



CICIG Comisión
Internacional Contra
la Impunidad en Guatemala



TWO YEARS OF WORK: A COMMITMENT TO JUSTICE

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I. INTRODUCTION

On the occasion of its two-year anniversary, the International Commission against Impunity in Guatemala (known by its Spanish acronym as CICIG) presents a report on its activities, internal organization, some of its achievements, lessons learned and challenges for the future in light of the renewal of its mandate to 3 September 2011, which emerges from the Agreement signed by the Government of Guatemala and the Secretary General of the United Nations.

It is difficult to understand CICIG without recalling the support given to Guatemala by the international community as a whole and by the United Nations, which is the greatest exponent of multilateralism, during the last 15 or 20 years.

The combined cooperative efforts displayed by more than 30 Embassies accredited in Guatemala demonstrates the international community's concern for and interest in the Guatemalan citizens' well-being and full respect of their human rights, particularly regarding the achievement of democracy and peace.

The creation of CICIG is the fruit of a decision by the Guatemalan State, not a single President, a given Foreign Minister or any other person. The road traveled since its conception, until its full installation, was full of obstacles and advancement and backward movements. But the decision of a State that realized ten years earlier that it could not ensure the full exercise of its citizens' rights, permitted negotiations to advance until the Agreement was finally signed in December 2006 and subsequently ratified by Congress.

Three executive branches of the State, each of them with their respected Foreign Ministers, and two different Congresses and Constitutional Courts participated in the political decision, negotiation, signature and ratification of the Agreement for the creation of the International Commission against Impunity in Guatemala.

During that time, the Commission was the object of political debate during two electoral processes. In this regard, the Constitutional Court played its role by giving legal certainty to CICIG's work through consultative opinions.

But none of this would have been possible without the international community's constant attention and support and civil society's unflagging commitment, impartial advice and search for solutions. Few countries have as many civil society organizations, each with its own viewpoint and sect oral interests, committed to the dream of a more democratic country and a justice system capable of combating impunity.

To everyone who has assisted CICIG from day one, we express our deepest gratitude.

II. CICIG'S MANDATE

CICIG was established pursuant to the Agreement entered into between the United Nations and the Government of Guatemala on 12 December 2006, which was ratified by the Congress of the Republic on 1 August 2007 and went into effect on 4 September 2007. Through an exchange of letters, the President of the Republic and United Nations Secretary General decided to extend CICIG's mandate until 4 September 2011. Congress ratified the extension on 16 July 2009.

The Secretary General appointed Dr. Carlos Castresana Fernández Commissioner, at the level of Assistant Secretary-General, in September 2007. The appointment was also extended until September 2011.

As is known, there are no similar precedents for CICIG's mandate in the United Nations or other international organizations that seek to strengthen the rule of law. CICIG operates as an international prosecutor's office, investigating cases contemplated in its mandate, but promotes criminal prosecution through the national justice system. In other words, while the State's responsibility of criminal prosecution can be shared by CICIG in its capacity as a complementary prosecutor, the Judiciary of the State of Guatemala is responsible for prosecuting and handing down verdicts and sentences. While maintaining above-mentioned prerogatives that ensure CICIG's independence in the discharge of its mandate, the Commission plays a fundamental role in the strengthening of State institutions constitutionally mandated with the responsibility of criminal prosecution.

Among its functions, the Commission is mandated to ascertain the existence of illegal security groups and clandestine security organizations; cooperate with the State in dismantling such groups and organizations; promote the investigation, criminal prosecution and punishment of crimes committed by their members; and recommend to the State the adoption of public policies aimed at eradicating such groups and organizations and preventing their reorganization. In addition to investigating cases contemplated in its mandate, the Commission may act as a complementary prosecutor in these cases and has the authority to promote criminal and/or disciplinary actions before the relevant authorities against public servants who obstruct the Commission's activities or functions and thus contribute to impunity.

By the nature of the creation Agreement, CICIG is an independent body from the political, organizational and financial standpoint. In accordance with its mandate, its budget is entirely funded entirely through voluntary contributions from the international community.

III. IMPLEMENTATION OF CICIG'S PLAN OF ACTION

Since its establishment, CICIG has gone through different stages signified by its internal organization, conformation of a working team and diverse events in the country that directed and determined its activity.

A. Administration

Between September and December 2007, the Commission, which lacked a budget, offices and personnel, received the collaboration of the United Nations Development Programme (UNDP), which provided CICIG with space and the necessary support within its own installations until CICIG moved into its own premises.

A trust fund administered by UNDP was created on 3 October 2007 to manage financial contributions and ensure transparent accountability. Under the 12 December 2006 Agreement between the United Nations and the Government of Guatemala, the State of Guatemala is required to provide CICIG with offices and other installations as well as implement all of the necessary measures to ensure the safety and security of CICIG's staff.

In January 2008, CICIG Headquarters was equipped with furniture and computers donated by the European Union's Electoral Monitoring Mission and was formally inaugurated on 14 January 2008 when United Nations Under-Secretary for Political Affairs B. Lynn Pascoe visited Guatemala to attend the inauguration of Mr. Álvaro Colom Caballeros as President of the Republic.

In early January 2008, the Commission's initial team (approximately 17 individuals) was hired based on educational background, experience and professionalism and following the United Nations gender and geographic distribution recruitment policies; the Trust Fund administered by UNDP was also established at that time.

With the arrival of the Chief Administrative Officer and the Human Resources Officer in April 2008, an urgent and ongoing staff recruitment strategy was put in place. A comprehensive computerized financial system that completed and consolidated CICIG's administration was implemented in January 2009; the Commission became relatively independent from UNDP once it had its own Sections of Human Resources, Information Technologies, General Services and Procurement of Goods and Services. Its administrative duties are framed within the United Nations' principles, rules and procedures, adapted to the special circumstances required by CICIG's work.

