

**Implementation of the International Commission Against Impunity in
Guatemala (CICIG): Strengthening the rule of law from 2015 to 2019**

By

FUENTES DE PAZ, Ledy Daryle

CAPSTONE PROJECT

Submitted to

KDI School of Public Policy and Management

In Partial Fulfillment of the Requirements

For the Degree of

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Committee in charge:

Professor Kim, Taejong, Supervisor



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Approval as of December, 2020

Implementation of the International Commission Against Impunity in Guatemala (CICIG): Strengthening the rule of law from 2015 to 2019

PARTNER ORGANIZATION	
REGION	Central America
ORGANIZATION TYPE	Local government
PROJECT DURATION	2015 - 2019
DEVELOPMENT CHALLENGE	Strengthening Justice System
DELIVERY CHALLENGES	Corruption, Political manipulation, weak rule of law.
CASE AUTHORS	Ledy Darylé Fuentes de Paz (KDI School of Public Policy and Management)
PROJECT EXPERT	Iván Velásquez (CICIG)
SECTOR	Government - Justice
COUNTRY	Guatemala

Executive Summary

The International Commission Against Impunity in Guatemala –CICIG- (its Spanish acronym), helped Guatemala’s Attorney General’s Office investigate and indict Illegal Bodies and Clandestine Security Apparatus (CIACS) and other related crimes. In 2015, CICIG Commissioner Iván Velásquez, (2013-2019) with Attorney General Thelma Aldana and the Special Prosecutor’s Office Against Impunity headed by Francisco Sandoval discovered massive tax fraud on imported goods in the customs system. Called “The Line”, the criminal network involved businessmen and high-level officials including Otto Pérez Molina and Roxana Baldetti Elías, former President and Vice President.

One of Guatemala’s first major tax fraud and corruption cases, “The Line” exposed a justice system weakened by an underground network that bribed and intimidated judges, prosecutors, police, and undermined the electoral system. Through cases like these, CICIG

and its government partners strengthened the rule of law and fought against corruption, illicit electoral financing and political interference. In 2015, they helped enact legal reforms to the judiciary and prosecutor's office and presented constitutional, criminal, electoral financing, impeachment and amparo, habeas corpus and constitutionality law reforms still pending approval as of 2020.

During its legal reforms, emblematic cases of corruption and exposure powerful criminal networks deeply embedded in the state, the commission demonstrated that no one is outside the reach of justice, earning popular approval and building alliances with the attorney general's office, civil society, national police and international cooperation who jointly took action in favor of continuing the fight against impunity and corruption. CICIG built a citizen trust and demonstrated that the powerful can be tried by helping the prosecutor's office pursue paradigmatic cases of drug traffickers, ex-military personnel, corrupt politicians, corrupt bankers and even past war crimes.

Introduction

In 2015, CICIG an international organization created to investigate corruption cases in Guatemala, revealed the system of corruption and tax fraud that allowed companies to avoid paying taxes in exchange for bribing customs authorities and collecting illegal funds to channel to corrupted actors integrated with high level officials, politicians, ex-President Pérez Molina and government staff.

The United Nations created CICIG in 2006 at the request of the Government of Guatemala¹ to help domestic institutions investigate and eradicate Illegal Bodies and Clandestine Security Apparatus (CIACS) and prevent their reappearance. These illegal bodies arose as counter-insurgents in the Guatemalan Civil War (1960-1996),² which had roots in the country's agrarian structure and economic exclusion, subordination of the indigenous, and authoritarianism.³ These clandestine structures were replicated and maintained by encouraging organized violence to protect political and economic interests; using corruption, intimidation, coercion and others mechanisms of impunity.⁴

After CICIG began operations in 2007, it focused on investigating and prosecuting crimes allegedly committed by the CIACS, strengthening Guatemalan institutions, proposing legal and institutional reforms, and publishing research. CICIG was not created to handle and solve cases, but to help dismantle the CIACS by determining their structures, operations, and finances. The Commission's powers included investigate individuals or entities related to CIACS, requesting searches and subpoenas, presenting criminal charges to the Attorney General's Office, acting as an adhesive plaintiff, and calling witnesses. (Under Guatemalan law, a party harmed by a crime can assist the prosecution with investigation, evidence collection, and other legal roles as an adhesive plaintiff.)

CICIG was a hybrid international entity, unique in the world, that worked with Guatemala's laws and institutions, but was internationally funded and neither financially nor

¹ https://www.wola.org/sites/default/files/Citizen%20Security/2015/WOLA_CICIG_ENG_FNL_extra%20page.pdf p. 3

² Commission for Historical Clarification. Guatemala, memory of silence, Project Services Office of the United Nations (UNOPS). Sevigrafcicos, S.A. Guatemala, 1999. P.45-54

³ Ibid. P. 82-94.

⁴ Myrna Mack Foundation. International Commission against Impunity in Guatemala: Indispensable tool to combat political violence in the country. Guatemala, November 2006. <https://pdba.georgetown.edu/Security/citizenssecurity/Guatemala/programas/CICIG.pdf>

functionally dependent on any Guatemalan institution. CICIG's investigations showed how some private groups appropriated many state functions to enrich themselves, exploiting weaknesses in the Guatemalan justice system like low capacity and resources.

In its early years, CICIG took a comprehensive approach to capacity building, working with the Attorney General's Office to back up their investigation and indictment of crimes committed by the CIACS, supported by an agreement of bilateral cooperation⁵. Through the agreement, CICIG helped establish the Special Prosecutor's Office Against Impunity (known by its Spanish acronym FECI) to investigate illegal groups activities and trained it in the adoption of investigative techniques and laws.

