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America

ADVOCATES AGAINST IMPUNITY

A case study on human rights organizing in Guatemala



AP Photo/Moses Castillo

Guatemala's then-Vice President Eduardo Stein, left, and Carlos Castresana, right, director of the International Commission Against Impunity in Guatemala, shake hands as Guatemala's Foreign Minister Gert Rosenthal looks on, during the commission's inauguration ceremony in Guatemala City, Friday, Jan. 11, 2008.

The creation of Guatemala's anti-impunity commission in 2007 showed how flexibility, a broad-based coalition, and judicious use of international pressure can make a successful human rights campaign.

With human rights advocates watching on a live streaming video feed, the Guatemalan Congress on August 1, 2007, approved an agreement between the United Nations and the Guatemalan executive to create the International Commission Against Impunity in Guatemala, or CICIG in its Spanish acronym. Guatemala's elected representatives thus gave the United Nations authority to probe and aid prosecution of on-going criminal activity, and not simply past human rights abuses or criminal activity, jointly with national authorities to a degree that was unprecedented in Latin American history.

Nine months earlier, President Oscar Berger and U.N. officials had agreed to establish the commission as a tool to investigate illicit criminal groups that had established themselves in the Guatemalan state and were widely believed to be settling scores, executing enemies and advancing their illicit interests with little interference from police or the courts. Some of the groups were outgrowths of paramilitary groups active during Guatemala's long civil war, while others appeared in the aftermath of a peace agreement that ended the war in 1996. By asking the Congress to allow creation of CICIG, the Berger government was implicitly accepting the idea, long maintained by human rights groups, that Guatemala's police and judicial systems, among other institutions, had been infiltrated by organized criminal groups and that these state

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institutions were incapable of facing the problem on their own. A special board, with international clout and funding from international donors channeled through the United Nations, would be necessary to probe illicit groups and start the task of dismantling them.

The congressional vote creating CICIG was preceded by nearly six years of public and behind-the-scenes advocacy, maneuvering and pressure that began with a small group of human rights organizations based in Guatemala but soon spread to include the support of North American and European NGOs and later broadened further to encompass a wider cross-section of Guatemalans and numerous foreign governments. At several junctures, it appeared as if their efforts would fail. A previous attempt to create a similar body had collapsed in 2004. In that instance, the United Nations and the previous Guatemalan administration had agreed to establish a Commission for the Investigation of Illegal Armed Groups and Clandestine Security Apparatuses, or CICIACS. The initiative ended in disarray after the country’s Constitutional Court, dominated by appointees of the rightist Guatemalan Republican Front (FRG) party then in power, ruled that the agreement creating the commission violated Guatemalan sovereignty as defined in the Constitution. Following that defeat, Guatemalan groups remained deeply skeptical that an international commission would ever become a reality and, if it did, whether it would have the authority needed to make real progress against the organized crime groups believed to have infiltrated whole sectors of government. Yet they persisted in their advocacy, leading in December 2006 to an agreement between the Guatemalan government and the United Nations to create what became known as CICIG. Even then, many human rights advocates considered this new proposal a watered-down version of CICIACS. These critics of the agreement to create CICIG noted, for example, that while the commission would be able to gather evidence and present it in court, prosecution of alleged conspirators would still be in the hands of the public prosecutor’s office (*Ministerio Público*), which many advocates considered unreliable, often incompetent, and possibly compromised by the very clandestine groups it was supposed to be investigating. The campaign to create CICIG faced challenges and setbacks at every turn, and the likelihood of its passage was uncertain until the final votes were counted.

A decisive turn in the campaign for CICIG occurred in February 2007, when three visiting Salvadoran politicians and their driver were kidnapped and murdered on a road near Guatemala City. Four Guatemalan police officers were arrested for the crime and subsequently murdered in their cells before they could be thoroughly questioned by authorities. Five months later, with the murders and their grisly aftermath still etched in the minds of Guatemalans, the Guatemalan Congress approved the CICIG initiative in a dramatic vote broadcast via internet.

The campaign for CICIG demonstrated that civil society, by putting the issue on the agenda and generating political and societal support, can play a critical role in tackling organized crime structures that may initially seem untouchable. The purpose of this report is to recount the advocacy campaign that led to this pioneering commission and draw lessons that could be applied to similar efforts elsewhere in Latin America and beyond. The report is based on interviews with key figures in the effort that led to CICIG and the earlier, failed attempt to create a similar commission; official documents associated with the effort; and news accounts.

WAR AND ITS AFTERMATH

Although CICIG's mission is to tackle only organized crime structures entrenched in the state (as opposed to other organized crime phenomena existing outside the state, such as drug trafficking rings or common crime syndicates), the campaign that led to its creation took place in a climate of corruption, crime and impunity that has infected all of Guatemalan society. In 2007, there were 5,781 homicides in Guatemala, or 47 per 100,000, one of the highest rates in the world for a country not at war.¹ The conviction rate in homicide cases has been widely reported to be under two percent. The roots of this everyday violence in Guatemala are complex, and they include the malignant influence of U.S. Cold War-era military and police aid, but it can be seen as partly an outgrowth of the legacy of brutality and impunity dating from the country's long civil war.

