with few truly impressive accomplishments to its name. But against the odds, Velázquez was able to return CICIG to its core mission of targeting the nexus of political corruption and criminal activity in Guatemala's compromised state institutions, and found significant success in doing so. Under Velázquez, CICIG recorded a series of stunning victories, including revealing the massive *La Línea* corruption scheme that helped bring down President Pérez Molina and Vice President Baldetti.

Today, CICIG is arguably stronger than ever, and Guatemala is a changed place. The massive protests that forced out Pérez Molina and Baldetti not only upended the country's political order, but now offer hope for a future that is less corrupt and more beholden to the rule of law.

CICIG is hardly a perfect instrument, and its path to success was hardly linear. But for countries struggling with entrenched corruption, organized crime, and compromised state institutions, CICIG now stands as a potent potential model.

# ENDNOTES

- 1 The political economy of state formation has become a central focus in recent years for development agencies struggling to understand the sources of political blockages (the universal “lack of political will”) undermining reform programs. See, e.g., *World Bank, World Development Report 2011: Conflict, Security and Development*, Washington, DC: World Bank, 2011; Organization for Economic Co-Operation and Development, Development Assistance Committee (OECD-DAC), *International Engagement in Fragile States. Can't We do Better?* Paris: OECD, 2011; OECD-DAC, *Supporting State building in Situations of Conflict and Fragility: Policy Guidance*, Paris: OEDC, 2010; USAID, *State building in Situations of Fragility and Conflict*, Washington DC: USAID, 2011.
- 2 Douglass North would describe Guatemala as a “limited access order;” the most common form of large-scale political organization in recorded human history. See Douglass North, John Wallis, and Barry Weingarten, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded History*, New York: Cambridge University Press, 2009. North et al. produced a sophisticated historical analysis of the patterns underlying different forms of social order to arrive at a broad framework explaining political change. The central contrast is between the historically dominant “limited access orders” based on clientelistic elite coalitions and the relatively recent “open access orders” based upon impersonal political and organizational institutions. Much of the book explains the logic underlying the two broad social structures, the steps necessary for the transition from limited to open orders, and the reasons for the complex, and very different, institutional behaviors characteristic of each. See, also, Douglass North, John Wallis, Steven Webb, Barry Weingast, eds., *In the Shadow of Violence: Politics, Economics, and the Problems of Development*, New York: Cambridge University Press, 2013.
- 3 These state structures are often described as “neopatrimonial” systems - hybrids combining traditional particularist client-patron structures overlaying, and dominating, formal liberal democratic state institutions. See Michael Bratton and Nicolas van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*, Cambridge, UK: Cambridge University Press, 1997; Patrick Chabal and Jean-Pascal Daloz, *Africa Works: Disorder as Political Instrument*, Indiana: University of Indiana Press, 1999; Patrick Chabal, *Africa: The Politics of Suffering and Smiling*, London: Zed Books, 2009, especially chs. 2 and 4.
- 4 Diana Cammack, “The Logic of African Neopatrimonialism: What Role for Donors?” *Development Policy Review*, vol. 5 (2007): 599-614.
- 5 North goes on to note that the “[f]ailure to understand how the much more visible and direct connections among political, economic, religious, and military privileges are integral to the social order is a major impediment to a better development policy and better social science history.” North et al., 2009 (see n. 2), p. 269.
- 6 The definition of Guatemala’s “elites,” historic and contemporary, is complicated, and its contours are still opaque and disputed, with good data scarce. One sociologist estimated that a core group of 22 families, linked by marriage to another 26 families just outside the core, have dominated economic and political life in Guatemala for almost 400 years. Marta Casaus Arzu, *Guatemala: Linaje y racismo*, San Jose, Costa Rica: Facultad Latinoamericana de Ciencias Sociales, 1992. Former military, organized crime, and a new group of economic and political actors (“emerging capital”) are also elements of the contemporary elite structure.
- 7 Jennifer Schirmer, *The Guatemalan Military Project: A Violence Called Democracy*, Philadelphia: University of Pennsylvania Press, 1998.
- 8 Andrew Schlewitz, “Explaining Militarism: The Case of Guatemala,” *Center for the Study of Social Change*, New School for Social Research, June 13, 1977.
- 9 For background on the roots of the conflict and the role of economic elites and the military, see Report of the Commission for Historical Clarification, *Guatemala: Memory of Silence*, 1999, Conclusions, paras. 108-28.
- 10 For a description of that alliance, which still shadows contemporary politics, particularly war crimes prosecutions, see Martin Rodriguez Pellecer, “Los militares y la elite, la alianza que gana la guerra,” *Plaza Publica*, August 21, 2013.
- 11 For a historic overview of the economic elite's role in shaping politics and economic policy, see PNUD, *Guatemala: Un economia al servicio del desarrollo humano?* Informe Nacional de Desarrollo Humano 2007/2008, Guatemala, 2008, chs. 13-15. CACIF often serves as a “placeholder” reference for this group.

- 12 Paul Dosal, *El Ascenso de las Elites Industriales en Guatemala 1871-1944*, Guatemala: Piedra Santa, 2005.
- 13 Schirmer, 1998 (see n. 7).
- 14 The accords committed the Guatemalan state to undertake comprehensive structural reforms designed to end the historic legacies of indigenous discrimination and exclusion and transform the administrative instruments of an authoritarian regime into institutions capable of sustaining a liberal democratic order. They included agreements on human rights, indigenous affairs, macroeconomic and fiscal policy, labor issues, land distribution, agrarian policy, military and public security reform, and strengthening the judiciary sector and public administration. The key security sector commitments called for the creation of a new civilian national police force, the reduction and reconfiguration of the military to focus exclusively on external threats under civilian oversight and control, the creation of a civilian intelligence agency, and the elimination of all counterinsurgency structures. In total, 13 agreements contained more than 300 institutional, economic, and social reform commitments. See United Nations, "Report of the Secretary General on the United Nations Verification Mission in Guatemala" A/59/307, para. 18, August 30, 2004.
- 15 Interview with Edelberto Torres-Rivas, Guatemala City, March 2012.
- 16 Edgar Gutierrez, "Poder político del gran empresario en el periodo democrático," *Revista Analisis de la Realidad Nacional*, Guatemala City: Universidad de San Carlos, March 2012.
- 17 Andrea Calvaruso, Fabrizio Feliciani, and Ricardo Stein, *Informe final de consultoría para el proyecto "Sistemas de Apoyo Estratégico a la Presidencia/Vicepresidencia de la República"*, Guatemala City, February 2007.
- 18 Juan Hernandez Pico, "Las elites tradicionales en pugna con las elites emergentes," *Envío*, no. 397, April 2015.
- 19 Jose Alfredo Cabrera, a former president of the Bar Association, is a self-professed member of the emerging elite who was the first member of his family to attend university. He also believes himself to be the first anti-elite head of the Bar. Interview, Guatemala City, March 15, 2012.
- 20 Interviews with Edgar Gutierrez and Edelberto Torres-Rivas, Guatemala City, March 2012.
- 21 See Stephen Dudley, "Justice and the Creation of a Mafia State in Guatemala," *InsightCrime*, September 15, 2014; "Las 5 claves para entender la disputa por la justicia," *Nomada*, April 22, 2014.
- 22 That advantage, of course, originated in the wealth and political capital obtained through historical control of economic resources and government institutions. As Acemoglu and Robinson note, "political institutions enable the elites controlling power to choose economic institutions with few constraints or opposing forces. They also enable the elites to structure future political institutions and their evolution. Extractive economic institutions, in turn, enrich the same elites, and their economic wealth and power help consolidate their political dominance." Daron Acemoglu and James Robinson, *Why Nations Fail: The Origins of Power, Prosperity and Poverty*, New York: Crown Publishers, 2012, p. 81.
- 23 For overviews, see Washington Office on Latin America (WOLA), *The Captive State: Organized Crime and Human Rights in Latin America*, October 2007; Arlene Tickner, "Latin America and the Caribbean: Domestic and Transnational Insecurity," *Coping with Crisis Working Paper Series*, International Peace Academy, February 2007; UN Office on Drugs and Crime (UNODC), *Crime and Development in Central America: Caught in the Crossfire*, New York: UNODC, 2007; International Crisis Group, *Latin American Drugs I: Losing the Fight and Latin American Drugs II: Improving Policy and Reducing Harm*, March 14, 2008; International Crisis Group, *Guatemala: Squeezed Between Crime and Impunity*, June 22, 2010; Ivan Briscoe and Martin Pellecer, *A State Under Siege: Elites, Criminal Networks and Institutional Reform in Guatemala*, Netherlands Institute of International Relations, September 2010; International Crisis Group, *Guatemala: Drug Trafficking and Violence*, October 11, 2011; Ivan Briscoe and Marlies Stappers, *Breaking the Wave: Critical Steps in the Fight Against Crime in Guatemala*, Clingendale Institute and Impunity Watch, January 2012.
- 24 Julie Lopez, "Guatemala's Crossroads: The Democratization of Violence and Second Chances," in Cynthia Arnson and Eric Olsen, eds., *Organized Crime in Central America: The Northern Triangle*, Washington, DC: Woodrow Wilson Center for Scholars, 2011, p. 147.
- 25 *Ibid.*, pp. 144-45.
- 26 David Keen, "Demobilizing Guatemala," *Crisis States Program*, Working Paper No. 37, Development Research Center, London School of Economics, 2003, p. 5. Lopez notes the military controlled the state (roads, airports, sea ports, customs, communications) in those years and consequently "criminal activity was impossible without the knowledge of the armed forces." Lopez, 2011 (see n. 26), p. 148 (quoting Hector Rosales). The U.S. believed that a number of senior military officials, particularly those working with military intelligence, managed private criminal networks linked to international drug smuggling cartels, providing secure transshipment services

- (airstrips, customs clearance, ports and coastal harbors, ground transportation) and protection from police and judicial investigations. U.S. drug enforcement officials apparently detected the involvement of at least 31 active duty Guatemalan military officers, most in military intelligence, in drugs transshipment between 1986 and 1995 just after General Francisco Ortega Menaldo became intelligence chief. Frank Smyth, "The Untouchable Narco-State: Guatemala's Military Defies the DEA," *The Texas Observer*, November 18, 2005.
- 27 See Julia Lopez, "El ocaso de los Lorenzana," *Plaza Publica*, April 29, 2011; International Crisis Group, *Guatemala: Drug Trafficking and Violence*, October 11, 2011; Evelyn Boche and Cindy Espina, "The Cut Throat Business of Local Politics in Guatemala," *InsightCrime*, September 4, 2015.
- 28 Briscoe suggests that "the ability of drug cartels to constrain police officers and local authorities owes much to their growing importance as sources of cash and other benefits." Briscoe and Pellecer, 2010 (see n. 23), p. iv.
- 29 Briscoe suggests these agreements constitute a "double" social contract between cartels and local populations (to provide proto-welfare and protection services in exchange for tolerance) and the police and government officials (financing for elections). Briscoe and Stappers, 2012 (see n. 23), p. 25.
- 30 The unprecedented flurry of arrests of major organized crime actors by the Office of the Public Prosecutor under Claudia Paz y Paz in 2011 and 2012 was the result of requests from the U.S., whose Department of Justice had indicted several for drugs trafficking; none were officially wanted by the Guatemalan judicial system, and all were promptly extradited to the U.S. Hector Mendoza, leader of the Mendoza criminal organization in the north of Guatemala, was arrested in September 2014 in an Office of the Public Prosecutor operation supported by CICIG and is pending trial in Guatemala.
- 31 The transition began with a Constitutional Assembly in 1984, which produced a new constitution in 1985, and continued through the election of Vinicio Cerezo (1986-1990), the turbulent administration of Jorge Serrano Elias (1990-1993) and his 1993 auto-golpe, and ended with Ramiro de Leon Carpio (1993-96).
- 32 Mark Jones, "Weakly Institutionalized Party Systems and Presidential Democracy: Evidence from Guatemala," *International Studies Review* 14, 2011; ASIES, *Monografía de los partidos políticos 2004-08*, Guatemala City: ASIES, 2009.
- 33 Briscoe and Pellecer, 2010 (see n. 23),
- 34 CICIG, *El financiamiento de la política en Guatemala*, July 16, 2015.
- 35 President Colom lost 26 of 51 UNE deputies early in his administration when they defected to a new party, LIDER, created by an ambitious UNE deputy, Manuel Baldizón, reportedly for a switching fee of \$60,000 each. Baldizón went on to run for the presidency in 2011, finishing second to Otto Pérez Molina in the first round and losing by a wide margin in the final. Baldizón ran again in 2015, this time as the heavy favorite, but failed to make it into the second round, a casualty of the new anti-corruption mood of Guatemala's voters.
- 36 Calvaruso, 2007 (see n. 17), p. 19.
- 37 William Stanley, "Building New Police Forces in El Salvador and Guatemala: Learning and Counter-Learning," *International Peacekeeping* 6, no. 4 (1999).
- 38 See MINUGUA, Area Jurídica, *Informe Final*, December 2001.
- 39 Several former high-ranking military officers accused of links with criminal activities were close advisors of the new president (as a hedge, some suggested, against the agrarian and business elites prepared to oppose land and fiscal reforms) and came to wield significant influence inside the administration. They included General Francisco Ortega Menaldo, Colonel Napoleon Rojas Mendez, and Colonel Jacobo Esdras Salan Sanchez. It was widely believed that Menaldo was connected to a group established by Alfredo Moreno, who transformed a counterinsurgency intelligence structure in the customs department (to track the movement of guerillas and arms in and out of the country) into a contraband network. Menaldo, Portillo, and Ríos Montt were said to belong to a "Lifeguard Group (*Grupo Salvavidas*)" to block investigations into the network's activities. See "La Cofradía en era democrática asesorado por Alfonso Portillo," *El Periodico*, February 2, 2010. Writing in 2002, journalist Ruben Zamora claimed that "[t]his criminal organization has remained intact for more than two decades...[and] has become a solid and vigorous institution...[that] democratically took over the executive [under Portillo] and presently has control over every string of actual power." See Ruben Zamora, "El crimen organizado, el ejército y el futuro de los guatemaltecos," *El Periodico*, November 12, 2002. Remnants of these groups were said to participate in the original networks targeted by human rights NGOs in 2002.
- 40 For an overview of the corruption and violence of the first half of the Portillo administration, see Juan Hernández Pico, "The Armed Wing of the 'Hidden Powers' in Action," *Revista Envío*, no. 249 (April 2002).

