

**LEARNING TO WALK WITHOUT A CRUTCH:
AN ASSESSMENT OF THE INTERNATIONAL COMMISSION
AGAINST IMPUNITY IN GUATEMALA**

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LEARNING TO WALK WITHOUT A CRUTCH: AN ASSESSMENT OF THE INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Since it began operations in September 2007, the International Commission Against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala, CICIG) has brought a degree of hope to a country deeply scarred by post-conflict violence and entrenched impunity. As homicide rates sky-rocketed to rival Mexico's, and criminals fought for territorial control and dominated or corrupted multiple levels of state agencies, the novel independent investigating entity created by agreement between the government and the UN Secretary-General responded to fear that illegal armed groups had become a threat to the state itself. Much remains to be done, however. During the next years the commission should establish the strategic basis for dismantling the illegal security forces and clandestine security organisations (Cuerpos Ilegales y Aparatos Clandestinos de Seguridad, CIACS) over the long term and building Guatemalan justice capacity, including by supporting national ownership of the commission's functions and embedding them within the judicial system.

CICIG's formal mandate is to support and assist domestic justice institutions in the investigation and prosecution of crimes committed by CIACS, to identify their structures, operations and financing and ultimately to dismantle them. At the same time, CICIG has sought to strengthen the weak judicial system in order to put an end to impunity, a task made infinitely more difficult by the complex relationship between elements of state institutions, political parties, the private sector and the CIACS.

On 13 January 2011, Secretary-General Ban Ki-moon confirmed a second two-year extension of CICIG's original mandate, to 4 September 2013. The commission has achieved notable and unprecedented short-term successes, evidenced by positive outcomes in a series of high-impact legal cases, dismissal and prosecution of several senior officials, removal of a compromised attorney general and the selection of a respected successor. It has encouraged the adoption of norms for election of Supreme Court judges and helped generate public awareness about impunity, CIACS and organised crime. It contributed directly to the crea-

tion of a Special Prosecutor's Office that assists its work (Unidad Especial de la Fiscalía de Apoyo a la CICIG, UEFAC) and has supported greater professionalism in the Public Prosecutor's Office (Ministerio Público, MP), the institution charged with the investigation and prosecution of crimes in Guatemala. It has also pushed through a limited number of important legal reforms.

However, the core elements of the mandate – dismantling the CIACS and consolidating sustainable institutional transformation – remain unmet, and it is uncertain whether sufficient progress has been achieved or at least the foundations have been laid to guarantee those goals will be accomplished. Severe structural constraints and the resistance of diverse spoilers, as well as limitations imposed by the commission's own mandate and strategies, have been restraining factors. Such institutional transformation as there has been will remain isolated exceptions, unless further legislative reforms are adopted to extend them throughout state institutions.

Moreover, there is a serious question about the degree to which the Guatemalan state and broader society are prepared to exercise ownership of CICIG and sustain its achievements. Clear measures need to be taken to reduce the possibility that continuation of the mandate will only make the justice system more dependent on external mechanisms. National ownership of the commission's functions and objectives is crucial to guaranteeing its long-term impact. Assuring a sustainable legacy through the transfer of technical capacities from CICIG to national institutions should be a priority during the next two years. CICIG has provided a crutch. The justice system must now learn to walk on its own and increasingly assume the responsibilities with which CICIG has been charged.

RECOMMENDATIONS

For creation of effective, professional and well-resourced national rule of law institutions

To the Government of Guatemala:

1. Support CICIG's mandate through the strengthening of a well-funded and trained rule of law sector, including by:
 - a) enforcing and supporting, as appropriate, the removal of tainted officials from key rule of law institutions, such as the Public Prosecutor's Office, the judiciary and the National Civil Police, applying administrative and disciplinary measures where appropriate and prosecuting, where possible, any officials linked to CIACS;
 - b) strengthening financially and technically the units of the Public Prosecutor's Office (MP) and the National Civil Police mandated with identifying and prosecuting those linked to or participating in the CIACS, including through the establishment of an independent criminal investigation unit within the MP, as well as other institutions, such as the criminal defence system and the judiciary;
 - c) establishing an adequate career system for the public service in general and the police and MP in particular, and ensuring dignified salaries and benefits; and
 - d) obtaining passage of key legislation proposed by CICIG, such as the reform of the Statutory Law of the Public Prosecutor's Office and an enhanced fiscal regulation.
2. Reviving and implementing the National Agreement for the Advancement of Security and Justice signed in April 2009 as an element of the roadmap for judicial reform processes.

To the Congress of Guatemala:

3. Prioritise passage of key legislation proposed by CICIG, including reforms to the Statutory Law of the Public Prosecutor's Office, ensuring an independent, transparent selection mechanism for the office of Attorney General; the Law on Injunction (*Amparo*), Habeas Corpus and Unconstitutionality; the Law on Immunity of Public Officials; the Immigration Law, with specific reference to human trafficking, including illicit trafficking of migrants; and laws related to disciplinary measures in the justice system and pleas in criminal proceedings.

To the Attorney General:

4. Improve the MP's capacity to detect prosecutors and other staff linked with CIACS by establishing an effective, independent internal affairs unit, in close coordination with the UEFAC, and improve its human resources policies by creating an adequate system of benefits and protection.

To the International Community:

5. Present common conditions to the government for future cooperation, including adoption of a national agenda for the justice system and fiscal reform and retention by the president elected in September 2011 of Attorney General Claudia Paz y Paz, at least through the critical two-year period of CICIG's mandate.

For strengthening the work of CICIG

To the International Commission Against Impunity in Guatemala (CICIG):

6. Consolidate CICIG's achievements in specific cases, expand its intervention in institutional reform to combat impunity and build capacity, including by:
 - a) focusing its prosecutorial activity on dismantling the CIACS as its first strategic priority publicly and clarifying its criteria for case selection and its general plan of investigations over the next two years;
 - b) mapping out CIACS structures, locations and activities and sharing the information with the attorney general; and
 - c) expanding its intervention in the interior so as to confront CIACS at local and regional levels.
7. Evaluate CICIG's activities, impact and strategy together with Guatemalan stakeholders, including civil society organisations and public institutions, and independent international experts.

To the International Community:

8. Maintain and strengthen coordinated donor support to CICIG by:
 - a) ensuring it has all required financial and technical resources, including a fully funded two-year budget; and
 - b) backing the evaluation of CICIG, its achievements and limitations, with pertinent indicators and in constant dialogue with all stakeholders, including Guatemalan public institutions and civil society organisations.

*For coherently transferring capacities from
CICIG to national institutions*

To the Government of Guatemala:

9. Establish a high-level commission, under the president's authority and with the participation of public institutions, CICIG and civil society representatives, to establish a transfer strategy, including a budget, institutional mechanisms, benchmarks and timelines.

To the Congress of Guatemala:

10. Pass fiscal reform and complementary legislation to guarantee an adequate budget for the public sector.

To the Attorney General:

11. Use the UEFAC as a seedbed to build and transfer capacities within the MP, including by enhancing its role and authority and requiring all MP units, such as the Special Unit for Crimes against Life, to collaborate with it when requested and immediately disciplining those that do not.
12. Establish and follow a roadmap for transferring CICIG information, resources and techniques, including by:
 - a) building an efficient, transparent information system that protects sensitive data on CICIG investigations; and
 - b) expanding the prosecutorial activities of all appropriate MP units, in collaboration with CICIG and UEFAC.

**To the International Commission Against
Impunity in Guatemala (CICIG):**

13. Establish and pursue a proactive strategic plan to transfer knowledge and capacities to Guatemalan public institutions, including working together on establishing a model for selecting and investigating high-impact cases and appointing UEFAC personnel.

To The International Community:

14. Reinforce donor coordination on the long-term funding priorities of national justice institutions and in particular monitor the strategic plan to transfer CICIG capacities to them.

Guatemala City/Bogotá/Brussels, 31 May 2011

LEARNING TO WALK WITHOUT A CRUTCH: AN ASSESSMENT OF THE INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA

I. INTRODUCTION

Guatemala's brutal 36-year internal armed conflict was formally ended with the signing of the Accord for a Firm and Lasting Peace in December 1996. Impunity for the egregious human rights violations during the conflict, however, has been almost absolute: only a handful of court cases have held perpetrators to account for their crimes.¹ Fifteen years after the end of the fighting, not a single intellectual author of the military's abuses has been penalised.²

Since hostilities ended, structural problems have deepened, as the country has experienced increasing criminal violence and social conflict and escalating numbers of homicides amid high rates of poverty and exclusion. Weak institutions have not dealt effectively with these complex, interrelated factors; the judicial system has notably failed to respond adequately to growing criminal power and influence at both national and local levels. Impunity is a key obstacle to generation of the conditions, including democratic consolidation, required to prevent future deadly

conflict. Drug trafficking organisations (DTOs) and other organised criminal networks, many linked historically to or direct descendants from military counter-insurgency networks, have intensified their activities and embedded themselves within state institutions, becoming in the process central actors in extensive post-conflict violence.³

The illegal security forces and clandestine security organisations (Cuerpos Ilegales y Aparatos Clandestinos de Seguridad, CIACS) can be traced directly to the armed conflict. They emerged from military networks, the former National Police and the justice system itself, as well as from diverse sectors of the licit economy. Structures were already in place when the peace was signed; rather than being dismantled, they mutated to adapt to the new democratic context.⁴ Many had their origin in the web of relationships developed between security forces (legal and illegal) and other sectors within society (politicians, business people and other civilians). They had used counter-insurgency strategies against groups that opposed the military regimes and in the new post-conflict conditions increasingly oriented themselves toward illicit and personal profit. Their networks have progressively developed links with political parties at all levels of society and infiltrated the state, seeking to guarantee "their interest in impunity and in

¹ The agreement that created CICIG defines impunity as "the de facto or de jure absence of criminal, administrative, disciplinary or civil responsibility and the ability to avoid investigation or punishment, all of which weaken the rule of law, impeding the ability of the State to fulfil its obligation to guarantee the protection of the life and physical integrity of its citizens and provide full access to justice, with the resulting loss of confidence of citizens in the democratic institutions of the country" (Preamble, third paragraph).