Thirty-six years of internal armed conflict in Guatemala officially ended in 1996 when the government signed a peace accord with the coalition of leftist guerrilla groups known as the Guatemalan National Revolutionary Unity (URNG), with both sides and the country at large exhausted by the civil war. The Guatemalan conflict, which killed nearly 200,000 people, was the longest and bloodiest of the wars that consumed Latin America in the second half of the 20th Century.² An early characteristic of the war was the proliferation of armed groups that wantonly kidnapped and killed workers, intellectuals, students and others who were believed to fit the profile of guerrilla sympathizers. By the 1980s, the war had morphed into a genocidal campaign by the Guatemalan military against indigenous communities in the rural western highlands, where guerrilla groups remained active. In major cities, however, armed groups comprised largely of active and non-active duty military officers continued to abduct and murder purported leftists.

Even before the 1996 peace agreement, human rights organizations reported that these military groups were turning into clandestine squads with criminal agendas that included kidnapping, extortion and assassination of personal enemies and business rivals. Other violent groups that did not necessarily have a previous connection to the war's counterinsurgency campaigns were also appearing. The peace agreement called for the dismantling of all these criminal structures but, as later events showed, this did not happen.

The years immediately following the 1996 peace agreement saw a downturn in homicide rates and politically motivated killings. Clandestine groups linked to the state continued to be active, however, as several headline cases showed in the late 1990s. One of those cases was the murder of Bishop Juan Gerardi in April 1998, in his garage two days after he presented an exhaustive report on atrocities committed during the war that concluded that government forces were responsible for over 85 percent of the violations that occurred during the internal armed conflict. The Gerardi killing occurred two blocks from the presidential palace. As that case showed, the information that these clandestine groups had at their disposal to track victims, the level of planning and sophistication with which they carried out attacks, and the ability to act seemingly without fear of police interference all suggested that these groups were well-connected and not composed of common criminals.³

An upsurge in brazen attacks and threats against human rights activists – ranging from intimidation to assassinations – began in 2001, during the administration of President Alfonso Portillo who took office in 2000. On the surface the attacks appeared to be acts of common crime. Yet as the



Helen Mack, president of the Myrna Mack Foundation, was an instrumental actor in the movement to create an independent commission to investigate clandestine groups in Guatemala.

targets widened to include clergy, trade union activists, indigenous and peasant leaders, journalists, forensic anthropologists, and others involved in anti-impunity initiatives and in denouncing acts of corruption by state officials, a pattern emerged of systematic attack on civil society actors. As human rights conditions continued to worsen and more civil society actors received threats or were victims of violence, a climate of fear and exasperation spread.

A small group of prominent human rights organizations decided to join forces and take drastic action to place the issue of attacks on civil society on the public and international agenda. These organizations included the Center for Legal Action on Human Rights (*Centro para la*

Acción Legal en Derechos Humanos, CALDH), the International Human Rights Research Center (*Centro Internacional para Investigaciones en Derechos Humanos, CIIDH*), the Myrna Mack Foundation (*Fundación Myrna Mack, FMM*), the Mutual Support Group (*Grupo de Apoyo Mutuo, GAM*), the Rigoberta Menchú Tum Foundation (*Fundación Rigoberta Menchú Tum, FRMT*), the Institute of Comparative Studies in Criminal Sciences of Guatemala (*Instituto de Estudios Comparados en Ciencias Penales de Guatemala, ICCPG*), the Human Rights Office of the Archdiocese of Guatemala (*Oficina de Derechos Humanos del Arzobispado de Guatemala, ODHAG*), and Security in Democracy (*Seguridad en Democracia, SEDEM*).

The initiative that led to CICIG began, by most accounts, in late 2001, during a series of gatherings of this coalition. Reaching out first for the backing and collaboration of international human rights organizations such as WOLA, these eight organizations, often braving death threats and harassment, then sought to garner the support of Guatemalan government officials and representatives of aid-donor governments who were based in Guatemala, often at their respective countries' embassies, for this innovative proposal.

