

CICIG: Created to disappear, designed to last (*working paper*)

Jonatán Lemus¹

Introduction

The International Commission Against Impunity in Guatemala (CICIG) was created in 2006 out of an agreement between the state of Guatemala and United Nations. It started its work in 2007 after ratification by the Guatemalan Congress. The CICIG's main purpose as stated in the agreement is "to support, strengthen and assist institutions of the State of Guatemala responsible for investigating and prosecuting crimes allegedly committed in connection with the activities of illegal security forces and clandestine security organizations" (CICIG's Agreement, 2006). A decade after its creation, CICIG has received worldwide attention for its work prosecuting top political actors in Guatemala, such as former president and vicepresident, Otto Perez Molina and Roxana Baldetti, just to name a few.

Most of the literature about CICIG portrays it as a successful case of international intervention and shared sovereignty. By fighting against corruption in the state, the Commission has contributed to strengthening institutions and the rule of law in Guatemala. Furthermore, CICIG is usually praised for: 1) its capacity to build alliances with state and civil society actors, 2) promoting law reforms, 3) playing an active role in judicial appointments, and 4) its communication strategies to acquire legitimacy in public opinion's eyes. Because of this successful experience, some have argued that this model can become a new recipe for international involvement in countries with weak judicial institutions.

¹ Professor of Political Science at Universidad Francisco Marroquin, Guatemala.

However, before jumping into conclusions about the applicability of this model around the world, one must reflect on some questions about CICIG's activities and results. To what extent does the involvement of the international body in local political processes generate incentives for bureaucratic, self-interested behavior? Do CICIG's alliances with state and civil society actors diminish its independence as an investigative institution? How do pressures from public opinion affect the Commission's work and its selection of cases? Does the prolongation of CICIG's mandate generate dependence instead of the strengthening of Guatemalan institutions?

In fact, CICIG has also been criticized for the very same reasons others have praised it: becoming a player in judicial appointments, proposing some controversial reforms to the Guatemalan constitution, and the use of televised conferences to shift the public in its favor. From this perspective, instead of strengthening Guatemalan institutions, the Commission is making national institutions dependent on its assistance.

This article focuses on these points of contention and argues that CICIG's ever-growing involvement in the political system is a consequence of its institutional design. In order to survive, CICIG depends on three key factors: 1) the collaboration of state institutions such as the Attorney General, the National Police, and courts 2) favorable rules of the game that will make its cases more likely to succeed, and 3) mobilization of public support to gain legitimacy. Consequently, CICIG has become involved in the appointment of key actors in the justice system, in the promotion of changes to Guatemalan laws, and in media campaigns to generate support among Guatemalan society. The side effects of this institutional design pose an interesting paradox: an international institution created to eventually disappear, once immersed in a polarized political system, will face incentives to behave as any domestic bureaucracy trying to maximize its power and resources to ensure its survival.

The article is divided in four sections. First, I briefly describe some of the arguments presented on the literature about CICIG and institutional design. Second, I discuss the context that led to CICIG's creation, and briefly review the tenure of three Commissioners and their major cases. In the third section, I delve into the discussion on how the institutional design creates incentives for CICIG's involvement in Guatemalan politics via influencing judicial

appointments, changes to the rules of the game, and public opinion. In the last, I summarize this article's main argument and present some questions about international interventions.

Previous literature on CICIG and its institutional design

It has been only ten years since the beginning of CICIG's work in Guatemala, but some articles have been written on CICIG's institutional design. In these papers, the Commission is usually portrayed as a case study of successful international intervention. For example, Morano (2017) studies the process of institutionalization that CICIG has undertaken during its first decade. He argues that only by achieving a higher level of institutionalization, CICIG has become more effective at prosecuting corruption networks. He compares the tenures of three CICIG's commissioners and shows that whenever a Commissioner decided to keep a lower public profile, deinstitutionalization occurred which put the institution's existence in peril. In fact, Morano claims that Iván Velásquez, the current CICIG's Commissioner, provided legitimacy to the organization when presenting the "*Caso La Línea*", in which former president and vice-president Otto Perez and Roxana Baldetti were accused.

