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International Anti-Impunity Missions in Guatemala and Honduras: What Lessons for El Salvador?

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Introduction

In February 2019, Nayib Bukele was elected president of El Salvador. One prominent pledge he had made during the campaign was the formation of an international commission that would assist in the fight against corruption, linked to the United Nations (UN) and/or the Organization of American States (OAS). The inspiration for this commission was the International Commission against Impunity in Guatemala (CICIG), which has helped the Guatemalan Attorney General's office identify 60 criminal networks and prosecute over 100 cases resulting in more than 300 convictions since its creation in 2007.¹ It was celebrated as a success after its investigations led to corruption-related indictments of the then-President Otto Pérez Molina and the then-vice president Bukele did not release many details of the proposal before the election, and had designated his vice-presidential candidate, Félix Ulloa, to oversee the initiative. Campaign staff indicated they were seeking to adapt the CICIG model, and also perhaps draw on the Organization of American States Mission in Support of the Fight Against Corruption in Honduras (MACCIH). Both these institutions were innovative attempts to reduce exclusionary governance by a restricted group of elites, to enhance democratic governance, and to model holding even the well-connected and powerful to account.

Despite the apparent impact of CICIG in putting top elected officials, legislators, military officers and economic elites in jail, its mandate, methods, and difficulties are not well known. The work of MACCIH, a more recent entity that, perhaps unfairly, is generally held to be disappointing in relation to CICIG, is also little known outside specialized circles.² The purpose of this document is to highlight lessons from these two Central American experiences for those interested in establishing a comparable hybrid institution that combines an international mission with national capacities in combatting corruption and/or impunity.

Although CICIG and MACCIH arose from civil society efforts rather than campaign pledges of a presidential candidate, many of their lessons hold relevance for El Salvador. As the UN Mission in Guatemala (MINUGUA) was preparing to

¹ Velásquez Gómez, Iván. *Letter from the CICIG Commissioner to the UN Secretary General*. Comisión internacional contra la impunidad en Guatemala, January 11th, 2019, https://www.cicig.org/wp-content/uploads/2019/01/NOT-002-20190111-Letter_to_SG.pdf.

² Mejía, Thelma and Meza, Victor. *El Control de la Corrupción y la Impunidad en Honduras 2014-2018* (Tegucigalpa, Centro de documentación de Honduras: National Endowment for Democracy, 2017); McDormoth, Alberto et al. *Percepciones sobre la situación hondureña en el año 2015*, Equipo de reflexión, investigación y comunicación, January 2016, <https://cis.org/sites/default/files/2015%20Report.pdf>; *Jueces y magistrados de lo Penal en materia de Corrupción se presentaron este lunes a evaluación de conocimientos en el marco de un proceso de selección*, Asociación para una sociedad mas justa, <http://asjhonduras.com/webhn/tag/mac-cih/page/6/>; Sosa, Eugenio, *¿Cual es el juego de la élite política detrás de las reformas electorales en Honduras?*, Centro de Estudio para la Democracia, January 13th, 2019, <https://cespad.org.hn/2019/01/13/cual-es-el-juego-de-la-elite-politica-detras-de-las-reformas-electorales-en-honduras/>.

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leave eight years after the 1996 peace agreement, human rights organizations there became concerned about an uptick in killings of justice officials and NGO activists. They worked with UN officials and sympathetic government officials to propose a new UN mission that would fight shadowy illegal armed groups and have the power of independent prosecution. However, that proposal was rejected by the courts and resisted politically. A couple years later, government officials who were worried about these unaccountable and corrupt armed groups introduced a modified version that was approved as CICIG in December 2006.³

In the case of Honduras, the news of USD\$300 million stolen in a large corruption scheme from the Honduran Social Security Institute (IHSS) caused popular outrage in 2014.⁴ The following summer, just as CICIG's investigation was bringing down the president of Guatemala, Honduran president Juan Orlando Hernández – hounded by allegations – admitted his campaign had benefitted from the stolen IHSS money.⁵ Throughout mid-2015, tens of thousands marched in the streets of the country's main cities every Friday demanding Hernández' resignation and the creation of a Honduran equivalent of CICIG.⁶ Both cases show how non-governmental actors were vital. However, Hernández was able to save his presidency with a mission whose weaker terms of reference blunted its ability to strike decisive blows against the most corrupt structures in the country.

The report is organized by diverse aspects of the mission. It begins by analyzing decisions about the formulation of the mandate of each mission, including what powers the missions would have and how they would relate to national authorities. It then examines the difficult politics of the creation of each body, followed by a discussion of the lessons of dealing with external actors, including the UN, the OAS and bilateral donors. It concludes with a lengthier analysis of the impact and legacy of the missions.

³ Personal interviews by Chuck Call with former Vice President Eduardo Stein, 2017; Gavigan, Patrick. *Against the Odds: CICIG in Guatemala*. Open Society Justice Initiative, Washington, DC, 2016, <https://www.justiceinitiative.org/uploads/88ffafc0-09bf-4998-8ef3-e2a175e3f455/against-odds-cicig-guatemala-20160321.pdf>; Doggett, Martha. *Reflections on the Evolution of CICIG – The International Commission against Impunity in Guatemala*, 2018 Congress of the Latin American Studies Association, Barcelona, May 2018.