One of the groups, the Myrna Mack Foundation, was led by Helen Mack, who had an unusual background in the human rights field as both victim and advocate. Her sister, Myrna Mack, a well-known anthropologist, had been murdered in 1990 by a military death squad following the publication, by some of her colleagues, of a study describing the situation of the internally displaced indigenous communities, displacement largely caused by the Guatemalan military. Though Myrna had not worked directly on the study, the Guatemalan military linked her to its publication and ordered her elimination.* Helen Mack organized a campaign for justice in her sister's death, pressuring prosecutors and police to investigate and enlisting help from embassies and human rights groups, but she still faced indifference and a seemingly impenetrable wall of impunity at every step. The police detective who prepared the investigative report in the case was murdered in 1990. Judges hearing the case received death threats. A court in 1993 convicted an army sergeant attached to the *Estado Mayor Presidencial* (EMP), the presidential military staff, of physically carrying out the murder of Myrna Mack. Thirteen more years passed before the conviction of another EMP officer, Colonel Juan Valencia Osorio, for

* The story of Myrna Mack's life, her brutal assassination, and the struggle for justice led by her sister Helen could fill its own report, if not a full-length book. Due to space limitations, key details of the case, such as the flight of Colonel Juan Valencia Osorio after his conviction was upheld, had to be omitted. If you are interested in learning more about this extraordinary story, please visit the Myrna Mack Foundation website (www.myrnamack.org.gt), which has biographies of both Myrna and Helen, as well as more details about the case.

ordering the killing, was upheld by the Supreme Court.⁴

“The illegal bodies and clandestine structures were simply the continuation of the death squads that operated in Guatemala,” said Helen Mack in an interview.⁵ “One of them, the EMP, was responsible for the extrajudicial execution of my sister Myrna Mack. At that time [in 2001], Myrna’s case was still open, and the idea of proving that these clandestine groups existed and were carrying out illegal acts became a personal calling.”

David Lindwall, at the time counselor for political affairs at the U.S. Embassy in Guatemala, first heard the idea in October 2001, during a breakfast meeting with Mack. The embassy is an influential actor in Guatemala, and winning its support for the idea of an international commission proved crucial to making it happen.

“Her argument was that we needed an international organization to do this because the Guatemalan justice system was hopelessly compromised,” Lindwall, now the deputy chief of mission in Guatemala, said in an interview. “Unless we brought in an international organization, we were unlikely to have any results ... There was a resurgence of threats against human rights groups – with killings and break-ins – and what Helen was working out was the view that there was a relationship between these threats and figures in the military and former military. She had to walk me through that, because at the time it was not clear that that was what was happening.”⁶

What human rights leaders were originally proposing was a commission that would have international authority not only to investigate cases but also to assist in prosecuting and dismantling the clandestine groups. Although unprecedented in Guatemala, the idea for such a commission drew in part on a project in neighboring El Salvador called the *Grupo Conjunto* (Joint Group). El Salvador had ended its own, 12-year civil war with a peace agreement signed in 1992 by representatives of the government of President Alfredo Cristiani and a guerrilla coalition, the Farabundo Martí National Liberation Front (FMLN), which, under the peace agreement, became a political party with guarantees for the safety of its members against reprisals. The peace agreement also included a provision for creation of a Truth Commission under United Nations auspices. The Truth Commission’s report, issued in March 1993, noted that the rightist death squads that had terrorized Salvadorans during the years before and during the civil conflict had not been eradicated. The report suggested they were spreading into organized criminal enterprises and settling scores with violence. A flurry of threats and violence against political figures from both sides in the first years after the peace agreement highlighted the danger of allowing these clandestine groups to remain intact.

After some prodding from foreign governments and local and international human rights NGOs, the Salvadoran government agreed to create the Joint Group for the Investigation of Illegal Armed Groups with Political Motivation in El Salvador, or *Grupo Conjunto*, in late 1993. The group was led by four commissioners, two named by the Salvadoran president and two named by the United Nations, which would also fund the initiative. The group’s jurisdictional scope was quite limited. It had no power to arrest or prosecute suspects, but it could organize and supervise a team of investigators comprised of Salvadoran and international experts that could present evidence to prosecutors. The group was also charged with presenting a report on its findings, with recommendations, to the Salvadoran government.⁷

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In its final report, the *Grupo Conjunto* affirmed that death squads active during the civil conflict had morphed so thoroughly into criminal enterprises that their political activities and “commercial” activities – reportedly including kidnapping, arms trafficking and drug trafficking – were all but indistinguishable. In private, the group presented evidence to the Salvadoran government on individuals associated with these criminal organizations. And there the group’s work stopped. Not a single criminal case was ever brought on the basis of evidence gathered by the *Grupo Conjunto*, due in part to a lack of political will by Salvadoran authorities. Activity by these organized, military-based criminal structures abated significantly, however, due to purges of the police and armed forces carried out in part on the basis of evidence gathered by the *Grupo Conjunto*.⁸

Despite its modest results, the *Grupo Conjunto* offered important lessons for the creation of CICIACS and, later, CICIG in Guatemala. First, it showed how a Central American country emerging from civil war could devise a strategy by which the state would seek the aid of the international community to respond to a serious threat to internal security lingering from the conflict. Second, it showed how even if the results were scant in terms of prosecutions, the initiative could still contribute to the executive’s ability to curb the problem of illegal groups by helping to clarify the extent of the problem and some of the actors involved. Finally, it showed how civil society groups that had played significant roles in the peace agreements could later work toward solving a peacetime security challenge.