The first CICIG Commissioner, Carlos Castresana Fernández (2008-2010),⁶ was a Spanish lawyer with experience in anti-corruption issues, who helped create the Commission together with members of civil society. He led CICIG's institutional design and the integration of its investigative and legal teams and search for international support. During his term, the Guatemalan Congress passed legal reforms proposed by CICIG that strengthened the justice system and fight against organized crime. In June 2010, he resigned, blaming the "failure" of Guatemala's commitment to combat impunity.⁷

His successor Francisco Dall'Anese Ruíz (2010-2013),⁸ a Costa Rican jurist and former attorney general, was criticized for alleged passivity in its investigations and for making strong accusations without concrete evidence against a group of judges and magistrates whom they accused of promoting impunity by benefiting organized crime

⁵ <https://www.cicig.org/wp-content/uploads/documents/convenios/mp-cicig.pdf>

⁶ <https://onu.org.gt/comunicados/comunicado/>

⁷ https://www.kas.de/c/document_library/get_file?uuid=979618db-f93b-fc56-d5ea-a3fb6dc4e548&groupId=275611 p.3

⁸ <https://www.cicig.org/comunicados-2010-c/el-secretario-general-de-naciones-unidas-elige-a-francisco-dallanese-ruiz-como-comisionado-de-la-cicig/>

groups. Nevertheless, under Dall’Anese, CICIG began investigations into the CIACS that guided the commission’s later work.

Under both its first commissioners, CICIG promoted public policies and law reforms such as a law against organized crime, criminal procedure code, tighter gun controls, illicit trafficking of migrants, creation of centralized high-risk tribunals, domain extinction law, witness protection program and rules for court-ordered wiretaps⁹. These laws increased the transparency of the political system, provided legal instruments and improved justice sector performance, contributing to enhanced criminal prosecutions, judicial independence, and fairer sentences.

A new era began under Commissioner Iván Velásquez in 2015, when CICIG and Attorney General’s Office exposed a scheme of customs fraud orchestrated by ex- President Molina. The corruption network called “The Line”, whose members initially involved middle-level officials and individuals, reached a former president and vice-president. “The Line” transformed the personal and political position of President Otto Pérez Molina, who initially supported CICIG’s mandate until it dismantled his customs plot. The case enraged Guatemalans citizens, who began months of nonviolent protests that forced Pérez Molina to resign.

The prosecution and the commission thwarted 21 organized crime structures in 2015¹⁰ and more than 660 people linked to the processes in the executive, legislative, judicial and private sectors. Public opinion poll showed that citizens and civil society supported

⁹ WOLA Report on the CICIG Experience. https://www.wola.org/sites/default/files/Citizen%20Security/2015/WOLA_CICIG_ENG_FNL_extra%20page.pdf p. 13

¹⁰ Pérez, Zonia. El Periódico Post article: Miguel Ángel Gálvez, Judge who closed the circle against impunity. Guatemala, December 12, 2015. <https://elperiodico.com.gt/nacion/2015/12/16/miguel-angel-galvez-el-jue-que-cerro-el-circulo-contra-la-impunidad/>

CICIG's operations.¹¹ The citizen's protests were accompanied with some civil society leaders, in this case one of them was Manfredo Marroquín (Director of "Acción Ciudadana", a national anticorruption nonprofit),¹² who worked together with the global anti-corruption nonprofit Transparency International.

Popular indignation people toward the traditional political class contributed to Jimmy Morales's winning election in 2015. Morales was a former television comedian who used the slogan "Neither corrupt nor thief" during his electoral campaign.

In march 2015, before the end of CICIG's third mandate, Commissioner Velásquez¹³, a Colombian jurist, human rights activist, former investigating magistrate on Colombia's Supreme Court, whose experience was based on cases related to torture and abuse committed by anti-guerrilla force as well as illegal trafficking and corruption.¹⁴ Velásquez faced the absence of support from the president and congress for the new mandate extension and the deficiency of cooperation of government agencies in the investigation of cases (mostly the excessive use of judicial delays).

Therefore, CICIG worked to eradicate impunity and corruption by strengthening Guatemalan justice system, developing strategies focused on supporting and contributing to the state's institutions in the investigation and criminal indictment of crimes, and promoting the creation or reformation of institutional mechanisms and public policies necessary to eradicate illegal structures, in conclusion, was aiming to strength the judicial system and reduce impunity with investigation, prevention and education.

¹¹ <https://www.soy502.com/articulo/guatemaltecos-avalan-trabajo-cicig-segun-encuesta>

¹² Founded in 1996 to help create a conscientious and committed citizenship with democratic development in Guatemala, also to promote transparency in public management.

¹³ <https://www.cicig.org/cicig/comisionado/>

¹⁴ Civil organization equipped with structure or discipline of the military type.

CICIG's work and the extension of its mandate became a controversial topic in three electoral cycles in 2011, 2015, and 2019. Candidates were divided: old-line politicians opposed CICIG's work, while new politicians showed their support for mandate extensions for the popular commission. President Jimmy Morales originally expressed his support for CICIG¹⁵ and wrote "I wish to express my good will to request the extension of the CICIG's mandate from 2019 to 2021, a request that I will expressly ratify when the legally appropriate moment arrives" in the letter signed by Morales on April 15, 2016, addressed to the UN and published in the *Diario de Centro América* in September 2016.¹⁶

But after his son and brother were linked to a corruption case occurred during the presidency of Otto Pérez Molina (2012-2015), his position changed radically. In 2017, CICIG asked for a preliminary judgment against Morales for illicit electoral financing carried out in 2015 during his political campaign.¹⁷ In an effort to avoid being connected with his predecessor's corruption, Morales asked the UN for the removal of the CICIG commissioner.¹⁸ The UN affirmed its support for the work carried out by CICIG's Commissioner Velásquez. After this effort Morales persisted and proclaimed Commissioner Velásquez "persona non grata" and forcing him to leave the nation right away.¹⁹ Morales justified his decision by saying: "He abused his powers by making publications in the media

¹⁵ Gutiérrez, Karla. *Diario de Centroamérica Post Article: President Jimmy Morales will request a new extension for CICIG.* Guatemala, April 10, 2016. <https://dca.gob.gt/noticias-guatemala-diario-centro-america/presidente-jimmy-morales-solicitar-nueva-prorroga-para-la-cicig/>

¹⁶ Vélix, Cristian. *La Hora Post Article: Conflict of interests? When Morales offered to extend CICIG's mandate to 2021.* August 19, 2019. <https://lahora.gt/conflicto-de-intereses-cuando-morales-ofrecio-extender-el-mandato-de-cicig-a-2021/>

¹⁷ <https://nomada.gt/pais/entender-la-politica/por-que-jimmy-quiere-expulsar-a-ivan-velasquez-del-pais/>

¹⁸ *Prensa Libre Post Article: Government complains to the UN about Velásquez and asks that Cicig limit himself to his mandate.* <https://www.prensalibre.com/guatemala/politica/jimmy-morales-se-reune-con-el-secretario-general-de-la-onu-en-nueva-york/> August 26, 2017.

