

January 11, 2019

His Excellency, Mr. Antonio Gut eres,
Secretary-General of the United Nations

First, I would like to thank you for your continued support for the work of the International Commission against Impunity in Guatemala, CICIG, and thus the strengthening of the Rule of Law and the democracy in that country.

Since its establishment in 2007, CICIG has worked resolutely in compliance with its mandate accompanying local institutions for the identification and dismantling of illegal groups and clandestine security organizations, as well as promoting legal and institutional reforms that prevent their recurrence. As a result, the Commission has provided support in more than 100 cases presented in national courts (mostly high-impact cases); it has identified more than 60 complex criminal structures, obtained more than 300 convictions, and has promoted more than 34 legal reforms.

However, smear campaigns, defamation, and threats have increased after the presentation of cases involving high-powered political and economic sectors as is foreseeable for an entity that aims to prosecute the structures co-opting the State to profit and refusing to lose their illegally and illegitimately obtained privileges. The fight against corruption faces opposition in all corners across the globe, but that should not stop the global efforts to tackle this scourge that impedes the development of the countries and democracies. I reiterate the gratitude of CICIG's staff and my own for your leadership and commitment in this effort.

Faced with recent allegations by representatives of the Government of Guatemala about the performance of this Commission, I attach a document with information on the operation of the Judiciary and the activities of the Commission.

Please accept, Excellency, the assurances of my highest consideration.

Iv n Vel squez G mez
International Commission against Impunity in Guatemala, CICIG

His Excellency Mr. Antonio Gut eres
Secretary-General, United Nations
New York

Regarding the Alleged Intervention in Internal Affairs:

It has been argued that CICIG has meddled in internal affairs by promoting constitutional reforms for strengthening the judicial framework.

The Agreement on the establishment of CICIG expressly includes among its powers the promotion of legal and institutional reforms that prevent the actions and reappearance of the Illegal Groups and Clandestine Security Organizations (CIACS). Since its creation, CICIG has participated in more than 34 proposals for legal reforms. Thus, Article 2. (Functions of the Commission) of the agreement establishing the CICIG in subparagraph C reads: *"Recommend to the State the adoption of public policies for eradicating clandestine security organizations and illegal security groups and preventing their re-emergence, including the legal and institutional reforms necessary to achieve this goal."*

In the same line, Article 6 (Cooperation with CICIG), establishes in paragraph 3: *"The Executive Branch shall submit to the Congress of the Republic of Guatemala and shall promote a series of legislative reforms required to ensure the proper functioning of the Guatemalan criminal investigation and judicial prosecution system. Such proposals for legislative reform shall be developed in consultation with representatives of institutions of the Guatemalan State and the United Nations in order to bring the Guatemalan legal system in line with international conventions on human rights."*

At the request and under the auspices of the three State branches of the Republic of Guatemala, a participatory process began in 2016 for the preparation of a proposal for the justice sector reform. A Technical Secretariat comprised of local entities (the Attorney General's Office (*Ministerio Público, MP*), the Human Rights Ombudsman (*Procuraduría de los Derechos Humanos, PDH*), and international agencies (CICIG, Office of the UN High Commissioner for Human Rights, OHCHR, and the UNS in Guatemala, represented by the Office of the UN Resident Coordinator) appointed by president Jimmy Morales, was established.

The heads of the three branches launched this process on April 25, in the National Theater. A process of national consultation and dialogue with civil society and institutions was initiated through national and regional thematic tables. More than fifty members of Congress signed it, and the heads of the three State branches formally presented the initiative to the Congress of the Republic. Therefore, it is fair to say that the State of Guatemala initiated and requested technical support for the process. It was further ratified and formally presented to the Congress by almost one-third of its members.

While the reforms were discussed in the Congress, Mr. Oscar Chinchilla, who was the Chairman of the Congress of the Republic of Guatemala, requested the Technical Secretariat to attend the meetings with groups of members of Congress to resolve the questions they may have about the initiative. These meetings were held in the Commission, with the presence of members of the Technical Secretariat and Mr. Chinchilla.