Still, the paucity of the *Grupo Conjunto*’s results convinced numerous human rights advocates that a Guatemalan commission, even if created, would never succeed in probing impunity very deeply. This skepticism reached the highest levels and was one of the main barriers to building support for the initiative as Guatemalan human rights activists contacted officials in governments and international organizations. Martha Doggett, at the time senior officer and head of the Guatemala desk at the United Nations Department of Political Affairs, recalled the conversation when she was first approached about creating an anti-impunity commission in Guatemala.

“In El Salvador, no cases ever made it to court. They interviewed everyone and then nothing ever came of it. It seemed like there was no point to it,” Doggett, now deputy director of the department, said in an interview in 2008. “By this point [in 2002] there was a lot of talk about these death squads that had become guns for hire in Guatemala and the need for a commission to investigate the problem. It was a bold initiative, and I was frankly skeptical that it would ever happen, in part because Guatemala never had the high-level attention that, for example, El Salvador had from the international community.”⁹

Yet in Guatemala, international and national pressure built on the outgoing Portillo government to address the problem in some way. Despite the pressure, the Portillo administration failed to take decisive steps to stop the illegal activities of these groups, and the human rights situation deteriorated steadily. After much criticism from Guatemalan civil society groups, Portillo announced the creation of an ad-hoc presidential commission to investigate the constant death threats and attacks on civil society groups, while at the same time government spokesmen continued to minimize the threat or deny its existence. Local human rights groups refused to cooperate with Portillo’s commission and pushed instead for an internationally-backed body that would investigate the threats against civil

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society organizations and help dismantle the state-entrenched clandestine groups.

After a year of intense advocacy efforts, a breakthrough finally came in January 2003, when Guatemala's Human Rights Ombudsman, Sergio Morales Alvarado, with the support of civil society groups, issued an official resolution asking the government to create a special international commission that would probe clandestine groups that "continue violating people's rights to life, integrity, security and dignity."¹⁰ The government and Morales' office initiated negotiations for an agreement to create a commission, with the participation of local human rights organizations, and facilitated, at the request of then-Minister of Foreign Affairs Edgar Gutiérrez, by the head of the Americas Division of the New York-based organization Human Rights Watch, José Miguel Vivanco, a Chilean lawyer. The talks led, in March 2003, to an agreement to establish the Commission for the Investigation of Illegal Armed Groups and Clandestine Security Apparatuses, or CICIACS. On the prodding of Guatemalan activists, as well as U.S. and European human rights groups, the Portillo government formally requested assistance from the United Nations to help bring the commission into operation, leading to an official visit of a U.N. technical mission to assess the viability of the proposal, and later to the signing of an agreement with the United Nations on January 7, 2004, for the creation of the commission. Seven days later, Portillo's term ended, and the proposal was left to the incoming president, Oscar Berger.

CICIACS never officially came into existence, for reasons detailed below, yet its provisions set a rough template that CICIG would later follow. Under the proposed agreement, CICIACS would have the power both to initiate criminal prosecutions independently and act as *querellante adhesivo*, or auxiliary plaintiff, in cases initiated by the government's own prosecutors. The commission's leadership and technical staff would be comprised of both Guatemalan and international experts appointed by the United Nations, and the government committed itself in the agreement to granting full access and freedom of movement to the commission's investigators. They were given a two-year renewable mandate, with a proviso that the United Nations could withdraw from the arrangement if it deemed that the Guatemalan government was not cooperating with the commission or was failing to implement reforms to the criminal justice system.

Various human rights defenders have said that they were taken off guard by the strength of opposition to CICIACS within Guatemala. Public opinion, initially favorable to the commission, soured in the face of a vigorous campaign by right-wing elements in the news media and in Congress to discredit the commission as an infringement of Guatemalan sovereignty.

"There was this stream of attack editorials on CICIACS from people who feared it might actually bring change," said Lindwall. Although the newly inaugurated President Oscar Berger publicly supported the commission and told major international donor countries he backed it, internally he was widely seen as unwilling to spend much political capital to bring the commission into existence. Aware of the tenuousness of support for CICIACS in the Berger administration, officials of the U.S. government and various European governments applied high-level, if discreet, pressure on the president to move forward. When Berger travelled to Washington, Secretary of State Colin Powell raised the need for CICIACS in their private meeting. "It was his first talking point," said Lindwall. "The secretary turned to me to ask how to pronounce CICIACS." European officials raised the issue in official meetings, and the European Parliament passed a resolution urging Guatemalan authorities to

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“fully support and facilitate the task of” CICIACS.¹¹

Yet within Guatemala, opposition hardened. The Human Rights Committee of the Congress voted against referring the agreement creating the commission to the full Congress for its approval. The final blow came in August 2004, after the Berger administration formally asked the country’s highest authority on constitutional law, the Constitutional Court, to issue a binding ruling on CICIACS. The court was dominated by judges appointed by the Guatemalan Republican Front, or FRG, the party of former rightist dictator Efraín Ríos Montt, who Berger had recently defeated in the first round of the presidential elections. The court ruled that CICIACS violated Guatemala’s Constitution because, among other objectionable articles, it granted a foreign organization – the United Nations – powers that the court maintained were reserved for Guatemala’s judicial branch and the Public Prosecutor’s Office. With that ruling, CICIACS officially died.

