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Agency versus Structure in the Fight against Corruption in Guatemala. A Case Study of CICIG.

Daniela María Adriana Navas Estrada
International Relations

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ACRONYMS AND ABBREVIATIONS

ASIES	Association of Investigation and Social Studies (<i>Asociación de Investigación y Estudios Sociales</i>)
CACIF	Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (<i>Comite Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras</i>)
CEH	Commission for Historical Clarification (<i>Comisión para el Esclarecimiento Histórico</i>)
CIACS	Illegal Groups and Clandestine Security Organizations (<i>Cuerpos Ilegales y Aparatos Clandestinos de Seguridad</i>)
CICIACS	Commission for the Investigation of Illegal Groups and Clandestine Security Organizations (<i>Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad</i>)
CICIG	International Commission against Impunity in Guatemala (<i>Comisión Internacional contra la Impunidad en Guatemala</i>)
FECI	Special Anti-Impunity Prosecutor's Bureau (<i>Fiscalía Especial contra la Impunidad</i>)
MINEX	Ministry of Foreign Affairs (<i>Ministerio de Relaciones Exteriores</i>)
MINUGUA	United Nations Mission for Verification in Guatemala (<i>Misión de Verificación de las Naciones Unidas en Guatemala</i>)
MP	Public Prosecutor's Office (<i>Ministerio Público</i>)
PDH	Human Rights Ombudsman's Office (<i>Procuraduría de Derechos Humanos</i>)
PNC	National Civil Police (<i>Policía Nacional Civil</i>)

SAT	Tax Administration Office (<i>Superintendencia de Administración Tributaria</i>)
UEFAC	Special Prosecution Unit Assigned to CICIG (<i>Unidad Especial de Fiscalía de Apoyo a la CICIG</i>)
UME	Wiretapping Unit (<i>Unidad de Métodos Especiales de Investigación</i>)
UN	United Nations
UNDP	United Nations Development Programme
UNDPA	United Nations Department for Political Affairs
URNG	Guatemalan National Revolutionary Unit (<i>Unidad Revolucionaria Nacional Guatemalteca</i>)
WOLA	Washington Office on Latin America

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CHAPTER 1

INTRODUCTION

For the last 9 years, a unique hybrid mechanism of international cooperation has been working in Guatemala to help national institutions strengthen the rule of law and fight against corruption and impunity. The uniqueness of the *International Commission against Impunity in Guatemala* (CICIG) lies in the fact that for the first time in the history of the United Nations an international body has been given the authority to investigate cases of organize crime corruption by international mandate, but operating under Guatemalan laws. Over its years of work, and more than 200 investigations, CICIG has generated public awareness about corruption and impunity and has become a symbol for structural reformations.

In April 2015 came out publicly what has been considered CICIG most controversial investigation. The discovery of a corruption and tax fraud network, that involved high-level state officials, lead to the resignation and prosecution of the former President and Vice-president of Guatemala. This historic event has brought hope among the Guatemalan population, proving that the state own institutions and laws can be functional. In a short period of time, CICIG has managed to do what no one else has, it has investigated and prosecuted powerful criminal structures and individuals, demonstrating that no one is outside the rule of law.

Over the years, CICIG has become Guatemala's most trusted institution and has accomplished important institutional reformations, especially within the Public Prosecutor's Office. Without any doubt, CICIG has played the most important role in the fight against corruption and impunity in Guatemala. Whether CICIG's success is due to an institutional set-up or due to the agency of CICIG's actors, is the research question that I aim to answer throughout this investigation.

The structure of the thesis is divided in 5 chapters. In Chapter 2, I present CICIG background, with the purpose of explaining what CICIG is, why CICIG was created, and how does CICIG work. To answer this questions, I present CICIG history, reasons of creation, mandate, prominent cases, accomplishments and obstacles. Following, in Chapter 3, I refer to the theoretical and conceptual framework that has served as the scientific ground for this thesis. I have chosen the agent-structure debate as theoretical framework and, and within this debate, I have selected some of Anthony Giddens concepts from his structuration theory. In Chapter 4, I deal with the methodological

aspects of this investigation, namely the research strategy, design and method. I have chosen a qualitative approach, with a case study as a research strategy and the analysis of documents as a research method. And finally, Chapter 5 is divided in two parts. In the first part, I present the analysis of CICIG from an agent-structure perspective to answer the research question, and in the final part I formulate my conclusions.

CHAPTER 2: CICIG BACKGROUND

2.1 Guatemala's Armed Conflict: Background and CIACS

The 36 year armed conflict that took place in Guatemala formally ended with the signing of the Peace Accords in December 1996. It has been calculated that during that period approximately 200,000 people were killed and other 45,000 were disappeared¹ (WOLA 2015:5). To date, impunity for the human rights violations committed during the armed conflict has been almost absolute. Moreover, the structural problems have deepened and violence has increased. Although the causes and evolution of the conflict are not being discussed in this investigation², having a broad understanding of the problematic during this period helps to understand why post-conflict violence still persists in Guatemala, and why the creation of an international mechanism was the only way out to address this problem.

After the signing of the peace accord, Guatemala faced an escalating spiral of violence, particularly targeted against certain sectors of civil society. To address this issue, local human right leaders asked the UN special organization *Washington Office on Latin America* (WOLA) to investigate this problem, and the result was the investigation report “Hidden powers in post conflict Guatemala” that came out publicly in 2003. The WOLA report attributed the acts of violence to illegal and clandestine groups linked directly to the previous armed conflict. The study revealed how these groups, formed by former or current members of the military, intelligence and police forces, use their positions and connections within the state institutions to enrich themselves through illicit activities, and how they manipulate the justice and security systems to guarantee their impunity.

¹ These are the numbers of the UN-sponsored Commission for Historical Clarification (CEH) who in its report “Guatemala Memory of Silence”, attributed 93% of the human rights violations to the Guatemalan state and 3% to the guerilla groups. For more information see: https://www.aaas.org/sites/default/files/migrate/uploads/mos_en.pdf

² For more information about the Guatemalan 36-year armed conflict see the Recovery of Historical Memory Project (REMHI) “Guatemala Never Again” (*Guatemala Nunca Más*). Available in Spanish at: <http://www.odhag.org.gt/html/Default.htm>

According to WOLA, some of these illegal groups, formally known as *Illegal Groups and Clandestine Security Organizations (CIACS)*³, were established during the armed conflict to combat and repress the insurgency. Others were created as private entities to eliminate political opponents. After the signing of the peace accords, these groups never disappeared but continued to exist and some evolved into more complex networks. In the post-conflict context, their goal switched from the elimination of guerrillas and political opponents to illicit operations to gain economic profit and to infiltrate themselves in the state institutions to assure their impunity and protect their interests.

In order to achieve this, these groups have developed links with political parties which have helped them by prevent political policies aimed to strengthen the rule of law. Additionally, these groups have extended their *modus operandi*. What started as targeted assassinations has evolved into more complex organized crime structures which dedicated themselves to activities such as drug trafficking, arms contraband, and money laundry.

In an investigation about Guatemala's justice system, impunity, and human rights violations, Amnesty International (2002) described the situation in Guatemala as a *corporate mafia state* in which the traditional sector of the oligarchy is now ruling together with other non-traditional sectors, such as new business men, police and military officials and judiciary agents. The consequence is the existence of a state that possess formal political authority but that is institutionally infiltrated by informal powerful structures, being *impunity* the key obstacle preventing the generation of conditions for peace and democracy.

Impunity is here understood as the absence of criminal discipline and the ability to avoid investigation or punishment. Impunity not only weakens the rule of law and impedes the State to protect the lives and physical integrity of its citizens and provide access to justice, but also results in the loss of confidence of citizens in its government and institutions (International Crisis Group, 2011:1).

³ The name CIACS is taken its acronyms in Spanish *Cuerpos Ilegales y Aparatos Clandestinos de Seguridad*. In English these groups are known as Illegal Groups and Clandestine Security Organizations. It has been also translated to Illegal Clandestine Security Apparatuses. Both names refer to CIACS.

2.2 The creation of CICIG

Given this context, it became clear for civil society and human rights groups in Guatemala that the government lacked the ability to carry out investigations and criminal prosecution of these groups because of their high level of influence within the state's institutions. What was needed was an entity that had both the political and economic independence and the ability to carry this task. The solution was the creation of a commission aimed specifically to investigate the CIACS.

The first proposal came in 2003 by human right organizations, supported by the *Human Rights Ombudsman's Office* (PDH). It was envisioned that such a commission would have the task of investigating and assisting the authorities in criminal prosecutions. The crimes to be investigated were especially those against human right defenders and justice officials. In June 2003, what had originally been conceived as a national commission was given an international status when the government signed an agreement with the United Nations to create the *Commission for the Investigation of Illegal Groups and Clandestine Security Organizations*, CICIACS.

However, in May 2004 the agreement was rejected on the ground that the commission's terms violated Guatemala's Constitution by endowing an international entity the powers of criminal prosecution that Guatemalan laws reserves for the Public Prosecutor's Office (MP) only. The then President in office, Oscar Berger, worked to replace the CICIACS by another investigatory commission that didn't violate the Constitution. To address this issue two different working groups were created⁴, and by January 2006 the proposal for a new agreement was presented. By December 2006 the negotiations with the UN was renewed with the signing of the agreement to establish an *International Commission against Impunity in Guatemala*, CICIG⁵. The Congress ratified the agreement in August 2007, and the Commission began its work in September of the same year.

⁴ The first group included the *Presidential Commission for Political Reform*, the *Human Rights Ombudsman*, the *Bar Association* and the *Centre for the Defense of the Constitution* (CEDECON). The second group included the Vice-President, the Minister of Foreign Affairs and the *Presidential Human Rights Commission*, together with representatives of the civil society and human rights movements, with the particular leadership of Helen Mack, the Director of the Myrna Mack Foundation (International Crisis Group, 2011:5)

⁵ The Agreement to Establish CICIG is available at:
http://www.cicig.org/uploads/documents/mandato/cicig_acuerdo_en.pdf

2.3 CICIG relationship with the International Community and the United Nations⁶

The international community, especially the UN, has been experimenting with different mechanisms to help governments struggling with weak justice and security institutions to respond effectively to corruption and violence. These mechanisms have varied and have included the traditional technical assistance, the establishment of investigative committees, or the creation of mixed criminal tribunals⁷. The Guatemalan experiment, however, is a unique hybrid mechanism of international cooperation without any precedent in the world. Before CICIG, the UN had never involved itself in the investigation of organized crime (WOLA 2015:6).

It is unique in the sense that it is an international and independent criminal investigative entity that operates under Guatemalan laws and in close collaboration with the national security and judicial systems. These characteristics differentiate CICIG from other UN hybrid tribunals (which are less dependent to the national legal system) and allows the international community a higher level of influence over national institutions in comparison to other technical assistance programmes (Hudson & Taylor 2010; WOLA 2015).

Unlike other international criminal justice mechanisms, CICIG does not use international law and judges to punish offenders. Instead, the commission works together with Guatemala's own institutions to adopt new mechanisms and practices to combat impunity and violence more effectively. It is worth mentioning that Hudson & Taylor make an interesting comparative analysis between CICIG and other international criminal justice initiatives. Hudson & Taylor sustain that CICIG's two innovations that make it superior to all other mechanisms are: 1) its level of integration into the national judicial system and 2) its combination of powers to promote prosecutions and to reform institutions (Hudson & Taylor 2010:60-61).