- 41 The U.S. government estimated that as of 2002, some 400 metric tons of cocaine were shipped through the Central American corridor annually, with up to half of the total passing through Guatemala. Cocaine seizures had reached some 10 metric tons in 1999. But under the Portillo administration, seizures fell to 1.4 metric tons in 2000, 4.1 in 2001, and 2.4 in 2002. Indeed, in 2002, the National Civilian Police's Anti-Narcotics Operation Department (DOAN) stole more than double the amount of cocaine seized that year. In addition, DOAN agents held a small village hostage while torturing and killing village residents in an effort to steal 2,000 kg of cocaine. See United States, *International Narcotics Control Strategy Report*, Bureau for International Narcotics and Law Enforcement Affairs, Washington, DC: U.S. Department of State, 2003.
- 42 As evidenced by the dismissal of 2,088 officers in 2004 and 1,428 in 2005 (in a police force of approximately 20,000 personnel) for participation in serious crimes. The new anti-narcotics unit, which replaced the corrupt DOAN after its closure in 2002, suffered its own scandal as its director and two top officials were arrested in the United States for drug smuggling. The most striking evidence of the reach of organized crime networks into state institutions occurred in February 2007, when three Salvadoran members of the Central American Parliament traveled to Guatemala to participate in a regional meeting and were abducted and killed by members of the Guatemalan PNC, including the head of its anti-organized crime unit, all allegedly members of a criminal group operating from within the police institution. The four officers were arrested and sent to a maximum security prison; they were, however, killed inside their cells three days later, before they could be interrogated. See Carmen Aida Ibarra, "Crime and Corruption in the Guatemalan Police," *Revista Envío*, no. 38 (March 2007). Berger's government would suffer a posthumous scandal when its interior minister, a beacon of the traditional elite, was accused by CICIG in 2010 of leading a parallel security organization responsible for these and other extra-judicial executions.
- 43 Ricardo Daher, "Guatemala se convierte en Colombia: Los narcos toman el control de los organos de poder comunales," *Semanario Liberación*, August 10, 2007.
- 44 See Report of the Commission for Historical Clarification, *Guatemala: Memory of Silence*, 1999; Oficina de Derechos Humanos del Arzobispado de Guatemala, *Nunca Más: Informe Proyecto Interdiocesano de Recuperación de la Memoria Histórica*, 1998.
- 45 For a comprehensive and well-written description of the Gerardi murder and the subsequent investigation leading to the first convictions of military officials for crimes against civilians in Guatemala, see Francisco Goldman, *The Art of Political Murder: Who Killed the Bishop?*, New York: Grove Press, 2007.
- 46 MINUGUA, *Fourteenth Report on Human Rights*, UN Doc. A/58/566, November 10, 2003, paras. 51-56. These structures had been used to monitor, penetrate, and repress guerilla organizations and a broad range of political, labor, civil society, and academic actors deemed sympathetic to the insurgents.
- 47 Claudia Samayoa, *El rostro del terror: Analisis de los ataques en contra defensores de derechos humanos del 2000 al 2003*, Guatemala City: Coalition para la CICIACS, 2004.
- 48 See Informe del Grupo Conjunto para la Investigación de Grupos Armados Ilegales con Motivación Política en El Salvador, July 28, 1994.
- 49 Interviews with UN officials, New York, December 2011.
- 50 See *Agreement between the Government of Guatemala and the Human Rights Ombudsman for the establishment of CICIACS*, March 13, 2003.
- 51 *Informe de la Mision Tecnica Exploratoria para determinar la viabilidad de la constitucion de una comision para la investigacion de los cuerpos ilegales y aparatos clandestinos de seguridad en Guatemala*, August 31, 2003, on file with author (a member of the evaluation mission).
- 52 Ibid.
- 53 Article 46 "establishes the principle that human rights treaties and agreements approved and ratified by Guatemala take precedence over national law." Constitution of Guatemala, Article 46, 1985.
- 54 Guatemala's legal code provided strong procedural guarantees for individual rights, several of which, such as the *amparo* (a broad constitutional appeal), were often used tactically to delay proceedings indefinitely. Wiretaps and plea bargaining were not permitted, and significant legislative and constitutional changes were required to meet the standards and provide the tools established by the *Palermo Convention on Transnational Organized Crime*.
- 55 Eight NGOs had formed a group called the "Coalition for CICIACS" to advise the government during negotiations and provide analysis and information for a public relations campaign to persuade the press, Congress, the business sector, political parties, and civil society to support the eventual CICIACS agreement.



- The new proposal addressed, but went far beyond, the NGOs' interest in a mechanism to end the threats and attacks against them and push for the dismantling of criminal-political networks. Their primary concern was the viability of an ambitious international proposal in the face of strong national opposition.
- 56 Interview with UN officials, New York, December 2011.
- 57 Erik Garcia, *Los detractores de la CICIACS: Analisis del discurso*, Coalition para la CICIACS, 2004.
- 58 On his first visit to Washington, President Berger told then-Secretary of State Colin Powell that he thought Guatemala's police and prosecutors could handle corruption and organized crime now that Portillo and the FRG had been removed from office. Telephone interview, U.S. diplomat, January 2012.
- 59 Corte de Constitucionalidad, Opinion Consultative, no. 1250-2004, August 5, 2004.
- 60 MINUGUA had requested OHCHR to open an office to continue its human rights monitoring, reporting, and technical assistance work. The negotiations with the government proved difficult; the president did not want the office to be able to issue annual reports criticizing the state of human rights in Guatemala. The issue was resolved - the office issues annual reports - and an agreement signed and ratified in early 2005.
- 61 The government did not contact the UN about CICIG between August 2004 and December 2005.
- 62 Lorena Seijo and Carlos Menocal, "Crimen organizado, tras diputaciones y alcaldías," *Prensa Libre*, February 19, 2007.
- 63 Memorandum (unsigned and undated), "Dilemas y respuestas para el combate de la criminalidad organizada"; interview with Helen Mack, Guatemala, December 2011.
- 64 Interview with Frank LaRue, Guatemala, December 2011.
- 65 Ibid.; interview with Eduardo Stein, Guatemala, December 2011.
- 66 Interviews with UN officials, New York, December 2011; *Marcie Mersky, Case Study: The International Commission against Impunity in Guatemala*, unpublished manuscript, 2011.
- 67 *Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala* ("CICIG"), Art 2(1), December 12, 2006.
- 68 Ibid., Art 1(1)(d).
- 69 As noted in greater detail below, the flexibility of the mandate - in light of the range of demands for CICIG's attention once installed in Guatemala - contributed to a lack of clear strategic direction over much of its first eight years. However, it also permitted CICIG to shift its principal focus from illegal security groups (particularly inside the police and Interior Ministry) and organized crime from 2007 through 2013 to structures supporting political corruption in 2014, a move contributing to broader political change.
- 70 Correspondence from UN Office of Legal Affairs official to author, November 2006.
- 71 Interviews with UN officials, New York, December 2011.
- 72 Both Florido and Viemann would come to rue the trip. CICIG asked for, and obtained, the dismissal of the attorney general shortly after its installation in Guatemala in 2008, and sought an indictment in 2010 against the Interior Minister for running an illegal parallel security structure.
- 73 Editorial, "Dictamen negativo contra la Cicig," *El Periodico*, July 20, 2007.
- 74 "El pulso final por la CICIG," *El Periodico*, June 29, 2007.
- 75 Rodrigo Estrada, "Intensa jormada concluye con aprobacion," *El Periodico*, August 1, 2007; Crosby Giron, "Congreso da vida a CICIG," *Albedrio.org*, August 4, 2007.
- 76 "La CICIG fue la tormenta perfecta," *El Periodico*, August 5, 2007.
- 77 Edgar Gutierrez, "La CICIG y las gusaneras," *El Periodico*, August 6, 2007.
- 78 Claudia Acuna, "Instituciones confiables, el reto de la CICIG dirigida por Castresana," *Prensa Libre*, September 18, 2007.
- 79 Interviews with UN officials, New York, December 2011. *Marcie Mersky, Case Study: The International Commission against Impunity in Guatemala*, unpublished manuscript, 2011.
- 80 CICIG, *Dos anos de labores: Un compromiso con la justicia*, 2009.
- 81 Telephone interviews with CICIG and UN officials, November 2015.
- 82 Interviews with CICIG staff, Guatemala City, March 2012. Castresana initially anticipated a staff of 100, evenly split between internationals and Guatemalans. James Derham, "CICIG on Track for January Inauguration," U.S. Embassy Cable (Wikileaks) 07GUATEMALA2164, October 30, 2007.

- 83 See CICIG, *Un ano despues*, September 2008, p. 3; CICIG, *Cuarto anos de labores*, 2011, p. 9.
- 84 The thematic idea was discussed with the U.S. ambassador. U.S. Embassy Cable (see n. 82, above). By the end of the year, CICIG was grouping its cases into four thematic areas: femicides, bus driver murders, attacks on union leaders, and attacks on human rights defenders.
- 85 Interviews with former CICIG officials, Guatemala City and New York, November 2011.
- 86 James Derham, "CICIG Selecting Cases, Recruiting Staff," U.S. Embassy Cable (Wikileaks), 08GUATEMALA85, January 29, 2008.
- 87 By the end of its first year, CICIG had received 64 formal, and dozens of informal, complaints from the government and the public. The lack of public knowledge of the Commission's mandate produced a wide range of requests for assistance from Guatemalans frustrated with a dysfunctional legal system. CICIG opened investigations into 15 cases. CICIG joined the Office of the Public Prosecutor as a co-prosecutor in two cases: the Zacapa shootout and the Mariachi Loco police extortion racket. CICIG, 2009 (see n. 82), p. 4.
- 88 James Derham, "Deputy Secretary's Meeting with CICG Commissioner Castresana," US Embassy Cable (Wikileaks) 08GUATEMALA796, June 26, 2008.
- 89 James Derham, "CICIG Commissioner Discusses Progress and Challenges," US Embassy Cable (Wikileaks) 08GUATEMALA355, March 19, 2008.
- 90 James Derham, "CICIG Commissioner Provides Update," US Embassy Cable (Wikileaks) 08GUATEMALA621, May 16, 2008.
- 91 Castresana suggested that Florido was "both inefficient and unable to do his job," and was "receptive to political pressures from Congress, former President Portillo...and others, and he interferes with prosecutors' work on politically sensitive cases." US Embassy Cable (Wikileaks) 08GUATEMALA796, June 26, 2008.
- 92 A. Perez, "Juan Luis Florido déjà la Fiscalía General de la Republica," *El Periodico*, July 30, 2008; Coralia Orantes, "Juan Luis Florido renuncio por criticas," *Prensa Libre*, Sept. 31, 2007.
- 93 CICIG's mandate gave it the capacity to denounce to the proper administrative or criminal authorities public officials it felt were obstructing investigations. Kenia Reyes, "CICIG pide cambio de fiscalia en case del crimen de Victor Rivera," *El Periodico*, July 31, 2008. The resignation of Florido and appointment of Velazquez happened so quickly that the president had to issue the oath of office to the new attorney general in an airport waiting room just before the president left for a meeting in Colombia. Kenia Reyes, "Colom realiza juramentacion "express," *El Periodico*, 1 Aug 2008.
- 94 Castresana told the American embassy that CICIG was investigating the involvement of Matus and former senior Interior Ministry advisor Victor Rivera, later assassinated, in the Parlacen murders and subsequent executions of the Guatemalan police accused of the crime. Stephen McFarland, "Chief Homicide Prosecutor Announces Resignation," U.S. Embassy Cable (Wikileaks), 08GUATEMALA1056, August 19, 2008. The investigation of the Parlacen and Rivera killings, augmented by the Pavon and Infiernito prison murder cases, would lead to CICIG's most spectacular allegations: the existence of a parallel security structure in the Berger administration's Interior Ministry responsible for targeted killings, drug thefts and "social cleansing" led by the Interior Minister himself.
- 95 Luis Angel Sas, "CICIG aconseja depurar a la mayoría de la cupula de la Policia," *El Periodico*, July 31, 2008.
- 96 Julio Revolorio, "Nombran a una mujer para dirigir la Policia Nacional," *El Periodico*, Sept. 22, 2008. The reasons for the change were never clarified. Blanco, a career police officer, was the sister of Orlando Blanco, a leader of President Colom's UNE party in Congress. She would later be arrested for running a parallel security structure within the National Civil Police.
- 97 Guatemalan law did not permit wiretapping, controlled drug deliveries, other forensic techniques, or plea bargaining central to modern approaches to combating political corruption and organized crime. Prosecutors and police were therefore forced to rely on vulnerable and frequently unreliable witness testimony while Guatemala had no effective witness protection program.
- 98 Luis Angel Sas, "Se estrena la Cicig, cae un jefe policiaco y tres agentes," *El Periodico*, June 10, 2008.
- 99 Interview with former CICIG official, New York, March 2012.
- 100 Ana Lucia Blas, "Diputados critican escasos resultados de Cicig," *Prensa Libre*, Sept. 10, 2007; Editorial, "A medio mando y sin resultados," *Prensa Libre*, Sept. 12, 2007.
- 101 Stephen McFarland, "CICIG's Challenges, Accomplishments, and Mandate Extension," US Embassy Cable (Wikileaks), 08GUATEMALA1370, 3 Nov 2008.

