

The End of the CICIG Era

An Analysis of the:

Outcomes

Challenges

Lessons Learned



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Introduction

The International Commission against Impunity in Guatemala (CICIG) was established in Guatemala in 2007 as a joint endeavor between the Guatemalan government and the United Nations. The agreement to create CICIG was signed as an exchange of letters between of UN Secretary General Kofi Annan and Guatemalan President Oscar Berger, both of whom were at the end of their terms. Because of these impending transitions the Commission was established quickly and without a fully viable structural vision and without a full understanding of the paradoxical mission it was undertaking.

The commission's task was to improve the country's efforts in combating violence, corruption and impunity pertaining to crimes linked to the state and diminish the historic impunity that has been the hallmark of Guatemalan judicial system. At the same time, the CICIG was dependent on the state institutions it was investigating for providing investigative and judicial counterparts that could be trusted, office space and security that would not be compromised, and political will to ensure the CICIG's success – a competing set of priorities from the beginning that were ultimately impossible to reconcile. On September 3, 2019, the CICIG ended its operations after the commission's mandate was not renewed in 2018.

This report, aimed at an audience outside of Guatemala and not deeply knowledgeable about the country or its history, analyzes the CICIG's actions and efficacy in fulfilling its mandate, as well as providing lessons learned from the experience. The report describes the CICIG through a narrative of events that prompted the commission's creation, an evaluation of the mandate's phases, an evaluation of the CICIG's investigative and prosecutorial efforts, a look at each commissioners' era, and an examination of the CICIG's outcomes. The report concludes by offering lessons learned from the CICIG and by providing recommendations on where future iterations of the CICIG could be improved.

Conceived as a short-term (3-5 year) enterprise, the Commission initially received near-unanimous support among the Guatemalan public, political parties, business leaders and the international community. After 12 years the CICIG had lost some popular support, a great deal of political and business support inside Guatemala and was no longer a priority for the international community, particularly the United States. Just as importantly, while making a significant impact by prosecuting dozens of high value cases, the CICIG experience runs the real risk of leaving little lasting institutional impact and durable change. This is in part because the CICIG was viewed by many as being politically tone deaf, overstepping its mandate over time and becoming more political in deciding which cases to pursue and prosecute. In the end, CICIG's perceived politically motivated case selection and prosecution, coupled with political tone deafness, were important factors in its acrimonious demise.

There is only fragmentary evidence to suggest that the CICIG improved the police's overall capacity to investigate, the public prosecutor's office's ability to build cases, and the general public's perception of impunity going forward. In 2018, the impunity rate in Guatemala

sat at 98 percent, or roughly the same as the rate in 2002.¹ Given that the CICIG's primary purpose was prosecute high-level cases and create a framework for the national judicial system to reduce impunity, this an important indicator of the possible lack of lasting impact by the organization.

One significant area where impunity improved is homicides, where the unsolved murder rate decreased from 95 percent in 2009 to 72 percent in 2012.² Moreover, the International Crisis Group estimated that the commission's work resulted in an annual homicides decrease by around 5 percent between 2007 and 2017.³ However, the direct causality between the CICIG actions and the drop in homicides (part of a broader, simultaneous trend across the Northern Triangle countries of El Salvador, Honduras and Guatemala) is not necessarily that strong. It is too early to determine whether improvements in immunity or the ability to prosecute cases will have lasting effects.⁴

CICIG leaders and backers, while acknowledging the institution should be limited in time and functions, made few visible efforts to move as if the mandate were not perpetual, and as a result did not focus as extensively as many initially envisioned on building up national institutional capabilities which could assure continuity. And as the political support for the CICIG splintered there were fewer efforts by the government to create cohesive, enduring units to carry on the work. As a result, the few ongoing attempts to replicate CICIG behaviors often fail to distinguish what is replicable and viable without the U.N. support and what efforts that should be handled in other ways.

A coalition of private sector groups, in a study using 2018 figures, found that a total of 546,011 cases were discharged by the attorney general's office (*Fiscalía General de la República*) part of the Public Prosecutor's ministerial structure (*Ministerio Público-MP*) the court systems, while it took in 413,080 new cases, yet even with that differential there was a backlog of 1, 230,236 cases choking the system. The study found that the combined overall efficiency of six state entities improved from 26.6 percent to 33.2 percent, with the police being the least efficient of the organizations.⁵

In all CICIG brought criminal charges against 1,540 people, of whom 660 have been prosecuted; identified 70 criminal structures; and prosecuted 120 "high-impact cases." The largest share of the cases that were successfully prosecuted (43 percent) were carried out during 2017-2019, the years when CICIG was under harshest internal attack.⁶ Critics of CICIG, including prosecutors who worked with the group, say the last figure is misleading because the cases had been initiated and pushed through the judicial system almost to completion by Velasquez's predecessors.

¹ Hector Silva Avalos and Parker Asmann, op. cit..

² Tiziano Breda, op. cit..

³ Maureen Taft-Morales, op. cit..

⁴ Tiziano Breda, op. cit..

⁵ "Flujograma de la Justicia Criminal," Centro de Investigación económicos nacionales et al, in possession of author. https://www.fundesa.org.gt/content/files/publicaciones/2019VF_Presentacion_Flujograma_4_4__1.pdf

⁶ "Informe de Cierre," op. cit.

For this analysis both supporters and opponents of CICIG shared their ideas of what went right, what went wrong and how CICIG lost popular support and the support of much of the political establishment, and what can be learned from the historic experience.

Executive Summary

After 12 years of the CICIG, Guatemala and outside observers can draw on the rich experience to highlight some of the lessons learned for future independent investigative commissions. The CICIG experiment was the first of its kind with broad, vaguely defined powers which evolved over time, molded by the personalities and philosophies of its various Commissioners. Time will remain the best storyteller as the post CICIG era plays out and its actions and of all that contemplate this era in Guatemalan history. However, what is clear is that when independent investigative bodies lose the consensus of broad sectors of society, including the political elite and international backers, and are perceived as being politicized, they rapidly lose the ability to function effectively.

As former U.S. ambassador Steve McFarland noted, corruption is a “wicked problem,” meaning a problem that is multifaceted, cuts across several interdependent issues that must be tackled simultaneously and require long-term whole of government efforts to tackle. Wicked problems are seldom solved but can sometimes be managed down from an existential threat to the state to something less challenging, and eventually into part of the normal, permanent criminal landscape.

While many viewed the CICIG as a potential silver bullet to problem of corruption and state-sponsored violence, in reality the best that could be hoped for with the organization and any subsequent similar ones that may follow, is to help the state manage the “wicked problems” to keep them from escalating into existential threats to the state.

McFarland also astutely identifies another important reality that played a significant role in the CICIG’s demise: “While there are generally agreed upon solutions to reduce corruption, success requires the anti-corruption leaders to think as politicians as well as prosecutors; in anti-corruption efforts, successful policy implementation may depend more upon individual leadership than other public policy challenges, and they require much more time than one might anticipate.”⁷ In the end, as discussed below, the failure to understand the political realities and clash of personalities were key to ending CICIG’s mandate.

Although the CICIG initiative has come to its end, the lessons can help guide future initiatives aimed at fighting clandestine groups and corruption, to preserve human rights, and build momentum to remove the most egregious criminal elements from the body politic and state institution. Independently, in the case of post-CICIG Guatemala, the fight against impunity must continue despite the fierce resistance from entrenched criminal actors and power brokers.

⁷ Ambassador (ret) Stephen G. McFarland, “Prosecuting Corruption and State Capture When Corruption Fights Back: The Lessons of the Commission Against Impunity in Guatemala,” unpublished paper, November 22, 2019.

The fight against clandestine groups, transnational trafficking, money laundering and corruption is one that every nation faces to varying degrees. Guatemalans reluctantly asked for help and they received it from the UN. But the mission to establish rules and train trusted referees in the midst of an ongoing game where there were no referees or rulebooks was a herculean task. This led to both success and failures, as this report discusses.

In the case of CICIG, individual leadership differences, actual or perceived conflicts of interests and collusion, and the complexity of the criminal structures all played a part in ending the Commission's mandate. In addition, the consensus among multiple national and international stakeholders fractured as the CICIG's mandate expanded to new areas many viewed as outside the original purview – a purview that was vague and ill-defined from the outset. The pioneering spirit of Commissioner Castresana's era, the polarizing era of Commissioner Dall'Anese and the politically charged era of Commissioner Velásquez, each provide a complementary view to the analysis in this report.

The creation of the CICIG also generated unrealistic expectations both in Guatemala and the international community of rapid, overwhelming success in dismantling parallel structures that had existed for decades through powerful alliances among themselves and with sectors of the state. With some clear successes, particularly in the early days, the heightened expectations were understandable but ultimately unrealistic and unsustainable.

Finally, the CICIG set out with a significant lack of understanding of its own vulnerabilities or little understanding that it could be penetrated by hostile actors infiltrated on behalf of the criminal elements that the group was supposed to be investigating. In the first few years CICIG did not have an internal affairs or counter-intelligence program, lax internal security and a belief their operations were shielded from possible corruption because they were a UN affiliated body. This naivete incurred significant harm and was costly to its effectiveness.

This report is based on an extensive open source literature review in English and Spanish, as well as interviews with multiple individuals who worked with CICIG, diplomats directly involved with CICIG, individuals who provided information to CICIG and worked with them on an informal basis, and individuals who alleged that CICIG had violated their due process rights and acted beyond the organization's mandate.

The fight against organized crime, corruption and impunity is vital across the hemisphere. The CICIG had its strengths and weaknesses like all organizations. This report seeks to go beyond the politics and the groundswell of opinions to draw some lessons to guide future experiments. There is a great deal to be learned from this experience given the pervasiveness of criminal enterprises around the globe and the ongoing discussions to develop similar commissions in the region.

Important Points of Mention from Lessons Learned

1. Include a clear definition of the mandate and appropriate cases in the mandate at the outset
2. Clearly delineate the role of the commissioner in order to avoid the personality-driven pitfalls encountered by CICIG directors
3. Include evaluation and performance metrics in the mandate
4. Establish a clear command and control structure among the organization, the international sponsoring agency and the host government
5. Focus on completing the judicial trials of those arrested
6. Have a strong messaging team and strategy in place from the beginning
7. Create functional counterintelligence and personal security structures
8. Publish an annual action plan and be accountable for its completion
9. Maintain broad international backing for the mandate
10. Involve the international entities more in an oversight capacity
11. Build capabilities within institutions from the outset and design permanent mechanisms to transfer capabilities
12. Emphasize maintaining continuity in leadership and investigative teams on both the host country and international side
13. Install internal mechanisms at the outset to prevent the cooptation of the state and corruption and The pathway to be avoided is the penetration of organized crime into upper echelons of power by shining light on the existing relationships and funds flows between criminal and political organizations.
14. Build a consensus with host country on due process and how to carry out new prosecution mechanisms without violating due process and trial by media

Overview and Regional Context

The CICIG was formed in the face of multiple intractable criminal cases and high-profile murders that led to a common understanding that the corruption and parallel security and intelligence services intertwined with the state were too powerful for national law enforcement and judicial structures to confront alone. The entire Northern Triangle faced a rising wave of violence, with the three nations (El Salvador, Guatemala, Honduras) ranking among the five most violent in the world. Various formulations of traditional aid packages for Mexico and the Northern Triangle, aimed at addressing the root causes of violence, while investing hundreds of millions of dollars, had made little impact on lowering the violence, combatting impunity or stemming the growth of transnational organized crime, particularly drug trafficking.

In fact, by most metrics the situation across the region was getting worse, not better, as the aid flowed in. CICIG was viewed internationally as a necessary new and outside the box experiment to tackle the underlying issue of impunity in a way that would change the dynamic and serve as a model for the rest of region and, perhaps, the continent and beyond. Guatemala, facing a series of crisis, agreed after fits and starts, to allow the experiment to proceed there.

The CICIG described the criminal organizations in tackled as

Hidden or clandestine networks that: move from legal to illegal and formal and informal sectors and vice versa; generate political power to take advantage of the economic resources of the state; and have the capacity to generate impunity for their activities. Our investigations found political-economic networks in different parts of the state and around the state that have existed for the 30 years of democratic transition. These networks have infiltrated the structures of political power in order to introduce their own agenda of illegal and legal interests, and to convert the public interest agenda and state agenda to their agenda by shaping political relationships, the logic of the political parties, and commercial and contractual relations with the government and the state itself.⁸

Guatemala's position was not unique. The peace processes that ended the wars in Nicaragua (1990), El Salvador (1992) and Guatemala (1996) had failed to deliver on the promised stability, reduction in violence and establishment of functioning judicial systems. Homicide rates were rising in part because transnational gangs like the Mara Salvatrucha (MS-13) and Calle 18 were gaining territorial control and local and regional criminal structures grew in complexity and strength.