² Guatemala's population is approximately 55 per cent indigenous. According to the UN-sponsored Historical Clarification Commission, the conflict was characterised by the occurrence of acts of genocide carried out by state agents between 1978 and 1983. While the conflict possessed an acutely ethnic dimension – according to the UN, 83 per cent of the 200,000 civilian victims were indigenous – it was not waged exclusively on ethnic lines. *Guatemala: Memoria del Silencio*, Comisión de Esclarecimiento Histórico (Guatemala City, 1999). Also see, "Guatemala Nunca Más", Informe del Proyecto Interdiocesano, Recuperación de la Memoria Histórica, Oficina de Derechos Humanos del Arzobispado de Guatemala, Guatemala City, 1998.

³ Crisis Group especially thanks CICIG Political Adviser Aníbal Gutiérrez for his insightful ideas relating to this report, in particular the characterisation that CICIG represents a "crutch" for the Guatemalan state.

⁴ See Iván Briscoe, "A Criminal Bargain: The State and Security in Guatemala", Fundación para las Relaciones Internacionales y el Diálogo Exterior (FRIDE), September 2009; Silvia Mazzarrelli, "The International Commission against Impunity in Guatemala: Catalyzing Internal Processes of Change", (unpublished master of laws thesis), 2008-2009; I. Briscoe and M. Pellecer Rodríguez, "A State Under Siege: Elites, Criminal Networks and Institutional Reform in Guatemala", Clingendael Institute, September 2010; Julie López, "Guatemala's Crossroads: Democratization of Violence and Second Chances", Woodrow Wilson Center for International Scholars, December 2010; and M. Vela, "Guatemala: un caso de prueba para la responsabilidad de proteger" (unpublished document), 2011.

preventing the consolidation of effective law enforcement and judicial institutions”.⁵

This report evaluates from multiple perspectives a unique body created in partnership with the UN to combat these developments: the International Commission against Impunity in Guatemala (CICIG). It does not extensively detail specific legal cases that have been discussed elsewhere, including in an earlier Crisis Group report, and about which information is available on the commission’s website.⁶ Rather, it analyses CICIG’s impact, taking into account a few key cases, in terms of its mandate, describes both its limitations and the opportunities it creates for combating impunity and dismantling the CIACS and offers policy recommendations to the Guatemalan institutions, CICIG itself and the international community.

II. THE DIFFICULT PATH TO CICIG

The underlying causes of Guatemala’s internal armed conflict were the disproportionate control of economic resources, particularly land, by an economic and political oligarchy whose interests had been historically protected by the armed forces, the repression of dissident political forces and state discrimination against the indigenous majority of citizens. Internationally, those factors were reinforced by a Cold War environment that instinctively labelled movements for political change as “communist” and “revolutionary”.⁷ The systematic closure of formal institutional political channels to civilian opposition in the early 1960s in the aftermath of the 1954 coup d’état orchestrated by the U.S. Central Intelligence Agency (CIA) was the key causal event of the conflict.⁸

Between the 1960s and 1980s, a series of armed insurgencies emerged. Right-wing military governments, with financial and security support from the U.S. and most with a bare democratic façade, were in place during much of the period. Beginning in 1981, the security forces confronted the insurgency with a “scorched earth” campaign that resulted in vast loss of human life, including numerous massacres of indigenous communities. The guerrilla army, the Guatemalan National Revolutionary Unity (Unidad Revolucionaria Nacional Guatemalteca, URNG), was essentially defeated within two years, though it maintained a destabilising armed capacity and a growing political presence over the subsequent internationally-monitored peace process (1987-1996).

In the aftermath of the military defeat of the guerrillas, general elections returned civilian rule in 1985. During both the peace process, which concluded in 1996 with signature of the last of seventeen accords,⁹ and the post-conflict reconstruction, the international community, in particular the UN, has played a vital role, exerting political pressure and providing considerable financing through multilateral and bilateral loans and grants aimed at strengthening democracy and the rule of law. Despite fifteen years of actions aimed at transforming the justice system, however, impu-

⁵ Mazzarrelli, op. cit., p. 6.

⁶ Crisis Group Latin America Report N°33, *Guatemala: Squeezed Between Crime and Impunity*, 22 June 2010. For analysis by others, see fn. references below. The CICIG website is www.cicig.org.

⁷ Tom Barry, *Guatemala: The Politics of Counterinsurgency* (Albuquerque, 1986); and G. Black with M. Jamail and N. Stoltz Chinchilla, *Garrison Guatemala* (New York, 1984).

⁸ Greg Grandin, *The Last Colonial Massacre, Latin America and the Cold War* (Chicago, 2004).

⁹ See Dinorah Azpuru, “Peace and Democratisation in Guatemala: Two Parallel Processes”, in C. J. Arnsperg (ed.), *Comparative Peace Processes in Latin America* (Stanford, 1999); Susanne Jonas, *Of Centaurs and Doves: Guatemala’s Peace Process* (Colorado, 2000); and R. Brett, *Social Movements, Indigenous Politics and Democratisation in Guatemala, 1985-1996* (Boston, 2008).

nity remains extremely high,¹⁰ state institutions are fragile and increasingly infiltrated by organised crime, and criminal violence has intensified dramatically.¹¹

The peace accords lacked effective mechanisms to guarantee implementation of comprehensive reforms.¹² In particular, structural factors relating to the distribution of land and the perpetuation of economic inequalities were not addressed adequately. Important gains that were part of the peace accords, moreover, such as those relating to increased tax collection, security¹³ and demilitarisation,¹⁴ have not been consolidated, due primarily to the political power of elites to block reforms. Furthermore, according to one of its key advisers, Héctor Rosada, a fundamental flaw of the peace process was not to have anticipated the problems that would arise from the growth of organised criminal networks and their infiltration of the state.¹⁵

These setbacks have been exacerbated by the failure to dismantle the clandestine security structures and the growing presence of organised crime, DTOs and youth gangs (*maras*). New diverse, well-armed illegal actors have appeared since the end of the peace process. As income inequality has soared,¹⁶ the criminal networks have imposed themselves on daily life, and crime rates are on the rise.

¹⁰ According to statistics of the Supreme Court of Justice, quoted by a CICIG report, only 11,000 of 600,000 reports, ended in formal charges. “Tercer año de labores”, CICIG (online), 2009.

¹¹ The homicide rate for 2010 given by the Policía Nacional Civil de Guatemala was 46.3 per 100,000 and 96.04 per 100,000 within the capital, Guatemala City. The 2010 rates for neighbouring countries were: El Salvador 71 (San Salvador, 82), Colombia 39 (Bogota, nineteen), Mexico 29 (Mexico City, eight). “Estudio comparativo de la incidencia de homicidio doloso en ciudades y jurisdicciones sub nacionales de los países del mundo 2010”, Consejo Ciudadano para la Seguridad Pública y la Justicia de México, January 2011.

¹² See Crisis Group Report, *Guatemala Squeezed Between Crime and Impunity*, op. cit.; also F. Stewart, G. Brown and L. Mancini, “Why Horizontal Inequalities Matter: Some Implications for Measurement”, Center for Research on Inequality, Human Security and Ethnicity (CRISE), working paper no. 19 (2005); and C. Caumartin, “Racism, Violence and Inequality: An Overview of the Guatemalan Case”, CRISE, working paper no. 11 (2005).

¹³ For discussion of the advances and obstacles relating to security, see Hector Rosada, “Guatemala 1996-2010: hacia un Sistema Nacional de Seguridad y Justicia”, Cuaderno de Desarrollo Humano 2009/2010 – 1, UN Development Programme (UNDP), 2010.

¹⁴ For in depth details relating to the implementation of the peace accords, see “Guatemala: una economía al servicio del desarrollo humano”, UNDP, 2008; and “Guatemala: hacia un estado para el desarrollo humano”, UNDP, 2010.

¹⁵ Crisis Group interview, Guatemala City, 12 April 2011.

¹⁶ Income inequality in Guatemala remains among the highest in Latin America; tax collection is among the lowest in the re-

In circumstances that the UN Special Rapporteur on Extra-Judicial or Arbitrary Executions in 2007 called a “killers’ paradise”, the state has been increasingly unable to guarantee minimum citizen security and respect for fundamental human rights; on the contrary, state agents continue to be implicated in acts of violence, while “there are now more killings per day than there were during the armed confrontation, and evidence shows that the state has responsibility under international human rights law for widespread killings”.¹⁷

A. A FALSE START

CICIG was born out of the Global Human Rights Accord, signed by the government and the insurgent URNG in March 1994 that proposed a commission to dismantle the CIACS. However, that did not come about for more than a decade. Instead, in the years following the signing of the peace in 1996, negative structural patterns and conditions within society persisted or deteriorated, and the expressions and consequences of violence evolved. During the same period, the long hoped-for fiscal reform process was not approved,¹⁸ further contributing to the fragility and weakening of state institutions. With the emergence of criminal networks, including DTOs and *maras* as major actors, violence is no longer primarily political as in earlier decades, but extortion, drug-trafficking and distribution, criminal control of legal and semi-legal markets, robbery and contract killing are commonplace.¹⁹

Clandestine structures have evolved since the end of the armed conflict into organised criminal networks and/or merged with foreign organised criminal networks, particu-

gion, approximately 11.9 per cent of gross domestic product (GDP) in 2010. Tax rates for other Central American countries are: 17.5 (Nicaragua), 14.9 (Honduras), 14.0 (El Salvador) and 13.8 (Costa Rica). See “Investigación de coyuntura 2010: el comienzo de la recuperación para Centroamérica”, Instituto Centroamericano de Estudios Fiscales (ICEFI), *Lente fiscal centroamericano*, no. 1 (2010), p. 24.

