



**INTERNATIONAL COMMISSION AGAINST
IMPUNITY IN GUATEMALA REPORT ON THE
FIFTH YEAR OF ACTIVITIES**

INTRODUCTION

The International Commission against Impunity in Guatemala (hereinafter CICIG or "Commission") was established to contribute to the dismantling of illegal security forces and clandestine security organizations (CIACS) in accordance with its mandate set forth in the "Agreement between the United Nations and the Government of Guatemala on the creation of an International Commission against Impunity in Guatemala (CICIG)". This agreement was signed by the two parties on December 12, 2006 and formally approved by the Congress of the Republic of Guatemala on August 1, 2007, thus granting the Commission an initial two-year mandate.

To date CICIG's mandate has been extended on two occasions through an exchange of letters between the Government of Guatemala and the Secretary General of the United Nations. The current mandate ends on September 3, 2013.

In September 2012, CICIG completed its fifth year of activities to support the dismantling of illegal security forces and clandestine security organizations (CIACS) and to fight impunity. The Commission has used the powers conferred upon it by its mandate in four general areas: first, to support the criminal prosecution and investigation of egregious crimes in which CIACS are alleged to be involved; second, to strengthen security and justice institutions, especially the Public Prosecutor's Office (MP), the Judiciary (OJ) and the National Civil Police (PNC); third, to promote public policies and legal reforms that improve the legal framework for the criminal prosecution and investigation of crimes committed by CIACS and that enhance the institutional capacity to combat such crimes; and fourth, to publish general and thematic reports.

In June 2012, CICIG adapted its roadmap for 2012 to 2013 in order to appropriately address the requirements and need to transfer capacities to their main counterparts in preparation for the conclusion of the mandate.

This report presents the results CICIG obtained in the aforementioned areas between September 2011 and August 2012 and details the obstacles the Commission encountered when working to fulfill its goals.

Guatemala de la Asunción, September 11, 2012.

EXECUTIVE SUMMARY

The International Commission against Impunity in Guatemala (CICIG), led by Commissioner Francisco Javier Dall'Anese Ruiz and comprised of 168 national and international officials, has supported Guatemalan institutions over the past five years in dismantling illegal security forces and clandestine security organizations (CIACS) and implementing strategies to prevent their re-emergence. This report describes CICIG's activities between September 2011 and August 2012.

CICIG has continued to work closely with its main counterpart, the Public Prosecutor's Office (MP), and a major improvement in the institutional relationship with the Judiciary (OJ) has been seen during Thelma Aldana's presidency. The Commission also developed a smooth relationship with political powers who entered office in January 2012, especially President Otto Pérez Molina and Minister of the Interior Mauricio López Bonilla.

President Pérez Molina, shortly after assuming the presidency, declared his interest in extending CICIG's mandate for a further two years until September 2015 and creating a roadmap to transfer capacities to national justice and security institutions. In this regard, based on methodology advice from the Secretariat for Presidential Planning and Scheduling, CICIG designed a detailed roadmap for 2012 to 2013, which was endorsed by the Commission's counterparts.

CICIG's criminal investigation and prosecution work leads it to participate in a number of complex cases regarding various serious crime issues that impinge upon the civil and political rights of Guatemalan people. At present, the Commission participates in 21 cases as a complementary prosecutor—most of which are cases under the responsibility of the Special Anti-impunity Prosecutor's Bureau (FECI) of the MP—and offers technical support in other investigations at the behest of the Public Prosecutor's Office (MP).

Over the period of the fifth year, the MP and CICIG have achieved five convictions in cases of illegal adoption, murder of social and cultural leaders, and a corrupt state official with ties to a drug trafficking organization. Furthermore, investigative progress has been reported in a number of cases concerning extra-judicial killings, extortion, human trafficking for illegal adoptions, state corruption, drug trafficking and money laundering, illegal trafficking of goods and persons, and crimes related to agrarian and social conflict. Most of these cases involve politically and economically powerful people.

However, it is worrying that advances made in criminal investigations are not always

matched by advances in criminal prosecution. At present, most of the cases investigated by CICIG during recent years are stagnant due to a number of legal remedies.

As far as institutional strengthening is concerned, CICIG has followed up training, technical assistance and capacity transfer strategies initiated in previous years, especially those directed at FECl. These strategies include the use of special investigation methods, the Witness Protection Program, the MP Analysis Unit and the MP Security Department, and the institutions involved in resolving illegal adoptions. Regarding the National Civil Police (PNC), 3 officials and 16 officers are continually involved in the Commission's police investigation work.

Furthermore, CICIG has undertaken new lines of institutional strengthening by supporting the creation of a new financial investigation unit at the MP, enhancing the Division of Protection of Persons and Security of the Ministry of the Interior and fortifying the audit capacity of the Comptroller General's Office. CICIG has also provided technical assistance to the presidency of the Judiciary (OJ), especially in redesigning its disciplinary system. More recently, the Commission has begun an analysis of the security department of the Superintendence of Tax Administration (SAT).

In addition, the Commission has completed a cycle of special training for prosecutors and police, and it has supplied FECl and the Witness Protection Office with technological resources (forensic analysis equipment in particular) and logistics resources.

In regard to the legal reforms fostered and supported by CICIG, the Commission has supported efforts to control corruption (participating in the discussion of the bill of the unjust enrichment law) and to pass the law providing for the creation of the Directorate General for Criminal Investigation. In addition, it has offered recommendations on constitutional reforms related to security and justice.

Finally, CICIG developed five reports on profiles of applicants for senior state positions (including information assessing the different candidates) at the request of institutions responsible for selecting candidates for senior state positions.

I. ORGANIZATIONAL STRUCTURE AND FUNCTIONING OF CICIG

CICIG is comprised of Commissioner Francisco Javier Dall'Anese—who also serves as the legal representative—and the following units: Political Affairs, Department of Investigations and Litigation (including police, legal and financial investigation sections),

Department of Information and Analysis, Department of Administration, Department of Security and Safety, and the Press Office.

As of August 31, 2012, the Commission has 168 national and international officials, 76 of whom perform substantive tasks (45.25%), 63 work in security (37.5%) and 29 perform administrative duties (17.25%). In total, 70% of staff members are male and 30% are female. If you exclude the Department of Security and Safety (comprised mainly of men), the gender ratio for the rest of the sections is 59% men and 41% women.

Twenty-one nationalities are represented at CICIG: Argentina, Canada, Chile, Colombia, Costa Rica, El Salvador, Germany, Spain, France, Guatemala (65 officials), Honduras, Ireland, Italy, Mexico, Peru, Portugal, Sweden, Switzerland, the United Kingdom, the United States, and Uruguay.

CICIG operates thanks to economic support provided by the following donor countries and international organizations: Canada, Denmark, the European Union, Finland, Germany, Ireland, Italy, Mexico, Netherlands, Norway, the Open Society Foundation, Spain, Sweden, Switzerland, the United Kingdom and the United States. Furthermore, Argentina, Chile, Colombia and Uruguay contribute to CICIG's functioning by providing security contingents.

II. RELATIONS WITH THE INTERNATIONAL COMMUNITY AND THE UN

The Commission maintains constant communication with the United Nations—particularly the Department of Political Affairs in New York—through the regular submission of informative reports on its activities.

In Guatemala, CICIG continues to participate in the United Nations Thematic Interagency Group for Human Rights, Governability, Security and Justice, and it maintains a close relationship with other agencies of the United Nations System, especially:

- UNICEF, by means of the Agreement to conduct studies on children and adolescents, especially in those cases related to adoptions "in transition", which were begun under the previous adoptions law and registered before the National Council for Adoption, pursuant to Articles 56 and 57 of the Adoptions Law. Work is also undertaken to enhance the criminal prosecution of crimes perpetrated against children and adolescents through the acts of illegal security forces and clandestine security organizations and other forms of organized crime;

- The Office of the High-Commissioner for Human Rights (OACNUDH), in the area of technical assistance with justice and security institutions, including the Security and Justice Working Group of the Commission of the Congress of Legislation and Constitutional Matters, and through information exchange on common interest cases, such as agricultural conflicts that produce human rights violations;
- The United Nations agencies involved in the implementation of the Peace Building Fund. Along with the aforementioned agencies, also included in this relationship are the United Nations Development Programme, UN Women, the United Nations Population Fund and the United Nations Office on Drugs and Crime.

The international community, especially those donor countries and agencies that make financial contributions to the Commission, has shown continual support—both politically and economically—for CICIG. The Commission regularly convenes meetings to share information on its activities with the diplomatic corps, donor countries, international organizations and cooperation agencies in Guatemala.

III. RELATIONS WITH NATIONAL COUNTERPARTS

Following the change in political authorities produced by the 2011 general elections, the period under examination has been a time of transition for the Commission in regard to its dialogue with the executive branch and the legislative branch. During the second half of 2011, while maintaining a fluid dialogue with President Álvaro Colom, CICIG also conversed with the main political parties involved in the electoral process.

