



Building Accountability from the Inside Out

Assessing the Achievements of the International
Commission Against Impunity in Guatemala

By Trevor Sutton May 2016

Center for American Progress



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Introduction and summary

Twenty-five years ago, most of the world's governments treated corruption of public officials as a domestic issue far removed from the realm of foreign affairs and international policy.¹ Since then, much has changed. Today, the United States and many other influential nations and institutions recognize pervasive graft as a serious threat to global security and a major obstacle to international development goals.² The Obama administration has declared freedom from corruption to be a “basic human right” and has promised to “lead the way” in confronting graft in the international system.³ In the same spirit, the United Kingdom has declared that corruption “harms societies, undermines economic development and threatens democracy,” while U.N. Secretary-General Ban-Ki Moon has singled out corruption as “criminal,” “corrosive,” and “disastrous” in its effects.⁴ Furthermore, virtually every major development organization from the Americas to Asia treats corruption as a significant impediment to equitable growth and the building of effective institutions.⁵ As the World Bank stated in a recent brief, “fighting corruption has become a policy priority for the development community over the past two decades and ... is critical to the achievement of the Bank’s overarching mission.”⁶

Yet, for all this ambitious rhetoric, making inroads against corruption can be a slow, frustrating task—especially for outsiders seeking to change a culture of entrenched greed. As the Center for American Progress noted in a report published last year, the United States’ decade-long effort to combat corruption in Afghanistan has failed to stanch an epidemic of official bribe-taking, especially as it concerns the drug trade.⁷ And, as recently reported in *The New York Times*, U.S. and U.N. efforts to identify assets lost to corruption in developing countries has succeeded in recovering only a small percentage of an estimated \$20 billion to \$40 billion stolen by venal officials.⁸ For many activists and policymakers working on corruption issues, good-news stories are few and far between.

In this context, it is easy to understand why the unusual achievements of a U.N.-backed investigative body focused on combating impunity and organized crime in Guatemala, the International Commission Against Impunity—known by its Spanish-language acronym, CICIG—has attracted international attention. Since its founding in 2007, CICIG has convicted a string of high-profile Guatemalan figures on charges of corruption and abuse of office, including two interior ministers; two directors general of the National Civil Police; the director of the country’s prison system; and numerous military officials and organized crime figures.⁹ Most dramatically, a CICIG investigation into customs fraud led to the arrest of Guatemala’s then-President Otto Pérez Molina along with his Vice President Roxana Baldetti last year.¹⁰ Both Molina and Baldetti have since resigned and are currently in jail awaiting trial.¹¹

To call these outcomes astounding would not be an overstatement. There is no precedent, even among developed countries, for the arrest and trial of a sitting head of state on corruption charges.¹² Not surprisingly, many in the Americas and in the wider international community have called for the extension of the CICIG model to other corruption-plagued countries.¹³ Most recently, authorities in Honduras—under immense public pressure—have agreed to a CICIG-like anti-corruption body under the auspices of the Organization for American States, or OAS—a development received with cautious enthusiasm by some, skepticism by others.¹⁴

In addition to individual prosecutions, CICIG’s tenure has coincided with a steady drop in the homicide rate in Guatemala—still one of the highest in the world at 29 homicides per 100,000 residents, but down approximately one-third from its 2009 peak.¹⁵ Many other crime categories have similarly declined.¹⁶ While CICIG cannot claim sole credit for this positive trend, there is little question that it has contributed to an environment of increasing security in one of the most violent regions in the world—the Northern Triangle of Central America—which has long been in the grip of drug cartels and other criminal networks.¹⁷ This trend is especially surprising given persistent and, in some cases, escalating violence in neighboring countries such as Venezuela and El Salvador—the latter of which surpassed Honduras to become world’s murder capital in 2015.¹⁸ It is remarkable, but perhaps not unexpected, that a recent survey found that Guatemalans trust CICIG more than any other institution in the country, including the Catholic Church.¹⁹

CICIG is—by any measure—a momentous achievement and a welcome development for the people of Guatemala. But it is important not to stretch its significance too far or to assume CICIG clones will produce similar results in other jurisdictions. One reason CICIG’s effectiveness has drawn such praise is that corruption inquiries in many other contexts have served as instruments in ideological or partisan struggle; as rubber stamps for oppressive regimes; or simply as paper tigers incapable of holding accountable those who are most deserving of punishment for graft. Making sense of CICIG’s lessons for anti-corruption efforts in other parts of the world requires an understanding of the factors that have allowed the commission to avoid a similar fate and how they can be replicated elsewhere.