¹⁹ <https://news.un.org/es/story/2017/08/1384881>

about accusations against Guatemalan citizens without observing the constitutional guarantee of the presumption of innocence ... and due process"²⁰.

The attempted expulsion of Velásquez was frustrated by citizen and civil society support²¹ and filings in the Constitutional Court and with the Human Rights Ombudsman.²² The Constitutional Court ruled in Velásquez's favor, finding in a divided vote that Morales's order violated the Constitution.²³

Delivery Challenges

Corruption and Patronage:

In Guatemala, public corruption was endemic at all levels,²⁴ including a weak justice system²⁵ and civil service patronage.²⁶ On the 2015 Transparency International Corruption Perceptions Index, Guatemala ranked 123rd out of 168 countries surveyed and scored 28/100, decreasing only 2 points by 2019.²⁷

Citizens who needed a service, a job, or a favor had to pay bribes. Corrupt practices produced a high social cost because they reduced opportunities and deprived people of

²⁰ <https://elsiglo.com.gt/2017/08/27/morales-declaro-non-grato-a-velasquez-porque-se-excedio-y-abuso-de-sus-funciones/>

²¹ Prensa Libre Post Article: President Jimmy Morales declares Iván Velásquez "non grato" and orders his expulsión. Guatemala, August 26, 2017. <https://www.prensalibre.com/guatemala/politica/jimmy-morales-declara-non-grato-a-ivan-velasquez/>.

²² CICIG: XII Annual Work Report 2019. p. 6, 9. https://www.cicig.org/wp-content/uploads/2017/10/XII_Informe_Anuar_CICIG.pdf

²³ <https://www.plazapublica.com.gt/content/declarar-non-grato-ivan-velasquez-fue-ilegal-le-dice-la-cc-morales>

²⁴ FLACSO. Impunity and corruption in the tax field. Acción Ciudadana. Guatemala. 2000.

²⁵ United Nations system in Guatemala. Office of the Resident Coordinator (OCR) Guatemala: Common Country Assessment. <https://onu.org.gt/wp-content/uploads/2016/04/Estudio-de-Situacion-Guatemala.compressed.pdf> p. 78

²⁶ National Human Development Report. UNDP. Guatemala: towards a Status for the human developing 2009/2010. http://hdr.undp.org/sites/default/files/guatemala_indh_2009-10.pdf P. 76,86, 298.

²⁷ Transparency International, Corruption Perceptions Index 2015. <https://www.transparency.org/cpi2015>

public services. Corrupt networks particularly excluded and exploited vulnerable groups like women, youth, people with disabilities, and the Indigenous.²⁸

Corruption and impunity were long entrenched in the political culture of Guatemala. When Velásquez recognized that he faced a corrupt network of ex-military, political, and business elites, he said in an interview that he had “never realized the corruption in Guatemala was of this size or level of state empowerment.”²⁹

Corrupt networks arguably turned the country into a “mafia state” with connections to the military and law enforcement as well as lucrative involvement in illegal schemes like money laundering, trafficking of narcotics and arms, car theft, kidnapping for ransom, adoption scams, and prohibited uses of protected lands.³⁰ Francisco Sandoval, prosecutor of FECCI, called these arrangements fundamental to The Line case, because it “summarized a work methodology that allowed establishing how CIACS operated, and how over time they restructured and later on became illicit political-economic networks.”

An anonymous CICIG source said in an interview on Insight Crime that “The corruption system is so deep, with such deep roots, that it does not depend on any case or on any particular person”. “It can change, adapt very quickly”³¹.

Acts of corruption have survived, due to aspects such as outdated legislation, weaknesses in government institutions, justice and electoral systems, in which the common factor has been poor access to public information and lack citizen participation, which link

²⁸ ICEFI/OXFAM. Corruption: Its ways and impact on society and an agenda to confront it in the North Central American Triangle. Guatemala. 2017.P. 235.

²⁹ García, Jacobo. El País Post Article: “I never thought that in Guatemala corruption was of this size or the level of state empowerment”. San Salvador, December 16, 2018. https://elpais.com/internacional/2018/12/16/mexico/1544917421_544663.html

³⁰ Guatemala’s Lethal Legacy: Past Impunity and Renewed Human Rights Violations. Amnesty International. P. 48

³¹ <https://es.insightcrime.org/noticias/noticias-del-dia/guatemala-enfrenta-reto-corrupcion-estructural-cicig/>

conflicts of interest and impunity. Criminal Judge Juan José Lemus said that in Guatemala, high levels of corruption and impunity have occurred, in part, because of the frequent abuse of legal delays in criminal proceedings against elites.

Impunity:

Impunity constitutes a violation of state obligations to protect the privileges and integrity of all citizens. It is a particular issue in Guatemala, where the intentional homicides rate accordingly to the World Bank was 29.4 per 100,000 people in 2015³² and impunity rates estimated between 99.1 percent and 98.4 percent.³³ The report by International Crisis Group explained that CICIG contributed to a steady reduction in Guatemala's homicide rate, which fell from 45.1 per 100,000 in 2009, the most violent year in the country's recent history, to 26.1 in 2017, and helped reduce the impunity rate for violent crimes from 98 percent in 2008 to 87 percent in 2016.³⁴

In Guatemala the impunity has allowed the lack of confidence of citizenship in all democratic institutions of the country, where the weakness of security and justice institutions has left a state unable to respond because it is inoperative. According to Velásquez, there are only two possibilities to reduce impunity: “Either fewer crimes are committed or more convictions are handed down. In other words, greater action in prevention or repression, or a combination of both ”³⁵.