- 102 Interviews in Guatemala, December 2011 and March 2012.
- 103 A CICIG lawyer thought that the Public Prosecutor's case was initially weak, but "could be strengthened and carried through to a successful conclusion." He also said that "a successful prosecution of Portillo would also entail developing a case against Portillo's attorney general, Carlos de León Argueta." US Embassy Cable (Wikileaks) O8GUATEMALA1370 (see n.101 above). While Portillo was charged with garden-variety corruption - theft of funds from the defense budget with several defense officials - long-circulating rumors tied him to one of the famous military-centered parallel criminal structures, the "Cofradía." (See n. 39, above). CICIG joined the Public Prosecutor on the Portillo prosecution in April 2009 and worked closely with the New York District Attorney, who filed an extradition request, to build a case for embezzlement and money laundering. The Public Prosecutor and CICIG eventually lost the Portillo case and were not able to indict de León for Portillo-era corruption (and a charge in a separate corruption case was rejected by a court in 2012).
- 104 Colom was alleged to have allocated state contract and infrastructure projects to the districts of GANA and FRG deputies and reduced Patriot Party attacks by threatening to release documents implicating Pérez Molina in a congressional embezzlement scandal. For a description of the lobbying and influence peddling in the Presidency from Colom's finance minister, see Juan Alberto Fuentes Knight, *Rendición de Cuentas*, Guatemala: F&G Editores, 2011.
- 105 Human rights NGOs criticized the appointment, associating Gandara with repressive security tactics during the late 1990s. Enrique Naveda, "Presidente reestructura su gabinete de seguridad," *El Periodico*, Jan. 8, 2009. Gandara would only last six months in the post and would later be indicted by CICIG and the Public Prosecutor for planting false evidence in the Rosenberg case, appointing a "band of drug thieves" to senior posts in the National Civil Police, and fraud and embezzlement. Paola Hurtado, "Gandara, el desterrado," *El Periodico*, Jan. 17, 2010; Jerson Ramos, "Gandara ligado a proceso por el fraude en Fraijanes II," *El Periodico*, Feb. 1, 2012.
- 106 Luis Angel Sas, "Entrevista: Confiamos en traer a otros miembros de la conspiración y ponerlos delante de tribunales," *El Periodico*, February 4, 2009; U.S. Embassy Cable (Wikileaks), O9GUATEMALA134, February 12, 2009; Juan Manuel Castillo, "El Fiscal General asegura que la coordinación con CICIG continua," *El Periodico*, February 6, 2009.
- 107 Dina Fernandez, "Castresana echa chispas (y con razon)," *El Periodico*, February 4, 2009.
- 108 Juan Manuel Castillo, "El Fiscal General asegura que la coordinación con CICIG continua," *El Periodico*, February 6, 2009. The two charges were finally reinstated by a judge at the end of the year, after several dilatory appeals by the Matus defense. He remained at liberty, though. Claudia Acuna, "Jueza anade dos dilitos al ex fiscal Alvaro Matus," *Prensa Libre*, December 29, 2009.
- 109 "Activistas respaldan a Cicig en combate a mafias," *Prensa Libre*, February 4, 2009; "Amnestia Internacional muestra preocupacion por escaso de apoyo a al Cicig," *Prensa Libre*, February 10, 2009.
- 110 "Colom pidera ampliar el mandato de Cicig," *Prensa Libre*, March 3, 2009.
- 111 Olga Lopez, "Impunidad cubre a Alfonso Portillo," *Prensa Libre*, October 8, 2009.
- 112 Coralia Orantes, "CICIG acciona contra jueza de proceso contra Portillo," *Prensa Libre*, June 4, 2009.
- 113 Claudia Mendez Arriaza, "El video de Rosenberg y la tormenta desatada en Gobierno," *El Periodico*, May 12, 2009. The entire video with English subtitles is on YouTube at <https://www.youtube.com/watch?v=VxZptUp9a44>. For a transcript of the video, see "Reacciones a las denuncias del abogado Rosenberg," *El Periodico*, May 11, 2009. For an overview of the case and CICIG's investigation, see David Grann, "A Murder Foretold," *The New Yorker*, May 4, 2011.
- 114 Marcela Fernandez and Julio Lara, "Demandan renuncia del presidente," *Prensa Libre*, May 13, 2009.
- 115 "Preparan dos grandes manifestaciones para el domingo," *Prensa Libre*, May 15, 2009; Leonel Diaz Zecena, "Cacif se sumara a marcha pacifica," *Prensa Libre*, May 15, 2009; R. Sandoval, "Manifestaciones se tornan tensas, Policia se ausenta," *El Periodico*, May 14, 2009.
- 116 Luis Angel Sas, "CICIG toma la investigacion del asesinato de Rosenberg," *El Periodico*, May 13, 2009.
- 117 "Congreso apreuba Ley de Comisiones de Postulacion," *Prensa Libre*, May 21, 2009.
- 118 Karen Cardona, "Aprueban leyes de Cicig, y bono dan el priner paso," *Prensa Libre*, Aug. 5, 2009.
- 119 "Congreso ratifica, de urgencia nacional, extension de mandato de la Cicig," *Prensa Libre*, July 16, 2009.
- 120 Juan Manuel Castillo, "Marlene Blanco va a Gobernacion, Rember Larios fuera de la Policia," *El Periodico*, June 9, 2009. She was then appointed Vice Minister of Security in August 2009 only to resign six months later when the Public Prosecutor announced the arrest of her former bodyguards in connection with the murder of a police commander in 2009. Rosmery Gonzalez, "Blanco Lapola renuncia al vice-ministro de seguridad," *El Periodico*, February 18, 2010.

- 121 Paniagua claimed that he was removed from the PNC because he had discovered and dismantled two parallel intelligence units created by Blanco, which had been targeting extortionists for execution. Paola Hurtado, "Lo que callo Porfirio," *El Periodico*, March 6, 2011. The prosecution against Perez Paniagua eventually failed. In court decisions in January and February 2010, he was acquitted of all charges for lack of sufficient evidence. Gladys Galeano, "Admiten imposibilidad para demostrar culpa de Perez," *El Periodico*, February 9, 2011.
- 122 "Cicig empieza a dar frutos," *Prensa Libre*, June 28, 2009.
- 123 Stephen McFarland, "Recommendation that USG Support CICIG Mandate Extension," US Embassy Cable (Wikileaks), 09GUATEMALA239, March 17, 2009.
- 124 Article 186(c) of the Guatemalan Constitution prohibits relatives of a sitting chief executive (or participant in a coup) from running as a candidate for president. Torres was not the only candidate whose fate depended upon the Constitutional Court; Zury Rios Sosa, daughter of Efraín Ríos Montt, hoped to run at the head of the FRG, and Patricia de Arzú, wife of the former president, hoped to lead the PAN.
- 125 Jessica Osorio, "Ven intereses futuros en partidos alineados," *Prensa Libre*, October 8, 2009; "Cambia escenario para eleccion de magistrados," *Prensa Libre*, September 30, 2009.
- 126 Claudia Acuna, "Sociedad fiscalizara a las postuladoras," *Prensa Libre*, August 21, 2009.
- 127 See CICIG, *Informe Proceso de Eleccion de Magistrados a la Corte Suprema de Justicia y Cortes de Apelaciones*, November 2009.
- 128 Villatoro was a self-professed member of the anti-elite "emerging capital" well-known for his influence within the judicial sector. The U.S. embassy characterized him as an "influential attorney and businessman" and "judicial powerbroker" who had made a fortune "mixing counterfeit shoes with genuine articles" and "smuggling illicit products (such as televisions and tires) into Guatemala for resale." The embassy had regular contact with Villatoro and was pleased by his "receptiveness to our suggestions for improving his list of [judicial] candidates." Drew Blakeney, "Congress Selects Supreme Court Amid Controversy," US Embassy Cable (Wikileaks), 09GUATEMALA919, October 2, 2009.
- 129 Castresana presented no proof of his accusations. Coralia Orantes, "Carlos Castresana acusa al Rey del tenis de manipular eleccion," *Prensa Libre*, October 7, 2009.
- 130 One of the candidates on the list was Thelma Aldana, who would replace Claudia Paz y Paz as attorney general in 2014 and prove to be an outstanding head of the Office of the Public Prosecutor and solid partner for CICIG.
- 131 The vote occurred only after intense negotiations among the government's coalition partners contributing to the initial slate of candidates. The national and international pressure pushed GANA and the FRG to buckle, despite of Sandra Torres' insistence on maintaining the original slate, finally giving up on three candidates. The final tally produced a court with "ten of thirteen [justices] for whom neither the Embassy nor CICIG has derogatory information." Drew Blakeney, "Three Supreme Court Justices Replaced at CICIG's Behest," US Embassy Cable (Wikileaks) 09GUATEMALA929, October 9, 2009.
- 132 Karen Cardona, "Congreso elige a magistrados de lista consensuada," October 10, 2009. Nonetheless, 50 of the 90 judges elected received fewer than 60 points on the 100-point evaluation scale even though civil society and CICIG urged Congress to reject candidates earning fewer than 60. Coralia Orantes, "50 magistrados para las salas de Apealciones con menos de 60 puntos," *Prensa Libre*, October 11, 2009.
- 133 "Senalan conjura contra la justicia en proceso de eleccion de magistrados," *Prensa Libre*, November 18, 2009.
- 134 "Postuladores rechazan cuestionamientos de Castresana," *Prensa Libre*, September 17, 2009. Claudia Acuna, "Polemica por criticas de la Cicig a postuladores," *Prensa Libre*, September 18, 2009; interviews with CICIG officials, Guatemala, November 2011; interviews with UN officials, New York, December 2011.
- 135 "Encuesta: Guatemaltecos respaldan a Carlos Castresana," *Prensa Libre*, October 12, 2009.
- 136 Juan Manuel Castillo, "Presidente de la CSJ lanza criticas contra Castresana," *El Periodico*, January 20, 2010.
- 137 Claudia Acuna, "Cicig investiga las acciones de jueces," *Prensa Libre*, November 29, 2009.
- 138 "Cicig investiga a seis jueces y a una magistrada del TSE," *El Periodico*, October 30, 2009.
- 139 Claudia Acuna, "Magistradores designan a pesquisadores en casos emprendidos contra dos juezas," *Prensa Libre*, December 3, 2009.
- 140 The labor movement claimed 41 murders and disappearances between 2004-09, and the campesinos complained of repression in the countryside, noting the killing of 13 farmers on the Nueva Linda farm in 2005. "La Cicig investigara atropellos a sindicalistas y dirigentes campesinos," *Prensa Libre*, October 29, 2009.
- 141 He would be dismissed, and later indicted, for fraud and embezzlement.