To that end, this report considers the background of CICIG and provides an overview of its structure and mandate. It also investigates the factors that have contributed to its success in dismantling corrupt networks and advancing rule of law in Guatemala. Drawing on this analysis, the report then examines the challenges and opportunities for replicating the CICIG model outside of Guatemala and offers recommendations on where and under what conditions other CICIG-type anti-impunity mechanisms are likely to succeed. The report concludes that CICIG presents a powerful tool for creating political accountability in countries struggling with corruption. But it also finds that CICIG’s achievements must be understood in the context in which they occurred—and that the CICIG model should be viewed as a catalyst for broader reform rather than as an end unto itself or a universal solution to impunity.

Background and the start of CICIG

The creation of CICIG was in key respects a response to the devastating legacy of Guatemala’s four-decade long civil war, which was unusual in its brutality and its debilitating effect on basic institutions of governance—even by the grim standards of other Central American conflicts.²⁰ Well after the signing of peace accords in 1996, Guatemala remained plagued by insecurity and violence: Its homicide rate increased steadily over the course of the 2000s and remained one of the four highest in the world during the entire decade.²¹ Much of this violence was a direct result of organized criminal activity, which had surged with the conclusion of hostilities, as demobilized military and paramilitary groups seamlessly transitioned into criminal networks that engaged in a wide range of illicit activities, including narcotics, human trafficking, kidnapping, extortion, and money laundering.²² Over time, these criminal networks succeeded in co-opting Guatemala’s fragile postwar institutions so completely that the entire country became—in the words of a 2002 Amnesty International report—“a corporate mafia state” in which there was little meaningful distinction between criminal interests and those of public officials.²³

This nexus between crime and politics encouraged a degree of recklessness and impunity that shocked even seasoned observers of Central America. In 2008, for example, the state successfully prosecuted only 83 murder charges in a year when more than 6,300 civilians were violently killed.²⁴ In a particularly grisly episode that became a symbol of Guatemala’s dysfunction, three Salvadoran legislators—one of whom was the son of leader of El Salvador’s ruling party—and their driver were gunned down in broad daylight by members of Guatemala’s police force and the head of its organized crime unit.²⁵ Following their arrest, the police officers were then murdered under unclear circumstances while captive inside a maximum security prison.²⁶ As a senior U.N. official observed, “Guatemala is a good place to commit a murder because you will almost certainly get away with it.”²⁷

The murder of the Salvadoran legislators was a final catalyst for the creation of CICIG.²⁸ An earlier proposal to create an international body to investigate “illegal groups and clandestine security organizations”—commonly referred to by the Spanish acronym CIACS—in Guatemala had faltered when the country’s Constitutional Court declared it unlawful in 2004.²⁹ Growing popular outrage over systemic violence, along with civil society advocacy, kept pressure on the government to make a second attempt at establishing such a body—this time, integrated into and subordinate to Guatemala’s domestic political system.³⁰ In 2006, President Oscar Berger signed an agreement with the United Nations³¹ that established CICIG.³² In May of the following year, three months after the killing of the Salvadoran legislators, the Constitutional Court ruled favorably on CICIG’s constitutionality, and, in August, the Congress ratified the agreement following a contentious debate.³³

CICIG's structure and mandate

CICIG marked an innovation in international justice mechanisms in that it was designed to work within Guatemala's existing judicial and police institutions while nonetheless retaining a high degree of independence and influence through its affiliation with the United Nations.³⁴ CICIG's commissioner—its chief officer—is chosen by the secretary-general, and its funding comes from voluntary donations from the international community. In other respects, however, it functions much like an independent agency inside the Guatemalan political system.³⁵ Under its agreement with the U.N. Secretariat, the Government of Guatemala has pledged a wide range of privileges to CICIG, including freedom of movement, the right to meet with and interview any person in Guatemala, and access to all government records relevant to its investigations.³⁶