The installation of the Commission was possible due to the financial support provided by donor countries and organizations such as the Foundation Open Society Institute (FOSI), the Soros Foundation, the European Union and the governments of 12 countries: Canada, Denmark, Finland, Germany, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom (International Development Department) and the United States of America. As additional security measures and investigation needs were identified, the Governments of Argentina, Chile, Colombia, Mexico and Uruguay contributed the services of experienced

security specialists to strengthen the Commission's activities in this area and the Governments of France, Germany, Spain, Sweden and Switzerland provided experienced investigation specialists. With these voluntary contributions, the Commission had the capacity to proceed in hiring the necessary staff.

To date, the Commission is incorporated by 159 national and international staff members, of which 74.21% are men and 25.79% women. This does not include the Safety and Security Unit, which is comprised mostly of men: 62.63% men and 38.38% women.

Officials from 27 countries have worked with the Commission: Argentina, Canada, Chile, Colombia, Costa Rica, Cuba, El Salvador, Ethiopia, Germany, France, Guatemala, Honduras, Ireland, Italy, Lebanon, Mexico, Nicaragua, Peru, Portugal, Spain, Sweden, Switzerland, the United States of America, Trinidad and Tobago, Tunisia, the United Kingdom and Uruguay.

B. Communications

At the beginning of operations, CICIG and its work was characterized, from the communications point of view, by the generation of different opinions that were made public by the national media and that, in general terms, fueled expectations with regard to what the Commission could accomplish. In light of the prevailing climate of insecurity and as a result of the great concern felt by different sectors of the country, misinformation colored the perceptions of the majority of the actors who generate opinion in Guatemala.

In order to make clear CICIG's action framework, it was fundamental, from the first moment, to emphasize the importance of Guatemalans' involvement in rescuing their own justice system. In practical terms, the Commission's communication strategy focused on the need to restore Guatemalans' confidence and, in this context, to receive the support of the most diverse actors' in strengthening state institutions, beginning with punishment of those responsible for the system's ineffectiveness and, ultimately, exalting the dignity of honest, hard-working and efficient officials.

CICIG challenged the public to put the justice system to the test based on the premise that together, the State, Guatemalan citizens and CICIG would cooperate to restore the rule of law in the country. This definition of CICIG's true action framework and the crucial role played by different sectors of society in the fight against impunity began with meetings between the Commissioner and persons who influence public opinion.

The work of the media, direct communication and the Commission's readiness to discuss matters that are in the public domain have allowed Guatemalan society to understand CICIG's, the importance of the theme of "Justice" for the country, procedures that take place at the political level and social changes demanded by the community.

A monthly average of 371 articles or other notes was published between January and August 2009 by the media. A constant flow of information to society has been maintained through communication professionals, who have also become aware of and accepted their responsibility to report in a truthful and timely manner in order to ensure that their work contributes to the

defense of the rule of law, democracy and, consequently, justice. Additionally, in June 2009, the Commission's website was launched to give citizens direct access to information about CICIG.

Since the Commission's installation, security has been an ongoing concern. As a result, a series of security measures were taken to limit the possibility of the public accessing persons, documents and locations where investigation and analysis work is done.

However, in view of the need to receive information from society that might contribute to the investigations under way, a telephone hot line and e-mail address where the population can share confidential information were set up.

Since May 2009, more than 320 reports on alleged corruption cases, drug trafficking groups, gangs and impunity involving the National Civilian Police, the Public Prosecutor's Office and the Judiciary have been received. Communications are received by a group of international investigators who forward them to the appropriate investigative teams.

C. Security

Pursuant to the creation Agreement, the Government of Guatemala is primarily responsible for the security and protection of the Commission's personnel, facilities and property. Parallel to this, the Commission has established its own Safety and Security Unit to complement the support provided by the Government of Guatemala. This Unit was established to preserve the autonomy and independence of security operations to ensure the effective and efficient execution of the Commission's mandate.

As the Commission's mandate includes the investigation of high-impact and high profile cases, it is being evaluated that the threats, vulnerabilities and risk associated with the Commission's personnel and property will increase and require a dedicated, collective and cautious approach to face multiple likely scenarios in the future. The Commission, in cooperation with the Guatemalan national security forces, has implemented measures to mitigate the risk and will continue developing its capacity to overcome increasing staff protection and security concerns.

D. Relations with the United Nations and the International Community

CICIG's relationship with the international community is one of the pillars of its work. Regular meetings with the Ambassadors of donor and cooperating countries led to the creation of a network of relations to facilitate its activities. This support, which was fundamental from both the political and technical point of view, was also indispensable from the financial standpoint.

The support received in Guatemala was evidenced at different meetings held at the United Nations Headquarters in New York, where the representatives of those countries pledged ongoing political support to CICIG's activities.

Within this framework, the United Nations General Assembly adopted a Resolution requesting that the Secretary-General continue providing support to the Commission. This Resolution was

cosponsored by 58 countries and adopted by consensus on 10 November 2008 by the world's highest multilateral body.

CICIG is grateful for the support received and hopes to continue consolidating the international community's and the United Nations' commitment to Guatemala.

E. Cooperation Agreements

Since its initiation, CICIG has signed the following cooperation and exchange of information agreements that have allowed it to move forward in the different activities it carries out in fulfillment of its mandate: Bilateral Cooperation Agreement between the Public Prosecutor's Office and CICIG, signed on 27 February 2008; Collaboration Agreement among the First Lady's Social Works Secretariat (SOSEP), the Office for the Defense of Indigenous Women (DEMI), the Presidential Secretariat for Women (SEPREM) and CICIG, signed on 6 March 2008; Bilateral Cooperation agreement between the Ministry of the Interior and CICIG, signed on 25 March 2008; Bilateral Cooperation Agreement between the Tax Administration Bureau (SAT) and CICIG, signed on 2 July 2008; Inter-institutional Agreement among the Ministry of the Interior, the Public Prosecutor's Office and CICIG to establish and implement a wiretapping system, signed on 24 November 2008; Cooperation Agreement between UNICEF and CICIG to conduct studies in favor of children and adolescents, signed on 3 February 2009.