Regarding the relationship between CICIG and the international community, it was agreed, during the negotiations between the UN and the Guatemalan government, that CICIG would not be established as a UN body. This decision generated both advantages and disadvantages regarding

⁶ The information presented in this section was obtained from different sources: Latin America Report No 36 "Learning to walk without a crutch: An assessment of the International Commission against Impunity in Guatemala" published in 2011; Latin America Report No 56 "Crutch to Catalyst? The International Commission against Impunity in Guatemala", published in 2016, and the WOLA Report on the CICIG Experience "The International Commission against Impunity in Guatemala" published in 2015.

⁷ Examples of different international justice mechanisms can be found in the work of Hudson & Taylor "The International Community against Impunity in Guatemala. A new model for International Criminal Justice Systems".

establishment, financing, administrative operations and personnel. On the bright side, since it was a bilateral agreement, the creation of CICIG required limited diplomatic effort to establish. Additionally, CICIG was given the freedom to carry its own administrative processes, allowing the commissioner to have a greater flexibility when contracting its own personnel. CICIG is staffed by both national and international staff⁸.

On the down side, given that CICIG is not a UN body, it does not receive funding from the regular UN budget and must rely on voluntary contributions from the member states⁹. Institutionally speaking, it depends on the *United Nations Development Programme* (UNDP), which is in charge of administering CICIG's trust fund. CICIG can also receive political monitoring and advice from the UN *Department for Political Affairs* (UNDPA). In regards to its staff, CICIG status as a non-UN body means that its personnel are not integrated within the UN system, and therefore not entitled to the UN's pension funds and benefits. This has created difficulties for the commissioner to hire high level UN professionals who would like to remain within the UN system to preserve their rights and benefits.

Lastly, CICIG is led by an international commissioner named by the UN Secretary General. However it is the Guatemalan President who decides whether or not to extend CICIG's mandate. Since its creation to date, CICIG has had three commissioners and has asked for the extension of its mandate in four occasions. The current commission has a valid mandate until September 2017, and it's currently led by Commissioner Iván Velásquez.

⁸ According to CICIG's eight report on activities, published in November 2015, CICIG's staff was composed by 148 officials: 80 Guatemalans and the rest from the countries of Argentina, Canada, Chile, Colombia, Costa Rica, El Salvador, France, Honduras, Mexico, Peru, Sweden, Uruguay and Venezuela. Eighty-five percent of the international staff has been hired directly by CICIG, the rest have been sent by cooperating countries to engage in police and security investigation activities.

⁹ According to CICIG's sixth report, published in 2013, among the contributor member states were: Canada, Denmark, Finland, Germany, Italy, Ireland, Netherlands, Norway, Spain, Sweden, United Kingdom, United States and the European Union. In its eighth report, published in 2015, CICIG underlines the permanent support that the commission has received from the countries of Argentina, Chile, Colombia, Sweden and Uruguay to extend the work of its personnel within the institution. Recently, Peru and Switzerland have also offered to send specialized officials to support CICIG's work in Guatemala.

2.4 Defining CICIG mandate: what it is and what is not¹⁰

CICIG can be considered a product of unfulfilled promises of the 1996 Peace Accords that ended Guatemala's 36 year armed conflict. Among the agreements was a commitment to dismantle the illegal and clandestine CIACS. However, the Peace Accords lacked effective mechanisms to guarantee the implementation of the reforms. Therefore, it was not until CICIG came to be a decade after the signing of the peace) that a real effort was made to investigate and process these groups.

Unlike the original CICIACS, CICIG lacks of prosecutor powers and has to operate under Guatemalan laws in conjunction with Guatemalan security and justice institutions. However, CICIG has broader powers than its predecessor: its objective consists not only in investigating the CIACS, but most importantly to reform and strengthen the institutions responsible for investigating and prosecuting crimes, namely: the Public Prosecutor's Office (MP), the National Civil Police (PNC), the Interior Ministry and the justice system.

CICIG neither investigates the causes and evolution of the armed conflict nor the human rights violations perpetrated during this period. Before CICIG, there was another international commission that was set to this task¹¹. Instead, CICIG mandate is focused on the investigation of crimes committed by CIACS. It also works together with national justice institutions to identify their structures, operations and financing and ultimately to help dismantle them.

According to the Agreement to Establish CICIG (2006), the mandate enables the commission to:

- ❖ Operate under national law and within the country's courts
- ❖ Present criminal charges to the MP
- ❖ Join as a complementary prosecutor¹² in court proceedings
- ❖ Investigate any individual, official or private entity associated with CIACS

¹⁰ The information presented in this section was obtained from different sources: Latin America Report No 36 "Learning to walk without a crutch: An assessment of the International Commission against Impunity in Guatemala" published in 2011; Latin America Report No 56 "Crutch to Catalyst? The International Commission against Impunity in Guatemala", published in 2016, and the WOLA Report on the CICIG Experience "The International Commission against Impunity in Guatemala" published in 2015.

¹¹ In 1994, the UN and Guatemala established a *Historical Clarification Commission* (CEH; official name in Spanish) to investigate the human rights violations that occurred during the armed conflict. Although different in nature, the CEH helped pave the way for CICIG's creation.

¹² CICIG must refer all its cases to Guatemalan prosecutors and can only participate in such cases as a *querellante adhesivo*, meaning it becomes part of the proceedings acting as the accusing party which can request examination of evidence or decisions from the courts.

- ❖ Promote administrative disciplinary processes against any public official who denies to cooperate or impedes investigations
- ❖ Propose policies and institutional and legal reforms to those institutions with which it collaborates
- ❖ Guarantee confidentiality to those who collaborate with it
- ❖ Obtain statements, documents and collaboration from any government official or entity
- ❖ Issue annually public reports on its activities

2.5 CICIG prominent cases

❖ **The Rosenberg Case**

Rodrigo Rosenberg was a Guatemalan lawyer who was killed in 2009 and who, prior to his killing, recorded a video (which was later released to the media) in which he accused the former President Alvaro Colom, the former first lady, Sandra Torres, businessman Gregorio Valdez and Colom's private secretary Gustavo Alejos to be responsible for his murder. Rosenberg's death provoked a political crisis in Guatemala and took thousands of Guatemalans to the streets asking for the President Colom's prosecution. Colom wisely asked CICIG to take the case. CICIG investigations and conclusions were released in January 2010, founding President Colom and the others not connected to Rosenberg's death¹³. CICIG was credited for avoiding a political crisis in Guatemala. The results of the commission's investigation resulted in the dismantlement of two organized crime networks composed by active and retired members of the PNC and the military.

❖ **The Portillo Case**

Alfonso Portillo Cabrera was the President of Guatemala between the years of 2000 and 2004. On April 2011, a CICIG investigation concluded that Portillo, together with the ministers of defense, Eduardo Arévalo Lacs; the minister of public finance, Manuel Maza Castellanos, and members of the military, Jacobo Esdrás Salán Sanchez and Napoleón Rojas Mendez, constituted a parallel organization responsible for the embezzlement of 120 million quetzals (approximately 15 million dollars) from the Ministry of Defense.

¹³ CICIG's investigations found out that Rosenberg planned his own killing, faked extortion against himself and hired someone to kill him with the help of two relatives.

According to CICIG investigations, Portillo made budgetary modifications without justifiable cause. These changes were approved both by Arevalo Lacs and Maza Castellanos. When his mandate ended in 2004, without immunity Portillo ran off to Mexico. Portillo was later extradited to Guatemala in October 2008 to stand trial on corruption charges. He managed to avoid prison by paying a 1 million quetzales bail (approximately \$131,000). In 2010, a CICIG operation detained Portillo, Arevalo Lax and Maza Castellanos. However, in May 2011, a Guatemalan court absolved Portillo and the ministers. CICIG appealed the ruling in 2013, nevertheless the court upheld the original ruling. In May 2013, Portillo was extradited to the United States for laundering \$70 million through US banks. In March 2014, Portillo pled guilty and was sentenced to five years in prison. In June 2014, Salán Sanchez and Rojas Mendez were sentenced to five years in prison by a Guatemalan court.

The Portillo case exemplifies acts of corruption in the highest levels of the Guatemalan government and exposes how parallel illegal networks use their power and influence in the judiciary system to guarantee their impunity and protect their interests.

❖ **The Pavón Case**

Another case that caused controversy and polarization in Guatemala was the killing of seven prisoners in Pavón prison on September 2006 during an Interior Ministry operation known as *Operation Peacock*. The human rights ombudsman publicly declared that the deaths had characteristics of extrajudicial executions. Among the accused were the director of the National Civil Police, Erwin Sperisen; the deputy director of the Criminal Investigations Division of the police, Javier Figueroa; the chief of the Criminal Investigations Division of the police, Victor Hugo Soto; the director of the Penitentiary System, Alejandro Giamattei, and the Ministry of Interior, Carlos Vielmann.

According to CICIG, high-level officials of the police and military had created a parallel structure, within the Ministry of Interior and the National Civil Police, to kill escapes and prisoners who resisted orders. This structure was also involved in drug trafficking, money laundry, kidnapping and extortion. As a result of the investigation on August 2013 Soto was sentenced to 33 years in prison. Regarding the others, Giamattei was the only one to be tried in Guatemala but cleared of charges in July 2011 for lack of evidence. The other three officials made use of their double nationalities to leave Guatemala, Figueroa to Austria, and Sperisen to Switzerland and Vielmann

to Spain. In November 2013, an Austrian court declared Figueroa not guilty, and in June 2014 a Swiss court declared Sperisen not guilty. In June 2013 a Spanish court began proceedings against Vielman. In 2014 Vielman was still awaiting trial in Spain. The evolution of Vielman's trial is unknown in this investigation.

The Pavón case is a good example of the challenges and opposition that CICIG has faced when dealing with high profile personalities. The accusation and arrest of Vielman produced a strong reaction against CICIG, especially from the *elite groups* who saw "one of their own" being targeted. Former President Oscar Berger and vice-president, Eduardo Stein, accused CICIG of overstepping its mandate. As International Crisis Group (2011: 12) points out, there is a tendency in many Guatemalans to think that the execution of prisoners and criminals should not be punished. Moreover, cases like Pavón show how previously helpful figures to CICIG, like Berger or Stein, may react in opposition when the commission acts against one member of their elite groups.

❖ **La Línea Case**

In April 2015, CICIG uncovered a corruption network within Guatemala's tax collecting agency, the Tax Administration Office (SAT). Among the network, referred as "The Line" (*La Línea*), these people were involved: former President Otto Pérez Molina; former vice-president, Roxana Baldetti; two former heads of the SAT, Carlos Enrique Muñoz Roldán and Álvaro Omar Franco Chacón; and vice-president Roxana Baldetti's personal secretary, Juan Carlos Monzón and, who was in charge of the tax defrauding organization. The network also included other people from middle to high ranking members of the SAT, to others outside the agency.

According to CICIG investigations, the network operated in three ports (Quetzal, Central and Santo Tomás). Importers could call a phone number (*La Línea*) to negotiate a deal: the importer would pay 40% of import taxes to the state, 30% to the tax fraud network, and keep the remaining 30%. In this way, *La Línea*, defrauded the government 60% in due taxes revenue, an estimated of 940 million quetzales (\$120 million) (WOLA 2015: page).

Revelation of the scandal within the Pérez Molina administration generated protests and thousands of Guatemalans went to the streets demanding the resignation of President Pérez Molina and vice-president Baldetti. In May 2015, the Congress revoked Baldetti's immunity to allow CICIG her investigation. Baldetti resigned the charge two days later. Pérez Molina resigned in September 2015. Both were sent to preventive jail and are in the process for trial while these lines are being

written. Baldetti's personal secretary, Juan Carlos Monzón, turned himself to justice in October 2015, he is currently awaiting in jail.