¹⁷ “Civil and Political Rights, Including the Questions of Disappearances and Summary Executions”, Report of Special Rapporteur Philip Alston on extrajudicial, summary or arbitrary executions, Addendum, A/HRC/4/20/Add.2, 19 February 2007, pp. 5-7. While the report is four years old, much the same could be said today.

¹⁸ President Álvaro Colom had made this a priority, but his administration (2008-2012) has so far failed to achieve it.

¹⁹ “Recognising the Past: Challenges in the Combat of Impunity in Guatemala”, Impunity Watch, November 2008; “Exchanging a Culture of Violence for a Culture of Life”, Impunity Watch, August 2010. As an example, extortion of bus companies by youth gangs resulted in approximately 391 deaths of drivers, 110 of bystanders and 43 of presumed extortionists between 2007 and 2010; see Crisis Group Report, *Guatemala: Squeezed Between Crime and Impunity*, op. cit.

larly Mexican syndicates. These do not appear to seek absolute control of the state or its total failure. Rather, a certain skeletal state framework and degree of political and physical infrastructure are required for them to function optimally. The consequence is the persistence of a state that possesses formal political authority but key aspects of which – including the selection processes for attorney general and the Supreme and Constitutional Courts – have been infiltrated by an informal power structure.²⁰

The initial proposal sought to implement the concept set up in the Global Human Rights Accord, as well as respond to the international observers, including the UN Special Rapporteur on the Independence of Judges, who visited Guatemala in 1999 and recommended an independent commission to investigate judicial corruption and influence peddling.²¹ That proposal was directed at a seriously deteriorating human rights situation linked to CIACS activity. In 2003, with violence and intimidation against human rights defenders intensifying, a coalition of human rights organisations, supported by the Human Rights Ombudsman's Office (Procuraduría de los Derechos Humanos, PDH), proposed the Commission for the Investigation of Illegal Groups and Clandestine Security Organisations (Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad, CICIACS).

This followed the findings of a UN technical commission, established in 2002, that the judicial system lacked sufficient mechanisms to investigate CIACS effectively.²² Elaboration of this proposal took place amid a series of initially ineffectual initiatives proposed by the government of then President Alfonso Portillo, including establishment of a presidential commission to investigate threats and intimidation against human rights defenders and creation of the

Special Human Rights Defenders Unit within the Public Prosecutor's Office (Ministerio Público, MP).

It was envisaged that the CICIACS, in addition to investigating, would submit a report to assist the authorities in criminal prosecutions and would make recommendations. Some elements of this were later included in the CICIG mandate, but above all, the crimes to be investigated were those against human rights defenders and justice officials. In June 2003, what had originally been conceived of as a national commission was given international status in an agreement between the government and the UN. The commission was to be presided over by an appointee of the secretary-general. Creation of the commission and its effective functioning necessitated a series of legal and institutional reforms.

However, the agreement was immediately controversial in Guatemala, where its threat to the power of CIACS was recognised. Formally, the intense debate revolved around the constitutionality of the commission, in particular its independence from the national judicial system. In May 2004 the Congressional Governance Commission rejected the agreement on the grounds that the terms of the new body violated the constitution. In August the Constitutional Court agreed, citing the grant of diplomatic immunity to international CICIACS officials and, significantly, the authority to initiate independent criminal investigations. The commission, therefore, never came into operation.

B. CREATION

The rejection occurred at a time of increasing crisis within the judicial system, marked by the growing influence of the CIACS and worsening impunity. These factors were in turn exacerbated by the lack of effective mechanisms for supervising and disciplining members of the sector and non-compliance with criteria for their selection, promotion and evaluation. The constitutional requirement that the legislature elect Supreme Court and Appeals Court judges every five years restricted judicial independence and left judges vulnerable to political interference.²³ A new effort was consequently made to create a commission with broader powers. It aimed not only to dismantle the CIACS, as a primary objective, but also to reform and strengthen the institutions responsible for investigating and prosecuting crimes. It further sought to reduce the extreme dependence on witness testimony for obtaining convictions in order to give increased weight to other, particularly scientific, evidence.

²⁰ Crisis Group interview, Iván Briscoe, Research Fellow at Clingendael, the Netherlands Institute of International Relations, Bogotá, 4 March 2011. Susan Peacock and Adriana Beltrán, "Hidden Powers in Post-conflict Guatemala", Washington Office on Latin America, 2003; Impunity Watch, November 2008 and August 2010, op. cit.

²¹ "With regard to judicial corruption and influence peddling, an independent enforcement agency with powers to investigate complaints of corruption in public office, including in the judiciary, and prefer prosecutions should be set up. This may require separate legislation. This agency should not be part of the Office of the Attorney-General but should be a separate entity, independent of all government departments save that the facilities of the prosecutorial services of the Attorney-General's Office could be utilised. This agency should submit annual reports to Congress and such reports should be made public". "Civil and Political Rights, Including Questions of Independence of the Judiciary, Administration of Justice, Impunity", report of the Special Rapporteur Param Coomaraswamy, Addendum, E/CN.4/2000/61/Add.1, 6 January 2000.

²² "Country Briefing: Guatemala", Economist Intelligence Unit, 21 August 2006.

²³ Impunity Watch, November 2008 and August 2010, op. cit.

Immediately upon entering office in 2004, President Oscar Berger began to address the issue of an investigatory commission to replace the CICIACS. A working group was created that sought an alternative, with the aid of lobbying by civil society organisations, buttressed by international pressure.²⁴ A further working group was created to formulate a proposal for a new agreement that was finally presented by the vice president in January 2006 to parliamentary commissions, the PDH and the human rights movement and later to the UN.²⁵

The agreement was signed in December 2006 by the UN and the government, despite continued opposition by conservative sectors.²⁶ Would-be spoilers included the Guatemalan Republican Front (Frente Republicano Guatemalteco, FRG), the right-wing party led by former General Efraín Ríos Montt that had a majority in Congress, the Unionist Party (Partido Unionista) and the Nationalist Union for Change (Unión del Cambio Nacionalista, UCN).²⁷ Positions gradually became less antagonistic, however, particularly within elements of the private sector, such as the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras, CACIF).

Critical support from the human rights movement and insistence from the international community were key in consolidating the Berger administration's consistent backing for the commission and obtaining Congressional ratification of the agreement in August 2007, three months after the Constitutional Court handed down a favourable opinion.²⁸ The shift in opinion was a consequence of supporters' pressure, as well as the general acceptance in most of society that clear measures were necessary to confront increasing violence. At the same time, modifications in

the mandate of what became CICIG, in particular relating to the limitation of its prosecutorial powers, reduced the possibility that the Constitutional Court would reject the commission.

C. MANDATE

CICIG is a hybrid criminal justice mechanism, embedded in the national judicial system, the consequence of the government's request for assistance to the UN Secretary-General.²⁹ Institutionally dependent upon the Secretariat's Department of Political Affairs (UNDPA), it is UN-sponsored but not a UN body. Its mandate is the investigation and dismantling of organised criminal networks and the strengthening of the domestic criminal justice system, but not the investigation and penalisation of international crimes.³⁰

Politically, organisationally and financially independent, CICIG is funded by voluntary contributions from the international community that are administered by the UN Development Programme (UNDP).³¹ It is led by an international commissioner, with the status of assistant secretary-general. Originally it was expected to have approximately 50 staff, but due to increasing demands it presently employs some 200; 60 to 70 are investigators and prosecutors,³²

²⁴ The working group included the Presidential Commission for Political Reform, the then human rights ombudsman, the Bar Association and the Centre for the Defence of the Constitution (Centro para la Defensa de la Constitución, CEDECON), as well as members of the human rights community.

²⁵ The group brought together the vice presidency, the foreign ministry and the presidential human rights commission, along with broad representation of civil society and human rights movements, with particular leadership shown by Helen Mack, the director of the Myrna Mack Foundation.

²⁶ The formal title was "Agreement between the United Nations and the Guatemalan Government Relating to the Establishment of the International Commission against Impunity in Guatemala".

²⁷ See Julia Schünemann, "Mirando al Monstruo a la Cara: La Comisión Internacional en contra de la Impunidad en Guatemala y el Contrato de construcción del Estado de Derecho", FRIDE, October 2010.

²⁸ The negotiation, signing and ratification of the agreement establishing the commission spanned three governments, two Congresses and two distinct Constitutional Courts.

²⁹ Crisis Group interview. Carlos Castresana, former head of CICIG, Washington DC, 22 May 2011. CICIG shares characteristics with the International Criminal Tribunals for the Former Yugoslavia (ICTY) and for Rwanda (ICTR), as well as the UN International Independent Investigation Commission (UNIIC) established in Lebanon in 2005. It also shares experiences with the UN Assistance to the Khmer Rouge Trials (UNAKRT). However, its mandate diverges significantly from earlier international criminal justice mechanisms in that it is embedded within and subordinate to the national judicial system and lacks independent prosecutorial powers. The commission also contrasts with conventional technical development cooperation and assistance programs, which are usually focused on strengthening the judiciary solely through training, equipment and other bilateral interventions, without dealing, as CICIG does, with investigations on specific cases. See Andrew Hudson and Alexandra Taylor, "The International Commission against Impunity in Guatemala: A New Model for International Criminal Justice Mechanisms", *Journal of International Criminal Justice*, vol. 8 (2010), pp. 53-74.

³⁰ Schünemann, *op. cit.*, p. 4. See also CICIG website <http://cicig.org>. Crisis Group interview. Carlos Castresana, former head of CICIG, Washington DC, 22 May 2011.

³¹ Spain, the UK, U.S., Sweden, Canada, the Netherlands, Italy, Norway, Switzerland, Finland, Denmark, Argentina, Germany, Ireland and the European Commission have supported CICIG financially. The 2010 budget was approximately \$20 million.