These agreements allow CICIG to develop specific activities in fulfillment of its mandate and their implementation will continue during the next two years of the Commission's life.

F. Relationship with Counterparts

As the State of Guatemala is the signatory of the Agreement on the creation of CICIG and hence the Commission's natural counterpart, in its day-to-day work, CICIG is in contact communication with three institutions that are crucial in the fight against impunity: the Ministry of the Interior (and agencies therein such as the National Civilian Police, and the Penitentiary System); the Public Prosecutor's Office; and the Judiciary.

The first stage of CICIG's work consisted mainly of building fluid working relationships and establishing mutual trust with its counterparts. This was achieved almost from the outset with the Ministry of the Interior, and particularly with Minister Vinicio Gómez (†) and his successor, Minister Francisco Jiménez. However, subsequent ministerial appointments and constant turnover among high-ranking National Civilian Police officials have made it difficult to design and implement medium and long-term security plans despite their extreme necessity. Progress has been made, although not at the desirable pace, in removing corrupt officials from the PNC and incorporating into CICIG's activities other police officers, whose backgrounds were checked and who receive constant training.

Good coordination exists with the Public Prosecutor's Office, and with the appointment of Amílcar Velázquez Zárate's as Attorney General in August 2008, it was possible to install in the Public Prosecutor's Office the Special Prosecutor's Office for CICIG (known by its Spanish acronym as UEFAC) on 2 September 2008. Since then, this relationship has been linked with the

progress achieved in investigations, with the consequential pressure this entails. It can be said, however, that the relationship between the Public Prosecutor's Office and CICIG has become stronger, although it will undoubtedly be put to the test when the litigation phase begins in most of the court cases resulting from the investigations.

The training of 30 police officers was initiated in July 2008, including a 348-hour classroom course in criminology and police investigation methods. At the end of the course, final examinations were taken and 20 police officers were selected to begin the second stage of the training, a one-school-year field observation and modeling training course.

These officers were assigned based on their graduation profiles to the Public Prosecutor's Office to carry out investigation activities and provide security and protection to public prosecutors; to CICIG headquarters to perform security and protection functions for the police investigators; and to provide logistical support and security and coordination services and act as police liaisons for CICIG's investigators in their operational functions.

A Memorandum of Understanding is being prepared and is expected to be signed shortly in order to strengthen the coordination between CICIG and the PNC.

G. Special Prosecutor's Office for CICIG

The Special Prosecutor's Office for CICIG (UEFAC) was established under the Agreement on the creation of CICIG and the Bilateral Cooperation Agreement entered into by the Public Prosecutor's Office and CICIG on 27 February 2008 in order to implement the Commission's technical assistance and support of criminal investigations. The UEFAC is integrated by Guatemalan assistant and auxiliary prosecutors, who are supported in their investigative activities by the Coordinator's Office, staffed by international and Guatemalan CICIG personnel.

The Public Prosecutor's Office's personnel assigned to the UEFAC were submitted to a selection process by CICIG that looked to incorporate those officials who voluntarily manifested their interest in joining this special unit, had no administrative or criminal records, have demonstrated ability, experience and knowledge of the situation in the country, the national regulatory framework and CICIG's mandate and passed the reliability tests developed especially for this purpose. The Commission has implemented training programs in investigative plans and techniques for the Unit's staff considering the regulatory and human rights framework applicable to investigations, as well as their personal development.

Although it is not CICIG's responsibility to provide security for UEFAC premises or officials who require it, the Commission has strengthened security and mobility measures for certain Prosecutors and Auxiliary Prosecutors until the Public Prosecutor's Office is able to obtain resources from State agencies that are responsible for this part of the Agreement on the creation of CICIG and the Bilateral Cooperation Agreement that established UEFAC. The Commission understands that one of the indispensable conditions for the staff of the Public Prosecutor's Office to carry out the investigations identified by CICIG as part of its mandate is personal protection and security in view of the constant threats and harassment of the part of criminal structures that are being investigated and prosecuted.

In accordance with the mandate established by its creation agreement, CICIG and the Public Prosecutor's Office have identified several cases that fall into CICIG's investigative framework. The suspects come from or are part of illegal security groups and clandestine security organizations established to commit crimes of a magnitude that affects full enjoyment and exercise of Guatemalans' civil and political rights. These illegal groups or structures are likely linked directly or indirectly to State officials or have the ability to generate impunity for their illegal actions.

Identifying these groups and the crimes they have committed requires special investigative conditions as well as prosecutors and investigators exclusively dedicated to these cases and the application of special investigative plans and methods (wiretaps, supervised deliveries, undercover agents and witness protection) in order to understand the context surrounding the commission of crimes and understand the networks and links that support the organization's leaders and members and offer impunity from investigation, prosecution, sentencing or enforcement of penalties.

The Public Prosecutor's Office regularly creates special prosecution offices in which personnel and resources are concentrated and, together with the tools provided by national legislation, investigate high-profile cases. However, the international norm in regard to the criminal prosecution of certain types of crimes - which is recognized by the Guatemalan State - and the international standards regarding due process, efficacy of criminal investigation and access to judicial remedies for crime victims, e.g. in the jurisprudence of regional human rights bodies, are parameters that contribute to the investigation and prosecution of the perpetrators of organized criminal activities that fall within the purview of CICIG's activity.

Criminality of this nature require the creation of legal tools or application of those that already exist in the Law on Organized Crime but are not being used, as well as enhanced security and protection for prosecutors and investigators.

UEFAC's functions are divided into four areas: case investigation; coordination of prosecutors and auxiliary prosecutors' work and activities; institutional strengthening; and training.