Today, Guatemala remains a country divided along the lines of civil conflict (left vs right) and these silos, which seldom overlap, have created a culture of "survival of the fittest," which enables and fosters corruption. This reality facilitates a culture of patronage at all levels and a culture of "Gatekeepers" that exploit the weaknesses of the institutions to establish organized crime groups and syndicates. The topography of the country and long history of weak state presence dating back to the colonial era, has created spaces which are exploited by alternative power structures, primarily drug cartels, gangs and other criminal groups, who often

⁸ "Informe de cierre: El Legado de Justicia en Guatemala," CICIG, October 2019.

prey on indigenous communities or co-opt and operate on traditional indigenous lands. Guatemalans live in a country that is still at war internally and the polarization means that applying justice – or seeming to – to one side and not the other only breeds distrust among decision makers and cripples efforts to enact much needed reform initiatives geared toward moving the country forward.

The end of the Cold War and its proxy conflicts in the hemisphere were particularly difficult for Central America and opened the door for highly trained individuals with extensive combat experience to join forces and rapidly form sophisticated, highly militarized criminal operations. The dramatic and rapid downsizing of militaries and the disarming of insurgent groups put tens of thousands of young men on the streets with few employment opportunities or economic options. With the ideological barriers crumbling, it became more lucrative and viable for these groups to pool their skill rather than fight each other.

| AÑO | NÚMERO DE HOMICIDIOS |
|------|----------------------|
| 2000 | 2,904 |
| 2001 | 3,230 |
| 2002 | 3,631 |
| 2003 | 4,237 |
| 2004 | 4,507 |
| 2005 | 5,338 |
| 2006 | 5,885 |
| 2007 | 5,781 |

Figure 1: Homicide rates in the years preceding the creation of the CICIG (Source: CICIG final report)

An international investigation of post-conflict armed groups in El Salvador 1994 found that the “illegal armed groups” operating after the war had “morphed” into more sophisticated, complex organizations than had existed during the civil war, and that, as self-financing entities they had a strong economic component, as well as political aspect, to their operations.⁹

The same phenomenon occurred in Guatemala, where shadowy forces called Illegal Clandestine Security Apparatuses (*Cuerpos Ilegales y Aparatos Clandestinos de Seguridad*) controlled intelligence and security and intelligence structures with more power than the state.

While El Salvador, Honduras and Nicaragua all had significant foreign military training on a state-to-state level during the Central American wars, Guatemala, largely ostracized internationally, had relied for military training on Israel as well as private Argentine and right-wing Cuban exile trainers. The Guatemalan military and paramilitary groups developed a reputation for massive human rights abuses where traditional conditionality on military aid had historically been non-existent or ineffective.

⁹ “Informe del Grupo Conjunto Para la Investigación de Grupos Armados Ilegales con Motivación Política en El Salvador,” El Salvador, July 28, 1994, accessed at: <http://www.uca.edu.sv/publica/idhuca/grupo.html>

The Israeli government, which maintained several hundred advisers on the ground in Guatemala in the 1980s, and other group, did not condition their support to the government on its adherence to human rights or other factors,¹⁰ leading many Guatemalan leaders who had not opposed CICIG to significantly underestimate the disruptions the presence of an international investigative body, untethered to the Guatemalan political and military structures, could have. Financial corruption and influence in the political sector, which became a focus of the CICIG, was often not viewed as a significant problem – or even illegal – by many Guatemalan political elites and stakeholders who had traditionally participated in formal politics.

Unlike homicides and parallel intelligence structures, which hindered the ability of the traditional groups to operate economically or attract foreign capital without significant hurdles, using financial influence was viewed as perhaps problematic but not a root problem and not something that CICIG was mandated to investigate or prosecute.

While the extreme right-wing groups in El Salvador and Guatemala were in close contact as part of a broad U.S.-backed anti-Communist coalition during the 1970s and 1980s, some of the Guatemalan elites considered their Salvadoran counterparts to be too soft and ready to negotiate and blamed this perceived weakness the result of El Salvador's reliance on U.S. assistance and the conditions that came with that aid.

The Marxist-led guerrilla groups in the region also maintained sporadic contact. But the FMLN in El Salvador carefully cultivated its international image, allowed frequent media access to its leaders and combatants and lobbied extensively in Washington and European capitals. The Sandinista government in Nicaragua also had a broad range of international contacts, from fellow Marxist governments to a host of revolutionary movements across the world.

However, the Guatemalan groups remained largely in remote mountainous regions with little contact even with likeminded groups in the region, and even less with their would-be international partners, leaving them with a much narrower view of the world, the changes wrought by the end of the Cold War, and fewer outside supporters.

When the conflict ended in Guatemala – four years after the conflicts in El Salvador and Nicaragua had reached a negotiated settlement – there was not an accepted, institutionalized doctrine of civilian control of the military, institutional respect for human rights, or a history of intelligence services being used strategic rather than political and economic gain. El Salvador in particular had made some efforts at the end of the war to incorporate U.S. doctrine of civilian control and independent intelligence structures into the post-war political architecture, but over time these efforts were unsustainable.

¹⁰ Rosa de Ferrari, "Israel's close relationship with Guatemala has roots in country's civil war," Panoramas, University of Pittsburgh Center for Latin American Studies, January 8, 2018, accessed at: <https://www.panoramas.pitt.edu/news-and-politics/israels-close-relationship-guatemala-has-roots-countrys-civil-war-0>

The most well-known of the clandestine structures in Guatemala was known generically as The Brotherhood (*Cofradía*), a group of former military intelligence officers who worked, often with political parties, to create large criminal empires.¹¹ Over time, as the *Cofradía* and other groups split into different factions, former guerrillas formed alliances with former military and police officers to form new criminal groups that had more real power than the state and often operated with the direct participation of the state or with the acquiescence of the state.

In addition, the criminal organizations became quasi-states within Guatemala, where drug trafficking families provide employment, medical care, education and security to the local population – things the state never did. This gave the criminal structures access to local and national political power, concentrated on the local municipal offices of mayor and the national assembly, as the families moved heavily into buying their way into the formal political power structure and the corresponding immunity.

The CICIG Experiment

As criminal groups became more visible and the iron fist (*mano dura*) policies against criminal groups and gangs consistently failed to stem the tide of violence across the region, CICIG was created as a bold experiment. The theory of the case for CICIG was that the international community would work “side by side with Guatemalan investigators and police” as the two are true “to develop and fortify cells of highly trained, vetted prosecutors and police. The hope is that these cells of ‘untouchables’ will eventually head the institutions, and that they can lead reform from within.”¹²

There is surprising agreement across those interviewed that the first years of the CICIG were valuable and that the organization operated within its mandate to make significant advances. Even those bitterly opposed to CICIG in the last two years of its existence usually caveat their opposition by saying that the CICIG started off well and was not viewed as the hostile force it was later perceived to be.

As became clear over time, as the CICIG and the MP under whose auspices the attorney general’s office operated, advanced against various corrupt actors, it encountered even more corruption. And, as CICIG and the MP prosecuted and jailed increasingly high-profile individuals – two ex-presidents, a sitting president and vice-president, former ministers, congressmen, and private sector leaders – it generated more and more opposition from the affected sectors of the political structure, particularly as the focus of the investigations shifted to financial crimes rather than violent crimes. By 2018 this opposition was increasingly coordinated and effective, focusing on two CICIG vulnerabilities: CICIG’s three-year mandate renewal process, and its reliance upon U.S. political support.¹³

¹¹ Steven Dudley, “Drug Trafficking Organizations in Central America: *Transportistas*, Mexican Cartels and Maras,” *Organized Crime in Central America: The Northern Triangle*, Woodrow Wilson International Center for Scholars, November 2011.

¹² Dudley, op. cit.

¹³ McFarland, op. cit.

This opposition was coupled with the growing perception that CICIG was increasingly operating outside its original mandate and taking cases far from its purview, with multiple, credible allegations that charges against some individuals were not backed by solid evidence, and that the strong political ambitions of the attorney general at the time, Thelma Aldana, who later unsuccessfully ran for president, had tainted the apolitical nature of the prosecutor's office.

The belief that the CICIG had become a political instrument willing to pursue minor cases was particularly true in the case of the investigations against José Manuel Morales, the son of President Jimmy Morales, and Samuel "Sammy" Morales, the president's brother, for corruption cases involving less than \$35,000 going back to 2013. These cases were widely viewed as small cases that did not come close to meeting the threshold established for CICIG to tackle major cases. In addition, the alleged crimes occurred before the president even ran for office. Guatemalan courts ultimately acquitted both men on all counts.¹⁴

The counter argument by supporters of CICIG is that the Guatemalan prosecutors in the MP asked CICIG to support the Morales cases because of the political sensitivity, and that not taking them would have created the perception of political fear or favoritism by Commissioner Iván Velásquez and the organization. However, in retrospect there is broad consensus among those interviewed that the move was at best ill-advised and gave significant ammunition to CICIG's opponents, including President Morales.

"If CICIG wanted to prosecute the president's family, at a time when relations were badly strained anyway, it should have waited until there was something more than what in Guatemala passes for petty crime," said one former CICIG official. "The thinking was to show no favoritism, but it was a case that should have been handled in the regular court structure, not a CIG major crimes case. It was far below the level of what CICIG was supposed to be handling. It was tone deaf and cost us a lot of political support."

Another tipping point in public perception of the CICIG came following the historic jailing of conservative president Otto Molina Pérez – a former military officer – and his vice president, Roxana Baldetti for illicit financial activities and corruption during their time in office. The cases were initially hailed as an historic breakthrough but have since stalled in the court system. Baldetti has been convicted in one case, which is on appeal and remains in prison. Perez Molina has yet to go to trial for any of the alleged crimes and remains in "preventative detention." *La Línea* as the corruption scheme was known, reportedly continues and the arrests, while setting an important precedent on equality before the law, appears now to have yielded a significant PR boon without dismantling of the underlying criminal structure within the state.

When significant corruption issues with former center-left president Alvaro Colom were discovered in the *Transurbano* case and Colom was arrested on Feb. 13, 2018 but was released from jail after only five months, there was the widespread feeling that the CICIG was protecting politicians on the left while persecuting those on the right. This narrative was already being

¹⁴ Luis Echeverría, "Son, brother of outgoing Guatemalan president cleared of fraud," Reuters, August 19, 2019, accessed at: <https://www.reuters.com/article/us-guatemala-corruption/son-brother-of-guatemalan-president-morales-acquitted-of-corruption-idUSKCN1V91Q8>

written by those disillusioned with CICIG and its leader at the time Iván Velásquez, suspected by many of the political elite of being a closet leftist operative infiltrated into the CICIG.

Sandra Torres, Colom's former wife and former vice president aligned with radical populist movements, was arrested in September 2019 for accepting illegal campaign contributions, but the case was not brought by the CICIG, which was being dismantled at that time. In October 2019 a judge ordered Torres to be placed in preventative detention in prison. There was a widespread perception that Torres, who had long been suspected of engaging in multiple illicit criminal enterprises, would have been a legitimate CICIG target but was not investigated because of her political alignment. CICIG prosecutors said the MP never requested help in investigating Sandra Torres, thereby tying the CICIG's hands.

While such deep political divisions may be hard for outsiders to grasp, it is a real legacy of the civil war. The lingering, deep hostility of the traditional hard right, deeply anti-Communist wing of Guatemalan politics toward anything perceived as being of the left and therefore Marxist, and the belief that Colom and others were secretly aligned with Marxist guerrillas during the civil war is real and abiding.

Over time it became an article of faith that CICIG favored the left, including multiple unfounded allegations that Velásquez, a Colombian, was a member of the FARC Marxist insurgency. At the same time CICIG did little to allay those suspicions, pursuing few if any cases related to the criminal structures tied to the former guerrilla groups and again appeared over time to be at best tone deaf to the way its work was being perceived over time by the political and economic elites of Guatemala.