The commission's work can be broadly divided into investigations, prosecution, and technical assistance and reform recommendations. On the investigative side, CICIG operates with a high degree of autonomy and has the power to hire its own investigators, compel testimony, and subpoena documents.³⁷ The commission also works with vetted local law enforcement teams to engage in covert surveillance—including wiretapping—and provide witness protection and relocation.³⁸ While most investigative activity is aimed at supporting specific law enforcement actions, CICIG also produces thematic reports on patterns of criminal activity—for example, on financing of political parties—that have provided a basis for subsequent reforms programs.³⁹ With respect to prosecutions, CICIG can initiate criminal complaints and serve as a “private” or “complementary” prosecutor—*querellante adhesivo*—but only with the concurrence of the attorney general's office and the consent of the judge overseeing the case.⁴⁰ Just as importantly, CICIG must seek convictions inside Guatemalan courts rather than in specially convened international tribunals of the kind established to convict war criminals in Rwanda, Sierra Leone, and former Yugoslavia.⁴¹

On the technical assistance and recommendations side, CICIG has the authority to propose and oversee reforms to judicial and law enforcement institutions, including proposing legislation to Guatemala’s Congress.⁴² This role, while ultimately advisory, has resulted in the passage of a number of notable reforms and laws, including the creation of a modern wiretapping regime and the establishment of special courts to hear “high-risk” cases of powerful and dangerous individuals that have, in turn, been the venue for some of CICIG’s highest-profile prosecutions.⁴³ Of equal significance, CICIG’s commissioners have repeatedly made public requests to the president and Congress for the removal of corrupt officials, as well as the lifting of official immunities, which has led to the dismissal of hundreds of police officers and dozens of prosecutors and jurists who allegedly engaged in illegal activities or sought to obstruct CICIG’s work.⁴⁴ This practice led to an unusual confrontation in 2010 between CICIG’s first head, Carlos Castresana, and former Attorney General Conrado Reyes—a CICIG skeptic who sought to obstruct the work of the commission and access its confidential files—that resulted in the latter being forcibly removed by the Constitutional Court only days after the former resigned in protest the government’s failure to cooperate.⁴⁵

Of significance, CICIG’s original mandate contains no reference to corruption but rather to the crimes committed by CIACS.⁴⁶ While corruption and CIACS go hand in hand, CICIG’s targeting of graft—as opposed to human rights abuses such as extrajudicial killings—was a strategic choice by the body’s leadership that developed over time rather than an outcome dictated by the terms of its charter. In fact, it is only the latest of CICIG’s three commissioners, Ivan Velasquez, who has elevated corruption to become CICIG’s principal focus on the theory that, two decades after Guatemala’s civil war, violence and impunity are now driven more by economic than ideological or political motives.⁴⁷

Why has CICIG been successful?

No single factor accounts for CICIG’s success investigating and prosecuting some of the most powerful and feared figures in Guatemala nor is there a simple explanation for how the commission has spurred substantial reforms in a system that was once viewed as broken beyond repair. There is, however, one cause factor that stands above all others: the bravery and determination of CICIG personnel and their allies in the government of Guatemala. Of particular importance, several of Guatemala’s attorneys general—above all, Claudia Paz y Paz, who served from 2010 to 2014, and her successor, Thelma Aldana—have shared CICIG’s reform agenda and developed a productive, collaborative relationship with the commission at no small risk to themselves and their staff.⁴⁸ Unfortunately, while there are many courageous anti-corruption activists in countries across the Americas and elsewhere in the world, such a convergence of talent and courage is not guaranteed in other jurisdictions where the CICIG model may be appropriate.

What can be replicated—or at least identified more reliably—are the factors that allowed CICIG and its allies to pursue its mandate without being consistently stymied, co-opted, or cowed. Four factors stand out as particularly critical in this regard:

- Civil society support
- An effective balance of independence and dependence on Guatemala’s domestic political system
- A flexible, forward-looking mandate
- Strong external backing

Civil society support

Guatemala has a robust and active civil society that encompasses local and international organizations.⁴⁹ Civil society organizations, or CSOs, in Guatemala frequently contend with threats of reprisal relating to their research and advocacy into organized crime and human rights abuses, but they do not face systematic repression of the kind seen in more autocratic countries such as Venezuela.⁵⁰

This environment has enabled Guatemalan CSOs to advocate persuasively for changes in Guatemalan governance and draw attention to persistent problems in Guatemalan society and politics.⁵¹ A vibrant civil society community has been a huge asset to CICIG—both in its advocacy for CICIG’s creation and continued mandate and in its direct support to CICIG’s various lines of effort.