³² During 2009, CICIG employed 196 national and international officials: 72 were involved in security functions; 29 in administration; and 95 in substantive tasks. CICIG employs staff from the following countries: Germany, Argentina, Austria, Bolivia, Canada, Chile, Colombia, Costa Rica, El Salvador, Spain, the

with the remainder working in analysis, the administrative and security departments and the office of the international commissioner.³³ The first head, Spanish prosecutor Carlos Castresana, achieved impressive results under difficult circumstances but resigned in June 2010, after Colom appointed an attorney general (Conrado Reyes) whom CICIG had accused of having clear links to organised criminal networks and having undermined its investigations by removing cooperative prosecutors and investigators. Castresana's successor is the former attorney general of Costa Rica, Francisco Dall'Anese Ruiz.³⁴

CICIG's mandate for independent criminal investigation, accompaniment of prosecutions and sponsorship of proposals for institutional reform of the justice and security sectors is, in its own words, "unprecedented within the United Nations or other international efforts to promote responsibility and strengthen the rule of law".³⁵ The commission explains that "[i]ts novelty lies in the fact that, for the first time, an international body has been given the authority to conduct criminal proceedings in national courts".³⁶ Rather than providing equipment or technical aid, it is oriented toward forming and strengthening capacities of national institutions by "on-the-job training" and particularly litigation on specific cases.³⁷ This is meant to precipitate long-term structural and institutional transformation within the judicial system.³⁸

U.S., Finland, France, Guatemala, Honduras, Ireland, Italy, Mexico, Peru, Portugal, the UK, Sweden, Switzerland, Trinidad and Tobago, and Uruguay. "Third Year of Labours", CICIG, 2009. As of March 2010, there were 187 staff members of whom 77 were security, 27 administrative and 83 investigators and prosecutors and other substantive staff. At that time, 56 were Guatemalans and 131 internationals. See: "CICIG in numbers. Quantitative Report on CICIG's activities", CICIG, Guatemala City, March 2010.

³³ Crisis Group interview, Aníbal Gutiérrez, Guatemala City, 12 April 2011.

³⁴ Reyes was ultimately dismissed by Colom after the Supreme Court gave him a face-saving way of doing so by challenging certain procedures used in the original nomination process. Also see Crisis Group Report, *Guatemala: Squeezed Between Crime and Impunity*, op. cit.

³⁵ "El mandato del la CICIG no tiene precedentes dentro de las Naciones Unidas u otros esfuerzos internacionales de promover la responsabilidad y reforzar el estado de derecho", <http://cicig.org/index.php?page=sobre>.

³⁶ See CICIG brochure, http://cicig.org/uploads/documents/Brochure_English.pdf.

³⁷ Crisis Group interview, Arturo Aguilar, international affairs and cooperation secretary in the Public Prosecutor's Office, Guatemala City, 11 April 2011.

³⁸ Impunity Watch, November 2008 and August 2010, op. cit. It also gives the international community an important perspective on Guatemala's institutions, since it operates completely within the domestic legal system.

The objectives set out in the agreement are (i) to support, strengthen and assist institutions of the Guatemalan state in the criminal investigation and prosecution of those crimes carried out by CIACS; (ii) to assist in the clarification of their structures, activities, modes of operation and sources of finance; and (iii) ultimately to precipitate their dismantlement and legal prosecution.³⁹ Activity is directed especially against those state agents linked with the CIACS who are in a position to guarantee impunity to the criminal networks and clandestine structures. CICIG can investigate any individual, official or private entity (Article 3.1.d) and is authorised to promote and carry out criminal investigations by filing criminal charges with the relevant authorities, as well as accompany investigations and litigation as a "complementary prosecutor" (*querellante adhesivo*), when its petition is granted by the domestic justice system.⁴⁰ It may also give technical advice to the authorities in "the investigation and criminal prosecution of presumed members" of CIACS and cooperate with other relevant national institutions (Article 3).

The state is obliged to provide offices and ensure that appropriate national institutions have sufficient resources to comply with their obligations under the agreement. Significantly, CICIG operates under national law and within the country's courts; its legal interventions are subject to the jurisdiction of the judicial system and to the decisions of its representative institutions (Article 1.2). The agreement does not give it authority to intervene directly in or act as interlocutor with judicial organs, meaning that it lacks independent prosecutorial power.

CICIG has elected to focus on high-impact cases, making use of its authority to conduct pre-judicial investigations and support those carried out by Guatemalan institutions. Its mandate permits it to identify non-cooperative, obstructionist or corrupt officials who commit offences and to participate in disciplinary proceedings as a third party (Article 3). It also can propose policies (Article 2.1.c) and institutional and legal reforms to those institutions with which it principally collaborates, namely the MP, the interior ministry and the National Civil Police (Policía Nacional Civil, PNC).

It may support and lobby for legislative reforms and new laws perceived to be fundamental to its goal of dismantling the CIACS and propose creation of mechanisms and procedures to protect the right to life and personal integ-

³⁹ Article 1. CIACS are defined in Article 1(d.i-ii) as "those groups that commit illegal acts in order to affect the full enjoyment and exercise of civil and political rights and are linked directly or indirectly to agents of the State or have the capacity to generate impunity for their illegal actions".

⁴⁰ A complementary prosecutor takes part in the charge and the investigation process as a joint plaintiff, Article 116, Guatemalan Penal Process Code.

riety.⁴¹ Article 3 gives it power to guarantee confidentiality to those who collaborate with it and to request state protection for them. Under the same article, the commission is also entitled to obtain statements, documents and collaboration from any government official or entity.

The mandate does not directly touch on the fundamental economic causes of the country's long history of violence,⁴² nor does the commission investigate the egregious human rights violations of the armed conflict. CICIG is not a transitional justice mechanism, since it does not attempt to reveal the truth of past crimes or produce justice and reparations for their victims. What it addresses are several direct causal factors of the new violence and ongoing impunity, namely the activities of the CIACS, institutional weakness and corruption.

However, the agreement does make important gestures toward human rights protection and international standards, since CICIG addresses illegal structures and their actions that affect the full exercise of civil and political rights and so pursues two related objectives. First, it seeks to strengthen the capacity of the criminal justice system to protect overall rights. Secondly, it aims to elucidate and articulate a relationship between past human rights violations and present impunity by making advances against organised crime. The successful prosecution of organised criminal networks may eventually lead to the adoption of more robust criminal law practices and an improved institutional culture for investigating and punishing crimes, including past human rights violations.

The objectives of CICIG, nevertheless, have been gradually detached from a human rights discourse and its functions increasingly differentiated from those initially proposed for CIACS. In its direct focus on CIACS, the commission seeks to identify and punish criminals rather than directly assist victims of human rights violations. This focus "has permitted a possibility of garnering more support for the commission from sectors other than human rights defenders, such as the economic elite, for example, given that they too may be victims of these structures. Moreover, the shift away from an exclusive human rights approach also opened the door for important international support, including from the U.S. Drugs Enforcement Agency".⁴³

One of its important characteristics is that it is embedded within the justice system. The resulting proximity of the international commission and national justice functionaries who collaborate on a daily basis presents problems, in particular subjection to decision-making bodies that may have been infiltrated by criminal networks, as cases like that against ex-Prosecutor Alvaro Matus in 2008 have shown.⁴⁴ But there is also an advantage: the possibility to institutionalise important practices learned through regular interactions heightens the opportunity for national actors, within and outside the judicial system, to share in CICIG's activities and appropriate its objectives and achievements for their own in the medium to long term. Deference to domestic institutions is likewise a key factor that may help to restore local confidence in the justice system. Successful joint action on cases and long-term judicial reform allow citizens to witness justice being carried out against criminal networks by national institutions.⁴⁵ This should strengthen state legitimacy and may become an enduring CICIG legacy.⁴⁶

In this respect, CICIG contrasts with many prior international initiatives implemented in the country since the end of the armed conflict, which have been perceived as imposed from outside and above, lacking adequate discussion with or acceptance by broad sectors of society and thus local ownership. The post-conflict reconstruction process was indeed imposed upon powerful political and economic sectors which did not share the belief of the international community and of a broad swath of Guatemala society that structural transformation was needed to end impunity. As such, CICIG's efforts were resisted by those forces along with efforts to consolidate respect for democracy and human rights. The lack of success in producing the structural changes promised by the peace accords also saw democracy itself brought into question by many in Guatemalan society, considerable numbers in which exhibit significant support for a "tough line" (*mano dura*) approach to crime.

⁴¹ CICIG has the capacity "[t]o establish such mechanisms and procedures as may be necessary for the protection of the right to life and to personal integrity pursuant to the international commitments of the State of Guatemala with respect to the protection of fundamental rights and to international instruments to which Guatemala is a party", Article 1.b, agreement.

⁴² Corinne Caumartin, "Racism, Violence and Inequality: An Overview of the Guatemalan Case", Centre for Research on Inequality, Human Security and Ethnicity, March 2005.

⁴³ Crisis Group interview, Anabella Sibrián, country director, Dutch Platform Against Impunity, Guatemala City, 12 April 2011.

⁴⁴ Matus was charged with abuse of authority and dereliction of duty for obstructing the investigation into the murder of Victor Rivera, former interior ministry adviser and director of the anti-kidnapping unit during the Berger presidency. At the time he led the unit in the public prosecutor's office's in charge of that investigation.

⁴⁵ Schünemann, op. cit., pp. 1, 27.

⁴⁶ Mazarrelli, op. cit., p. 33.

III. THE IMPACT: AN ISLAND OF EFFICIENCY?

In general, CICIG has achieved unprecedented short-term successes, evidenced by positive outcomes in high-impact cases, its decisive support for civil society in achieving selection of an uncompromised attorney general in December 2010, the adoption of norms for the election of Supreme Court judges and generation of public awareness and debate concerning impunity and organised crime. CICIG directly influenced institutional arrangements within the MP, thus leading to the creation in 2008 of a special prosecutor's office (Unidad Especial de la Fiscalía de Apoyo a la CICIG, UEFAC) that assists its own work, and also pushed through a limited number of important legal reforms (discussed below). Significantly, however, until the MP Organic Law is amended, it remains possible for the president to remove the attorney general, leaving that position politically vulnerable in advance of the September 2011 presidential election.