⁴ Toledo, Elena. *Fed-up Hondurans Protest for Change after Corruption Scandal*. Panam Post, June 21st, 2015, <https://panampost.com/elena-toledo/2015/06/21/fed-up-honduras-protest-for-change-after-corruption-scandal/?cn-reloaded=1>.

⁵ Palencia, Gustavo. *Presidente Honduras admite que su campaña recibió fondos vinculados a corrupción*. Reuters, June 3rd, 2015, <https://lta.reuters.com/articulo/topNews/idLTAK-BN0OJ21520150604>.

⁶ Cabrera, Jorge. *Fotos: Miles marchan con antorchas en Honduras exigiendo la dimisión del Gobierno*. RT, June 7th, 2015, <https://actualidad.rt.com/actualidad/176944-fotos-miles-marchan-protestan-antorchas-hoduras>.

I. Mandate Formulation and Initiation

The purpose of the mission is important. Every hybrid mission needs a clear scope of work reflecting the purpose for which it was created. CICIG's function is to investigate and dismantle "cuerpos ilegales de seguridad y aparatos clandestinos de seguridad" (Art. 2 of accord, hereafter "illegal armed groups").⁷ Such bodies were defined as those that illegally undermine the ability of citizens to exercise political and civil rights and that have links to state officials or that generate impunity for their actions (Art. 1). Corruption does not appear in the mandate. However, the ability of illegal networks to generate impunity for their actions relies on corrupt state officials. Therefore, CICIG's success in disarticulating illegal armed groups controversially led to uncovering and breaking up corrupt networks involving the political system and elites.

The scope of MACCIH is slightly different. Its title explicitly includes "corruption and impunity." Its mandate is to support Honduran institutions in various ways to investigate and prosecute "cases of corruption."⁸ MACCIH has framed its work against impunity as dismantling corruption and corrupt networks. In practice, MACCIH has selected solely cases involving "corrupt networks" – networks that reach into middle to senior levels of the state. This focus has frustrated some Hondurans who wish MACCIH to investigate important human rights cases with no apparent link to corrupt networks.

These missions' mandate regarding criminal investigation and prosecution lies at the center of their work and is their most misunderstood feature. An earlier proposal of CICIG (called CICIACS) conferred upon the international mission the power to indict and prosecute suspects, independently of the Guatemala's Attorney-General's office and the National Civilian Police. That proposed power emerged out of concerns that the relevant state institutions were excessively penetrated by corrupt networks linked to powerful criminals. However, the Constitutional Court rejected independent prosecutorial power. This vital part of the court's decision effectively killed the proposed mission for two years until a new government, itself worried about its power in light of illegal armed groups, revisited the issue.⁹ The revised mandate authorized international officials to initiate and carry out criminal investigations of cases involving illegal political-economic networks, but they could only accompany and support national prosecutors, including a newly created unit

⁷ *Acuerdo entre la Organización de las Naciones Unidas y el Gobierno de Guatemala relativo al establecimiento de una Comisión Internacional Contra la Impunidad en Guatemala (CICIG)*. New York, December 12, 2006. http://www.cicig.org/uploads/documents/mandato/acuerdo_creacion_cicig.pdf.

⁸ *Convenio entre el Gobierno de la República de Honduras y la Secretaría General de la Organización de los Estados Americanos para el establecimiento de la misión de apoyo contra la corrupción y la impunidad en Honduras*. Washington, DC, January 19th, 2016, <http://www.oas.org/documents/spa/press/convenio-MACCIH-1.19.16.pdf>.

⁹ Personal interviews by Chuck Call with Eduardo Stein, Helen Mack. Guatemala City 2017.

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The research and investigations of CICIG and, to a lesser extent, MACCIH, have contributed to understanding how criminal networks are linked to economic elites, political leaders and parties, and elements in the security forces.

to work with the international mission investigators, in indicting and trying the cases. All of these proposals solely involved national courts – never any international judges deciding cases.

The investigatory mandate of MACCIH is identical to CICIG’s in certain ways. It can select which cases it will investigate, and it cannot indict or prosecute alone, but only in support of national prosecutors. However, it differs in that MACCIH cannot investigate alone but must do so in conjunction with Honduran investigators and prosecutors. On the one hand, the provision for shared investigations was viewed as correcting a flaw of CICIG, forcing MACCIH to strengthen rather than bypass state prosecutorial capacity. However, it was widely perceived as a government maneuver to weaken MACCIH, as an ineffective and corrupt Public Ministry, led by an Attorney General selected by the President, would continue to have the power to shelve or impede sensitive criminal investigations. As in Guatemala, a new unit was created within the Public Ministry to work in tandem with the international mission, which greatly facilitated coordinated investigations.