The relationship between CICIG and the new Government was strengthened in November 2011 by the proposal of President-elect Otto Pérez Molina to develop a roadmap outlining the responsibilities of the parties. The roadmap was finalized on July 9, 2012 through the presentation of the 2012-2013 CICIG Work Plan. The plan establishes the following activities: contribute to reducing impunity rates; contribute to coordinating the State in the fight against criminality; contribute to the implementation of strategies to eradicate and prevent the re-emergence of illegal security forces and clandestine security organizations (CIACS); and contribute to raising awareness of the impact of impunity upon a democratic society. The presidents of the three branches of government reached the necessary consensus (executive branch, legislative branch and judicial branch) together with the Attorney General and Head of the Public Prosecutor's Office (MP), and subsequently, through the signing of a deed, they reaffirmed their commitment to guaranteeing that each institution fulfills its specific objectives in the joint fight that the State of Guatemala and the Commission are carrying forward to eradicate impunity.

In the area of eradicating and preventing the emergence of criminal structures so that Guatemalan institutions are able to tackle organized crime, reference must be made to the commitment demonstrated by the President of Guatemala and the President of Congress in approving the creation of the Directorate General for Criminal Investigation (DIGICRI) in July 2012. The final text of the bill to create DIGICRI was made possible through the joint efforts of the Ministry of the Interior, the Public Prosecutor's Office (MP), legislative advisers and CICIG. The creation of this new institution is the result of one of the seven proposals drafted by CICIG to coordinate the State of Guatemala, which makes it possible to provide the country with a scientific criminal investigations police force capable of tackling CIACS and organized crime.

Furthermore, progress has been made in designing the Integrated Police Information Platform project, which will facilitate the visualization of the complexity of crime in Guatemala. As a first phase, the economic support for the project will be provided by the United Nations System in Guatemala through the UN Peace Building Fund.

It must be mentioned that despite the passing of various years, 70% of CICIG's recommendations on judicial reform have not been implemented, seriously compromising the effective fulfillment of the mandate and bringing into doubt the commitment of the legislative branch to the fight to dismantle and prevent the re-emergence of CIACS.

In relation to criminal prosecution and investigation, the Minister of the Interior, the National Civil Police (PNC), the Public Prosecutor's Office (MP) and CICIG have coordinated highly important operations, especially in the case of the progress made with enforcing the Public Prosecutor's Office Framework Plan for Strategic Investigation in extortion cases. CICIG has provided technical support to this plan through the Prosecutor's Bureau for Crimes against the Life or Integrity of People and the Anti-organized Crime Prosecutor's Bureau. The working methods and coordination of the MP and the Ministry of the Interior—fostered by CICIG since the previous Government—increase the effectiveness of the criminal prosecution and investigation of egregious crimes affecting Guatemalan society.

Regarding the administration of justice institutions, CICIG has maintained very close ties with the highest MP authorities. By virtue of the MP's good institutional will, the criminal prosecution and investigation of crimes committed by CIACS has continued through joint efforts carried out between both institutions. Furthermore, CICIG has intensified the different strategies to strengthen the MP institutionally, as demonstrated in the present report.

As far as relations with the Judiciary (OJ) are concerned, it must be underlined that relations have improved greatly following the election of Judge Thelma Aldana in October 2011 as president of the Judiciary and the Supreme Court of Justice. Inter-institutional rapprochement resulted in periodic meetings between CICIG, the OJ and the MP. Furthermore, the president of the OJ and Commissioner Dall'Anese planned a shared agenda with four priorities centered on institutional strengthening: the disciplinary regime, the separation of the administrative and jurisdictional functions of the OJ, legal and constitutional reforms and gender issues.

During this time, CICIG has also formalized its relation with two important institutions in the fight against impunity by signing bilateral cooperation agreements with the Comptroller General's Office (October 7, 2011) and the Superintendence of Banks (November 4, 2011).

IV. IMPLEMENTATION OF THE MANDATE

1. Criminal investigation and investigation

The illegal security forces and clandestine security organizations (CIACS)—embedded in various state structures and largely stripped of the ideological context that inspired them during the armed conflict—have diversified their activities. CICIG participates in cases where such diversity can be seen. In these cases, given the complexity and involvement of people with sufficient power to guarantee impunity, the justice system must apply all its resources to criminally prosecute and solve them.

As part of the strengthening of institutional capacities to fight organized crime, CICIG has fostered, from within the Public Prosecutor's Office, a strategic criminal investigation methodology through the creation of teams of prosecutors, police officers and analysts. These teams address cases, beginning with the crime findings, and they use special methods such as telephone tapping, effective cooperators and financial and criminal analysis.

During this period, five convictions have been obtained in the cases in which the Commission participates either as a complementary prosecutor or by offering technical support. These five convictions include two illegal adoptions cases, two cases in which social and cultural leaders were murdered, and a corruption case concerning a state official with ties to a drug trafficking structure. At present, CICIG participates in 48 investigations, some of which are indicated below.

1.1. Extra-judicial killings

(Cleopatra Case, Matus Case, Pavón Case, Río Hondo Zacapa Case, La Cueva Case, Infiernito Case, Mario Roberto Iboy Case, Tripas Case)

The penal guarantees system serves to prevent excessive reactions by the State. Although the justifying goal of criminal law is the prevention of crimes (including controlling arbitrary and unreserved punishment by the State), in Guatemala, the CIACS operating during the armed conflict were never dismantled and the practice of conducting extrajudicial killings—which by then lacked any ideological interests—was inherited by other members of the police force, who conducted such acts as part of a social cleansing process.

Seven active cases and other current investigations under the responsibility of CICIG demonstrate the previous existence of death squadrons within the Ministry of the Interior and the National Civil Police (PNC). These squadrons neutralized alleged criminals or conflictive convicted prisoners.

The *modus operandi* of two structures is being analyzed. One of the structures was implemented during the government of Oscar Berger as an antithesis to a rehabilitating policy. Ministry of the Interior authorities designed social cleaning plans (Pavo Real Plan, Gavilán Plan, etc.) with complex structures that included the assignment of staff, roles and logistics. The plans strived to identify problematic inmates with the aim of killing them (Pavón Case); recapture fugitives in order to murder them (Infiernito Case, Río Hondo Zacapa Case, La Cueva Case); and to kill alleged criminals without subjecting them to a criminal proceeding (Mario Roberto Iboy Case).

These practices were not isolated incidents but rather killings conducted in a systematic fashion, forming part of a structured plan, and executed by members of the National Civil Police (PNC) under the orders of former Minister of the Interior Carlos Viemann, former Director General of the PNC Erwin Sperisen, former Director of the Prison System Alejandro Giammattei, and other officials. These groups of police never operated autonomously, but rather they responded to the orders of the aforementioned former officials.

The structure had complex mechanisms to guarantee impunity when committing the acts, including contacts inside the Public Prosecutor's Office (MP) (as shown by the Rivera Case and the Matus Case). This theory is based on the findings of proceedings against former head of the Prosecutor's Bureau for Crimes against the Life or Integrity of

People, Álvaro Matus, responsible for blocking the criminal investigation, and a former official of the Witness Protection Office who hid members of the criminal organization and sent them to locations outside of the country. These investigations are still underway to determine which high-ranking MP officials were involved. These mechanisms prevent progress from being made in investigations and ultimately make it impossible to link high-ranking government officials to proceedings.

Furthermore, both when the acts were committed and during criminal prosecution, part of the traditional economic sector to which Carlos Vielmann belongs exercised its influence through a multi-million media and social campaign to control the messages communicated to public opinion. The campaign used ribbons, posters, advertisements in newspapers, opinion columns, television interviews, publishing houses and clear manifestations of support from the leaders of CACIF, the Assembly of Presidents of the Professional Associations of Guatemala and former President Oscar Berger.

These figures presented the perpetrators to be heroes and denied the involvement of the chain of command in social cleansing plans.

Although numerous former PNC officials were arrested during the aforementioned period, the only cases that are still underway in Guatemala at present are those against perpetrators who, despite the gravity of their responsibility, held lower positions within the criminal organization. Despite the wealth of proof available (including photos, statements and scientific proof), in August 2012 the proceedings against the former Director of the Prison System, Alejandro Giammattei, along with his advisor, Mario Roberto García Frech, were formally closed and all avenues of recourse have been exhausted.

The same items of evidence have been accepted by jurisdictions outside of Guatemala in proceedings against other alleged architects of the crimes. For example, on August 31, 2012, the former Director of the National Civil Police (PNC), Erwin Sperisen, was arrested in Geneva (Switzerland) and he is being remanded in custody, following a letter rogatory issued by the Guatemalan authorities, for his part in murders that took place in Guatemala between 2004 and 2007. As a Swiss citizen, he will be tried in Switzerland. Carlos Vielmann, former Minister of the Interior, currently faces charges in Spain for the same crime, following a complaint filed by Commissioner Dall'Anese in December 2010. The Commissioner filed this complaint after an extradition request failed due to the involvement of officials from the Ministry of Foreign Affairs of Guatemala. The Public Prosecutor's Office (MP) eventually dropped the extradition because it felt that the necessary conditions were not present in Guatemala to hold an impartial trial against Vielmann. The Deputy Director of PNC Crime Investigations, Javier Figueroa, is under

investigation in Austria and is currently remanded in custody.

The investigation of a second criminal structure demonstrates how the social cleansing practices used by the State to fight crime are deeply rooted within the National Civil Police. The perpetrators of these acts are nothing more than subjects that can be easily replaced following a change in authorities. This renewal of key staff can clearly be seen during the government of Álvaro Colom in the structures led by former Director General of the PNC, Marlene Blanco Lapola, and other officials of the Minister of the Interior.