- 142 Luis Angel Sas, "CICIG presenta evidencias: Rosenberg panifico su crimen," *El Periodico*, January 13, 2010; Claudia Mendez Arriaza, "Rodrigo Rosenberg: del heroismo a una trama de telenovela?" *El Periodico*, January 13, 2010.
- 143 One judge stated that the Rosenberg case "was like no other investigation in Guatemalan history...using scientific investigation methodologies to clarify the truth." CICIG, *Tercer ano de labores*, 2010, p. 2.
- 144 See Grann (see n. 113).
- 145 Castresana returned the volley, suggesting that the president "do his job" providing security "so that judges are not killed." Juan Manuel Castillo, "Presidente de la CSJ lanza criticas contra Castresana," *El Periodico*, January 20, 2010.
- 146 O. Ismatul, "Destituyen a Ministro de Gobernacion por actos anomalos en la cartera lo sustituye Carlos Menocal," *El Periodico*, March 1, 2010. The scandal would swallow up former National Civil Police director Baltazar Gomez and sub-director Hector Lapoyeu as well. Kenia Reyes, "Caso Maskana: dos ex-jefes de Policia enfrentaran juicio," *El Periodico*, July 5, 2010.
- 147 Luis Angel Sas, "CICIG presenta denuncia contra Salvador Gandara por peculado," *El Periodico*, March 16, 2010.
- 148 Juan Castillo, "Castresana: Los acuerdos se alcanzaron en la oscuridad," *El Periodico*, May 7, 2010.
- 149 Patricia Rosenberg, "Conrado Arnulfo Reyes Sagastume, nuevo Fiscal General," *El Periodico*, May 25, 2010.
- 150 Luis Assardo, "Castresana Renuncia a su cargo en la Cigig," *El Periodico*, June 7, 2010; Olga Lopez, "Castresana déjà la Cigig por ataques sistematicos," *Prensa Libre*, June 8, 2010. Castresana alleged that Reyes "had a record of corruption in his personal history. His appointment is the result of an agreement between law firms involved in irregular adoptions and other representing narcotraffickers." Julio Revolorio, "Castresana: Para la ONU, Guatemala no ha cumplido su parte," *El Periodico*, June 8, 2010; Gustavo Berganza, "La caida de Castresana," *El Periodico*, June 8, 2010.
- 151 "Kamikaze Mission: The UN's Prosecutor Resigns, Taking an Enemy with Him," *The Economist*, June 17, 2010.
- 152 Luis Angel Sas, "CICIG sostiene que escuchas relacionan a ex fiscal general con los Valdes Pais," *El Periodico*, June 15, 2010.
- 153 Luis Assardo, "Corte de Constitucionalidad anula la eleccion de Conrado Reyes," *El Periodico*, June 10, 2010.
- 154 Louisa Reynolds, "ONU nombra a Dall'Anese nuevo jefe de la CICIG," *El Periodico*, July 1, 2010.
- 155 Interviews with UN officials, New York, July 2015.
- 156 The review consisted of a quick inquiry with the Costa Rican president at an official funcion. Interview with Álvaro Colom, Guatemala, June 2015.
- 157 Luis Angel Sas, "Una estructura, multiples crimenes, segun la CICIG," *El Periodico*, August 10, 2010.
- 158 Claudia Martina Arriaza, "Necesitamos CICIG, pero debe tener una linea de supervision," *El Periodico*, October 24, 2010; interviews with Eduardo Stein, Guatemala, December 2011 and June 2015.
- 159 Asier Andres, "Un grupo de empresarios contrato al 'lobista' que denunció Dall'Anese," *El Periodico*, February 8, 2011; interviews with UN officials, New York, March 2012.
- 160 Fernando Carrera, "La impunidad de los elites," *El Periodico*, August 12, 2010.
- 161 The Public Prosecutor claimed the Foreign Ministry had intentionally delayed the transfer to undermine the extradition; the Foreign Ministry claimed the Office of the Public Prosecutor and CICIG had filled out the request incorrectly. Hugo Alvarado y Claudia Acuna, "Extradicion de Carlos Vielmann en suspenso por error del MP," *Prensa Libre*, December 4, 2010.
- 162 Luis Angel Sas, "Surgen senalamientos entre ex fiscal de la CICIG y Castresana," *El Periodico*, August 5, 2010.
- 163 "Fiscal costarricense senal que a Castresana le falto firmeza en CICIG," *Prensa Libre*, August 20, 2010.
- 164 Coralía Orantes, "No existe investigacion contra ex-comisionado," *Prensa Libre*, December 3, 2010.
- 165 Lafitte Fernandez, *Crimen de Estado: El caso Parlacen*, San Salvador: Aura, 2011.
- 166 Gladys Galeano, "Javier Figueroa colaboro con CICIG en Caso Parlacen y Pavon," *El Periodico*, November 16, 2010.
- 167 Gladys Galeano, "Juez declaro en rebeldia a ex fiscal de la CICIG, Gisele Rivera," *El Periodico*, November 27, 2010; "Rivera impugna la rebeldia en su contra," *Prensa Libre*, December 22, 2010.
- 168 Mendez Vides, "El futuro de la CICIG," *El Periodico*, November 18, 2010; Juan Luis Font, "La implosion de la CICIG," *El Periodico*, November 19, 2010; Miguel Angel Albizures, "La verdad debe prevalecer," *El Periodico*,

- November 30, 2010; Dina Fernandez, "La CICIG en aprietos," *El Periodico*, December 1, 2010; Fernando Carrera, "Las Termopilas y la CC," *El Periodico*, December 2, 2010; Edgar Gutierrez, "La CICIG, detras de su sombra?" *El Periodico*, December 6, 2010; Fernando Carrera, "Justiciado, no," *El Periodico*, December 9, 2010; Luis Morales Chua, "Giselle Rivera (1)," "Giselle Rivera (2)," "Giselle Rivera (3)," and "Giselle Rivera (4)," *Prensa Libre*, December 2010.
- 169 Luis Angel Sas, "Pediran evaluacion de trabajo de Carlos Castresana," *El Periodico*, November 27, 2010.
- 170 Coralia Orantes, "Se va jefe de CICIG acusado," *Prensa Libre*, December 3, 2010.
- 171 CICIG, *Informe de la CICIG con ocasion a la eleccion del Fiscal General y Jefe del Ministerio Publico*, November 19, 2010.
- 172 Kenia Reyes, "Lineas breves del perfil de los seis nominados a Fiscalia General," *El Periodico*, December 7, 2010.
- 173 Asier Andres, "Presidente juramenta a la nueva Fiscal General," *El Periodico*, December 10, 2010.
- 174 Kenia Reyes, "Ley de Extincion de Dominio es aprobada con mas de cien votos," *El Periodico*, December 8, 2010.
- 175 Gustavo Berganza, "El actor politico del ano: la CICIG," *El Periodico*, December 31, 2010.
- 176 Juan Luis Font, "Los tormentos de la CICIG," February 11, 2011.
- 177 CICIG planned to "intensify the design and implementation of a capacity transfer plan to CICIG's partners for the purpose of assuring the sustainability of strategies to eradicate and prevent the return of illegal groups and clandestine security structures." CICIG, *Informe de la Comision internacional contra la impunidad en Guatemala con la ocasion de su cuatro ano de labores*, September 8, 2011, p. 4. While the government and CICIG agreed on a set of general commitments, a detailed plan never materialized.
- 178 Baldizón's family features prominently in a detailed analysis of the economic and political role of organized crime in Petén. See *Anonymous*, 2010 (unidentified manuscript). His campaign promises included reinstating the death penalty and televising executions, granting workers an extra month's salary each year, and ensuring Guatemala's football team reached the World Cup.
- 179 Interview with Claudia Paz y Paz, Guatemala, March 2012.
- 180 Ibid.
- 181 Ibid. The board had to approve the dismissal or reassignment of senior staff.
- 182 Ibid.
- 183 Byron Vasquez, "Caso Cabral: capturan a dos supuestos sicarios," *Siglo 21*, July 13, 2011; "'El crimen de Facundo abral esta resuelto despues de 72 horas,' dijo la fiscal," *Infobae America*, July 13, 2011.
- 184 Coralia Orantes y Leonardo Cererser, "Dall'Anese revela plan contra la Corte de Constitucionalidad," *Prensa Libre*, February 16, 2011.
- 185 "CICIG desmiente renuncia de Dall'Anese," *Prensa Libre*, Feb. 18, 2011. Other critical, and odd, press reports surfaced at the same time. One paper reported that nine of the 14 persons arrested for the killing of Khalil Musa (in the *Rosenberg* case) said that CICIG had pressured them to declare that the intellectual authors of the double crime were individuals like Otto Pérez Molina and Leonel Sisniegra Otero, of the anticommunist movement, offering lighter sentences in exchange for the doctored testimony. "Jueza de caso Muza ordena investigar supuestas presiones de CICIG," *Prensa Libre*, February 25, 2011. The claims went nowhere and appeared to be part of an ongoing propaganda campaign against Dall'Anese and CICIG.
- 186 The rumors cited Helen Mack, perhaps Guatemala's most respected human rights and justice sector reform advocate and one of CICIG's original proponents. The Pro-Justice Movement, a collective of rule of law reform organizations, issued a press statement denouncing the "malicious speculations" including Mack in the "apparently coordinated" attacks against Dall'Anese. The release went on to note that "CICIG, like any organization, may be controversial at times, but good faith critiques of its actions were not intended to harm or undermine its work." *Movimiento pro Justicia desmiente que Helen Mack apoye campanas contra la CICIG*, *Centro de Reportes Informaticos sobre Guatemala*, February 2011.
- 187 Elyssa Pachico, "'Smear Campaign' in Guatemala Aims to Discredit Reformers," *InSight Crime*, March 1, 2011; "Organizaciones sociales ofrecen respaldo a la CICIG," *El Periodico*, March 2, 2011. See also Fernando Carrera, "Como fortalecer a la CICIG," *El Periodico*, March 3, 2011.
- 188 Hugo Alverado, "Reves para la CICIG," *Prensa Libre*, January 19, 2011
- 189 Hugo Alvarado, "Giammattei les gana pulso a MP y a CICIG," *Prensa Libre*, February 12, 2011.



- 190 Hugo Alvarado y Rosmery Gonzalez, "Tribunal exculpa a ex presidente Alfonso Portillo por peculado," *Prensa Libre*, May 10, 2011. Nonetheless, Portillo remained in prison pending the processing of the U.S. extradition request against him and a government appeal.
- 191 "Jueza ordena cerrar proceso contra ex director de Predidios," *Prensa Libre*, May 10, 2011.
- 192 "CC otorga amparo a Alejandro Giammattei por case Pavon," *Prensa Libre*, November 10, 2011.
- 193 "Ex director de Presidios sale de carcel exculpado de ejecuciones," *Prensa Libre*, June 25, 2011.
- 194 Juan Hernandez Pico, "El gran dilema electoral: mano dura sin corazon o sensibilidad social sin escrupulos," *Revista Envio*, no. 351, June 2011; "De reves en reves," *Prensa Libre*, May 11, 2011; Jorge Jacobs, "Fracasos," *Prensa Libre*, May 13, 2011.
- 195 Editorial, "Libro reabre caso de parlamentarios," *Prensa Libre*, May 27, 2011.
- 196 "Proceso contral Alvaro Matus queda paralizado por conflicto de jurisdiccion," *Prensa Libre*, July 20, 2009.
- 197 Claudia Acuna, "Va a juicio ex fiscal A. Matus," *Prensa Libre*, April 27, 2010. However, doubts were raised about the existence of evidence linking Matus to a criminal organization. Luis Angel Sas, "Fiscalia sin vincular a Matus con asesinos de V. Rivera," *El Periodico*, April 26, 2010.
- 198 Byron Ronaldo Vasquez, "Quitan caso Matus a juezas que absolvieron a Portillo," *Siglo 21*, June 11, 2011. A month earlier, a trial court convicted five individuals for the murder of Victor Rivera, accepting the argument that the killing was planned by a narco-trafficking leader, Jorge Mario Paredes. Hugo Alvarado, "Caso Rivera: Sindicados reciben condenas de cinco a 46 anos," *Prensa Libre*, May 10, 2011.
- 199 Byron Vazquez, "Relevan a juzgadora," *Siglo 21*, March 7, 2012.
- 200 "Juzgado da tramite a la decision del MP para no estraditar a Vielman," *Prensa Libre*, July 14, 2011.
- 201 Interview with Claudia Paz y Paz (see n. 179). The decision was controversial, and some senior CICIG officials thought Vielman should have gone to trial in Guatemala, even with all of the attendant risks. Interviews with CICIG officials, Guatemala, July 2015.
- 202 The principle cases involved Portillo, Vielman, and three others implicated in the Pavon/Infiernito killings, the Amatitlan police drugs fire, and the Maskana fraud investigation. Virginia Hebrero, "Sin depuracion del poder judicial Guatemala no saldra del bache," *Prensa Libre*, September 22, 2011. CICIG also sent a letter to the president of the Criminal Chamber of the CSJ complaining about the work of a number of judges in cases in which CICIG was involved, particularly the slowness in authorizing hearings and proceedings. "Cicig se queja en la Cameral Penal de la CSJ contra varios jueces," *Prensa Libre*, June 23, 2011.
- 203 CICIG, 2011 (see n. 177), p. 12.
- 204 Coralia Orantes, "Jueza violo debido proceso, dice CICIG," *Prensa Libre*, June 11, 2011.
- 205 Hugo Alvarado and Coralia Orantes, "Jueza afirma debilidad de CICIG en acusaciones," *Prensa Libre*, June 15, 2011. Galicia would later voluntarily withdraw from the CICIG cases. Hugo Alvarado, "Jueza reuncia a casos de CICIG," *Prensa Libre*, July 2, 2011. She considered resigning from the bench in August. "Jueza Veronica Galicia analiza renunciar del Organismo Judicial," *Prensa Libre*, August 22, 2011.
- 206 Hugo Alvarado, "Corte Suprema de Justicia exige respecto por actuacion de jueces," *Prensa Libre*, June 17, 2011.
- 207 Hugo Alvarado, "CSJ descarta investigacion," *Prensa Libre*, June 16, 2011.
- 208 Hugo Alvarado, "Jueces rechazan pesquisas de Cicig," *Prensa Libre*, July 7, 2011.
- 209 Hugo Alvarado, "Asociacion de Jueces demandan salida de Francisco Dall'Anese," *Prensa Libre*, July 20, 2011.
- 210 Hugo Alvarado, "Jueces no ven viable colaboracion de CICIG," *Prensa Libre*, March 2, 2011.
- 211 Coralia Orantes, "Cicig solicita transparencia," *Prensa Libre*, February 12, 2011. See CICIG, *Informe de la CICIG con ocasion de la eleccion de la corte de constitucionalidad*, March 2011. The evaluations were based on open source media information, complaints or judicial reprimands found in the Public Prosecutor's Case Management System, and civil society interviews and submissions.
- 212 Nonetheless, CICIG's involvement in the selection of judges continued to generate criticism. See Edgar Gutierrez, "Detener la invasion extrajudicial," *El Periodico*, March 7, 2011.
- 213 CICIG, 2011 (see n. 177), pp. 19-20.
- 214 Mynor Toc, "CUC pide a CICIG y MP investigar desalojos en el Polochic," *Prensa Libre*, August 11, 2011.
- 215 CICIG, 2011 (see n. 177), pp. 19-20; interviews with CICIG officials, March 2012.