“When Perez Molina was arrested with strong U.S. support, we in the business sector who had supported him thought we should wait and see what happened next,” said one businessman who moved from supporting CICIG to opposing the continuation of the organization's mandate. “Then Colom was arrested, we thought, okay, now they are being even handed. Then Colom walked, Sandra (Torres, Colom's ex-wife and former First Lady) was never arrested in a CICIG case when everyone knew about her corruption and crimes, it became clear there was a political agenda.”

In addition, the intangible, contextual issues and personalities involved – particularly between Velásquez, the last CICIG commissioner, and Guatemalan President Morales, who did not renew CICIG's mandate – coupled with waning international interest and the antipathy of the Trump administration to the organization, created the perfect storm for the demise of CICIG.

Of particular importance was the shifting focus of the Trump administration's priorities in Central America. The Obama administration embraced the traditional bipartisan U.S. policy goals and methodologies, had offered full support for the CICIG as part of a broad effort to deal with the underlying causes of poverty and social inequality.

When Perez Molina sought to end the CICIG's mandate in 2015, his administration faced threats of retaliation from the Obama administration as well as public protests in support of the body. When the scandal that ultimately sent him to jail broke, Perez Molina felt he had no choice

but the renew the CICIG's mandate for an additional two years despite his disdain for the organization and his own legal jeopardy.

However, the Trump administration is primarily interested in a transactional relationship and little interested in traditional approach or supporting U.N.-led mandates in Central America. Essential to the Trump administration was halting the flow of migrants from Central America to the U.S.-Mexico border. In exchange for the support of the Morales administration for unpopular U.S. policies, the Trump administration has been willing to offer a largely hands-off approach on things that irritated Morales, including the CICIG, strict control how U.S. security aid was used and allegations of widespread corruption.

At the same time, conservative businessmen launched a sustained lobbying campaign against the CICIG in Washington, particularly Evangelical groups through the offices of Vice President Pence and then U.N. Ambassador Niki Haley. When the Trump administration decided to move the U.S. Embassy in Israel to Jerusalem, the Morales administration in Guatemala was one of the few countries to not only embrace the move, but to follow suit by moving its embassy as well. This stance virtually guaranteed that Morales administration would receive little pushback over strategic issues like ending the mandate of CICIG.

History

On December 29, 1996 an agreement known as the "Agreement on a Firm and Lasting Peace" for Guatemala was signed, signaling the end of more than three decades of internal conflict in which both sides, unlike in other contemporaneous conflicts in the region, remained internationally isolated and largely outside the international consciousness.¹⁵

The end of Guatemala's internal conflict left an estimated 200,000 people killed as part of a broad anti-Communist campaign that largely targeted indigenous populations in the highland areas. Due to both the geographic isolation of the combat zones and Guatemala's general isolation in the international community, complex intelligence and security networks, often deeply corrupt and operating as separate powers from the central government, had taken root throughout the country.¹⁶

In the wake of this conflict, and considering the lasting marks of corruption and violence on the people, the United Nations created a Verification Mission (MINUGUA) to document the presence of violent actors and to counter violent remnants of the conflict.¹⁷ Many of these

¹⁵ "The International Commission Against Impunity in Guatemala: a WOLA Report on the CICIG Experience," *The Washington Office on Latin America*, July 1, 2015, accessed at: <https://www.wola.org/analysis/wola-report-on-the-international-commission-against-impunity-in-guatemala-cicig/> .

¹⁶ Maureen Taft-Morales, "Guatemalan President's Dispute with the U.N. Commission Against Impunity (CICIG)," *Congressional Research Service*, March 5, 2019, accessed at: <https://fas.org/sgp/crs/row/IN11029.pdf>.

¹⁷ "Against the Odds: CICIG in Guatemala," *Open Society Justice Initiative*, February 4, 2016, accessed at: <https://www.justiceinitiative.org/uploads/88ffafc0-09bf-4998-8ef3-e2a175e3f455/against-odds-cicig-guatemala-20160321.pdf/> .

criminal actors were illegal security forces and clandestine security organizations (CIACs) developed during the conflict, that continued to operate after the war.¹⁸

From the outset there was a fierce contest over who would control the narrative of the conflict: those who viewed it as an anti-Communist crusade to save the nation from disaster, or a brutal counterinsurgency campaign fought to thwart any efforts to structurally reform the deeply unequal distribution of wealth and allow indigenous populations a say in their future.

As the Central American wars were winding down, in 1992 Rigoberta Menchú, a Guatemalan indigenous activist, won the Nobel Prize for Literature for her autobiography *Yo, Rigoberta*, focusing new attention on the violence against the civilian population in Guatemala's internal conflict. In a pattern repeated in other cases, Menchú was hailed as a hero by many, reinforcing the narrative of military brutality. While the broad arc of the narrative is true, Menchú's account of her life was later found to be riddled with inaccuracies, lies and inconsistencies¹⁹

This incident and subsequent international debate proved to be a microcosm of the polarization that CICIG encountered a few years later. While activist groups essentially dismissed the inaccuracies as minor errors in broader, true narrative of military brutality against indigenous civilian populations, many of those in Guatemala who supported the military and its tactics took exactly the opposite view – that Menchú deliberately presented a false narrative that discredited the rest of her story and was solely aimed at damaging the military's image, doing through propaganda what the guerrillas could not achieve through armed conflict.

As with the CICIG, the preponderance of the evidence supported the Menchú narrative writ large, but with sufficient errors and misrepresentations to lend credibility to those seeking to discredit the effort, often presenting an equally false narrative.

Even with the United Nations' presence and the peace agreement's signing, violence – especially targeting human rights defenders and historically marginalized and largely indigenous populations – surged while impunity remained at extremely high levels. Between 2000 and 2003 for example, there were 374 reports of human rights defenders being threatened with at least 49 individuals killed.²⁰ Official statistics found Guatemala's impunity rate to be 96 and 98 percent in the early 2000s, and the situation was so bad, that in 2002 Amnesty International referred to Guatemala as a “corporate mafia state.”²¹

¹⁸ “Saving Guatemala's Fight Against Crime and Impunity,” *International Crisis Group*, October 24, 2018, accessed at: <https://www.crisisgroup.org/latin-america-caribbean/central-america/guatemala/70-saving-guatemalas-fight-against-crime-and-impunity> .

¹⁹ Larry Rohter, “Tarnished Laureate: Nobel Winner Finds her Story Challenged,” *The New York Times*, December 15, 1998, accessed at: <https://www.nytimes.com/1998/12/15/world/tarnished-laureate-a-special-report-nobel-winner-finds-her-story-challenged.html>

²⁰ “Against the Odds: CICIG in Guatemala,” op. cit.

²¹ “The International Commission Against Impunity in Guatemala: a WOLA Report on the CICIG Experience,” op. cit.

Even so, the MINUGUA’s mandate ended in 2004, leaving Guatemala at a standstill in its efforts to combat impunity, corruption, and violence.²² Given the persistent violence and insecurity in Guatemala, civil society groups began to organize and protest, demanding the continued presence of the United Nations to combat this insecurity and impunity.

In 2002, with the assistance of Guatemalan civil society groups and then president Alfonso Portillo, Guatemala began to consider requesting the assistance of the United Nations to combat the counterinsurgency intelligence networks from the conflict. In 2003, Portillo sent a letter to the United Nations requesting assistance to create a commission designed to counter the growing insecurity that these lingering groups posed in Guatemala.²³

The commission would be called the International Commission Against Illegal Security Groups and Clandestine Security Organizations (CICIACS) and the commission would act as a UN body with the authority to investigate and prosecute cases.²⁴ President Portillo signed the CICIACS into law in 2003 but the agreement was almost immediately rejected by Guatemala’s Congress citing that too much authority was taken away from the state as the international commission could completely bypass the Attorney General’s office and prosecute their own cases.²⁵

| President | Dates | Party | Investigated | Arrested |
|----------------------------|-----------|-------------|--------------|------------|
| Óscar Berger | 2004-2008 | GANA | Yes (2006) | No |
| Álvaro Colom | 2008-2012 | UNE | Yes (2009) | Yes (2018) |
| Otto Pérez Molina | 2012-2015 | Patriota | Yes (2015) | Yes (2015) |
| Alejandro Maldonado | 2015-2016 | Independent | No | No |
| Jimmy Morales | 2016-2019 | FCN | Yes (2017) | No |

Figure 1: Guatemalan presidents during the CICIG and whether they were investigated (author elaboration)

The rejection was a significant blow not only to President Portillo – who was later arrested by the CICIG for corruption in 2010 and prosecuted in the US - but to Guatemala’s civil society groups that had organized throughout the country. In 2004, Óscar Berger was elected as Guatemala’s next president. The Berger government was initially hesitant to begin renegotiating a new international commission, despite persistent pressure by NGOs, often allied and financed by activist international organizations that had long opposed the military in Guatemala and strongly tied to solidarity groups that had supported the armed Marxist insurgencies in the region.

However, in February 2007, three Salvadoran members of the Central American Parliament (PARLACEN), a regional legislative body established after the civil wars, were murdered and incinerated in their vehicle as they drove to Guatemala City.²⁶ It was later

²² “Saving Guatemala’s Fight Against Crime and Impunity,” op. cit..

²³ “The International Commission Against Impunity in Guatemala: a WOLA Report on the CICIG Experience,” op. cit..

²⁴ “Against the Odds: CICIG in Guatemala,” op. cit..

²⁵ “Against the Odds: CICIG in Guatemala,” op. cit..

²⁶ Hector Silva Avalos, “Kamilo Rivera and the Ghosts of Guatemala’s Death Squads,” *InSight Crime*, May 16, 2019, accessed at: <https://www.insightcrime.org/news/analysis/kamilo-rivera-ghosts-guatemalas-death-squads/>.

discovered the men were carrying \$5 million in cash, possibly to be used to purchase cocaine in Guatemala, tying the assassinations to regional organized criminal structures.²⁷

The incident sparked regional outrage and concern. Several Guatemalan police officers were subsequently arrested and charged with the murders but were themselves gunned down inside a maximum-security prison a few days after their arrest, causing further consternation and demonstrating the weakness and incapacity of the state to carry out basic law enforcement and judicial functions.

These events and the international condemnation that followed, prompted President Berger to revisit the international commission to combat crime groups that operated directly or indirectly with the state. Most of the negotiations were conducted by then Vice-president Eduardo Stein, who became the primary champion of allowing the establishment of an international investigative body in Guatemala.²⁸

On December 12, 2006 the United Nations and the Guatemalan government signed a similar agreement to the 2003 agreement; this time however, the agreement passed the Guatemalan congress. The International Commission against Impunity in Guatemala (CICIG) was formally established in 2007 and became operational in 2008.²⁹

While the commission's authorities were similar to the previous agreement, the CICIG's mandate had one significant difference. The CICIG would have the ability investigate cases, but the Public Prosecutor's office would be the only authority to prosecute cases in Guatemala. In total, five different presidents would serve Guatemala while the CICIG was operational. During the CICIG's 12 operational years, four of the five presidents would opt to renew the CICIG's mandate. Four of the presidents would be investigated by the CICIG and two would subsequently be arrested for crimes investigated under the commission. In September 2019, the CICIG was shut down permanently after president Morales failed to seek a second renewal of the CICIG's mandate in 2018.

The CICIG's Mandate

The CICIG's mandate as written in the December 2006 agreement lays out the objectives, definitions, functions, and powers of the CICIG. Among them, the CICIG is:

- To support, strengthen, and assist institutions responsible for investigating and prosecuting crimes;

²⁷ While the ties of the three PARLACEN members to cocaine trafficking was never proven, investigations in both El Salvador and Guatemala found reason to believe the cash was the primary motive for the assassinations, and the brutal manner in which they were carried out indicated ties to a drug operation. See: "Diputados salvadoreños asesinados en Guatemala iban con 5 millones de dólares," EFE, November 15, 2010, accessed at: <https://www.chicagotribune.com/hoy/ct-hoy-268519-vv12-15595596nov15-story.html>

²⁸ "Against the Odds: CICIG in Guatemala," op. cit..

²⁹ "The International Commission Against Impunity in Guatemala: a WOLA Report on the CICIG Experience," op. cit..

- To identify the structures, activities, modes of operation, and sources of financing of the clandestine criminal groups;
- To dismantle these parallel criminal organizations operating as parallel states and prosecute individuals involved in their activities;
- To establish mechanisms and procedures for the protection of the right to life and to personal integrity.³⁰

In short, the Commission was tasked with investigating, assisting in prosecuting, and dismantling illegal groups and actors that are in some way associated with the state.³¹ The CICIG also has the authority to propose legal and institutional reforms to Guatemala's Congress that would aim to improve the judicial process and investigative capacities.