2.6 CICIG accomplishments and championed legal instruments

In terms of popular approval, CICIG has enjoyed an increasingly approval among citizens. According to an August 2015 poll conducted by a local newspaper, Prensa Libre, CICIG is Guatemala's most trusted institution with a rating of 66%, in comparison to the Catholic Church (64%), the army (50%), the police (26%), the judges (25%), the congress (12%) and the presidency (11%) (International Crisis Group 2016: page).

Particularly, the year 2015 was perhaps one of the most significant years to strengthened CICIG's position and legitimacy not only towards the Guatemalan society, but also towards powerful interests that had been critical to the commission before, such as CACIF. CICIG 2015 revelations about a massive fraud within the customs agency touched a nerve in the Guatemalan society, making it possible for different groups across the political spectrum to join forces in support of CICIG. Without a doubt, CICIG's public profile has generated public awareness about corruption and impunity. Part of the commission's success is due to the good relationship that CICIG has had with the public media. Commissioner Velasquez keeps a high-public profile and its predominant means of communication with the Guatemalan society is via interviews and through news releases via its internet website.

Among the instruments that CICIG has championed in order to fight against corruption and organized crime, we have the following:

❖ The Special Anti-Impunity Prosecutor's Bureau (FECI)

In February 2008, CICIG signed a cooperation agreement with the MP to support the investigation and prosecution of crimes committed by CIACS. To carry this job, a special unit within the MP was created with the name of Special Prosecution Unit Assigned to CICIG (UEFAC). The name was later changed in 2011 to the Special Anti-Impunity Prosecutor's Bureau (FECI)

❖ The Wiretapping Unit (UME)

Until 2008, there were no laws in Guatemala that allowed a judicial order to approve wiretaps to monitor calls or text messages or obtain information about the owner of the phone. The MP and the National Civilian Police, the only entities entitled to do this legally, lacked the capacity, training

and equipment needed to do it. To fix this, CICIG, through an agreement with the MP, PNC and Ministry of Interior, created a Wiretapping Unit (UME) within the Public Prosecutor's Office, which began working in June 2009.

❖ **The Confidential Informant**

This legal figure allows members of organized crime to receive legal benefits in exchange for information. The figure of the confidential informant had existed in Guatemala since 2006. However, the law did not allow its application to members of organized crime involved in murder, which basically left the measure inapplicable given that these groups are involved in killings. CICIG proposed a modification to the *Law against Organized Crime* to use the figure of the confidential informant without this restriction.

❖ **The Witness Protection Program**

As with the confidential informant, Guatemala had a law regulating the protection of witnesses. Nevertheless, this law was not well regulated, which created a situation of uncertainty in which the safety of the witnesses could not be guaranteed. CICIG contribution was designing new regulations, protocols, best practices manuals, relocation measures and new identities for witnesses to enhance the witness protection program. In addition, the commission was able to ensure support from the international community, especially from Spain, Canada and Holland, with whom negotiated for the relocation of high-case witnesses.

❖ **Courts for High Risk Crimes**

Officials who work in the justice system in Guatemala are very vulnerable, especially in rural areas of the country where the state presence and authority is minimal. For this reason, in 2009, CICIG proposed the creation of Courts for High Risk Crimes, located in the capital city but with jurisdiction in the whole country. A similar measure previously existed, the High Impact Crime Courts. However, they failed because they lacked specificity, resulting in abundant amount of cases. CICIG proposed the creation of centralized high risk tribunals, outlining their jurisdiction as well as the nature of the cases they should work with.

2.7 CICIG's obstacles and limitations

CICIG not only has accomplished advances in the fight against corruption and impunity in Guatemala but has also faced significant obstacles and limitations. Despite that CICIG has managed to prove that Guatemalan judicial system can be used to prosecute powerful individuals, unfortunately some of the high profile cases have ended in liberation.

CICIG has also encouraged and promoted the adoption of norms and institutional arrangements within the MP and for the election of judges. However, until the MP Organic Law is amended, it remains possible for the President to remove the attorney general, making the position vulnerable to political interests. Additionally, the legislation that the commission seeks to implement must pass through the Guatemalan Congress, an institution characterized by weak political parties which defend different interest, in alliance with both licit and illicit powers, and which have managed to block or delay important reforms.

Regarding the Public Prosecutor's Office, CICIG has encourage the strengthening of this institution, especially with the creation of FECCI to investigate and prosecute members of CIACS. While this has helped specializing and professionalizing the institution, the MP remains absent in most of the country. The MP has offices in only 53 of the 338 municipalities. (International Crisis Group 2016) The National Civilian Police is in a similar situation, the institution does not have sufficient number of police officers to guarantee law and order.

CICIG has managed successful work collaboration with Guatemalan local institutions, however, national prosecutors are in responsible of carrying on with CICIG court cases, with success depending not only on the evidence but on the ability of the prosecutors to maneuver themselves in the judicial system. A major setback is that Guatemala's current laws allows the defense attorneys to delay sentencing indefinitely. Additionally, the MP lack professionalized and skilled litigators trained in oral argument, which puts them in a position of disadvantage in relation to more skilled defense lawyers. In other cases, the public prosecutors might be skilled but the judges are not trained to maneuver complex investigations, ending in minimal sentences despite the availability of evidence.

Moreover, the Guatemalan state and its institutions face severe budget shortages, in a country with one of the lowest tax collection percentages in Latin America. Guatemala has a tax collection rate

of 13% of the GDP, compared to a regional average of 21%. It also has one of the lowest social spending rates: in 2013 it spent \$179 per capita compared to regional mean of \$777. Likewise, in 2013 the government spent less on public security: 48% per capita in compared to an average of \$101 in Central America (International Crisis Group 2016). Powerful interest continue blocking fiscal and tax reforms denying the prosecutors, judges and police the resources they need to function effectively.

CHAPTER 3: THEORETICAL AND CONCEPTUAL FRAMEWORK

The purpose of this chapter is to present relevant concepts and theories that serve as the scientific ground of this thesis. The theoretical concepts used in the research questions originate from the agent-theory debate that has been going on in the social sciences for many decades. Within this debate, special mention will be given to Anthony Giddens who has made an important contribution to the topic. It is also important to mention that sociology has played a significant role and has influenced other social sciences, such as international relations and political science, which have borrowed and adopted central sociological concepts to provide explanation and understanding within their own fields.

Given that the main unit of analysis in this thesis is a specific organization, namely the International Commission against Impunity in Guatemala (CICIG), it is important to begin by explaining what is understood by the term “institution”, and why the study of institutions matter in social sciences¹⁴.

3.1 The study of institutions: why institutions matter?

To the question why the study of institutions matter, Bell (2002:1) responds that institutions matter because modern governance takes place largely through institutions. In addition, according to Bell, institutions have the ability to shape and/or constrain political behavior and decision making of the actors that operate through them. Bell defines institutions as a set of rules, codes, or tacit understanding which shape behavior, and suggests that it is best not to think of institutions as things but as *processes*. Additionally, when defining institutions in Bell’s terms, it is important to notice that the focus is not only on the *formal* practices and behaviors but also on the *informal* ones.

3.2 Old versus new institutionalism

According to Bell (2002:4), the study of institutions began in the late 19th century and early 20th century. During this time, political scientists were busy *describing* the formal institutions of the modern state. The purpose and main emphasis behind this ‘old institutionalism’ was on *description* and not on explanation or theory building. Bell points out that when old institutionalism did turn

¹⁴ Throughout this thesis, there will be no analytical distinction between the terms “institution” and “organization”; I use both terms interchangeable through the investigation.

to explanations, it was assumed that political behavior was shaped by the formal rules and procedures of institutions.

After the Second World War, a major school in political science developed in the United States that removed the focus from the state's formal institutions and argued that political behavior was derived by the *informal* relationships within and beyond government institutions. This school argued that the best way of explaining behavior was through the direct observation of behavior itself. Therefore the name of *behaviorism* as the label for this school of thought (Bell, 2002:4).

However, in the 1980's critics of behaviorism proposed a new approach that switched back to the focus on institutions again. This approach was known as 'new institutionalism', and in political science two different schools of new institutionalism analysis emerged: rational choice and historical institutionalism.

Rational choice authors argue that individual actors form institutions for rational purposes, and that those individual actors have the ability to change and shape institutions to suit their goals. In contrast, *historical institutionalist* see institutions as shapers of – rather than the rational product of – individual behavior (Bell 2002:6). This debate in the social sciences, about whether agents' behavior is self-determined, or whether institutions or structures shape agent's behavior, is commonly known as the "agency-structure debate". However, to understand the agent-structure debate it is helpful to look back to the sociology that established itself in the English-speaking world and sought acknowledgment as an authentic science.

3.3 The agent-structure debate

According to sociologists, human societies showed an order and a pattern. The task of sociology was then to explain why actions were patterned as they were, and by analogy with other sciences, explanation meant linking actions to causes or influences independent of them (Ritzer & Smart 2001:344).

Sociologists were raising questions and giving answers, for instance to the question of what is making people act in a certain way. The answer was; they are following norms. Why is there an overall pattern in their actions? Because there is an overall pattern in their norms. What is the pattern? The pattern of a social system or structure that creates rules and norms and forms institutions. According to the sociologists, it was by reference to this system or structure that

actions could be understood and explained. In this context the theory of social structure emerged, associated with Talcott Parson and other sociologists in the English-speaking world. In this version of social structure explanation, the structure was understood as separate and prior to individuals (Ritzer & Smart 2001:344).

This sociological explanation was accepted for a considerable period. However, as Ritzer & Smart (2001) point out, it was not its inherent inadequacies that brought this explanation to an end, but an ever-increasing concern within sociology for the role of the ‘individual’ within society. Critics argued that structural theories were given the individual a passive role. A change of perspective set aside structural functional theories and switched the focus on human agency.

Harold Garfinkel alleged that the problem with the structural functional theories was that it turned individuals into ‘dopes’, that is:

“ [structural theories make] out individual human beings as ‘dopes’, that is as passive producers of action to the specification of whatever structural or cultural models of their conduct were available in the cultural settings, rather than as knowledgeable human beings aware of and able to account of the existence of those models” (Garfinkel in Ritzer & Smart 2001:345)

The way sociologists understood human beings changed. This led to an alternative understanding of the relationship between individuals (agents) and social norms and rules (structures). It is widely recognized that an attempt to re-conceptualize sociology on this topic is Anthony Giddens with his *structuration theory*. However, before moving to Giddens, it is important to mention two other interrelated problems within the agent-structure debate, namely those concerning ontological and epistemological issues.

3.4 The ontological and epistemological issues of the agent-structure problem

Wendt points out that the agent-structure problem is really two interrelated problems, one ontological, the other epistemological. Devetak et al (2012:24) define *ontology* as the branch of philosophy that studies the nature of ‘being’; it is concerned with what is considered to be the fundamental elements of the world being observed. *Epistemology*, in the other hand, is defined as the theory of ‘knowing’; it is concerned with how knowledge is produced and acquired.

In the agent-structure debate, the ontological issue concerns the nature of agents and structures and their interrelationship. There are two ways to approach this question: 1) by making one unit of analysis ontologically primitive, or 2) by giving both units equal ontological status. Structural theories, for example, reduced one unit of analysis to the other; they treat the structure as given, and as a result, they understand the explanatory role of those structures as generating of norms and therefore constraining actors to those existing norms.