Mission mandates included other important functions such as the ability to propose legal and constitutional reforms, to strengthen and propose regulatory changes to institutions like the Public Ministry, to analyze criminal networks, and to engage with civil society. Although the investigation of high-impact cases lies at the core of these missions’ purpose, other functions have also proven influential. CICIG has successfully proposed new laws and constitutional amendments, commented on the fitness of attorneys-general and senior police officials, and proposed changes to the internal structures of the Public Ministry. It helped create the conditions for the selection in 2010 and in 2014 of reform-minded prosecutors who could and did act with significant independence from political influences. MACCIH’s mandate includes a civil society observatory run by a unit of OAS officials that has elicited input from Honduran civil society organizations and has educated them and researchers about the issues surrounding MACCIH’s various legal proposals. However, the observatory took a year and a half to become active, was too bureaucratic and top-down, and was disappointing in its lack of organization and impact. The research and investigations of CICIG and, to a lesser extent, MACCIH have contributed to understanding how criminal networks are linked to economic elites, political leaders and parties, and elements in the security forces. CICIG has occasionally published such reports jointly with civil society organizations.¹⁰

Multilateral sponsors have their own motives and constraints that shape decisions about undertaking a mission and the definition of mandate. Multilateral organizations like the UN and the OAS are based on states, and those states have significant

¹⁰ *Presentación de propuesta al Congreso de la República de reformas al Código Procesal Penal en materia de prisión preventiva.* Comisión Internacional Contra la Impunidad en Guatemala, November 28th, 2018, https://www.cicig.org/noticias_2018/presentacion-de-propuesta-de-reformas-en-materia-de-prision-preventiva/.

influence in decisions. In the case of CICIG, most member states were supportive, in alignment with the Guatemalan government's own official support, up until 2017. By contrast, many saw the OAS as too eager to undertake a mission in Honduras when MACCIH was under consideration in 2015, leading to unnecessary concessions regarding the mandate. These organizations' decision to undertake a mission, and to define its terms, may reflect caution rooted in a desire to protect their reputation, eagerness to show their relevance, budget imperatives, and excessive deference to the concerns of their Member States (including especially the USA).

Expect a drawn-out, difficult process to gain agreement on the establishment of an international anti-corruption / anti-impunity mission. Both CICIG and MACCIH involved extensive negotiations before opening their doors. The initial 2002 proposal for a "CICIACS" in Guatemala led to an assessment mission and negotiations with the UN, then stonewalling by the Congress and a negative opinion by the Constitutional Court in August 2004.¹¹ After over a year of inactivity, the new government of President Oscar Berger drafted a revised proposal which then took over a year to gain approval, helped by the last-minute rush to sign the accord before the term of UN Secretary-General Kofi Annan ended in 2006. A number of factors had to align, including Congressional approval following the scandalous assassination of imprisoned police officers who were charged in the assassination of four members of the Central American parliament. MACCIH's creation was concluded in only several months in 2015-16, helped by fears that street protests might bring down the government of Juan Orlando Hernández. Nevertheless, the process involved negotiations with the UN and the OAS, two staff exploratory trips by the OAS, months of negotiation over the mandate that also involved the US government and NGOs, and negotiations with the Congress (a 2018 constitutional court decision upheld the accord creating MACCIH)¹². Although the Attorneys General in both countries had little role in the formation of the missions, their disposition toward the mission has proven vital for any success.

Both missions weathered constitutional challenges based on questions about sovereignty and the powers of international entities in criminal prosecutions. The constitutionality of the predecessor body to CICIG, "CICIACS" (the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations), was invalidated in 2004 by the Constitutional Court. The court found that the proposal for CICIACS to prosecute crimes on its own, without the Public Ministry, violated the Attorney-General's constitutional monopoly on prosecution.¹³ By contrast, five

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¹¹ Doggett, Martha. *Reflections on the Evolution of CICIG – The International Commission against Impunity in Guatemala*, 2018 Congress of the Latin American Studies Association, Barcelona, May 2018.

¹² Personal interviews by Chuck Call with OAS and US State Department officials who requested anonymity, with Eric Olson, and then-Foreign Minister Arturo Corrales.

¹³ *Sentencia No. 1250-2004 - Acuerdo referente a la creación de la Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad en Guatemala de Corte de Constitucionalidad*. La Gaceta No. 73, August 5th, 2004.

months after the revised “CICIG” proposal was signed by the government and the UN in 2006 without the powers of autonomous prosecution, the Constitutional Court affirmed its constitutionality. Indeed, because the agreement to create CICIG was found to constitute an international human rights treaty by that Court, its provisions superseded national law.¹⁴

The Constitutional Court reaffirmed the constitutionality of CICIG on three subsequent occasions. In 2017, the Court rejected an attempt by President Jimmy Morales to declare the CICIG Commissioner Iván Velásquez persona ‘non grata’ on process grounds.¹⁵ A year later in September 2018, the Constitutional Court reaffirmed its decision suspending indefinitely Morales order banning Velásquez from the country.¹⁶ The Court also rejected Morales’ attempt in January 2019 to immediately end CICIG’s mandate,¹⁷ although it had earlier supported his right not to renew the mandate upon its expiry in September 2019. It found that Morales had not followed the procedure established in the international treaty creating CICIG to revisit the mandate during its tenure. In sum, despite repeated challenges to its constitutionality, CICIG has sustained its legality, including the ability of its staff to initiate and carry out investigations independently of the Public Ministry.

MACCIH has similarly overcome a constitutional challenge. The January 2016 agreement between the OAS Secretary-General and President John Orlando Hernández creating MACCIH was approved by the legislature. A subsequent accord between the Attorney-General and the OAS in January 2017 authorized the creation of the Special Prosecutorial Unit against Corruption and Impunity (UFECIC) to work exclusively with the OAS Mission in “integrated criminal investigative and prosecutorial teams.”¹⁸ In that agreement, the MACCIH officials had access to all

¹⁴ Despite the word of the highest constitutional authority in the land in May 2007, a congressional committee voted its reservations about constitutionality in hopes of killing the proposal, but the full Congress nevertheless approved CICIG after the embarrassing scandal involving assassinations of incarcerated accused police officers.