BEYOND CICIACS

Human rights groups drew bitter lessons from the failure of CICIACS. The first was that international pressure, even at very high levels, could not be a substitute for political will from key actors within the government, which the CICIACS campaign conspicuously lacked. Many experts close to the proposal noted in retrospect that the campaign for the approval of the commission really only had one consistent supporter in the Portillo administration.

The second lesson was that the broad support of influential sectors such as the business community was key to its passage. Marlies Stappers, now a policy adviser to the group Impunity Watch and at the time head of a coalition of seven Netherlands-based human rights groups active in Guatemala known as Plataforma Holandesa, attributed the failure in part to the fact that the Guatemalan human rights community never managed to “build a broad-based coalition to push for” the approval of the initiative, a step she described as “fundamental to advancing a proposal that threatens powerful sectors.”¹²

“We made a major strategic error with CICIACS,” said Stappers. “We never adequately explained the importance of the initiative to other sectors, including grassroots groups, churches, the business community, etc.”

The CICIACS experience showed also the need for tactical flexibility on the part of human rights groups. “Getting CICIG was a nearly six year process, and the only way you can understand it is with CICIACS,” said Adriana Beltrán, head of WOLA’s Police Reform and Organized Crime programs. “When CICIACS fell through, it showed that you have to be ready to reevaluate your objectives and your strategy if you’re going to move forward.”¹³

Among the human rights community in Guatemala, the collapse of CICIACS deepened the skepticism about prospects for any special measures to counter Guatemala’s organized crime problem and entrenched impunity. A certain fatalism crept into their thinking, and it did not lift until 2007. “The failure of CICIACS was a serious blow and also a great scandal, because it happened amid a continued deterioration of citizen security. CICIACS disappeared, but the need for it did not,” said Claudia Samayoa, a leader of the Human Rights Defenders Unit, a prominent human rights group in Guatemala City.¹⁴ Samayoa said she and other rights activists continued to face indifference, if not outright opposition, to the idea of a commission from officials in the Berger administration, despite its avowed

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A new series of shocking criminal cases demonstrated again both the degree to which clandestine groups had commandeered the state and, in turn, the state's inability to assert itself against them. In April 2004, Colonel Raúl Cerna, the former financial chief of the *Estado Mayor Presidencial* (EMP), disappeared. Cerna and other senior military officers were under investigation for the embezzlement of as much as \$250 million quetzals (US\$33 million) from the EMP budget. Soon after his disappearance the Defense Ministry attested that Cerna had simply deserted and even informed the press that it would issue a warrant for his arrest. Six months later, his body was found. Tests revealed that Cerna had died in April, apparently after being poisoned with hydrochloric acid. At the time he had checked himself into a well-known private hospital, yet, despite having identified himself, his family was never notified and he was subsequently buried as a "John Doe" in a public cemetery. A few weeks before his disappearance, Cerna had mentioned being harassed and receiving threats. His case was never solved.

Crime continued to worsen in the years after the failure of CICIACS. Some 6,000 people were murdered in 2006, with only a relatively few, high-profile cases leading to conviction. One of those was the Gerardi murder. The Supreme Court in January 2006 upheld the convictions of two army officers and a third man for ordering the 1998 bludgeoning of Gerardi in his garage. Human rights groups cheered the ruling, but it was widely believed the killing had been planned by higher-ranking officers, and so the case ironically underscored the persistence of impunity even in cases that ended in convictions.

"The blood-frenzy with which killings are occurring in Guatemala is exceeding the limits of our imaginations," said an editorial in the newspaper *elPeriódico* in March 2006. "People talk about macabre initiation rites for armed gangs, of conflict between mafia capos and gangs, about destabilizing actions carried out by the parallel state, of violent acts of revenge by illegal groups or the clandestine security apparatus."¹⁵ The editorial shed light on what analysts had long been warning of, the existence of two "parallel states" – one, an elected democratic government and civil service, and the other, a network of entrenched clandestine groups built on personal loyalties and business ties and using violence to eliminate opponents and advance their interests. The resources of the official state had been put to the service of the illegal activities of a parallel structure that operated in secret.

TOWARD CICIG

In spite of mounting security concerns, U.S., European and Guatemalan rights groups encountered significant obstacles in their second attempt to form a commission with U.N. participation. For one, human rights activists found that representatives of foreign governments who had supported CICIACS were reluctant to believe that the problem of clandestine groups continued under the Berger administration. The previous administration, under Portillo, had gained an international reputation for corruption and impunity. Portillo himself had admitted to shooting and killing two people in Mexico before becoming president. (He claimed the killings were in self-defense, but he was never tried).