Wendt (1987:339) indicates that the manner in which a social theory addresses the ontological issue conditions its approach to the epistemological aspect of the agent-structure problem. For example, approaches that conceive individuals or agents as nothing more than recipients of stimuli generate explanations that are ‘causal’ in form. On the other hand, approaches that conceive individuals or agents as reflective, self-understanding, goal-orientated subjects, generate explanations that are ‘interpretative’.

According to Wendt (1987:337-338), the agent-structure problem has its origins in two assumptions about social life: 1) human beings and their organizations are purposeful actors whose actions help to reproduce and transform the society in which they live, and 2) society is made up of social relationships which structure the interactions between these purposeful actors.

Taking together these assumptions suggests that human agents and social structures are in one way or another *interdependent*. In this sense it is plausible to believe that both agents and structures are relevant in the explanation of social behavior. However, as Wendt (1987:338) observes, the problem is that there is not a single conception of the agent-structure relation. This has resulted in a variety of conceptualizations of the relationship across social sciences. Nevertheless, it is widely recognized that an attempt to re-conceptualize sociology on this topic is Anthony Giddens with his *structuration theory*.¹⁵

Giddens structuration theory tries to overcome the weakness in these theories by giving agents and structures equally ontological status. As Wendt (1987:339) points out, far from being the ‘best of both worlds’, the structuration approach introduces a particular conceptualization of the agent-

¹⁵ The term ‘structuration theory’ is sometimes narrowly used to refer to the work of Anthony Giddens. However, the term can be used more broadly for a group of social theories that share similar assumptions about the agent-structure relationship. This group includes theorists such as Pierre Bourdieu, Phillip Abrams, Roy Bhaskar, Derek Layder and Alan Dawe (Wendt 1987).

structure relationship. “The structuration theory solution to the agents-structure problem is conceptualizing agents and structures as mutually constituted and codetermined entities” (Wendt 1987:350).

3.5 Anthony Giddens’ contribution to the agent-structure debate

In his structuration theory, Giddens gives both structure and the agent equal ontological status. For Giddens, agents are not the ‘dopes’ of rules, rather they have agency in the sense of being active in relation the rules and norms, and not predictably comply with them. Agency, for Giddens, is an independent power of the individual to intervene in the events and make a difference in them (Ritzer & Smart 2001:346).

Regarding agency, Giddens believes that agents have the power to ‘act otherwise’, which means:

“...being able to intervene in the world, or to refrain from such intervention, with the effect of influencing a specific process or state of affair. [...] Action depends upon the capability of the individual to ‘make a difference’ to a pre-existent state of affairs or course of events. An agent ceases to be such if he or she loses the capability to ‘make a difference’, that is, to exercise some sort of power” (Giddens 1984:14)

Regarding structure, Giddens believes that social structures have both the capacity of facilitating and constraining action:

“It facilitates action by virtue of what it makes available and constrains action by virtue of what it lacks and cannot make available. It does not, however, stand as a determinant or even as a cause of action, since it does not ‘make’, the active agents who engender it do one thing rather than another. Indeed it is those agents, deciding to do whatever they decide to do by drawing upon structure, and thereby manifesting their *agency*, who reconstitute structure through their actions and secure its continued existence ” (Giddens in Ritzer & Smart 2001:345).

The agent-structure debate and Giddens’ approach to the topic help to set the conceptual and scientific background of thesis. In the analysis and discussion part, Chapter 5, I retake the agent-structure debate to analyze the dynamic going on between CICIG as an agent and the Guatemalan political and institutional system as a structure.

CHAPTER 4

RESEARCH STRATEGY, DESIGN AND METHOD

4.1 Defining a research strategy: a qualitative approach

Within the social sciences, there is a tendency to confuse the terms ‘research strategy’, ‘research design’ and ‘research method’. As a starter, it is important to understand that there are two big strategies when it comes to social research, the quantitative and the qualitative approach.

Generally speaking, quantitative research emphasizes in measurements, while qualitative research emphasizes in words. According to Bhattacharjee (2012:35) quantitative and qualitative research differ from the type of data being collected and analyzed: “quantitative data involve numeric scores, metrics and so on, while qualitative data includes interviews, observations, and so forth”. In this thesis, I take a *qualitative* approach because the purpose of this investigation is not the generation and explanation of numerical or statistical data but the understanding and analysis of a concrete issue or problematic. With this decision to adopt a qualitative research strategy, two other decisions has to be made: the decision about my research design and research method.

4.2 Defining a research design: a case study

According to Bryman (2008:30): “A research design provides a framework for the collection and analysis of data. A choice of research design reflects decisions about the priority given to a range of dimensions of the research process.” For Bhattacharjee (2012:35) a “research design is a comprehensive plan for data collection in an empirical research project. It is a “blueprint” for empirical research aimed at answering specific research questions or testing specific hypothesis”.

Bryman (2008: 35) recognizes different types of research designs¹⁶; my particular choice of research design for this thesis is the one of a *case study* design. In social sciences, the case study design is defined and understood in different ways. For instance, Bromly (in Berg & Lune 2012: 325) define the case study “as an attempt to systematically investigate an event or a set of related events with the specific aim of describing and explaining these phenomena”. For Bogdan and Biklen (Ibid: 325) a case study is a “detailed examination of one setting, or a single subject, a single depository of documents, or one particular event”. Hagan (Ibid: 325) defines the case study as “in-

¹⁶ According to Bryman, the five types of research design are: experimental design, cross-sectional or survey design, longitudinal design, case study design, and comparative design. (Bryman 2008, 35)

depth, qualitative studies of one or a few illustrative cases”. For Berg & Lune (2012, 325) a case study “[involves] systematically gathering enough information about a particular person, social setting, event or group to permit the researcher to effectively understand how the subject operates or functions”. For Bryman (2008, 30) “the basic case study entails the detailed exploration of a specific case”. Lastly, according to Stake (in Bryman 2008, 52) “case study research is concerned with the complexity and particular nature of the case in question”.

As Bryman (2008, 54) points out, in a case study, the case is object of interest in its own right and the research aims to provide in-depth understanding of it. However, two questions that come to mind regarding case studies are: what is the purpose behind the case study design, and how do case studies relate to theory?

4.2.1 The purposes behind case studies

According to Stake, researchers have different purposes for studying cases, which he classifies in three different types: intrinsic, instrumentive and collective. In the first type, the purpose is “to better understand a particular case (...) it is because of its uniqueness or ordinariness that a case becomes interesting” (Stake in Berg & Lune 2012:335). In the second type, “the intention is to help the researcher better understand some external theoretical question, issue or problem” (Ibid: 335). In this type, the case becomes of secondary importance and plays a supportive role providing an example to refine a theoretical explanation. Finally, in the third type, “multiple cases may be selected in order to try replicating insights found in individual cases or to represent contrasting situations” (Stake in Berg & Lune 2012: 336). The purpose behind this type is to identify similarities and patterns between multiple case studies.

4.2.1.1 CICIG as a case study

Regarding this thesis, I am concentrating in a single institution, the International Commission against Impunity in Guatemala (CICIG). My research question is: *to what extent CICIG success is due to an institutional set-up (structure) or due to the agency of CICIG leaders and actors*. In Stake’s terms, my purpose are *intrinsic* in the sense that my idea is to gain understanding of this particular institutional organization. My intention is to gather enough information about CICIG to understand what element(s) have determined its success, and how the organization operates in a bigger setting, which is the Guatemalan political system. I do, however, rely on theoretical frameworks and concepts to analyze my case; which takes me to the importance of the relationship

between research and theory.

4.2.2 The relationship between case studies and theory

According to Bryman (2012:4), information about a particular case study is collected in relationship to something. This something can be a problematic or a theory. The relationship between research and theory can be of two types: deductive or inductive. In a deductive approach, theory provides a framework within which the case can be understood and interpreted. In Bryman's words, theory serves as a "rationale", it is something that guides and influences the collection and analysis of the information gathered (Bryman 2012: 6, 9). In an inductive approach, theory is viewed as the outcome of the research process. In other words, the relationship is one of theory building.

In a similar way, Bhattacharjee indicates that scientific inquiry may take two possible forms, inductive and deductive: "In an inductive research, the goal of a researcher is to infer theoretical concepts and patterns from observed data. In deductive research, the goal of the researcher is to test concepts and patterns known from theory using new empirical data. Hence, inductive research is also called *theory-building* research, and deductive research is *theory-testing* research" (Bhattacharjee 2012:3).

In this thesis I take a *deductive* approach. This means that I rely on existing and available theory to gain better understanding of my case study. In this investigation, the agent-structure debate and concepts used in Anthony Giddens' structuration theory served as framework to analyze CICIG's agency in the Guatemalan political system. As Bryman (2012: 8) observes, "concepts are the key ingredients of theories", they make sense of the social world and function as labels to aspects of the reality being studied. Theory and concepts have played an important role in this thesis, not only in the establishment of the overall framework for the investigation, but also in the formulation of the research questions.

Bhattacharjee points out that depending on the purpose of the research, scientific research projects can be grouped into three types: exploratory, descriptive and explanatory. *Exploratory* research "is often conducted in new areas of inquiry, whereas the goals of the research are: (1) to scope out the magnitudes or extent of a particular phenomenon, problem or behavior, (2) to generate some initial ideas about the phenomenon, or (3) to test the feasibility of understanding a more extensive study regarding the phenomenon" (Bhattacharjee 2012:6)

Descriptive research “is directed at making careful observations and detailed documentation of a phenomenon of interests. These observations must be based on the scientific method (i.e, must be replicable, precise, etc.), and therefore, are more reliable than casual observations by untrained people” (Bhattacharjee 2012: 6). Lastly, *explanatory* research “seeks explanations of observed phenomena, problems, or behaviors. While descriptive research examines the what, where and when of a phenomenon, explanatory research seeks answers to why and how types of questions. It attempts to ‘connect the dots’ in research, by identifying causal factors and outcomes of the target phenomenon” (Ibid: 6).

The purpose of this thesis is *explanatory* in the sense that I seek explanation on what element is determining CICIG success, whether its strength lies in its structure or in the agency of its actors. My main *unit of analysis* is CICIG as an organization. However within this organization I’m looking to analyze two components: its institutional setting (mandate) and particular individuals (the Commissioner and the Attorney General). Defining my unit of analysis was important because it guided me to choose what type of data I needed to collect and where I should collect it from.

4.3 Qualitative analysis of texts and documents

So far I have mentioned the aspects related to the research strategy and design. However one more aspect must be mentioned, the one concerning the research method chosen in this study. Bryman (2008, 4) explains that “methods of social research are closely tied to different visions of how social reality should be studied. Methods are not simply neutral tools: they are linked with the ways in which social scientists envision the connection between different viewpoints about the nature of social reality and how it should be examined”. Research methods are associated with different kinds of research design. Bryman (2008:30) observes that research design “represents a structure that guides the execution of a research method and the analysis of the subsequent data”. A research method is simply a technique or tool for collecting data. In qualitative social research there are several types of research methods, for example: ethnography, qualitative interviewing, focus groups, discourse and conversation analysis, and qualitative analysis of texts and documents (Bryman 2008:369).

For this thesis I have chosen the *qualitative analysis of texts and documents* method. The term “documents” refers to different sources such as official government documents, organizations’ official documents, newspaper news and articles, journal articles, internet websites, academic textbooks, press releases, annual reports, academic studies and research, among others. All these documents contain information that are potential sources for scientific analysis. However, the information contained in the documents may or may have not been created for the purpose of scientific research. Therefore, my role as a researcher is to add scientific value to the analysis of such documents. The purpose behind the analysis of these texts and documents is not only the collection of information but the interpretation and analysis of this data.