Furthermore, Navas (2016) makes a positive argument about CICIG's institutional design. She argues that the Commission's success is a result of its "very permissive, explicit and clear mandate" (p.42). In her view, CICIG is not an international imposition as it was requested by the Guatemalan state. This increases the sense of the Commission's legitimacy in the country. The mandate provides the capacity to investigate any public person and allows the Commission to create alliances with local state actors. Navas argues that by having access to the domestic institutions' internal dynamics, CICIG has been able to propose changes within them.

Other studies focus on the idea of "shared sovereignty". Gunther Maihold (2016) views CICIG as "the first hybrid [international] justice mechanism that was not established in the context of transitional justice (...) but to build capacities for weak judicial structures" (p.8). In other words, CICIG's uniqueness comes from the fact that it was requested by the Guatemalan state, which agreed to cede some of its sovereignty in the judicial system to an international body.

From Maihold's perspective, "[CICIG's] hybrid nature leads to constant negotiation processes between different political actors" (p.14). Thus, CICIG must become involved with local actors, as it needs their approval. Maihold points out that whether CICIG is accepted by Guatemalan society depends on how actors evaluate its outputs. For that reason, in its article Maihold makes a description the different arguments in favor and against the existence of the UN sponsored body in Guatemala.

Another essay by Edgar Gutiérrez (2016) also points out CICIG's dual nature: A Guatemalan proposed design executed by an international organization. Gutierrez argues that CICIG was created as an innovative international intervention in the context of a state controlled by organized crime. At the time, there were only two options to prevent Guatemala from becoming a "failed state". One was the transfer of international capacities to Guatemalan institutions, which the experts considered was not enough, and the other was the establishment of a peacekeeping operation, which they did not view as appropriate. As a result, they decided to propose the creation of a new international body under the concept of shared sovereignty. This meant that an international commission would intervene in national judicial prosecution, but it was subject to Guatemalan laws. By working with Guatemalan officials in criminal investigations, the international commission would at the same time, transfer capacities to Guatemalan institutions. Finally, Gutierrez makes an important observation: the design established that CICIG was not regulated by United Nations bureaucratic mechanisms so "it had to make its own path, on the go, opening up space for creativity" (p.31). This resulted in some weaknesses once in operation. CICIG's temporary nature resulted in high rotation of human resources, short term funding, and lack of formal mechanisms for supervision and accountability.

In this brief review, I presented those articles that focused on how institutional design was important for the Commission's work. Overall, the literature has a positive view of CICIG's design and work in Guatemala. Nevertheless, in this essay I question whether an international body, created to be temporary, must aim at accumulating more power and influence in the local political system, behaving as any domestic bureaucracy would. Certainly, the evidence shows that in the short term, CICIG may have contributed to weakening criminal structures.

However, in the long run, the “permissive” “creative” “institutionalized” mandate (as the mentioned authors put it) creates incentives for a Commission that desires more power, making Guatemalan judicial institutions dependent on its assistance. The rest of the article will develop this argument.

CICIG’s history and institutional design

Guatemala experienced a 36-year-long civil conflict that resulted in thousands of deaths. One consequence of this conflict was the emergence of illegal security forces and clandestine security organizations. In response to this phenomenon, after the signing of the 1996 Peace Agreements, one agenda item was the dismantling of these parallel security apparatuses known as CIACS (Illegal Bodies and Clandestine Security Apparatuses). A first step in that direction was the 2003 request by the Guatemalan government asking United Nations to propose a mechanism to investigate and prosecute member of CIACS.

In 2004, the government and United Nations signed an initial agreement for the creation of a “Commission for the Investigation of Illegal bodies and Clandestine Security Apparatuses” (CICACS), which was granted its own prosecution powers. However, once in discussion in Guatemala, the Constitutional Court determined that the agreement was unconstitutional, as only the Public Prosecutor (*Ministerio Público*) was in charge of criminal investigation in the country.