¹⁵ *La Corte Constitucional de Guatemala “suspende definitivamente” la expulsión del comisionado de la CICIG Iván Velásquez ordenada por el presidente Morales*. BBC Mundo, August 30th, 2017, <https://www.bbc.com/mundo/noticias-america-latina-41092123>.

¹⁶ *Revoca Corte de Guatemala veto a Comisión de la ONU*. La Jornada, September 16th, 2018, <https://media.jornada.com.mx/ultimas/2018/09/16/revoca-corte-de-guatemala-veto-a-la-cicig-9565.html>; <https://elfaro.net/es/201809/centroamerica/22466/Corte-le-aclara-al-gobierno-de-Morales-que-Iv%C3%A1n-Vel%C3%A1squez-puede-regresar-a-Guatemala.htm>.

¹⁷ *Guatemala: Corte Constitucional suspende la salida anticipada de CICIG*. Deutsche Welle, <https://www.dw.com/es/guatemala-corte-constitucional-suspende-la-salida-anticipada-de-cicig/a-47011824>.

¹⁸ Ministerio Público – OAS. *Mecanismo Interinstitucional de Cooperación Bilateral entre el Ministerio Público de la República de Honduras y la Secretaria General de la Organización de Estados Americanos a través de la Misión de Apoyo Contra la Corrupción y la Impunidad en Honduras*, Article 3. January 18, 2017, <http://www.oas.org/es/sap/dsdme/maccih/new/docs/Acuerdo-Ministerio-Publico-MACCIH-creacion-Unidad-Fiscal-Especial-contra-Impunidad-y-Corrupcion.pdf>.

case materials on the cases they selected and worked with and through the UFECIC to request documents as well.¹⁹ In 2018, the constitutional chamber of the Supreme Court (the highest authority on constitutional questions) found that the accord creating MACCIH was constitutional, but that the UFECIC was not. The decision was derided by many commentators and legal scholars, and the Attorney-General released a statement detailing reasons why the decision was invalid (although this had no legal weight). Although the decision seemed crafted to deliver a stealthy, lethal blow to MACCIH via the back door of the UFECIC, the result was an affirmation of the constitutionality of MACCIH itself alongside continuing de facto integrated investigations and prosecutions by the UFECIC and the mission.²⁰

Implications for Salvadoran actors' consideration: Mandate Formulation and Initiation

CICIG and MACCIH have enjoyed greater success than imagined when they were first launched. Elements of these missions are likely to prove adaptable to the Salvadoran context. However, the danger of drawing on prior innovations is that insufficient adaptation will occur to meet the tailored needs of a distinct reality. Salvadoran officials and social actors should reflect carefully on the country's greatest needs and creatively forge a mandate that responds to those contextualized problems.

Both CICIG and MACCIH were created with due attention to their respective constitutions and have survived constitutional challenges by decision of the highest juridical authorities on constitutional questions. That does not mean that careful construction of the mandate of such an institution will escape constitutional challenge. On the contrary, any international mechanism of criminal investigations is likely to be challenged, reflecting either principled opposition or self-interested actions of corrupt and unaccountable elites who benefit from such a system. A 2010 proposal by officials of then-President Funes for a "Comisión para la Investigación del Crimen Organizado en El Salvador (CICOSAL)" found that there was ample constitutional basis for the naming of international prosecutors when the Attorney-General's office has failed to fulfill its duties.²¹

Salvadorans also have an opportunity to create a mechanism by which civil society can provide input to the mission, offer accountability of its performance, and help set expectations and articulate to the public the work of the mission. Neither MACCIH nor CICIG has effectively done this. In both those cases, publics assumed that a commission could be erected, conclude investigations, and somehow drive national courts to deliver guilty sentences in unrealistic time frames.²²

¹⁹ *Ibid.* Articles 7 and 8.

²⁰ At some point, a court could vacate the work of the UFECIC based on this decision.

²¹ *Gobierno de Funes diseñó propuesta de "CICIG" salvadoreña.* El Mundo, August 27th, 2015, <https://elmundo.sv/gobierno-de-funes-diseno-propuesta-de-cicig-salvadorena/>.

²² Personal interviews by Chuck Call with various Honduran civil society organizations,

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Despite the verve and prior planning conducted by the team of President Bukele before he assumed office, the process of attaining agreement on an international mission is likely to take months rather than weeks. Communicating this likely timeline, citing prior experiences, to the public would help manage public expectations. Furthermore, because political parties have for three decades been relatively strong in El Salvador, holding them up to scrutiny is likely to occur in the course of investigations. Such an endeavor would require strategic building of coalitions to be credible.

II. The Good and Bad of Affiliations with Multilateral Organizations and the Role of Donors

Association with a Multilateral Organization offers Profile and Legitimacy. CICIG derived clout and legitimacy from its association with the UN Secretariat. The mission received material and political support from the UN in New York that helped it withstand pressures from various political quarters in Guatemala. Similarly, MACCIH's status as an official mission of the OAS, with the Secretary-General as its formal but distant head, also gave it a profile that was difficult for elites or the public or the press to ignore or treat dismissively. The profile, technical support, and resources offered by association with these multilateral organizations initially incentivized the Guatemalan and Honduran governments to approach the UN and the OAS, respectively.