³² World Bank Report of Intentional Homicides Rates. <https://data.worldbank.org/indicator/VC.IHR.PSRC.P5?end=2017&locations=GT&start=1995>

³³ Organization of American States. (OAS). Situation of Human Rights in Guatemala. Approved by the Inter-American Commission on Human Rights on December 31, 2017. P.37. <http://www.oas.org/en/iachr/reports/pdfs/Guatemala2017-en.pdf>

³⁴ <https://www.crisisgroup.org/latin-america-caribbean/central-america/guatemala/70-saving-guatemalas-fight-against-crime-and-impunity> p.14

³⁵ <https://elperiodico.com.gt/nacion/2015/11/28/presentan-sistema-para-medicion-de-la-impunidad-en-el-pais/>

Since colonial times, Guatemala's traditional elite has dominated the powers of the state, with wealth from agriculture and businesses that exploited the majority Indigenous population.³⁶ This dominance has provoked several political and military challenges, including the Civil War that ended in 1996 and allowed both organized crime and emerging elites to accumulate influence over state institutions, electoral politics, and patronage.³⁷

Impunity in Guatemala has undergone several transformations.³⁸ Beginning in the 1990s, reforms moved government control from the military to civilian governments and changed the criminal justice shifted from a postcolonial inquisitorial system, in which judges conducted investigations, to a more open adversarial system. From 2006 to 2016, many advances were made in the fight against impunity. However, the CICIG encountered many bottlenecks including delays and judicial interference.³⁹ The Commission helped develop the Integrated Justice System (known by its Spanish acronym SIJ), a model to collect all the information related to the operation of justice institutions⁴⁰.

Another challenge faced was a poor criminal investigation addressed with the transfer of capabilities by CICIG to the relevant entities, such as the National Police, Attorney General Office, INACIF, among others. Obstacles like the malicious litigating, violence and harassment against justice operators⁴¹, the vulnerability of the judicial independence and the autonomy of prosecutors were tackled with law reforms proposed by the Commission and some approved by the Congress.

³⁶ https://es.insightcrime.org/images/PDFs/2016/Guatemala_Elites_Crimen_Organizado.pdf p.7

³⁷ <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5799f4984> p.4

³⁸ https://myrnamack.org.gt/images/redes_ilicidas/Layout_Impunidad_Redes_Ilicitas_MM.pdf p. 33-39

³⁹ Guatemala's Lethal Legacy: Past Impunity and Renewed Human Rights Violations. Amnesty International. P. 11

⁴⁰ <https://www.cicig.org/comunicados-2019-c/informe-dialogos-por-el-fortalecimiento-de-la-justicia/>

⁴¹ <http://www.dplf.org/sites/default/files/1184345829.pdf> p.5

For the deficiencies in the judiciary budget⁴², poor academic training in the legal area, CICIG as essential key contacted various universities to start meetings and discussions on reform of university legal education⁴³, a series of private conversations, in which public officials, academics, social leaders, as well as representatives of national and international organizations participated.

CICIG, in order to combat impunity worked together with the Special Prosecutor's Office Against Impunity (FECI) to investigate high-impact cases.

Political Interference:

In 2015, CICIG was in its third term concerned about a new extension of it, besides that was investigating high impact cases that involved some politicians and high level officials related to the central government. To build more investigations and combating corruption, CICIG needed to create and discuss more law reforms and secure the support of the President and the Congress.

After several investigations that implicated members of the executive,⁴⁴ legislative⁴⁵ and judiciary system,⁴⁶ were linked to the criminal phenomena such as judicial corruption, illicit electoral financing, contraband, drug trafficking, administrative corruption, and money laundering, being these reasons why they showed the lack of support⁴⁷ for CICIG's

⁴² <https://www.prensalibre.com/guatemala/politica/presupuesto-propuesto-de-0j-y-mp-es-insuficiente-incluso-para-funcionamiento/>

⁴³ <https://www.cicig.org/listado-noticias-2016/las-universidades-deben-ser-impulsoras-de-una-cultura-de-legalidad-y-promotoras-de-una-vida-digna/>

⁴⁴ <https://www.dw.com/en/former-guatemala-cabinet-ministers-arrested-on-corruption-charges/a-19324123>

⁴⁵ <https://www.insightcrime.org/news/brief/guatemala-congress-leader-latest-to-fall-anti-impunity-crackdown/>

⁴⁶ <https://www.insightcrime.org/news/brief/magistrate-arrest-signals-battle-guatemala-judiciary/>

⁴⁷ <https://elperiodico.com.gt/nacion/2015/11/10/cicig-los-resultados-de-su-lucha-frontal-contra-la-impunidad-en-el-pais/>

mandate extension and their commitment from government agencies for the investigation of cases.

To address this delivery challenge, CICIG in collaboration with human rights ombudsman and civil society fought several times in the courts with judicial mechanisms for the durability of CICIG.

The reason why the process had been delayed is that the CICIG investigated and sent to jail some politicians and relatives of the then President of Guatemala. These were motives for some deputies allied to the official⁴⁸ and other parties⁴⁹ and also, the Presidency⁵⁰ showed their dislike since to 2015 till 2019⁵¹, rejecting the Commission's work, its mandate and the importance of the counterparts like attorney general, the national police, human rights ombudsman and courts in the fighting against corruption, threatened the stability of this institution.

Tracing the Implementation Process:

Contributing to the reduction of impunity in Guatemala (2015-2018)

After created an effective commission with prepared investigators, prosecutors, technologies, a careful capacity building with their own resources and strong authority, the Commission focused on developing and building solid political leadership and multilateral partnerships, judicial and legal reforms, joint efforts with national counterparts and civil

⁴⁸ <https://www.soy502.com/articulo/brochas-congreso-repartieron-millones-sobornos-32419>

⁴⁹ <https://www.plazapublica.com.gt/content/perdon-pidieron-los-diputados-que-se-vayan-exigio-la-plaza>

⁵⁰ <https://es.insightcrime.org/noticias/noticias-del-dia/autoridades-de-guatemala-y-la-cicig-acusan-a-otro-expresidente-por-corrupcion/>

⁵¹ <https://www.guatelevision.com/episodios/mp-y-cicig-presentaron-antejuicio-por-financiamiento-electoral-ilcito-contrajimmy-morales-13ago>

society groups.⁵² CICIG also worked on research related to five priority areas⁵³: political financing, judicial corruption, the narcotics trade, land dispossession, and the customs system.