The process was therefore participatory, transparent and sponsored by the powers of the State. Unfortunately, the lack of political will has hampered the approval of reforms that are essential for the strengthening of the justice sector and the consolidation of the achievements made in the fight against corruption.

Specific Procedural Steps (Alleged Illegal Search):

It has been argued that CICIG abuses force in the searches and raids. It has also been mentioned that a raid carried out in 2016 at the offices of the Secretariat of Administrative Affairs and Security (Secretaría de Asuntos Administrativos y de Seguridad, SAAS) was an attack on national security.

According to Guatemalan law, searches are requested by the Attorney General's Office and authorized by the competent judge. CICIG, in its role as technical support, accompanies certain procedural acts and proceedings that national authorities carry out, such as raids.

According to the usual protocols, a search and seizure management unit is established for each diligence. Each unit consists typically of an MP prosecutor, an assistant prosecutor, and a patrol of the National Civil Police - (*Policía Nacional Civil, PNC*). The MP coordinates with the Ministry of the Interior the assistance of the PNC (public forces). The PNC authorizes the equipment and security modalities for each raid. A CICIG expert (sometimes two) accompanies each team as an observer and technical advisor (typically forensic experts in financial analysis, for instance). Therefore, CICIG attends these proceedings without the use of force.

In November 2016, the Attorney General's Office, with the support of CICIG, carried out diligence in one of the buildings commonly known as the "Presidential House." When they arrived, the security guards let in the investigators. The investigators collected documents and left. A video shows the entire procedure. In November 2016, president Jimmy Morales and his spokesperson, Heinz Hiemann, stated that there was no trespass in the Presidential House. Both said¹ that the Attorney General's Office confused the addresses of the proceedings: *"There was no raid in the presidential house; however, we opened the doors so they could come in. They did enter the SAAS headquarters. When they realized that it was not the presidential guard office, they left,"* said Morales in November 2016. *"I insist, the presidential house suffered no trespassing,"* he stated.

¹ <https://www.youtube.com/watch?v=ttKen7Gvn8s&feature=youtu.be> – Presidente

<https://www.youtube.com/watch?v=v3FxGFAUdwQ> - Vocero presidencial

Alleged Abuse of Preventive Detention:

It has been claimed that CICIG abuses pre-trial detention.

According to Guatemalan law, the pre-trial detention is ordered by the competent judge and should be applied only where there is a risk of flight or if the person will obstruct the investigation, in addition to the cases provided for in article 264 of the Criminal Procedure Code (offenses for which is mandatory). The prosecutor may request pre-trial detention, but it is not his decision.

CICIG investigates illegal structures with power and influence both in Guatemalan institutions and its society. In these cases, CICIG and MP request that the defendants will be sent to prison in the circumstances described above, according to current legislation. Today, less than 40% of the people bound over for trial in cases developed by CICIG are in pre-trial detention. The national average of pre-trial detention for other crimes is much higher.

In context, the total Guatemalan prison population is 23,986 persons in jail; 12,612 of them are in pre-trial detention vs. 11,374 who are serving time. In other words, the number of people in pre-trial detention is higher than those who have been convicted. The people who are in jail related to CICIG are less than 1.1% of the total prison population.

The Guatemalan system has serious shortcomings. The Criminal Procedure Code of Guatemala orders that the imprisonment ceases, among other reasons, when a year has passed since the person is in pre-trial detention. However, the Code also establishes that pre-trial detention can be extended by the courts "as necessary," which in practice results in long periods in jail. In a context of institutional weakness and few controls, there is a high risk of abuse of such extensions. This problem is aggravated by the deplorable conditions of the Prison System.

On the other hand, the justice system faces a widespread phenomenon of the use of malicious litigation by some defense lawyers, aimed at postponing the progress of the cases and the eventual conviction of the defendant. It is especially true in the cases supported by CICIG due to the power of the defendants and their lawyers.

Regarding the strengthening of the justice system and the defense of human rights, the Commission has worked together with the Attorney General's Office and the Human Rights Ombudsman in drafting a proposal for reforms to pre-trial detention, which was presented to the members of Congress in November 2018.