There were three primary differences in the CICIG mandate compared to the CICIACS in 2003: (i) The CICIG would refrain from directly prosecuting cases, (ii) it would include organized crime in the mandate, and (iii) it would establish the commission as an independent body.³² Following the CICIG's establishment it served as an experiment on how independent, hybrid UN bodies could combat impunity at the national level. While broad in its objectives and authorities, there are some clear parameters within the mandate.

A significant difference was also in the name. The original commission specifically stated in its name that its mission was to combat "illegal security groups and clandestine security organizations," not combat impunity writ large nor to tackle broader issues of corruption in and around the state. The anger at the CICIG as it moved past looking at armed groups and security organizations is rooted partly in the expectation of Guatemalan stakeholders that the CICIG's mission was limited to the original statement, while the U.N. viewed the mission over time as broader than that.

The first parameter was that while the commission can combat illegal security groups and clandestine security organizations, the CICIG could only investigate these groups and organizations if they were linked directly or indirectly to the State. In the early 2000's, this definition was primarily geared toward combatting former counterinsurgency networks from the internal conflict era such as the counterinsurgency intelligence group known as the Presidential Security Guard (*Estado Mayor Presidencial*) and the *Cofradía* and similar structures.

However, the operational definition of these groups quickly expanded to include other criminal actors, including organized criminal groups. There was a fine and often blurred line among organized criminal groups, drug traffickers, or non-government related criminal actors and those with clear ties to the Guatemalan government. No clear criteria was laid out and the definition would expand to include localized criminal groups and families; foreign transnational organized crime groups; and corrupt government officials.³³ Velásquez went further, declaring

³⁰ "Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala," hereinafter CICIG agreement mandate, December 29, 2006, accessed at: http://www.cicig.org/uploads/documents/mandato/cicig_acuerdo_en.pdf .

³¹ Maureen Taft-Morales, op. cit..

³² Against the Odds: CICIG in Guatemala – Open Society Justice Initiative (February 4, 2016)

³³ "Against the Odds: CICIG in Guatemala," op. cit..

that the “original sin” of democracy in Guatemala was illicit campaign finance that was “suffocating the rule of law, generating inequality in the electoral processes and distorting popular will.”³⁴

However, these lines of investigation were not explicitly laid out in the original mandate and would be a growing cause of conflict between the CICIG and the Guatemalan government, the political elite and business community, particularly because the existing laws on campaign finance were broad and poorly written. Many of the actions eventually investigated by the CICIG were not viewed by political elites as clearly illegal or unusual.

A second issue was that, while CICIG was nominally a commission within the United Nations, it operated as an independent body and this distinction is quite significant in operational terms.³⁵ Unlike other bodies associated with the United Nations, the CICIG did not receive the same legal and personal protections and services, because - by mandate - the UN cannot investigate a Member State, hence the independent status of the CICIG with little UN oversight. Rather, the government of Guatemala was to provide the office space, security, and other protections for the CICIG and its employees.³⁶

Moreover, while the Commissioner and all international staff were to have the conventional immunities and protections provided by the United Nations, local staff and employees would not enjoy the same level of privileges.³⁷ These distinctions affected not only the initial hiring process for the CICIG in 2008, but additionally made protecting local staff relatively difficult at times.³⁸ When the CICIG’s mandate ended those national workers lost their functional immunity and were left largely unprotected and exposed to retaliation by the groups they had helped prosecute.

Structurally, as an independent body, the CICIG did not have clear metrics, an annual plan of action, or even a dedicated budget as the Commissioners were required to fundraise for their own commission.³⁹ Funding levels were between \$12 million and \$15 million a year, donated by the international community. This made it impossible to evaluate the performance of the CICIG against any reasonable standard of action or progress or move toward clearly defined objectives.

While commission’s mandate worked to create some distance between the CICIG and the United Nations, the group was to collaborate closely with the Guatemalan state. The mandate explicitly states that the MP would appoint special prosecutors to work on investigations and prosecutions; the National Police would create special police units to support the Public

³⁴ Héctor Silva Ávalos and Steven Dudley, “President Jimmy Morales’ (and Guatemala’s) ‘Original Sin,’” InSight Crime, May 23, 2018, accessed at: <https://www.insightcrime.org/investigations/president-jimmy-morales-guatemalas-original-sin/>

³⁵ “Against the Odds: CICIG in Guatemala,” op. cit..

³⁶ CICIG agreement mandate, op. cit..

³⁷ Op. cit..

³⁸ “Against the Odds: CICIG in Guatemala,” op. cit..

³⁹ Op. cit..

Prosecutor's office, and the executive would promote legislative reforms as outlined by the commission.⁴⁰

In practice, the CICIG would have a contentious relationship with all three Guatemalan bodies but some efforts were made to facilitate this collaboration. For instance, the Public Prosecutor's office created the Special Unit Against Impunity (*Fiscalía Especial Contra la Impunidad, FECI*) to work closely with the CICIG to and investigate and prosecute cases brought by the commission.⁴¹ Within the National Police, the CICIG worked closely with the Special Criminal Investigation Unit which has continued their actions after the CICIG's mandate ended in September 2019.⁴² However, members of the existing unit said the lack of political will in the current leadership has greatly diminished the groups' capacity to investigate and prosecute high-level crimes and corruption.

"We are only a handful left, and without protection from our bosses we are exposed to retaliation," said one current prosecutor. "It is getting harder and harder to get any cases pushed forward or to get authorization or resources for cases that touch officials."

Despite the establishment of the special units the CICIG had difficulties building and maintaining working relationships with all bodies of the Guatemalan government. From high turnover rates of foreign CIG workers, particularly the leadership, to investigating the very government officials that the CICIG was supposed to be working with, the commission often could not fully distinguish between allies and potential enemies in its investigations. New arrivals meant constantly rebuilding institutional knowledge and trust in the work environment as well.

However, given the mandate's active decision for collaboration, the CICIG was able to dedicate resources to improving the investigating and prosecutorial capacities of the Public Prosecutor's office in part because the CICIG's strong relationships with two of Guatemala's Attorney Generals that were in place for most of its mandate: Claudia Paz y Paz and Thelma Aldana.⁴³ The levels of cooperation between U.S. law enforcement (primarily the Drug Enforcement Administration – DEA) and other U.S. and international bodies with their Guatemalan counterparts has dropped significantly since the CICIG came under sustained attack.

As will be discussed, personalities mattered. The CICIG was helping to investigate senior leaders of the government that was hosting the organization, and personal and institutional relations frayed over time until the final rupture between President Morales and Commissioner Velásquez.

⁴⁰ CICIG agreement mandate, op. cit..

⁴¹ Katerin Chumil, "MP fortalece la FECI con creación de Unidad de Apoyo Técnico," *El Periódico*, August 13, 2019, accessed at: <https://elperiodico.com.gt/nacion/2019/08/13/mp-fortalece-la-feci-con-creacion-de-unidad-de-apoyo-tecnico/>.

⁴² "Policía Nacional Civil y Ministerio Público, buscan mejorar capacidades investigativas," *Ministerio de Gobernación*, August 28, 2019, accessed at: <https://mingob.gob.gt/policia-nacional-civil-y-ministerio-publico-buscan-mejorar-capacidades-investigativas/>.

⁴³ "Against the Odds: CICIG in Guatemala," op. cit..

The Role as a Complementary Prosecutor of the Attorney General

From the beginning, the CICIG was to provide training and assistance on cases and to “promote criminal prosecutions by filing criminal complaints with relevant authorities.”⁴⁴ In so doing, the CICIG relied on the capacities of the Public Prosecutors Office to prosecute, and in many instances, to investigate cases.

However, the CICIG maintained the ability to investigate cases and to provide those investigations and technical assistance to the proper judicial authorities, allowing the commission to serve as a complementary investigatory body. The mandate included a stipulation that a CICIG employee could also “join a criminal proceeding as a private prosecutor” though the mandate does not elaborate on the operational aspects of this process.⁴⁵ The CICIG helped bring more than 120 cases in the Guatemalan courts, implicating 1,540 people and bringing charges against 680 people, of whom 310 were convicted and most of the rest await trial in pretrial detention.⁴⁶

It is worth mentioning that of those cases that the Attorney General’s office made the decision to prosecute, 85 percent of the individuals who went to trial were ultimately convicted.⁴⁷ Even without prosecutorial powers, the CICIG and its staff played a critical role in the prosecution of cases and in the process transferred knowledge and capacity to collaborative state institutions. However, the estimates of those who have been arrested but never tried, including former president Perez Molina, vary from dozens to hundreds, some in limbo and deprived of liberty for years. This has been a primary criticism of the prosecutions in which the CICIG investigated or supported the MP office.

The commission also had the power to recommend appointing or dismissing judicial authorities. In fact, all three commissioners frequently used their authority to recommend the nomination of judges and even the Attorney Generals. Over the course of the CICIG’s mandate, it asked the president to “remove an attorney general, to fire a dozen lead prosecutors, and to revoke the appointment of a public defender director.”⁴⁸ This was often a contentious practice because in making recommendations, the CICIG would therefore accuse some public servants of being unfit to serve in office without having to present any evidence to support the allegations.

The first commissioner, Carlos Castresana, focused significant resources and attention on judicial reform. However, he was not very successful, both because the CICIG was just getting off the ground, but also because Castresana often made his selections for judges known through

⁴⁴ CICIG agreement mandate, op. cit..

⁴⁵ “Against the Odds: CICIG in Guatemala,” op.cit.

⁴⁶ “The International Commission Against Impunity in Guatemala: a WOLA Report on the CICIG Experience,” op. cit.; Mark L. Scheider, “Democracy in Peril: Facts on CICIG in Guatemala,” CSIS, April 11, 2019, accessed at: <https://www.csis.org/analysis/democracy-peril-facts-cicig-guatemala>

⁴⁷ “Los Hechos: El legado de la CICIG en la lucha contra la corrupción en Guatemala,” op. cit.

⁴⁸ “The International Commission Against Impunity in Guatemala: a WOLA Report on the CICIG Experience,” op. cit..

media outlets which caused tension between the commissioner and the public.⁴⁹ The most notable case came in May 2010 when Colom named a new attorney general that was not on the final list of candidates approved for consideration for the job.

Colom chose Cornado Reyes, whom Castresana publicly accused of corruption, ties to illegal adoptions and lawyers representing drug traffickers. On June 10, 2010 Castresana abruptly resigned as commissioner of CICIG, charging that the Guatemalan government had not lived up to its international obligations.⁵⁰ Castresana's public accusations and resignation eventually produced the desired effect – Reyes was removed from the post after a few months, where he had reportedly already begun dismantling CICIG investigations – but also demonstrated the dangers and growing animosity that such public tactics of confronting and humiliating the host government would engender.⁵¹

The second commissioner Francisco Dall'Anese inherited all the tensions of the Castresana confrontations and tempestuous resignation, and tried to ensure the selection process for the new attorney general went more smoothly. Colom, chastened by the international firestorm that followed the naming of Reyes, this time accepted the recommendation to hire the candidate most rated as most qualified by the selection process, naming Claudia Paz y Paz as Guatemala's next Attorney General in December. The proved quite transformative for the CICIG and the AG's office.⁵²

The relationship between the CICIG and the public prosecutor's office significantly improved after Paz y Paz's 4-year appointment. However, to the dismay of the international backers of CICIG, Paz y Paz was not placed on the short list of candidates for the next term, effectively denied a second term. Instead, President Pérez Molina chose a sitting supreme court justice, Thelma Aldana, who was widely viewed as being close to his party and particularly close to vice president Baldetti. She was also known to have her own personal ambitions to the presidency.⁵³ These rumored ambitions proved to be true when Aldana ran for president in 2018, but was ultimately disqualified from the race.

A second characteristic of the CICIG's role in assisting the prosecutor's office was the commission's emphasis on improving the investigative and prosecutorial capacities of the office. The CICIG frequently made recommendations to Guatemala's Congress and judicial bodies on how improvements could be made to investigative and prosecutorial practices. Congress was not required to approve the changes and did so only sparingly during the CICIG's operations.⁵⁴

Among the proposed legal instruments that did not exist were: the successful broad criminalization of political corruption, including illicit enrichment of public officials, bribery, and lying about one's patrimony; wire tapping, now in place under a special unit within the MP;

⁴⁹ "Against the Odds: CICIG in Guatemala," op. cit..