The Commission took advantage from their battling corruption revealing more cases, working closely with the attorney general and civil society, strategically earning public support for their continuum work on the strength of the justice system and the country's development, covering with another mandate extension more prosecution, prevention, policies and investigation and focused in its working plan.

The CICIG, as a developing strategy joined the efforts made by social organizations and think-tanks in submitting law proposals related to justice system reform from 2015 to 2018 and winning approval of certain laws by Congress. Examples of the legal reforms presented to the Congress and to the Security and Justice office of the Legislation and Constitutional Points Commission included: the judicial career law, the Attorney General's Office law; the constitutional law; impeachment law and the amparo, habeas corpus and constitutionality law⁵⁴. After their discussion, in 2016, the favorable opinion of the Congress Commission of Reforms to the Justice Sector was issued, approving the Attorney General's Office law⁵⁵, which promoted stability in the position of the Attorney General, development of the professional career of prosecutors, suppression of the advice of the Attorney General's Office and transformation of the disciplinary system; and the judicial career law⁵⁶, to raise standards of judicial independence.

⁵² List of some civil societies that accompanied CICIG were: Fundación Mirna Mack, Alianza por la Reforma, Acción Ciudadana and Justicia Ya, as well as research centers like ASIES, ICEFI, Konrad Adenauer,

⁵³ https://www.cicig.org/uploads/documents/2015/COM_085_20151113_VIII.pdf p.4,68.

⁵⁴ Ley de Amparo, Exhibición Personal y de Constitucionalidad.

⁵⁵ Decree 18-2016 of the Congress of the Republic, Reforms to the Attorney General's Office Organic Law.

⁵⁶ Decree 32-2016, Judicial Career Law.

The Commission overcame political interference by discussing the benefits for the approval, obtaining the support from civil society and citizens in the lectures at the Congress about the importance of these reforms removing obstacles in the investigations, prosecutions and capacity building.

In the case of other unapproved proposals, although there was a consensus with the executive, legislative and judicial system, and a national dialogue, these reforms did not get Congressional approval, they lost due to debates of the different political parties and various interest groups.

CICIG's Working Plan 2015-2018:

Investigations and Prosecutions

CICIG set two long-term objectives: contributing to the reduction of impunity in Guatemala and promoting Guatemala's citizens' participation in strengthening justice sector institutions. CICIG developed its activities in order to improve the capacity of the State in the investigation and criminal indictment of crimes committed by lawless structures linked to State entities, as well as, to seek a legal framework, institutional and citizen participation to eradicate and prevent reappearance of these mafia structures.

To fulfill its objective, CICIG focused on criminal investigations, through a joint investigations teams of police and prosecutors to overcome their mutual mistrust and transfer knowledge to the security forces, particularly in operations aimed at dismantling large gang structures dedicated to extortion.

From 2015 to 2018, CICIG intervened in the process of prosecuting 56 cases⁵⁷ in accordance with extortion, financing of political parties, judicial corruption, narcoactivity and dispossession of land and customs system, those corruption cases affected all levels of the public and private sectors, just as the three branches of the state. CICIG, contributed in the last years in complex corruption investigations that identified models and techniques routinely employed by this organized crime sector.

CICIG's indictment work based on the strategic prosecution concept of emblematic cases that responded to the commission's mandate, having as objectives the dismantling of the CIACS, sanction of their participants and the protection human rights. In the prosecutions CICIG participated, as technical support or adhesive complainant, together with FECCI promoted the strategic analysis of the criminal phenomenon using special investigation methods, in which it conducted and delivered police, financial, criminal and forensics reports who supported and substantiated the criminal prosecution. This work was made possible by the contribution coordinated of national and foreign CICIG's officials and the agreements celebrated with the attorney general office, the ministry of interior and official requirements to the superintendence of taxes and banks.

The Commission pursued high impact cases which targeted the bureaucracy and the justice system and other cases who had the possibility of restoring the amounts stolen from the state. Since 2015, CICIG fostered a culture of legality in Guatemalan society, presenting new corruption cases and arrests⁵⁸ of CIACS members with extensive media coverage communication every Thursday, to such an extent that citizens already expected "CICIG

⁵⁷ Final Closing Report: The Justice Legacy in Guatemala. CICIG, 2019. p. 105-111 https://www.cicig.org/wp-content/uploads/2019/08/InformeLegadoJusticia_SI.pdf

⁵⁸ <https://republica.gt/2018/01/25/jueves-de-cicig-ocho-capturados-en-allanamientos/>

Thursdays,⁵⁹ the day of the week when the Commission normally announced through the media new investigations worked jointly with the Attorney General. These CICIG's reports and law enforcement operations had opposition from businessmen, politicians and people involved in the criminal network, who tried to sink the anti-corruption efforts of the Commission, with black campaigns, demonstrations and opposition in Congress to pass certain laws, which CICIG overcame with strengthening its capacity building, the convictions obtained and the high expectations of citizens and the support of civil society.

Capacity Building

CICIG transferred operational capacity to justice sector counterparts by jointly developing activities related to research, advanced techniques, legal argumentation, legal and procedural principles such as objectivity and probity. The Attorney General's Office and CICIG had technological systems for storage and correlation of information that were constantly updated and definitely served to investigate cases in 2015-2018. This was demonstrated with the collaboration that CICIG had with the financial, criminal, forensic and police reports in which it had the participation of national and foreign officials.

The strengthening and transfer of capacities⁶⁰ developed through training courses given by national consultants and international, as well as CICIG staff, in which topics related to the electoral criminal⁶¹ and administrative legal framework, methods and tools of research, organization and operation of teams of research, investigation and financial analysis, equally, the relationship between money laundering and illicit electoral financing.