Yet there are Pros and Cons to Multilateral Affiliations. In the case of CICIG, the Commissioner's tenuous accountability to the UN gave him tremendous autonomy in management and choice of cases. It also brought responsibilities for fundraising and left him open to criticisms of acting as an unaccountable international bureaucrat. The problems of the OAS regarding MACCIH are legion.

The head of mission is the Secretary-General of the OAS rather than the "Spokesman" on the ground, management and budgeting decisions are delayed due to OAS procedures, and political motives and personal friendships seem to have figured into the hiring of key investigative personnel and some section chiefs of MACCIH. Some accuse SG Almagro of acceding to President Hernandez' preferences for a less aggressive MACCIH out of political considerations. The prior Spokesman, Juan Jimenez Mayor, accused SG Almagro of politicizing the mission, of siphoning off resources for OAS headquarters personnel not involved in the mission, and of internal spying.²³ After Almagro expressed a lack of confidence in

2016, 2017, Tegucigalpa.

²³ @JuaJimenezMayor. "No voy a polemizar con el Secretario General de la OEA. Dos correos remitidos por mí a la OEA demuestran que la verdad nos hace libres." Twitter, February 16th, 2018, 9:57 PM, <https://twitter.com/JuaJimenezMayor/status/964695347271479297>; @JuaJimenezMayor. "Head of Honduras Anti-Graft Body Resigns, Claims Lack of OAS Support". Twitter, February 18th, 2018, 9:59 AM, <https://>

Jimenez Mayor in February 2018,²⁴ the latter resigned. The undignified public spat undermined the reputation of the OAS Mission. The new Spokesman Luiz Marrey Guimaraes has put the mission on an even keel but with a lower profile. Of the two models, the UN-supported independence of CICIG seems preferable in terms of impact, quality and management, if not in terms of political accountability.

Donors have provided key funding and public support, and the USA has an outsized role that is now uncertain. Both CICIG and MACCIH have relied on donor governments to fund their operation. This has offered independence from the national governments but reliance on external donors. In general, donors have supported these experimental missions without interfering in their internal operations and decisions. The OAS budget for MACCIH has been much less than that of CICIG.²⁵ Given its power in the region, the United States of America has played an outsized role, one of support for CICIG and MACCIH up to the Trump administration. In 2018, that support shifted to one of skepticism and even hostility to CICIG among some within the US Congress and administration. National-level opponents of CICIG and MACCIH have fostered and exploited this wavering US support. The turnabout in U.S. support has emboldened President Jimmy Morales and legislators in their opposition to CICIG.

Implications for Salvadoran actors' consideration: International Organizational Affiliations and Donors

Affiliations with multilateral organizations bring a profile that helps protect commissions and their national colleagues from undue influence or threats to a certain degree. That affiliation also offers access to international expertise and to the structures of accountability that assist resource mobilization. CICIG enjoyed positive benefits of association with the UN, but without the political pressures and bureaucratic complications of being an authorized political mission. The Salvadoran government should seek agreement with the United Nations (and/or the OAS) that

twitter.com/JuaJimenezMayor/status/965239441089597440; @JuaJimenezMayor. “Quería pasar la página y que acabe esta historia para bien de la @OEA_MACCIH. Pero debo comunicar la inferencia y violación de mis comunicaciones por la representante Claudia Barrientos. Esta es el grupo de mi familia en Lima penetrado de forma ilegal. Hay alguna explicación?”. Twitter, February 20th, 2018, 2:02 PM, <https://twitter.com/JuaJimenezMayor/status/966025312952836096>; @JuaJimenezMayor. “Con gran pesar y luego de una profunda reflexión comunicó mi renuncia al cargo de Vocer de la @OEA_MACCIH. Aquí expresé mis razones 1/1”. Twitter, February 15th, 2018, 9:53 PM, <https://twitter.com/JuaJimenezMayor/status/964331815837274112>.

²⁴ *La carta de Almagro que molestó a Juan Jiménez Mayor*. La Prensa, February 16th, 2018, https://www.laprensa.hn/honduras/1152800-410/carta_almagro-renuncia-juan_jimenez_mayor-maccih-hondurnas.

²⁵ MACCIH's budget is approximately USD\$9 million per year, <http://www.democracy-lab.org/publications/2016/9/20/what-is-maccih> ; CICIG's budget is now approximately USD\$15 million per year, but had been even higher, <https://www.economist.com/the-economist-explains/2018/05/18/what-does-cicig-do>.

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The UN has shown itself to be a more consistent, less politicized, more professional multilateral partner in Guatemala than the OAS in Honduras.

streamlines insofar as possible the bureaucratic and human resource burden, and which draws on the soundest available expertise. The government would do well to articulate what is the compelling need for a mission, and to specify technical requirements whose budget would be warranted. The UN has shown itself to be a more consistent, less politicized, more professional multilateral partner in Guatemala than the OAS in Honduras.

