



**CICIG**  
Comisión Internacional Contra  
la Impunidad en Guatemala



**International Commission against Impunity in Guatemala**

**-CICIG-**

**“One Year Later”**

September 2008  
Guatemala

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**INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA**  
**ONE YEAR LATER**

**1. Mandate of the Commission**

The International Commission against Impunity in Guatemala (hereinafter “the Commission” or “CICIG”) was established under the 12 December 2006 Agreement between the United Nations and the State of Guatemala. The Agreement, which was ratified by the Congress of the Republic of Guatemala on 1 August 2007, entered into force on 4 September 2007. The Secretary-General of the United Nations appointed a Public Prosecutor of the Supreme Court of Spain, Carlos Castresana Fernández, as Commissioner on 14 September 2007.

It should be noted that under the above-mentioned Agreement, the Commission’s functions include determining the existence of illegal security groups and clandestine security structures, collaborating with the State in the dismantling of such groups and structures, promoting the investigation, criminal prosecution and punishment of crimes committed by their members, and recommending to the State the adoption of public policies for eradicating such groups and structures and preventing their re-emergence. The Commission has the power to file criminal and/or administrative complaints with the relevant authorities against civil servants who contribute to impunity by interfering with the Commission’s exercise of its functions or powers.

By virtue of the very nature of the Agreement on the establishment of CICIG the Commission has political, organizational and financial independence. As provided in the Agreement, all of the Commission’s expenses are met through voluntary contributions from the international community. For the purpose of channelling those contributions and ensuring transparency and accountability, a trust fund administered by the United Nations Development Programme (UNDP) was established on 3 October 2007. The State of Guatemala, for its part, undertook to provide the Commission with office space and to take all necessary measures to ensure the security and protection of Commission staff.

CICIG has a two-year mandate as from the date of its establishment; this means that the Commission’s current mandate will end in September 2009. As is well known, the Commission’s mandate is unprecedented in the United Nations or other international organizations working to strengthen the rule of law. Far from being an independent special tribunal, CICIG investigates cases that are within the scope of its mandate and promotes criminal prosecutions in the national justice system. In other words, under this mechanism, while the State’s responsibility for criminal prosecutions may be shared with CICIG when the latter acts as a complementary prosecutor, prosecutions and decisions remain fundamentally the responsibility of the State of Guatemala. While preserving the above-mentioned prerogatives to ensure its independence and the fulfilment of its mandate, the Commission, through its assistance function, also plays a key role in strengthening State institutions with constitutionally mandated responsibility for criminal prosecutions.

One year after the entry into force of the Agreement, the present report is intended to provide a brief overview of the Commission's achievements and the challenges it has encountered in implementing its mandate.

## **2. Phases of implementation of the CICIG action plan**

Both methodologically and chronologically, CICIG has been implementing its action plan in quarterly segments. A new phase of the plan has been implemented each quarter, following an analysis of the results produced in the preceding quarter.

In line with this plan of action, in the first quarter (September 2007-January 2008), which was also defined as the preliminary phase, efforts were focused on obtaining political and financial backing for the Commission from the international community. While the Commission established its operating structure in accordance with its own budgetary and operational parameters, the Commissioner developed a set of constructive, fluid relationships with the new authorities of the legislative and executive branches and with the most direct counterparts, such as the Office of the Public Prosecutor and the National Civilian Police. Also important in this phase were the relationships established with civil society and the media in order to explain the Commission's mandate and obtain the necessary cooperation of these stakeholders.

Beginning in January 2008, CICIG focused on recruiting legal, investigative, administrative and security personnel as expeditiously as possible. As a result, in the next quarter it was able to form the teams that would handle the substantive work, as police investigators, prosecutors and lawyers from different countries joined the Commission and familiarized themselves with the structure and operation of national institutions such as the Ministry of the Interior, particularly the National Civilian Police, and the Office of the Public Prosecutor.

The second quarter (January-April 2008) was devoted to the establishment of operational cooperation and joint initiatives with the National Civilian Police involving the provision of technical assistance in criminal investigations and the identification of weaknesses and deficiencies that were hindering the public safety efforts of the Police. At the same time, having achieved a staffing level of about 40 per cent with respect to the total envisaged, the Commission began to investigate some of the cases referred to in the complaints received. In several cases, those investigations were coordinated with the Office of the Public Prosecutor.

In the third quarter (May-July 2008), the Commission, having filled 70 per cent of the posts in its staffing table, made notable progress in investigating cases, both those it investigated independently and some of the paradigmatic cases it investigated jointly with the Office of the Public Prosecutor. In this phase, the investigation of cases was of strategic value for revealing structural deficiencies in the Office of the Public Prosecutor; detecting the lack of coordination between that institution and the National Civilian Police; and identifying those civil servants who by action or omission were not only obstructing the investigations but also, more disturbingly, impeding the clarification of the cases themselves, thus facilitating impunity.

