

## HOW EFFECTIVE ARE HYBRID ANTI-CORRUPTION AGENCIES IN TACKLING POLITICAL CORRUPTION? THE CASE OF THE COMMISSION AGAINST IMPUNITY IN GUATEMALA

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**ABSTRACT:** *Literature on political corruption agrees that in contexts with widespread corruption, curbing it through institutions is insufficient. That is, formal rules like laws and anti-corruption agencies are not always obeyed or enforced because individuals regard corruption as the expected behavior. Therefore, some legal mechanisms remain unenforced. In addition, the conventional perspective suggests that fighting corruption is a problem of collective action and lack of civil society engagement. Nonetheless, scholars have ignored the role of international hybrid agencies in tackling this situation. In this article, I will propose elements to fill this gap and demonstrate that the Commission Against Impunity has proven to be an effective means of fighting political corruption and impunity in Guatemala. Similarly, the Commission's legacy challenges theoretical mainstream anti-corruption theories. Using case study methodology and pursuing a documentary review, I argue that the Commission was competent in tackling impunity, overcoming the collective action dilemma, and encouraging social participation. These outcomes were possible due to the Commission's institutional design and, to a lesser extent, cooperation between local and international actors.*

**KEYWORDS:** *Political corruption, CICIG, institutions, impunity, collective action, enforcement.*

**RESUMEN:** *La literatura sobre la corrupción política coincide en que, en contextos de corrupción generalizada, frenarla a través de las instituciones es insuficiente. Es decir, las reglas formales como leyes y agencias anticorrupción no siempre se obedecen o hacen cumplir porque las personas consideran la corrupción como la conducta esperada. Por lo tanto, algunos mecanismos legales siguen sin aplicarse. Además, la perspectiva convencional sugiere que la lucha contra la corrupción es un problema de acción colectiva y falta de participación*

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*de la sociedad civil. No obstante, los académicos han ignorado el papel de las agencias híbridas internacionales para ayudar a abordar esta situación. En este artículo, proporcionaré elementos para llenar este vacío y demostrar que la Comisión Contra la Impunidad ha demostrado ser un medio eficaz para combatir la corrupción política y la impunidad en Guatemala. De manera similar, el legado de la Comisión implica un reto a las principales teorías de combate a la corrupción. Siguiendo una metodología de estudio de caso y realizando una revisión documental, argumentaré que la Comisión fue competente para enfrentar la impunidad, superar el dilema de la acción colectiva y fomentar la participación de la sociedad. Estos resultados fueron posibles gracias al diseño institucional híbrido de la Comisión y en menor medida, a la cooperación entre actores locales e internacionales.*

PALABRAS CLAVE: *corrupción política, CICIG, instituciones, impunidad, acción colectiva, cumplimiento de la ley.*

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## I. INTRODUCTION

Corruption in all its manifestations is a phenomenon that has always existed but had not been much studied until recently. Political corruption is a widespread malaise mainly visible in countries with low-democratic development. Political corruption refers to grand corruption, “...which implies distortion or subversion of the exercise of public office so that it meets private, partisan or sectional interests”.<sup>1</sup> Or, to State capture, that is, “...where corrupt relations are used to pass laws that entrench, extend and render ‘legitimate’ corrupt gains”.<sup>2</sup> These approaches are quite broad and include several branches

<sup>1</sup> Mark Philip, *The Definition of Political Corruption*, in ROUTLEDGE HANDBOOK OF POLITICAL CORRUPTION 22 (Paul Heywood ed., 2015).

<sup>2</sup> WORLD BANK, ANTI-CORRUPTION IN TRANSITION: A CONTRIBUTION TO THE POLICY DEBATE (Policy Research Working Paper, 2000).

of the State. In this article we are interested in evaluating political corruption from the perspective of impunity, a non-existence or weakness of the rule of law and a lack of enforcement overview.

The fight against political corruption has been studied from different angles, from the institutional and enforcement viewpoint to the sociological and anthropological perspective. All of them contribute to understand the phenomenon, prevent it and strive to reduce it. These approaches take into account diverse reference frameworks in an attempt to tackle the problem. Nonetheless, they all highlight the importance of the context: the tools for assessing are not necessarily the same in a mature democracy compared to those in an incipient one. In the former case, working on incentives and increasing penalties could have satisfactory results. However, in the latter setting, the results would not be as positive if relying only on institutional means.