⁵⁹ <https://www.prensalibre.com/tema/jueves-de-cicig/>

⁶⁰ https://www.cicig.org/wp-content/uploads/2017/10/XII_Informe_Anual_CICIG.pdf p. 45

⁶¹ <https://impacto.gt/tse-y-cicig-firman-convenio-para-la-transferencia-de-capacidades-en-el-marco-del-proceso-electoral/>

Another method was the case studies used based on CICIG's experience and for the national police, the Commission had to create police units to support the investigation by the Attorney General, for the implementation of this strategic criminal prosecution methodology, they formed teams made up of prosecutors, police and specialized analysts for criminal phenomenon who, together with CICIG legal and police investigators, they in common developed research plans⁶².

The police training was pedagogical in criminalistics and police investigation methodology, culminating the training with final suitability exams. Some of these trained police officers distributed between the Attorney General Office and the CICIG to carry out investigative functions and police support, acquiring, with the accompaniment of international CICIG police investigators, to implement crime scene investigation skills, location techniques, surveillance and monitoring of people under investigation.

Juan Francisco Sandoval, indicated that the guarantee of this transfer was based on the fact that if at any time the commission leaves, the capacity or work methodology can be transferred to teams of the Attorney General Office and the National Police.

CICIG as a contribution to strengthening Judicial Branch's capacities and Attorney General's Office, built a National System of Measurement of Impunity⁶³, adapted to the Guatemalan context, in order to serve for the construction of reliable official data and information generation models and as input for the elaboration of public policies by the national institutions. The purpose was to allow national institutions to assume responsibility for continuing the measurement of the impunity index in the country⁶⁴. The data would be

⁶² https://www.cicig.org/wp-content/uploads/2019/08/InformeLegadoJusticia_SI.pdf p.48

⁶³ International Commission Against Impunity. (CICIG) 2015. <https://www.cicig.org/comunicados-2015-c/sistema-de-medicion-de-impunidad/>

⁶⁴ <https://lahora.gt/impunidad-disminuyo-7-82-ciento-los-ultimos-ocho-anos/>

analyzed by process and outcome indicators related to the different criteria, dimensions and components of impunity according to the Ministry of the Interior, the National Institute of Forensic Sciences, and the Judicial Branch.

To achieve the measurement, the following was performed: Analysis and compilation of the different concepts of impunity handled by the different international and national institutions, particularly the United Nations System (UNS), the justice system, the academy and civil society; A set of criteria on the models and ways of measuring impunity was required to achieve a definition in accordance with international standards (comparability), which in turn is appropriate to national reality (relevance); and analysis of indicators and established criteria for the measurement of impunity, data obtained on homicides, estimation of impunity for homicides in Guatemala in the period between 2005 and 2014, thus testing the effectiveness of the model⁶⁵.

Until the first semester of 2018, institutional information was collected, approved and analyzed seeking to calculate the incidence, efficiency, effectiveness and impunity of the Justice System for all crimes registered as of 2008, with the goal of an analysis platform of a decade.

This system showed for the 2008-2016 period, total impunity for all crimes was 92.86%, with an annual total in 2008 of 96.40% and in 2016 was 90.87% (which implied a reduction of 5.53%). The trend of that account would be an average reduction of 0.7% per year. The annual effectiveness of the justice system has grown from 3.6% in 2008 to 9.8% in 2015 - also being the year with the lowest recorded impunity, with 90.2%.⁶⁶.

⁶⁵ <https://www.mp.gob.gt/noticias/2015/11/27/mp-y-cicig-presentan-sistema-de-medicion-de-la-impunidad-en-el-pais/>

⁶⁶ <https://www.cicig.org/articles/sistema-integrado-de-justicia/sistema-integrado-de-justicia/>

With the purpose of analytical and good practice in order to identify criminal structures and generate recommendations for reform, CICIG developed a manual of good practices in criminal investigations. The manual was dedicated to the anticipation of risks, threats or damages caused by the CIACS, the support of the officials of the Attorney General Office was essential for the development of this manual.

It contained practical and theoretical elements to apply in investigations against complex criminal structures. This manual stated that over time, criminal structures had opportunities to improve their mechanisms and processes. It is important to highlight that one of the findings of the report was the lack of capacity of the government to investigate the CIACS, having the opportunity to expand beyond Guatemalan territory and become a geopolitical problem that affects the entire region.

Improving the Justice System

In the second strategic line, the Commission worked to diagnose obstacles in the national justice system, proposed legal and institutional recommendations, and researched and draft thematic reports. Legal advisor David Gaitán said the reports were necessary to fulfil Millennium Goals, commitments the CICIG had made with UN agencies in Guatemala. These reports were focused on sex trafficking for sexual exploitation, the link between violence against women and organized crime, and political finance.

The commission also worked to reform the Postulation Commissions, constitutional bodies that prepare lists of candidates approved for appointment to high positions of the State by the President or Congress.⁶⁷ Political interference in the commissions has been evidenced

⁶⁷ Political Constitution of the Republic of Guatemala, articles: 207, 214, 215, 216; Postulation Commissions Law. Guatemala City. P. 2
<http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2009/pdfs/decretos/D019-2009.pdf>

by election process anomalies. For example, former Vice President Roxana Baldetti and the ex-deputy Gudy Rivera tried to pressure Claudia Escobar, former magistrate of the Appeals Chamber of the Supreme Court to issue a favorable sentence to benefit Roxana Baldetti's official party, in exchange for reelecting her in the period 2015-2019.⁶⁸

In 2017, the Commission worked with a network of justice organizations to develop amendments to the postulation commissions law, to guarantee the transparency of the process and adequate qualification and evaluation of applicants. In sum, CICIG strengthened the Rule of Law and the justice system through direct and joint work with its main counterpart, the attorney general and transferred capabilities through investigation and criminal prosecution, essentially it worked as a team with the national authorities with the objective of fulfilling their mandate in the fight against impunity and corruption.

Proposals for legal reform promoted by CICIG (2015-2018)

Since its implementation, CICIG was clear that the legal reforms were key to the development of its objectives and strategies, CICIG's investigations revealed evidence of the operations and illicit actions of the CIACS, leading to urgent reforms in criminal investigation law procedures. The Commission formed a specialized team that carried out an extensive review of the criminal law and criminal procedural regulatory framework and existing research methods, with the aim of contributing to the modernization of the tools available to the criminal justice system to confront the criminal activity of the CIACS.