Despite this first failure, the negotiations between United Nations and the Guatemalan government continued. As a result of this ongoing process, in 2007 the state of Guatemala and United Nations signed the “*Agreement between the United Nations and the State of Guatemala on the Establishment of an International Commission Against Impunity in Guatemala*”. This new agreement addressed previous concerns about the commission’s prosecutorial powers, and established the following set of functions:

1. Provide technical assistance to Guatemalan institutions in the investigation and criminal prosecution of crimes committed by illegal security groups and clandestine security organizations.
 2. Join in a criminal proceeding as private prosecutor (*querellante adhesivo*)
 3. Report to the relevant administrative authorities the names of public officials who may interfere with the Commission's exercise of its functions.
 4. Implement cooperation agreements with the relevant state institutions for the purposes of carrying out its mandate.
 5. Recommend to the State the adoption of public policies, including legal and institutional reforms, for the eradication of clandestine security organizations.
- (Agreement CICIG, 2006)

The commission's term had a two-year duration, but it could be extended at the request of the Guatemalan government. The Commission started its work in September 2007 under the direction of the Spanish prosecutor, Carlos Castresana who stayed in as commissioner until 2009.

During Castresana's term, CICIG was involved high impact cases such as:

- The accusation against former president Portillo for a case of corruption.
- The investigation of lawyer Rodrigo Rosenberg's assassination and whether president Alvaro Colom and the first lady, Sandra Torres, were implicated.

Castresana resigned in 2010 after he charged the elected Attorney General at the time, Conrado Reyes, for not collaborating to CICIG's work against corruption. Reyes was later removed, and Claudia Paz y Paz was appointed in his place.

After Castresana's resignation, Francisco Dall'Anese, a Costa Rican prosecutor, became CICIG's new commissioner. Dall'Anese remained in the job for three years, from 2010 to 2013. During his tenure, CICIG was involved in the investigation of cases such as:

- *Caso Pavón*, in which CICIG accused former public officials for extrajudicial killings in prisons.
- *Caso Blanco Lapola*, against former head of the National Police, Marlene Blanco Lapola, for leading an extrajudicial killings organization.
- *Caso Migración*, in which public officials in the *Dirección General de Migración* were charged for illegally providing passports to foreigners as part of a human trafficking group.

Dall’Anese tried to manage a lower profile as commissioner. He resigned after the Guatemalan government complained to United Nations about his public statement regarding the genocide trial going on in the country. According to Morano (2017), Dall’Anese was responsible for a process of deinstitutionalization of CICIG, which put the existence of the institution in peril. In fact, after Dall’Anese’s resignation, CICIG’s existence was debated, and the new commissioner was asked to prepare an exit strategy for the following two years.

Ivan Velásquez succeeded the Costa Rican Commissioner. He was known for his work against paramilitary structures in Colombia. During Velasquez term, CICIG increased the number of cases it has become involved in. Apart from prosecuting groups dedicated to extrajudicial killings, together with the 2014-elected Attorney General, Thelma Aldana, CICIG started focusing in corruption cases. The first major corruption case was known as *La Línea*. The Commission accused president and vice president, Otto Perez Molina and Roxana Baldetti, of leading a smuggling structure. As a result, CICIG’s legitimacy increased and it became the most trusted institution in the country. Its mandate was extended for another two years, as pressure mounted in favor of the international commission.

From 2013 to 2017, CICIG has been involved in cases such as:

- *Caso La Línea*: former president and vice president, Otto Perez Molina and Roxana Baldetti, were accused of leading a smuggling structure.

- *Caso IGSS Pisa*: members of the board of Guatemalan Social Security Institute were charged for hiring of a company that provided bad quality services to patients, resulting in their death.
- *Caso Cooptación del Estado*: former public officials and businessmen were arrested for allegedly creating an illegal campaign-funding network.
- *Caso Bufete de la Impunidad*: CICIG denounced the existence of a lawyers' firm that benefited from influence peddling and accused Supreme Court judge, Martha Sierra de Stalling of granting them benefits.
- As a result of these and more corruption cases, CICIG has presented investigations against former ministers, Supreme Court judges, congressmen, mayors, and directors of other state institutions.