Case Investigation

UEFAC's main function is to support investigative activities in cases that, due to the form in which they were executed and the characteristics of the perpetrators, shock the population, put witnesses and evidence in danger and undermine confidence in National Civilian Police and Public Prosecutor's Office authorities. Cases investigated by UEFAC are selected by mutual agreement by the Attorney General and the Commissioner against Impunity in Guatemala if they consider that the cases meet the requirements established by CICIG's mandate.

Coordination of Prosecutors and Auxiliary Prosecutors

The UEFAC Coordinator's Office provides legal and logistical support to investigations carried out by UEFAC's prosecution offices. This support is not limited to cooperation only with Public Prosecutor's Office staff, but also to CICIG's lawyers and investigators assigned to specific cases. The Coordinator's Office selects the personnel from the

Public Prosecutor's Office, the Criminal Investigation Office (DICRI) and the National Civilian Police that will staff the UEFAC and monitors the performance of its functions.

Institutional Strengthening

The Coordinator's Office also cooperates with the Public Prosecutor's Office in the development of special investigative methods to enable it to more effectively combat crimes, especially those committed by organized criminal organizations. This includes supporting the definition, implementation, training, launching and assessment of the wiretap system and other special investigative methods.

Meetings have been held with authorities from the Public Prosecutor's Office, the National Civilian Police and the Penitentiary System with a view to establish mechanisms that permit the investigations to be carried out in a clear, consistent and orderly manner, particularly those investigations related to the murder of bus drivers and their assistants. Finally, support has been provided to the Public Prosecutor's Office's Crimes against Women Unit, which has a considerable investigation backlog.

Training

In this area, the UEFAC Coordinator's Office has designed training workshops on service and attention for UEFAC staff as a tool to strengthen criminal investigation. These workshops include: a workshop on CICIG's normative and legal framework; a workshop on case investigation and types of organized crime as a model of collaborative work between the Public Prosecutor's Office and CICIG (the Zacapa Massacre Case); a workshop on using wiretapping to collect evidence; a stress management workshop for UEFAC personnel; a DATA reading and information workshop; a workshop on the Inter-American System for the Protection of Human Rights; and a workshop on Implementation of Investigation Plans.

UEFAC also participated in trainings for other Public Prosecutor's Office and National Civilian Police personnel, judges and magistrates specifically on wiretapping, the right to privacy, fundamental guarantees and due process and investigation plans.

IV. INVESTIGATIONS AND JUDICIAL PROCEEDINGS

This section includes declassified information on some of the investigations conducted by CICIG, some of which have been led to criminal prosecutions subsequent to the completion of the police investigation. Other current investigations are kept confidential in order not to obstruct the investigations and preserve the security of those involved.

CICIG's mandate provides it with the authority to gather, evaluate and systematize information provided by individuals, official or private entities, nongovernmental organizations, international organizations and the authorities of other States. It conducts direct investigations to determine the existence of illegal security groups and clandestine security organizations, their structure, *modus operandi*, sources of funding and possible links with State agencies or employees and

other sectors that violate civil and political rights in Guatemala. These investigations are conducted by legal and police investigators and are confidential.

Due to the magnitude of investigation requests in comparison to CICIG's operational capacity, the Commission undertakes an inductive reasoning process to determine whether or not parallel structures can be reached. The following criteria are used in the case selection process: the likelihood of links with illegal groups and clandestine security organizations; the short and long-term political impact of the case on the fight against impunity; and the probability of success in advancing the case in the criminal process. The requirement and availability of the Commission's staff and material resources as well as the time required to investigate and solve the case are also considered.

If, through its direct investigation, the Commission determines the existence of criminal structures and that crimes have been committed, it promotes criminal prosecution by filing a complaint before the competent authorities. Under CICIG's creation Agreement and the Code of Criminal Procedure, the Commission also has the authority to act as complementary prosecutor in cases that fall within its purview.

When these facts are investigated by the Public Prosecutor's Office, CICIG gives technical advice to the Prosecution Units or Special Prosecution Offices that conduct the investigations. For example, the first investigation in which the Commission took part since its establishment in Guatemala was the Narcotics Prosecution Office's investigation of the Zacapa massacre perpetrated on 25 March 2008 in Río Hondo, Department of Zacapa.

Since the Special Prosecutor's Office for CICIG was created and became operational, investigations originally carried out by other Prosecution Unit of Special Prosecution Offices but were subsequently selected by CICIG's Commissioner or the Attorney General as falling under the Commission's mandate, have been consolidated in the UEFCA.

A. Investigations

The Nicaraguan Bus Case. A bus traveling from Nicaragua to Guatemala City was found abandoned and engulfed in flames on 8 November 2008 in the Department of Zacapa. The charred bodies of 16 people were inside the bus. Work at the crime scene and later work done by experts determined that most had died from gunshot wounds.

The murdered passengers include: Marta Reineris Castro Rivera, Carlos Miguel Paiz Castillo, José Abraham Paiz Vanegas, Tomasa de los Ángeles Rodríguez, Ramón Aquiles Martínez Marín, Eshmán Alberto Vega Aguilar, Lorena Teresa Aguilar Arauz, Jesús Ezequiel Domínguez, José Miguel Rivera Martínez, Antonio Hernández Rivas, Manuel Antonio Ortega, Dulce María Rivera Martínez, Griselda Zapata, Brenda Lorena Hernández Blandón and Lidia Sandoval López, all Nicaraguan citizens, and Robert Andras Picnicky, a Dutch citizen.

The investigation was initiated by the Public Prosecutor's Office in Zacapa and transferred a few days later to UEFAC, which carried out a number of inquiries and searches with the support of CICIG, the National Civilian Police, the National Civilian Police's Division of Criminal Investigations and Anti-Narcotics Squad (DINC-SAIA) and the Guatemalan National Institute of

Forensic Science (INACIF), in coordination with the Public Prosecutor's Office of Nicaragua. As the investigation progressed, the manner in which the victims were murdered was established and the criminal organization that planned, organized and executed the crime - a structure that engaged in cocaine and arms trafficking, murder for hire, money laundering and other crimes - was identified based on technical evidence.