CSOs were effective in drawing domestic and international attention to violence and impunity in Guatemala in the late 1990s and early 2000s, putting sustained pressure on the government to offer a meaningful response to the challenge of CIACS.⁵² Civil society was the first to put forth the idea of an independent investigatory body to tackle impunity, leading to the 2004 agreement with the United Nations, which ultimately produced CICIG.⁵³ Just as important, CSOs have been a critical ally of CICIG as it sought to deliver on its mandate, most critically when it was threatened by government indifference and obstruction.⁵⁴

This second contribution of civil society is worth emphasizing: The unavoidable challenge facing corruption inquiries is that, if they are effective, they are almost certain to encounter political resistance bleeding into outright hostility, even from the actors that sponsored their creation. Civil society can provide a bridge with the broader population and the international community in order to ensure that the inquiry can continue along its mandate, even when state forces become arrayed against it.

This can be seen at several junctures in the history of CICIG. One occasion was the Constitutional Court’s invalidation of CICIG’s precursor, which very easily could have led to the demise of the anti-corruption project in Guatemala had CSOs not pressed for a new agreement with the United Nations.⁵⁵ A second was when a subcommittee of the Guatemalan Congress voted down CICIG in 2007, appearing to deal it a fatal blow, only to reverse itself after intense civil society criticism—amplified by the murder of the Salvadoran legislators.⁵⁶ A third key moment came in June 2009, when CSOs organized a large public gathering of organizations from across Guatemalan society to support CICIG’s work at a time when it was struggling to reform a corrupt judiciary.⁵⁷ Finally, in 2015, civil society lined up forcefully behind CICIG when President Otto Pérez Molina signaled his intention not to renew CICIG’s mandate; that advocacy, along with external pressure from the international community—above all, the United States—caused Pérez to reverse his decision.⁵⁸

Balancing political independence and dependence— but not aloofness

CICIG's success derives in significant part from its ability to operate autonomously and without direct supervision from Guatemala's elected officials and civil servants. CICIG's ability to select its own cases and to investigate them using powerful tools such as subpoenas, wiretaps, and undercover agents—all without political supervision—has meant that it has been far more effective at uncovering far-reaching criminal networks than Guatemala's ordinary law enforcement agencies. Just as important, however, has been CICIG's ability to disseminate information into the public domain without serious constraint.⁵⁹ This liberty, along with a relatively free press, has been a powerful tool against obstructionism and backsliding. Finally, and perhaps most crucially, CICIG is not dependent on the Guatemalan state for its financing, depriving hostile political actors from using what is often the most effective means of defanging a potentially damaging inquiry: depriving it of the resources it needs to be truly effective. Instead, CICIG is funded by voluntary contributions from foreign governments, including the United States. While the U.N. Development Programme administers CICIG funds, the commission itself is largely free to determine how they are spent.⁶⁰

Yet CICIG's mission is not simply to collect scalps but also to spur reform in Guatemala's dysfunctional institutions and end the culture of impunity that has prevailed for decades. Taken in this broader context, CICIG's subordination to Guatemala's domestic political system has been just as crucial to its success as its freedom to maneuver in certain domains. While this may seem counterintuitive, recall that conventional international justice mechanisms, such as the International Criminal Court or the Special Court for Sierra Leone, operate largely independent from domestic political systems and have, at best, limited engagement with local stakeholders. As a result, such bodies accomplish little in the way of strengthening domestic rule of law and often find themselves accused of imposing an alien or imperialistic form of justice.⁶¹ By contrast, CICIG prosecutors must present their cases before a Guatemalan judge in the company of a Guatemalan prosecutor, which has had the effect of empowering reform-minded actors within Guatemala's police and judiciary and demonstrating to ordinary Guatemalans what accountability looks like within their own system. It has also made the commission extremely popular with the Guatemalan public.⁶²

Furthermore, CICIG's dependence on Guatemalan institutions has ensured that the commission's broader reform agenda remained a priority, even as its investigative and prosecutorial activities grew in size and ambition. These reforms have had the complementary effect of building a more capable and fair justice system in Guatemala. For example, CICIG successfully advocated for the creation of a Special Anti-Impunity Prosecutors Bureau—Fiscalía Especial contra la Impunidad—operating under Guatemalan authorities but staffed by CICIG-trained investigators and prosecutors who collaborate with CICIG staff on cases.⁶³ In addition, CICIG efforts resulted in the creation of a mechanism for witness protection and relocation, something Guatemala effectively lacked before then.⁶⁴ Had CICIG operated outside of the Guatemalan justice system, these reforms would not have been necessary or possible. While many challenges remain—for example, CICIG has struggled to purge actors from Guatemala's judiciary⁶⁵—few could argue that the effect of these reforms has not been highly salutary for rule of law. In particular, such reforms reduce the likelihood that organized crime and clientelistic political networks in Guatemala will regroup and reassert themselves after being targeted by CICIG.