I am aware that my research could have benefit with the use of combined research methods. For example the use of interviews. This method could have supplied me with valuable information that is not written in documents or texts. However, to do interviews would have required me to travel to Guatemala and engage myself in field work. This was not a feasible option during the time that I was working on this study. This task would have required additional economic resources and time, which I was lacking, in order to carry it out. Therefore, I chose a method that would allow me to collect data without the need of having to travel.

Regarding the process of my data collection and the texts and documents that I gathered to provide this information, I began my research consulting CICIG’s official website and publications. The following documents were available online:

- ❖ Agreement to Establish the International Commission Against Impunity in Guatemala
- ❖ Cooperation Agreement between RGP,MP and CICIG
- ❖ Cooperation Agreement between SIB and CICIG
- ❖ Cooperation Agreement between the Comptroller’s Office and CICIG
- ❖ Cooperation Agreement between SOSEP, DEMI, SEPREM and CICIG
- ❖ Cooperation Agreement between SAT and CICIG
- ❖ Cooperation Agreement between MP and CICIG
- ❖ Cooperation Agreement between MG and CICIG
- ❖ Cooperation Agreement between UNICEF and CICIG
- ❖ Cooperation Agreement between UNIFEM and CICIG
- ❖ Cooperation Agreement between UNDOC and CICIG

- ❖ CICIG Annual Report: Year 1
- ❖ CICIG Annual Report: Year 2
- ❖ CICIG Annual Report: Year 3
- ❖ CICIG Annual Report: Year 4
- ❖ CICIG Annual Report: Year 5
- ❖ CICIG Annual Report: Year 6
- ❖ CICIG Annual Report: Year 7
- ❖ CICIG Annual Report: Year 8
- ❖ Thematic Report on Transit of Firearms
- ❖ Thematic Reports on Process to Select Judges (7 Reports)
- ❖ Thematic Report on Adoptions
- ❖ Thematic Reports on Candidate Profiles in Selection Process of Authorities (3 Reports)

Although the majority of these documents are not directly cited in my study, most of them (especially the mandate and annual reports) were a useful source of information to learn and understand about the internal dynamics of the commission.

Once I had collected the official data published by CICIG, I moved on to research official government documents on the topic of my study. I found particularly useful the diplomatic magazine “International Politics” (“*Política Internacional*”), published by the Ministry of Foreign Affairs (*Ministerio de Relaciones Exteriores-MINEX*), where I found different articles useful for my analysis.

A second valuable source of information were the different informs and studies published by national and international organizations such as WOLA, International Crisis group and ASIES. All these studies contained in detailed information about the commission that helped the construction of the background for the case study. Another important source was an academic study about CICIG published in the Journal of International Criminal Justice. Additionally, during the process of writing, I followed on a regular basis was the Guatemalan newspapers (like *Prensa Libre*, *El Periódico* or *La Hora*) and other online media (like *Plaza Pública*, *Acción Ciudadana* or *Justicia Ya*) for news, articles and press releases about the topic.

The information and data gathered from these different sources allowed me to have sufficient information to qualitative interpret the case study and answer to my research question, *to what*

extent CICIG success is due to an institutional set-up (structure) or due to the agency of CICIG leaders and actors. Primordially the data that I was looking to find in the sources of information relate to CICIG mandate and the role played by its actors, mainly the Commissioner and the Attorney General.

4.4 Criteria for assessing the scientific value of case study designs

4.4.1 Generalizability

When doing scientific research, there are different considerations that must be taken in order to guarantee that the investigation is trustworthy. One of the questions that comes to mind regarding case study designs is whether the study of a single case can provide findings that can be applied to other cases? Or in other words, can findings be generalized? According to Bryman, the answer is that they cannot. However, as researchers tend to argue, the purpose of a case study is not generalization. The scientific value of case study designs is generating an intensive examination of a single case. The value is not in the generalizability of the research but in the “quality of the theoretical reasoning in which the case study researcher engages” (Bryman 2008: 57). In other words, how well is the analysis done of the information in relation to the theoretical arguments that generated the research?

4.4.2 Objectivity

Another criteria to take into consideration when assessing the scientific value or case studies is objectivity. Bruce & Lune (2012, 340) explain that objectivity is linked with reproducibility or replication: “objectivity rests on the ability of an investigator to articulate what the procedures are so that the others can repeat the research if they so choose”. Like any other research designs, case studies require the investigator to explain what areas have been investigated and through what means or methods.

What I have presented in this chapter are generally the type of considerations taken when doing social scientific research. The following chapter deals with the analysis of the data using the agent-structure debate as theoretical framework.

CHAPTER 5

ANALYSIS AND CONCLUSIONS

5.1 One case study, two analytical approaches

This final chapter engages in the analysis and discussion of CICIG to answer to the research question: *to what extent CICIG success is due to an institutional set-up (structure) or due to the agency of CICIG leaders and actors*. From an agent-structure approach, CICIG can be analyzed from two different angles: the micro and the macro perspectives. Although my research question is raised from a micro-level perspective –where CICIG (as an institutional setup) is seen as the structure, while the leaders and actors (who act through CICIG) are seen as the agents – I argue that in order to examine CICIG’s internal dynamics, it is necessary to begin the analysis from a macro-level perspective. I believe this is so because it is not possible to understand CICIG internal dynamics without first understanding the setting in which it was created, exists and operates.

5.2 The macro-level perspective

From a macro-level perspective CICIG as an institution is considered an agent embedded in a bigger structure, which is the Guatemalan political system. To begin the analysis it is therefore required a definition of what a political system is. Simply put, the political system is the structure that dictates the “rules of the political game”. Or in Giddens terms, the political system constitutes the structure that facilitates or constrains action.

5.2.1 Defining what a political system is

Within the social sciences, there is not a single-agreed definition of what a political system is. However, there is some sort of understanding that a political system is composed by different elements. One definition that I find interesting, and useful for my analysis, is the one proposed by Manuel Alcántara Sáez. In his book, *Governability, Crisis and Change*¹⁷, Alcántara explains that political sciences studies have followed different interpretative paths, with at least 7 different approaches: 1) the functional, 2) the cultural 3) the rational, 4) the organizational, 5) the group-conflict, 6) the state-centered and 7) the institutional. (Alcántara 1995: 43). In his book, Alcántara integrates elements of all of them to create what he calls a personal concept of political system:

¹⁷ Translated from the original Spanish title *Gobernabilidad, Crisis y Cambio* published in 1995.

The term political system is formed by the following elements: First, the institutional elements (formally known as the *political regime*) which represent the three political powers (executive, legislative and judicial) and their rules of interaction between them and with society; but also the norms, written or customary, that refer to the forms of ownership of property. 2) Second, the institutionalized *actors* in which society is organized to convey their demands, influence or modify government decisions. Third, the *values* of the individuals and social groups that compose the society in terms of compression of political activity derived both from strictly cultural elements and historical experiences. Finally, the existence of a political system of national character is a smaller part of a bigger international system, from which it can receive influence as a consequence of the action of another political system of equally national character, or as a results of the actions of the international system itself. (Alcántara 1995:54-55) [Own translation from the original text in Spanish]

The four elements mentioned by Alcántara (institutions, actors, political culture and international system) interact in a systemic way in which the variation in one of the parts affects the whole. According to Alcántara (1995:57), the different components of the political system are “intertwined by a certain logic of action”; that is, by a specific way of relating with each other in which they shape the rules of the game. It may be the case that these rules may be explicit or not. However, the characteristics of these different elements and their relationship allow the political system to be defined one way or another.

5.2.2 The Guatemalan political system in a nutshell

For the past 30 years the Guatemalan political system has been functioning under a democratic regime. Formally speaking, democracy began in Guatemala in 1985 with the promulgation of a new Constitution and the celebration of general elections. The power was then transferred from a military regime to a civil-democratic regime. Paradoxically, democracy and armed conflicted coexisted in Guatemala for a decade. This meant that the military dictatorship ended, but the counterinsurgency logic in the state and armed forces persisted. It was not until December of 1996, when the Peace Accords were signed, that the counterinsurgent state came to an end. However, decades of military dictatorship and a 36-year armed internal conflict have had without any doubt a great impact on the Guatemalan political system and democratic regime.

My intention in this subsection of the chapter is not to analyze each and every different element that compose the Guatemalan political system –a task that falls out of the limits of this

investigation– but to pinpoint those elements that have either facilitated or constrained CICIG actions.

5.2.2.1 The institutions

Guatemala has been plagued by corruption and impunity within the state and government's institutions. Without any doubt, one of the most damaged institution during the years of military dictatorship and armed conflict was the judicial power. This is so because during the period of the armed conflict, state officials and army forces committed hundreds of violations, abuses and crimes that were never recognized nor considered as illegal actions by the military regime and, therefore, were never punished. This resulted not only in a functional reduction of the judicial system's capacity to judge and punish, but also in widespread impunity (Torres Rivas 2006: 17-18).

Additionally, the problems and challenges that the Guatemalan judicial system presents today are not only a consequence of decades of judicial malfunction, but also a consequence of a structural problem that has roots in the 1985 Constitution and other set of laws and norms that govern the judiciary. An example of this are the so called “nomination commission”. The nomination commission is an institution created and recognized in the Guatemalan Constitution to choose and nominate judges and magistrates to different courts. Castresana (2009:50) explains that back when the nomination commission was created, it was considered as a great democratic advance that the judges were going to be chosen by professionals (bar associations, magistrate associations, and universities) and not by the military, who were characterized by choosing the judges in a discretionary manner.

Today, however, as Castresana has pointed out, in a democratic system it is unacceptable that one of the three powers of the state, the one that acts as the guarantor of fundamental rights, is being elected by corporations that have no representative popular mandate. According to Castresana:

For justice to be reliable it must be independent and impartial, and the nomination commissions propitiate precisely the contrary, they propitiate judges and magistrates to be chosen by certain pressure groups, big law firms, and universities that far from contributing to the objectivity have been politicized as a consequence of having spent years choosing important public officers. (Castresana 2009:50) [Own translation from the original text in Spanish]

In addition to the judiciary power, another greatly damaged institution is the legislature. In the past, the legislative function was orientated to ratify decisions taken by the military; today it is characterized by political parties that represent an amalgamation of particular interests, revealing the presence of powerful influences outside the legislative (Torres Rivas, 2007:11). Similar to the problems regarding the judicial power, the problems in the current legislative power are rooted in the laws and norms that govern the political party system. In 2014, ASIES¹⁸ published a study titled “*Guatemalan political parties: financing and institutionality*”, where it is argued that the poor and scarce way in which the laws regulate the financing of politics in Guatemala¹⁹ makes it possible for private and personal groups (interested in ensuring and safeguarding their interests in the Congress) to finance the political parties. According to Novales (2014:vii), the Guatemalan model of financing political parties affects not only the autonomy of the political parties but puts them in a positions of disadvantage against their powerful financiers.

Regarding the executive power, in April 2015, the presidency of Otto Perez Molina (President) and Roxana Baldetti (Vice-President) experienced a severe government crisis when both were accused to form part of an extended system of corruption and customs fraud²⁰. These revelations caused a commotion in the citizenship taking approximately 30,000 people to the streets in protest, demanding the resignation of the presidential couple. The protests, that lasted several weeks, managed to weaken the government to the point that on May 2015 Baldetti had no other option than to resign. A few months later, in September 2015, the resignation of Perez Molina followed. Both Perez Molina and Baldetti were arrested in preventive jail and are currently waiting for trial. Since January 2016, a newly elected president, Jimmy Morales, has been in charge of the government.