The accusation made by the MP and CICIG maintains that between 2008 and 2010, Marlene Blanco led various groups, comprised of National Civil Police (PNC) officers, who conducted contract killings, and she also controlled a system referred to as an Operations Intelligence System that was used to establish a structure that conducted intelligence work and parallel investigations on certain crimes to identify and murder alleged criminals. When she took control of the National Civil Police (PNC), she maintained control of these criminal police groups and, in a context where extortion and driver deaths exceeded the Government's response levels, designated a police group specialized in extortions so as to establish a criminal response, clearly contravening the most basic due process guarantees, under the premise that the "rotten tree must be completely uprooted" (Tripas Case, Cleopatra Case). This situation continued while she held the post of Vice-Minister of Community Support and then Vice-Minister of Security (both within the Ministry of the Interior). These investigations are yet to be concluded.

While the investigations continue, Marlene Blanco Lapola was arrested in March 2012 and she is currently remanded in custody, linked to proceedings on charges of criminal association and extra-judicial killings, along with three active and two retired police officials. It must be stated that in relation to this structure, two former members of the Special Criminal Investigation Directorate of the PNC were convicted of the forced disappearance of an alleged extortionist.

In order for a State to achieve a legitimate criminal policy, it must tackle crime without restricting guarantees; otherwise, the State itself becomes a criminal. The outcome of the proceedings being investigated with CICIG's support regarding various groups who use extra-judicial killings as a means of tackling crime may or may not ultimately reaffirm the validity of the principle of legality as a control over the State's ability to impose penalties.

1.2. Extortions

Another crime that seriously damages Guatemalan society is the egregious criminal acts perpetrated by gangs, such as murders, extortion and money laundering. The complexity

of such examples of organized crime lies in the large number of facts and perpetrators, some of whom operate from within prisons.

At the behest of the Public Prosecutor's Office (MP) and with the aim of implementing best practices in the field, the Framework Plan for Strategic Investigation was developed as part of a joint effort. This investigation model makes it possible to rank information based on the degree of certainty regarding an individual's involvement in a crime, generate profiles of victims and perpetrators, analyze data en masse and implement other similar criminal investigation tools. The method obliged the investigative body to create two prosecutor's officers focused on investigating gangs and a liaison unit comprised of analysts and investigators. This sought to combine criminal analysis work with criminal prosecution activities and hence address cases as integral parts of a crime phenomenon.

To implement this method, a 250-file database was created for each gang (Mara 18 and Mara Salvatrucha) and they were ranked according to the number of items of evidence against each individual. This has made it possible to make substantial progress with general reports on structure-related topics and other reports on the origin, *modus operandi*, the diversity of activities and the hierarchical functional structure of both gangs.

Among the main characteristics of these gangs is the control they exercise over a specific territory, claiming it to be their own and using it to commit illicit acts. The gangs use firearms to commit violent acts against rival gangs, the local population and business premises; the latter pair is also subjected to extortion to obtain money. The gangs use a specific name and language, tattoos are symbols of their identity, and they have a hierarchy comprised of bosses, deputies and officers—all of whom have different roles within the structure. Such roles include collecting extortion money, gathering information, recruiting gang members and establishing logistics to commit illicit acts.

This type of crime stems from a long marginalization process and it strikes a contrast with attempts to reinsert an individual into a social framework whose structural inequalities played a significant role in causing the crime. The ability of youth gangs to replace their leaders is another factor that must be taken into consideration by the State; however, rather than being addressed using criminal law, social policy measures should be used. If the State does not adopt a social policy to combat aspects related to this type of crime, it will be a phenomenon that continues to grow.

To date approximately 200 premises searches have been conducted and some 100 members of the two criminal structures have been arrested, all of whom are linked to

proceedings and remanded in custody. Roughly 65 cases have been linked to both structures and some 120 investigations are due to be linked.

The proceedings of these cases have been surprisingly quick in comparison to other cases investigated by CICIG, despite the large volume of facts and accused parties. It should be emphasized that the judicial proceedings of the 100 accused parties have not been affected by a single judicial remedy.

The different responses used by the State are surprising, because both extra-judicial killings and gang murders damage life—a legally protected interest—in the same manner. The methods used by perpetrators do not differ significantly, but there is one difference: the proceedings conducted against gang members all concern individuals who comprise the bottom of the social ladder, whereas the masterminds of extra-judicial killings are at the other end of the ladder. Both groups have access to legal assistance that guarantees their right to defend themselves; however, the judicial system seemingly differentiates between two different kinds of citizen depending on their social status. The difference stems from the ability to manipulate the judicial system by presenting frivolous and inadmissible remedies that purely strive to block proceedings. Alternatively, what is worse, some groups impinge upon judicial independence such that it would appear that courts have double standards when evaluating the damage caused to the same legal interest, depending on whether it is a case of extrajudicial killing or murder.

1.3. Human trafficking for illegal adoptions

(Primavera Case, Muyus Case, Rosalinda Rivera Case, Adoption Network Case, Pontaza Case)

In relation to human trafficking for illegal adoptions, CICIG participates in the criminal prosecution and investigation of 38 illegal adoption processes grouped together in five different cases. Cases have been addressed together, sharing considerable quantities of information to identify matches and to establish the existence of organized structures involved in this variety of human trafficking. This method has made a difference when analyzing the phenomenon and it has made it possible to establish the responsibility of parties holding different roles within the structure. In this sense, progress has been made regarding the form in which illegal adoptions are tackled. Previously, it had only been possible to establish the responsibilities of the final links in the criminal chain.

The investigations have made it possible to identify four *modus operandi* (which are not mutually exclusive) that are present in the investigated cases.

The first such example, also the most common, is the human trafficking perpetrated by notaries who make use of the old adoption procedure (voluntary jurisdiction). Notaries (who when exercising the profession acquire public office-bearer status), in exchange for money, obtained children directly from biological mothers or intermediaries who convinced the mothers through promises of gains, deceit or by taking advantage of the vulnerability of the mother. Once the children had been acquired, they were offered to foreign adoptive parents through international adoption agencies who acted as bridges. Then, after identifying the interested parties and receiving a large sum of money, the adoption was processed using a notary (Adoption Network Case, Rosalinda Rivera Case). These cases have produced the prosecution of three intermediaries involved in obtaining children; the investigation is still underway.

On other occasions, when not even the vitiated consent of the mother or biological parents had been obtained, the children were stolen. Along with lawyers and notaries, civil registrars and municipal officials were also involved, taking part in these illicit acts at the behest of the criminal groups, falsifying documents and altering the marital status of subjects. Also associated with the criminal structure were private refuges where the children were kept during the procedure, throughout which time the families interested in adopting were charged maintenance, generally exploiting the paternal desires of the foreign citizens. These citizens had been obtained through the work of international adoption agencies with links to these networks. To date a conviction and an indictment against legal representatives of two children shelters has been achieved, a lawyer has been convicted and investigations have been conducted into nine other lawyers.¹

"Child laundering" was also investigated—a crime that aims to hide all the illegal acts committed in order to guarantee the impunity of the members of the network and to prevent children from being located and claimed by their biological parents. Furthermore, documents were falsified to modify or hide the children's identity, present them as having had their rights violated and, therefore, proceed to seek protection pursuant to the Law for the Integral Protection of Children and Adolescents. In league with the Attorney General of the Nation's Office (PGN), documents with irregularities were permitted, information disclosed was not verified and formalities were omitted to receive undue economic benefits.

¹ On October 25, 2011, in relation to the illegal adoption of a minor, the Eighth Court for Criminal Sentencing convicted Alma Valle Flores, lawyer and notary, and Enriqueta Noriega Cano, representative of a shelter. Both parties were linked with the Asociación Primavera adoption agency and received 21-year and 16-year sentences, respectively, as well as being charged with criminal association, human trafficking and the use of false documents.

In the courts, the judges involved with the criminal structure declared the child to be abandoned and confirmed adoptability (the final requirement in order to proceed with the adoption). In consequence, all previous interventions by network members in the illegal adoption process appeared to be legitimate (Adoption Network Case, Primavera Case, Muyus Case²). In these cases, four officials from the Attorney General of the Nation's Office (PGN) have been prosecuted.

Another identified *modus operandi* concerns the manner in which the criminal structure falsified documents to prevent obstacles that would make the adoption legally unviable. For example, they hid the fact that the mother was a minor and the mother's marriage, as well as avoiding the recognition of the child by the father or other people. Furthermore, officials from the civil registries and doctors were involved in obtaining false documentation, acting in collusion with the network (Adoption Network Case, Rosalinda Rivera Case). In these cases, investigations are underway against an official from the Civil Registry and a doctor.

Finally, a hypothesis has been examined according to which influence peddling was used—through abuse of legal process and in complicity with public office-bearers—to pursue adoption procedures when the necessary requirements had not been met. The aim in such cases is to push through the adoption and appear to comply with the process stipulated in the current law. Members of the network forge agreements with officials from the Social Welfare Secretariat who, even though the child has already been handed over to the family, issue foster family certificates for people who allegedly care for the child; however, this is not the case. Then, officials from the National Council for Adoption issue suitability to adopt certificates to the adoptive family who, in fact, already has the child in their possession. After meeting these requirements, judges participate once more. They are responsible for "cleansing" the proceeding and legitimizing it through a judicial statement that makes the whole proceeding appear to be legal. However, the truth is the whole proceeding is flawed (Pontaza Case). In these cases, investigations are underway against three officials from the Social Welfare Secretariat and three officials from the National Council for Adoption.