CICIG's complaints and recommendations for administrative proceedings have led to the disciplining and removal of non-cooperative, obstructionist and corrupt officials from multiple institutions. It played a significant role in the dismissal of Attorney General Conrado Reyes in 2010 and the resignation of Judge Irma Leticia Valenzuela the previous year.⁴⁷ It also precipitated, in 2008, the removal of 1,700 members of the PNC (including 50 commissioners, a director-general and a sub-director) accused of corruption and incompetence. This was unprecedented in Guatemala's recent history.⁴⁸

To determine how well CICIG is accomplishing its broader mandate, however, its impact needs to be identified in three inter-related spheres: first, with respect to the legal cases it pursues; secondly, its capacity to influence legislation, public policy, state arrangements and institutions; and finally, its ability to contribute to the development of a new culture within state institutions, particularly the MP. Important to this analysis are assessments of its strategy for transferring capacities to national institutions and of the degree to which its on-the-job training has con-

tributed to legal culture and norms as well as greater professionalism.

A. PUBLIC PERCEPTIONS

The debate about CICIG and its impact continues to be heavily shaped by judgments relating to its two leaders, their styles and their cases. A clear distinction is made between the "ice breaker" media visibility of Carlos Castresana and the less public profile of the recently appointed Francisco Dall'Anese Ruiz.⁴⁹ Interviewees identified phases, corresponding partially to the terms of the two international commissioners. CICIG evolved from a first, "silent phase" (2007-2008), during which it concentrated on establishing its foundations and effective counterparts within the MP, such as the UEFAC, into a more proactive phase (2009-2010). During the latter, Castresana took important initiatives, including proposal of legislative reforms to Congress and engagement with selected cases.⁵⁰ His exit brought in the present phase, in which Dall'Anese appears to be assuming a lower profile for himself and CICIG, emphasising instead a more visible responsibility for national institutions, in particular the MP, while also taking on cases of a strategically different character.⁵¹

Opinion in Guatemala is divided over the advantages of a commissioner with a high public profile. The respected human rights activist Helen Mack said Castresana's visibility not only "brought with it political pressure upon the state and illegal actors, but also acted to exert an important educative role in his pronouncements to the press", which painstakingly explained the details of the cases CICIG was investigating.⁵² His visibility kept those who benefited from impunity both in and out of government on the defensive and encouraged others to speak out. His strong personality and courageous stance against impunity

⁴⁷ CICIG filed a complaint with the MP against Judge Valenzuela and appealed to the Supreme Court of Justice, accusing her of obstruction of justice for her decision to remove CICIG from the case against former President Alfonso Portillo. CICIG 2010, op. cit., p. 3.

⁴⁸ "Two Years of Work: A Commitment to Justice. Guatemala City", CICIG, 2009, p. 4. However, Crisis Group interviews in Guatemala between February and April 2011 with a broad array of state and non-state actors indicated that none of those dismissed had been otherwise sanctioned, raising a question of the institutional impact of such a mass process within the force.

⁴⁹ Crisis Group interviews, Luis Ramírez, research director, Instituto de Estudios Comparados en Ciencias Penales de Guatemala, ICCPG [Guatemalan Institute of Comparative Studies in Penal Sciences], 14 April 2011; Ricardo Stein, senior adviser to the UNDP office in Guatemala, Guatemala City, 22 February 2011. The "ice breaker" characterisation was Stein's.

⁵⁰ According to Luis Ramírez, CICIG was strengthened under Castresana in two interdependent ways: politically, particularly with regard to its relations with national authorities, such as the MP, the executive and the Supreme Court of Justice; and through the start of an important relationship with the media. Crisis Group interview, 14 April 2011.

⁵¹ Xavier Michón, Guatemala country director, UNDP, has suggested that CICIG's workload may in part have shifted to adapt to the new context, with more emphasis gradually placed on transferring capacities to national institutions, instead of an exclusive litigation strategy. Crisis Group interviews, Guatemala City, 12 April 2011, 15 April 2011.

⁵² Crisis Group interview, Guatemala City, 14 April 2011. Helen Mack is the director of the Myrna Mack Foundation.

also energised the CICIG staff. Castresana himself now says that his profile was “too high” and that it was a mistake “to do everything, including being a spokesman, a lobbyist, and a fundraiser”.⁵³ His critics were also unhappy at his emphasis on the role of an international hybrid body rather than domestic institutions.

Criticism of Dall’Anese has been the opposite side of the coin, notably the argument that his relative absence from the press, “while giving national institutions more prominence, may send the wrong message of a CICIG that is more removed from the national reality”.⁵⁴ However, Dall’Anese’s reaction to the recent reversals of the Portillo and Pavón cases suggests that, like his predecessor, he is prepared if necessary to use the public media to name and shame questionable conduct.⁵⁵

The debate over public perceptions, however, is not really about styles or phases. The crux of the matter is the political nature and impact of initiatives CICIG has taken through the courageous work of its commissioners and functionaries and their national counterparts. It has sought to strengthen and restructure the judicial system, so as to end impunity, confront the CIACS and help restore judicial independence. Historically, pre-existing constitutional arrangements combined with their political power have enabled powerful members of elite groups to control the judicial system, thus to defend their political and economic interests through privileged access to the most powerful justice institutions, such as the Constitutional Court, and assure protection for their illegal actions. When legal means have been unavailable or ineffective, corruption, infiltration of state institutions by CIACS, coercion or violence have been used. CICIG’s efforts to build a more impartial and effective justice system for the first time truly threatened the interests of some of the most powerful groups, so not surprisingly produced strong reactions.⁵⁶

Since the Presidency of Alfonso Portillo (2000-2004), who allegedly represented one segment of this elite and whose administration was publicly against CICIG’s predecessor (CICIAS), other segments have gradually lost ground. This began to encroach upon the elites’ exclusive control of the state and dominance of the economy. The emer-

gence of organised criminal networks seeking to control the state was part of this dynamic.

Some members of the most powerful economic sectors initially viewed CICIG with distrust, scepticism and concern; however, this began to change somewhat, at least partly due to a realisation of the increasing threat organised crime presented to traditional interests, as well as to insistent pressure from progressive members of the elites.⁵⁷ The Berger administration was thus able to negotiate and obtain ratification of the agreement establishing CICIG in 2006. The commission is now disrupting practices and processes, some corrupt, involving state and private transactions that maintained the old economic and political order and pursuing prosecutions that have gradually affected these powerful groups. When factions have been touched by a prosecution, they have reacted vigorously. As a state official commented, “no one can accept it when one of their own is investigated, and that’s when they begin to criticise CICIG publicly”.⁵⁸

In a recent press interview, President Colom highlighted the crucial role CICIG is playing in Guatemala: “CICIG is the only guarantee we have to keep moving towards more justice. The system is so infiltrated that if you don’t have this kind of international audit, you cannot move forward. I ensure you that it is not nice to have a UN official telling the President of Guatemala to fire a minister for this and that. I had no other option but to comply”.⁵⁹ This statement reveals how important the commission has become for the rule of law but suggests at the same time that the state will remain overly dependent upon it unless national institutions are simultaneously strengthened.

B. BREACHING THE WALL OF IMPUNITY

CICIG’s most direct impact arguably is shown in the prosecutions that have given it visibility and prestige, generating broad legitimacy and, except from their targets, respect. The commission supports cases in the following ways: with UEFAC as complementary prosecutor; through investigation with other MP units; and by giving technical support and accompaniment. Its investigative and case work breaks down as follows:

⁵³ Crisis Group interview, Washington DC, 22 May 2011. Castresana noted that he had urged New York-based UN officials to support CICIG’s work directly, including by involvement in its important decisions.

⁵⁴ Crisis Group interview, Luis Ramírez, research director, ICCPG, Guatemala City, 15 April 2010.

⁵⁵ Crisis Group interviews, UN officials, New York, 20 May 2011. Entrevista en CNN en Español, 16 December 2011; “Dalla’nese denuncia cabildeo internacional contra la CICIG”, *El Periódico*, 16 February 2011.

⁵⁶ Edgar Gutiérrez, “La CICIG, ¿detrás de su sombra?”, *Inciencia Democrática*, 6 December 2010.

⁵⁷ For more detailed discussion of this process, see Briscoe, “A Criminal Bargain”, op. cit.; and López, “Guatemala’s Crossroads”, op. cit.

⁵⁸ Crisis Group interview, state functionary, Guatemala City, 15 April 2011.

⁵⁹ “Los Narcos nos están invadiendo”, *El País*, 24 May 2011.

Investigation and Criminal Prosecution⁶⁰

Activities	
Complaints received	1,736
Open investigations	56
Judicial oral hearings	1
Cases as complementary prosecutor	11
Sentences	7
Investigation Missions (estimate)	919
Accompaniment in raids carried out by competent authorities (estimate)	248
Accompaniment in captures carried out by competent authorities (estimate)	157
Electronic files centralised	128,000

Classification of Cases	
Cases under investigation and technical support to other MP units	27
Cases investigated and supported technically by UEFAC	34
Cases closed between January 2008 and August 2010 after preliminary investigation	183
TOTAL	244

1. Case Selection Criteria

The principal criteria CICIG applies to pursue a case are the likelihood of links with illegal groups and clandestine security organisations; the short- and long-term political impacts on impunity; the probability of successful criminal prosecution; and operative capacity, such as the ability to guarantee security for those involved (including witnesses) and adequate budget.⁶¹ It is likely these criteria will be expanded to include cases with a high possibility of impact within society, particularly those which citizens may perceive as directly relevant to themselves. MP officials say it is the international commissioner who normally identifies cases. Occasionally the decision results from the attorney general's recommendation, in consultation with ministry officials, but mostly the commissioner takes the final decision.

