

BRIEFING

Unfinished Business: Guatemala's International Commission against Impunity (CICIG)

MARCH 2015

In 2007 Guatemala boldly sought the help of the United Nations in its struggle against organized crime linked to security and other government actors, leading to the creation of the International Commission against Impunity in Guatemala (known by its Spanish acronym CICIG). President Otto Pérez Molina must now decide whether to ask the United Nations for a further two-year mandate for CICIG. This briefing paper argues that he should do so, because CICIG has proved an indispensable partner and critical observer. CICIG remains crucial in Guatemala's continuing struggle to eliminate criminal influences debilitating to a democratic society, and to strengthen judicial independence and the rule of law.

Introduction

Eight years ago, Guatemala's justice system had become synonymous with impunity. After a brutal and long-running armed conflict, criminal networks carry inordinate power in Guatemala, with too often violent results and a destructive influence on Guatemalan society and the young democracy. In response, CICIG was created as an international body to support the Public Ministry, the National Police and other State institutions in the investigation and prosecution of crimes committed by organized criminal enterprises with strong ties to political and security sector actors, and to engage alongside state institutions in other activities to dismantle these groups.

These groups (known in Guatemala by their Spanish acronym CIACS¹) arose during the internal armed conflict among security sector personnel who combined organized crime networks with considerable political influence. While the older groupings exercise somewhat diminished influence, they have given rise to newer, more active entities which continue to reflect the penetration of organized crime into formal power structures. They share the same traits as the CIACS which arose directly from the armed conflict—including the use of violence, corruption and the obstruction of justice for criminal ends.

After three extensions of successive two-year mandates since CICIG started operations in 2007, Guatemalan President Otto Pérez Molina must now determine whether to request that the United Nations renew CICIG's term after September 2015.

In the past eight years, CICIG has played a crucial role in Guatemala in strengthening state investigative and prosecutorial institutions, advancing paradigmatic corruption cases and the prosecution of powerful criminals, providing international support for much-needed legal reform, and strengthening – and even safeguarding – state institutions and the democratic system.

CICIG offers an important model of international support for state institutions to strengthen the rule of law in states struggling to control criminal violence with frail and often corrupt security and judicial institutions. CICIG has worked with national authorities to demonstrate the ability of a well-resourced prosecutor to efficiently resolve complex cases and investigate and prosecute previously untouchable figures.

This is unfinished business.

¹ *Cuerpos Ilegales y Aparatos Clandestinos de Seguridad*, or “illegal security forces and clandestine security organizations.” Agreement Related to the Creation of an International Commission Against Impunity in Guatemala (CICIG), 12 Dec. 2006, ratified by Congress of Guatemala, 1 Aug. 2007, following Consultative Opinion of the Constitutional Court, May 2007.

Progress has been fitful and much more remains to be done. It is hard to conceive of the steps taken, or those to come, without CICIG's complementary efforts.

Powerful organized criminal enterprises continue to undermine and corrupt democratic structures in Guatemala. There is a need to consolidate improvements in the justice sector. Evidence of corruption and political manipulation regarding the nation's highest political, judicial and prosecutorial appointments demonstrate the gravity of threats to independence of Guatemala's fragile justice system. CICIG's role as partner and critical observer is indispensable to make lasting headway against Guatemala's structures of impunity.

CICIG is not a panacea, and is a novel and imperfect institution. Yet CICIG nonetheless, and at Guatemala's current juncture, plays an essential role working with state institutions to provide independent technical expertise as well as operational and political capacity to limit the impact of criminal structures on the democratic system.

Criminal Investigations and Prosecutions

Guatemala has for the first time taken important steps to address the powerful actors who have undermined democratic governance and hampered the country's security. CICIG has played a crucial role in important cases which have demonstrated that state institutions—with adequate political and technical support, and insulation from undue pressures—can effectively investigate, prosecute and hold accountable those who had previously been deemed untouchable.

CICIG's more than 200 investigations have resulted in charges against powerful criminal operatives and over 160 current or former government officials. As importantly, it has helped prosecutors make the shift from looking exclusively at individual actors to examining criminal organizations. It has worked with prosecutors to investigate at least fifteen networks related to organized crime and corruption.