Flexible, forward-looking mandate

CICIG's mandate, unlike those of many other international tribunals, is not focused on redressing a discrete set of historical crimes nor is it focused on a particular type of offense. Rather, it is framed in terms of combating CIACS, which are defined as groups that “commit illegal acts in order to further the full enjoyment and exercise of civil and political rights” and “are directly linked to agents of the state or have the capacity to generate impunity.”⁶⁶ Like many features of CICIG, this remit sets it apart from other international or hybrid justice mechanisms. From the perspective of ending the culture of impunity that has brought such high levels of violence to ordinary life in Guatemala, this departure from convention has been a positive change.

Justice and accountability take many forms. In countries that have experienced mass atrocities, institutionalized human rights abuses, and war crimes, holding the perpetrators accountable—or merely compelling them to confess their crimes in a public setting—can be an end unto itself. Tribunals and truth commissions that are focused on crimes from a distinct period and involve a defined set of actors can also help a nation psychologically move on from the trauma of the past and build a more unified, resilient political order.⁶⁷ But such bodies are not designed to address an ongoing crisis of impunity that effects ordinary citizens on a daily basis.

Nor do they confront dysfunction in existing institutions or promote reform of corrupt processes, except in the sense that they demonstrate a strong disapproval of impunity as a general matter.

CICIG's mandate, by contrast, is focused on a class of actors that is defined by behavior that is not merely illegal or repugnant but also systemically debilitating to basic governance. Just as important, these actors' behavior is defined in present-tense terms. This framing has given CICIG commissioners the authority and the flexibility to address the root causes of impunity by treating crime as the product of contemporary forces rather than as historical phenomena. For the first two CICIG commissioners, that meant building out Guatemala's ability to identify and effectively prosecute complex criminal organizations—and their political protectors—that were engaged in human rights abuses.⁶⁸ Under current commissioner Ivan Velasquez—a Colombian national with deep experience in a country that has struggled with the same state dysfunction and organized crime challenges as Guatemala—CICIG's focus has shifted to identifying and dismantling the economic underpinnings of impunity.⁶⁹ In practical terms, this has meant greater emphasis on combating nonviolent crimes such as illegal campaign finance, money laundering, and judicial corruption.^{70 71} As Velasquez recently told International Crisis Group, “[o]ur objectives did not change ... the CIACS changed.”⁷²

Velasquez's reframing of CICIG's agenda suggests another virtue of the institution's broad mandate: It allows its leaders to channel and apply the lessons of shared values and common experiences. As noted above, CICIG has become extremely popular under Velasquez, suggesting that his approach to addressing impunity has resonated with ordinary Guatemalans to a greater extent than the efforts of his two predecessors.⁷³ Perhaps unsurprisingly, it is Velasquez's approach—again building off institutional reforms pursued by his predecessors—that has netted the most spectacular achievements, specifically the uncovering of a customs fraud scheme in which President Pérez and Vice President Baldetti were implicated.⁷⁴ While it is possible to read too much into national background, Velasquez's tenure at CICIG suggests that international anti-impunity mechanisms may benefit from greater regional flavor rather than the more cosmopolitan model that is employed elsewhere by U.N. tribunals.

These observations are not meant to suggest that a forward-looking flexible mandate cannot also give rise to disorganization, discontinuity, and dithering in the hands of ineffective leaders. Yet, the fact remains that systemic impunity is a challenge that can be contained only through a dedicated, well-organized response, and there is little reason to believe that a mandate focused on specific events or categories of crime would have allowed CICIG to succeed under mediocre leadership.

CICIG's decade of work has not been without major stumbles—in particular, its unsuccessful prosecution of former President Alfonso Portillo in 2012.⁷⁵ It is now, however, more capable and respected than at any point in its history, illustrating that the ability to evolve and adjust in the face of setbacks can be a major asset for an institution with aims as ambitious as those of CICIG.