III. Impact and Legacy

Unclear Criteria for Assessment. It is not clear how best to assess hybrid missions. However, some combination of the specific mandated functions and the broader impact on the country's levels of impunity and accountable governance seems appropriate. The most obvious metric is their various mandates. These center on the ability of CICIG to dismantle the illegal armed groups, and the ability of MACCIH to investigate and help indict and prosecute the more serious state-linked corrupt networks. But the mandates also include their ability to influence and improve the judicial system of the two countries. Arguably, their ability to help strike decisive blows against corruption and impunity, and to leave behind stronger judicial institutions, are strong indicators. But other factors are worth considering. What if the public's broad confidence in the justice system and perception that corruption is reduced? What about these missions' contribution to cleaner elections and strengthened democratic governance? Critics argue that CICIG not only undermined state sovereignty but also fostered instability. In fact, the constitutional contestation that has occurred over the past three years reflects democratic checks and balances within the constitution and laws of Guatemala. Moreover, any uncertainty about political stability derives from criminal investigations that have largely found merit in the courts. CICIG has successfully unmasked and damaged through legal means corrupt networks that included top state officials and party leaders, including three presidents, several cabinet ministers, army officers, police officers, and economic elites who illegally influenced elections. These corrupt elites, not CICIG, bear the responsibility for political turbulence.

High-impact investigations and prosecutions took place that wouldn't have otherwise occurred. The most notable impact of CICIG and MACCIH has been supporting case investigations and converting them into indictments. Many of these cases would likely never have otherwise come to trial, although corruption in the courts (especially in Honduras) has contributed to the dismissal of cases. CICIG's investigations have exposed and disarticulated a number of illegal armed networks with links into the state. The *La Línea* case was the highest profile, showing how the president, vice president and other senior officials received a cut from a system of customs kickbacks over several years.

CICIG investigations have resulted in hundreds of convictions, but in Honduras the courts and Congress have impeded convictions in MACCIH-supported cases. Although CICIG-supported cases have enjoyed general success in convictions, MACCIH and the Honduran Public Ministry have encountered serious obstacles converting indictments into convictions. The Congress has changed laws to enhance impunity (especially its own), and the pressure on the courts remains strong.

These missions have contributed to institutional strengthening. Despite allegations of institutional weakening, most analysts (and Guatemala's most recent past two Attorneys General) believe that CICIG and MACCIH have strengthened the role of the Public Ministry, the ability of the Ministry to investigate and successfully prosecute cases, and, in the case of Guatemala, the quality of its top officials. Prosecutors have benefitted from the accompaniment and example of prosecutors from other countries with more experience in cases of corruption and organized crime. In addition, a signal early accomplishment of CICIG was to raise enough questions about the newly appointed Attorney-General Conrado Arnulfo Reyes in 2010 to spark the prompt nullification of his appointment by the Constitutional Court.²⁶ That process shaped an atmosphere that produced two highly qualified Attorneys-General who distinguished themselves by independent actions that threatened the political establishment.²⁷

Legislators in both Guatemala and Honduras created special units within their respective Public Ministries to work closely with the international mission. Guatemala's Special Prosecutorial Unit against Impunity (FECI) has worked closely as the counterpart to CICIG, even as many mission staff are also Guatemalans. MACCIH, by contrast, is much smaller and its prosecutors, criminalists and financial analysts are internationals. As MACCIH can only investigate in conjunction with the Public Ministry and can only support the prosecution by that ministry's prosecutors, the mission's work has been very much the product of UFECIC. The international missions worked with others to help vet, select and train the professionals in these units. The mission's shared responsibility (formally an effective veto power) for the selection of the head of the UFECIC was vital, helping ensure the selection of a career prosecutor with a track record of showing courage in taking on high-risk cases.

Prosecutors (in Honduras and Guatemala) have benefitted from the accompaniment and example of prosecutors from other countries with more experience in cases of corruption and organized crime.

²⁶ *The CICIG: An Innovative Instrument for Fighting Criminal Organizations and Strengthening the Rule of Law.* The Washington Office on Latin America. June 2015, https://www.wola.org/wp-content/uploads/2015/07/WOLA_CICIG_ENG_FNL_extra-page.pdf.

²⁷ Gavigan, Patrick. *Against the Odds: CICIG in Guatemala.* Open Society Justice Initiative, Washington, DC, 2016, <https://www.justiceinitiative.org/uploads/88ffafc0-09bf-4998-8ef3-e2a175e3f455/against-odds-cicig-guatemala-20160321.pdf>.

The investigations, especially by CICIG, have exposed multiple examples of criminal networks involving economic elites, politicians, and criminal figures, often with ties to officials within the police, intelligence or armed forces.

Missions take time to set up; they may require years to have impact. CICIG was widely considered a disappointment in its first two years,²⁸ by which time its investigations had produced zero convictions. MACCIH was working on only four cases at the end of its first year.²⁹ Although MACCIH was able to achieve convictions of twelve individuals by its second anniversary, it took several months to negotiate its creation, to conduct minimal initial hiring, and secure a workplace. For MACCIH, the launch of UFECIC twenty months into its term proved to be a threshold that led to a spate of indictments based on MACCIH-supported investigations.³⁰ MACCIH also benefitted from the investigations carried out by the state-created, non-governmental National Anti-Corruption Council.

CICIG's zealous investigations and success contributed to its political isolation. The success and unyielding prosecutorial mentality of Colombian jurist Ivan Velasquez, commissioner from 2013-19, undermined the qualified support he had among economic and political elites. Many praised his integrity and determination to support prosecutions emerging from all investigations no matter where they led. However, this posture also alienated constituencies that had previously tolerated CICIG, especially economic elites, leaders of most political parties, and a judiciary that perceived him as constraining its independence (and ability to let politicians and white-collar criminals off easy), and the new 'anti-corruption' president Jimmy Morales. Some observers believe that more judicious case selection, perhaps via avoiding all decision-making in the hands of a single decisionmaker, complete control over case selection.