- *A corruption case against former senior state and military officials:* CICIG worked with Guatemalan prosecutors to prosecute former president Portillo and several once-untouchable senior military officers for embezzlement and corruption. Portillo was extradited from Mexico in 2008, and in 2009 charged along with his attorney general, army chief, and several other senior military officers, in the 2003 theft of defense ministry funds. The investigation, while unsuccessful in Guatemala, led to his 2013 extradition to the United States where he plead guilty to charges of money laundering and was sentenced to six years imprisonment.
- *Network of high-level security officials involved in prisoner executions:* A

CICIG investigation unraveled a parallel structure within the Interior Ministry that carried out extrajudicial killings, “social cleansing” operations, money laundering, drug trafficking, and extortion. CICIG provided evidence for the indictment of 19 people in connection with the execution of ten prisoners at El Pavon and El Infiernito prisons, as well as the 2007 killings of Salvadoran members of the Central American Parliament (Parlacen) and related killings of arrested police officials and investigators.² CICIG worked with state authorities to bring charges against former senior officials; pursued extradition and provided evidence to support the prosecution of various officials outside of Guatemala.³

- *Prison enterprise headed by a convicted assassin and involving senior prison officials:* CICIG and the Public Ministry identified and dismantled a multi-million dollar criminal structure run by former army captain Byron Lima, in prison for the 1998 political assassination of Archbishop Juan Gerardi, author of a Guatemalan truth commission report. Lima now faces charges alongside 12 high-level state agents for running a money-laundering empire from within prison walls, accused of extortion, selling security and arranging prisoner transfers for cash. Among those charged are the director and deputy director of the national prison system. Recognizing the importance of CICIG, Lima himself said before a judge that, “if CICIG stays in Guatemala,” other cases will advance which will implicate powerful actors—indirectly calling for its ouster, while demonstrating the importance of its continuation.⁴
- *The Mendoza crime family, a “private army”:* In 2014, CICIG announced the capture of Haroldo Mendoza Matta, the leader of one of Guatemala’s oldest criminal dynasties, dominating large areas of northern Guatemala with a “private army” of assassins and control of the drug trade. The Mendoza family has been linked to business and political elites, and accused of creating business structures benefiting from state corruption.
- *Dismantling criminal networks in state institutions:* CICIG joined the Public Ministry in arresting former police chief and deputy interior minister Marlene Blanco for extrajudicial killings. CICIG supported the prosecution of scores of people in a criminal network within the migration authorities which falsified passports to permit illegal residence or movement in Guatemala. CICIG also persuaded the Public Ministry to open a formal investigation of Alvaro Matus, the head prosecutor for organized crime and corruption, accused of intentionally obstructing investigations into the Rivera and Parlacen killings.

² In 2007, three Salvadoran parliamentarians were killed in Guatemala. Four police detectives arrested for the murder were themselves murdered in maximum-security jail cells soon after their arrests. Victor Rivera, an Interior Ministry advisor investigating the killings, was later murdered, as was prosecutor Juan Carlos Martínez soon after the acquittal of 13 suspects.

³ Director of Police Criminal Investigations Victor Hugo Soto was convicted. National Police director Erwin Sperisen was convicted in 2014 to life imprisonment in Switzerland.

⁴ “CICIG no debe estar el país,” afirma Lima Oliva,” Prensa Libre, 16 Sept. 2014.

Law Reform

Guatemala now has legislation that enables a modern law enforcement approach and a more solid foundation for the nation's judicial institutions. CICIG has been instrumental to these efforts, through the provision of technical and advisory capacity. CICIG has authored, and/or contributed to, essential law reform proposals, some still awaiting adoption or full implementation.