Presumption of Innocence:

It has been argued that the press conferences carried out together with the former Attorney General, Thelma Aldana, and CICIG to present their investigations violated the presumption of innocence.

The Attorney General's Office has traditionally held press conferences on cases considered to be of public interest. Such a practice is not innovation nor a recent change in the way to disclose the investigations to the public. In the case of investigations carried out together with CICIG, it is the Attorney General's Office who decides on the convenience of presenting them in a press conference, and it leads the information. The role of CICIG at the press conferences is of technical support to MP. The administration of Thelma Aldana chose for joint press conferences. The Attorney General Porras has opted for the Head of the Special Prosecutor Against Impunity (FECD) to participate in the conferences, and CICIG provides support in the presentation and documentation of the cases.

Press conferences are used to inform people, first hand and in a reliable way about the facts that support the hypothesis of the investigation, the existing evidence, the people supposedly related and the modus operandi, among other details. This exercise has a double objective: (i) show and raise awareness on the operation, scope and impact of CIACS in the country, and (ii) avoid speculation and manipulation of the information before the initial hearing.

It should be noted that after the procedural reforms of the 1990s in criminal matters, Guatemala joined the accusatory, oral and public system, which implies that any citizen or the media can attend a hearing within the framework of the judicial processes that take place.

We have always been cautious and respectful when referring to individuals allegedly related to the accusation, so it is the judicial process that settles the actual events and responsibilities. Regarding the presumption of innocence, it is applied with absolute character, considering that the names of the defendants are provided as accused and never as guilty.

"Zimeri" Incident:

It has been argued that CICIG violated the human rights in the case known as "Zimeri," and the evidence in the case was altered.

In June 2017, after working hours, CICIG staff was involved in a brawl during a soccer match. As a result, a young man by the surname of Zimeri and a worker of the Commission were seriously injured. Mr. Zimeri filed a claim against the workers of the Commission for assault.

By principle and nature, CICIG strongly condemns all types of violence. The staff of the Commission participated in the event during non-working hours and outside the exercise of their duties. Therefore, they are individually responsible with no connection with their work.

However, CICIG developed an internal disciplinary procedure according to its own administrative and human resource management standards.

In the framework of the disciplinary process, a copy of the security video was requested to the sports facility as evidence. The original videos that recorded what happened were always officially incorporated into the court case, in the MP, and its manipulation is not an option.

Requesting a copy of the footage to the facility has no link with the judicial file, which continues its course, nor does it influence its progress. These copies were used to apply internal administrative sanctions, since the staff of the institution is subject to general rules of conduct and decorum (beyond working hours and the exercise of their functions), in a framework of accountability and ethical behavior. The criminal case continues its course in the Attorney General's Office, without any interference from CICIG.

Transfer of capacities to the Attorney General's Office:

It has been claimed that CICIG weakens the national institutions.

The key to the transfer of capacities carried out by CICIG is the development of investigation and litigation processes between local officials and staff of the Commission, in such a way as to learn by doing; and it has been a continual effort.

Significant outcomes achieved by the MP together with CICIG in complex cases have relied on innovative ways to respond to this criminal activity, with modern investigation methods and working on criminal prosecution together with prosecutors, police officers and analysts. In the last 11 years, there has been a qualitative and quantitative leap in dealing with crimes that seriously affect Guatemalan society, related explicitly to administrative corruption, drug trafficking, smuggling and tax evasion, irregular adoptions, illegal campaign financing illicit trafficking or extortion.

Since its creation, CICIG has contributed to the strengthening of the MP, among others, with the following elements:

- CICIG has supported the creation of special prosecution sections as the Special Prosecutor against Impunity, the Unit of Special Methods, and the Directorate of Criminal Analysis.
- CICIG has promoted the implementation of criminal prosecution tools: phone interceptions, forensic data extraction software, and the 'cooperating witness' figure, among others.
- A strategic criminal prosecution approach has been promoted to address criminal phenomena in the joint work of international and national prosecutors.
- CICIG supported the creation and operation of the witness protection program.