⁵⁰ "Against the Odds: CICIG in Guatemala," op. cit.

⁵¹ "Against the Odds: CICIG in Guatemala," op. cit.

⁵² "Against the Odds: CICIG in Guatemala," op. cit..

⁵³ Sergio Morales and Claudia Palma, "Thelma Aldana es la nueva Fiscal General," Prensa Libre, May 9, 2014, accessed at: <https://www.prensalibre.com/guatemala/preisente-nombrara-nuevo-fiscal-general-0-1135086685/>

⁵⁴ "The International Commission Against Impunity in Guatemala: a WOLA Report on the CICIG Experience," op. cit..

asset forfeiture, now in place; the figure of the confidential informant for organized crime cases, which has not yet been implemented; controlled delivery operations and undercover agents, never fully implemented; a witness protection program to protect that was never fully implemented; and the creation of courts for high-risk crimes, created in 2009.⁵⁵ In addition, the commission also assisted the Guatemalan government in capturing and analyzing DNA and ballistics tests, in part through police training.⁵⁶

Despite these successes not many of the recommendations made by the CICIG were ultimately not passed due to political deadlock, corruption and limited funds to carry out the improvements and the commission was not wholly successful in accomplishing as much as it would have liked in the long-term.

A third characteristic of the CICIG's role legal cases was the media and public attention generated by the CICIG's investigations, a strategy that often hindered the CICIG's investigative work. As discussed below, the CICIG commissioners often came out personally to make major announcements or accusations, personalizing what should have been a concerted and much broader institutional approach. This led to high visibility in cases where CICIG was hoping to generate public support for a particular action, such as naming judges or prosecutors.

The strategy was not entirely unsuccessful. As the CICIG closed its doors in September 2019, it had a 70 percent approval rating by the Guatemalan public.⁵⁷ The CICIG did not initially have a public relations staff member, requiring then commissioner Castresana to conduct public outreach on his own. This resulted in a few PR challenges, that didn't go away entirely even after Castresana hired a small staff to manage these challenges and the Guatemalan public's awareness of the commission grew dramatically.⁵⁸

Throughout its tenure the CICIG commissioners would play an outsize role in announcing cases, naming judges and advocating positions. This left the commissioners, particularly Velásquez, vulnerable to accusations that they individually personified the Commission and made attacking them easier. For the CICIG, finding a balance in its public role was difficult and the commission never learn to fully thread that needle.

Finally, through the CICIG's partner was the Attorney General's office, The Public Prosecutor's office created the Special Unit Against Impunity (*Fiscalía Especial contra la Impunidad*, FECI).⁵⁹ This specialized unit was created as an elite body to work directly with the CICIG and prosecute cases that fell within the CICIG's mandate. It was the embodiment of the CICIG's mission to improve the judicial system's capacities. While this unit was quite successful in its mission during the CICIG's operations, this is now the only unit that carries on the commission's work in the post CICIG era.

⁵⁵ The International Commission Against Impunity in Guatemala: a WOLA Report on the CICIG Experience," op. cit..

⁵⁶ "Saving Guatemala's Fight Against Crime and Impunity," op. cit.; "El Papel de la CICIG en la Promoción de Reformas Jurídicas contra la Impunidad," CICIG, June 2019.

⁵⁷ "Saving Guatemala's Fight Against Crime and Impunity," op. cit..

⁵⁸ "Against the Odds: CICIG in Guatemala," op. cit..

⁵⁹ Op. cit..

The FECCI currently has more than 70 active cases, many of whom were investigated by the CICIG in recent years.⁶⁰ Going forward, it is not immediately clear to what extent the FECCI will continue to operate and the Attorney General has not directly addressed the FECCI's role past 2019.⁶¹

By law, the MP has to request a Docket Number for each new case. Every piece of evidence, every witness interview, etc. is carefully documented as the information will be made available to the defense during the trial. However, no such "official" docketing system existed within CICIG nor were they obligated to maintain the strict rules that govern due process, and which guarantee the right to a fair trial. This led to instances in which parallel dockets were created and led to gaps in the judicial process. Certain cases have brought forth accusations of fake or coerced witnesses and the selective exclusion of contradicting testimonies.

In short, the CICIG role was limited by design which made actively participating in some cases. However, the CICIG did assist, both directly and indirectly, in the prosecution and conviction of individuals during its tenure. In fact, the CICIG made several significant improvements to way that cases are developed and was able to address certain challenges that the Attorney's General office likely would not have successfully addressed on their own.

The Impact of the CICIG on Criminal Groups

Before going into the role that the CICIG had on dismantling the criminal groups as stated in its mandate, it is necessary to identify who these groups are and how they changed over time. From its inception, the CICIG defined *illegal security groups and clandestine security organizations* as "those groups that commit illegal acts in order to affect the full enjoyment and exercise of civil and political rights and that are linked directly or indirectly to agents of the State or have the capacity to generate impunity for their legal actions."⁶² This definition included the counterinsurgency groups from the period of Guatemala's internal conflict but clearly encompassed other groups as well.

The only clear directive from the definition is that the illegal security groups must be at least marginally linked to the Guatemalan state. While this broad definition could be viewed positively for the CICIG and its Commissioners, in practice the ambiguity created significant challenges in identifying and combating these groups and ensured that the CICIG had no metrics by which to measure its success in fulfilling this objective.

According to the International Crisis Group, the CICIG identified and dismantled more than 180 criminal groups during its tenure.⁶³ These criminal groups vary in member size and criminal capacities. In some of the cases investigated by the CICIG, illegal security groups involved murder-for-hire bands while in other instances the groups involved several members of

⁶⁰ Sofia Menchu and Diego Oré, "CICIG termina su mandato en Guatemala ¿Se acaba la lucha contra la corrupción?," *Reuters*, August 30, 2019, accessed at: <https://lta.reuters.com/articulo/guatemala-corrupcion-cicig-idLTAKCN1VK1JN-OUHLT>.

⁶¹ "Los Hechos: El legado de la CICIG en la lucha contra la corrupción en Guatemala," op. cit..

⁶² CICIG agreement mandate, op. cit..

⁶³ "Saving Guatemala's Fight Against Crime and Impunity," op. cit..

the president's cabinet. As a result of these differences, it is difficult to use a metric in determining just how successful the CICIG was in identifying and combating illegal security groups in Guatemala. The Open Society Foundation found that while the CICIG successfully investigated many high-level cases, the first two Commissioners at least performed demonstrably worse in "mapping the criminal networks as part of its mandate".⁶⁴

To properly evaluate the CICIG's work in identifying and combatting illegal security groups, it is necessary to first understand some of the group's at work. Related specifically to organized crime, there are five established crime families in Guatemala: the Mendozas (Izabal and Péten); the Lorenzanos (Zacapa, El Progreso, Jalapa, Chiquimula); the Ponces (East); the Zarcenos (South Pacific); and the Chamales (Southwest).⁶⁵

These groups were primarily *transportista* networks, often working with similar groups in Honduras, El Salvador, Panama, Venezuela and Colombia, to move cocaine to storage centers in Guatemala, where Mexican organizations can then collect the cocaine from central nodes and move them northward. There are also transnational criminal gangs like the MS-13 and Barrio 18, which are less involved in the cocaine trade than their counterparts in El Salvador and Honduras but maintain significant territorial control and criminal activities.⁶⁶

In addition to the local structures there are large, predominantly Mexican, drug trafficking organizations like the Zetas and the Sinaloa Federation who operate in Guatemala.⁶⁷ The Zetas made a concerted effort to establish territorial control in Guatemala but were eventually largely driven out of their strongholds by an alliance of local *transportista* families.

Finally, there are the networks of politicians at all levels and businesspeople who work to launder funds for themselves and the Mexican trafficking structures and/or embezzle money from the state and launder it through local banks and businesses. While investigations into organized criminal groups were permitted in the CICIG mandate, the crimes committed with direct ties to the state were to be the priority of the international commission. This breakdown in a common understanding of what constituted ties to the state was a major point of rupture between the Morales government and CICIG.

⁶⁴ "Against the Odds: CICIG in Guatemala," op. cit..

⁶⁵ "Against the Odds: CICIG in Guatemala," op. cit..

⁶⁶ Arron Daugherty, "MS13, Barrio 18 Rivalry Increasing Violence in Guatemala: President," *InSight Crime*, February 4, 2015, accessed at: <https://www.insightcrime.org/news/brief/ms13-barrio-18-rivalry-increasing-violence-in-guatemala/>.

⁶⁷ Steven Dudley, "The Zetas, Drug Money and the Colom Campaign in Guatemala," *InSight Crime*, August 9, 2018, accessed at: <https://www.insightcrime.org/investigations/the-zetas-drug-money-colom-campaign-guatemala/>.



Figure 2: Map of Guatemala demonstrating where local criminal groups operate (source: Wikimedia)

When it viewed such investigations as appropriate, the CICIG investigated private citizens, as it did in the Rosenberg death in Guatemala City.⁶⁸ This particular case was taken by the CICIG because following Rosenberg’s murder, a video emerged of Rosenberg alleging then president Colom had ordered his murder.⁶⁹

Chaos erupted, protesters took to the streets, and the CICIG was charged with handling the case. Ultimately, then Commissioner Castresana determined that not only had Rosenberg fabricated the accusations against president Colom, he had also arranged for his own murder from known hit men in Guatemala.⁷⁰ The successful unraveling of a complex and politically charged case solidified the reputations of the CICIG and helped lead to a broader notion of an illegal security group or ties to the state.

What this case demonstrated is how intertwined criminal actors are in Guatemala, involving the business sector, organized criminal actors, and allegedly (though he was completely absolved) the president of Guatemala. That the allegation of the president being

⁶⁸ “Against the Odds: CICIG in Guatemala,” op. cit..

⁶⁹ David Grann, “A Murder Foretold: Unravelling the ultimate political conspiracy,” *The New Yorker*, March 28, 2011, accessed at: <https://www.newyorker.com/magazine/2011/04/04/a-murder-foretold> .

⁷⁰ Op. cit..

involved in a murder was accepted as plausible shows how deeply embedded these criminal networks are, both in reality and in the national psyche.

The Challenges of the three Commissioners

Over the course of the CICIG's 12 operational years it was led by three different commissioners appointed by the Secretary General of the United Nations.⁷¹ This was one of the only direct authorities that the United Nations had with regards to the commission, and the rules required the Commissioner not be a Guatemalan.⁷² Finally, the commissioner was to provide periodic updates to the UN Secretary General and no term or year limits for commissioner were outlined.

Given the vagueness in the CICIG's mandate, the three commissioners would each approach the commission differently, opting to focus on different aspects of the impunity challenge. Their effectiveness was often predicated on Guatemala's sociopolitical dilemmas during their tenure, complementing the administrative setbacks and substantive organizational hurdles within the commission itself. Each commissioner faced unique challenges to their particular time period and the internal dynamics of Guatemala's socioeconomic and political life.

| Commissioner | Dates | Nationality | Priorities |
|-----------------------------|---------|-------------|---|
| Carlos Castresana | 2007-10 | Spain | <ul style="list-style-type: none"> • Set up commission (administrative) • Fundraise donors for budget • Conduct PR outreach by himself • Investigate high profile cases |
| Francisco Dall'Anese | 2010-13 | Costa Rica | <ul style="list-style-type: none"> • Rely on PR team for outreach • Reform judicial system • Clear pending docket • Refrain from taking new cases |
| Ivan Velásquez | 2013-19 | Colombia | <ul style="list-style-type: none"> • Create a clearer action plan • Give smaller cases to AG • Investigate fewer but larger cases • Focused on the political elite |

Figure 3: List of CICIG commissioners and their primary priorities (author elaboration)

⁷¹ "Secretary-General Appoints Carlos Castresana Fernandez of Spain to head International Commission Against Impunity in Guatemala," *United Nations*, September 17, 2007, accessed at: <https://www.un.org/press/en/2007/sga1096.doc.htm>.

⁷² CICIG agreement mandate, op. cit..