- *Modern investigative and prosecutorial techniques:* CICIG's lobbying for legislative approval of modern investigative techniques assured the provision of the tools needed to solve complex cases and confront organized crime. CICIG and the Public Ministry successfully lobbied for congressional authorization of a property seizure law and modern tools such as phone intercepts, controlled drug deliveries, undercover operations, plea bargaining, and streamlined extradition processes. CICIG also submitted a package of reforms to the criminal procedure, organized crime, and trial proceedings laws to equip state actors with the appropriate legal authority and tools; and for modifications of laws on arms, private security regulation, corruption, illicit enrichment, and constitutional challenges.
- *Specialized "high-risk" courts:* With CICIG support, Guatemala's congress created so-called "high-risk" courts for organized crime and other complex cases and the Supreme Court authorized the use of such courts. Since 2009, all major cases of organized crime and human rights abuses have used these specialized courts, ensuring greater judicial independence, heightened expertise, and greater protection for the judges and other participants.
- *Judicial selection processes:* In 2009, with CICIG's support and technical guidance, Guatemala's congress established new procedures for selecting senior judges and the attorney general. The new process created minimum requirements for judicial posts, and clearer regulation and oversight of the process. The recent selection processes, marred by evidence of corruption, demonstrate that continued reforms and international oversight are still critical; CICIG continues to provide technical assistance to these discussions.

Strengthening the Capacity of National Authorities

With significant help from CICIG, Guatemala's police and prosecution authorities now boast specialized personnel capable of handling complex cases and using the tools developed through law reform. For the first time, the public ministry announced a major improvement in the ability to resolve homicide cases and substantial reductions in the number of homicides in recent years. CICIG's contributions have been repeatedly acknowledged by state actors.

- *Strengthening prosecutorial capacity:* CICIG worked with the Public Ministry to establish and transfer skills to a specialized and vetted unit for cooperation

between the two entities to focus on political corruption and organized crime. CICIG has helped also to develop within the Public Ministry a witness protection program, a security unit to protect prosecutors, an international relations office to support cooperation, and a much-praised Criminal Analysis Unit. Further, CICIG has worked with authorities to permit the effective use of wiretapping and sophisticated forensic technologies to dramatically increase Guatemala's criminal investigation capacity.

- *Strengthening policing capacity:* CICIG worked with the Interior Ministry to create and train a police unit specialized in criminal investigation. President Perez Molina, at the start of his presidency, specifically recognized the technical capacity-building role of CICIG when he sought an extension of its term for this purpose.

Strengthening the Democratic System

CICIG has helped to strengthen the democratic system, including with the dismantling of networks of corruption within public authorities, the successful investigation of a case which threatened to bring down the government, research and technical analysis on the funding of political parties and corruption within the customs authorities, and monitoring of judicial selection processes.

- *Challenging corrupt ministers, police and prosecutors:* CICIG's investigation and engagement with the public ministry led to the prosecution of four ministers. CICIG worked with the public ministry to bring charges against two police directors, and successfully pushed for the removal of some 1,700 police officers implicated in corruption and other criminal activities.⁵

CICIG's work has led to the dismantling of at least five criminal structures composed of police officials, most implicated in cases of kidnapping, drug trafficking, extortion and theft. CICIG also supported the removal of over 50 prosecutors and investigators implicated in corruption⁶; at least 12 staff of the Public Ministry were charged for having participated in illegal activities. In 2012, Interior Minister Mauricio Lopez Bonilla expressly sought CICIG support to help remove unqualified or compromised ministry staff.⁷

- *The Rosenberg case:* CICIG's successful resolution of a complex murder saved the government from what was effectively a soft coup attempt. Rodrigo Rosenberg, a respected Guatemalan lawyer and former director of the Guatemalan Chamber of Commerce, was purportedly assassinated in 2009 and, following his death, left a video message that threatened to bring down the Colom government—accusing the President of organizing his assassination.

⁵ Luis Angel Sas, "CICIG aconseja depurar a la mayoría de la cúpula de la Policía," El Periodico, 31 Jul. 2008.

⁶ These prosecutors were not removed, as Congress failed to establish the appropriate authorizing body.

⁷ Gerson Ortiz, "Gobernación pide asesoría de la CICIG para supervisar al personal," El Periodico, 9 Feb. 2012.