In fulfilling its mandate, CICIG has supported the development of 34 legal reforms that have allowed the improvement of capacities for research and judicial persecution. Furthermore, the Commission has developed different projects in coordination with national institutions, including the Integrated System of Justice, the Observatory of the Criminal Justice System,

the promotion of a Law-Abiding Culture, the technical support to the implementation of the electoral reforms and the strengthening of the Supreme Electoral Tribunal.

CICIG's Accountability:

It has been argued that CICIG is not accountable for the use of its funds and activities

CICIG is exclusively funded through voluntary contributions from the UN Member States through a trust fund managed by the United Nations Development Program (UNDP), under accounting standards and transparency rules of the United Nations. This situation points to the total independence of the Commission's work and absolute transparency. UNDP submits quarterly financial performance reports to donors. There is also an independent annual audit that is also shared with donors. All information is available on the UNDP website.

Concerning the activities of the Commission, it prepares and publicly presents an annual report. The United Nations and the Government of Guatemala have organized annual meetings with CICIG's donors in NY to show its progress and projections. CICIG also holds regular meetings with representatives of donor countries in Guatemala.

Lack of Control and Supervision:

It has been argued that CICIG is a supranational entity that acts without control or accountability.

CICIG's nature and the mandate establish clear internal controls on its powers. Its substantive actions are regulated by Guatemalan criminal and procedural laws within the framework of the investigations and litigations where it supports the Attorney General's Office as a complementary prosecutor. In other words, it is always the national authorities of the judiciary who exercise jurisdiction and competence. CICIG is a technical-auxiliary entity.

1. Although CICIG can conduct independent investigations, it has no criminal action: it cannot bring cases to the courts. Only the Attorney General of the Republic can decide which investigations should be prosecuted, and therefore, the supervision of criminal prosecution activities is carried out, in any case, by the MP.
2. Although CICIG may request to participate in criminal proceedings as a complementary prosecutor, it is always a judge or a court who should authorize it. In its role as a complementary prosecutor, CICIG is subject to the provisions of the Criminal Procedure Code.
3. CICIG cannot carry out proceedings like searches, arrests, telephone interceptions.
4. The competent judge or court always give the judgments of the cases.

Selective Persecution and the Politicization of Justice:

It has been argued that the cases that CICIG supports in matters of research and litigation were politically motivated and responded to ideological purposes, resulting in selective persecution.

There is no evidence to support this assertion. Thus, the cases have led to charges against people allegedly related to illegal networks of every social group and ideological location, in the purpose of pursuing criminal structures, regardless of the nature or quality of the people within it.

The cases supported by CICIG since its creation have affected more than 1,000 defendants that include: members of Congress of different political parties (ideology); officials from the last five administrations- including heads of government and conservative and progressive ministers; mayors and members of local governments; judges and magistrates; members of the army; members of the National Civil Police; representatives of the private sector and different individuals, among others.

Regarding the Alleged Violation of the Constitution of Guatemala:

It has been asserted that CICIG disrespects the Constitution of Guatemala, because of the statements made by an official of the Commission in a hearing where he referred to the hierarchical superiority of the Agreement establishing the Commission.

The official of the Commission referred to Article 46 of the Guatemalan Constitution, which states:

Article 46.- Pre-eminence of international law. Sets the general principle that, in the matter of human rights, treaties and conventions accepted and ratified by Guatemala have preeminence over internal law.

Regarding the Alleged Interference in Electoral Matters:

After signing a Technical Cooperation Agreement with the Supreme Electoral Tribunal, it has been argued that CICIG tries to manipulate the electoral process and to favor specific candidates.

In 2013, CICIG established the Illicit Campaign Financing (*Financiamiento Electoral Ilícito, FEI*) as one of its main investigation lines. It has been demonstrated that FEI is one of the strategies used by illicit political-economic networks to co-opt power and obtain the approval of the authorities to enrich themselves irregularly. The Commission has addressed the issue comprehensively through the investigation of criminal cases, the presentation of a thematic report, the proposal of recommendations for legal reforms and institutional strengthening activities.