The criminal structure, with international ties, consists of:

- Marvin Montiel Marín (alias *El Taquero*), was indicted for the crimes of murder, conspiracy and illegal association;
- Byron Eduardo Abalony Vargas, indicted for murder, conspiracy and illegal association;
- Héctor Estuardo González Morales (alias *La Rana*), indicted for murder, conspiracy and illegal association;
- Mario Roberto Aragón García, indicted for murder, conspiracy and illegal association;
- Juan Carlos Policarpio Chinchilla, indicted for murder, conspiracy and illegal association;
- Roberto Rivera Chacón, indicted for murder, conspiracy and illegal association;
- Luis Alberto Yumán Garrido (alias *El Padre*), indicted for murder, conspiracy and illegal association;
- Jorge Estuardo Montiel Marín, indicted for illegal association;
- Sara Elizabeth Cruz Mancilla, indicted for illegal association;
- Nidya Florinda Marín Solórzano, indicted for covering up a crime; and
- Rony Eduardo Terraza Hernández, indicted and arrested for covering up a crime.

On 29 June 2009, the UEFAC filed an indictment before the Criminal Court of the city of Zacapa against Juan Carlos Policarpio Chinchilla and Eduardo Terraza Hernández. The search for fugitives continues. The Supreme Court of Justice's Criminal Chamber subsequently agreed to the Attorney General's request to transfer the proceedings to a Guatemala City court that prosecutes high-risk cases, since conditions in Zacapa do not ensure protection of the lives and safety of judicial employees, the parties, their attorneys, witnesses and others involved in the proceedings. The hearing to establish whether the case would be sent to the trial phase of the criminal process was set for 5 November 2009.

The murder of Víctor Josué Rivera Azuaje. On 7 April 2008, former Ministry of the Interior advisor, Víctor Josué Rivera Azuaje, was murdered as he was driving in Guatemala accompanied by his secretary, María del Rosario Melgar Martínez, who was injured in the event. The investigation was transferred to the UEFAC in October 2008. Once the investigation began, however, it was determined that the crime scene investigation, custody of the recovered evidence, the handling of witnesses and informants and the manner in which some procedures were carried out had been allegedly manipulated by Álvaro Matus, the former head of the Public Prosecutor's Office's Crimes against Life and Personal Integrity Unit. A study of the criminal events that took place after this attack revealed that several informants who worked for the Ministry of the Interior's anti-kidnapping group, which was advised by Víctor Rivera, were subsequently murdered. The investigation continues and major progress has been made.

Galindo Case. Former Air Force Major Moisés Eduardo Galindo Ruiz, who was the Head of the Ministry of Defense's Army Budget Division, and former Infantry Colonel Luis Catarino Estrada Valenzuela, who was the Deputy Chief of the Ministry of Defense's Army Finance Department,

were accused of embezzlement and ongoing misrepresentation and placed under house arrest. The arrest and resolution of 8 May 2009 were decreed by the Fifth Criminal Trial Court. The investigation was transferred to UEFAC in November 2008.

Byron Vargas Case. On 28 April 2008, in the locality of Estanzuela, Department of Zacapa, three girls, Nancy Carolina Hichos Pérez (16), Silvia María Morales Rodas (17) and María Alejandra Girón Trigueros (17) were murdered. The investigation was initially conducted by the Zacapa District Prosecutor's Office and Byron Humberto Vargas Sosa was identified as the author of the crime. The UEFAC took over the case in October 2008, expediting witness identification, the gathering of ballistic and other evidence and resolutions, and unequivocally identifying the main suspect. Byron Vargas was arrested by National Civilian Police officers on 15 February 2009 while in possession of a large number of firearms. At the first hearing, the UEFAC accused Vargas Sosa of the triple murder. He was indicted for murder by the Judge of the First Criminal Court in the Department of Zacapa.

During the course of the investigation, Esteban Bolvito Pérez and Mario Enrique Cojoc Quej were identified as the persons who participated in the crime with Vargas Sosa and were accused of first-degree murder. In June 2009, the Criminal Chamber of the Supreme Court of Justice approved the Attorney General's request to transfer the trial to the Guatemala City court where high-risk cases are prosecuted, since conditions in Zacapa do not ensure protection of the lives and personal safety of judicial and prosecution employees, the parties, their attorneys, witnesses and others involved in the proceedings. The hearing to establish whether the case would progress to the trial phase of the criminal process was held in this new court.

Rosenberg Case. Attorney Rodrigo Rosenberg Marzano was murdered on 10 May 2009. Before his death, Rodrigo Rosenberg recorded a video in which he stated that if the recording were made public, it would mean he was already dead. He added that the cause of his death would be that he had been the attorney for businessman Khalil Musa and his daughter, Marjorie Musa, who were murdered in Guatemala City on 14 April 2009; he stated that he was investigating these murders and accused the President of the Republic, Álvaro Colom, and his wife, Sandra Torres Colom, businessman Gregorio Valdez and the President's Private Secretary, Gustavo Alejos, as responsible for his murder. In the video, the victim also referred to corruption in the Banrural Bank and the National Coffee Association (Anacafé) and to illegal activities carried out to fund the First Lady's projects, in which Gustavo Alejos, Gregorio Valdez and phantom companies were used for money laundering and other criminal activities.

The file on this investigation was transferred to UEFAC on 14 May 2009. On 11 September 2009, investigative operations that led to the capture of 10 persons belonging to a criminal organization linked to the murder were carried out in Guatemala City with the support of the National Civilian Police and the Army. The captured individuals were indicted by the Tenth Criminal Court for the crimes of murder and conspiracy. The investigation to determine the identity of the intellectual authors of the crime continues.