On August 2017, CICIG claimed that president Jimmy Morales was responsible of illicit campaign funding, as he allegedly failed to report campaign contributions during the 2015 electoral process. A few days later, Morales tried to expel the Commissioner from the country on the grounds that Velasquez had violated the terms of the Geneva Convention. The Constitutional Court ruled Morales' effort unconstitutional, which allowed the CICIG's commissioner to remain in the country.

While CICIG's work was well received by all Guatemalan sectors in 2015, the increase and scope of the corruption cases, as well as the debate over constitutional reform in 2017 (promoted by CICIG itself), has generated a very polarized political climate, in which some question CICIG's procedural and political mechanisms. In the following sections, I focus on three factors of CICIG's institutional design that are critical for its survival. I show how these institutional factors create incentives for CICIG's involvement in local political processes.

The effects of CICIG's institutional design

a) Involvement in judicial appointments

According to the 2006 agreement, CICIG can only provide assistance for the prosecution of criminal groups; it cannot promote any investigation on its own terms. This has created

incentives for collaboration between CICIG and Guatemalan state institutions. While this is a positive feature of the 2006 agreement, as it ensures that CICIG respects Guatemalan laws and processes, it has had an unintended political consequence. As part of its survival, CICIG must ensure the support of the Attorney General, the head of the National Police, judges and heads of other state institutions. When the Commission has not found a supportive network, it has resorted to its power to make public accusations against the officials who do not align with its agenda.

At first sight, this may not be a negative issue. There is a broad agreement on eradicating parallel security apparatuses that undermine the rule of law. However, because CICIG requires a positive relationship with actors such as the Attorney General and court judges, it has played an increasing role in judicial appointments, becoming a veto player. As the elections of these key posts become more political, the Commission has also engaged more and more in political activism.

CICIG's interest in judicial appointments was observed from the very beginning. According to Morano (2017) in 2008, CICIG's first commissioner, Carlos Castresana, did not find a supportive environment with the Attorney General at the time, Juan Luis Florido and the National Police Director, Isabel Mendoza. In response, Castresana asked president Alvaro Colom to remove Florido from his post or, he threatened, CICIG would leave the country (Morano, 2017). The Attorney General Florido ended up resigning as a consequence of CICIG's pressure, and Amilcar Velasquez Zarate was appointed. The new Attorney General was more collaborative, and helped Castresana set up a special anti-corruption unit within the Attorney General's Office, which later transformed into the FECI (Special Unit against Impunity). Furthermore, president Colom also removed Isabel Mendoza as head of the National Police (Morano, 2017), and he appointed Marlene Blanco Lapola who was later charged by CICIG of extrajudicial killings.

Carlos Castresana also played an important role in the selection of a new Attorney General. On May 2010, president Colom had appointed Conrado Reyes. Castresana came out in a news conference accusing Reyes of having links with corruption networks. As Colom refused to ask

Reyes' resignation, Castresana left CICIG, which generated more pressure from civil society groups against Reyes and Colom. Two days later, the Constitutional Court ordered a new selection process. Thus, despite his resignation, Castresana was successful in his attempt to block Reyes' appointment.

CICIG's involvement in appointment processes did not stop with Castresana. At the beginning of commissioner Francisco Dall'Anese's term, the institution was an active participant in the election of a new attorney general (Morano, 2017). CICIG collected information on the applicants and influenced civil society on the final list that was sent to president Colom, who appointed Claudia Paz y Paz as head of Ministerio Publico. Paz y Paz had a positive relationship with CICIG, and that helped the organization survive during those years.

On 2014, Thelma Aldana was elected new Attorney General. While some civil society organizations expressed concerns about her election, CICIG did not veto her as they did with previous attorneys. Aldana proved to be an important collaborator in CICIG's agenda, and during her tenure, both institutions have undertaken the most important corruption cases in Guatemalan history.