In the fourth quarter (July-September 2008), the Commission has developed closer ties of cooperation with the Office of the Public Prosecutor, a task made easier by the changes introduced in that institution beginning in July 2008. It has

also strengthened its ties of cooperation and technical assistance with the judiciary branch.

In the current phase, it will be crucial for the Commission, in coordination with the Office of the Public Prosecutor, to concentrate all its efforts on building, practically from scratch, the national witness protection system. At the same time, the Commission will continue its dialogue with “friend” countries with a view to establishing ad hoc mechanisms for ensuring, when necessary, the protection of particularly vulnerable witnesses abroad.

Of course, CICIG will continue to investigate high-impact cases that are considered important for the discharge of its mandate, while at the same time analysing all cases within its jurisdiction in order to determine whether it should become a party to any proceedings.

### **3. CICIG today**

The Commission now has a total of 109 staff members, representing 73 per cent of the total staffing table provided for in its budget. They come from 24 countries, including Guatemala, which is represented by 26 staff members. As will be discussed below, the number of Guatemalan staff will be gradually increased in the coming months. Women account for 47 per cent of the Commission’s substantive and administrative personnel; 33 per cent of them occupy decision-making posts. However, this percentage goes down to 20 per cent when the number of women staff is compared to the total number of Commission staff. This imbalance is due to the fact that 41 of the Commission’s 109 staff members are security officers, and these posts are occupied primarily by men, despite the efforts being made to recruit female officers.

As at 31 August 2008 the International Commission against Impunity in Guatemala had received voluntary contributions totalling \$13,792,785 from 13 donors<sup>1</sup> and had received pledges of contributions that would cover the CICIG budget for 2009. To date, the Commission has executed 44 per cent of its budget. Some “friend” countries, including Chile, Mexico and Uruguay, have helped to strengthen the Commission’s security system by seconding a large number of security officers and experts to CICIG. Other “friend” countries, such as Germany, Spain, Sweden and Switzerland, as well as United Nations departments and agencies, including the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Department of Peacekeeping Operations (DPKO), the United Nations Development Programme (UNDP), the United Nations Department of Safety and Security (UNDSS) and the United Nations Children’s Fund (UNICEF), have cooperated with the Commission by sending staff with expertise in various areas and providing other kinds of support. Other donors have supported CICIG by providing equipment.

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<sup>1</sup> Denmark, European Union, Finland, Germany, Netherlands, Norway, Open Society Institute, Soros Foundation, Spain, Sweden, Switzerland, United Kingdom, United States of America.

#### **4. The year's activities**

##### **(a) Investigation**

In its first year of operations, the Commission received 64 complaints. It is now investigating 15 high-impact individual cases, most in coordination with the Office of the Public Prosecutor. With respect to the other complaints, those concerning similar cases have been clustered and the Commission is monitoring them as situations, particularly those involving femicide, the killing of bus drivers, human trafficking and attacks on and killings of trade unionists and human rights activists. The remaining complaints have been deemed not to fall within the Commission's mandate.

In terms of experience, in the cases in which cooperation with the Office of the Public Prosecutor has been positive, the investigations have yielded some immediate results, as shown by the fact that the Commission was able to establish itself as a complementary prosecutor in two high-impact cases within a relatively short time: a case involving a clash between drug traffickers on 25 March 2008 that left at least 11 people dead in Zacapa and a case of an official and three officers of the National Civilian Police who engaged in extortion. In order to overcome the distrust between the Office of the Public Prosecutor and the National Civilian Police, which makes coordination between the two bodies difficult, the Commission has encouraged the creation of joint investigation teams. As a result of this initiative, it is hoped that joint investigations under the leadership of the Office of the Public Prosecutor will become the rule rather than the exception.

Conversely, in cases where relations with the Office of the Public Prosecutor have not been productive or where the Commission's investigative work has even been systematically obstructed, the investigation of cases has lagged behind.

In such cases, the Commission, in exercise of the powers provided for in its mandate, has identified and provided the names to the competent authorities of those civil servants who have been derelict in their duty or have obstructed the work of CICIG, whether by action or by omission. The Commission will continue to exercise this power whenever it detects such situations and will file criminal or administrative complaints where appropriate.

##### **(b) Legislative reforms**

In its first year of operations, drawing on the knowledge and experience of a team of highly qualified international jurists, CICIG has analysed national legislation on security, criminal law and criminal procedure, studying the "bottlenecks" that might be contributing to the paralysis of the justice system in Guatemala. CICIG has identified the legal and regulatory changes needed to better protect the rights guaranteed in the Constitution of the Republic of Guatemala and to remove obstacles and fill legal gaps that interfere with the prompt administration of justice.

On the basis of this analysis, the Commission has observed that some of the provisions that were originally established for the purpose of safeguarding constitutional rights and ensuring the proper functioning of the civil service can be used to delay or even halt the progress of justice. The Commission has also

observed that mechanisms for the protection of persons linked to proceedings have not been properly implemented; this should be corrected.