- 216 Kate Doyle, "Justice in Guatemala," *NACLA Report on the Americas*, Spring 2012.
- 217 Tulio Judrez, "Fiscal General senala destabilizacion," *El Periodico*, December 21, 2012; Kate Doyle, (see n. 216).
- 218 Interview with Public Ministry staff, March 2012.
- 219 OPM made this request during a visit to CICIG in October 2011.
- 220 Secretaria de Comunicacion de la Presidencia de la Republica, *Discurso de Toma de Posesion del Presidente Otto Pérez Molina*, Guatemala, January 14, 2011; Maria Carolina Pina, o Pérez Molina cambio ha comenzado, OIRFI Espanol, January 15, 2012.
- 221 Ibid.
- 222 Ibid.
- 223 Maricio Lopez also asked for CICIG support to review the ministry's personnel and help remove unqualified or compromised staff. German Ortiz, "Gobernacion pide asesoria de la CICIG para supervisar al personal," *El Periodico*, February 9, 2012; Julia Laura, "Ministro de Gobernacion solicita apoyo de la Cicig," *Prensa Libre*, February 9, 2012.
- 224 The major opposition party, Manuel Baldizón's LIDER, copied a strategy used by the president against Colom, calling the finance minister to defend Colom's budget and shutting down all other business for almost three weeks.
- 225 Ricardo Barrientos, "Nuevo gobierno, Nuevo saqueo," *Plaza Publica*, January 24, 2012; Claudia Palmo, "Carta evidencia participacion de ministros en contratos de medicina," *El Periodico*, March 21, 2012.
- 226 Giovanni Conreras, "Presidente Otto Perez Molina gestiona extension del periodo de Cicig," *Prensa Libre*, March 29, 2012.
- 227 Sofia Menchu, "Perez Molina propone regular las drogas," *El Periodico*, April 9, 2012.
- 228 Interviews with UN officials, New York, March 2012.
- 229 Interviews with officials in the Office of the Public Prosecutor, Guatemala, March 2012.
- 230 Interviews with diplomats, Guatemala City, December 2011 and March 2012.
- 231 "Los cuatro ejes de trabajo de la CICIG," *Publinews*, September 7, 2012; "Presentan plan de trabajo de la Cicig ante la ONU," *Siglo 21*, September 6, 2012.
- 232 CICIG, *International Commission against Impunity in Guatemala Reports on the Fifth Year of Activities*, September 11, 2012, p. 8.
- 233 Commissioner Dall'Anese promptly condemned the decision and CICIG appealed. Jerson Ramos, "CICIG arremete contra juez Aguilar," *El Periodico*, February 9, 2012.
- 234 Byron Rolando Vasquez, "Caso Renap: reincorporan a CICIG," *Siglo 21*, February 3, 2012; Arturo Gudina, Vasquez, f a victory? sity in GuatemalSiglo 21, March 16, 2012. Marlene Blanco, former director of the National Civil Police under Alberto Colom, was charged with managing a group of assassins within the National Civil Police. "Guatemala: Policia y CICIG capturan a ex directora de Policia Nacional," *Centro de Noticias ONU*, March 23, 2012; "Detienen a ex viceministra y ex policias acusados de ejecuciones en Guatemala," *El Mundo [elmundo.es]*, March 3, 2012.
- 235 Evelyn de Leon, "Desmantelan banda salvatrucha de sicarios y extorsionistas," *Siglo 21*, July 9, 2012; Evelyn de Leon, "Caen guatemalteco y mexicano por narcos," *Siglo 21*, September 13, 2012.
- 236 R. Gonzalez and H. Alvarado, "CICIG vincula a jueza con abogado defensor," *La Prensa*, May 26, 2012; Jerson Ramos, "CSJ ordena traslado de jueza Silvia de Leon," *El Periodico*, May 31, 2012.
- 237 CICIG, 2012 (see n. 177), pp. 22-24.
- 238 Interviews with NGOs and diplomats, Guatemala, March 2012.
- 239 Interviews with UN officials, New York, March 2012.
- 240 "CICIG tacha ocho de los diez aspirantes al cargo," *Siglo 21*, May 18, 2012; "Catalan asumira la Senabed en junio," *Siglo 21*, May 23, 2012.
- 241 "La CICIG anuncia investigacion a 12 jueces por el delito de prevaricato," *Siglo 21*, June 25, 2012.
- 242 "CICIG informara sobre malo jueces," *Siglo 21*, August 30, 2012.
- 243 CICIG, *Lost jueces de la impunidad*, November 28, 2012. CICIG withdrew the report from its website after the arrival of Iván Velázquez. The new commissioner felt the report did not provide sufficient evidence to support accusing the judges of malfeasance. Interviews with CICIG officials, Guatemala, October 2015.

- 244 "Conmocion entre magistrados y jueces por informe de la CICIG," *La Hora*, November 30, 2012.
- 245 Evelyn de Leon, "Cicig presenta denuncia penal contra 18 jueces," *Siglo 21*, November 30, 2012. Although the Public Prosecutor would request the lifting of immunity of eight of the judges, only one of the 18 (later 21) would lead to a criminal indictment. Interviews with CICIG officials, Guatemala, June 2015.
- 246 But remained concerned about a number of retired military appointments at the sub-minister level in the security sector who could stall or undermine the Public Prosecutor's work on cases involving former military officers. Interviews with Office of the Public Prosecutor officials, Guatemala, March 2012.
- 247 "Confirman sentencia por masacre de 'Plan de Sanchez'," *Emisoras Unidas*, October 22, 2012.
- 248 For an overview and analysis of the Ríos Montt trial, see Open Society Justice Initiative, *Judging a Dictator: The Trial of Guatemala's Ríos Montt*, November 2013; for day-to-day reporting on trial developments, see [www.riosmontt-trial.org](http://www.riosmontt-trial.org).
- 249 Interviews with Office of the Public Prosecutor officials, Guatemala, March 2012. CICIG says it provided "technological and logistical tools to optimize investigations and security activities" in addition to "advisory assistance, the presentation of proposals to create and restructure office sections, the design of protocol and organization functioning manuals, implementation assistance, audit assessment and the evaluation of certain investigations." The Commission's training efforts focused on the acquisition of "technical, theoretical and practical knowledge on topics related to extradition, international legal assistance, criminal prosecution in analysis and judicial investigation special methods and techniques." Lectures and seminars were supplemented by "direct involvement in investigation plans, criminal analysis and police investigation-related activities." CICIG 2012 (see n.177 above), p.26. Informal assessments of the usefulness of the training outside of joint fieldwork were not enthusiastic. Interviews with CICIG officials, Guatemala, March 2012 and October 2015
- 250 "CICIG apoya creación de Digicri," *Siglo 21*, July 21, 2012; Geldi Munoz, "CICIG complacida por aprobación de ley anticorrupción," *Siglo 21*, October 31, 2012.
- 251 "Primer ano en deuda, lejos de cambio," *Plaza Publica*, January 17, 2013.
- 252 The website of *El Periodico* newspaper had been targeted by several cyber-attacks, and its editor and reporters were threatened following investigations into government corruption. In November, Pérez Molina took the extraordinary step of filing a complaint against José Rubén Zamora Marroquín, the editor of *El Periodico*, accusing him of coercion, blackmail, extortion, violating the constitution, and insulting the president. A judge ordered him not to leave the country and set a hearing for February 2014. In December, a judge issued a restraining order against Zamora (later overturned) prohibiting him from criticizing or physically approaching Baldetti and her family. Carlos Arrazola, "El hombre que le susurra al poder (y viceversa)," *Plaza Publica*, September 27, 2015.
- 253 The numbers are provided by the *Instituto nacional de ciencias forenses de Guatemala* ([www.inacif.gob.gt](http://www.inacif.gob.gt)). The National Civil Police numbers tend to be materially lower (and less reliable).
- 254 "El primer ano de gobierno de Pérez Molina y Baldetti," *La Hora*, January 12, 2013; Universidad Rafael Landívar, Programa de Opinion Publica, *Informe del Primer Ano de Gobierno de Otto Pérez Molina*, January 2013.
- 255 "Amplian mandato de CICIG hasta 2015," *Emisoras Unidas*, January 18, 2013.
- 256 Byron Rolando Vasquez, "Investigaran a 20 jueces por denuncia," *Prensa Libre*, February 20, 2013.
- 257 Marcia Lisseth Zavala, "La CICIG presenta denuncias contra dos jueces," *Siglo 21*, April 11, 2013; Marcia Lisseth Zavala, "CICIG investiga a jueza Carol Patricia Flores," *Siglo 21*, April 19, 2013.
- 258 "La CICIG coordina investigacion por anomalias en Sistema Penitenciario," *El Periodico*, February 20, 2013; Julio F. Laura, "Hay mas reos con privilegios," *Prensa Libre*, February 20, 2013; Rodrigo Baires Quazada, "El largo paseo de Capitain Lima Oliva," *Plaza Publica*, February 28, 2013. The judge reviewing the indictment, however, dismissed charges again Lima Oliva for prison escape.
- 259 Open Society Justice Initiative (see n. 248), p. 4.
- 260 Which prompted an angry denial from the president, and increased conservative sectors' suspicions about the attorney general's true intentions. Many investigators of the civil war suggested that the president had been present in massacre areas and directly involved in military operations, but the accusations never led to a judicial investigation or indictment.
- 261 "Traicionar la Paz y Dividir a Guatemala," Campo Pagado, *Prensa Libre*, April 16, 2013.
- 262 "Perez Molina tambien afirma que el juicio por genocidio hace peligrar la paz," *Plaza Publica*, April 16, 2013.
- 263 "Cicig acusa a exfuncionarios de amenazar a jueces en caso de genocidio," *Emisoras Unidas*, April 18, 2013; "Caso genocidio: La Cicig ve en el comunicado de los 12 una amenaza contra el tribunal," *Plaza Publica*, April 18, 2013.

- 264 Rudy Tejeda, "Canciller anuncia la renuncia de Dall'Anese," *Siglo 21*, May 29, 2013; "Francisco Dall'Anese continua al frente de la CICIG," *Publinews*, May 29, 2013; Diego Jimenez, "Francisco Dall'Anese dejara Cicig tras roce con Gobierno de Guatemala," *La Nacion (Costa Rica)*, May 30, 2013.
- 265 The Constitutional Court's 3-2 decision was tortuous and confusing, apparently concluding that the trial court should have suspended the hearings until an appeals court reviewed the objections raised by Ríos Montt's ejected counsel. The Open Society Justice Initiative summarized the aptly scathing remarks of one of the dissenting judges: "the Constitutional Court had based its 'senseless' and 'unprecedented' judgment on an improper reading of the underlying facts, and of the challenge lodged by Ríos Montt. According to Judge Porras, the Constitutional Court's resolution presumed a challenge never made by Ríos Montt's lawyer; granted a remedy not requested by Ríos Montt; responded to events that never occurred in the courtroom; and did not acknowledge that the underlying due process violation had already been appropriately remedied by the trial court." Open Society (see n.248), p.18.
- 266 Carmen Ibarra, head of the Pro-Justice Movement, head of the Pro Justice Movement, suggested that Dall'Anese's resignation had been predictable "because under his management CICIG has neither moved forward or backward." Rudy Tejeda, (see n. 264, above); "Francisco Dall'Anese dejara la CICIG en septiembre," *CERIGUA*, May 29, 2013; Helen Mack was said to be "scathing in her assessment of Dall'Anese's leadership after his departure" noting that "[t]he Commission is an instrument and an opportunity that we Guatemalans had, and because of the incompetence of the leadership, it has been weakened." James Bargent, "Last Rites for Guatemala's Anti-Impunity Crusaders CICIG?" *InsightCrime*, September 9, 2013.
- 267 "CC dice que recibio presion desde CICIG," *Siglo 21*, August 28, 2013; "Presidente pide a CICIG aclarar denuncia de CC," *Siglo 21*, August 29, 2013; "La CICIG en el ojo del huracan," *Siglo 21*, September 1, 2013.
- 268 Evelyn de Leon, "Presidente Perez dice que CICIG seguira hasta 2015," *Siglo 21*, August 28, 2013.
- 269 "El valioso trabajo de la Cicig," *Plaza Publica*, September 8, 2013.
- 270 Gustavo Berganza, "En la agonía de la CICIG," *Contrapoder*, September 9, 2013.
- 271 Interviews with UN officials, New York, June 2015.
- 272 Evelyn Boche, "Dall'Anese asegura que no hay 'megacaso' contra funcionarios del actual gobierno," *Contrapoder*, August 23, 2013.
- 273 Sergio del Aguila, "El colombiano Ivan Valazquez es el Nuevo CICIG," *Siglo 21*, August 30, 2013.
- 274 Interviews with CICIG officials, Guatemala, June 2015; Emiliano Castro Saenz, "Ivan, el temible," *ContraPoder*, April 20, 2015. His education included organized structures using moneylaundering techniques through business and bank accounts. The "parapolitics" scandal resulted in the conviction of 50 congressmen and reached to the office of the president of Colombia during the five years he oversaw the investigations.
- 275 Coralia Orantes, "Perez reafirma que CICIG no pasara de 2015," *Siglo 21*, September 2, 2013.
- 276 "CICIG dispuesta a abrir investigacion de nuevos casos de impunidad," *Siglo 21*, November 14, 2013.
- 277 Coralia Orantes, "Jueces de la impunidad se hizo por rumores," *Siglo 21*, October 13, 2013. In the same article, Anabella Cardona, president of the Judges Association, said: "This confirms what we have been saying in that these charges lack substance. As a result, the majority of preliminary investigations have rejected the request for a formal investigation."
- 278 "Baldetti prefiere que CICIG investigue en corrupcion en las aduanas," *Siglo 21*, December 10, 2013; "Roxana Baldetti reitera duda sobre CICIG y el tiempo," *Prensa Libre*, December 11, 2013. Focusing on corruption in the customs services was an interesting recommendation given the investigation that would bring down Baldetti and Pérez Molina in 2015.
- 279 "Pérez Molina sugiere a CICIG investigar a alcaldes," *Prensa Libre*, December 12, 2013.
- 280 "Lider pide ampliacion al mandate de la CICIG," *Prensa Libre*, December 19, 2013.
- 281 Interviews with CICIG officials, Guatemala, June and October 2015.
- 282 Interviews with CICIG officials, Guatemala, June 2015; Carlos Arrazola, "De como Ivan decidio de abrir las cloacas y so puso a fumigar," *Plaza Publica*, August 12, 2015.
- 283 Interviews with CICIG officials, Guatemala, October 2015.
- 284 CICIG, *Informe de la Comision internacional contra la impunidad con la ocasion de su septimo ano de labores*, October 23, 2014.
- 285 Ibid.