The criminal organizations involved in illegal adoptions have managed to infiltrate the judicial system. In this regard, officials who should oversee the legality of judicial proceedings actually have sought to create impunity. Mario Fernando Peralta Castañeda,

² In this case, the Sixth Court of Criminal Sentencing convicted, on February 15, 2012, a fake mother on a charge of modification of marital status and she was acquitted of more severe charges of criminal association and human trafficking. As a result, FECCI—with backing from CICIG—appealed the decision.

judge for children and adolescents, was the subject of a complaint filed by FECI and CICIG on March 26, 2012. He is linked to proceedings on charges of criminal association, human trafficking, malfeasance and denial of justice. Furthermore, CICIG fostered the lifting of immunity of Rossanna Maribel Mena Guzmán, another judge of children and adolescents, against whom FECI filed a request to lift immunity on July 11, 2012.

1.4. Corruption

*(Crimes against state property through public contracting procedures)
(Portillo, RENAP, Maskana, Fraijanes II, Mayor, ASODEGUA, Militares)*

Corruption-related crimes that affect the State's property comprise a significant percentage of CICIG's work. This type of crime threatens the stability and security of societies by undermining institutional, democratic, ethical and justice values and by compromising sustainable development and the rule of law. The corrupt acts are committed by individuals who are very different to the stereotype of common criminals: public office-bearers are involved who not only damage the integrity of public property but also the correct functioning of State assets, the fulfillment of its goals and the fidelity of the officials responsible for such property.

Corruption-related crimes are difficult to investigate, not just because of the ways in which officials can manipulate or destroy evidence, but also due to their ability to pressurize potential witnesses, investigators and judges. The greatest hurdle to overcome with economic crimes (corruption, capital laundering or large-scale fraud) is the lack of a crime scene. In place of a crime scene, one is faced by, among other things, contracts, securities and bank transfers—all of which appear to be legal. Therefore, experts (accountants, auditors and financial analysts) must identify the untruths, tricks and operation simulations contained within such documents so as to create physical evidence or evidence for prosecution.

A paradigmatic case concerning the infiltration of corruption in Guatemala is the embezzlement committed by the Ministry of National Defense during the government of former President Alfonso Antonio Portillo Cabrera. During this government, millions of Guatemalan quetzals were illegally taken from the portfolio between 2001 and 2003.

The criminal structure orchestrated a plan to steal from national coffers. Following instructions given by former President Alfonso Portillo, authorization was given for budget transfers to be made to the Ministry of National Defense, which were endorsed by the Minister of Public Finance and the Minister of National Defense. The transferred

funds were recorded in books in a budget line protected by a military secrecy guarantee and, in practice, the funds were taken through cash withdrawals, in collusion with various high-level military officials. This was not an isolated incident—to date various transactions have been made under the blanket of secret military spending.

Former President Alfonso Portillo, Manuel Hiram Maza Castellanos (Minister of Public Finance) and Eduardo Arévalo Lacs (Minister of National Defense) were prosecuted on a charge of embezzlement for stealing GTQ120,000,000.00 from the Ministry of National Defense. However, on May 9, 2011, the Eleventh Court of Criminal Sentencing, Drug Trafficking and Crimes against the Environment acquitted the three former officials. This decision was highly questionable: the siphoning of funds had been verified and the decision received a validly reasoned dissenting opinion. The majority vote was appealed and a second instance ruling is pending.

The majority vote in favor of the acquittal does not stand up to examination. The majority vote indicates that the President of the Republic is not responsible for public monies; however, this is not of particular importance, because the proven facts demonstrate that Portillo Cabrera misappropriated funds. On these grounds, Portillo should have been convicted. If one were to accept—as a mere academic exercise—that the President of the Republic was not responsible for the public treasury, he should still have been convicted like any other citizen when it was proven that he had siphoned funds from the Ministry of National Defense and incorporated them into his assets. Furthermore, the principles of forensic audit were ignored so as to disregard the forensic audit evidence, and the principles of common audit were applied. It is clear that the judges' aim was to acquit Portillo one way or another.

More recently, the Public Prosecutor's Office (MP) has filed accusations concerning acts that took place in 2001 whereby GTQ461,000,000.00 were taken. The MP accused eight high-ranking military officials: Enrique Ríos Sosa, Sergio Hugo Cárdenas Sagastume, Randolpho Leonel Chacón Álvarez, Luis Alberto Gómez Guillermo, Moisés Eduardo Galindo Ruiz, Luis Catarino Estrada Valenzuela, Miguel Ángel Salguero Torres, Pedro Adolfo Catalán Muñoz. All of these parties were accused of continuous embezzlement and falsification of facts for siphoning the aforementioned amount and classifying it as secret military expenses. The case is set to go to trial. In 2001, this group of military officials held positions in the Finance Department of the Army, which allowed them to ensure that the pertinent administrative actions were taken to siphon funds from the Guatemalan public treasury. The officials were involved in the preparation and execution of these actions. The fact that they were all co-perpetrators of the crime ensured that all the criminal chain kept quiet.

These investigations have been blocked by the abuse of ordinary and extraordinary appeals—a tactic to delay justice, which has not been addressed by judges.

Other types of corruption subject to investigation include state contracting processes, which have produced fraud, misappropriation, extortion, criminal association, dishonesty, money laundering and laundering of other assets. Also encompassed under this bracket are procurement processes and the subsequent lack of implementation control by juristic persons belonging to state officials; public office-bearers who directly benefit from negotiations; the next of kin of such public office-bearers; and the actions of individuals who have created business structures that receive a large proportion of public negotiations.

In this regard, an investigation has been conducted into the process whereby, in 2009, the contract to renovate the Fraijanes II prison was awarded. This award process involved a complex series of fraudulent contract awards and a subsequent lack of implementation control (Fraijanes II Case). To date this case has identified more than 20 individuals as being responsible, including auditors of the Comptroller General's Office. In addition, sentences have been issued against some perpetrators and judicial proceedings are still ongoing against two former ministers of the interior, Salvador Gándara and Raúl Velásquez Ramos. On February 15, 2012, the judge of the Tenth Court of the First Criminal Instance ruled to send Raúl Velásquez Ramos to trial on charges of abuse of authority and noncompliance of duties. Furthermore, in the same case, one of the main responsible businesspersons is linked to proceedings and another perpetrator has been arrested abroad and faces extradition. International legal assistance was successfully coordinated in the process to gather evidence.

Other corruption cases investigated by CICIG, such as RENAP (fraudulent contract awarded to the business Easy Marketing to issue the Guatemalan personal identification document) and Maskana (an illegal fuel purchasing business planned within the office of former Minister of the Interior Raúl Velásquez), are currently at the intermediary phase.

These proceedings are an example of the aiding and abetting of some justice officials who have passed corrupt sentences to benefit some of the parties involved. This demonstrates how the judicial independence of justice officials has been influenced by economic exchanges, friendship, solidarity and even violence. The justice officials shield themselves behind inadequately implemented legal instruments—such as the preliminary ruling on immunity, which serves to create impunity. As a result, a hearing to lift immunity has been brought against the judge in question.

The case of the Mayor of La Antigua (Guatemala) is also under investigation. The mayor

awarded his next of kin contracts to provide works and services to the municipality. The *modus operandi* involved taking advantage of his position as a higher authority responsible for awarding contracts, sidestepping the legal prohibition of employing family members whose degree of kinship is defined by law and hiding the kinship by establishing juristic persons, thus making it possible to award the works or services contract. This mechanism also served to guarantee impunity (the existing criminal legislation only contemplates the criminal responsibility of the legal representatives of juristic persons) due to the lack of appropriate legislation for the fight against corruption.³

The mayor, as well as awarding his next of kin contracts, received a fee for awarding the contract, taking advantage of the lack of classification of the crime of unjust enrichment and other such crimes. Other irregularities were identified, such as the overvaluation of contracted works and services and the failure to subsequently execute such works and services. The mayor in question conducted all of these activities by exercising his immunity guarantee, which served as a means of generating impunity. On nine previous occasions, the mayor had been accused, but a proceeding to lift immunity was deemed inadmissible on every occasion, demonstrating that so long as the mayor continued in office he would be legally untouchable (Mayor Case).

These investigations have been hindered by the corruption encrusted in the political elite and the emerging economic sector. These actors form networks that act in collusion and are difficult to penetrate with the traditional criminal law tools. Therefore, the classic modalities of criminal responsibility must be reviewed and a second gear is necessary. Such networks highlight the legal loopholes that exist in relation to this genre of crimes and the need to establish an appropriate criminal codification.

1.5. Drug trafficking

(Vidal Requena, Amatitlán Case, Montes Case, Fusión Case, Retalhuleu Kidnapping Case, Rubén Rosales Case)

Crimes linked to drug trafficking were also subject to investigation. A number of investigations have demonstrated how criminal organizations involved in drug trafficking have infiltrated national territory and the links that exist between these organizations and State officials.