Former President Alfonso Portillo is photographed by police after returning from Mexico to face corruption charges in October 2008. Some experts suggest that the corrupt Portillo administration's tacit endorsement of the CICIG proposal actually worked against it.

So when Berger took office, major aid donors in governments and international organizations believed that the need for a commission had passed. Human rights advocates saw momentum slipping away. As Stappers explained, “The Portillo government was so corrupt and so outrageous and so difficult to deal with that there was much more willingness to accept that this problem was bad. Under Berger, there was less willingness to see that it was still going on.” Lindwall said that the Portillo government had such a poor reputation internationally that its endorsement of CICIACS actually harmed the project and complicated efforts to revive it under Berger.¹⁶ Officials under both presidents, Stappers said, did little to discourage the undercurrent of what she believed to be xenophobic resentment against human rights groups among ordinary Guatemalans and in the media.

The demise of CICIACS had brought satisfaction to nationalist sectors and those who benefited from the work of clandestine groups in Guatemala. The defeat showed the depth of resistance in political and judicial realms to the idea, embodied in CICIACS, of granting an outside body the power to assist in disrupting the activities of illegal structures entrenched in the state, even if that power was granted temporarily and under specific conditions. Concerns about the constitutional implications of this arrangement needed to be addressed before any new proposal could be drafted.

As the security situation worsened, the Berger administration, under the leadership of Vice President Eduardo Stein and Berger-appointed Director of the Presidential Commission for Human Rights Frank LaRue (the former director of CALDH), began working in 2005 to reformulate the proposal and address the objections raised by the Constitutional Court. As LaRue insisted, “CICIACS is a key issue for the strengthening of the justice system and for overturning impunity. I believe that in this country we do have a serious problem of impunity.”¹⁷ This effort involved internal consultations and contacts with civil society groups, congress and other sectors of Guatemalan society. International lobbying continued; human rights activists believed key pressure was again coming from the U.S., Canadian and European embassies. The activists encouraged officials from those embassies to raise the issue with Guatemalan authorities not only in discussions specifically about human rights but in other areas as well, including on economic or development aid.

At the same time, the Berger government reinitiated contacts directly with the United Nations, with the intention of reaching a treaty-level agreement for the creation of the commission. This was an important departure from CICIACS, which had been worked out essentially between NGOs and the government. Although a U.N. technical team had been involved in the formulation of the CICIACS model, U.N. officials felt they had insufficient involvement in drafting the agreement intended to create the commission.

“The idea that you were going to have NGOs and the Guatemalan government reach an agreement, and that it was going to be binding on the United Nations, was just not helpful,” said Doggett. “This was a civil-society initiative... The United Nations is an organization of member states, and although we work with civil society groups often, our primary counterpart is always the government.”¹⁸ Contacts went back and forth between Guatemala and the United Nations through 2006 until the two institutions announced, on December 11, 2006, an agreement to create the International Commission Against Impunity in Guatemala, or CICIG.¹⁹ In January 2007, an executive commission led by Vice President Stein held a series of meetings with the different political parties to clarify details

of the new agreement and lobby on its behalf. In late February, in response to a shocking turn of events, and with the vice president himself admitting that organized crime had infiltrated the National Civilian Police (PNC) and other major state institutions, the government formally submitted the agreement to Congress.²⁰

Not all Guatemalan human rights groups were happy with the CICIG draft. “CICIG has less capacity to fight against impunity [than CICIACS]. It is weaker, and yet it was being presented as a panacea against impunity, organized crime and drug trafficking,” said Samayoa.²¹

CICIG indeed had a more limited mandate than the previous initiative, and although they shared the same basic concept, CICIG’s investigative capacities differed in some critical respects. The new commission could “promote” criminal prosecutions by sharing information with prosecutors or filing complaints with relevant authorities, but it could not issue subpoenas or initiate prosecutions on its own. As under CICIACS, however, its officials were given complete freedom to interview whomever they wished and full access to all government documents and officials. It could recommend policies to the government aimed at dismantling criminal organizations. Again, the agreement included a provision allowing the United Nations to terminate its cooperation with Guatemala if the state failed to cooperate with CICIG or failed to “adopt legislative measures to disband clandestine security organizations and illegal security groups during the mandate of CICIG.”²² The Guatemalan state thus committed to purging itself of the groups that had infiltrated its most basic security functions, as subsequent events showed.

PARADISE OF IMPUNITY

On February 19, 2007, three Salvadoran members of the Central American Parliament and their driver crossed into Guatemala on their way to a meeting of regional lawmakers in Guatemala City. They never reached their hotel. Near a shopping center on the outskirts of the city, their car was commandeered and all four were taken to a ranch where they were beaten, tortured, and shot to death. Their bodies and their car were then set on fire. Four police officers, including the head of the organized crime unit of the Guatemalan National Police, were arrested two days later and charged with carrying out the murders. Evidence included a surveillance video showing the police officers’ vehicle escorting the Salvadorans’ car and GPS readings that tracked the police car to the ranch.²³

The killings offered a chilling demonstration, if any more were needed, of how deeply criminal groups had overrun Guatemala’s security forces. Almost immediately, a sense that a new catalyst for change was at hand took hold. “It is essential that this crime be solved and that we use this event to change the pitiful image of a country seen as a paradise of impunity. The tragedy of the parliamentarians can become an opportunity,” said an editorial in *elPeriódico*.²⁴ The extent to which Guatemala had indeed become a paradise of impunity became even clearer three days after the editorial appeared; all four suspects had their throats slit and were then shot to death inside their cells in a maximum security prison, just hours before they were to be interrogated by FBI agents aiding in the investigation. The killings remain unsolved.