Apart from its role in the selection of Attorney General, CICIG has also questioned judges that are allegedly associated with corruption networks, and at the same time, the Commissioners have constantly criticized the process for judicial appointments. For example, former Congressman Gudy Rivera was charged of influence peddling when he asked one of the candidates for court, Claudia Escobar, to rule in favor of the government party in a particular case. In exchange, Rivera offered his party vote for her reelection as a judge. Furthermore, CICIG also prosecuted other judges, including some members of the Supreme Court, accusing them of corruption.

All of the cases above show a trend in CICIG's behavior: whenever a public official does not collaborate with the institution's agenda, CICIG has publicly denounce them for having links with corruption networks. The institutional design established in the 2006 agreement gives CICIG this power, and has converted it into a veto actor in Guatemalan judicial selection

processes. While this may seem like a positive aspect of CICIG's role in Guatemala, one must question whether this was the original intent of the 2006 Agreement.

b) Changes to the rules of the game

As seen in the previous section, CICIG has played an important role in the selection of key public officials. This is because, in order to survive as an institution, CICIG needs to find actors willing to collaborate. Otherwise, CICIG would not have any capability to fulfill its mission because of its lack of prosecutorial powers.

Apart from a support network, CICIG has also needed changes to the rules of game. The narrative has been that the Guatemalan judicial system does not allow the institution to do its work properly. The 2006 Agreement also gave CICIG the power to recommend the Guatemalan state public policies, and institutional reforms to combat the illegal security apparatuses. Under that provision, CICIG has promoted a number of initiatives to change the Guatemalan justice system such as:

- Wiretapping: since its creation, CICIG has promoted the use of wiretaps to collect evidence for its cases. In 2008, Castresana promoted the approval of the *Ley Contra la Delincuencia Organizada*, which granted the *Ministerio Publico* the legal power to wiretap those individuals that were suspicious of belonging to criminal networks.
- Confidential informants: In the 2008 law, CICIG also promoted some changes to the figure of confidential informant. Although the law did recognize this figure since 2006, it was not applicable to cases of murder. In fact, according to WOLA (2015) the figure was never applied until the creation of CICIG.
- Witness protection program: CICIG also promoted the application of this program in Guatemala, which was not implemented due to lack of resources. CICIG "wrote regulations, protocols, and a best practices manual, and it provided support in identifying safe lodging" (WOLA, 2015).
- Courts for High Risk Crimes: these courts were created to deal with high impact cases of organized crime and violations of human rights. These are centralized courts that

have headquarters in Guatemala City, but have jurisdiction over the whole country (WOLA, 2015).

- Law against corruption: approved in 2012, it created new categories of criminal offences such as illicit enrichment, influence peddling, and bribery (Carrera, 2017)
- Constitutional reform: CICIG also promoted changes to the Guatemalan Constitution. Among the proposed changes, it sought a change to judicial appointment mechanisms, as well as the recognition of indigenous law as a system parallel to the existing one. The proposal to reform the Constitution generated the highest level of polarization in the country, and created a hardcore opposition of many actors to CICIG's role.
- More recently, the commissioner Velasquez has also mentioned future initiatives to modify different laws. These will cover not only judicial issues but also more general topics as electoral law and civil service reform.

Nevertheless, some have questioned the manner in which CICIG has made use of its "proposal power". While CICIG can legally recommend changes, it is not clear to what extent it can influence political factors or public opinion to promote a particular reform agenda. Furthermore, CICIG's recommendations are increasingly covering a wider array of topics that may or may not be related to the Commission's main mandate.

The conclusion in this section is that in order to survive as an institution, apart from finding public actors willing to collaborate, CICIG has also promoted changes in the rules of the game. Without changes to the justice system, CICIG would not be able to do its work properly, and hence, it would be unable to justify its existence. In order to promote this reform agenda, CICIG has made use of political tactics. The problem with this model is that 1) changes are designed exclusively to make CICIG's job viable, and 2) a poor performance can always be blamed on the need for more reforms, thus creating a vicious cycle.

c) Mobilization of public support

CICIG was designed to be a temporary institution that would eventually fulfill its purpose. For that reason, the Guatemalan government has to request its renewal every two years. The

paradox of this institutional arrangement is that, once it becomes alive, an institution will always have incentives to maintain its existence, just as any domestic bureaucracy would.