Several cases selected by the commission and in which it has acted as complementary prosecutor have involved apparently low-profile criminal networks, for example, those relating to four ex-police accused of membership in the criminal group El Mariachi Loco, the Rivera murder (see below) and that of Álvaro Matus. Others, including President Portillo for embezzlement, have involved the most serious and entrenched criminal networks.⁶²

A critical element of debate is the degree to which case selection has followed the above criteria, indeed whether cases have been assumed as the result of a coherent and strategic selection process aimed at the long-term goal of dismantling the CIACS. CICIG has been criticised for not developing a coherent public communications strategy about its work, in particular regarding the selection of cases.⁶³ Some donors believe there is a flexible strategy that both is directed at that objective and responds to urgent political priorities. Donors and civil society actors alike cited CICIG's success in resolving the Rosenberg case (see below) as a key contribution to political stability.⁶⁴

Some civil society representatives were more reserved, arguing that the case selection strategy has not been sufficiently explained, and the few criteria that have been revealed are not adhered to in practice. They suggested CICIG's approach is too often improvised, without adequate regard to its long-term objective, indeed that the case selection process has been fundamentally reactive rather than strategic.⁶⁵ Castresana acknowledged that the commission lacked an organised agenda and work plan at the beginning; the general idea that guided its work, he said, was to target specific groups linked to CIACS.⁶⁶

human trafficking/adoptions (no. 01079-2008-05306); Zacapa, gun battle; Portillo (no. 7102-2001); Enrique Sosa and defence ministry officials (no. 1073-2009-0656); kidnapping, rape and torture of Gladys Monterroso, wife of Human Rights Ombudsman Sergio Morales (no. 01071-2009-00678); and Arévalo Lacs (no. 01074-2009-01245). There have been final convictions in the bus case (technical support to UEFAC), murder and concealment; "Smurf" case (technical support from UEFAC), homicide; Lemus (complementary prosecutor with UEFAC), aggravated robbery, simulation of crime, abuse of authority; Rosenberg (complementary prosecutor with UEFAC), murder, illicit association, possession of firearms; Amatitlán (UEFAC as investigator), conspiracy, traffic and illicit possession of drugs, illegal raid and detention, abuse of authority, obstruction of justice; and Maskana (complementary prosecutor), non-compliance of duties. <http://cicig.org/index.php?page=cases>.

⁶³ Crisis Group interviews, Guatemala City, February and April 2011. See also Hudson and Taylor, *op. cit.*, p. 63, who indicate that the tension between the need for confidentiality and anonymity (arising from the commission's mandate to investigate specific criminal cases) and the importance of a coherent communications outreach strategy and accompanying constant engagement with civil society is an inevitable problem of hybrid commissions.

⁶⁴ Crisis Group round table, Guatemala City, 15 April 2011. The same views were expressed by a number of regional experts. Grupo de reflexión OES, attended by Crisis Group, Washington DC, 21 January 2011.

⁶⁵ Crisis Group interviews, Guatemala City, February and April 2011.

⁶⁶ Crisis Group interview, Washington DC, 22 May 2011.

⁶⁰ Figures reflect cases handled from the establishment of CICIG until April 2011. Crisis Group email correspondence, Aníbal Gutiérrez, CICIG Guatemala, 6 May 2011.

⁶¹ CICIG 2009, *op. cit.*, p. 13.

⁶² CICIG has been admitted as a complementary prosecutor in the following cases: Álvaro Matus (no. 01079-2009-00211); Lemus, El Mariachi Loco (no. 49-2008); Rosalinda Rivera,

Interviewees repeatedly said the commission has not developed a single set of criteria that guarantees coherent and consistent choice. In the polarised environment where CICIG operates, they argued, this opens the door to claims that the selection process lacks clear aims. It has been alleged that “the selection of cases and investigations of the commission were subject to biases protecting the interests of the traditional Guatemalan oligarchy”,⁶⁷ and that there is a tendency to privilege certain cases.⁶⁸ Although no evidence directly supports such allegations, they still may have damaged the commission’s credibility. It is thus crucial for CICIG to clarify its case selection strategy.⁶⁹

A further criticism of the selection process has been that virtually all cases have been in Guatemala City.⁷⁰ According to CICIG officials, this is due to budgetary and security concerns.⁷¹ The criticism, from both official and private Guatemalans and internationals, is, however, serious given the weakness of state institutions in the interior and that organised criminal networks, including DTOs, appear to operate extensively outside the capital, particularly in the border regions. For example, they are active in the northern department of El Petén, next to Mexico, which has a homicide rate considerably higher than the national average.⁷²

2. Prominent Cases

Rosenberg

This was in many ways CICIG’s biggest test.⁷³ Prior to his 2009 killing, Rosenberg, a prominent lawyer, recorded a video (subsequently released to the media)⁷⁴ in which he said that if it had been made public, he would already be

dead and that President Álvaro Colom, the first lady, Sandra Torres, businessman Gregorio Valdez and Colom’s private secretary, Gustavo Alejos, would be responsible for his murder, as well as for the earlier murders of businessman Khalil Musa and his daughter, Marjorie.⁷⁵ The video’s release and Rosenberg’s death precipitated an acute political crisis, including demonstrations throughout Guatemala City calling for the president’s impeachment.⁷⁶

Colom wisely asked CICIG to take the case, and its conclusions, released in January 2010, found no connection of the president and the others with Rosenberg’s death. Rather, he had planned his own killing for personal reasons, faked extortion against himself and hired hit men, with the aid of two relatives, to kill him, all with a criminal network’s help.⁷⁷ CICIG was widely credited with ending the political crisis, perhaps even preventing a coup d’état. The case shocked society, not least for revealing the way members of the elite, of which Rosenberg was one, “arranged things between friends when problems occurred”.⁷⁸ On 15 July 2010, nine individuals were convicted of murder, illicit association and possession of firearms. The results included dismantlement of two organised criminal networks, in Escuintla and Guatemala departments respectively, composed of active and retired members of the PNC, hired killers and ex-soldiers.

While the case’s political relevance was clear, the details of its resolution raised a question as to whether it fell within CICIG’s mandate. Nevertheless, although the outcome did not directly involve senior members of the government, it revealed the culture of criminality undergirding certain business sectors and showed how well-connected persons use criminal groups to resolve private problems. It also led to the destruction of two criminal structures in which serving and ex-officials participated and, while consuming large quantities of the commission’s time and resources,

⁶⁷ Schünemann, op. cit., p. 21.

⁶⁸ Crisis Group interview, Marielos Monzón, Guatemalan journalist, Guatemala City, 16 April 2011.

⁶⁹ “Broad discretion in case selection, and resulting public frustration and mandate creep, are problems common to hybrid mechanisms. CICIG discarded 49 of the 64 complaints received in its first year as outside its mandate, with limited explanation. Guatemalans expressed confusion over its role as private prosecutor and what cases were within its mandate”. Hudson and Taylor, op. cit., p. 62.

⁷⁰ An exception involved a massacre in Río Hondo, Zacapa, on 25 March 2008.

⁷¹ Crisis Group interview, Thomas Pastor, CICIG Secretary, Guatemala City, 21 February 2011.

⁷² “Crime and Violence in Central America, a Development Challenge”, World Bank, April 2011. The massacre of 27 persons in a cattle ranch in the department of El Petén, on 16 May 2011, caused the declaration of a State of Siege by President Colom. “Gobierno publica Estado de Sitio en Petén”, *Prensa Libre*, 18 May 2011.

⁷³ Crisis Group interview, Luis Ramírez, research director, ICCPG, Guatemala City, 13 April 2011.

⁷⁴ “Asesinato Rodrigo Rosenberg 1”, video, YouTube, 11 May 2009. www.youtube.com/watch?v=VxZptUp9a44.

⁷⁵ In the video, Rosenberg stated that his death was linked to the investigations he himself was pursuing into the killings in Guatemala City on 14 April 2009 of businessman Khalil Musa and his daughter, Marjorie Musa, for whom he was attorney (and with whom Rosenberg was sentimentally involved). He denounced corruption in the Banrural Bank and the National Coffee Association (Anacafé) and alleged illegal activities to fund projects of Sandra Torres in which he said Alejos and Valdez were also involved.

⁷⁶ For a particularly illustrative and elaborate account of this case, see David Grann, “A Murder Foretold, Unravelling the Ultimate Political Conspiracy”, *The New Yorker*, 4 April 2001.

⁷⁷ “Conferencia de Prensa caso Rosenberg”, video, YouTube, 14 January 2010, www.youtube.com/watch?v=9erCQCxU7WU&feature=player_embedded.

⁷⁸ Crisis Group interview, Juan Ramón Ruíz, director, Forum for Organisations of Civil Society in Security Issues, Guatemala City, 13 April 2011.

broke new investigative ground for Guatemala, in particular in the use of scientific evidence and wiretapping.⁷⁹

Pavón

The case that has perhaps caused the most acute polarisation involves the killing of seven prisoners in Pavón Prison on 25 September 2006 during an interior ministry operation (“Peacock”). The human rights ombudsman publicly said their deaths had characteristics of extrajudicial executions.⁸⁰ Statements have been taken from two of the accused, the former directors of the penitentiary system and of what is now the Specialised Division for Criminal Investigation. The operation also included the former director of the PNC and the anti-kidnapping unit, then led by a Venezuelan, Victor Rivera, who was murdered in 2008. Several detention orders remain pending, including against ex-Interior Minister Carlos Vielman (now living in Spain), on charges of extrajudicial execution.