- 286 Interviews (see n. 283).
- 287 For an overview, see "Las 5 claves para entender la disputa por la justicia," *Nomada*, April 22, 2014.
- 288 Jessica Osorio, "Se inicia depuracion de candidatos al TSE," *Siglo 21*, January 30, 2014; Bill Barreto, Oswaldo Hernandez, and Dennys Mejia, "Cuando los jugadores eligen a sus arbitros," *Plaza Publica*, February 27, 2014.
- 289 "La CICIG presenta objections contra 70 aspirantes al TSE," *Siglo 21*, February 6, 2014; Manuel Hernandez, "Comision de Postulacion publica punteo de aspirantes," *Prensa Libre*, February 12, 2014; Coralia Orantes, "CICIG claifica positiva nomina para el TSE," February 20, 2014; Bill Barrento, "Con el apoyo de Lider, el Partido Patriota ys sus aliados eligen a los magistrados del TSE," *Plaza Publica*, March 12, 2014.
- 290 Coralia Orantes, "Acciona para cambiar de fiscal," *Siglo 21*, January 10, 2014.
- 291 Oswaldo Hernandez, "CC dice no a la Fiscal," *Plaza Publica*, February 2, 2014. The court received strong criticism from both national and international actors, including the United States. Lesly Veliz, "Incertidumbres, dudas y molestias por amparo," *Siglo 21*, February 9, 2014.
- 292 Jessica Osorio, "Congreso acata la orden y juramenta a postuladora," *Siglo 21*, June 10, 2014.
- 293 Claudia Palma, "Revelan injerencia en eleccion de fiscal," *Prensa Libre*, April 24, 2014, p. 2; Byron Rolando Vazquez, "Hay intencion de manipular postulacion," *Prensa Libre*, April 24, 2014, p. 4.
- 294 For an overview of the issues surrounding the attorney general's mandate, see Steven Dudley, "Guatemala: The War of Paz y Paz," *InsightCrime*, 2014.
- 295 Nonetheless, an effort was made to impede CICIG's ability to object to particular candidates.
- 296 Hugo Alvarado, "Cicig senala a 13 de 26 candidatos a fiscal general," *Prensa Libre*, April 12, 2014.
- 297 Glenda Sanchez, "Thelma Aldena lidera calificacion de aspirantes al MP," *Siglo 21*, April 28, 2014.
- 298 Sergio Morales y Claudia Palma, "Thelma Aldana es la nueva Fiscal General," *Prensa Libre*, May 9, 2014. Aldana had obtained the highest score of all the candidates from the Nominations Commission, two points ahead of Claudia Paz y Paz. Glenda Sanchez, "Thelma Aldana lidera calificaci3n de aspirantes al MP," *Siglo 21*, April 28, 2014.
- 299 See, e.g., Clemente Morroquin, "No se podia esperar un milagro," *La Hora*, May 12, 2014; Kyra Gurney, "Gautemala New AG Appointment Blow to Anti-Impunity Campaigners," *InsightCrime*, May 12, 2014.
- 300 Jose Luis Sanz, "Guatemala: The Fall of Paz y Paz, the End of a Judicial Awakening," *InsightCrime*, August 15, 2014.
- 301 For an overview of the interest groups maneuvering for influence in the commissions, "using clientalism and corruption to [nominate judges to protect] business and provide impunity," see Carlos Arrazola, "Estas son las Comisiones de Postulacion mas deslegitimadas," *Plaza Publica* [interview by Helen Mack], September 15, 2014; Daniel Villatoro Garcia, "Los aprietos de las Comisiones de Postulacion," *Plaza Publica*, August 15, 2014.
- 302 Coralia Orantes, "CICIG pide enmendar proceso de comisiones de postulacion," *Siglo 21*, September 17, 2014.
- 303 "Necesitan gendarme," *La Hora*, September 19, 2014.
- 304 Marguerite Cawley, "Following Outcry, Guatemala Suspends Election of High Court Judges," *InsightCrime*, October 10, 2014. The Supreme Court eventually granted the Public Prosecutor's request to lift Rivera's immunity.
- 305 Saira Ramos, "Senalan trafico de influencias y vicios en eleccion de cortes," *La Hora*, November 12, 2014; Claudia Palacios, "Voto razonado: Quedaron debidamente comprobados los vicios denunciados," *La Hora*, November 20, 2014.
- 306 "Ven momento coyuntural para reforma judicial," *Siglo 21*, October 25, 2014.
- 307 "CICIG postpone proyecto para reformar la justicia en el pais," *Prensa Libre*, November 25, 2014.
- 308 Claudia Palacios, "Dialogo por reformas al sector justicia se quedan en el olvido," *La Hora*, January 27, 2015.
- 309 Diego de Leon Sagot y Ileana Alamella, "Edwin Sperisen, el culpable," *Plaza Publica*, June 8, 2014.
- 310 Marguerite Cawley, "Bishop's Killer Ran Prison Bribery Ring in Guatemala," *InsightCrime*, September 4, 2014.
- 311 "CICIG desarticula estructura criminal dirigida por Lima Oliva," *El Periodico*, September 4, 2014; "Byron Lima, el preso mas poderoso de Guatemala," *BBC Mundo*, September 17, 2014.
- 312 In 2007, Otto Pérez Molina and Rozana Baldetti admitted to contacts with the Mendoza clan. Carlos Arrazola, "Otto Perez, noces de insomnia y un cambio de ultima hora en el informe sobre Cicig," *Plaza Publica*, April 23, 2015.

- 313 "Lider: CICIG debe ampliar mandato," *La Hora*, September 5, 2014; Manuel Rodriguez, "Preocupa capacidad de investigacion sin la CICIG," *La Hora*, September 10, 2014.
- 314 Saira Ramos, "Mayoría de bancadas en el Congreso apoya una prorroga de la CICIG," *La Hora*, September 11, 2014; Jessica Osorio, "OJ apoya prorroga de CICIG; fiscal no opina," *Siglo 21*, September 12, 2014; "Reiterada vision sobre nuestra problematica," *Prensa Libre*, November 3, 2014; "Necesaria discussion," *La Hora*, November 3, 2014; Pedro Pablo Marroquin, "CICIG, cual is la alternative?" *La Hora*, November 4, 2014; Luis Andreade Falla, "Mission Cumplida?" *El Periodico*, November 7, 2014; "Una anunciada diplomacia activa," *Prensa Libre*, November 11, 2014; "Y ahora, quien podra defendernos?," *Plaza Publica*, November 12, 2014; Manuel Rodriguez, "Cooperantes apoyan a CICIG," *La Hora*, December 10, 2014.
- 315 Alvaro Alay, "CICIG: Perez y Lopez no ven viable la ampliacion," *Siglo 21*, September 9, 2014.
- 316 "Paises cooperantes apoyaran extension de mandato de la CICIG," *El Periodico*, September 11, 2014; Denise Berduo, "Paises amigos si darian mas fondos para la CICIG," *Siglo 21*, September 11, 2014.
- 317 Manuel Rodriguez, "Baldetti propondra discussion sobre ampliacion de mandato de la CICIG," *La Hora*, September 18, 2014.
- 318 Claudia Palacios, "Lucha contra la impunidad esta en juego este ano, decisivo para la CICIG," *La Hora*, January 2, 2015; Saira Ramos, "Bloques legislativos a favor de la continuidad de la CICIG," *La Hora*, January 8, 2015; Coralia Orantes, "Fiscal Thelma Aldana: 'CICIG deberia seguir,'" *Siglo 21*, January 9, 2015; Alejandro Castillo, "Embajador de EEUU indica que la CICIG es necesaria," *La Hora*, January 28, 2015.
- 319 Manuel Rodriguez, "Pérez Molina: Fase de la CICIG en el pais ya termino," *La Hora*, January 7, 2015.
- 320 Alvaro Alay, "Presidente pedira al sector justicia analisis de la CICIG," *Siglo 21*, January 16, 2015. The request to the *Instancia*, its members owing their posts to the support of the president, was probably a tactical maneuver to free Pérez Molina from the political fallout of a decision not to renew CICIG's mandate; the decision would be made by the *Instancia* and ratified by the president. See Carlos Arrazola, "Otto Perez, noches de insomnio y un cambio de ultima hora en el informe sobre la CICIG," *Plaza Publica*, April 23, 2015.
- 321 Rudy Tejeda, "Vian y grupos sociales piden que siga la CICIG," *Siglo 21*, February 2, 2015.
- 322 "Empresarios a favor de continuidad de la CICIG," *La Hora*, February 4, 2015.
- 323 "G4: Nueva prorroga de CICIG es indispensable," *La Hora*, February 9, 2015; "Precandidatos opinan sobre continuidad de la CICIG," *Siglo 21*, March 5, 2015.
- 324 In contrast, if CICIG were evaluated by its prosecution of Portillo, "it wasn't worth anything." "Alfonso Portillo: El pais necessita cirugia mayor," *La Hora*, February 25, 2015.
- 325 Claudio Palacios, "Continuidad de CICIG suma respaldo social en Guatemala," *La Hora*, February 26, 2015.
- 326 Joe Biden, "A Plan for Central America," *New York Times*, January 29, 2015. For an overview of the proposal, see Adam Isacson, "What's in the Billion-Dollar Aid Request for Central America?" Washington Office on Latin America, February 3, 2015; Dawn Paley, "Obama's Central American Rescue Plan Will Only Make Matters Worse," *New Republic*, February 5, 2015.
- 327 "Vicepresidente de EEUU senala que trabajo de la CICIG 'es importante,'" *Siglo 21*, March 3, 2015; "Biden es tajante: Renovar la CICIG es la llave para el plan de ayuda de EEUU," *La Hora*, March 8, 2015. In a visit to a US-funded program in the town of Villa Nueva, Biden said that "while the decision [to extend] is a sovereign one, the Government must extend if anyone hopes that the US Congress will commit millions of dollars to the initiative [for Guatemala]." Glenda Sanchez, "Biden condiciona fondos a prorroga de la CICIG," *Siglo 21*, March 4, 2015.
- 328 "Congresistan respaldan prorroga de CICIG en Guatemala," *Prensa Libre*, March 24, 2015; "EEUU ratifica que sin la CICIG no hay plan para Guatemala," *La Hora*, March 26, 2015.
- 329 "La Respuesta de Otto Pérez Molina," *La Prensa*, March 5, 2015; Manuel Rodriguez, "Presidente: Con o sin EEUU, habra plan por la prosperidad," *La Hora*, March 17, 2015. Although Pérez Molina remained adamant about CICIG, his spokesperson raised the possibility that the Commission could be extended with a reduced mandate, focusing on corruption and organized crime. Manuel Rodriguez, "De continuar CICIG, nuevo mandato se focalizaria en corrupcion y crimen," *La Hora*, March 4, 2015. This produced mixed reactions among civil society organizations. Manuel Rodriguez, "Ven intencion presidencial de debilitar a la CICIG," *La Hora*, April 14, 2015.
- 330 "Pérez Molina asegura que no se dejara 'chantajear' para continuidad de Cigig," *Prensa Libre*, April 13, 2015.
- 331 "Open Society destaca el papel de la CICIG contra la impunidad," *La Hora*, March 20, 2015; "Oficina en Washington para Asuntos Latinoamericanos respalda continuidad de CICIG," *Prensa Libre*, March 25, 2015; Marlyn Valedéz, "Alemania apoya a la CICIG," *Siglo 21*, April 15, 2015.