Strong external backing

While actors within Guatemala bear the most credit for CICIG's longevity and success, strong support from the United States and other countries has played a key role.⁷⁶ Financial support is unquestionably the most critical support function played by outside powers, given the institution's substantial workforce and resource needs. But the international community has also provided important diplomatic support for CICIG at moments when its relationship with Guatemalan authorities appeared fragile. To take one example, in 2015, President Pérez has stated that he was opposed to extending CICIG's mandate for another two years, but the United States—specifically, U.S. Vice President Joe Biden—pressured him into doing so, making continued U.S. aid to Guatemala contingent on the renewal.⁷⁷ Although details of Pérez's account are open to question, there is little doubt that the United States has robustly advocated for CICIG since its creation and sought the renewal of its mandate in 2015, as did the European Union.⁷⁸

Pérez's comments about U.S. pressure, made after his fall from power, are evidence of the delicate balance foreign governments must strike when supporting inquiries like CICIG. On one hand, foreign support can provide a lifeline to such institutions in times of crisis. On the other, it can also be contorted into spurious arguments that countries in crisis are puppets of outside powers that are advancing a narrow political agenda rather than broader interests of accountability and justice. Indeed, Pérez did not hesitate to suggest that CICIG was trampling on Guatemalan sovereignty and doing the bidding of the United States.⁷⁹ In the same vein, a group of retired Guatemalan military officials has alleged that CICIG is “an extension of the United States' State Department in Guatemala.”⁸⁰

Thankfully, the jubilant public response to Pérez's resignation in Guatemala suggests that these views are far from mainstream.⁸¹ But such self-serving statements from Pérez on CICIG do contain a grain of truth: The international community and specific actors within it can effectively push back against attempts to undermine corruption inquiries when they hold other leverage over

the host government. In Guatemala's case, the long history of U.S. assistance to Guatemala, coupled with the fact that the United States was in the process of formulating a large aid package at the time CICIG's mandate was up for renewal, meant that its support for CICIG carried unusual weight.⁸²

Another significant, if obvious, form of outside support to CICIG has been from the United Nations itself. Here, however, it is important not to overstate the United Nations' role in CICIG's activities. To its credit, the United Nations has allowed CICIG largely to operate autonomous of U.N. Secretariat control, serving principally in an advisory, administrative, and monitoring role, as well as acting as a conduit for donations from the international community.⁸³ In fact, strictly speaking, CICIG is not a U.N. entity as much as a U.N.-backed entity. For example, CICIG employees are not subject to U.N. personnel rules and do not enjoy the benefits afforded to U.N. staff.⁸⁴ But the United Nations has unquestionably enhanced CICIG's position within Guatemala by virtue of its prestige and its credible claim to represent the interests of the international community rather than a particular bloc of countries. Furthermore, association with the United Nations allows CICIG's international staff to enjoy certain privileges and immunity—an invaluable asset when facing a potentially hostile political establishment in the host country.⁸⁵ But perhaps the greatest contribution the United Nations has made to CICIG has been in selecting three competent commissioners to run the body, all of whom have labored to ensure that CICIG does not become a failed experiment in transitional justice.

Summary: A catalyst, not a panacea

These four factors—autonomy, flexibility, and domestic, as well as international, support—do not constitute a magic formula for controlling corruption. Rather, they reflect the critical role CICIG has played in channeling and amplifying pre-existing reform impulses across a range of populations inside and outside Guatemala. CICIG's institutional design, resourcing, and stewardship have allowed it to tap into powerful yearnings for accountability and transparency without falling victim to the common pitfalls of politicization—such as capture by the regime or opposition—or aloofness. In this sense, CICIG could be characterized as a catalyst for what political scientist Michael Johnson has called “deep democratization”—that is, the process of creating political space for civil society and ordinary people to participate in debates over how power and wealth should be used in a polity.⁸⁶ For deep democratization to happen, there must be a level of underlying grassroots support for reform and, at least, a notional commitment to pluralistic democratic processes from political elites—something that exists in Guatemala but not everywhere in the world.

Lessons: The next CICIG?