In order to counteract grand corruption, anti-corruption institutions and agencies have been set in motion. Building anti-corruption agencies is a recent phenomenon which generates regular debates. Likewise, a great deal of literature has focused on assessing the mechanisms for the implementation, creation and application of formal rules and specialized laws. The International Commission to Combat Impunity in Guatemala (CICIG by its Spanish acronym) provides meaningful insights to theoretical and empirical anti-corruption studies for several reasons. First, because it is the first institution of its kind; that is, it is unique in its legal nature and implies an institutional experiment to address a specific social problem. Secondly, it is important in revealing how theories on the fight against corruption (i.e., principal-agent and collective action) fit in this new empirical institution. Third, on an academic level, it is very interesting to observe how CICIG coexists with the Guatemalan reality. Guatemala is one of the countries with the highest rates of homicide, impunity, lack of enforcement and political corruption in the world.<sup>3</sup> Finally, as will be further explained, it is important to spot how an international agency works with national institutions.

This article offers an original research in anticorruption literature. Hybrid Anticorruption Agencies are a new phenomenon, and some literature has discussed such agencies. For instance, Charles Call & Hallock<sup>4</sup> systematize what happened in Guatemala and Honduras during the lifespan of their hybrid agencies. Some legal literature has explained the *sui generis* legal nature of Guatemala's Commission. Zamudio-González<sup>5</sup> analyzed the nature of the Commission in Guatemala as a self-governing organization and focused her analysis on the Commission's management from an organizational theory

<sup>3</sup> HAL BRANDS, CRIME, VIOLENCE, AND THE CRISIS IN GUATEMALA: A CASE STUDY IN THE EROSION OF THE STATE (Strategic Studies Institute, 2010).

<sup>4</sup> Charles Call & Jeffrey Hallock, *Too Much Success? The Legacy and Lessons of the International Commission Against Impunity in Guatemala*, 24 CLALS WORKING PAPER SERIES (2020).

<sup>5</sup> Laura Zamudio-González, *La Comisión Internacional contra la Impunidad en Guatemala (CICIG). Una organización autodirigida*, LVIII 3 (233) FORO INTERNACIONAL (2018).

perspective. In addition, this author studied the work of hybrid anticorruption agencies in their fight against corruption. This scholar concludes by stating that the Commission in Guatemala was effective but a victim of its own originality. However, despite this theoretical progress, some issues need to be addressed. This article focuses on contrasting the main anti-corruption theories in contexts with systemic corruption with that which empirically occurred in Guatemala with the CICIG.

This article contributes to anticorruption studies in several ways. Initially, it brings ideas about the role of international hybrid institutions in helping tackle grand corruption; then, it offers a critical review of the existing literature while providing insights on policy-building and institutional-strengthening. Considering the fact that the CICIG experience sheds light on civic engagement to fight corruption, this article proposes some of the lessons learned and opportunities for future progress. Lastly, this work highlights topics that have not been addressed in available and could be the focus for further analysis.

This article argues that CICIG was effective in reducing impunity (political corruption) in Guatemala due to the uniqueness of the Commission's legal status as a joint complainant (co-prosecutor) (*querellante adhesivo*), as well as an autonomous entity in terms of its functions, operations and financial structure. In addition, the CICIG's good performance was possible because of cooperation among local justice institutions, the Commission and the international community. A holistic approach to fighting corruption aids to dismantle illegal networks by capturing key political elites and provides legal assistance in consolidating national judicial institutions. The CICIG's performance was a positive sign for Guatemalan citizens. As a result, collective action dilemmas were overcome, and civil society mobilized against political corruption in Guatemala.

The first part addresses the theories on fighting corruption contained in current literature. The next part details the analytical framework, followed by a description of the situation of pervasive corruption in Guatemala. The following section lists the favorable CICIG actions and achievements during its 12-year existence. The effectiveness of the CICIG's performance in the Central American country is then analyzed. Finally, conclusions, public policy recommendations, and areas for future research are outlined.