- 332 In January 2015, CICIG and the Public Prosecutor successfully reincorporated the Commission as co-prosecutor in the Rosenberg case proceedings against the Valdes brothers, and filed a case for corruption and illegal enrichment against Judge Yadel Reinoso.
- 333 "CICIG encarcela a 20 bandas," *Prensa Libre*, March 22, 2015.
- 334 Virginia Contreras, "Lider entrega en la CICIG su informe de financistas," *La Hora*, March 30, 2015.
- 335 Genovanni Contreras and Hugo Alvarez, "Red de defraudacion controlaba operaciones de la SAT," *Prensa Libre*, April 16, 2015.
- 336 For an overview of the evolution of customs fraud since the military networks of the 1970s to *La Linea*, see Jose Ruben Zamora, "El Crimen Organizado, el Ejercito y el Futuro de los Guatemaltecos," *El Periodico*, December 12, 2002; Bill Barreto and Oswaldo J. Hernandez, "De Moreno a La Linea: la huella military en la defraudacion aduanera," *Plaza Publica*, August 22, 2015; R. Estrada and F. Rodriguez, "Los origenes de La Linea: dos hermandades de militares unidas en la 'Red Moreno,'" *El Periodico*, August 23, 2015. A network of police officers, tax administration, and court officials had been arrested in 2013 for smuggling fuel to Guatemala City from El Salvador (Gasofa case). See CICIG, Sixth Report of Activites of the International Commission Against Impunity in Guatemala, August 2013, p. 14.
- 337 "MP y CICIG dan golpe a estructura de contraband y defraudacion aduanera," *La Hora*, April 16, 2015.
- 338 One writer described the scandal as "so sleezy and blatant in its operations that it smacks of a second-rate New Jersey mafia racket from 'The Sopranos.'" Francisco Goldman, "From President to Prison: Otto Perez Molina and a Day for Hope in Guatemala," *The New Yorker*, September 4, 2015.
- 339 Mendizabal was soon formally accused of facilitating the bribe of the judge who released six of the accused on bail. He disappeared, apparently fleeing Guatemala. "Luis Mendizabal, con orden de captura," *La Hora*, May 8, 2015; "El talon de Aquiles," *La Hora*, May 11, 2015. Additional evidence implicated Mendizabal more deeply in *La Linea's* activities. See Sebastian Escalon, "Luis Mendizabal y la boutique de las conspiraciones," *Plaza Publica*, May 24, 2015; "Luis Mendizabal, el sastre de La Linea," *ContraPoder*, May 28, 2015.
- 340 Interview with Thelma Aldana, Guatemala, June 2015.
- 341 Demonstrating a certain lack of criminal sophistication, the bribe arrangement was discovered through - inevitably - the same phone wiretaps used to dismantle *La Linea*. "MP y Cigic pediran antejuiciar a juez por prevaricato," *Siglo 21*, April 29, 2015; Elsa Coronado, "La jueza del caso 'La Linea' habria recibido soborno," *ContraPoder*, May 8, 2015.
- 342 Joining Franciso Javier Otiz, accused of a senior role in *La Linea*, with employment experience in the Moreno Network. Luis Solano, "Entre el teniente Jerez y el "bufete de la impunidad," *Plaza Publica*, May 5, 2015; "Cicig: Bufete proveedor de impunidad," *Prensa Libre*, May 8, 2015.
- 343 As with most contemporary revolutions, this one seems to have begun with a Facebook message. See JM Ahern, "Asi nacio la revolucion de Guatemala," *El Pais* (Spain), September 6, 2015; "Exigen renuncia del binomio presidencial y que continue la CICIG," *Plaza Publica*, April 20, 2015.
- 344 Juan Hernandez Pico, "Una situacion extraordinaria: miles contra la corrupcion," *Envio*, no. 399, June 2015.
- 345 "Presentan denuncia penal contra binomio presidencial," *La Hora*, April 23, 2015.
- 346 Byron Dardon and Henry Pocasangre, "Cacif pide la renuncia de vicepresidenta Roxana Baldetti," *Prensa Libre*, May 6, 2015; "CSJ se saca la presion, antejuicio de Baldetti pasa al Congreso," *Diario Digital*, May 6, 2015.
- 347 "Carta de renuncia de Roxana Baldetti," *Prensa Libre*, May 8, 2015.
- 348 "Por unanimidad recomiendan ampliar mandato de la Cigic," *Siglo 21*, April 22, 2015. The president had assumed the Instancia would follow his wishes and conclude that Guatemala no longer needed CICIG's services, but the political fallout from the *La Linea* case greatly weakened his authority. See Carlos Arrazola (see n. 320).
- 349 "CACIF pide continuidad de la CICIG y de Ivan Rodriguez," *ContraPoder*, April 21, 2015.
- 350 "CICIG permanencera dos anos mas en Guatemala," *Prensa Libre*, April 23, 2015; Ben Kei Chin, "Fue una trago amargo para el president," *Prensa Libre*, April 24, 2015.
- 351 "MP y CICIG evidencian negociacion ilicita entre drogueria Pisa y el IGSS," *La Hora*, May 20, 2015; "CICIG: Funcionarios habrian cometido homicidio culposo," *Siglo 21*, May 20, 2015. The judged assigned the IGSS case had been named as one of the 18 "impunity judges" in CICIG's 2014 report. "Jueza a cargo del caso IGSS fue senalada por la Cigic," *Siglo 21*, May 20, 2015.
- 352 Joel Suncar, "Accion penalmente contra Otto Pérez Molina," *Prensa Libre*, May 22, 2015.



- 353 Byron Rolando Vasquez, "Así opero la red de tráfico de influencias," *Prensa Libre*, July 9, 2015; "UTHO cierre el círculo a OPM y sacude al sector económico mas boyante," *Nomada*, July 10, 2015; "Red ilícita incluye un juez, al yerno del Presidente y un ex viceministro," *El Periodico*, July 10, 2015.
- 354 "MP y CICIG capturan a red que defraudo a menos Q56 millones," *El Periodico*, June 24, 2015.
- 355 "Expresidente del Congreso senalado por desfalco y plazas fantasmal," *El Periodico*, June 26, 2015. Maudi had also served as a link between the Patriot Party and CACIF since 2011, and was elected president of Congress with the support of Pérez Molina. Sofia Medina, "Maudi, el diputado-empresario al que acusa CICIG, ascendio a su secretaria," *Nomada*, June 26, 2015. It has been suggested that CACIF agreed to support the Pérez Molina candidacy in exchange for Maudi's inclusion on the Patriot Party ticket. Martin Rodriguez Pellecer, "Porque Pérez Molina y los empresarios ya no estan tan tranquilos," *Nomada*, June 30, 2015.
- 356 Sara Menini, "Así negociaron proyectos y plazas en el Mides diputados de Lider," *Prensa Libre*, July 7, 2015; "Solicitan antejuicio contra cuatro diputados y un alcalde de Lider," *El Periodico*, July 7, 2015.
- 357 Maria Aguilar, "MP y CICIG accionan contra edil ligado a narcos y lavado," *Siglo 21*, July 31, 2015.
- 358 "Antjuicio contra candidato vicepresidencial de Lider," *El Periodico*, June 16, 2015; "Chico Dolar y la red transnacional de lavado de dinero que financio campanas politicas," *El Periodico*, June 16, 2015.
- 359 "Baldizon denuncia injerencia de la CICIG en politica ante la OEA," *Prensa Libre*, July 27, 2015.
- 360 "CICIG si, pero sin Veasquez, dice Baldizon," *El Periodico*, July 29, 2015. For a somewhat-colorful synopsis of the corruption critique against Baldizón, see Martin Rodriguez Pellecer, "Baldizon es el puto amo del sistema (y aqui hay 7 razones para sostenerlo)," *Nomada*, July 6, 2015.
- 361 Henry Pocsangre, "Retorma fuerza la protesta por reformas electorales y renuncia del Presidente," *Prensa Libre*, July 16, 2015; Alex Rojas, "Miles the guatemaltecos piden la renuncia de Otto Pérez Molina," *Prensa Libre*, August 22, 2015.
- 362 Samuel Perez, "Rio revuelto," *Prensa Libre*, May 22, 2015; "El president atezado," *ContraPoder*, May 21, 2015.
- 363 Bernardo Arevalo, "Entre Tunez y Egipto: depende de nosotros," *Nomada*, June 18, 2015; Rodrigo Barahona Celda, "Estamos a tiempo para construir alternativas?," *Plaza Publica*, June 23, 2015.
- 364 A group called *Movimiento Semilla*, a group of 17 academics, proposed the creation of a transitional government to carry out reforms and the postponement of elections until January 2016. "Movimiento Semilla propone un gobierno de transicion ante la crisis," *El Periodico*, August 14, 2015.
- 365 In the interest, argued these actors, of maintaining political stability and Constitutional order while allowing the next government to manage the reform agenda. "Desacuerdos retrasan entrega de iniciativa," *El Periodico*, June 24, 2015; Gustavo Berganza, "2015; Gustavo Berganza, ega de iniciativa," *ContraPoder*, May 25, 2015.
- 366 "OEA resuelve apoyar a Guatemala ante crisis politica," *El Universal*, June 15, 2015.
- 367 Anita Isaacs, "America's Second Chance in Guatemala," *New York Times*, June 22, 2015.
- 368 Jessica Gramajo, "Iniciativa del TSE sin runbo fijo en el Congreso," *Prensa Libre*, June 30, 2015; "Bancadas PP y Lider paralizan reform electoral," *El Periodico*, August 5, 2015.
- 369 Juan Luis Font, "La victoria del sistema," *ContraPoder*, June 18, 2015.
- 370 CICIG (see n. 177).
- 371 "CICIG: la mitad del financiamiento de partidos vience de la corrupcion," *El Periodico*, July 17, 2015.
- 372 "Corrupcion principal fuente de financiamiento de las organizaciones politicas," *Prensa Libre*, July 16, 2015.
- 373 The composition of the Constitutional Court had been determined by an agreement between Pérez Molina, his Patriot Party, Manuel Baldizón's Lider and Sandra Torres' UNE. The conservative, pro-military and pro-business block had gained a majority of three candidates, but lost the most reliable of those, Alejandro Maldonado, when he was appointed to the vice-presidency to replace Baldetti. Subsequent votes depended on the composition of the court on a given day, as noted by the decisions on the president's *amparo* requests. When the Court voted against granting the *amparos*, one of the judges of the "conservative" wing was "mysteriously" absent, and his replacement's vote secured the majority against the president. See Sofia Medina, "Un misterio en la CC y la cabeza de Perez vuelve a pender del hilo Baldizon," *Nomada*, July 2, 2015.
- 374 Byron Vasquez, "Nuevo reves para Otto Perez Molina y se revoca amparo de Fischer," *Prensa Libre*, July 8, 2015.
- 375 "Lo juridico se esta decidiendo politicamente," *El Periodico*, June 24, 2015; "Congreso tiene via libre para decidir sobre inmunidad de Perez," *El Periodico*, July 29, 2015.



- 376 "Congreso engaveta solicitud de antejuicio contra Perez Molina," *El Periodico*, August 14, 2015.
- 377 Andrea Morosco, "Perez Molina y Baldetti los cabecillas de La Linea, segun MP," *Prensa Libre*, August 21, 2015; Jessical Gramajo, "Audios implican a Perez y Baldetti en red criminal," *Prensa Libre*, August 24, 2015.
- 378 Elsa Cabria, "El dia en que los empresarios (por fin) abandonaron a Otto Perez," *Nomada*, August 22, 2015.
- 379 The vote was 132-0, with 26 deputies absent.
- 380 Martin Rodriguez Pellecer and Gladys Olmstead, "El dia que los ciudadanos ganaron a OPM y a los poderosos (en la primavera guatemalteca)," *Nomada*, September 2, 2015.
- 381 Haroldo Shetemul, "Baldizon baja y Morales empata con Torres," *Prensa Libre*, August 10, 2015. Not surprisingly, the president's approval rating had fallen to 12 percent. Gustavo Montenegro, "El 88 percent desaprueba a Otto Pérez Molina," *Prensa Libre*, August 12, 2015.
- 382 Debora Lopez, "Torres es la rival de Morales en la segunda vuelta," *Siglo 21*, September 15, 2015.
- 383 "Jimmy Morales electo nuevo presidente de Guatenala," *El Periodico*, October 26, 2015.
- 384 Joshua Partlow, "Jimmy Morales used to do blackface comedy. He's now poised to be Guatemala's president." *Washington Post*, September 19, 2015; Alberto Fuentes, "Podremos ganar el partido con Jimmy?" *Plaza Publica*, September 17, 2015; "From Lewd Jokes to Power: Guatemalan Comic on Course for Presidency," *New York Times* (Reuters), October 1, 2015.
- 385 Elsa Cabria, "El perfil de Sandra Torres, la maquilera impaciente," *Nomada*, September 5, 2015.
- 386 Steven Dudley, "After Guuatemala President's Fall, Reconfiguration or Status Quo for Military Networks?" *InsightCrime*, Sept. 3, 2015; "Hacia una restauration del antiguo regime?" *Plaza Publica*, September 19, 2015; Edgar Gutierrez, "Alcances y limites de las elecciones," *El Periodico*, September 10, 2015.
- 387 Domenica Velazquez, "Encuesta Libre: Cicig se gana confianza y aprobacion de los guatemaltecos," *Prensa Libre*, August 13, 2015.
- 388 Stephen Schlesinger, "This is One of the Most Innovative Programs in the UN's Toolbox," *The Nation*, October 5, 2015; "The CICIG: An Innovative Instrument for Fighting Criminal Organizations and Strengthening the Rule of Law," *Washington Office on Latin America*, June 2015.
- 389 Alex de Waal asks the question in a slightly different way: "what should be the international strategy for responding to countries which do not appear set on a path of state-building from within—those which have no foreseeable chance of functioning in a Weberian or Lockean sense?" Alex de Waal, "Mission Without End? Peacekeeping in the African Political Marketplace," *International Affairs* 85, no. 1 (1989). While the Guatemalan state does function in a minimalist Weberian sense in many areas, its crisis is tied to the weakened ability of traditional elites to manage the political economy or control high levels of criminal violence but who still refuse to negotiate a broader, more inclusive coalition whose interests are protected by a more robust rule of law.
- 390 Daron Acemoglu and James Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*, New York: Crown Publishers, 2012.
- 391 World Bank, 2012 (see n. 1), pp. 103-4.
- 392 These largely Latin America-focused programs fell apart in the mid-1970s in the shadow of the collapse of modernization theory. David Trubeck and Marc Galanter, "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States," *Wisconsin Law Review*, 1974.
- 393 Thomas Carothers, "The Rule of Law Revival," *Foreign Affairs* 77, (1998): 95-106; Kofi Annan, *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, New York: United Nations, 2004; Camino Kavanagh, *Shaky Foundations: An Assessment of the UN's Rule of Law Support Agenda*, New York: NYU Center on International Cooperation, 2012.
- 394 Jose Maria Maravall and Adam Przeworski, eds., *Democracy and the Rule of Law*, Cambridge, UK: Cambridge University Press, 2003; Thomas Carothers, ed., *Promoting the Rule of Law Abroad: In Search of Knowledge*, Washington, DC: Carnegie Endowment for International Peace, 2006; Andras Sajó, ed., *The Dark Side of Fundamental Rights*, Amsterdam: Kluwer Press, 2006; Erik Jensen, "Justice and the Rule of Law," in Charles Call, ed., *Building States to Build Peace*, Boulder, CO: Lynne Rienner, 2008, 119-42.
- 395 As if to prove the point, on May 1, 2012, the Woodrow Wilson International Center for Scholars organized a discussion on "Justice Reform in Latin America: Why Is It So Difficult?"
- 396 As one of the three legs of the "liberal peacebuilding" model: democratization, liberalization, and the rule of law.