¹⁸ The Association of Investigation and Social Studies (*Asociación de Investigación y Estudios Sociales, ASIES*) is one of Guatemala’s most important think tanks created in 1979 with the purpose of investigating the social, political, economic, agrarian and military situation in Guatemala in the beginning of the 80’s, and proposing democratic solutions to the crisis that the country was dealing in that time. To date, ASIES has published more than 8,000 documents, investigations and studies that present recommendations to achieve a democratic state of law.

¹⁹ The political party financing regime in Guatemala is established in the Electoral and Political Party Law (*Ley Electoral y de Partidos Políticos, LEEP, Decreto 1-85 de la Asamblea Nacional Constituyente*) and in the general regulations (*Acuerdo 18-2007 del Tribunal Supremo Electoral*) and financing regulations (*Acuerdo 19-2007 del Tribunal Supremo Electoral*). (Novales 2014:20)

⁴ For more information about this case, known as “The Line” (“La Linea”), please refer to CICIG’s 8th Report of Activities, available online in Spanish at:
http://www.cicig.org/uploads/documents/2015/COM_085_20151113_VIII.pdf

5.2.2.2 The national actors

According to Alcántara's definition, in addition to the state institutions, a second important element are institutionalized actors, such as: civil society, political parties, interest or pressure groups, and social movements. In the case of Guatemala, during the period of military dictatorship and armed conflict, all forms of opposition, social movements and manifestations were violently repressed, even causing the death of some participants (Torres Rivas 2015:10). Additionally, there has been no recognition of the homicidal abuses committed during that time, the perpetrators have received neither sentences nor punishment for the perpetrators. Impunity has been the practice.

Repression and death not only affected civil society but also the legal opposition as represented by the political parties. During the decade of the 70's important leaders in favor of democracy were vilely murdered²¹ causing a tremendous and negative impact in today's political system. All the leaders that represented the Guatemalan version of socialdemocracy were killed during the military dictatorship. The consequence is that today -all over the political spectrum- there is a lack of democratic political leaders with defined ideologies and inclusive democratic proposals.

In regards to the pressure groups, in Guatemala there is a powerful economic elite that is formally represented in the *Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations* (CACIF)²². Since its creation in 1957 CACIF has constituted a dominant pressure group that has historically been against tax reforms in Guatemala. According to Torres Rivas (2006:30), this economic elite group was the biggest winner after the signing of the peace in 1996 and the failed attempt of the constitutional reforms in 1999²³. This dominant group, composed by

²¹ Such as the cases of the assassinations of political democratic leaders such as Adolfo Mijangos, Fuentes Mohr, Colom Argueta, Lopez Lavarre and many others.

²² CACIF, from its acronyms in Spanish, is the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (*Comite Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras*) founded in 1957.

²³ Torres Rivas explains that decades of conflict torn the social fabric, clearly seen during the period of the signing of the Peace Accords in 1996 and later during the referendum in 1999. When internal armed conflict finally ended and the peace accords were signed there was no mass support for the Agreements. In fact, several surveys showed that the Agreements were unknown or that the knowledge was limited. Later in 1999 took place a referendum with the purpose to include the Peace Accords in the Constitution and to provide a legal and institutional basis for the planned reforms. However, the NO won with 55% of votes with the participation of only 18.5% of the registered citizenship. This was not considered a major defeat in Guatemala's democracy, particularly in the attempt of recognizing indigenous rights and a multiethnic nation, but also was an exhibition of racism from the powerful elites. (Torres Rivas, 2006:27, 31)

a network of families²⁴, was not harmed by the conflict, and after 1985 they distanced themselves from the military, conserving their class status intact. According to Torres Rivas, this economic elite, who was in favor of peace but against democratization and constitutional reforms, saw in the signing of the peace, not the opportunity to democratize the country and make structural changes in benefit of the society, but the opportunity to achieve political stability as a condition for financial liberation, stimulus for private investing and external capital flow (Torres Rivas 2006:31).

Today CACIF and its members constitute a powerful pressure group who maintain their business and activities in a context of free market and minimal state and financial control. Additionally, by financing political parties over several decades, they have managed to safeguard their interests, blocking any attempt of tax reform by the Congress.

5.2.2.3 The political culture

The political culture in Guatemala was also affected in the absence of democracy and dialogue and the use of violence and repression to resolve political differences. For many decades, popular protests and manifestations were banned. Years of conflict and division have had a negative impact in the social values of solidarity, respect and trust between the Guatemalan people. In addition, years of political abuse and violation of the rule of law caused that the Guatemalans lost respect and loyalty to the institutions and laws.

However in April 2015 something without precedent happened. After CICIG and the MP broke the news with new corruption scandals involving the President and Vice-president, thousands of people took the streets for several weeks demanding actions. These public demonstrations resulted in the resignation of former President Perez Molina and former Vice-president Baldetti. It is interesting to notice that most of the participants in the massive protests were middle class, young people who had access to social media (such as Facebook and Twitter), and who were able to organize in a quick and spontaneous way. Torres Rivas explains that “the youth that in 2015 is fighting their own battle has no longer memory of what happened in the 80s of last century; there is some sort of ignorance in the generation of the Peace Accords” (Torres Rivas 2015:10-11) [Own translation from the original text in Spanish]. This young generation may have no recollection of the

²⁴ An interesting study about the Guatemalan oligarchy and family networks as structures of economic power can be found in Marta Elena Casaus Arzú's book “Guatemala: Lineage and Racism” (*“Guatemala: Linaje y Racismo”*) published in 1992.

conflictive past, however this same ignorance has enabled them to have no fear to form a new wave of social protests and movements.

Although in 2015 there were signs of a civil awakening, there is still indifference and disinterest in today's society. The truth is that most of the population understand little of politics, has not read the Constitution, and do not follow the public debate. As Torres Rivas accurately puts it: "this is a society that has been sick after so much violence caused by war. It is a symptom of what happens to a society when the socializing resources of order, morality, respect and loyalty have been weakened" (Torres Rivas, 2015:12) [Own translation from the original text in Spanish].

In order to build up political culture and citizenship becomes necessary not only to re-construct the broken bonds between Guatemalans, but to re-define democratic values absent in the society. It is of crucial importance that Guatemalans believe and have faith in their institutions. But in order for this to happen, the fight against corruption and impunity must be battled, not only by an international organizations created for this purpose but, most importantly, by the citizenship itself.

5.2.2.4 The international actors

Finally, in addition to elements of the political system mentioned above, it is important to not forget that the national political system is inserted in and influences by a bigger international system. In the case of Guatemala, the presence of international actors and their influence has been noticed since the beginning of the negotiations of the peace accords. The process, which took place between 1991 and 1996, involved the negotiation and signing of 12 accords. Among the agreements was the Agreement on Human Rights, which introduced the role of the international community, especially the UN, as a verification body (Villagrán Sandoval 2016:40). In September 1994, at request of the parties, the UN established the *United Nations Mission for the Verification of Human Rights and Compliance with the Commitments of the Comprehensive Agreements on Human Rights in Guatemala (MINUGUA)*. According to the UN:

MINUGUA carried out verification and institution-building activities through the country. More than 250 human rights monitors, legal experts, indigenous specialists and police were posted throughout Guatemala, including in its remotest areas. Their presence and verification activities have focused public attention on human rights and the related problem of impunity, reinforcing the declining trend in political violence. (Retrieved from United Nations official website at <http://www.un.org/en/peacekeeping/missions/past/minuguabackgr.html>)

In December 1996, when the last agreement was signed, the Agreement on the Definitive Ceasefire, the Security Council decided to attach to MINUGUA a group of 155 military observers. Although the expanded mission continued to be known as MINIGUA, its official name was shortened and changed to the *United Nations Verification Mission in Guatemala*, in order to reflect the new mandate, which included the cessation of hostilities, the separation of forces and the disarmament and demobilization of former guerilla combatants, grouped in the Guatemalan National Revolutionary Unit (URNG) (Resolution 1094-1997).

Today, 20 years after the signing of the Peace Accords, there is no longer a chronogram or compliance checks. As Aguilar Peralta (2016:107) indicates, the peace agreements have ceased to be a process in Guatemala, it has become a referent. The influence of the international community is no longer directly related to the peace accords. However, the creation of a new international mechanism to combat corruption and impunity in Guatemala can be considered as a product of the (unfulfilled) promises of the Peace Accords.

Among the agreements was a commitment to dismantle CIACS. The first proposal of an international investigative organization, back in 2003 with the name of CICIACS, was born as a demand for the protection of human rights activists. However, according to Gutierrez the crime that moved the frontier of human rights concerns into that of organized crime was the murder of Bishop Juan Gerardi²⁵-the pastoral director of the *Interdiocesan Project for the Recovery of Historical Memory* (RHEMI) - just 48 hours after presenting the Inform “Guatemala Never Again” (“*Guatemala Nunca Mas*”), which narrates the holocaust of the 36 year armed conflict (Gutierrez, 2016:29).

Over the years, CICIG has become a key institution in the battle against corruption in Guatemala. Since its creation in 2007, CICIG has lead more than 200 investigations. Perhaps the investigation that has had the most impact is the “La Linea” case that resulted in the resignation of the President and Vice-president of Guatemala in 2015. This case, together with other emblematic cases, are important in the sense that CICIG has not only revealed cases of corruption and impunity at the highest levels but, most importantly, has shown the Guatemalan population that criminals at the highest level (even the president or the vice-president) can be indicated using Guatemala’s own

²⁵ For more information about the Gerardi case check “*The Art of Political Murder. Who killed the Bishop?*” from the author Francisco Goldman, published in 2007.

laws and institutions. Without any doubt CICIG has touched a nerve in the Guatemalan political system. Whether CICIG's success is due to its institutional set-up or due to the agency of CICIG actors is what I intend to analyze and answer in the next and final section of this chapter.

5.3 The micro-level perspective

From a micro-level perspective CICIG, as an institutional setup, is seen as the structure, while the leaders and actors, who act through CICIG, are seen as the agents. When analyzing CICIG structure, I focus on the normative elements of the organization: mainly its mandate and signed agreements with other institutions. When analyzing CICIG's agents, I focus mainly in two important figures: the Commissioner, who leads the organization, and the Attorney General, who leads the Public Prosecutor's Office. Although the Attorney General is not part of CICIG staff, I argue that it is an actor that plays a key role in CICIG investigations. Without the support of the MP, CICIG cannot successfully bring cases to court. Therefore, these two central figures become important in the analysis.