“The killings confirmed, live and in full color, the whole concept behind CICIG. They made even more evident the need to dismantle the clandestine apparatuses,” said Helen Mack. “After this, few people spoke against CICIG.”²⁵

Samayoa said that until the killings, the Berger government appeared to have let the CICIG proposal languish and acted as if it wanted to dump the problem into the lap of the next administration (due take office in early 2008), as Portillo had done four years earlier. “The government hadn’t done any lobbying. It had announced CICIG, and two months later it had done nothing. And then the Salvadorans got killed,” said Samayoa. “The government realized it had to work with the Congress to get it passed.”²⁶

Events now moved quickly, and support for CICIG emerged from unexpected quarters. Otto Pérez Molina, a tough-talking former army general running for president for the rightist Patriot Party, and himself the subject of much speculation about possible ties to underground groups, came out publicly in support of the commission.²⁷ His main opponent, Álvaro Colom of the center-left National Unity of Hope (UNE) party, also supported the initiative. Opposition continued to come from the FRG and its allies in other rightist parties. The FRG held the second-largest bloc of seats in Congress and was led by Efraín Ríos Montt’s daughter Zury, a fierce opponent of CICIG. As they built support for the proposal among civil-society groups and legislators, human rights activists faced a series of threats and acts of intimidation. Unusually, international human rights groups were included in the attacks. The Guatemalan offices of three foreign-based aid organizations were broken into and their computers stolen, and an employee for a fourth organization was kidnapped, robbed and sexually assaulted, followed by a death threat 10 days later.²

As with CICIACS, the president of the Congress asked for an advisory opinion from the Constitutional Court on the agreement creating CICIG. This time, the court ruled in favor, noting that CICIG’s functions did not overlap with those of the Public Prosecutor’s Office and would not restrict the office’s power to bring its own prosecutions. The ruling cleared a major obstacle to the commission, but opposition persisted in Congress. The proposal looked as if it might die again in July 2007, when the International Relations Committee voted against sending it to the floor for a vote. Two members of Colom’s own party voted with the FRG legislators to reject the agreement, bringing sharp criticism of the candidate from both inside and outside the party for his failure to ensure discipline within his own party ranks. In addition, the three GANA members on the commission failed to attend on the day of the committee vote. The only procedure by which the agreement could come to a vote by the full Congress now would be if congressional leadership deemed it a matter of national urgency. The risk in following this route was that this special procedure requires a 2/3 majority (105 of 158 total votes) for approval.

Human rights groups, the vice president, and supporters in government, meanwhile, worked on various fronts to maintain pressure on the Guatemalan Congress and raise the stakes. The battle lines had long since been drawn inside Guatemala, so supporters of CICIG focused on drumming up international pressure. In May, the United States Senate had previously approved a resolution urging passage of the agreement. Senator Patrick Leahy, who had been a fervent supporter of the resolution, issued a statement in July saying he would oppose further U.S. security assistance to Guatemala if its Congress failed to approve CICIG. Congressman Eliot Engel issued his own statement urging the prompt approval of the agreement a day later.

“It was a matter of [the U.S.] Congress assuring the Guatemalans that this was of critical importance to the United States. We raised it with them at every opportunity,” said Tim Rieser, an aide

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to Leahy. Rieser had been following the issue for years and felt that the Guatemalans, with the help of the United Nations, had hit the right formula with CICIG and that it would not go the way of CICIACS. “The lesson of CICIACS was that they overreached. The idea that outside prosecutors would have sole responsibility was rejected,” he said.²⁸

Support poured in from other quarters, as well, creating an impression of a wave of international pressure for the commission. The European Parliament issued a statement of support that referred specifically to the killings of the Salvadoran legislators, their driver, and their accused assassins and sent a delegation of European legislators to meet directly with their Guatemalan colleagues to press for passage. If backing had once been discreet, it was now overt and emphatic. “We want these crimes to be solved and we want the Congress to ratify CICIG,” said one of the European parliamentarians.³⁰ The Inter-American Commission on Human Rights issued its own statement of support, as did a coalition of 44 U.S., European and Canadian rights and church groups ranging from the United Methodist Church to the Copenhagen Initiative for Central America and Mexico. In a last minute push, WOLA reached out to influential media outlets for support of CICIG. As result of this effort, on July 31, The New York Times published an editorial entitled “Only the Criminals are Safe” that urged passage while warning that the FRG “looks as if it can muster the votes to block passage.”³¹ The following day, translations of the editorial appeared on the front page of every major Guatemalan daily. Guatemalan groups maintained pressure on parties that had expressed support for the proposal to make sure their deputies voted as a bloc in favor.