## II. LITERATURE REVIEW: THE INSTITUTIONAL AND COLLECTIVE ACTION APPROACH TO FIGHTING CORRUPTION

Studying institutions is fundamental for political science and legal research because understanding how institutions (in)formally work provides a holistic explanation to come up with a better approach to deal with social, economic, or political issues. Institutions determine the opportunities in a society and

direct the way actors behave. Institutions matter<sup>6</sup> because they set the rules of the game, which in turn shape human behavior and spearhead incentives in all types of political, social, or economic exchanges. Since institutions organize political and social order, they reduce uncertainty by providing a structure to everyday life.<sup>7</sup>

When discussing the concept of institution, it is important to distinguish between formal and informal ones. A formal institution is a relatively “enduring collection of rules and organized practices, embedded in structures of meaning and resources that are relatively invariant in the face of turnover of individuals and relatively resilient to the idiosyncratic preferences and expectations of individuals and changing external circumstances”.<sup>8</sup> As mentioned, formal institutions are all the structures and processes put together in a specific place and context and applied among different actors. Conversely, informal institutions refer to “socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels”.<sup>9</sup> Thus, an informal institution is better understood as a cultural value, a tradition or an action that is only possibly interpreted within a particular place and time.

The way we approach the concept of institution is worth clarifying. An institution constitutes a set of incentives which rules power relations and constrains actors’ behavior. Institutions refer to practices, traditions, and customs, as well as political organizations. From an etymological and semantic point of view, the concept of institution resembles that of an organization or an agency; that is, to the physical representation of a mandate or obligation. For the purposes of this article, we refer to the concept of institution in both senses: broadly as incentives and as a synonym of organization or agency.

Institutionalism endorses the principal-agent theory, which is one of the main analytical frameworks used to analyze politics, legal enforcement, institutional change, and political order. Principal-agent perspective assumes that actors behave rationally to maximize their interests. Principals are normally identified as individuals (citizens) while agents are viewed as powerholders like bureaucrats, incumbents, decision-makers, or public officials. Both parties pursue their interests, yet they remain constrained by laws and institutions. Under this logic, agents engage in corruption when they assess the potential profit to outweigh the risk. In order to satisfy a general common good, the principal actor gives the agent power to act on behalf of the constituency.

<sup>6</sup> DOUGLAS NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE (Cambridge Univ. Press, 1<sup>st</sup> ed., 1991); Adam Przeworsky, *Institutions Matter?* 39 (4) GOV. AND OPP. 527 (2004).

<sup>7</sup> James March & John P. Olsen, *Institutional perspectives on political institutions*, 9 (3) GOVERNANCE 247 (1996).

<sup>8</sup> James March & John P. Olsen, *Elaborating the New Institutionalism*, in THE OXFORD HANDBOOK OF POLITICAL INSTITUTIONS 3 (Oxford University Press, 1<sup>st</sup> ed., 2008).

<sup>9</sup> Gretchen Helmke & Steven Levitsky, *Informal Institutions and Comparative Politics: A Research Agenda*, 2 (4) PERSPECTIVES ON POLITICS 730 (2004).

However, corruption occurs anytime agents pursue their own interests instead of complying with the collective will and therefore, undermine social wellbeing. If the rules are effectively designed and enforced, agents will reduce the number of incentives to engage in corruption because they know the consequences. This is the reason why building and enforcing institutions is fundamental for fighting corruption.

While this legal framework and theoretical approach have been useful in more advanced democracies,<sup>10</sup> it has not been that helpful in reducing systemic corruption in countries with weak institutions.<sup>11</sup> In contexts where corruption rules, a principal-agent approach is still an unsatisfactory theoretical explanation because there are no incentives for agents to defend institutions. An actor may obtain more benefits from noncompliance than by obeying formal rules. Wherever corruption is endemic, formal institutions are largely not obeyed and anticorruption agencies are hardly functional or are implemented ineffectively.<sup>12</sup> Rather than respecting formal rules, patterns of informal institutions prevail in weak institutional contexts and political leaders “seem to at least passively maintain the corrupt system”.<sup>13</sup> In the context of a corrupt setting, it is more costly to be honest than to engage in corrupt activities because there are no incentives to uphold anticorruption agencies.