In 2016, the Congress of the Republic of Guatemala approved reforms to the Political Parties and Elections Act that grants more functions and sanctioning authority to the Supreme Electoral Tribunal (TSE) to control and oversight political party funding. Since then, the Commission, together with other Guatemalan organizations and partners, has supported the TSE in the definition of electoral financing oversight models, instruments, protocols, and the implementation of the new Specialized Unit for the Control and Oversight of Political Party Funding (*Unidad Especializada de Control y Fiscalización de las Finanzas de los Partidos Políticos, UEFPP*).

In 2018, once this unit was implemented as stipulated in its mandate, CICIG has supported the strengthening of capacities of the UEFPP staff through a training and knowledge transfer program developed in partnership with the Konrad Adenauer Foundation (KAS). Courses were given by CICIG's national and international technical staff as well as international consultants of this foundation. Lawyers and auditors of the TSE received training to strengthen their knowledge about policy analysis and financial research, strategic analysis of information, as well as organization and operation of work teams.

The fight against corruption includes preventing criminal organizations and groups from financing politics and later use the public administration for their benefit and to the detriment of the common good.

Regarding the Alleged Intimidating or Tampering with a Witness:

Well-funded campaigns have asserted that the Commission officers have intimidated or offered illegal benefits to witnesses.

No economic or other benefits have been offered to witnesses during the administration of Commissioner Velásquez.

No magistrate has requested an investigation against a CICIG official for this reason, and no lawyer or CICIG investigator has been convicted of intimidation or illegal practices within the framework of the processes they work.

Increasingly, malicious litigation and false complaints against the Commission staff were promoted within the framework of well-financed smear campaigns. The aim is to intimidate the staff, discredit their work and hinder the progress of cases. No official has been sanctioned for those complaints after the application of due process.

Regarding Alleged Terrorist Acts by Commission Officials:

President Jimmy Morales, about the cancellation of courtesy visas to staff, stated that he could not accept in the territory, persons identified to have placed bombs in institutions and state buildings; however, he did not provide any details of whom he was referring to.

CICIG shared with the Guatemalan Ministry of Foreign Affairs the criminal records of the 11 officials whose visas were withdrawn. Those certificates, issued by their respective countries of origin, state that none of them has a criminal record. CICIG requested a written clarification to the Ministry of Foreign Affairs about the President's statements but received no response.

"Migration" Case:

It has been argued that CICIG, in collusion with the Russian Government, has favored the political persecution of the Bitkov family.

The "Migration" case was opened in the Special Prosecutor's Office against Impunity (FECI) in 2010. In 2018, a court sentenced 39 people responsible for participating in a passport forgery network. Among those convicted are former staff members of the General Directorate of Migration (Dirección General de Migración, DGM) of the National Civil Registry (Registro Nacional de las Personas, RENAP) of Guatemala, lawyers, agents (coyotes), and users of the criminal structure, including Igor Vladimirovich Bitkov, Irina Viacheslavovna Bitkova and Anastasia Bitkova.

The Attorney General's Office, with the support of CICIG, fulfilled its duty of presenting charges and providing evidence; then it moved forward in the trial and listened to the defense and prosecution, and the judges independently decided the penalties applicable, according to the Guatemalan Penal Code.

The Guatemalan judges found that there was enough evidence of the Bitkovs entering Guatemalan territory legally with their Russian passports. However, once in the country, they bought false documents from members of the criminal structure, a conclusion that was obtained from the review of more than 50 papers from Guatemalan institutions, subjected to expert and criminal analysis, and the statement of a 'cooperating witness' who provided details on the operation of the network. They acquired birth certificates, identity documents, and passports, in the case of Mr. Bitkov, with two different names.

In no case, within the context of the trial, as part of the strongly financed defamation campaign or in the examinations conducted by institutions of the US Government, evidence or indication of collusion with the Russian Government has been found.

A new trial ordered by the Constitutional Court against Mr. Bitkov also concluded - for the second time- on his conviction.