- 397 The literature on international criminal justice is extensive. For a sampling, see Payem Akhavan, "The Rise, and Fall, and Rise, of International Criminal Justice," *Journal of International Criminal Justice* 11, no. 3 (2013): 527-36; Daniel Donovan, "International Criminal Court: Successes and Failures," *International Policy Digest*, March 23, 2015; "The Rule of Law: The Institutional Framework: International Criminal Courts and Tribunals," *Security Council Report*, August 20, 2015.
- 398 Interviews with UN officials, New York, March 2012.
- 399 Citing the influence of the Mendoza and other crime families in the north, and the arrival of members of the Mexican Zeta cartel, Stein emphasized that the state could not confront their money and firepower on its own. Interview with Eduardo Stein, Guatemala, December 2011.
- 400 Frank La Rue saw "no reason to have grand expectations" because CICIG was "just a beginning in the fight against impunity"; in the best case, "the Commission would end its mandate having brought some cases to trial and sentencing, sending those found guilty to prison without the possibility of escape." But Impunity Watch insisted that CICIG should be judged by its ability to assure the "minimum institutional strengthening" needed to guarantee sustainability. In the worst-case scenario, CICIG would prosecute criminal-political networks without reaching the leaders and financial supporters of these structures and would leave "without having left in place the conditions necessary to obtain judicial sentences because of the lack of legal guarantees in the Guatemalan legal and institutional framework." Impunity Watch, International Center for Transitional Justice, Plataforma Holeandesa contra la Impunidad, *Cambiar la Cultura de la Violencia por la Cultura de la Vida: Los Primeros Años de la Comisión Internacional contra la Impunidad*, August 2010, p. 62.
- 401 His criteria for selecting cases included "the probability of links with illegal security forces and clandestine security organizations; the short- and long-term impact of the case on the fight against impunity; [and] the likelihood of success in moving the case forward" as well as "the availability of staff and resources and the time required to investigate and resolve the case." CICIG, *Dos años de labores: Un compromiso con la justicia*, February 2, 2010.
- 402 Interviews with CICIG officials, Guatemala City, December 2011.
- 403 Interviews with diplomats, Guatemala City, December 2011 and March 2012.
- 404 International Crisis Group, *Learning to Walk Without a Crutch: An Assessment of the International Commission Against Impunity in Guatemala*, May 31, 2011, p. 11.
- 405 One chess aficionado suggested that CICIG's acceptance of the case was the equivalent of capturing a "poisoned pawn"; the case would turn out to be a trap, and the Commission would lose no matter the quality or results of the investigation. Interview with Roberto Ardon, CACIF, Guatemala City, December 14, 2011.
- 406 Interviews with CICIG officials, Guatemala City, December 2011.
- 407 Jerson Ramos, "El fallo que devolvió la libertad al exfiscal De Leon Argueta," *El Periodico*, May 26, 2012.
- 408 See CICIG, "El financiamiento de la política en Guatemala," July 16, 2015; "Escuchas implican a Gustavo Alejos en el caso de corrupción del IGSS," *El Periodico*, October 29, 2015.
- 409 At the urging of donors, CICIG hired several consultants to draft a report outlining the forms of political corruption and political-criminal networks its cases had uncovered, but it was never published. CICIG, *Estructuras criminales e institucionalidad pública en Guatemala*, December 2011 (unpublished manuscript on file with author). Although the analysis was supposed to draw significantly on CICIG's work, the consultants were only granted limited access to the Commission's database and staff. Consequently, the report relied principally on open source material and interviews. It was never clear why the document was not published. Interviews with consultant, Guatemala, December 2011.
- 410 Interviews with Office of the Public Prosecutor officials, December 2011.
- 411 Interviews with Guatemalan judges, December 2011.
- 412 In Spanish, "redes económico-políticas ilícitas" (REPI). See CICIG, *Informe de la Comisión Internacional contra la Impunidad con ocasión de su octavo año de labores*, November 13, 2015, pp. 13-15.
- 413 See CICIG (n. 177).
- 414 This oversight is institutionalized in several ways. The head of national prosecutors' offices responds to the president in some cases (such as the United States) or high courts in others. Prosecutorial investigations are often controlled by judges. The ICC's chief prosecutor responds to the ICC judges, and on administrative and management matters, ultimately to the Assembly of States Parties to the Rome Statute. The Special Court for Sierra Leone had a management committee to whom the court judges and prosecutor report on administrative, management, and budgetary issues (but not prosecution or trial strategies).

- 415 Although Castresana pushed hard for nearly two years to transform CICIG into a UN organ to overcome personnel contracting, security, and other administrative difficulties, persuading the government and donors to support the demand, he seems to have changed his mind when the challenges seemed insuperable and it became clear that UN supervision would restrict his ability to freely maneuver in Guatemala. Interviews with UN officials, New York, March 2012.
- 416 Edgar Gutierrez, "Tirar el bebe con el agua sucia," *El Periodico*, December 2, 2010. The perception was, in part, the result of the commissioner's efforts to find a reliable set of political allies to help him understand and target political-criminal networks, provide access to information sources, and provide support for confrontations with political-criminal networks and powerful judiciary and political actors likely to be affected by CICIG's work. The human rights NGOs were CICIG's closest initial supporters, but they suffered fissures and regular splits over personality conflicts and strategic differences, and thus could be difficult to manage. The "modernizing," internationally oriented sector of the business elite, wrapped around eight families or business groups known as the "G-8," provided a complementary (but not always compatible), resource, and Castresana found them willing collaborators. They were also close to the American embassy, CICIG's strongest international supporter.
- 417 The UN also had very little leverage with personnel issues, finding itself challenged to respond to rumors of internal staff conflicts, claims of abuse of authority, unjust contract termination, and sexual harassment.
- 418 Each of the commissioners was reluctant to delegate political outreach responsibilities to staff. The policy was self-reinforcing: Guatemalans sought to speak only with the commissioner with information or recommendations for CICIG's work. Velázquez was able to take advantage of the unfortunate ouster of Claudia Paz y Paz as attorney general by hiring one of her top political advisors whose understanding of Guatemalan political dynamics and widespread contacts proved to be of great value to the new Commissioner.
- 419 When CICIG finally determined that it would produce a report on criminal structures and the Guatemalan state, it had to hire six outside consultants who worked for six months under highly restrictive conditions. A draft of the report was finished at the end of 2011 but has yet to be released.
- 420 Interviews with current and former CICIG officials, Guatemala, December 2011 and March 2012.
- 421 Interviews with CICIG officials, Guatemala, December 2011 and March 2012.
- 422 Interviews with Guatemalan judges and lawyers, Guatemala, December 2011 and March 2012.
- 423 Interviews with former CICIG officials and officials in the Office of the Public Prosecutor, Guatemala, December 2011 and March 2012.
- 424 Interview with former CICIG official, New York, March 2012.
- 425 Interview with officials in the Office of the Public Prosecutor, Guatemala, March 2012.
- 426 See CICIG, 2014 (see n. 177); interview with Iván Velázquez, Guatemala, June 2015.
- 427 Interview with Thelma Aldana, Guatemala, June 2015.
- 428 CICIG had little success with the National Civil Police. Guatemala's civilian police force had never recovered from government and donor mistakes at its birth: transferring much of the officer corps and first police class from the inept and military-dominated Treasury Police and Military Police of the counterinsurgency era. The resulting combination of investigative incompetence, brutality, and corruption lost the confidence of the public. Successive governments, constrained by limited revenues while responding to recurring scandals of police criminality, corruption, and ineptness in the face of skyrocketing criminal and social violence, proved unable to rebuild the police from within. Police officers, from directors to new recruits, had been accused and convicted of stealing drugs, running extortion rackets, and moonlighting for organized crime cartels as hired killers or the implements of "social cleansing." Officers are generally poorly educated, trained, supervised, and equipped. The latest effort to launch a comprehensive reform of the security sector, largely focusing on the police, was launched by President Colom in 2010. The National Strategy for Security Sector Reform, led by Helen Mack, produced a long-range blueprint accepted by all social and political sectors; the enthusiasm surrounding its work has not, unfortunately, continued after its report and recommendations were published. The Commission's efforts to find a reliable core within the police were continuously frustrated by the series of changes at the top of the Interior Ministry and the National Civil Police itself. Colom went through five interior ministers and five police chiefs, with three from each institution accused of corruption, theft of drugs, or running clandestine units. CICIG's first effort trained 30 officers in mid-2008 in criminology and investigations, 20 of whom were assigned to the Public Prosecutor's Office and CICIG to assist with criminal investigations and security. But the number was small, in a force of some 18,000 officers, and the contribution limited (at CICIG, they mostly provided perimeter security).

- 429 CICIG, 2010 (see n. 177), p. 7.
- 430 USAID has also supported judicial reform in Guatemala since the 1990s. Most of the programs have involved training, civil society support, and infrastructure expansion. See, e.g., USAID Guatemala website and USAID, *Achievements in Building and Maintaining the Rule of Law: MSI's Studies in LAC, E&E, AFR, and ANE*, Doc. No. PN-ACR-220, 2002.
- 431 Interview with Dan Fisk, Washington, DC, February 2012.
- 432 Telephone interview with U.S. diplomat, January 2012.
- 433 Those difficulties may be compounded by case-specific problems as well. CICIG has encountered strong resistance from a number of U.S. Congressmen to its investigations and prosecutions of illegal adoptions of cases because of strident protests from U.S. citizens seeking adoptions in Guatemala.
- 434 Interviews with officials in the Office of the Public Prosecutor and CICIG, March 2012; CICIG, *Estructuras criminales e institucionalidad pública en Guatemala* (unpublished draft), December 2011. This pattern was evident in the National Civil Police criminal cases, the Rosenberg and Musa murders, the Matus obstructions of justice, and the accusations against judges.
- 435 Interview with CICIG officials, Guatemala, October 2015.
- 436 Michael Lohmuller, "Honduras Prosecutors Call for Own Version of CICIG," *InsightCrime*, June 9, 2015; Elizabeth Malkin, "Corruption Scandals Drive Protests in Guatemala and Honduras," *New York Times*, June 12, 2015; Sam Tabory, "El Salvador Should Consider CICIG-Like Body: U.S. Official," *InsightCrime*, July 9, 2015; David Agren, "The Corruption Crackdown in Guatemala is Making Mexico Nervous," *VICE News*, September 21, 2015. On the other hand, Nicaragua seemed to take preemptive steps against the possibility of a local CICIG. "Gobierno de Nicaragua suspende proyectos del PNUD," *El Periodico*, October 14, 2015.
- 437 See Louisa Renolda, "Honduras's Aborted Mission for Political Reform," *Foreign Policy*, October 25, 2015.
- 438 Ibid.
- 439 The closest experience has been with international and hybrid courts, the Lebanon investigation of the Hariri assassination, and commissions of inquiry.
- 440 Interview with Carlos Castresana, New York, November 2011.
- 441 Interview with Francisco Dall'Anese, Guatemala, March 2012.
- 442 Intermediate options might include an organizational structure in the mandate specifying senior leadership posts designated by the UN in New York to facilitate relationships with headquarters. Oversight for a CICIG might be provided by a small management committee comprised of a senior headquarters official and representatives of member states in the country.

**OPEN SOCIETY JUSTICE INITIATIVE**

The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Brussels, Budapest, The Hague, London, Mexico City, New York, Paris, and Washington, D.C.

***[www.JusticeInitiative.org](http://www.JusticeInitiative.org)***

**OPEN SOCIETY FOUNDATIONS**

The Open Society Foundations work to build vibrant and tolerant democracies whose governments are accountable to their citizens. Working with local communities in more than 70 countries, the Open Society Foundations support justice and human rights, freedom of expression, and access to public health and education.

***[www.OpenSocietyFoundations.org](http://www.OpenSocietyFoundations.org)***