5.3.1 The structure: CICIG mandate

On December 2006, the government of Guatemala and the United Nations signed the "Agreement to Establish the International Commission against Impunity in Guatemala (CICIG)"²⁶. In August 2007 the agreement was ratified by the Congress and CICIG was established as an:

...independent international body designed to support the Public Prosecutor's Office (MP), the National Civil Police (PNC) and other State institutions in the investigation of crimes committed by members of illegal security forces and clandestine security structures and, in a more general sense, help to disband such groups. To do so, CICIG assists with the investigations and criminal prosecutions in a small number of complex cases, as well as implementing steps-in accordance with its mandate-aimed at strengthening the institutions of justice system so that they can continue to tackle these illegal groups in the future. (Retrieved from CICIG official website at <http://www.cicig.org/index.php?page=mandate>)

According to Article 1, *illegal security groups and clandestine security organizations* mean those groups that: "(i) commit illegal acts in order to affect the full enjoyment and exercise of civil and

²⁶ An electronic version of the agreement can be found in Spanish at:
http://www.cicig.org/uploads/documents/mandato/cicig_acuerdo_en.pdf

political rights and (ii) are linked directly or indirectly to agents of the State or have the capacity to generate impunity for their illegal actions” (Agreement between the UN and the State of Guatemala on the establishment of CICIG, 2006: Article 1)

Regarding the functions of the Commission, Article 2 states that in order for CICIG to achieve its objectives, the Commission has three functions:

(a) determine the existence of illicit security forces and clandestine security organizations, their structure, forms of operation, sources of financing and possible relations to State entities or agents and other sectors; (b) collaborate with the State in the dismantling of illegal security groups and clandestine security organizations and promote the investigation, criminal prosecution and punishment of those crimes committed by their members; (c) recommend to the State the adoption of public policies for eradicating clandestine security organizations and illegal security groups and preventing their re-emergence, including the legal and institutional reforms necessary to achieve this goal. (Agreement between the UN and the State of Guatemala on the establishment of CICIG, 2006: Article 2)

Additionally to the Commissions functions, Article 3 indicates that in order to fulfill its mandate, CICIG has 12 powers, among the most important are:

- ❖ Collect information provided by any person, official or private entity, non-governmental organization, international organization and authorities of the States
 - ❖ Promote criminal prosecutions by filing criminal complaints with the authorities. The Commission may also join a criminal proceeding as a probate prosecutor (*quellerante adhesivo*)
 - ❖ Provide technical advice to the State institutions in the investigation and criminal prosecutions of crimes committed by members of illegal security groups and clandestine security organizations
 - ❖ Report to the authorities the names of civil servants who in the exercise of their duties have committed administrative offences, especially those civil servants or public employees accused of interfering with the Commission’s exercise of its functions or powers
 - ❖ Enter into and implement cooperation agreements with the Office of the Public Prosecutor, the Supreme Court, the Office of the Human Rights Ombudsman, the National Civil Police and any other State institutions for the purposes of carrying out its mandate
 - ❖ Publish general and thematic reports on its activities and the results, including recommendations.
- (Ibid: Article 3)

Regarding the Commissioner, Article 5 states that:

The Commissioner, appointed by the Secretary-General of the United Nations, shall have overall responsibility for the activities of CICIG....He or she shall be a jurist with a high level of professional competence in the areas directly related to the mandate of CICIG, particularly human rights, criminal law and international law, and must also have extensive experience in the investigation of and fight against impunity. (Ibid: Article 5)

The different Commissioners that have led the organization have demonstrated the importance of creating cooperation agreements with other institutions in order to facilitate their job and create direct channels of communication. To date, CICIG has signed 10 cooperation agreements²⁷ with different institutions, among them:

- ❖ Property Registration Authority (*Registro General de la Propiedad* ,RGP)
- ❖ Public Prosecutor's Office (*Ministerio Publico*, MP)
- ❖ Bank Authority (*Super Intendencia de Bancos*, SIB)
- ❖ Office of the Controller General of Accounts (*Contraloría General de Cuentas* ,CGC)
- ❖ The President's Wife Secretariat for Social Work (*Secretaria de Obras Sociales de la Esposa del Presidente*, SOSEP)
- ❖ The Indigenous Women Defender (*Defensoría de la Mujer Indígena*, DEMI)
- ❖ The Presidential Secretariat for Women (*Secretaria Presidencial de la Mujer*, SEPREM)
- ❖ Tax Administration Office (*Superintendencia de Administración Tributaria* ,SAT)
- ❖ Interior Ministry (*Ministerio de Gobernación* ,MG)
- ❖ The United Nations Children Fond (*Fondo de las Naciones Unidas para la Infancia*, UNICEF)
- ❖ United Nations Development Fond for Women (*Fondo de Desarrollo de las Naciones Unidas para la Mujer*, UNIFEM)
- ❖ United Nations Office for Drugs and Crime (*Oficina de las Naciones Unidas contra la Droga y el Delito* , UNDOC)

²⁷ The list of cooperation agreements between CICIG with state institutions or other bodies can be found at: <http://www.cicig.org/index.php?page=agreements>. These documents are available only in Spanish.

Special mention deserves the collaboration agreement that CICIG has with the Public Prosecutor's Office (MP). The MP is the institution responsible for both the investigation and prosecution of criminal acts. Therefore it is of great importance for both CICIG and the MP to have a fluent communication and joint objectives in order to carry their jobs in an effective way. I argue that both institutions need and depend on each other for different but related reasons. For example, once CICIG has carried out its investigations it needs the collaboration of the MP to process the criminal prosecution. Without the MP's prosecutions, CICIG's investigations cannot go any further. On the other hand, the MP needs CICIG for technical advice and expertise. An example of this is the creation in 2008 of a special unit within the MP, the *Special Anti-Impunity Prosecutor's Bureau* (FECD), to investigate and prosecute members of CIACS. CICIG has supported and helped the strengthening of the MP by the professionalization and specialization of the institution. Without CICIG's help, the MP would not have been able to carry out investigations and prosecutions that required the use of specialized equipment, such as the Wiretapping Unit (UME), introduced by CICIG in 2009.

From an agent-structure perspective, CICIG mandate and signed cooperation agreements constitute the structure that establishes CICIG functions and powers within the Guatemalan political system. CICIG mandate serves both as facilitator and constrainer of CICIG actions. In other words, it gives CICIG a specific framework of action, it tells the Commissioner what he is allowed to do according to his mandate. However, the other important element in the agent-structure debate are the actors. According to Giddens (1984:14), agents are important because they have also the power to 'act otherwise'; which means that they are able to intervene, or refrain from intervening with the purpose of influencing a specific process or state of affair. Giddens refers to this power as *agency*. In the case of CICIG, the two actors that have the capacity to use their agency to make changes in the Guatemalan institutional setup are CICIG Commissioner and the MP's Attorney General. The following section is dedicated to these actors.

5.3.2 The actors: the Commissioner and the Attorney General²⁸

Since it began operations in September 2007, CICIG has been led by three commissioners: the Spanish jurist Carlos Castresana, the Costa Rican former attorney general Francisco Dall’Anese, and the Colombian former investigative judge Iván Velasquez. Additionally, CICIG has worked in conjunction with other important national figures within the MP, namely the attorney generals Amilcar Velazquez Zarate, Claudia Paz y Paz Bailey, and Thelma Aldana.

All these figures have contributed significantly to the fight against impunity in Guatemala and made efforts to the reformation and professionalization of the MP. However, in a conflictive and polarized society such as the Guatemalan, none of them have been able to escape controversy during their mandate, nor have they been able to carry their work without being pressured or resisted by both licit and illicit powers.

Since its creation, CICIG has evolved from being low profile and silent face to high profile and proactive. During the initial phase, Castresana was set to the task to build the commission from scratch. When Castresana started there was no structure and no system. It took approximately two years only to establish a telephone line, an email address, and a website to help create a connection and means of communication with the public. He had to hire staff and dedicate time to negotiate collaboration agreements with the MP. Since Velazquez Zarate became attorney general in August 2008, he and Castresana had a collaborating relationship which helped facilitated work between the two institutions.

Despite Velazquez efforts, when the time came to elect a new attorney general for the next period, the nominating committee in charge for the selection of high-level justice officials left his name out of the list of candidates presented to President Alvaro Colom in 2010. In May of the same year, President Colom named Conrado Arnulfo Reyes attorney general. Castresana immediately opposed to Reyes selection, and accused him of having connections with organized crime. As Castresana had predicted, as soon as Reyes took charge of the MP he made sure to block CICIG work and

²⁸ The information contained in this section was obtained from two Reports of the International Crisis Group: *Latin America Report No 36 “Learning to walk without a crutch: An assessment of the International Commission against Impunity in Guatemala”* published in 2011; and *Latin America Report No 56 “Crutch to Catalyst? The International Commission Against Impunity in Guatemala”*, published in 2016, and the *WOLA Report on the CICIG Experience “The International Commission against Impunity in Guatemala”* published in 2015.

investigations. Reyes was then taken down from his position, but this happened only after Castresana had resigned in June 2010.

During the same month of Castresana's resignation, UN Secretary General named Francisco Dall'Anese as Castresana's successor. At the same time, Reyes' removal opened the opportunity for human rights lawyer Claudia Paz y Paz to become attorney general. Dall'Anese's working terms coincide with those of Paz y Paz, and during the time they worked together, they managed to achieve progress and made important reforms within the MP.

Controversy, however, was around the block. In 2013, while commissioner Dall'Anese was in charge, former dictator Efraín Ríos Montt was in trial accused for genocide and war crimes during the armed conflict in the period of the 1980s. The Ríos Montt trial was extremely controversial given the divided opinions in the Guatemalan society about the armed conflict. While some sustain that there was genocide, others deny it. Dall'Anese asked to stop a media campaigns against the trial process and this allegedly infuriated President Otto Pérez Molina, who had publicly said that there was no genocide in Guatemala. Dall'Anese, in conflict with President Pérez Molina, resigned in September 2013.

Shortly after the UN Secretary General announced his appointment of the third commissioner, Iván Velásquez, who took charge of CICIG in August 2013 and who currently holds the position. Commissioner Velásquez began working in conjunction with attorney general Paz y Paz. Nevertheless, Paz y Paz' work was targeted by opposing political pressure and the influences of some parallel power structures succeeded when her mandate was cut short, ending in May 2014. The story was being repeated again, as with Velásquez, the nominating committee excluded Paz y Paz for reelection despite her positive achievements, international recognition and good qualifications for the position. Thelma Aldana replaced Paz y Paz as attorney general in May of the same year. However, current Attorney General Aldana has proved to be ideal for the position. Commissioner Velásquez and Aldana have built a strong and cooperative relationship which has been crucial for revealing and processing the highest impact case of corruption and tax defraud since CICIG creation²⁹.

²⁹ A short description about this case known as "La Línea", together with other CICIG's prominent cases, has been included in Chapter 2 of this thesis.

With the information I have presented so far, I believe it is now possible, in the next and final section of this chapter, to answer to the research question that originated this investigation: *to what extent CICIG's success is due to an institutional set-up (structure) or due to the agency of CICIG's leaders and actors.*

5.4 Determining CICIG success: agency versus structure?

In the course of 9 years, CICIG has managed to become one of Guatemala's most trusted institutions³⁰. This allows to talk about some sort of CICIG "success" within the Guatemalan political system. I am aware that the notion of a "successful institution" is difficult, or perhaps even impossible, to measure in a quantitative way. It becomes especially complex to determine how successful an institutions is when its actions and dynamics are part of a current and ongoing process, such as the case of CICIG. Nevertheless I will argue that although CICIG's success cannot be quantitatively measured, I have collected sufficient information on its performance to qualitatively interpret the institution as successful.

To the question, is it the structure or the agency that has determined CICIG success, the answer lies in both elements. Although this answer might sound over simplified, it requires further explanation. As WOLA has described it, CICIG is a unique hybrid mechanism of international cooperation without any precedent in the world. Before CICIG, the UN had never been involved in the investigation of corruption related to organized crime (WOLA, 2015). I argue that part of CICIG success is due to its very permissive, explicit and clear mandate. CICIG mandate has been written in such a way that it basically gives CICIG the green light and access to every private and public person and document that is required in order to investigate. This is a great tool that CICIG has been able to take advantage of.