CICIG investigated the killing, eventually concluding that Rosenberg arranged his own killing to destabilize the government and detailing the forensic techniques used to solve the crime. The credible and professional resolution of the case averted a major crisis.⁸

- *Customs related corruption:* Corruption in the customs authorities is rampant and recognized as a primary mechanism for tax evasion in Guatemala, at an estimated cost of over US\$ 1 billion. CICIG's commitment to analyze this issue, and CICIG's capacity for an independent investigation, helps to place customs corruption on the national agenda with ramifications for the ability of political, investigative and prosecutorial actors to respond to the corruption.
- *Analysis of political party financing:* CICIG is analyzing the influence of criminal enterprises on the financing of political parties and campaigns. The financial support of criminal actors for parties and electoral processes jeopardizes the independence of state institutions challenging impunity.
- *Justice sector selection processes:* In a judicial election process which produces intense political maneuvering, CICIG has publicly, and with some success, challenged the election of judges unfit to serve on Guatemala's highest courts. CICIG intelligence and advocacy has led to the dismissal of two attorneys general, and facilitated the appointment of the country's most reform-minded chief prosecutor in a generation. When the time came for the selection of a new national Human Rights Ombudsman, the relevant congressional committee expressly requested CICIG's review of the qualifications of the 19 candidates under consideration.

Support for CICIG

Although its actions have been controversial, and in some cases threatening to powerful interests, CICIG has won broad support domestically and internationally. Former foreign minister Edgar Gutierrez has recognized CICIG's achievements and its need for continued engagement in Guatemala, alongside the government, to achieve genuine institutional reform that could avert Guatemala becoming a failed state.⁹ Guatemala's current and former attorneys general, and the current interior minister, whose institutions benefit from CICIG's assistance, have strongly endorsed CICIG's work and recognized the need for its continuation in Guatemala beyond 2015.¹⁰

Interior Minister Mauricio Lopez Bonilla asserted recently that CICIG is a crucial partner, with demonstrated successes, and should remain in Guatemala beyond

⁸ Rosenberg asked well-known owners of a pharmacy chain to help him eliminate an "extortionist," and they easily hired a band of killers, most from the police who successfully carried out the request – and the extortionist turned out to be Rosenberg himself.

⁹ Edgar Gutierrez, "Las mafias no tienen ideología," *el Periodico*, 19 Jan. 2015.

¹⁰ "Fiscal Thelma Aldana: 'CICIG debería seguir,'" *siglo21*, 9 Jan. 2015.

2015 to “ensure that the advances [achieved] do not go backwards.”¹¹ Attorney General Thelma Aldana recognized collaboration with CICIG as an “opportunity” for the country, and one initially sought out by Guatemala.¹² Various political actors have also recently pledged their support to CICIG “to continue collaborating with Guatemala to improve the justice system.”¹³

The importance of CICIG’s role has also been emphasized by international actors. UN General Secretary Ban Ki Moon has recognized CICIG’s work “to fight for justice.”¹⁴ US Vice President Joe Biden, in a recent visit to Guatemala, affirmed that the continuation of CICIG in Guatemala is “very, very important” given the “gigantic” impunity problem in the Northern Triangle of El Salvador, Honduras and Guatemala.¹⁵

Conclusion

CICIG has made important reforms and unraveled entrenched criminal networks. Nonetheless, such networks continue to wield excessive power and are a threat to Guatemala’s democracy. The audacity of individual cases brought to light—top ministers implicated in the execution of prisoners; a prison enterprise run by a military officer convicted for a political assassination—lays bare the depth of the problem. Security and justice institutions remain weak, and the fear of serious crime for ordinary Guatemalans is immense. Other experiments at tackling impunity in complex contexts around the world have shown that interrupted efforts have short-lived results.

As vital as the prosecutions and reforms of recent years have been, they remain fragile and reversible. CICIG is a critical partner to create the potential for lasting change in Guatemala’s security and justice sector.

¹¹ “López Bonilla está de acuerdo con ampliar mandato de CICIG,” *La Hora*, 5 Sept. 2014.

¹² “Si la CICIG se va, el Ministerio Público tiene que caminar solo,” *El Periodico*, 9 Jan. 2015.

¹³ Facebook, Sandra Torres, Presidential candidate of Guatemala’s Unidad Nacional de la Esperanza (UNE).

¹⁴ G. Conreras, “Presidente Otto Perez Molina gestiona extensión del periodo de Cicig,” *Prensa Libre*, 29 Mar. 2012.

¹⁵ Joe Biden: “Mandato de CICIG debe prorrogase,” *Emisoras Unidas*, 3 Mar. 2015.

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