In light of the foregoing, the Commission, pursuant to article 2, paragraph 1 (c), of its mandate, taking into account the legal initiatives already under consideration and following consultations with civil society organizations and institutions specializing in security and justice issues, has submitted to the Congress of the Republic and the Supreme Court proposals for the reform of the Arms and Ammunition Act and the *Amparo* Act currently being debated in Congress. In addition, CICIG has also drawn up a package of comprehensive reforms of the Immunity Merit Procedures Act, the Code of Criminal Procedure, the Organized Crime Act and a number of regulations. These proposals were recently submitted to the President of the Republic of Guatemala for transmission as draft laws to the Congress of the Republic of Guatemala. The adoption of these reforms will determine not only how far CICIG will be able to progress in discharging its mandate, but also the extent to which justice can be expedited and impunity ended in Guatemala.

**(c) Assisting and strengthening state institutions**

The Commission has also made significant progress in the institution-strengthening component of its mandate. It has signed cooperation agreements on criminal investigation with the Office of the Public Prosecutor and the Ministry of the Interior, and on the investigation of femicide with the Secretariat for Social Work of the Office of the First Lady, the Office of the Ombudsman for Indigenous Women and the Presidential Secretariat for Women. An agreement with the Secretariat of Tax Administration on financial investigation and money-laundering is awaiting signature.

The most salient results of these agreements have included the decision by the Ministry of the Interior to assign 30 National Civilian Police officers to CICIG. The creation of this National Civilian Police-CICIG police unit will facilitate the investigation of the Commission's cases. Moreover, this type of coordination, a sort of "on-the-job training programme", is useful for training the participating officers.

Also worthy of note is the recent establishment of the Special Prosecution Unit, which, with the cooperation of the Public Prosecutor, will be located in the main building of the Prosecutor's Office and will thus be able to optimize its coordination with the respective prosecutors.

These police officers and prosecutors are expected to be functionally integrated into the Commission. Through a gradual process of replacing international staff, they will be given increasing responsibilities for the implementation of the Commission's mandate.

**5. Conclusions**

The dismantling of the illegal groups and clandestine structures entrenched in many public entities in Guatemala is the responsibility of the State. CICIG will continue to provide the State of Guatemala with all the support and assistance it can offer in order to ensure that these groups and structures are finally eradicated.

In order to meet this objective, however, the State of Guatemala must ensure that all agents of the justice system who consistently strive for fairness in the

administration of justice can operate freely and not in a climate of threats, pressures or even killings. Since the beginning of 2008 at least eight public officials in the areas of security and justice have been killed. All of them were working on or had information about high-impact cases.

Despite the above, a careful analysis of the convictions handed down shows that the justice system's effectiveness is at an unacceptably low level. While it is true that the Office of the Public Prosecutor and the National Civilian Police have the fundamental responsibility for investigation and criminal prosecution, judges are ultimately responsible for ensuring that the investigation is carried out effectively and in line with the requirements of due process, so that it will lead to a conviction where appropriate. This is the responsibility of the judiciary in a State governed by the rule of law.

Whenever certain civil servants are found to be ineffective or to be obstructing the Commission's investigative work, the Commission will file the administrative and/or criminal complaints as provided for in its mandate and will promptly inform the relevant authorities of such measures.

The Government of Guatemala has begun the important task of cleaning up the security forces and strengthening civil institutions. This work, which was begun by the previous Minister of the Interior before his tragic death on 27 June 2008, has been continued by the current Minister. Yet the challenges that lie ahead are still enormous. CICIG has supported and will continue to support this process of reform and strengthening so that the Guatemalan population can regain trust in the National Civilian Police. The establishment of a National Civilian Police-CICIG police unit can also contribute to this process. It is imperative to implement the existing laws on admissible forms of evidence.

The Office of the Public Prosecutor has launched an internal reform process that should be supported to ensure that it is carried out thoroughly and within a reasonable time frame. This reform should extend to the restructuring of the national witness protection system. The Commission appreciates the commitment demonstrated by the Public Prosecutor in leading the reform process and will continue to support the Office of the Public Prosecutor so that this institution can put an end to impunity in Guatemala. The establishment of a Special Prosecution Unit is an important step in this direction.

The Congress has before it a legislative agenda to reform security and justice in the country. This agenda is still very full and requires priority attention by the Congress itself. The Commission has drawn up a number of reform proposals containing measures that it regards as minimum requirements for consolidating the rule of law in Guatemala. While fully respecting the powers of Congress, the Commission hopes that the Legislature will give these proposals due consideration. The country's ability to make progress in dismantling illegal groups and clandestine structures will hinge on the adoption of these proposals.

The Commission could not have begun operations without the crucial support of civil society. Combating illegal groups and clandestine structures requires, first and foremost, a shared commitment. Such a commitment cannot exist without broad-based participation. Lastly, the work of CICIG can only be considered a success if it serves the interests of Guatemala's citizens.