Castresana: The Beginning

In September 2007, Carlos Castresana Fernandez was appointed by the Secretary General of the United Nations to serve as the CICIG's first commissioner.⁷³ A Spanish lawyer, Castresana is best known for his work in prosecuting former Chilean dictator, Augusto Pinochet for human right abuses and corruption.⁷⁴ He served as the CICIG's commissioner from 2007 through 2010.⁷⁵

Castresana spent most of his tenure managing administrative tasks and setting up the mechanics and architecture of the commission.⁷⁶ He began the process of hiring Guatemalan staff, acquiring vetted security members to protect the CICIG leadership and installations, and fundraising for the commission (as the CICIG relied on donations to even get off the ground). As these tasks were completed over the first two years Castresana began to focus more closely on investigating cases and making recommendations to the Guatemalan government. One of the most controversial contracting over time was retaining the services of the law firm Carrillo & Asociados, who handled the CICIG's legal challenges to the Guatemalan state.

Much of Castresana's work focused on aligning CICIG and the Guatemalan state, including the appointment of new judges and working through Congress to pass laws to strengthen the fight against immunity. Castresana wrestled with the murder of the three Salvadoran PARLACEN members and the Rosenberg case⁷⁷ and, after clearing president Colom of involvement in a homicide and demonstrating the efficacy of an independent investigatory body, the CICIG's stock rose. Overall, Castresana was known for being outspoken and often causing controversy as a result. Castresana, as noted above, would eventually resign after he became frustrated with naming of the attorney general and other growing disagreements with the Guatemalan government.⁷⁸

Dall'Anese: The Middle

The second commissioner, Francisco Dall'Anese, was appointed in July 2010. Costa Rica's former attorney general, Dall'Anese built his career prosecuting organized crime and corruption cases.⁷⁹ He is widely viewed as having significantly slowed the momentum Castresana had generated for the CICIG in terms of opening new investigations and setting up comprehensive investigations.

⁷³ "Secretary-General Appoints Carlos Castresana Fernandez of Spain to head International Commission Against Impunity in Guatemala," *United Nations*, September 17, 2007, accessed at: <https://www.un.org/press/en/2007/sga1096.doc.htm> .

⁷⁴ "Carlos Castresana," *El País*, Accessed at: https://elpais.com/politica/2011/10/07/biografiaeldebate/1318007019_970335.html .

⁷⁵ Op. cit..

⁷⁶ Against the Odds: CICIG in Guatemala – Open Society Justice Initiative (February 4, 2016)

⁷⁷ David Grann, op. cit..

⁷⁸ "Against the Odds: CICIG in Guatemala," op. cit..

⁷⁹ Elisabeth Malkin, "New Leader of Guatemala Investigations," *The New York Times*, July 1, 2010, accessed at: <https://www.nytimes.com/2010/07/02/world/americas/02briefs-Guatemala.html> .

Within his first year in office, the CICIG presented then Guatemalan president Berger with a list of potential options for a new attorney general. Claudia Paz y Paz was at the top of this list and president Berger accepted, changing the trajectory of the CICIG.⁸⁰ Throughout his three years as commissioner, Dall’Anese prioritized prosecuting cases that were already in the CICIG’s docket and working to collaborate more closely with the Public Prosecutor’s office, given Claudia Paz y Paz’s recent appointment.

In retrospect many view Dall’Anese’s focus on pushing existing cases rather than bringing new ones as at least an attempt at a necessary partial course correction, given the backlog of cases and the bottlenecks inside the Guatemalan judicial system. New cases were simply overwhelming the judiciary that had yet to deal with significant structural issues and workflow issues.

The most-high profile case to come to fruition during Dall’Anese’s tenure was the PARLACEN case of 2007, which is the case that initially spurred action towards the CICIG’s creation. Dall’Anese relied heavily on witness accounts rather than strong forensic evidence linking several prominent traditional political elites to the crimes.⁸¹

When the news broke that the CICIG was investigating Interior Minister Carlos Roberto Vielman, chaos broke out among the political elite. Among those arrested with Vielman were former prisons director and current president Alejandro Giammattei, on allegations of having been complicit in a 2006 operation to militarily retake El Pavon prison. In 2011, the now president-elect spent 10 months in prison on charges of conspiracy and extrajudicial killings⁸² but the case was ultimately dismissed for a lack of evidence and Giammattei was released.⁸³ Several other individuals affiliated with the case were convicted for their participation in the executions.⁸⁴ Prior to Giammattei’s election, the CICIG updated their web communiques related to Giammatteis’ cases to directly state that Giammattei was no longer under any type of investigation by the CICIG.⁸⁵

The PARLACEN case was Dall’Anese’s CICIG primary legacy but there were other controversies. Like Castresana, Dall’Anese was known for being outspoken in his views of who should be appoint to judgeships and ultimately about the trial of former dictator Efraín Ríos Montt in 2013. Ríos Montt was ultimately convicted – though this decision was quickly overturned – but Dall’Anese was very outspoken during the process.

Following the Ríos Montt trial, Guatemalan representatives travelled to the United Nations offices in New York to specifically make a complaint about Dall’Anese’s actions.⁸⁶ A

⁸⁰ “Against the Odds: CICIG in Guatemala,” op. cit..

⁸¹ Op. cit..

⁸² Caso Giammattei: Resolución de Cámara Penal de la Corte Suprema de Justicia,” *CICIG Comunicado 053*, October 7, 2011, accessed at: <https://www.cicig.org/comunicados-2011-c/caso-giammattei-resolucion-de-camara-penal-de-la-corte-suprema-de-justicia/> .

⁸³ Elisabeth Malkin, “Alejandro Giammattei, a Conservative, Wins Guatemala’s Presidency,” *The New York Times*, August 11, 2019, accessed at: <https://www.nytimes.com/2019/08/11/world/americas/guatemala-election.html>.

⁸⁴ “Qué fue la Operación Pavo Real, la masacre por la que fue a la cárcel el presidente electo de Guatemala,” Op. cit..

⁸⁵ Caso Giammattei: Resolución de Cámara Penal de la Corte Suprema de Justicia,” Op. cit..

⁸⁶ “Against the Odds: CICIG in Guatemala,” op. cit..

few weeks later, the Costa Rican attorney announced that he would not be seeking to renew his contract.⁸⁷ This is often characterized as the weakest period the CICIG's existence, with few clear milestone achievements during Dall'Anese's tenure.

Velásquez: The End

Ivan Velásquez, the final CICIG commissioner, was appointed in 2013 and would remain the commissioner for the next six years. A former member of Colombia's Supreme Court (CSJ), Velásquez had worked as an investigator in the Colombian Attorney General's office, focusing mainly on right-wing paramilitary groups.⁸⁸ This history immediately made him suspect in the eyes of some Guatemalan stakeholders, given that the paramilitary groups were initially formed to fight the Marxist FARC guerrillas, a similar trajectory to the Guatemalan parallel security structures that operated during and after the Guatemalan conflict, allegedly to fight a Marxist rebellion.

Like the Guatemalan non-state armed groups fighting the insurgencies, the Colombian paramilitaries had a long history of human rights abuses, had close ties to the military, and were justified by some as necessary to fight Communist revolutions. Unlike the Guatemalan groups, the Colombian paramilitaries abandoned their anti-Communist political posture after a few years and became a major drug trafficking organization, often working in conjunction with the FARC to move cocaine to the United States.

Velásquez's arrival in late 2013 was followed in May 2014 by the naming of Thelma Aldana, a politically ambitious lawyer and supreme court justice, as Guatemala's new Attorney General who had been previously suspected of ties with organized crime and who was closely identified with Perez Molina and Baldetti. The perceived ideological alignment of Velásquez and partisan political past of Aldana drew suspicions in the eyes of many in Guatemala's small and conservative political class as well as many in the human rights community. Despite the misgivings, Aldana and the CICIG continued to enjoy strong support from the Obama administration. Aldana promptly hired José Carlos Marroquín as a consultant to the MP - and Marroquín would later run her presidential campaign. Marroquín's naming furthered suspicions about Aldana's political ambitions and ability to keep the office of the attorney general neutral in Guatemala's cutthroat political environment.

From the beginning of his tenure, Velásquez focused on just a few priorities, moving many of the CICIG's smaller cases to the Public Prosecutor's Office. He decided to focus on political corruption, particularly campaign finance, and the effects of political corruption on a broader set of criminal activities.

This unilateral broadening of the purview of the CICIG's operations touched a much wider swath of Guatemala's public and private sector communities than investigations into

⁸⁷ James Bargent, "Last Rites for Guatemala's Anti-Impunity Crusaders CICIG?", *InSight Crime*, September 6, 2013, accessed at: <https://www.insightcrime.org/news/analysis/last-rites-for-guatemalas-anti-impunity-warriors/>.

⁸⁸ "Secretary-General Appoints Iván Velásquez Gómez of Colombia to Head International Commission Against Impunity in Guatemala," *United Nations*, August 31, 2013, accessed at: <https://www.un.org/press/en/2013/sga1437.doc.htm>

armed groups. The private sector and political elites were the primary recipients and sources of campaign finance operations.⁸⁹ The opposition, which grew with time, was often couched in terms of political ideology, with Velásquez being accused of carrying out a radical leftist agenda against the conservative Guatemalan elite and Aldana trying helping in an effort to boost her own political career. By their actions, they both would later be identified with a larger group of sociopolitical reformists that pushed for constitutional and other reforms that reflected a broader strategy to profoundly reshape Guatemala.

This refocusing of the primary CICIG investigations, Velásquez's own storied background in Colombia, coupled with the cases pursued by Aldana as Attorney General set off alarm bells across the political and business sectors. Suddenly, in their view, they were no longer supporting a body tackling parallel security and intelligence structures that had a significant impact on the legitimate business interests. Rather, they felt blindsided by what they perceived as a significant, unilateral changing of the rules of engagement that went to financial and political interests that were internal to Guatemala and not part of the CICIG's mandate.

According to multiple people who supported CICIG's efforts overall, the growing friction was fanned by the U.N. Secretary General's blanket refusal to entertain any questions on Velásquez or the CICIG's actions that were raised by Guatemalan government officials or private citizens, never answering numerous written requests for information and refusing to offer any explanation for CICIG's changing role.

While supporters of CICIG argue that this view was based on misconceptions and were part of the traditional power structures closing ranks to protect themselves when feeling threatened, the political tone deafness of Velásquez and his team precluded any significant discussions between the two sides and led to a rapidly deteriorating situation.

In his refocusing of priorities Velásquez sent at least 35 cases to the Attorney General's office to handle alone and he began focusing on tax crimes, crimes against indigenous populations, and extractives crimes.

In April 2015, news broke of a complex embezzlement scheme run through Guatemala's tax agency, Superintendence of Tax Administration (SAT). The media correctly reported that then vice president Roxana Baldetti's private secretary and the head of the SAT had both been arrested for their roles in orchestrating a tax scheme.

In the scheme, those importing goods would pay 40% of the taxes, give officials 30% as their cut and keep the remaining 30% of the taxes by calling a telephone number (or *la línea*).⁹⁰ In May vice president Baldetti was forced to resign for her role in the scheme and she was later arrested.⁹¹ Given the high-profile nature of the case, president Perez Molina was pressured by the

⁸⁹ "Against the Odds: CICIG in Guatemala," op. cit..

⁹⁰ "The International Commission Against Impunity in Guatemala: a WOLA Report on the CICIG Experience," op. cit..

⁹¹ Elizabeth Malkin, "Roxana Baldetti's Resignation as Vice President Shadows Guatemala Politics," *The New York Times*, May 10, 2015, accessed at: <https://www.nytimes.com/2015/05/11/world/americas/roxana-baldettis-resignation-shadows-guatemala-politics.html>.

U.S. and internal Guatemalan actors into renewing the CICIG mandate before he himself resigned in September 2015.⁹²

In this case, Velásquez argued that his shifting focus paid off by forcing the resignations of both the president and vice president in a scheme tied to state corruption. The CICIG and Velásquez were widely praised internationally for tackling a case that implicated the highest levels of government. There was little discussion the ensuing fact that, while Baldetti was convicted and sentenced to 15 years in prison, Perez Molina has spent the past four years in prison and has yet to be tried or convicted.

Along with dozens of other prisoners charged under CICIG-backed investigation, Perez Molina is held in a makeshift prison at the Mariscal Zabala military base, where prisoners can build their own houses of wood, aluminum and plastic, depending on their personal wealth and willingness to spend. During the author's visit to the prison he was hosted in a house made out of wooden planks, with a living room with two sofas, a kitchen with refrigerator and stove, two bedrooms and a bathroom. For a price, prisoners can enjoy carry out food, loud parties on the weekend and easy access to prostitutes.⁹³

This is not to say Perez Molina is either guilty or not guilty, only that the system constructed to deal with those accused in CICIG investigations remains significantly flawed in dispensing justice in a timely manner. The many months, and in some cases years, of pretrial detention in prison conditions that defy any logic, significantly undermines the legitimacy and credibility of the judicial process supported by the CICIG.