³ The United Nations Convention against Corruption, to which Guatemala is party, sets forth the obligation of States to adopt the necessary measures to punish juristic persons without prejudice to the criminal responsibility of natural persons.

Such cases include the violent murder of alleged perpetrators and persons who attempt to enter territory controlled by rivals and block their operations. In addition, people who transport drugs or cash produced by the sale of drugs have also been investigated. These organizations are capable of intimidating victims and witnesses so that they change their testimonies. Investigations are still underway into related operations, such as money laundering in the system's banks and the use of front-men to hide illegal revenue. The links between operations have been established by analyzing the cases together through the implementation of technological tools designed to handle massive data sets.

One of the structures under investigation was identified following an armed confrontation between PNC officers and alleged drug traffickers in the municipality of Amatitlán in April 2009. Five people lost their lives as a result of the confrontation. Investigations demonstrated that high-level officers of the PNC had been involved in operations to gain control of drugs belonging to drug trafficking groups and guarantee the impunity of police officers linked to those very criminal organizations. This can be appreciated by analyzing the activation of telephone networks in the area in the hours before the events took place and the call traffic from and to the telephones belonging to the police in question, who presumably were working for the Los Zetas criminal organization (Amatitlán Case). In relation to this crime, six members of the PNC have been linked to proceedings, including Chief of Police Baltazar Gómez Barrios—who, at the time, held the position of Head of Antinarcotics Analysis and Information of the National Civil Police (SAIA)—on charges of, inter alia, criminal association; illegal trade, trafficking and storage of drugs; and interfering with the course of justice. However, the case proceedings have been suspended since 2010 after an application for *amparo* was filed, and various judges hearing the case have been disqualified. At present, other investigations continue into other officials of the PNC and the Ministry of the Interior on the same charges.

As part of the investigations into events that took place at the Amatitlán warehouse, the Public Prosecutor's Office (MP) searched a number of premises, where they found documents with information on financial transactions conducted by an organization involved in drug trafficking. For example, documentation was found linked to a number of monetary deposits made between December 2007 and June 2010 to Vidal Efraín Requena Mazariegos, who at the time held the position of Director of the Zone 18 Detention Center for Men and had previously held various public office positions in justice administration entities.⁴

⁴ The former official had worked at the Civil Intelligence Directorate, the National Institute of Forensic Science, the Guatemalan Institute of Public Criminal Defense and the Prison System. When he received the payments, he held a position in the Prison System.

On July 11, 2012, the Court of the First Instance for High-risk Matters sentenced Requena Mazariegos to six years in prison and ordered the payment of a GTQ68,000 fine on charges of money laundering and the laundering of other assets; the discontinuance of charges of criminal association and active bribery are being subject to special appeal. The court also considered the analysis, conducted with CICIG support, of the financial transactions related to the money of illicit origin deposited in the personal account of the accused party. At present, the investigation is still underway to determine the manner in which the criminal organization Los Zetas was able to recruit public office-bearers to aid and abet criminal operations, and to reveal to what extent this group has penetrated other state structures.

Common data produced by drug trafficking investigations shed light on the control exercised by groups with ties to Los Zetas over the Verapaces area and the possible links between such groups and local police. By crosschecking data with the Civil Intelligence Directorate, using telephone tapping and interviewing informants it has been possible to identify a parallel structure with ties to Los Zetas. The structure operated in Police Station 52 of the National Civil Police (PNC) of Baja Verapaz and is linked with a number of crimes. On April 18, 2012, a local police officer and an individual were arrested by court order, linking them to proceedings on a charge of conspiracy to murder (Fusión Case).

The crosschecking of information also makes it possible to uncover criminal acts linked to drug trafficking, such as contract killings and the activities of clandestine security organizations serving the families of drug traffickers. The criminal structure led by Juan Ortiz "Chamalé", who faces extradition to the United States for his alleged ties to drug trafficking, enforced its territorial control by eliminating its competitors. A CICIG investigation into a kidnapping case demonstrated the group's ability to intimidate its victims so that they would change their testimonies. All of this took place without prosecutors or judges in the region speaking out (Retalhuleu Kidnapping Case). As a result, since September 2011, two alleged members of the criminal structure led by "Chamalé" have been linked to proceedings on charges of criminal association and kidnapping.

Families with drug trafficking ties have diversified their economic activities with the aim of laundering the revenue generated by their illegal activities. To achieve this, they resort to figures such as the front-man so as to generate impunity, as evidenced by the investigation against one of the front-men of the Mendoza family, which operates in the west of Guatemala (Rubén Rosales Case). In this case, on March 22, 2012, the Ninth Court of the First Criminal Instance ruled to send Rubén Rosales Sánchez to trial on charges of

money laundering and conspiracy to launder money.

Other current lines of investigation seek to identify other mechanisms employed by the drug trafficking structures to launder their assets through the system's banks (Montes Case).

1.6. Crimes related to agrarian and social conflict

(Polochic, Las Nubes, El Tigre, Víctor Gálvez, Nueva Linda)

In 2011 CICIG opened various investigations into the existence of alleged illegal structures linked to the protection of large landowner interests and the exploitation of natural resources in largely indigenous areas.

Access to the land was one of the causes of the armed conflict in Guatemala and it continues to be a source of social conflict. Based on the finca economic model, peasant farmers were stripped of the little land they owned and laws were enacted that left these farmers at the mercy of the new landowners, who were protected to such an extent that they were entitled to deliver justice within the limits of their land.

These practices were not eradicated and continue to occur (as seen by the murder of community leaders). Both practices seek to uphold property and natural resource rights in geographical areas where the interests of large landowners and drug trafficking groups lie, both of whom can become partners in the search for common goals.

The participation of actors involved with other kinds of crime has also been observed, as is the case with the clandestine security organization hired by Juan Ortiz "Chamalé". The members of this group are under investigation for the murder of trade union leader Víctor Gálvez, who opposed the interests of a transnational electricity company. Ortiz "Chamalé", who has interests in the electricity business and whose family works in the field, sought to sell energy to the transnational company and hence protected his own interests by preventing protests from taking place on his land. This took place in a context where the National Civil Police (PNC) and the army had only taken measures to repress the social protests. Ortiz could feel confident thanks to the fear that had been struck into the region's judges and prosecutors and because impunity had been generated in relation to other events that had taken place previously. As a result, three hired gunmen from this criminal structure murdered the trade union leader (Malacatán Eléctricas Case). Under this case, supported by the Commission, three people are due to be subject to oral proceedings on a charge of murder.

In the same fashion, the murder of Antonio Beb Ac, a peasant farmer, is being investigated. Beb Ac was murdered at the hands of special forces units of the National Civil Police (PNC) who abused their force during the operation conducted in March 2011 to clear the Miralvalle property in the municipality of Panzós, department of Alta Verapaz. The disciplinary proceeding undertaken by the Office of Professional Responsibility of the National Civil Police against the head of the elite unit failed to order punishment or produce the consequent investigation request for the Public Prosecutor's Office (MP). It only stated that there may have been a case of noncompliance of duties, and the head of the special unit failed to include the details surrounding the death of Beb Ac in the Miralvalle report. Through these acts, from the outset efforts were made to guarantee a mantle of impunity.

On April 20, 2012, the Court of High-risk Matters linked the Commander of the Police Special Forces to proceedings on a charge of extra-judicial killing—as requested by the Public Prosecutor's Office (MP) and CICIG, who acts as a complementary prosecutor. However, at a hearing to amend the indictment, the charge was changed to manslaughter. This decision was appealed by the Public Prosecutor's Office (MP) and CICIG, and the appeal is pending before the Constitutional Court (CC).

Other cases of excessive use of force in evictions are being analyzed, such as that concerning the execution of seven peasant farmers during the eviction of the Nueva Linda finca in Retalhuleu (Nueva Linda Case) and the murders of Ramiro Chon and Víctor Manuel Tut (community leaders and human rights defenders in the community of El Tambo [Petén]) for preventing the removal of peasant farmers who were living in protected areas beside the Laguna del Tigre in Petén (El Tigre Case). As of July 26, 2012, one conviction has been achieved against the Deputy Mayor of El Tambo for the murder of one of the leaders of Petén.

Furthermore, the murder of peasant farmer leader Adolfo Ich Chamán is also being investigated. Ich Chamán was allegedly murdered at the hands of members of the Compañía Guatemalteca de Níquel, a private security company, in events that took place in September 2009 in the municipality of El Estor (department of Izabal). It is also possible that members of the National Civil Police (PNC) took action following clashes produced in response to peasant farmer protests over land ownership in the Las Nubes community. The court responsible issued an arrest warrant for the head of security of the Compañía Guatemalteca de Níquel on charges of murder and causing mild injuries. The arrest is yet to take place, however.

1.7. Illegal trafficking of goods and persons

(Gasofa, Santo Tomás de Castilla, Furgones, Capitán, Fidel Pacheco)

Over the course of the fifth year, CICIG has opened new investigations linked to the illegal trafficking of goods—such as drug precursors and gasoline—as part of customs smuggling activities (including both borders and ports).

In the Gasofa case, an extensive investigation has been conducted into the existence of criminal structures that operate around the land borders (Guatemala-Mexico and Guatemala-El Salvador). In these zones, with the connivance of customs officials, the uncontrolled trafficking of fuel was allowed using false customs documents and the process was aided by members of the National Civil Police (PNC) who monitored the route of the tanker trucks so that they could pass through to the fuel drop off area without any inconveniences.