As CICIG's public profile has risen, a diverse group of voices have called for creating equivalent institutions in other countries that are suffering from corruption.⁸⁷ In particular, U.S. officials have pointed to El Salvador and Honduras as likely to benefit from a CICIG-type body and have reportedly been encouraging governments of both countries to explore the creation of independent anti-corruption commissions.⁸⁸ El Salvador's government has thus far resisted such suggestions.⁸⁹ In Honduras, massive anti-corruption protests and pressure from civil leaders led to the establishment of the Mission to Support the Fight against Corruption and Impunity in Honduras—known by the Spanish acronym MACCIH—under the Organization of American States, or OAS, earlier this year.⁹⁰

The impulse to replicate the CICIG model is both laudable and reasonable given its impressive record in a country plagued by impunity. It should not, however, be turned to reflexively or viewed as a universal solution. Many factors converged to make CICIG an effective institution—not all of which will necessarily exist in other contexts. Some of these factors can be engineered with careful planning and design—for example, in crafting the institution's mandate, finances, authority, and institutionalization within the domestic political system—but others will be more difficult to reproduce. For example, as noted above, CICIG's success was possible only because its reform agenda made headway with Guatemalan legislators and key members of the executive office, something that may be much more difficult to achieve in other countries. In particular, CICIG's success in lobbying for removal of compromised and obstructionist public officials may be challenging to recreate in countries with more entrenched bureaucracies. Likewise, Guatemala's courts, while dysfunctional, were apparently not broken beyond repair, which has allowed them to try high-profile cases with a reasonable, although not perfect, degree of fairness after the removal of a number of corrupt actors. In addition, it bears repeating that CICIG has benefitted tremendously during the past five years from the hard work and determination of Claudia Paz Y Paz and Thelma Aldana.

In contrast, it faced much steeper headwinds under Conrado Reyes before the Constitutional Court removed him, underscoring the unpredictable role that personalities can play in ambitious reform programs. Finally, as some observers have noted, Guatemala is unusual in that the United Nations has been present in the country for decades and played an important role in peace building efforts before and after the civil war.⁹¹

These uncertainties are not in and of themselves a reason to discount CICIG as an anomaly that cannot be reproduced elsewhere. CICIG did not become a force to be reckoned with overnight; it took many years and three different commissioners to achieve its current role within Guatemala. The yearning for good governance and accountability is, if not universal, very widely held. The international community and its allies owe it to the citizens of countries gripped by violence and impunity to help their respective governments make headway against criminal networks. Even an anti-corruption body that falls well-short of CICIG's high standards is better than no progress at all—except, of course, when a government uses a weak or ineffective anti-corruption inquiry as an excuse to do nothing about widespread graft in criminality or as a tool of suppression against critics and political enemies. For this reason, the absence of a vibrant civil society and the freedoms that nourish it—association, speech, and conscience—in a particular country would strongly caution against establishing a CICIG-type accountability process in said country.

Stepping back, it is worth asking whether El Salvador and Honduras are the only, or even the most promising, candidates for CICIG clones. It is not hard to understand why they have been singled out by the United States and transparency advocates: They are geographically and culturally similar to Guatemala; suffer similar challenges in terms of state infiltration by transnational criminals;⁹² and, in the case of Honduras, have seen massive anti-corruption protests in the last year.⁹³ But there are key differences. Honduras's government has been more overtly hostile to a free press and civil society than Guatemala's has, and there are signs that its willingness to engage on corruption issues may be superficial at best.⁹⁴ As many critics have observed, MACCIH, as it is currently constructed, is merely a program of "technical assistance" with no independent ability to investigate cases, making it an open question whether the entity is a step in the right direction or, in the words of one skeptic, is a "charade" to placate critics.⁹⁵ El Salvador, meanwhile, has a considerably better record on civil rights, as well as a constitutional court with an independent streak. However, its government has been even less willing to make concessions to national sovereignty than Honduras has, choosing instead to outright reject a CICIG-type body in October 2015—despite U.S. pressure.⁹⁶

Given these challenges, the United States, other governments, and civil society groups that advocate for more accountable, transparent government should consider looking elsewhere in the world for countries that could benefit from a CICIG-type body. Key factors for consideration would be:

- Civil society and, where measurable, popular support for such a body
- Institutional capacity to implement reforms
- CSOs' ability to exercise basic rights to expression and association
- Most importantly, the host government's willingness to at least formally commit to the existence of an independent body operating within its political structures and to allow that body's representatives to exercise its mandate without interference or threat

U.S. policymakers also should take into account the influence that the United States carries with the local political establishment, which could prove instrumental in discouraging the host government from backsliding on its commitments.