CICIG's legal reform team translated the result of this review into a matrix in which the existing problems were established, and designed a concrete line of work, always related to the objectives of the Commission with its counterparts. From 2008 to 2010 CICIG

⁶⁸ <https://es.insightcrime.org/noticias/analisis/excandidata-a-fiscal-de-guatemala-la-comision-de-postulacion-no-representa-ninguna-garantia/>

worked on 21 legal reform proposals, of which 13 were approved, reforms that were necessary to guarantee the proper functioning of the Guatemalan system, investigation and judicial prosecution. The Commission also promoted the establishment of high-risk crime courts especially for people involved in serious related to the prioritized criminal phenomena.

However, it was necessary to promote other reforms focused on eliminate different mechanisms of impunity, from elements organic-functional to substantive and procedural aspects of the Guatemalan legal regime. These reforms prepared in consultation with representatives of government institutions and the United Nations, in order to put the Guatemalan legal system in conformity with international conventions on human rights.

Since 2015 to 2018, CICIG worked with the Attorney General just like national and international organizations to promote and present to the congress 10 legal reforms, of which two were approved.⁶⁹ The first strengthened the independence and effectiveness of the Attorney General's Office, including objective criteria for prosecutorial appointment and removal. The second promoted judicial independence and disciplinary procedures. The unapproved proposals related to prosecutors, the police, forensic investigations, the prison system, law education and election of authorities in state institutions.

CICIG worked on removing obstacles to the investigation and criminal prosecution, and proposed law reforms of Constitutional Amparo Action, the regulation of the impeachment, the Criminal Procedure Code, and aspects on preventive detention. The design of the reforms based on the criminal prosecution of the abuse of power to purge the State of the illicit political-economic networks, same as the implementation of public

⁶⁹ (Attorney General's Office Law, Legislative Decree No. 18-2016 and Judicial Career Law, Legislative Decree No. 17-2017). https://www.cicig.org/wp-content/uploads/2019/06/Informe_ReformasLegales.pdf

policies, legal reforms and institutional strengthening measures to eradicate the impunity and consolidate the democratic rule of law.

The Commission overcame political interference and corruption when it built legal reform proposals, finding at the time a fairly open Congress regarding many of the proposals that were strategic and conditional for any achievement that the Commission may have in the future regarding their cases, also had the fundamental and permanent support of civil society, as a leading actor in the reforms, present in some of the law discussions made by Congress this was a form of public pressure in the approval of legal reforms.

The relationship between organized civil society and CICIG continued its strengthening and consolidation. An institutional policy of openness to civil society permitted analyzing their situations short-term national scenario, knew problems from different points of view and established cooperative relationships in different work areas of the Commission. The cooperation allowed the discussion and proposal of legislative reforms, social discussion of anti-corruption issues and verification processes for the selection of justice system authorities. CICIG also held numerous productive meetings with foreign officials and diplomats.⁷⁰

CICIG addressed impunity through general monitoring of the administration system of justice, because in Guatemala impunity for crimes functioned very efficiently, and certainly the investigations carried out by CICIG advanced to such an extent that they affected the traditional powers in the country, specially the economic, military, and political

⁷⁰ Government representatives: Germany, Argentina, Canada, Chile, Colombia, Denmark, Spain, United States of America, Finland, France, Ireland, Italy, México, Norway, Netherlands, Perú, Great Britain, Sweden, Switzerland, Europe Union, Uruguay.

elites. The work of CICIG and the prosecution had a lot of support from citizens and civil society, who trusted that a rule of law could be strengthened through these institutions.

After 12 years of work, as part of its mandate, CICIG provided support to the Attorney General Office in the investigation and prosecution of several high impact cases, the Commission on its way to fight corruption also worked in its relations with national counterparts to achieve its objectives. CICIG imposed strong internal policies, concerned about counterparts could undermine their cases, because the results of investigations against high level government officials, for the same reason, they built an integrity working relation to aim their anticorruption guidelines with various counterparts.

The renewal of CICIG's mandate generated controversy between the ex-President Pérez Molina and civil society, which specified the decision of request the Secretary General of the United Nations Organization, a new mandate's extension. The U.S. government resolved this controversy by linking economic aid to Guatemala to the extension of the CICIG's mandate.

The Attorney General's Office support was fundamental for the development of the impunity measurement system, thematic reports and manual of good practices in criminal investigation, strengthening trust between district attorney's, assistants and CICIG investigators. The collaboration that existed between CICIG and Attorney General was essential for its work and embodied in the UN agreement. At the beginning of its establishment the relationship was poor because the lack of support of the previous Attorney General⁷¹, this lack of cooperation could possibly have been due to its relationship with the corrupt structures under investigation.

⁷¹ Juan Luis Florido (2004-2008).

As the highest authority of the National Police, the Ministry of Interior had to give support to specialized prosecutors and specialized police, with educated professional agents. This was largely achieved by the bilateral cooperation agreement between both institutions, although this institution participated in corruption cases, which were investigated and prosecuted.⁷²

Facing Political Obstacles in 2018-2019

CICIG found another problems in its fifth and final extension of the mandate, when in September 2018, again the presidential prohibition remained to Commissioner Ivan's Velásquez to entry in Guatemala, despite a contrary decision of the Constitutional Court; in addition, another obstacle was the lack of renewal or repeal of courtesy visas of several CICIG international investigators, followed by the revocation of their accreditations and the setting of a period of 72 hours for leave the country in December 2018.

Morales' annoyance escalated after CICIG in 2017, decided to investigate him and his family members for embezzlement, fraud and campaign finance violations. The then former president could not be prosecuted because the Congress refused to lift the Immunity of President Morales in September 2017. Thus, Morales persisted in removing CICIG and succeeded.

These events produced the arrest of a CICIG investigator by Guatemalan border authorities in January 2019, which prompted Velásquez to work remotely from the neighboring country of El Salvador. The Commission continued to work and held face-to-face and online meetings with a group of investigators⁷³, including the head of the Special Prosecutor's Office against Impunity to continue analyzing corruption cases.