In this case it was possible to identify the structure and *modus operandi* of the criminal organization by using tools such as effective cooperators and intercepting calls, which made it possible to demonstrate the manner in which members of the National Civil Police (PNC) were abettors of the organization and interfered with the course of justice. A sentence was achieved through summary proceedings and 15 people have been linked to proceedings, including 9 police officers.

The new lines of investigation address the other structures that operate in maritime and land ports (Santo Tomás de Castilla Case, Furgones Case).

In regard to goods trafficking, one of the new investigations focuses specifically on the trafficking of drug precursors by a criminal organization comprised of individuals, members of the National Civil Police (PNC) and the Army of Guatemala, led by a Navy captain murdered in 2011 (Capitán Case). Under this case, five people are linked to proceedings on charges of criminal association, conspiracy to interfere with the course of justice and murder.

CICIG is also undertaking investigations into other illegal migration activities, including the 2010 murder of Fidel Pacheco, a migration official and trade union leader, and other acts that could be related to the illegal trafficking of persons (Fidel Pacheco Case).

CICIG'S SUBSTANTIVE WORK

Activities	Quantity
Complaints received	2361
Investigations open at present	289
Active investigations	55
<i>a. Cases investigated by FECl</i>	<i>41</i>
<i>b. Cases investigated in other prosecutor offices</i>	<i>14</i>
Participation as a complementary prosecutor	21
Sentences	17
Accused parties that received sentences	70
Lifting of immunity hearings	9
Administrative and criminal complaints against judges	4
Assistance with judicial statements (approximately)	52
Assistance with statements before the Public Prosecutor's Office (approximately)	1,030
Support for judicial premises searches	612
Support for judicial arrests	259

2. Institutional strengthening, legal and institutional reforms

2.1 Coordinating the State in the fight against criminality

In the framework of the responsibility acquired by the CICIG to contribute to the institutional development and strengthening necessary to coordinate the State of Guatemala in the fight against impunity, CICIG has promoted and developed strategic actions through technical assistance, training and capacity transfer. As a result of these measures, over the past year, 777 public office-bearers from different offices of the Public Prosecutor's Office, the National Civil Police and other government institutions have all benefited.

The technical assistance provided to the state bodies focused on providing technological and logistical tools to optimize investigations and security activities. Further support was provided in the form of advisory assistance, the presentation of proposals to create and restructure office sections, the design of protocol and organization functioning manuals, implementation assistance, audit assessment and the evaluation of certain investigations.

In relation to training, the Commission has centered its efforts on strengthening the processes through which officials working in investigative and operational fields acquire technical, theoretical and practical knowledge on topics related to extradition, international legal assistance, criminal prosecution in analysis and judicial investigation special methods and techniques. In addition, training programs have been offered to security officials.

Capacity transfer—based on the active and constant participation of public officials in the Commission's activities—was geared toward the knowledge, skill and ability acquisition of Public Prosecutor's Office (MP) and National Civil Police (PNC) officials in the areas of analysis, investigation and criminal prosecution. Emphasis was also placed upon their direct involvement in investigation plans, criminal analysis and police investigation-related activities. In turn, PNC officials were involved in joint security activities under the coordination of the Commission's international experts.

2.1.1 Public Prosecutor's Office (MP)

- ***Special Anti-impunity Prosecutor's Bureau (FECI)***: The technical support provided to FECI by CICIG over the course of the fifth year has included providing technical forensic analysis equipment used to handle criminal evidence and the necessary vehicles, computer units, bulletproof vests and cameras. Further assistance has been offered by way of technical support to extract forensic information, and the development of information extraction protocols and telephone analysis methods is underway. FECI prosecutors, assistant prosecutors, technicians and police officers were the beneficiaries of training programs covering the following techniques: questioning and interviewing, extradition and international legal assistance, criminal prosecution and investigation of human trafficking, investigation planning and criminal analysis. The joint work of interinstitutional investigation teams—FECI prosecutors, assistant prosecutors, technicians, analysts and police officers—has made it possible to improve investigation planning, define a procedural strategy, elaborate and present analytical products, and apply new police investigation methods and techniques.

- **Analysis Unit:** With the aim of implementing the transfer of capacities needed to strengthen the Analysis Unit, on February 16, 2012, the Commission deployed international officials to facilities of the Public Prosecutor's Office (MP), where they would be based and conduct internal joint coordination work on methodological and organizational matters. To date this group based at the MP has provided technical support in reviewing the restructuring proposal for the Analysis Unit and in training analysts and technicians to use analysis and information mapping tools provided on computer programs such as IBM i2 Analyst's Notebook 8.5.

- **Financial Investigation Section:** CICIG has fostered the criminal investigation and prosecution of financial crimes, supporting the creation of a Financial Investigation Section since November 2011. After analyzing the *status quo*, it established the goals, focus, profile and organizational roles of the proposed financial investigation section. In addition, CICIG developed a draft bill for the agreement to create this new body, which was submitted to the Attorney General for her revision and approval. The Commission plans to transfer international experts in financial investigation and analysis to the Public Prosecutor's Office (MP) and ensure joint work is conducted once the new section has been established.

- **Department of Security:** The Commission has provided technical assistance by advising the heads of the security department at an organizational and functional level and an audit was conducted during the second half of 2011. In addition, the implementation of these efforts was complemented by permanently assigning a security official to the MP. The training program for the department focused on risk analysis, shooting techniques, protection of persons and facility protection techniques.

- **Special Human Trafficking Prosecutor's Office:** In the framework of the agreement to take actions related to the Anti-organized Crime Law, the Law against Femicide and Other Forms of Violence against Women and the Law against Sexual Violence, Exploitation and Trafficking in Persons, the Commission has provided technical assistance by processing and storing information as well as analyzing the relation between criminal networks through the systemization of a database of open cases related to illegal adoptions. Furthermore, it is contributing to developing a criminal prosecution methodology for femicide, human trafficking and other forms of violence against women.

- ***The Prosecutor's Bureau for Crimes against the Life or Integrity of People, the Anti-organized Crime Prosecutor's Bureau and the Human Rights Prosecutor's Bureau:*** The Commission has contributed to strengthening the work of these bureaus by offering technical support over the past year to extract forensic information (computers, cellular telephones, storage devices) in high-impact cases on crimes related to interference with the course of justice and femicide (Siekavizza Case), murder, drug trafficking and money laundering (Facundo Cabral), politically-motivated murders (San José Pinula mayor candidates) and threats against journalists.

2.1.2 Ministry of the Interior

- ***National Civil Police (PNC):*** In accordance with the interinstitutional coordination agreement signed by the Ministry of the Interior and the Public Prosecutor's Office (MP) in relation to the units of the National Civil Police (PNC) that support the prosecutor bureaus and directorates of the Public Prosecutor's Office (MP), CICIG has contributed to strengthening the MP over the past year in two ways:

A) Criminal investigation and prosecution: training on interview and questioning techniques, extradition and international legal assistance, criminal analysis, criminal investigation and prosecution of human trafficking, investigation planning and operative techniques to protect witnesses. In addition, 3 officials and 16 officers have been actively and continually involved in the Commission's police investigation work, facilitating the acquisition of new knowledge, skills and abilities in surveillance and shadowing, locating witnesses, conducting interviews, executing arrest warrants of accused persons and drafting police reports. Furthermore, the coordination between international police officers and officials assigned to the Special Police Forces (FEP), the Office of Professional Responsibility (ORP), the Specialized Division of Criminal Investigation (DEIC) and the General Directorate of Civil Intelligence (DIGICI) to support the Commission's investigative and operative activities has, in turn, made it possible to coordinate the operative work of these units.

B) Security: technical support has been provided to the Division of Protection of Persons and Security through the creation of a proposal for the legal and regulatory framework, the elaboration of an operational guide for risk assessments and the provision of logistics material (bulletproof vests). As far as training is concerned, heads of section and more than 60 officers have benefited from the training cycles

on operational protection techniques for witnesses and shooting techniques. In relation to capacity transfer, the active and continual participation of 15 officers in the security activities of the Commission has facilitated the acquisition of new knowledge, skills and abilities in facilities security and protection of persons. In a second cycle, officers have joined a training program designed for CICIG security officials.

2.1.3 Judiciary (OJ)

The Commission has supported the strengthening of the Judiciary through the provision of technical assistance in developing policies that contribute to the fight against corruption, to true judicial independence and to a management and assessment system. The support has been implemented since October 2011 by participating in a working committee that submitted, on June 20, 2012, recommendations to redesign the disciplinary system in the framework of the Zero Tolerance of Corruption, Impunity and Influence Trafficking program. Still to be conducted are activities to enhance internal audit capacities, monitor courts and introduce technological tools for disciplinary control. Furthermore, since October 2011, CICIG has worked on separating administrative functions from jurisdictional functions within the framework of implementing the Standard Model of Quality and Accreditation of the Judiciary (OJ) and it has designed proceeding guides that are pending approval before the plenum of the Supreme Court of Justice. In addition, on March 13, 2012, the President of the Judiciary pledged to replicate this model in the judicial branch. Finally, the Commission has contributed to defining legal reform recommendations related to the Judicial Service Law. The document is due to be presented to the Judiciary (OJ).