CICIG and MACCIH assisted in exposing corrupt networks and campaign finance. The investigations, especially by CICIG, have exposed multiple examples of criminal networks involving economic elites, politicians, and criminal figures, often with ties to officials within the police, intelligence or armed forces. They have detailed heretofore hidden ways that dirty money comes into campaigns for elective offices and how legislators and the presidency illegally divert public monies to fund political parties and political campaigns.³¹

²⁸ *Guatemala, antes y después de Carlos Castresana al frente de la CICIG.* La Hora, July 31st, 2010, <https://lahora.gt/hemeroteca-lh/guatemala-antes-y-despues-de-carlos-castresana-al-frente-de-la-cicig-2/>.

²⁹ Personal interview Prof. Call with MACCIH Special Representative Juan Jimenez Mayor, January 2017.

³⁰ Call, Charles. *From Steady Progress to Severely Wounded: A Two-Year Report on the Performance of the OAS Mission in Support of the Fight Against Corruption and Impunity in Honduras.* CLALS Working Paper Series No. 18, July 30th, 2018, <https://ssrn.com/abstract=3210663>.

³¹ Dudley, Steven. *Logros y fracasos de la MACCIH en Honduras.* Insight Crime, June 22nd, 2018, <https://es.insightcrime.org/noticias/analisis/logros-y-fracasos-de-la-maccih-en-honduras/>; *Podcast de InSight Crime | El enjuiciador de presidentes.* InSight Crime, September 17th, 2018, <https://es.insightcrime.org/noticias/analisis/podcast-de-insight-crime-el-enjuiciador-de-presidentes/>; Dudley, Steven. *Élites y crimen organizado en Guatemala: la CICIG.* InSight Crime, September 1st, 2016, <https://es.insightcrime.org/investigaciones/elites-y-crimen->

These missions have made a modest contribution to public confidence that striking blows against corruption is possible through the justice system. CICIG and MACCIH have inspired a sense among the population that it is possible to strike decisive blows against corrupt senior officials and politicians. A 2015 public opinion poll found that CICIG ranked higher (at 66%) than all other institutions in public confidence, higher than even the military (50%), the evangelical (64%) and Catholic (64%) churches and teachers (61%) and the presidency (11%).³² The high-profile cases in Guatemala and Honduras have validated concerns among the publics, already generally supportive of external support for anti-corruption investigations, about widespread corruption in government. It has also shown that national prosecutors (and in the case of Guatemala, courts) can act against high-level officials and elites when backed by international missions. Unfortunately, public confidence in the justice system rated only 25% in 2015.³³

The need for relentless communication. Both CICIG and MACCIH suffered from insufficient public understanding of their mandate, its possibilities and its limits. Neither forged the close and sustained relationships of communication with civil society that could have assisted in communicating its work and in setting realistic expectations from the outset. The expectations of MACCIH were excessive given the political pressures on the Hernández administration in 2015 and the perceived role of CICIG in the resignation of Guatemala's president and vice president. Neither the government nor the mission communicated the various steps involved in assisting criminal investigations and prosecutions, much less reaching trial. Nor were the criteria for case selection communicated repeatedly to create an understanding of what cases would not be considered. In the case of CICIG, the nexus between corruption and the dismantling of illegal clandestine security groups was taken for granted and accepted by Guatemalan officials. However, it could have been communicated more clearly and repeatedly to shape public understanding.

International organizations bring advantages of capacity and profile, but also the politics of their member states. The UN and the OAS tend to shy from confronting sitting governments. Generally, their officials have been uncomfortable with a high public profile of the CICIG and MACCIH heads of mission. It is not out of the question that this relationship is transactional, as observers speculated that Luis Almagro acceded to Juan Orlando Hernandez' concerns about MACCIH in order to strengthen the likelihood of his support for Almagro's approaches to issues like Venezuela.

organizado-en-guatemala-la-cicig/.

³² *Cicig, institución major valorada por guatemaltecos; Presidencia, la peor.* Estrategia y Negocios, August 12, 2018, <https://www.estrategiaynegocios.net/lasclavesdeldia/868160-330/cicig-instituci%C3%B3n-mejor-valorada-por-guatemaltecos-presidencia-la-peor>.

³³ LaSusa, Mike. *Scandals Hurt Confidence in Guatemala Institutions: Poll.* InSight Crime, July 4th, 2016, <https://www.insightcrime.org/news/brief/scandals-confidence-in-guatemala-military-elites-poll/>. The 2014 poll was from a different source than the 2016 poll, which may largely explain differences.

Both CICIG and MACCIH suffered from insufficient public understanding of their mandate, its possibilities and its limits.

Societies creating a new international-national anti-impunity or anti-corruption mission have an opportunity to develop the sort of criteria for assessment lacking in CICIG and MACCIH.