In CICIG's case, the need for a constant extension of its mandate, agreed on 2006, has created incentives for a frequent mobilization of public support. This has been important in critical moments such as:

1. The removal of Luis Florido: as mentioned in an earlier section, Commissioner Castresana asked president Colom to remove public officials nonaligned with CICIG. He had the support of civil society organizations that also influenced the president. As pressure mounted, Colom gave in and asked for Attorney General Florido's resignation.
2. The veto of Conrado Reyes: this was another case in which CICIG's ability to gather public support was important. Due to Castresana's resignation, civil society groups pressured the president to ask Reyes' resignation as Attorney General. The president did not give in, but the Constitutional Court ordered a new selection process.
3. The election of Claudia Paz y Paz: during this process, CICIG worked together with civil society organizations to veto those applicants that may be associated with criminal networks. In a coordinated effort they proposed Claudia Paz y Paz as candidate for Attorney General. President Colom listened to their recommendation and appointed her to finish Conrado Reyes' term.
4. The renewal of CICIG's mandate in 2015: the existence of the Commission has been constantly questioned. In fact, after Dall'Anese resignation, many expected CICIG's departure in 2015. In fact, current Commissioner Velasquez was asked to elaborate an exit plan. Nonetheless, after *La Linea* case was revealed, CICIG was able to obtain public support even from some of its critics. Otto Perez Molina had no choice but to extend CICIG's stay another two years.
5. Blocking Velasquez' expulsion from the country: after president Morales asked Velasquez to leave Guatemala, some civil society groups organized demonstrations against the president. They also appealed to the Constitutional Court, which ruled Morales' actions unconstitutional.

Is mobilization of civil society desirable? While for some observers, civil society's involvement in supporting CICIG is positive; others question whether this need for popular legitimacy can lead to a "politicization of justice". In fact, CICIG has required the support of the civil society organizations in order to pressure governments to renew its mandate. To obtain it, CICIG has made use of communication strategies such as televised conferences, public forums, public appearances with state actors, and use of social media. Finally, some have questioned whether CICIG's need of support may influence its selection of which actors will be prosecuted. For example, some question why CICIG has not followed up on accusations against organizations that may incur in criminal conduct, but have usually mobilized in favor of CICIG's agenda.

Conclusions

CICIG is a unique experiment of shared sovereignty. In no other country in the world there is an international commission aimed at prosecuting criminal networks in the domestic level. During its ten years, CICIG has been praised for its success in promoting legal reforms in Guatemala and leading the fight against corruption.

Because CICIG's is seen as a potential solution for other countries with weak judicial institutions, this article hopes to generate a debate about the applicability of this model of international intervention. In this case study, I reflected on how CICIG's institutional design, by giving life to a hybrid institution, creates incentives for it to acquire more power, influence and resources, behaving as any domestic bureaucracy would. I argued that the lack of prosecutorial powers has made CICIG rely on three critical factors to survive as an institution: 1) the collaboration of key state actors such as the Attorney General, the National Police, and courts, 2) Changes in the rules of the game more favorable to the Commission's agenda, and 3) the mobilization of public support to pressure governments to renew its mandate. To justify its existence, CICIG has needed friendly state actors, rules, and public opinion. As a result, it has had incentives to 1) become a veto player in judicial appointments, 2) increase the scope

of topics in which it makes reform proposals and 3) promote its investigations in the media in order to gain legitimacy and public support.

Currently, the Guatemalan government has expressed its intention to review the contents of the 2006 agreement with United Nations. However, as long as the institutional design remains the same, the institutional dynamics will lead to a perceived need to maintain CICIG's operation in Guatemala indefinitely. If these institutional design issues are not addressed, this can become a permanent cycle that may end up, paradoxically, weakening Guatemalan judicial institutions in the long term. Thus, the applicability of CICIG's model to other countries depends on the political actors' normative views about international intervention. Should international bodies become institutionalized and seek to extend their stay in a country, or should they aim at a quick exit? I believe there is an important debate to be held on these questions.

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