On the day of the vote, August 1, 2007, the major presidential candidates – Colom, Pérez Molina and Alejandro Giammattei of the GANA party – personally escorted their delegations to Congress. Pérez Molina even vowed to expel any party member who did not vote in favor of the initiative.³² Opponents of the agreement signaled their intention to defeat the measure by staying out of the hall and denying quorum. Their effort failed. The agreement to create CICIG passed with 110 votes in favor, five against, and 43 lawmakers absent, with the vote following strict party lines. All 29 of the FRG deputies either stayed away or voted against the measure, while all 30 deputies of Colom’s UNE, all 18 of Pérez Molina’s Patriot Party, and all 23 of GANA voted in favor. After the vote, the president of the Congress, Rubén Darío Morales, told reporters that the assembly had received numerous bomb threats during the session but that the leadership had chosen not to make them public or evacuate the building.³³

Reflecting on the path to the approval of the commission, Helen Mack described it as a “collective effort,” meaning it was the work of many actors, in many different sectors.³⁴ The commission was formally constituted in November 2007 and opened its offices two months later. The commission’s staff of 109 includes lawyers, investigators, prosecutors, forensic experts and assistants under the direction of Spanish judge Carlos Castresana. CICIG was given a renewable two-year mandate to



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After a rollercoaster ride through different parliamentary procedures, the agreement to create CICIG passed with 110 votes in favor, five against, and 43 lawmakers absent.

help the Guatemalan government investigate, prosecute and eventually eradicate clandestine security organizations.³⁵ Thus, at a minimum, it is expected to remain in operation through late 2009, although its mandate can be extended by agreement between the United Nations and Guatemala. After such a tortuous road to its creation, the commission's Guatemalan supporters had few illusions about the difficulties it would face. "The horizon is clear, with its promises and challenges, and its threats: sabotage from within, legal hurdles, attempts to brush the commission aside," said an analysis in the newspaper *elPeriódico*. "With all the demands, ideological irritations and real enemies that it faces, CICIG will need light to guide its way."³⁶

CONCLUSIONS

The campaign to create CICIG holds many lessons for advocates seeking to protect the rule of law and end impunity in Latin America. Those involved in the CICIG effort have identified some of these lessons as:

Inclusion. The defeat of CICIACS has been attributed to many causes, but most advocates agree that the failure to get a wide cross-section of Guatemalan political actors, civil society and other influential sectors on board was an important factor. With this in mind, the CICIG strategy sought to ensure the participation of key players by raising awareness about the impacts of clandestine groups on their daily lives and livelihoods. The public endorsement of CICIG by important members of the business community and churches, among others, should not be underestimated.

Flexibility. The willingness by CICIG's supporters in the Berger government to retool the original CICIACS proposal so that it would win approval by the Constitutional Court cleared a potentially fatal barrier to CICIG. Although some human rights advocates believed – and continue to believe – that CICIG's statutes were inferior to those of CICIACS, they maintained their support of the project. This sense of pragmatism and flexibility, while maintaining the basic principle of U.N. involvement, was crucial in assuring passage for the commission.

International pressure. Embassies, international organizations and non-native human rights groups can be key allies, but their pressure can sometimes be best exercised behind the scenes. A too-public role for foreign actors can provoke a nationalistic counter reaction that can undermine a proposal, as happened to CICIACS. The drive for CICIG included judiciously applied diplomatic pressure on the Berger administration, as well as much more visible efforts in the weeks before the crucial vote in Congress.

Seizing the Moment. Probably no single factor was as crucial to CICIG's passage as the murders of the Salvadoran parliamentarians, their driver, and their presumed killers in February 2007. Few human rights campaigns will receive such a graphic demonstration of why they are needed at such a critical moment, but the underlying lesson remains that working fast to use concrete and illustrative events can bolster a cause. Previous gains against impunity in Guatemala had also been catalyzed by major criminal cases that shocked the public, such as the Myrna Mack and Gerardi murders. Although the case of the Salvadorans and CICIG is not strictly comparable to those examples, the record in Guatemala suggests that rights advocates should not rely solely on legal or political arguments to advance their cause. They should make their case also with examples from the daily news media that the general public and legislators can easily understand and relate to.

"The campaign to create CICIG holds many lessons for advocates seeking to protect the rule of law and end impunity in Latin America."

Political Will. No effort, of course, can advance without the commitment of key decision-makers within the government. Sustained political will acts as the foundation for bringing about meaningful change. For example, without the efforts of Vice President Stein and Commissioner LaRue to head the process for reformulating the proposal and subsequently advocating on its behalf, the CICIG would never have become a reality.

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