As part of its commitment to justice, CICIG keeps channels of dialogue open with the Judiciary (OJ) so as to improve communication through an exchange of suggestions and concerns. In addition, a joint discussion was recently held between CICIG representatives and high-impact judges to analyze the current state of cases. As part of these discussions, items covered include judgments given by judges, the Commission's participation as a complementary prosecutor and the strengthening of investigations. In a general sense, from the perspective of the Judiciary (OJ) and CICIG, it was proposed that aspects of sensitive cases evaluation be corrected and that investigation presentation practices be improved.

2.1.4 Other state institutions

- **National Council for Adoption (CNA):** In this area, the Commission has provided technical support by helping to draft the adoption regulations bill (which is pending approval) and by taking part in a working committee with officials from the CNA, the Attorney General's Office (PGN) and the Public Prosecutor's Office (MP) with the aim of reviewing and analyzing outstanding illegal adoption cases and supporting the planning and monitoring of investigations whose results have made it possible to identify a number of structures and relocate children with Guatemalan families.
- **Office of the Comptroller General:** Support to strengthen this oversight body has addressed two elements: A) Financial investigation and analysis. Technical support has been given to define specific cases and priorities in order to conduct an assessment and subsequently guide the work of auditors. Furthermore, the weaknesses and bad practices of audits have been identified. B) Legal side. Launch of the development of a judicial analysis leading to a base proposal to discuss and reformulate the criteria for audits of NGOs that manage state funds.
- **Superintendence of Tax Administration (SAT):** At the request of the SAT superintendent, in July 2012, the Commission started to audit the SAT security service.
- **Attorney General of the Nation's Office (PGN):** The recommendations set forth in the Report on Players Involved in Illegal Adoption Processes in Guatemala following the implementation of the Adoptions Law have been monitored.
- **Witness Protection System:** As part of complying with the interinstitutional agreement to strengthen the Witness Protection System, CICIG has provided logistics material to ensure technical support for protected witnesses, specifically through the delivery of mobile archives, and contributed to renting a number of properties that serve as safe bases where witnesses can seek refuge. Such witnesses require special security measures due to their participation in high-impact criminal proceedings. In addition, protocols have been designed to definitively and comprehensively relocate witnesses. CICIG contributed to 18 productive definitive relocation projects and continues to offer support for case evaluations, the implementation of protection measures, and the design of protocols for risk analysis and socio-psycho analysis. In regard to training, in

September 2011, the Group of Special Protection of the Public Prosecutor's Office—comprised of PNC officers—and staff from the MP Protection Office benefited from a number of joint activities offered by the US Justice Department through the support of officials from the US Marshal Protection Program. The Government of Germany provided financial support.

i. TECHNICAL ASSISTANCE

PUBLIC PROSECUTOR'S OFFICE
Provision of forensic analysis equipment to FECl to facilitate the administration of digital evidence (ENCASE, FREDL, IMIX, ADOBE CREATIVE)
Extraction of forensic information (computers, cellular telephones, storage devices)
Provision of logistics material (vehicles, computer equipment, bulletproof vests and cameras) to the Special Anti-impunity Prosecutor's Bureau (FECl)
Development of protocols for the extraction process of forensic information, analysis methods and telephone analysis
Revision of the proposal to re-structure the Analysis Unit, including analysis methods and systemization of information
Create a draft of the project for the Agreement to Create a new Unit of Analysis and Financial Investigation
Audit and present suggestions regarding the organization and functioning of the Security Department and participate in the monitoring of proceedings
NATIONAL CIVIL POLICE (PNC)
Implementation of a working committee in the Division of Protection for Persons and Security
Proposal of a legal framework and a regulatory framework for the Division of Protection of Persons and Security
Provision of logistics materials (bulletproof vests) to the Division of Protection for Persons and Security
Design an operational manual on risk assessments
JUDICIARY (OJ)
Participate in the working committee that led to the development of a draft disciplinary statute and the offering of recommendations to redesign the disciplinary system
Assist with the drafting of procedure manuals for the separation of administrative functions from jurisdictional functions (pending approval by the plenum of the Supreme Court of Justice)
Create recommendations for legal reforms on the Judicial Service Law, due to be submitted to the Judiciary (OJ)
Participation in a working group together with judges for high-impact matters to analyze the current situation regarding the cases
OFFICE OF THE COMPTROLLER GENERAL (CGC)
Assessment of the audits through the Directorate of Municipal Audits
Development of a judicial analysis and a base proposal to discuss and reformulate the criteria for audits of NGOs that manage state funds

NATIONAL COUNCIL FOR ADOPTION (CNA)
Participation in a working group with officials from the National Council for Adoption (CNA), the Attorney General of the Nation's Office (PGN) and the Public Prosecutor's Office (MP) with the aim of reviewing and analyzing illegal adoption cases, as well as planning and monitoring investigations
Participation in the development of draft adoption legislation, which was later approved
SUPERINTENDENCE OF TAX ADMINISTRATION (SAT)
Audit of the security service
WITNESS PROTECTION SYSTEM
Support the Protection Office in evaluating cases and implementing protection measures for witnesses
Design protocols for risk analysis, the identification of safe properties for witnesses and the comprehensive relocation plan for witnesses. Provision of logistics materials: mobile storage, payment of locations (safe properties)

ii. TRAINING

PUBLIC PROSECUTOR'S OFFICE		
DESCRIPTION	BENEFICIARIES	TOTAL
Questioning and interview techniques	Officers	44
Investigation and criminal prosecution of human trafficking	Prosecutors Investigators	17
Extradition and international judicial support		
Investigation and criminal analysis plan		
Shooting techniques Basic protection techniques in the framework of the Witness Protection Program Risk analysis	Security officials	489
Computer analysis and information mapping program: IBM i2 Analyst's Notebook 8.5	Analysts	5
	Technical analysts	1
TOTAL		556
NATIONAL CIVIL POLICE (PNC)		
DESCRIPTION	BENEFICIARIES	TOTAL
Questioning and interview techniques	Police officers	10
Investigation and criminal prosecution of human trafficking		
Extradition and international judicial support		
Investigation and criminal analysis plan		
Basic and operational techniques to protect witnesses in the framework of the <i>Witness Protection Program</i>	Police officers	60
	Heads of Section	10
Shooting techniques	Shooting instructors	4
TOTAL		84

iii. CAPACITY TRANSFER

PUBLIC PROSECUTOR'S OFFICE		
DESCRIPTION	BENEFICIARIES	TOTAL
Preparation, execution and development of an investigation plan for the cases carried forward by the Special Anti-impunity Prosecutor's Bureau (FECI)	Prosecutors	26
	Assistant prosecutors	

Preparation, execution and development of an investigation plan for cases carried forward by other bureaus	Prosecutors	23
	Assistant prosecutors	
	Criminal investigation specialists	17
Development and delivery of analytical products	Criminal investigation specialists	2
Framework plan for strategic investigation	Prosecutors, Assistant prosecutors, Criminal investigation specialists and analysts	35
TOTAL		103
NATIONAL CIVIL POLICE (PNC)		
DESCRIPTION	BENEFICIARIES	TOTAL
Surveillance and shadowing	Officials	3
Verification of information and location of addresses and witnesses		
Interviews		
Participation in execution of arrest warrants of accused parties	Police officers	16
Drafting of police reports		
Facilities security, protection of people and shooting techniques	Police officers	15
Integration into training program designed for CICIG security officials		
TOTAL		34

2.2. Legal and institutional reforms

Over the reported period, legislative progress has been made in relation to the anticorruption package debate. The package was developed by CICIG and civil society organizations with expertise in the justice area, and the Office of the United Nations High Commissioner for Human Rights provided oversight. The project built on the work carried out in 2010 and 2011 in the Security and Justice Committee of the Legislation and Constitutional Affairs Commission of the Congress of the Republic. It analyzed Bill 4450 and Bill 4462 on anticorruption proposals and rendered a conclusion recommending the approval of the Unjust Enrichment Criminal Law.

The bill, which comprehensively addresses systematic corruption, seeks to define a series of offences, including asset forfeiture of property acquired in an illicit manner, and it contemplates measures to address the matter as organized crime. The bill includes provisions related to determining the criminal responsibility of juristic persons, the special disqualification as an additional consequence of crimes committed against the public administration and the justice administration and creates offense definitions that are key to the fight against corruption, such as unjust enrichment, individual unjust enrichment and influence peddling. The proposal also has an extensive social backing and there have been a series of technical recommendations made by different social organizations.

On July 20, 2012, Congress approved Legislative Decree 15-2012, Law of the General Directorate of Criminal Investigation, creating a special police criminal investigation unit assigned to the Ministry of the Interior. The approved decree includes CICIG's recommendations for creating a technical police force that is separate from political authorities—one of the seven minimum elements that the State must have to tackle impunity.

It must be noted that, over the reported period, CICIG presented recommendations related to constitutional reform, which were submitted to the Legislation and Constitutional Affairs Commission of the Congress of the Republic on November 28, 2011 during the hearings held to discuss Bill 4387—a bill presented by USAC-URL-ASIES on reforming the Political Constitution of the Republic of Guatemala in the area of justice and security.