The arrest of Vielman in Spain in October 2010⁸¹ and the request for his extradition produced a strong reaction in the capital and the commission’s most direct challenge. The correct supporting documents were not sent on time, allegedly delayed in the foreign ministry, thus causing the request to be denied. In reaction, Commissioner Dall’Anese said the country’s institutions were “working to make justice impossible and to let impunity continue to reign”.⁸² Seeing “one of their own” targeted, most of the business community reportedly closed ranks against CICIG.⁸³ Demonstrations throughout Guatemala City supported Vielman, and important political figures opposed the commission’s requests on the case. Former President Berger and former Vice President Eduardo Stein (2004-2008) accused CICIG

of in effect overstepping its mandate, accusations it vehemently denied.⁸⁴

The fallout has caused an apparently irreparable rift between CICIG and important sectors, particularly conservative politicians and business associations but also some members of civil society. It led to lobbying, nationally and internationally, against renewal of CICIG’s mandate, suggesting that “because of the Vielman case, CICIG will never be pardoned by the traditional elite”.⁸⁵ Embassies, donors and certain civil society organisations, however, came out, both in private and publicly, in unequivocal support of CICIG. The March 2011 visit of UN Secretary-General Ban Ki-moon was to launch a peace fund for Guatemala, but it also allowed him to demonstrate his support for the commission.

At least a partial explanation for the sharp criticism directed at Dall’Anese from within all sectors of society, accompanied by moves to seek his removal, is that many citizens believe authoritarian responses against criminals remain acceptable, so the execution of dangerous prisoners should not be punished.⁸⁶ Moreover, the Pavón case shows that even previously helpful powerful figures may react sensitively when CICIG seeks to shine a light on fellow members of their elite groups.

In a serious setback to the prosecution, a special judge rejected legal arguments presented by CICIG and declared on 16 May 2011 that Vielman and his co-defendants could not be tried for illicit association (conspiracy), because the relevant amendments to the law against organised crime were not in force when the killings occurred.⁸⁷ CICIG plans to continue to pursue these cases through available legal processes.⁸⁸

Portillo

Alfonso Portillo Cabrera was president between 2000 and 2004. On 26 April 2011, a CICIG investigation concluded that he, ex-ministers of defence and public finance and members of the armed forces constituted a parallel organised structure within the governmental, administrative and financial spheres of power with the capacity to generate impunity for its actions and obtain public funds. They were accused of embezzling 120 million quetzals (Q, more than \$15 million) from the defence ministry. Portillo was

⁷⁹ The murders of the Musas are still under investigation. In September 2010, five individuals were arrested and charged with homicide, illicit association and conspiracy. Allegedly the same criminal structures involved in the murder of Rosenberg were also responsible for the deaths of the Musas.

⁸⁰ Kenia Reyes, “PDH señala ejecuciones extrajudiciales en Pabón”, *El periódico*, 29 December 2006. The seven had been arrested for the murder of several Salvadoran members of the Central American Parliament.

⁸¹ Carlos Vielman was arrested in Spain on 13 October 2010 and released on bail by the Spanish authorities on 23 November, after Guatemala failed to meet the deadline for filing the correct documentation for his extradition. See www.amnesty.org/en/news-and-updates/former-minister-accused-overkillings-guatemala-must-be-brought-justice-2010-11-26; and “Carlos Vielman capturado en Madrid España”, *Siglo 21*, 13 October 2010.

⁸² Juan Carlos Llorca, “Foreign Ministry foot-dragging on extradition”, *Buenos Aires Herald*, 27 November 2010.

⁸³ Crisis Group interview, Guatemala City, 16 April 2011. Vielman had also been a head of the Chamber of Commerce and a key member of CACIF.

⁸⁴ Oscar Rodríguez, “Don Carlos no estaba huído”, *Prensa Libre*, 16 April 2010.

⁸⁵ Crisis Group interviews, Guatemala City, 12 April 2011.

⁸⁶ Crisis Group interview, Michel Andrade, international consultant, Guatemala City, 19 April 2011.

⁸⁷ “Fallo favorece a Vielman, Figueroa y Sperinsen”, *El Periódico*, 17 May 2011.

⁸⁸ Crisis Group interview, UN officials, New York, 20 May 2011.

alleged to have ordered the transfer of the money to the ex-president of the Banco de Crédito Hipotecario Nacional, after formalising the step by a governmental accord. CICIG requested ten-year prison sentences and 25,000Q (\$3,300) fines.⁸⁹

CICIG considered this highly political case an opportunity to destroy a key organised criminal network, thus consistent with its mandate. It was also an opportunity to reveal the links between a corruption affair and past human rights crimes.⁹⁰ However, on 9 May 2011, a Guatemalan court absolved the ex-president (and ministers). Two judges ruled that “prosecutors failed to prove through documents or witnesses that Portillo was personally involved in embezzling the funds”; the third judge supported a guilty verdict. The former head of state still faces additional money laundering charges in the U.S., which is seeking his extradition.⁹¹

C. LEGISLATIVE AGENDA AND PUBLIC POLICY

High among the obstacles CICIG faces are the pre-existing legal arrangements that permit powerful actors, increasingly including illegal CIACS and DTOs, to control the judicial system and use it to defend their own interests. The decisions Guatemala’s fragile and infiltrated state institutions make not infrequently have at times weakened the rule of law. Legislative reforms proposed by the commission are oriented toward removing these obstacles. In general, they seek to improve conditions for effective investigations and achieving convictions through the judicial system. Key elements include increased use of technical and scientific evidence in trials; generation of conditions conducive for prompt, efficient trials; and better guarantees for non-interference in trials.⁹²

However, there is an acute legislative bottleneck. Only four CICIG proposals have been adopted, all in 2009: on arms and ammunition; strengthening criminal prosecution; criminal jurisdiction in high-risk proceedings; and changes to the Law against Organised Crime with regard to defendant-informants.⁹³ The legislation the commission seeks

must pass through Congress, an institution that in the past has blocked or delayed important reforms and is characterised by weak political parties that lack an organic relationship with civil society and often represent special interests, both licit and illicit.⁹⁴ Legislators have shown themselves unwilling to approve measures likely to impinge on their own interests or those of the powers they may represent, in particular the proposed anti-corruption and injunction (*amparo*) laws and new rules for constitutional protection procedures.

While CICIG has achieved some collaboration with Congress, lack of political will in general continues to hamper prospects for the remaining components of its legislative reform package. A new Congress (to be elected in September 2011) will be in place for most of the remainder of the commission’s mandate. It should be a priority to improve ties so as to implement key items, such as the National Agreement for Justice and Security, signed in 2009.⁹⁵

The remaining time of CICIG’s mandate, and an eventual short extension if required, should be accompanied by establishment and use of a clear transfer mechanism able to appropriate the commission’s best practices and to carry out its recommendations. This mechanism would also need to take due care of sensitive information, including the protection of victims, witnesses and documentation, and

Constitutionality; reforms to the Law on Immunities of Public Officials; reforms concerning pleas in criminal proceedings; the use of audio-visual in witness and expert testimony; and reforms relating to relocation and change of identity of witnesses and collaborators in criminal proceedings. The second package contained proposals to modify the Law on Criminal Jurisdiction in High-Risk Proceedings; reforms to rules about effective collaboration of defendant-informants; reforms to the regulations on illegal trafficking in arms and ammunition; reform to the Criminal Procedures Code and the Law against Organised Crime (regarding anti-corruption); modifications to the Criminal Code, the Law against Organised Crime and the Immigration Law with specific reference to human trafficking and illicit trafficking of migrants; modifications to laws relating to disciplinary measures within the judicial justice; the Law on International Legal Assistance and reforms to the Law on Extradition Procedures.

⁹⁴ Edelberto Torres-Rivas and Francisco Rodas, “Percepción Ciudadana de la Democracia”, UNDP, March 2008.

⁹⁵ The National Agreement for Justice and Security was signed in April 2009 by the government, the Congress, the Supreme Court of Justice and the attorney general. It listed and set a legislative agenda of basic reforms required for improvements in those sectors, including with regard to police, prisons, criminal investigations, weapons control and regulation of private security services. However, most of the reforms are still pending, and the legal instruments that were intended to implement the agreement have mostly been ignored by the Congress. The text of the agreement can be found at www.iepades.org/acuerdo_de_seguridad_y_justicia.pdf.

⁸⁹ “Ex Presidente Portillo y dos ex ministros integraron una estructura paralela para sustraer fondos del estado”, press release, CICIG, 26 April 2011. These are the maximum penalties for embezzlement.

⁹⁰ Crisis Group interview, Carlos Castresana, Washington DC, 22 May 2011.

⁹¹ “Court absolves ex- Guatemalan president in \$15 million corruption case”, *The Washington Post*, 10 May 2011.

⁹² Schünemann, op. cit., p. 23.

⁹³ In October 2008, the first package of laws was submitted, including proposals for reforms to the Law on Arms and Ammunition; the Law on Injunction (*Amparo*), Habeas Corpus and

further develop litigation strategies. A high-level commission should be created, under the direct authority of the president and with the active participation of the multiple institutions linked to CICIG's operations. It should be accountable to civil society organisations and supported by the international community and should establish a benchmarked transfer strategy, including budget, institutional mechanisms and timeline.

D. EMBOLDENING THE JUDICIAL SYSTEM

It will also be important to adopt measures that guarantee the sustainability of the commission's impact.⁹⁶ This involves, above all, encouraging national institutions to take on CICIG's functions and "emboldening the judicial system" by precipitating long-term and extensive structural and institutional change.⁹⁷ For this, the MP has particular significance.

According to CICIG's reports, collaboration and coordination with the MP have been effective from the start,⁹⁸ but especially once Amílcar Velázquez Zárate became attorney general in 2008.⁹⁹ Cooperation is excellent with Claudia Paz y Paz, who enjoys wide support as a brilliant and independent jurist and who took over as attorney general in December 2010. For example, she has been supportive of CICIG's role as a third party in disciplinary proceedings of public officials.¹⁰⁰ However, reform to the Organic Law of the MP is fundamental in order to safeguard the attorney general's office from political interference.

In July 2008, CICIG began to train 30 police officers in criminology and investigations. The twenty who passed their exams were assigned to the MP with responsibilities including criminal investigation, security and assisting CICIG. While this set an important precedent within domestic institutions, particularly one that has been among the most corrupt, two major deficits remain. First, there is no autonomous police criminal investigation unit. Secondly, twenty officers are unlikely to cause a profound transformation in a force of approximately 18,000 that

has no serious official career process, low pay and acute budget constraints.