The window is likely closing on these two experiments. Guatemala's President Morales has announced that CICIG will end when its current term expires on 3 September 2019. Even if a new president were to request a renewal, this would not occur until after the new president takes office in January 2020 and would require legislative approval. MACCIH's mandate expires in January 2020, and its current head is stepping down in June 2019, and the head of investigations is expected to assume the post. This unfortunate situation reinforces expectations that the Honduran government will not request a renewal, although this remains to be seen. Civil society organizations have stepped up their demand that MACCIH be renewed, and in May 2019, the U.S. Chargé d'Affairs praised MACCIH's work and called for its renewal.³⁴

Implications for Salvadoran Actors' Consideration: Impact and Legacy

Societies creating a new international-national anti-impunity or anti-corruption mission have an opportunity to develop the sort of criteria for assessment lacking in CICIG and MACCIH. Salvadoran officials could work with civil society to establish what sorts of goals are relevant to the Salvadoran context. Is there a level of institutional effectiveness sought? What markers for a fight against corruption are useful? To what extent should campaign finance be redressed? How will accountability be infused in other governance systems, and will civil society play a role in monitoring progress? If so, how and which organizations? Will such an effort address insecurity and impunity related to criminal gangs and their allies in the justice system?

Even with an expedited process based on months of planning, it will likely take months to negotiate an agreement with the UN or the OAS, establish MOUs with the Attorney-General's office, hire a commissioner and set up the human resource and administrative systems necessary to staff and operate the office. The selection of vetted prosecutors to work with a CICIES would be necessary but perhaps facilitated if such vetting processes have already been advanced. It makes little sense for a mission to have fewer than three or four-year initial mandate.

Of political significance, legislators in both Guatemala and Honduras eventually turned sour on the missions' investigations into their own conduct. As a result,

³⁴ @USAmbHonduras - Chargé d'Affairs Heide Fulton's Twitter account. "Gracias al @FteApoyoMACCIH por su respaldo a la MACCIH y su compromiso de aprobar leyes para combatir la corrupción. Coincidimos que el gobierno de Honduras debe extender el mandato de la @OEA_MACCIH y @Congreso_HND debe aprobar la Ley de Colaboración Eficaz de inmediato". Twitter, May 16th, 2019, 12:33 PM, <https://twitter.com/USAmbHonduras/status/1129062373581643776>; *Diputados y sociedad civil piden ampliación de vigencia de la MACCIH a la OEA*. Criterio.hn, February 20th, 2019, <https://criterio.hn/2019/02/20/diputados-y-sociedad-civil-piden-ampliacion-de-vigencia-de-la-maccih-a-la-oea/>.

members of congress from diverse political parties joined in multiple attempts to vote specific immunities for themselves. In Honduras they succeeded in at least temporarily derailing investigations into allegedly corrupt campaign financing, whereas some attempts in Guatemala were reversed under public and international pressure.³⁵ Given that the majority of legislators in El Salvador do not belong to the president's party, finding ways to take actions without legislative approval may be advisable. However, it may also open up the mission to perceptions of partisanship by President Bukele or to constitutional challenges.

The support of donors such as the United States, Germany, Canada, Sweden, the EU and others has been vital to the ability of CICIG and MACCIH to operate. The decidedly skeptical attitude of the Trump administration toward the perceived infringement on sovereignty represented by CICIG means that some guarantees, such as mechanisms to check the power of the head of mission, may be necessary to obtain U.S. support should the Bukele administration deem this important. External financial support may be vital, as reliance by international missions on national resources could open the door to legislatures zeroing out the mission budget.

In terms of the accountability of the head of mission, Salvadorans should be thoughtful. It would be advisable to consider striking some balance between the extremes of an OAS Secretary-General interjecting himself excessively in the day-to-day workings of a mission and the lack of operational accountability on CICIG's commissioner. If a mission receives official recognition as a body of an international organization, then the head of mission should be shielded from undue political interference from member states. At the same time, the U.N. Secretary-General and his secretariat could, for instance, provide greater political oversight of the Commissioner than CICIG's possesses. Another possibility to distribute decision-making is the appointment of a tripartite leadership of a mission (as was initially proposed for CICIG based on the experience of the Truth Commissions in that country) that would jointly make decisions on case selection strategy. Of course, the dysfunctional feuding that prevailed among the four heads of divisions during MACCIH first two years offers a lesson in avoiding diffuse responsibility. A crucial element of shared leadership is that the members not respond to competing authorities or interests. Another possibility that a Vice Commissioner be charged with overseeing either the management or the criminal investigations elements of a mission. Under this scenario, the political direction of the mission would reside separately from decision-making about case selection strategy.

³⁵ *Alarm as Guatemala bans head of UN anti-corruption body from country.* The Guardian, September 5th, 2018, <https://www.theguardian.com/world/2018/sep/05/guatemala-cicig-ivan-velasquez-jimmy-morales-ban.>; Flores, Alex. *Maccih denuncia pacto de impunidad en el Congreso Nacional para blindar la corrupción.* La Prensa, January 24th, 2018 <https://www.laprensa.hn/honduras/1146210-410/maccih-denuncia-pacto-impunidad-congreso-blindar-corrupcion>.

The support of donors such as the United States, Germany, Canada, Sweden, the EU and others has been vital to the ability of CICIG and MACCIH to operate.

The Salvadoran government should help articulate realistic expectations to the public of what an international mission will be able to accomplish. It should also structure the mission in such a way as to include an advisory body of civil society representatives that can help maintain fluid communication and public understanding of the mission's work and how it relates to the full spectrum of the criminal justice system in the country.

Finally, in considering the sustainability of the results and institutionalized legacy of any international mission, it might be useful to specify the post-mission integration of any special units or structures erected in conjunction with the mission.

The Salvadoran government should help articulate realistic expectations to the public of what an international mission will be able to accomplish.

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