Moreover, CICIG mandate enjoys legality but also wide *legitimacy*. Even though it is an international and independent investigative organization, it operates under Guatemalan laws and it was in fact the Guatemalan state who asked the UN to help establish the organization. Therefore, under no circumstances CICIG can be seen as an international imposition.

³⁰ According to an August 2015 poll conducted by a local newspaper, Prensa Libre, CICIG is Guatemala's most trusted institution. <http://www.prensalibre.com/opinion/se-confirma-apoyo-popular-a-la-cicig>

In addition to the faculties in its mandate, CICIG has also made sure to sign cooperation agreements with key institutions in charge of the investigation, prosecution and the adjudication of crimes. This makes possible for CICIG to have a collaborative relationships with different institutions, but also it has allowed CICIG to have access to the institutions' internal dynamics and propose changes within them. Both the mandate and the signed cooperation agreements constitute the structure or framework that shape/constrain CICIG actions.

Regarding the role of CICIG's actors, the path and alliances they have been building has not been an easy road. During its first years, and under Commissioner Castresana, CICIG had to deal with the indifference of public officials and lacked the support of the prosecutors (Villagrán Sandoval 2016:47). Naturally, CICIG had just established in the country which meant that the Commissioner was mainly focused in consolidating the organization and getting it settled. Additionally, in 2008 a new change of government took place which brought certain uncertainty and distrust to the political panorama.

In 2010 when Commissioner Dall'Anese took charge there was a new opportunity to forge a new relationship with the MP and the newly elected Attorney General Paz y Paz. During this time CICIG accomplished to professionalize and strengthened the MP. Additionally, CICIG tried to promote for the first time a constitutional reform. However this first intent was unsuccessful due to the unfavorable and conflictual context between the commission and some national courts who refrained from collaborating with CICIG investigations. Dall'Anese responded with the publication of a report in 2012 titled "Judges of Impunity" ("*Jueces de la Impunidad*") (Villagrán Sandoval, 2016: 47-48). During his period Dall'Anese was not able to find support in the judiciary system and after publication of the report the conflict between CICIG and the judiciary system just deepened.

In 2013 Commissioner Velazquez assumed CICIG leadership, which brought once again a new and strongest alliance with the MP and national judges that helped CICIG investigate new key cases. Thanks to the discovery of a corruption and tax fraud network in April 2015, CICIG has been able to position itself more firmly and gain stronger support from the citizenship. This time CICIG even managed to get support from CACIF, an institution historically known to defend its own interest and be against constitutional reforms.

With Commissioner Velasquez at the head, and with the support of Attorney General Aldana, CICIG has reached a maturity stage and has been able to show its transformation power. Thanks to the agency of these two leaders, CICIG has gained immense credibility in the society, showing that powerful criminal individuals can face justice using Guatemala's own laws and institutions. Additionally, Commissioner Velasquez, has not only become a relevant actor in the fight against corruption and impunity, but has also pushed an agenda for a constitutional reform, that has been pending over two decades, since the signing of the Peace Accords.

5.5 Conclusions

Without any doubt, CICIG structure has allowed the commission to become a key figure in the fight against corruption in Guatemala. However, I argue that in addition to the structure, it has been CICIG actors who had made it possible for the institution to have successful accomplishments. In a country like Guatemala, it is of little or no use having great laws and rules written in theory if there is no one making sure to put them into practice. This is where the role of the agents becomes significant. As Giddens (1984:14) indicated, it is the agent who has the power to act otherwise. From a micro-level perspective, CICIG agents have had the power of using the structure (mandate) in its favor in order to carry on their actions; and from a macro-level perspective, they have had the power of using their agency in order to make changes in the bigger structure (the political system).

Over the years, CICIG's actors have understood the importance of forming alliances with key institutions and procured to maintain good and open communication with the civil society through the public media. Given that CICIG is an autonomous institution, and does not depend economically from the state or any private entity, it has been able to escape forming alliances with powerful sectors, interest groups or economic elites that could interfere with its mandate. Instead CICIG has focused on forming alliances and looking for support from the key elements of governability in Guatemala.

CICIG success is both due to its structure and agency of its actors. From a structure point of view, CICIG mandate was created in such a way that it has ensured the commission with enough power and capacity to carry on its task. Its autonomy and independence has guaranteed the capacity to act and interfere in the private and public sector. In other words, no one can escape from CICIG investigations. From an agency point of view, CICIG actors have dared to do what no one else has: investigate and process powerful criminal structures and show the Guatemalan population that no

one is outside the rule of law, not even the President or Vice-president of the country. They have shown that the justice system can be functional using Guatemala's own laws and institutions. Additionally, they have managed to become a central actor for the promotion of constitutional reforms. This is not an easy task in Guatemala and CICIG cannot fight this battle alone.

CICIG's biggest strength lies in its powerful mandate and the agency of its actors, however, CICIG's biggest constraint lies in the very structure that CICIG is fighting to change. Big and structural changes must be made in each and every element of the Guatemalan political system mentioned above. How to move forward in a society where the system itself allows illegality to be rewarded and impunity to be enjoyed? CICIG's proposal to the solution is clear: make changes to the Constitution, make changes to the laws. There is no other way.

REFERENCES

Aguilera Peralta, G. (2016). ¡Qué veinte años no son nada! Reflexiones sobre dos décadas de paz en Guatemala in *Política Internacional*. Guatemala: Ministerio de Relaciones Exteriores. Available at: <http://ticg.minex.gob.gt/Uploads/Revista-Politica-Internacional.pdf#page=41> [Last accessed December 2016].

Alcántara Sáez, M. (1995). *Gobernabilidad, crisis y cambio. Elementos para el estudio de la gobernabilidad de los sistemas políticos en épocas de crisis y cambio*. México: Fondo de Cultura Económica.

Amnesty International (2002). Guatemala's lethal legacy: past impunity and renewed human rights violations. Available at: <https://www.amnesty.org/en/documents/AMR34/001/2002/en/> [Last accessed August 2016].

Bell, S. (2002) Institutionalism: Old and New. In *Government, Politics, Policy, and Power in Australia*.

Berg, B. L. & Lune, H. (2012). *Qualitative research methods for the social sciences*. 8th ed. Boston: Pearson.

Bhattacharjee, Anol (2012). "Social Science Research: Principles, Methods, and Practices" (2012). *Textbooks Collection*. Book 3. Available at: http://scholarcommons.usf.edu/oa_textbooks/3 [Last accessed November 2016].

Bryman, A. (2008). *Social research methods*. 3rd ed. ed. Oxford: Oxford University Press.

Bryman, A. (2012). *Social research methods*. 4th ed. ed. Oxford: Oxford University Press.

Castresana, C. (2009). Los retos de la justicia y el papel de la sociedad civil in *XXV Seminario Permanente sobre Realidad Nacional: XXX Aniversario de Asies*. Guatemala: Asociación

de Investigación y Estudios Sociales (ASIES). Available at:
<http://www.asies.org.gt/download.php?get=seminariorn2009.pdf> [Last accessed December 2016].

CEH (1999). Guatemala Memory of Silence. Guatemala: Oficina de Derechos Humanos del Arzobispado de Guatemala. Available at:
http://www.aaas.org/sites/default/files/migrate/uploads/mos_en.pdf [Last accessed August 2016].

CICIG (2006). Agreement between the United Nations and the State of Guatemala on the Establishment of an International Commission against Impunity in Guatemala. Available at: http://www.cicig.org/uploads/documents/mandato/acuerdo_creacion_cicig.pdf#page=12 [Last accessed December 2016].

Devetak, R., Burke, A. & George, J. (2012). *An introduction to international relations*. 2nd ed. ed. Cambridge: Cambridge University Press.

Giddens, A. (1984). *The constitution of society: outline of the theory of structuration*. Cambridge: Polity Press.

Gutierrez, E. (2016). La CICIG: Un diseño nacional y una aplicación internacional in *Política Internacional*. Guatemala: Ministerio de Relaciones Exteriores. Available at:
<http://ticg.minex.gob.gt/Uploads/Revista-Politica-Internacional.pdf#page=41> [Last accessed December 2016].

Hudson, A. & Taylor, A. W. (2010). The International Commission against Impunity in Guatemala: A New Model for International Criminal Justice Mechanisms. *Journal of International Criminal Justice*, 8 (1): 53-74. Available at:
<http://jicj.oxfordjournals.org/content/8/1/53.full.pdf> [Last accessed August 2016].

International Crisis Group (2011). Learning to walk without a crutch: An assessment of the International Commission against Impunity in Guatemala. Available at:

<http://www.crisisgroup.org/~media/Files/latin-america/36%20Learning%20to%20Walk%20without%20a%20Crutch%20---%20The%20International%20Commission%20Against%20Impunity%20in%20Guatemala.pdf> [Last accessed August 2016].

International Crisis Group (2016). Crutch to catalyst? The International Commission against Impunity in Guatemala. Available at: <http://www.crisisgroup.org/~media/Files/latin-america/Guatemala/056-crutch-to-catalyst-the-international-commission-against-impunity-in-guatemala.pdf> [Last accessed August 2016].

Novales Contreras, H. (2014). *Partidos políticos guatemaltecos: Financiamiento e institucionalidad*. Guatemala: Asociación de Investigación y Estudios Sociales (ASIES). Available at: <http://www.asies.org.gt/download.php?get=2014--disop--partidos-pol--ticos-guatemalteco--financiamiento-e-instricuionalidad.pdf> [Last accessed December 2016].

Ritzer, G. & Smart, B. (2001). *Handbook of social theory*. London: Sage.

Wendt, A. E. (1987). The agent-structure problem in international relations theory. *Int Org*, 41 (3): 335-370.

Torres-Rivas, E. (2006). Guatemala: desarrollo, democracia y los acuerdos de paz in *Revista Centroamericana de Ciencias Sociales*. Available at: <http://courseware.url.edu.gt/PROFASR/Estudiantes/Facultad%20de%20Ciencias%20Pol%C3%ADticas%20y%20Sociales/Gu%C3%ADa%20de%20Estudio%20Semipresencial%20Diagn%C3%B3stico%20y%20Participaci%C3%B3n%20Social%20I/Materiales%20adicionales%20de%20lectura/Guatemala,%20desarrollo,%20democracia%20y%20los%20acuerdos%20de%20paz.pdf> [Last accessed December 2016]

Torres-Rivas, E. (2007). A diez años de la firma de la paz in *El Observador*. Available at: <https://www.dropbox.com/s/i0ahp3qer6rzor0/El%20Observador%20No.%205%2C%20Cu%C3%A1l%20es%20el%20estado%20de%20la%20democracia%20en.pdf?dl=0> [Last accessed December 2016].

Torres-Rivas, E. (2015). Guatemala: la corrupción como crisis de gobierno in *Nueva Sociedad*. Available at: http://nuso.org/media/articles/downloads/COY1_Torres_Rivas_258.pdf [Last accessed December 2016].

Villagrán Sandoval, C.A. (2016). Soberanía y Legitimidad de los Actores Internacionales en la Reforma Constitucional de Guatemala: El Rol de CICIG in *Política Internacional*. Guatemala: Ministerio de Relaciones Exteriores. Available at: <http://ticg.minex.gob.gt/Uploads/Revista-Politica-Internacional.pdf#page=41> [Last access December 2016].

WOLA (2015). The International Commission Against Impunity in Guatemala. A WOLA report on the CICIG experience. Available at: http://www.wola.org/sites/default/files/Citizen%20Security/2015/WOLA_CICIG_ENG_FNL_extra%20page.pdf [Last accessed August 2016]