⁷² <https://www.cicig.org/wp-content/uploads/documents/convenios/mg-cicig.pdf>

⁷³ <https://www.soy502.com/articulo/ivan-velasquez-reune-investigadores-salvador-32419>

These meetings were short and although most used videoconferences. In the absence and personal treatment of the Commissioner for a year, the meetings were also organized with deputies, with non-governmental human rights organizations, with the Alliance for Reforms (a consortium of more than 30 anti-corruption entities),⁷⁴ with indigenous authorities, and journalists.

They faced challenges with the coordination at the higher level of the Attorney General Office, the direct counterpart was the Special Prosecutor's Office against Impunity, with that agency it continued to accompany investigations, presentation of cases and hearings. The Commission prepared a transition process that included the withdrawal as an adhesive plaintiff of legal proceedings which it was supporting. Nonetheless, the technical support in the litigating continued until the end of the mandate. CICIG's mandate ended on September 3, 2019.⁷⁵

Outcomes

The indictment cases efficiency and criminal prosecution indicators are figures for sentences obtained over the years, which have obviously been increasing, by point that between 2018 and 2019, 43% of defendants were convicted.⁷⁶

Verifying the quantity and impact of cases from 2008 to July 18, 2019, more than 1,540 people have been implicated in cases brought by CICIG and Attorney General. Under Velázquez, a greater number of investigations and judicial proceedings carried out, with 771 defendants and 41 sentences given by the judiciary from 2015 to 2018.⁷⁷ The joint

⁷⁴ <https://nimajpu.org/alianza-por-las-reformas-exigen-al-congreso-aprobar-de-manera-integral-las-reformas-constitucionales/>

⁷⁵ <https://www.prensalibre.com/guatemala/justicia/ivan-velasquez-se-despide-y-lanza-dardos-a-jimmy-morales/>

⁷⁶ Final Closing Report: The Justice Legacy in Guatemala. CICIG, 2019. p. 51 https://www.cicig.org/wp-content/uploads/2019/08/InformeLegadoJusticia_SI.pdf

⁷⁷ <https://www.plazapublica.com.gt/content/la-cicig-en-cifras-los-casos-los-implicados-y-los-procesos>

investigations led to more than 660 people processed by 2019.⁷⁸ During the period 2017-2018, were issued 71 sentences, and from the period 2018-2019, there were another 139 sentences of which approximately 90% were conviction sentences.⁷⁹

Of the more than 120 criminal cases accompanied by CICIG, more than 100 were handled by FECCI, where a variety of criminal issues were addressed (extrajudicial executions, torture, murder, money laundering, corruption in the justice sector, customs fraud, etc.) and more than 400 conviction sentences were issued.

The reforms implemented against crime and violence in the justice system, left positive results, specifically in the area of legislative reform and anti-corruption laws, which tightened penalties for crimes, also brought as a legacy, the Law Against Organized Crime, which modernized the criminal system, since it allowed the application of the figure of effective collaborator, in addition to introducing the model of undercover agents and wiretapping.

Now that the commissioner's term ended, a Gallup survey revealed⁸⁰ that CICIG was one of Guatemala's most trusted and popular international institution, because they showed that it was possible to fight against impunity and corruption and strength the rule of law.

However CICIG worked in its relationship improving it and its result was a good practice that served as a model for other countries, an example being is when the first mission belonging to the Organization of American States⁸¹, started operations in 2016, in

⁷⁸ Ibid p.50

⁷⁹ https://www.cicig.org/wp-content/uploads/2017/10/XII_Informe_Anual_CICIG.pdf

⁸⁰ <http://concritorio.gt/cid-gallup-mayoria-de-guatemaltecos-encuestados-ven-positiva-la-continuidad-de-cicig/>

⁸¹ <https://www.oas.org/es/sap/dsdme/maccih/new/mision.asp>

the Honduran Republic in order to support corruption and impunity from a comprehensive perspective.

Lessons Learned:

Cooperation with domestic institutions helped CICIG tackle corruption

The performance effectiveness of these entities in the judicial hearings - the Attorney General's Office as accuser and represented by FECCI staff, and CICIG as an adhesive complainant through their litigating lawyers, was strategic and showed there is hope to eradicate impunity and corruption with a strong partnership with local agencies, civil societies and technical international cooperation was a key factor of success.

This was possible due to the agreements signed between national institutions, the support given by civil societies to the work of CICIG and the financial aid from international cooperation in order to fight impunity and corruption.

The strong support of both institutions based on the cases investigated and the sentences obtained, coherence and joint work, were fundamental advantages to tackle corruption cases and strength justice in Guatemala.

Successful prosecutions: Case selection

After the “Line Case”, Velásquez changed the focus of the CICIG, moving away from the collection of cases he inherited and focusing on a set of investigations on the sources of corruption politics in government, rural city halls, and links between the embezzlement of state resources, illegal financing of political campaigns and crime organized in a context characterized by weak judicial and security systems.

The CICIG based the selectivity of cases to support Guatemalan partners to confront the phenomenon of the CIACS, which through crimes affect the rights of Guatemalans and

who has the capacity to seek impunity. To specifically pursue certain cases involving co-optation of the State by criminal structures, they had all the institutional support possible within the previous attorney general⁸² that supported them and judicial branch to guarantee impunity.

Escalating political attacks and electoral cycles

The attacks suffered by the Commission since 2016 have also shown that efforts to strengthen justice are not enough to transform the state. CICIG came to unveil the brain of the CIACS and stripped the capture of the various corrupted sectors, government and political institutions.

Very powerful sectors saw the fall of the mechanisms and mafias controlled by them through the State and decided to hinder the Commission's work and stop the institutional reform and strengthening processes with political interference and many times taking advantage of electoral cycles. Some of the tried to discredit and erase the legacy of the Commission.

To generate greater changes in Guatemala and fight impunity, the justice sector can serve as a catalyst and trigger for processes of change. It is essential to leverage that process with comprehensive reforms to the State. The political class, civil society, the media must promote necessary reforms to strengthen democracy.

⁸² Former prosecutor Juan Luis Florido, accused of collaborating by diverting an investigation related to a parallel security group made up of senior government officials from Oscar Berger (2004-2008).

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