With the resignations of Perez Molina and Baldetti, Alejandro Maldonado, who had become vice president when Baldetti resigned in 2015, served as interim president from September 3, 2015-January 14, 2016, during which time he oversaw scheduled national elections.

Jimmy Morales, an evangelist, popular comedian and variety show host was elected in October 2015 – in a very unlikely outcome that signaled the political frustration of the masses – and the momentum appeared to be forward moving for both Velásquez and the CICIG. Morales lagged behind Manuel Baldizón and Sandra Torres in early election polls and came back to win in a second-round run-off. Both Baldizón and Torres have since been arrested and criminally prosecuted, further disgracing the already tainted political landscape in the country.

In April 2016 Morales renewed the CICIG's mandate for another three years – or until his term was over. Traditionally the CICIG mandates were extended for two years at a time. However, the indications of goodwill were short-lived as Morales, his family and his party came under investigation for charges including corruption and campaign finance violations.⁹⁴ The campaign finance violations focused on the fact that most of the funding for the Morales

⁹² "Guatemala's President Otto Perez Molina Resigns," *BBC World News*, September 3, 2015, accessed at: <https://www.bbc.com/news/world-latin-america-34137225>.

⁹³ Author visit to the prison October 2019.

⁹⁴ Maureen Taft-Morales, op. cit..

campaign was never reported as required by law. In addition, Morales allegedly maintained control of his party's checkbook and bank accounts long after the campaign ended.⁹⁵

A separate case that was more personally linked to Morales, known as *Botín Registro de la Propiedad* was an investigation of state funds being misused to pay for events that never took place, benefitting private citizens with the payments. Specifically, the CICIG and MP alleged that in 2013 – long before Jimmy Morales, a TV comedian, had entered politics – the president's son Juan Manuel Morales Marroquín, and the president's brother, Samuel Morales Cabrera, had been paid a total of \$35,826.00 for three events where food was invoiced but Christmas baskets were allegedly not delivered.

The CICIG's decision to support the prosecution of the *Botín* case and Morales relatives brought swift blowback with Morales, the broader political community and the U.S. Embassy in Guatemala. The relatively small amount of money involved and the fact that it took place long before Morales was running for president made the decision appear to be a best politically naïve and at worst politically motivated.

“The way it was carried out was designed to humiliate the president, and we didn't understand it,” said one U.S. law enforcement official who was in Guatemala at the time. “You don't go after the president's son like that and expect there not to be a reaction.”

As the friction grew, according one businessman involved in some of the unsuccessful talks between CICIG and Morales to try to mediate a de-escalation of tensions, both Velásquez and Morales continued to ratchet up the attacks against each other.

Morales viewed the CICIG's action as an attack on him and his family, while Velásquez became convinced, according to two people who worked with him, that this would be a defining case for CICIG in demonstrating that no one is above the law and that it was not the size of the crime but the impunity that made the case important. He and others also said that he took the case as CICIG because Aldana asked him to, fearing it could not be handled through the normal court system.

In September 2016 the president's son and brother presented themselves for questioning and in January 2017 Samuel was arrested and Juan Manuel, under escort of the presidential guard, presented himself to the court for hearing.

On August 6, 2017, Morales announced he was declaring Velasquez *persona non grata* to protect Guatemala's national security interests and signed an order expelling Velásquez from the country. The order was struck down in a 3-2 ruling by the Constitutional Court, but the all-out war between Morales and Velásquez was now very public.

As InSight Crime noted, “Two days prior to the president's startling announcement, the Attorney General's Office and the CICIG had petitioned Congress to withdraw the president's immunity. Prosecutors sought information on more than \$900,000 in undeclared campaign

⁹⁵ Ávalos and Dudley, op. cit.

donations - based on the Attorney General's Office investigation - but they could not officially investigate Morales until his immunity was lifted after their several failed attempts to do so.”⁹⁶

The international alignment, heavily favoring CICIG, had begun to shift in Morales' favor as well. The Trump administration's new National Security and State Department teams were in a time of significant turnover and instability and the CICIG was no longer a foundational part of U.S.-Guatemala relations. Rather, the relationship focused almost exclusively on migration from the Northern Triangle to the U.S.-Mexico border. While some pressure was successfully brought to bear on Morales not to end the CICIG's mandate early, as the president had wanted to, there was little opposition in the Trump administration to letting the commission expire at the end of its mandate.

This attitude was reinforced by the outreach of Guatemalan private groups through three channels: the Trump administration, through the NSC and UN Ambassador Haley; the Congress, particularly Sen. Marco Rubio (R-Fl); and the office of Vice President Pence and his Evangelical network. The outreach message was that CICIG had overstepped its initial mandate, was meddling in Guatemala's internal affairs, and focusing on minor cases (such as the Bitkov family case involving a Russian family) that had few if any strategic ties to the Guatemalan state.

This outreach came as CICIG had lost much of its ability to influence Washington. While mostly enjoying strong bipartisan backing, the commission had primarily focused on friendly Democrats during the Obama administration and had done little work to cultivate relationships with the Republicans. The group also had lost the access it had enjoyed to the Obama White House and United Nation representatives. The sudden change in the relationships reportedly caught CICIG off-guard and the commission never successfully recovered.

The CICIG investigation also began reaching into the business community of Guatemala, who leaders had initially supported CICIG and had been trying to mediate détente between the president and the CICIG. The investigation focused on the funding of Morales' 2015 presidential campaign and possible illegal financial donations by the business community. CICIG and the MP found that a group of business leaders had donated almost \$1 million in funding that was undeclared by the Morales campaign. The money was reportedly used to audit the results of the 2015 election.

After the financing came to light, leaders of the business community took an extraordinary step: In April 2018 a group of prominent businessmen held a press conference to acknowledge they had paid for the electoral auditors and asked forgiveness from the Guatemalan people for any mistakes committed. The business leaders said they were concerned that the candidacies of Manuel Balizón and Sandra Torres, the two main rivals of Morales in the campaign – both with long histories of reported involvement in organized crime – would steal the elections.

They supported Morales, they said, because he was the best among the candidates not tied to major criminal structures. Baldizón's arrest in January 2018 in the United State for

⁹⁶ Ávalos and Dudley, op cit.

alleged corruption in the Odebrecht Case and the Sandra Torres arrest in 2019 in Guatemala for campaign finance violations further validated the concerns of the business leaders.

On May 17, 2018 Aldana left the attorney general’s office and shortly thereafter declared her intention to run for president of Guatemala. Two weeks before stepping down her now confirmed campaign manager, José Carlos Marroquín, held a meeting in Miami with leading Guatemalan businessmen asking for their financial support for her upcoming campaign. Aldana participated by speakerphone. According to a person with direct knowledge of events, the businessmen viewed the meeting as completely inappropriate, with a sitting attorney general requesting electoral support while investigating those at the meeting for alleged illicit campaign financing. In addition, having Marroquín chair the meeting, while being an employee of Aldana as attorney general further muddied the ethical waters.

In August 2018, Morales announced that he would not renew the CICIG’s mandate, effectively allowing the commission to expire in September 2019.⁹⁷ Five days later, Commissioner Velásquez was banned from returning to Guatemala.⁹⁸ In October 2019 the president’s family members were found not guilty of the charges that had been brought against them.

In March 2019 a judge issued an arrest warrant for Thelma Aldana, charging her embezzlement, lying and tax fraud, charges she denies but sufficient to end her presidential candidacy. National and international supporters of CICIG viewed the charges as fabricated in order to make sure could not become president and revive CICIG. She is currently reported to be living in the United States and seeking political asylum.

The CICIG continued working in its last year including the arrests of former presidential candidate Manuel Baldizón for his connections to Odebrecht fraud and former president Colom for his role in an embezzlement scheme.⁹⁹ In its final report, the CICIG cited 22 different cases that went to trial in its final year which brought 101 sentences, and the ¹⁰⁰ pending docket is now in the hands of the Public Prosecutor’s Office.¹⁰¹

| Commissioner | Most convictions in 1 year | Investigation | Sentences |
|-----------------------------|----------------------------|---------------|--------------------|
| Carlos Castresana | 57 (2009) | 28% | 72% |
| Francisco Dall’Anese | 50 (2013) | 41% | 59% |
| Iván Velásquez | 24 (2015) | 80% | 9% (+11% at trial) |

Figure 4: Case convictions and sentencing rates for each commissioner (source: Plaza Publica)

⁹⁷ “Guatemala 2018 Human Rights Report, United States Department of State, 2018, accessed at: <https://www.state.gov/wp-content/uploads/2019/03/GUATEMALA-2018.pdf>.

⁹⁸ Op. cit..

⁹⁹ Op. cit..

¹⁰⁰ “El Legado de Justicia en Guatemala,” *Comisión Internacional Contra la Impunidad en Guatemala*, August 20, 2019, accessed at: https://www.cicig.org/cicig/informes_cicig/informe-de-labores/informe-final-de-labores/.

¹⁰¹ Tiziano Breda, “Curtain Falls on Guatemala’s International Commission against Impunity,” *International Crisis Group*, September 3, 2019, accessed at: <https://www.crisisgroup.org/latin-america-caribbean/central-america/guatemala/curtain-falls-guatemalas-international-commission-against-impunity>.

Measuring Effectiveness

It is difficult to measure the efficiency of any of the three commissioners as each approached the mandate differently and each commissioner was confronted with different challenges and hurdles. Statistics will not reflect the more nuanced aspects of the commissioners' accomplishments and failures. Each commissioner had different issues though all were in some way related to the very difficult task of disrupting complex, elite-based criminal networks while working with the very government who was often being investigated.

One also needs to keep in mind that the CICIG's annual funding varied and was often not set until the year had begun, and that the renewal of each new mandate was never guaranteed, leaving the Commission in a constant state of flux and uncertainty both operationally and professionally in terms of hiring the best and most qualified people for the jobs.

Based on an analysis conducted by Plaza Publica, Carlos Castresana appears to be the most effective commissioner during the CICIG's tenure.¹⁰² Castresana had the highest sentencing rate and the most convictions in any given year when compared to his successors. Velásquez's numbers are by far the lowest though they likely do not accurately reflect the CICIG's work during that time, as many of the investigations were transferred to the Public Prosecutor's Office and therefore are not reflected in official statistics.

For Castresana, the challenges included: significant startup setbacks, including the hiring of the initial staff and finding a way to implement the unique mandate and structure given to the CICIG; fundraising challenges to stand up CICIG and begin to function; a lack of the Guatemalan population's support due to the newness of the Commission; a lack of a significant public face and outreach outside of the director; and an inability to work closely with the judiciary or the police because of deep collusion, corruption and lack of trust.

In Dall'Anese's case the issues included: challenges to building cases against the highest echelons of Guatemala's political elite; finding a balance between recommending changes and openly criticizing the government; lack of trust and personnel safety concerns due to Dall'Anese's own actions to dismantle security and vetting protocols; and building a CICIG without the promise that the commission would continue.

Finally, in the case of Velásquez, the challenges included: setting a clear plan of action consistent with the Commission's mandate; focusing on cases of political corruption of sitting members of the Guatemalan government and the constant friction that engendered; a fracturing of the national and international consensus on the validity and utility of the CICIG; and working to ensure that the judiciary would be ready to take over the CICIG's work after the commission ended.

¹⁰² Francelia Solano, "La CICIG en cifras: los casos, los implicados y los procesos," *Plaza Pública*, January 14, 2019, accessed at: <https://www.plazapublica.com.gt/content/la-cicig-en-cifras-los-casos-los-implicados-y-los-procesos>.

Outcomes of the CICIG

After 12 years of operation it is still too early to assess the CICIG's lasting legacy. It is also difficult to establish a single benchmark to gauge success given the ambiguous nature of the mandate and the evolving strategic direction.