Musa Case. On 14 April 2009, as Mr. Khalil Musa and his daughter Marjorie Musa Maldonado were on their way to their home in Guatemala City, they were intercepted by individuals who opened fire and killed them. The investigation was initiated by the Public Prosecutor's Office's Crimes against Life and Personal Integrity Unit and transferred to UEFAC on 15 May 2009. Despite the time that has gone by since the murders, decisive information has been gathered at

the crime scene and the investigation leading to identification of the individuals who carried out the murders is moving forward.

Amatitlán Case. On 24 April 2009, units from the National Civilian Police's Anti-Narcotics Squad (PNC-SAIA) conducted an anti-narcotics operation at a warehouse complex located on the highway from Guatemala City to the Pacific Ocean. They were met with resistance, which resulted in a confrontation that left five dead. The murdered policemen were Miguel Ángel Cahuec Morán, Roberto de Jesús Antonio Amador, Bonifacio de la Paz Pérez, Nery Antonio Arroyo Ortiz and Officer Resalió Oxlaj Raxcaco.

The search of one of the vehicles left behind by the assailants yielded a rocket-propelled grenade launcher, rifles and ammunition. 370 kilograms of cocaine were found in another vehicle. A search of the warehouse yielded additional packages of cocaine that were ready for shipment, a large amount of military armaments and 13 vehicles, including trucks and vans, some with Mexican and U.S. license plates. The first investigative tasks were carried out by the Escuintla Public Prosecutor's Office with the support of the Public Prosecutor's Office's Anti-Narcotics Unit, which took over the investigation. The case was subsequently transferred to UEFAC. The investigation seeks to determine what transpired and identify the members of the drug trafficking organization that owned the narcotics and caused the deaths of the National Civilian Police's Anti-Narcotics Squad (PNC-SAIA) police officers.

B. CICIG as Complementary Prosecutor

Massacre of 25 March 2008 in Zacapa. On 25 March 2008, a clash between two illegal, armed groups of drug traffickers at a place called Turicentro La Laguna, in the municipality of Río Hondo, Department of Zacapa, left nine dead, three wounded and six in custody. Subsequent investigations led to the capture of five additional suspects, including Daniel Pérez Rojas (alias *El Cachetes*). The members of this criminal group are allegedly part of the criminal organization known as the Zetas, of the Gulf Cartel. The investigation was conducted by the Public Prosecutor's Office's Anti-Narcotics Unit, which CICIG supported during the investigation with a team of international lawyers and investigators.

On 27 June 2008, the Tenth Criminal Court of the Department of Zacapa preliminarily admitted CICIG as complementary prosecutor. Acting as complementary prosecutor for the first time under its mandate, CICIG demonstrated its commitment to reinforcing the Guatemalan Public Prosecutor's Office's procedural position. It was considered that, given the allegations and the accused group's capacity for violence and level of corruption, the Commission's presence was indispensable in ensuring the strength and viability of the accusation.

In July 2008, the Public Prosecutor's Office's Anti-Narcotics Unit indicted the 11 suspects before the First Criminal Court of the Department of Zacapa. The hearing took place on 20 October 2008 in the Tenth Criminal Court of Guatemala City. The Judge ratified the indictment and advanced the case to the trial phase of the criminal process.

Because the main events in this case took place in Zacapa, the court that has jurisdiction over its investigation and prosecution was the Criminal Court of Zacapa. However, to ensure the safety of court officials, prosecutors, the parties, their attorneys, the defendants and the population of

Zacapa, the Public Prosecutor's Office and CICIG requested that the case be transferred to a court in Guatemala City. The trial will be conducted there under conditions that ensure its independence and security and guarantee the right to due process, the life and personal safety of the parties.

The jurisdiction conflict was settled by the Supreme Court of Justice's Criminal Chamber, which extended the jurisdiction of the Criminal Sentencing Court of Zacapa to allow the litigation stage to take place in Guatemala City, where the judges of the Zacapa court will preside over that stage of the trial. Other judicial proceedings will be carried out in Zacapa.

The evidentiary hearing was held on 9 July 2009 and a date and time for the trial to begin will be determined shortly.

The Matus Case. The defendant, Álvaro Matus, was the head of the Public Prosecutor's Office's Crimes against Life and Personal Integrity Unit. The case stems from the murder of Víctor Rivera Azuaje, a former advisor to the Ministry of the Interior. CICIG determined that the former prosecutor had manipulated the crime scene investigation, custody in the chain of evidence, the handling of witnesses and informants and some of the proceedings. He was charged with abuse of authority and dereliction of duty and later of conspiracy and obstruction of justice. Four other individuals (current and former Public Prosecutor's Office officials) have been linked to the case.

The proceedings is currently suspended due to a conflict of jurisdiction and a hearing to charge the former prosecutor with the aforementioned crimes, review his personal situation, present the indictment and start the trial is pending. In this case, CICIG acted for the first time to remove corrupt individuals from justice system institutions.

The Portillo Case. Alfonso Antonio Portillo Cabrera, President of the Republic from 2000 to 2004, was handed over by Mexican authorities to their Guatemalan counterparts on 7 October 2008, based on an extradition petition filed in 2005 for the crime of embezzlement. The investigation was transferred to the Special Prosecutor's Office for CICIG in November 2008. CICIG became a complementary prosecutor on 1 April 2009 and the Prosecution charged Alfonso Antonio Portillo with embezzlement on 3 April 2009.

With the intention of illegally removing public funds and for personal financial gain, President Portillo, jointly with the Ministers of Defense and Public Finance, approved an amendment of the national budget to transfer 120 million quetzals (approximately US \$15 million) to the Ministry of Defense through Government Resolution 16-2001. The removal of these funds was disguised by creating false certificates covering expenses labeled military secrets with support documentation that was irrelevant, insufficient and/or adequate to justify such expenses.