Applying these factors, it is not hard to identify additional potential candidates beyond El Salvador and Honduras. Kenya and South Africa, for example, both possess very high levels of corruption and violence; they also have a vibrant press and NGO community, a civically engaged public frustrated with official malfeasance, and a well-educated cadre of policeman and judges that is partially—but not completely—corroded by graft.⁹⁷ In addition, many countries in Southeast Asia—for example, the Philippines, a longstanding U.S. ally, and Myanmar, a new partner in the region—have struggled with deeply rooted corruption and persistent impunity.⁹⁸ While not producing violence of the level of the Northern Triangle, these countries have allowed organized crime to flourish and given rise to widespread human rights violations—for example, the use of slave labor in food production—as well as ecological catastrophe.⁹⁹

From an institutional point of view, there is little stopping countries outside Central America from negotiating U.N. agreements like the one the government of Guatemala signed. Furthermore, the United Nations is not the only international organization capable of creating CICIG-like bodies. Regional organizations, such as the Association of Southeast Asian Nations, or ASEAN, as well as the African Union, or AU, could very easily assume such a role. While ASEAN and, to a lesser extent, the AU have been reluctant to take any actions that intrude on the sovereignty of its members, that concern would largely be

absent in the case of an impunity commission for the simple reason that the host nation would voluntarily enter into the agreement. Furthermore, the overseeing institution's main responsibilities, like those of the United Nations, would be in collecting and processing funds, as well as providing technical and administrative support where required. The responsibilities, then, would involve little in the way of direct intervention into the domestic affairs of the host country.

One final challenge worth noting when discussing the extension of the CICIG model is the risk that such a model becomes a victim of its own success. Speaking broadly, the more the CICIG model is perceived to be effective, the more likely that political elites in countries with high levels of impunity and corruption will recognize a shared interest in ensuring that a CICIG-type commission is never established. Overcoming this hostility is a task that will fall first and foremost to local civil society, especially where political opposition is framed in terms of sovereignty and the adequacy of existing anti-corruption institutions. While the international community has an important role to play in pushing for anti-impunity measures in troubled states, such advocacy is unlikely to bear much fruit unless there are grassroots voices that can insert that message into the domestic conversation.

Conclusion: CICIG and legitimacy

CICIG offers an inspiring and—in many ways—unprecedented example of major advances made against impunity and corruption over a short period of time in a country that many once regarded as irretrievably lost to violence and organized crime. For this reason, CICIG deserves robust support from the international community, as well as close study and—where appropriate—emulation by other nations confronting similar challenges. At the same time, it is important not to inflate CICIG’s value as an anti-impunity and anti-corruption tool beyond the albeit very impressive results it has achieved over its nine years of activity or to advocate for CICIG clones without understanding the many ways in which such bodies can be sabotaged or co-opted.

One question that hovers over CICIG—and, in fact, all forms of international or hybrid justice—is whether its efforts will make an enduring mark on Guatemala’s institutions, leaving them stronger and more legitimate in the eyes of ordinary Guatemalans when CICIG’s mandate inevitably ends. This question is particularly acute for CICIG, given that its mission is as much about correcting a dysfunctional culture of governance as it is about redressing past wrongs. Most—but certainly not all—major blows against impunity in Guatemala over the past decade have been achieved on CICIG’s initiative, and it remains an open question whether a culture of accountability can endure beyond CICIG itself.¹⁰⁰ Somewhat ironically, CICIG’s recent string of high-profile indictments and convictions, coupled with its continued struggle with corrupt judges and prosecutors, suggests that the country is still a long way from this goal.

But there is reason for optimism. CICIG’s efforts have demonstrated that there exists both the talent and the determination inside Guatemala’s government to bring corrupt officials to heel, as well as to give a platform and voice to ordinary Guatemalans frustrated with years of irresponsible and ineffective governance. Just as importantly, CICIG has demonstrated that justice is possible under Guatemala’s own laws and inside its own courtrooms and police stations. While these accomplishments by themselves cannot solve all of the country’s rule-of-law challenges, they illuminate a path toward a future Guatemala that is safe, prosperous, and a stabilizing presence in the region.

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