Currently the specialized public prosecutor's unit FECCI will keep operating, though specifics on its budget and structure are not immediately clear. President Giammattei, who was personally touched by CICIG investigations, has indicated that he will make anti-graft efforts a top priority but has stated that he has no plans of reinstating the CICIG or a CICIG-like commission.¹⁰³ Given the internal factors and the waning international interest and attention, future efforts to combat impunity and illegal security groups will likely not be as successful as during the CICIG's operations. In many ways, Guatemala's efforts to reduce impunity are, at best, stalled in the short to medium term.¹⁰⁴

While the CICIG accomplished a significant amount – despite pushback from the Guatemalan state and the political elite – there are likely only a few cases that will be remembered going forward. The 2014-2015 Baldetti and Perez Molina cases were the most enduring ¹⁰⁵ and the *La Linea* case initially solidified the justification for why the CICIG needed to continue operating and just how complex illicit money networks can be.

Successful high-profile cases proved on an international level what the CICIG could accomplish while building a strong national constituency for the Commission. With tangible results that produced the heretofore unimaginable result of jailing a sitting president and vice president, public approval of the Commission's work skyrocketed. Public opinion polls show that the CICIG and the Public Prosecutor's Office were the most trusted institutions in Guatemala.¹⁰⁶

A systemic view of the criminal justice system shows that heightened activity at the MP and Prosecutorial level did not yield significant improvements in impunity reduction. A potential explanation lies in that the bottleneck of the system is found at the Courts. Further activism at the prosecutorial level only serve to exacerbate the backlog and accumulation of cases (which in Guatemala has led to “preventive” prison sentences far in excess of the maximum legal limit of 1 year). Future impunity reduction efforts would be well served to attend the bottleneck at the Courts by helping to build institutional capabilities as well as efficiencies.

Broadly speaking, the CICIG was a relatively effective United Nations tool to fight impunity but could have been much more effective had its mandate been more clearly defined, timeframe established from the outset and budget stability and a complementary organizational structure provided to attract the appropriate staffing.

¹⁰³ Tiziano Breda, op. cit..

¹⁰⁴ Hector Silva Avalos and Parker Asmann, op. cit..

¹⁰⁵ “Saving Guatemala's Fight Against Crime and Impunity,” op. cit..

¹⁰⁶ Maureen Taft-Morales, op. cit..

Lessons Learned

Several important lessons from the CICIG's mandate can be learned for potential future actions, although it appears unlikely in the near future that any country will embark on a similar effort. While these lessons, in some ways reflect the conditions and events that transpired in Guatemala, many of the CICIG's effects can also inform the larger debate on United Nations' investigative bodies. Any future commissions will face similar "wicked problems" in their investigations. With no silver bullets available that would lead to an overall resolution to the multiple conflicts inherent in these cases, the following recommendations are intended to correct the most tangible shortcomings of the CICIG that would likely be replicated in future efforts.

- 1. Include a clear definition of appropriate cases in the mandate at the outset:** The CICIG mandate was intentionally designed to be broad so that the commission could tackle as many criminal networks as possible. While one can appreciate the desire not to tie the Commission's hands from the beginning, the lack of clarity ultimately played a significant role in the demise of the Commission. As CICIG turned from homicide and violent crime cases to political financing and financial corruption cases, there were no clear parameters or guidelines on determining what cases to work on and which to prioritize. This lack of definition and ambiguity left significant areas where different groups could interpret cases and approaches in different ways, and ultimately led to unsustainable competing agendas between the Commission and the host country. It also made a shared understanding of the role of the organization impossible to maintain over time. While the CICIG initially enjoyed widespread acceptance in the business and political class due to a shared vision of the mission, that support fractured as the shared vision fragmented.
- 2. Include evaluation and performance metrics in the mandate:** Establishing metrics for evaluation of criminal investigations is difficult and overly stringent metrics can hamstring the ability to function effectively. However, with CICIG there were never metrics that the commission needed to meet, there were no instructions on the types of reports that the commissioner needed to send to the UN Secretary General or host government, and there was no methodology to identify if the CICIG was on or off course in their investigations. This meant that no one except the commissioner – not the UNSC, the Guatemalan government, donor community or Guatemalan society – could determine what success or progress should look like. This lack of metrics also deprived the commission of the capacity to evaluate and reorient its activities and resources over time. Rather, progress and success were almost exclusively measured by what the commissioner said it should be.
- 3. Establish a clear command and control structure among the organization, the international sponsoring agency and the host government:** In the case of CICIG, the relationship to and responsibility of the United Nations was not clearly spelled out, nor the obligations to respond to the host nations concerns. When the Guatemalan government requested information, clarification and justification for actions taken by CICIG, the requests were almost always unanswered, without even a pro forma response that acknowledged the requests. This occurred in both the written and verbal requests for

information. There need to be clear lines of responsibility, clear points of contact and clear mechanisms for an exchange of opinions, especially when the opinions diverge significantly. In addition, a local governance body such as an independent board might have provided the necessary oversight to approve changes to the mandate and might have alleviated the political tone-deafness.

15. **Focus on completing the judicial trials of those arrested:** Much of the powerful messaging on ending impunity sent by bringing charges against heads of state and others is diminished when trials drag on for months or years. This significantly undermines the appearance of swift and equal justice under the law. For the CICIG a significant part of the problem lies with the existing backlog in the Guatemalan judicial system, coupled with its endless appeals processes and pliable judges. But part also lies with the commission prioritizing the number of cases brought over the ability to bring cases to conclusion. It is a difficult balance to strike but a visit to the prison left no doubt that in many cases the CICIG process brought the worst of all worlds: a lengthy and inconclusive judicial process while abusing the preventive prison term limits. This is not an uncommon problem across Latin America but because of the international component to the Commission, one that must be dealt with for the investigative and judicial processes to remain credible, to avoid unnecessary arrests before trial and trials-by-media.
4. **Have clear communications guidelines which emphasize institutional progress and not “trial-by-media”** – The CICIG did not initially have a message, PR team or a spokesperson. This left the commissioner as the personification of the CICIG and all three commissioners struggled with how to depersonalize and institutionalize the messaging of the commission and the commissioner. Each commissioner also struggled to find a balance between publicly stating the CICIG’s priorities and desires seeming to give directives to the host government over who or what was acceptable, particularly in judicial appointments. Even when the commission hired a small staff, the commissioners often spoke for themselves which caused controversy on multiple occasions. These issues would have been significantly mitigated by having a competent, empowered communications team in place from the beginning. In addition, for fielding media inquiries, the team should have a defined message and proactive strategy for conveying that message on an ongoing basis to help create an overall narrative that was both accurate and easy to understand. Instead, the messaging was often reactive to events and, unless the commissioner chose to respond, non-responsive to requests for information or explanations for actions. This would have enhanced CICIG’s own transparency as well as making the commission, so commissioner focused.
5. **Create functional counterintelligence and personal security structures** – From the beginning CICIG suffered numerous penetrations and leaks of what should have been classified information and had few measures in place to identify and halt the penetration. This may have led to long-term intelligence gathering operations. This is in part a function of working in a new country and not knowing who the trusted interlocutors are. However, the commission never developed an effective counterintelligence structure that could both trace hostile actors inside and halt the unauthorized flow of information. At

the same time there were no properly trained personal protection units in place, creating the potential for significant physical harm to staff members. Any future type of similar commission should make these issues priorities from the beginning.

6. **Publish an annual action plan and be accountable for its completion** – While the specific cases being investigated need not be revealed in a public action plan, the CICIG had difficulty in staying on track on multiple cases. Until Velásquez entered as commissioner, there was never a clear, public report stating the annual priorities of the commission. This made public accountability impossible and also made it more difficult to evaluate the commission’s work against any objective metric. Each annual report should have an objective evaluation of the past year’s performance, based on the established and published statement of objectives and priorities.
7. **Strike the right balance with the government** – This is perhaps the most complex of the “wicked problems” that any commission would face. The complexity of the challenges presented to getting government buy-in while investigating presidents, cabinet members, judges and members of the political elites in that government cannot be overstated. In many cases, the CICIG would make judicial reform recommendations to the very individuals that would later be arrested or indicted. This made the CICIG’s work very difficult and none of the three commissioners were able to strike a balance when attempting to work with Guatemalan government officials. The line between being politically prudent and caving to inappropriate political demands from the government must be constantly examined. A clear example with the CICIG was the decision to open the investigations into the president’s family for relatively small alleged acts of corruption before taking office and which were later disproven. At a time of great friction between the commission and the president, the investigations could likely have left to lower courts for investigation without appearing to cave to political pressures. The decision to proceed at a time for splintering consensus over the CICIG and its mission was a self-inflicted wound that ultimately ended the CICIG’s operations. There is no question that bold action on high impact cases is important and can be positive for the commission. However, marginal acts that lead to growing antagonism or politically motivated acts should be avoided. Clarity on the mission and mandate of the commission would help determine the parameters of action.
8. **Maintain broad international backing for the commission** – Over time the CICIG lost much of its international backing without seeming to fully understand how precarious its position had become. Part of this was not working to maintain contacts with all sides in different political settings, but particularly the United States, which usually has an inordinate weight in both funding and exercising political pressure. The CICIG clearly did not understand the magnitude of the political earthquake the switch to the Trump administration brought, nor the damage that ignoring all criticism would be in the new environment. The EU was also absorbed in other issues and had significantly lowered its financial and political support for the CICIG. Any future commission must have leaders of the stature to be able to work across a broad political spectrum and clearly articulate the mission and accomplishments to different audiences. This primarily includes

stakeholders at the United Nations and regional bodies such as the Organization of American States.

9. **Involve the International entities more in an oversight capacity** – The CICIG always operated as a UN body that was very distant from the United Nations including not providing CICIG members with adequate guidance and protections. This distance was created so that the Guatemalan Congress would approve the commission, but the structure’s limited accountability and assistance made even fundraising difficult in meeting the commission’s budgetary requirements. The UN or another international body should have been more involved in structure and mission readiness.
10. **Take a Systemic View to addressing complex and “wicked problems”**. The Commission seems to have focused its attention on the wrong link of the criminal justice supply-chain. Future efforts to reduce impunity would do well to view the overall system and evaluate the highest leverage pressure points prior to diving into an activism frenzy which might become highly disruptive to the very same system that it is trying to fix.
11. **Maintain continuity on both the host country and international side** – One of the consistent complaints in the operations of the CICIG was the constant turnover of personnel and the need to get each new prosecutor or investigator up to speed on cases with the changes. International personnel could be obligated to commit to a minimum period of three years, for example. Attorneys generals and senior investigators could agree to not seek public office for several years after their terms expired to lessen the chance to target political enemies for direct electoral gains. Local investigative units could be designed to have clear career paths that keep the same personnel in place through the vetted structures for the long term. The shuffling of prosecutors and investigators in and out of the elite units caused both significant damage to the cases themselves, but also created significant information leaks of sensitive information in criminal cases.

Conclusions

While greatly diluted versions of the CICIG are operating or proposed in Honduras and El Salvador, neither has taken into consideration the lessons one can learn from CICIG. There is general consensus that the CICIG had a strong start, broadly accepted legitimacy and deep international backing when it began. The fast start and low expectations allowed for the vagueness of the mandate and lack of accountability mechanisms to go relatively unnoticed at the start of the mission. Twelve years later, in a dramatically changed world, the commission, which had not adapted to the shifting realities, ended with more of a whimper than a bang. We have explained, at least in part, how and why this happened.

Although the CICIG, as a barometer for measuring anti-corruption initiatives in the region, may be at an end the fight against impunity must continue. But there will also be fierce resistance from entrenched power brokers seeking to increase their influence and bottom line.

The CICIG achieved important results during its existence and has become an international reference point. Those seeking to build on the experience have significant foundations upon which to build but also important cautionary lessons to apply. Ultimately the commission could not survive the perfect storm of its own missteps, loss of international support and relevance, fracturing consensus and growing pushback in Guatemala, and political tone deafness of its leadership.

While the short-term results initially held the promise of uprooting long-standing criminal structures tied to the state, in the end it is not clear what the long-term results will be. They could be minimal and do not appear to have been built to be sustainable in the long term. Many of the structures, if not the individuals plucked from them for trial, remain intact and are likely to thrive in the future.

We have offered some tools that can be used to help a future commission avoid some of the pitfalls that it would inevitably face in a similar circumstance. Recognition of the tradeoffs that will be constantly necessary to achieve even minimal success is fundamental, as is recognition that the perfect should not be the enemy of the good in the process. We believe the CICIG did more good than harm. A more structured, delineated mission with stronger messaging and clear metrics from indictment through the trial phase would help enormously. Removing the commissioner's personification of the mission, clear timelines and consistent resources would also help. But fundamentally the contradictory mission of investigating state-linked criminal structures in partnership with the state itself will always have significant limitations in bringing fundamental change.

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