In a decision dated 19 May 2009, the Judge of the Fifth Criminal Court of the Department of Guatemala, definitively denied, at the request of Portillo Cabrera's defense attorneys, CICIG's participation in the case as complementary prosecutor, with the sole argument that the Agreement signed by Guatemala and the United Nations only allows CICIG to act in cases where the existence of illegal armed organizations has been established.

On 3 June 2009, CICIG appealed this decision, which was overturned by the Third Chamber of the Criminal Appeals Court of Guatemala on 23 June 2009. The Court granted the Commission's

appeal for two reasons: firstly, the appealed resolution did not give clear and precise grounds for denying CICIG's participation; and secondly, during the current stage of the proceedings, acceptance of the complementary prosecutor is preliminary. This allows CICIG to request interim participation in the proceedings, since there are reasons to presume that its participation is justified. The issue of its participation will be ultimately decided during the intermediate stage of the judicial process.

CICIG presented before the Public Prosecutor's Office a complaint against Judge Irma Leticia Valenzuela Dávila for the crimes of corruption and obstruction of justice. The Fifth Criminal Court Judge was transferred to another court and Judge César Augusto Amézquita Ruano was provisionally appointed to preside over the Fifth Criminal Court.

The hearing to decide whether the case will proceed to the trial phase of the process is pending because the defendant, Alfonso Antonio Portillo Cabrera, filed an *amparo*¹ against the Third Appellate Court's 23 June 2009 resolution that admitted CICIG as complementary prosecutor.

Eduardo Arévalo Lacs, Minister of Defense during President Portillo's administration in 2001, ratified Government Resolution No. 16-2001, which made it possible to amend the Ministry of Defense's budget in the amount of 120 million quetzals (US\$ 15 million).

Retired military officers **Napoleón Rojas Méndez** and **Jacobo Esdras Salán Sánchez**, who were President Alfonso Antonio Portillo Cabrera's Security Advisor and confidant, respectively, also took part in the crime. On 25 June 2009, the Eighth Criminal Court of Guatemala issued an arrest warrant against the three suspects for the crime of embezzlement. Of the three, only Eduardo Arévalo Lacs, who was accused of embezzlement, has been arrested. Bond was set at the equivalent of US \$5 million, and was lowered on two separate occasions, first to the equivalent of US \$635,000 and then to the equivalent of approximately US \$500,000. The other three suspects have not been apprehended and the relevant information has been given to Interpol. CICIG applied for the status of complementary prosecutor on 3 July 2009 and was provisionally admitted on 6 July 2009.

Former General **Enrique Ríos Sosa**, together with **Miguel Ángel Salguero Torres**, **Luis Alberto Gómez Guillermo**, **Sergio Hugo Cárdenas Sagastume**, **Randolfo Leonel Chacón Álvarez** and **Pedro Adolfo Catalán Muñoz**, are accused of direct involvement in the removal of various sums of money totaling the equivalent of approximately US \$55 million from the national treasury in 2001 and 2002 in their capacity as Ministry of Defense officials. On 25 March 2009, the Duty Judge in the Guatemala City issued arrest warrants against the former officials. Enrique Ríos Sosa, Miguel Ángel Salguero Torres and Pedro Adolfo Catalán Muñoz were apprehended the next day. In March and April 2009, Sergio Hugo Cárdenas Sagastume, Randolfo Leonel Chacón Álvarez and Luis Alberto Gómez Guillermo turned themselves in to the Ninth Trial Court. They were placed under house arrest as a precautionary measure. CICIG requested to enter the case as a complementary prosecutor and was provisionally admitted on 7 April 2009.

¹ An *amparo* is a special procedure in which an appeal for legal protection is made when there is an alleged violation of fundamental human rights.

The Case of the PNC Officers. Four members of the National Civilian Police (a captain, a lieutenant and two police officers) are being tried for the crimes of illegal detention, aggravated robbery and simulation of crime. This case exemplifies the corruption and presence of illegal bodies in the PNC. On 21 September, the Public Prosecutor's Office and CICIG obtained criminal sentences against Captain Elías Lemus Guerra (alias *El Mariachi Loco*), Lieutenant José Eduardo López Hernández and police officers Denis Godínez and José Alberto García Ortiz. The four suspects created a criminal group and carried out illegal activities while they were active public officials. Elías Lemus Guerra was convicted of theft, abuse of authority and simulation of crime and was sentenced to five years in prison. The other three defendants, José Eduardo López Hernández, Denis Godínez and José Alberto García Ortiz, were convicted for the same crimes. José Eduardo López Hernández was sentenced to eight years in prison and Denis Godínez and José Alberto García Ortiz were sentenced to six years. Successful cooperation between CICIG and the Public Prosecutor's Office resulted in sentences against all of the accused in the first case in which CICIG acted as complementary prosecutor. The case shows that the Guatemalan justice system is capable of investigating, prosecuting and convicting members of illegal security groups.

C. Amparos and Appeals Challenging CICIG's Constitutionality

CICIG's participation in investigative and procedural activities has been attacked with *amparos* and constitutional challenges. In general, all of them put forward the following arguments: investigations and criminal proceedings conducted by a prosecutor's office that "depends" on CICIG violate due process, the right to a defense and the principle of non-retroactivity of the laws; the appellant does not belong to an illegal security group or clandestine security organization; the Agreement on the creation of CICIG, and hence the Commission's participation in the investigation and/or as a complementary prosecutor cannot be applied retroactively because the fact occurred before the signature and entry into force of the Agreement.

Despite these appeals and the difficulties they present in taking cases to trial, the Commission has advanced in constitutional matters. In general, the decisions of lower courts and the Constitutional Court have been favorable, confirming that CICIG has acted in accordance with constitutional norms.