The UEFAC, established in September 2008, is a key instrument for the transfer of capacities and consolidation of good practices within the MP. CICIG donors say the unit is leaving "footprints" within the institution, acting beside CICIG as a "moral authority" within the justice system and society more broadly, particularly as its prosecutors gain professional confidence.¹⁰¹ The unit should be given a new name, since the current one implies over-dependence on the commission.¹⁰²

As noted above, the unit has worked with CICIG on important and successful cases. As of April 2011, it was dealing with 35 cases in which CICIG was a complementary prosecutor and giving technical support. UEFAC is a completely vetted unit – young prosecutors are recruited only after a careful evaluation. It has six prosecutors, three auxiliary prosecutors, six agents and two members each from the PNC and the Department of Criminal Investigation (Departamento de Investigación Criminal, DICRI). Its personnel have all passed a lie-detector test and been appointed directly by CICIG. The prosecutors insist that their unit should now take the lead on high-impact cases, precisely because it has been thoroughly vetted.¹⁰³

Institutional relationships between UEFAC and other MP units have been complicated. Officials say serious tension between UEFAC members and their colleagues initially derived from perceptions that staff were paid more and received more professional benefits, even though the internal statute of the MP determines salaries according to professional ranking.¹⁰⁴ MP members have allegedly protested on occasion outside the UEFAC office, asking for its removal to another part of the building. These complaints make it difficult to convince some officials to work in or collaborate with the unit. Tensions have also existed between CICIG and MP personnel, since the international investigators enjoy wide immunities, while the Guatemalan nationals working within CICIG and those Guatemalan investigators and prosecutors who are part of the vet-

⁹⁶ "CICIG will allow us to measure the degree to which institutions can be strengthened, and thus we will be able to read the political will of the state in making changes within the justice system, by seeing to what degree CICIG's role is institutionalised". Crisis Group interview, Manuela Sessa, ex-European Union official in Guatemala, February and April 2011.

⁹⁷ Hudson and Taylor, *op. cit.*, p. 66.

⁹⁸ "Informe de dos años de actividades CICIG a la CIDH", CICIG, 2 November 2009, p. 9.

⁹⁹ Crisis Group interviews, Javier Monterroso and Arturo Aguilar, MP, and Anibal Gutiérrez, CICIG, Guatemala City, February and April 2011.

¹⁰⁰ Crisis Group interview, Eunice Mendizabal, coordinator of UEFAC, Guatemala City, 14 April 2011.

¹⁰¹ Crisis Group interviews, Guatemala City, April 2011.

¹⁰² According to a UEFAC official, justice operators initially complained constantly when the unit sought to take on a case not tied directly to CICIG, arguing that, given its name, it had no jurisdiction.

¹⁰³ It is also for this reason that several officials recommended to Crisis Group that an internal affairs unit be established within UEFAC, rather than elsewhere in the MP. Crisis Group interviews, Guatemala City, April 2011.

¹⁰⁴ According to a UEFAC official, members of the unit have only received a single training course since the unit's establishment. Crisis Group interview, Guatemala City, 14 April 2011.

ted unit in the ministry undoubtedly are exposed to higher levels of insecurity.¹⁰⁵

Under the new attorney general, these attitudes have begun to change somewhat, as a sense develops that UEFAC is an integral part of the ministry. “Prior to the assumption of Claudia Paz . . . , the UEFAC was an island, but now it has been strengthened We were orphans, but now we have been adopted by the new Attorney General”.¹⁰⁶ Given the shift in attitudes among senior officials that has accompanied the new attorney general, state officials and internationals alike stressed that it was crucial to take advantage of her presence. However, they also emphasised the importance of achieving transformations at all levels of institutions that go beyond dependence upon individuals, and of consolidating mechanisms and practices that can guarantee institutionalisation of good practices.

On their own initiative, UEFAC members have begun to follow methods that allow them to adopt practices that strengthen and protect the unit as a whole. According to its coordinator, the unit seeks to decentralise knowledge and practices, in order to buttress UEFAC and at the same time increase the capacity of individual officials, by sharing the results of on-the-job training. For example, four prosecutors attended the Rivera murder trial in April 2011 to ensure that a collective group learned from it. Prosecutors divide up their work so that everyone is aware of all cases. UEFAC and CICIG have collaborated with other parts of the ministry in particular cases, for example the organised crime and crimes against life units – a process that has encouraged development of additional officials and begun to facilitate the transfer of capacities to more MP elements.¹⁰⁷

UEFAC considers itself a seedbed for training professional, honest and effective prosecutors and investigators who will subsequently lead other relevant MP units.¹⁰⁸ This may be one way to disseminate and institutionalise the legacy of CICIG training, skills and commitment. It would be im-

portant, not least because with the commission’s reduced public profile – a consequence of the shift in styles between Castresana and Dall’Anese – “the reaction in the courts has been palpable, and judges and other individuals have begun to feel less pressure from the UEFAC”.¹⁰⁹ And it is clearly urgent to elaborate mechanisms that will mitigate the likely reduction in capacity and pressure that will occur in the judicial system once CICIG leaves.

¹⁰⁵ CICIG consistently sought the same immunities for Guatemalan and international members of its staff. The UN Secretary-General made a direct request to President Colom on his March 2011 trip to Guatemala but was turned down. Crisis Group interview, UN officials, New York, 20 May 2011. Carlos Castresana stressed the importance of granting immunities to all members of CICIG’s staff and making the protection of all UN field agencies identical. Crisis Group interview, Washington DC, 22 May 2011.

¹⁰⁶ Crisis Group interview, UEFAC staff, Guatemala City, 14 April 2011.

¹⁰⁷ Crisis Group interview, Eunice Mendizabal, coordinator of UEFAC, Guatemala City, 14 April 2011.

¹⁰⁸ Anabella Sibrián, country director, Dutch Platform Against Impunity, also suggested this as a way to transfer capacities. Crisis Group interview, Guatemala City, 12 April 2011.

¹⁰⁹ Crisis Group interview, Guatemala City, 14 April 2011.

IV. CONCLUSION

CICIG has had an unprecedented impact on Guatemala's acute levels of impunity and their institutional foundations. It has precipitated successful criminal investigations, both as a complementary prosecutor and by providing other support. It has carried out additional strategic interventions to strengthen the judicial system and attack impunity. As a result of its own activities and collaboration with domestic institutions, individual and institutional capacities have been augmented, committed and progressive individuals appointed to positions and the norms and procedures for selection to high-court benches improved. In certain cases, the wall of impunity has been breached, demonstrating that the rule of law can be applied to all citizens equally and that no one is immune from investigation and prosecution. A perception is being generated that the legal system can withstand external pressure and violent threats to its operators. To this extent, CICIG has emboldened and empowered the justice system.

Nevertheless, this tendency is not irreversible. It remains unclear whether CICIG's impact has established the strategic basis for dismantling the CIACS over the long term, the commission's ultimate objective. State institutions are still weak and, in many cases, infiltrated by CIACS; they are as yet unable or unwilling to conduct effective criminal investigations on their own. And, in general, citizens do not yet trust state institutions, as they show by often not denouncing crimes or seeking assistance from the state. A culture of fear prevails, and resistance to reforms by spoilers remains profound and widespread.

This is the task for the next years, an undertaking whose design and implementation must be shared by CICIG and domestic institutions as they seek to generate ownership of the commission's functions by state institutions and embed them within the judicial system. If in the next two years, however, it strengthens CICIG, consolidates its impact and buttresses justice institutions by implementing a clear strategy to transfer capacities to them, Guatemala may begin to forge a convincing path toward a peaceful, sustainable post-conflict order that it can go down without its international crutch.

Guatemala City/Bogotá/Brussels, 31 May 2011

APPENDIX A

MAP OF GUATEMALA



APPENDIX B

GLOSSARY OF TERMS AND ABBREVIATIONS

CACIF	Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras)
CEDECON	Centre for the Defence of the Constitution (Centro para la Defensa de la Constitución)
CIACS	Illegal security forces and clandestine security organisations (Cuerpos Ilegales y Aparatos Clandestinos de Seguridad)
CICIACS	Commission for the Investigation of Illegal Groups and Clandestine Security Organisations (Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad)
CICIG	International Commission against Impunity in Guatemala (Comisión Internacional Contra la Impunidad en Guatemala)
DICRI	Department of Criminal Investigation (Departamento de Investigación Criminal)
DTOs	Drug trafficking organisations
FRG	Guatemalan Republican Front (Frente Republicano Guatemalteco)
ICCPG	Institute of Comparative Studies in Penal Sciences (Instituto de Estudios Comparados de en Ciencias Penales de Guatemala)
ICTY	International Criminal Tribunals for the Former Yugoslavia
ICTR	International Criminal Tribunals for Rwanda
MP	Public Prosecutor's Office (Ministerio Público)
PDH	Human Rights Ombudsman's Office (Procuraduría de los Derechos Humanos)
PNC	National Civil Police (Policía Nacional Civil)
UCN	Nationalist Union for Change (Unión del Cambio Nacionalista)
UEFAC	Special Prosecutor's Office for the CICIG (Unidad Especial de la Fiscalía de Apoyo a la CICIG)
UNDP	United Nations Development Programme
UNDPA	United Nations Department of Political Affairs
UNIIC	United Nations International Independent Investigation Commission
URNG	Guatemalan National Revolutionary Unity (Unidad Revolucionaria Nacional Guatemalteca)

APPENDIX C

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Eugene Chien	Nobuo Matsunaga	William O. Taylor	
Joaquim Alberto Chissano	Barbara McDougall	Leo Tindemans	
Victor Chu	Matthew McHugh	Ed van Thijn	
	Miklós Németh	Simone Veil	
	Christine Ockrent	Shirley Williams	