Although Bill 4387 is a project of minimums not maximums, the proposal debate constituted an important process in which 53 bodies and persons expressed their opinions regarding the content that should be subject to constitutional reform in the area of justice and security. This process led to subsequent fora and opinion columns, and the main criterion of the participating sectors was the need to thoroughly review the Constitution in this area.

CICIG's recommendation is based on a proposal to amend 21 articles of the Constitution and create 3 transitory articles. (The recommendation to constitutionally acknowledge legal pluralism is particularly important). Other recommendations include the creation of a judicial service that goes as far as the Supreme Court of Justice, provides for participation quotas for lawyers from outside the Judiciary (OJ) and regulates objective and transparent parameters for selecting judges and magistrates, with a clear liability regime for the Judiciary (OJ) as the governing body of judicial service; the establishment of a judiciary

council as the governing body of the judicial service; the separation of administrative roles from jurisdictional roles through the creation of a General Directorate of the Judiciary; the elimination of the reserve judge from the Judiciary (OJ) and the Constitutional Court (CC) and the implementation of the prevention of freely exercising the lawyer's profession while occupying a judgeship; the reform of the system for the selection of judges, Supreme Court judges, the Appeals Court, the Constitutional Court (CC), the Comptroller General, the Attorney General and the Prosecutor General of the Nation (removing the Nominating Commissions due to their susceptibility to external influences); the strictly civil nature of police forces; the greater independence of the Attorney General (defining objective motives for removal from office); the definition of the duty of the Attorney General of the Nation's Office (PGN) to defend and procure the interests of the State; and the structuring of the Constitutional Court (CC) with nine sitting judges.

At present, the executive branch, through its capacity to present bills, has also proposed the Amendment of the Constitution of the Republic of Guatemala, which includes topics that go beyond the consensus reached during 2011 and 2012 regarding the amendment solely of security and justice components of the Constitution. However, it is apparent that the need for constitutional reform occupies an important place in the country's political stage and an opportunity has arisen to discuss crucial reforms that would support the fight against impunity.

CICIG currently continues to support the legislative discussion and hopes that some of the points covered in the legislative reform recommendations can be implemented. At present, the following CICIG recommendations have been legislated:

CICIG Recommendation	Status
Constitutional Reform	Not legislated
Amparo Law Amendments	Not legislated
Immunity Law Amendments	Not legislated
Plea procedure (Code of Criminal Procedure)	Legislated
Offering of statements via audiovisual means	Legislated
Change of identity and relocation of witnesses	Partially complied with
Effective cooperation	Legislated
Illegal trafficking of firearms and ammunition	Partially complied with
Criminal Jurisdiction in high-risk proceedings	Legislated
Human trafficking	Not legislated
Illegal trafficking of immigrants	Not legislated
International cooperation on criminal matters	Not legislated

Judicial Service Law (including a proposal for a package)	Not legislated
Amendments to the Organic Law of the Public Prosecutor's Office (including the proposal for the disciplinary package and the prosecutor's profession)	Not legislated
Disciplinary Regime of the National Civil Police (Disciplinary package)	Not legislated
Asset Forfeiture	Legislated
Telephone Registration Law to prevent cell phone theft and extortion	Not legislated
Anticorruption Law (unjust enrichment)	Not legislated
Criminal Investigation Police Law	Legislated
Organic Law of the Attorney General of the Nation's Office	Not legislated

3. Drafting of thematic reports

With the aim of supporting the decision-making process of authorities with jurisdiction to select high-ranking officials, CICIG developed a number of reports on profiles of applicants for senior state positions. At the request of institutions responsible for selecting candidates, the reports included assessments of applicants:

- At the request of the Ministry of Foreign Affairs, the Social Welfare Secretariat of the Presidency of the Republic and the Supreme Court of Justice, in February and March 2012, CICIG developed three reports on profiles of candidates to form part of the board of directors of the National Council for Adoption.
- At the request of the Human Rights Commission of the Congress of the Republic, in May 2012, CICIG developed a report containing information on the twenty candidates for the position of Human Rights Ombudsman.
- At the request of the Vice-President of the Republic, in May 2012, the Commission submitted a report on the ten candidates for the position of Secretary General of the National Secretariat of Administration of Seized Property.

Through a financing agreement with the Open Society Institute Foundation, in the second half of 2011 and the first half of 2012, four expert consultants developed reports on criminal structures infiltrated in the justice administration system, the National Civil Police (PNC) and the Army of Guatemala. The report describes the *modus operandi* of CIACS from within and outside of the institutions, as has been demonstrated by some of the

paradigmatic cases pursued by CICIG. Furthermore, two digitizing clerks offered technical support to the work to feed a database created for this project. These reports are at the final editing stage.

Within the framework of the same project, CICIG's experience with criminal prosecution and the performance of certain judges led to the creation of a technical report on the irregular actions of certain judges and senior judges of the Judiciary (OJ). The report is currently being edited.

V. CHALLENGES AND CONCLUSIONS

In Guatemala laws and legal loopholes persist which make it difficult to achieve more effective investigation and criminal prosecution of egregious crimes. In the report, CICIG indicated that 70% of its legal reform recommendations were yet to be legislated. Such is the case with the amendments proposed for the Amparo, Habeas Corpus and Constitutionality Law and the Law on Lifting Immunity.

Furthermore, current criminal legislation does not suffice to tackle corruption. The State is internationally duty bound to adapt its domestic legislation so as to define corruption-related crimes, pursuant to the United Nations Convention against Corruption. CICIG recommends approving the Unjust Enrichment Criminal Law, also known as the Anticorruption Law, and maintaining the completeness of the proposal (especially in relation to establishing the criminal liability of juristic persons and the possibility for special disqualification as a consequence of crimes committed against public and justice administrations). Furthermore, it recommends conserving the wording of the criminal definitions included in the proposal, especially those related to the unjust enrichment of individuals and influence peddling.

Organized crime must be addressed differently by police and prosecutors. The results achieved in complex cases supported by CICIG are examples of a new way of tackling this type of crime through the use of modern investigation techniques and by conducting criminal prosecution in a strategic manner with prosecutors, police and analysts all working together. Guatemala must consolidate the progress made in the area of criminal investigation effectiveness so as not to revert to old ways.

Despite the advances made regarding the criminal investigation of egregious crimes, most of the cases investigated by CICIG between 2008 and 2010 are currently stagnant due to a number of legal remedies that prevent criminal prosecution from continuing. Excessive

delays in processing *amparo* applications and other legal actions—as seen in the Matus, Maskana, RENAP, Amatitlán and Rosenberg cases—delay proceedings. Other factors are related to recusals (Portillo Case) or judge disqualifications (Amatitlán Case), as well as attempts to exclude CICIG from criminal proceedings (RENAP, Retalhuleu Kidnapping).

The excessive delay in processing legal remedies is not an isolated incident but rather a systematic practice that can be seen in 40% of the cases processed by CICIG. It is not acceptable that a case be stagnant for two years due to a pending extraordinary *amparo* application (Amatitlán Case, among others). The filing of more than 30 extraordinary *amparo* applications using the same arguments without them being flatly rejected can be construed as malicious prosecution (De León Argueta Case).

At the judicial evaluation stage of a proceeding, problems arise when trying to verify the evidence under examination. The main problem faced by Guatemalan justice is guaranteeing the independence and impartiality of judges and providing the justice administration system with greater resources. Judicial independence is not just having the opportunity to operate as a judge without being subject to pressure but also, and especially, the right of citizens to have a conflict judicially resolved by an independent and impartial judge. Therefore, CICIG focuses on constitutional reform in the area of justice and security, as well as the reform of judicial service and the prosecutor's profession, and the strengthening of institutional disciplinary regimes—all of which contribute to an effective 'shakedown'.

On September 6, 2012, the Commissioner presented the CICIG 2012-2013 roadmap before the United Nations, and steps are also being taken to extend CICIG's mandate until September 2015. The roadmap covers the four main work areas of the Commission, with a special focus on strategies to transfer capacities to national institutions.

The implementation of this plan, approved by the Commission's main national counterparts, is the main task faced by CICIG in dismantling illegal security forces and clandestine security organizations (CIACS) and fighting impunity in Guatemala. In order to fully implement the plan, the support and commitment of the executive branch, the Congress of the Republic, the Public Prosecutor's Office (MP) and the Judiciary (OJ) will be necessary.

In order for a State to achieve a legitimate criminal policy, it must tackle crime without restricting guarantees; otherwise, the State itself becomes a criminal. The processes under investigation with CICIG support (linked to different groups who commit extra-judicial killings as a means of responding to crime) are evidence of the existence of a systematic

and organized plan, because such crime would be unlikely to happen randomly. The clarification of facts may or may not ultimately reaffirm the validity of the principle of legality as a control over the State's ability to impose penalties.

The justice sector institutions must improve their performance controls in order to rule out that investigation deficiencies identified in cases are due to institutional weakness, and they must isolate cases of obstruction of justice.

As has been stated on other occasions, the prosecution of senior former officials conveys a clear message to the people. With a good investigation, there is no such thing as the perfect crime and the accused party's power is irrelevant, as is the time that has passed since they committed the crime. There must be no doubt as to the fact that such individuals will be brought to justice sooner or later.

It is ultimately Guatemalans who must choose to eradicate impunity. One must ask: to what extent are the three branches of the State committed to justice?