V. LEGAL REFORM PROPOSALS

Within the framework of CICIG's mandate, two legal reform packages seeking to improve the legal and institutional framework of the criminal prosecution and conviction of members of illegal groups and clandestine organizations that fall under CICIG's jurisdiction were presented to relevant national authorities.

The following proposals were made for the strategic purpose of eradicating criminal structures by improving the conditions for effective investigations; enhancing the likelihood of securing an indictment; increasing the availability of technical evidence; enhancing the likelihood of conviction; creating conditions for speedy trial; and improving conditions for trials to proceed without interference.

The first reform package, submitted in September 2008, includes the following proposals:

- Modifications to Bill Nº 2290, which approves the Law on Arms and Ammunition;
- Modifications to Bill Nº 3310, in relation to the Law on *Amparo*, Habeas Corpus and Constitutionality;
- Amendments to Bill Nº 3778, in respect to the Law on Immunities of Public Officials;
- Reforms to Decree Nº 51-92, regarding the use of pleas in criminal proceedings;
- Reforms to Decree Nº 51-92, regarding the use of audiovisual means in witness and expert testimony; and
- Reforms to decree Nº 21-2006 and Resolution Nº 2-2007 of the Public Prosecutor's Office, in respect to the relocation and change of identity of witnesses and collaborators in criminal proceedings.

The second reform package, submitted in June 2009, contains the following proposals:

- Law on Criminal Jurisdiction in High-Risk Proceedings;
- Reforms to the Law against Organized Crime in relation to the effective collaboration of defendant-informants;
- Amendments to the Law on *Amparo*, Habeas Corpus and Constitutionality;
- Amendments to the Law on Immunities of Public Officials;
- Reforms to the Law on Arms and Ammunition (Law Nº 2290) regarding the illegal trafficking in arms and ammunition;
- Reforms to the Criminal Code and the Law against Organized Crime in relation to anti-corruption matters;
- Reforms to the Criminal Code, the Law against Organized Crime and the Immigration Law with regard to human trafficking and illicit trafficking in migrants;
- Reforms to various laws with regard to disciplinary measures in the criminal justice system; and
- Law on International Legal Assistance and reforms to the Law on Extradition Procedures.

Four of these proposals have been adopted: the Law on Arms and Ammunition (Decree No. 15-2009), the Law to Strengthen Criminal Prosecution (Decree No. 17-2009); the Law on Criminal Jurisdiction in High-Risk Proceedings (Decree No. 21-2009); and reforms to the Law against Organized Crime (Decree No. 23-2009) specifically with regard to defendant-informants. It is hoped that the other proposals will be discussed, enriched and adopted shortly to provide the country with the necessary tools to combat impunity.

Although most of the legislative reforms requested have not been adopted, the Commission has had a good level of communication with the Congress of the Republic during these two years. This communication was established with its President, the Board of Directors, various

committees (especially those that deal with the justice sector) and the political parties represented in it.

VI. RESULTS

Evaluating the results of the work done by an international commission such as CICIG is difficult, especially when the Commission is in the process of developing its own investigations and investigative activities. In spite of that, results have been achieved thanks to the activities carried out by the Commission since the start of its operations.

Without a doubt, CICIG's work during the last two years has resulted in greater awareness by various sectors of Guatemalan society of the existence of organized crime and high level of impunity and the urgent need to combat it. These topics have become crosscutting issues in national life and matters of interest to everyone, because they affect everyone. It should also be emphasized that despite the many setbacks suffered in the last two years, the Public Prosecutor's Office has carried out some positive actions, including the investigation and prosecution of high-impact crimes, and it is hoped that this will continue in the future.

With the international community's support, many activities have been carried out in the area of technical assistance to improve the capacity of justice system institutions. Within this framework, the strengthening of the national witness protection program should be highlighted; it included the drafting of regulations and protocols, support in identifying safe houses and the training of the Program's security officers and personnel by CICIG personnel and members of the US Marshals' Service, among other activities. Several activities were also carried out to support the establishment of the Communications Monitoring Center, as well as to obtain the necessary equipment and train the officers in charge of the Center. The system has been operational since June 2009.

VII. CHALLENGES

CICIG has faced major challenges during its first two years, but they are not different from those faced by Guatemala in overcoming impunity and enabling the effective enjoyment of its citizens' rights. The extension of CICIG's mandate provides the time required for achieving the goals that were devised at the Commission's initiation. This will be possible with the necessary tools, which include approval of outstanding legislative reforms, financial resources for justice system institutions and the clear and decisive political commitment of Guatemalan authorities and citizens. Specifically, the installation of the courts created under the Law on Criminal Jurisdiction in High Risk Proceedings (Decree N° 21-2009) is required. With the approval of these courts, the creation of a maximum-security judicial center to house them has become even more necessary.

Regarding the Judiciary, an important challenge will be the integration of a new Supreme Court of Justice to guarantee the independent and effective administration of justice.

The National Agreement for the Advancement of Security and Justice will continue to receive CICIG's support in order to help realize the initiatives included therein and medium and short-term plans that clearly outline the responsibilities of each of the players and institutions

involved, funding needs and implementation guidelines. However, the Commission cannot turn the good intentions enshrined in this Agreement into reality without the Guatemala's commitment and effort.

CICIG's greatest challenge will be to identify those justice officials whose commitment to their work and good practices in the exercise of their duties demonstrates that it is possible to obtain better justice for all.

VIII. CONCLUSION

From first moment of CICIG's existence, it has been maintained that a group of foreigners would be incapable of achieving results if it does not have the firm support of Guatemalans, who should commit to the work CICIG was to carry out.

A course marking a new direction has been set in the area of justice. Together, Guatemalan authorities and civil society and the international community have embarked on that course. We express our appreciation to those who have remained steadfast in their support of the Commission, to those who had misgivings at the beginning but later offered their support, to the media and to every honorable Guatemalan man and woman who demonstrates, through his or her day-to-day activities, that the dream of a country free of impunity can come true.