In places with mature institutions and the rule of law, fixing the incentives (in terms of the principal-agent framework) or increasing the penalties suffice to tackle corruption. Nonetheless, in less fortunate places, the institutional perspective is useful but requires other analytical tools. To understand corruption and the way it works in highly corrupt places, corruption must be seen as a component of the economic, legal, and political system.<sup>14</sup> Collective action scholars shed light on this situation. According to this analytical framework,<sup>15</sup> “what action should be taken should be expected to depend on

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<sup>10</sup> Michael Johnston, *Fighting systemic corruption: Social foundations for institutional Reform*, 10 EUR. J. DEV. RES. 85 (1998).

<sup>11</sup> Derick W. Brinkerhoff, *Assessing political will for anti-corruption efforts: an analytic framework*, PUB. ADMON. AND DEVELOPMENT 239 (2000); ODD-HELGE FJELDSTAD & JAN ISAKSEN, *ANTI-CORRUPTION REFORMS: CHALLENGES, EFFECTS AND LIMITS OF WORLD BANK SUPPORT* (IEG World Bank Working Paper, 2008); MICHAEL JOHNSTON, *SYNDROMES OF CORRUPTION. WEALTH, POWER AND DEMOCRACY* (Cambridge Univ. Press, 1<sup>st</sup> ed., 2005); Jakob Svensson, *Eight Questions about Corruption*, 19 (3) JOURNAL OF ECONOMIC PERSPECTIVES 19 (2005). Morris Szeftel, *Misunderstanding African Politics: Corruption and the Governance Agenda*, 25 (76) REVIEW OF AFRICAN AMERICAN POLITICAL ECONOMY 221 (1998).

<sup>12</sup> *Id.*

<sup>13</sup> Anna Persson et al., *Why Anti-Corruption Reforms Fail-Systemic Corruption as a Collective Action Problem*, 26 (3) GOVERNANCE AN INTERNATIONAL JOURNAL OF POLICY, ADMINISTRATION, AND INSTITUTIONS 449 (2013).

<sup>14</sup> RASMA KARKLINS, *THE SYSTEM MADE ME DO IT. CORRUPTION IN POST-COMMUNIST SOCIETIES* (Routledge, 1<sup>st</sup> ed., 2016).

<sup>15</sup> ELEONOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* (Cambridge Univ. Press, 1<sup>st</sup> ed., 1990).

shared expectations about how other individuals will act".<sup>16</sup> Therefore, our expected gain from corruption crucially depends on the number of other people we expect to be corrupt.<sup>17</sup> In places plagued with corruption, neither the agent nor the principal is expected to be honest due to the fact that being corrupt outweighs the benefits of being honest. Hence, the expected behavior is to act dishonestly.

Mungiu-Pippidi<sup>18</sup> refers to this situation when she explains the transition from competitive particularism to ethical universalism. In a context of competitive particularism, despite contested elections and pluralism, the rule of law is unequally enforced, the allocation of resources is not uniform and rent seeking is a frequent practice. The step after electoral democracy is to work on institutional strengthening and governance. In order to achieve the next stage, other components must be considered within the democratic equation. An organized civil society, moral values, free media or culture and social capital are some of the tools needed to attain ethic universalism and better governance. However, as explained by this author, collective action is difficult to overcome because the expected actions are based on particularism and self-interested motivation rather than on broader collective gain.

Corruption is now a problem of collective action because it is not just the sum of individuals seeing to satisfy their keenest interest. Corruption has a social component and organizational dynamics;<sup>19</sup> corruption is socially dense;<sup>20</sup> or even has deeply cultural and anthropological backgrounds;<sup>21</sup> corruption is contextual;<sup>22</sup> it is the result of bad social and state planning, of a deviation of public policies; it is the consequence of partial or incomplete development or incomplete democratization.<sup>23</sup> In other words, it is not just about evaluating

<sup>16</sup> ROBERT J. AUMANN & JACQUES.H. DREZE, WHEN ALL IS SAID AND DONE, YOU PLAY AND WHAT SHOULD YOU EXPECT? (Center for Rationality and Interactive Decision Theory, The Hebrew University of Jerusalem, 2005); Herbert Gintis et al., *Explaining Altruistic Behavior in Humans*, 24 (3) EVOLUTION AND HUMAN BEHAVIOR 153 (2012).

<sup>17</sup> Pranab Bardhan, *Corruption and Development: A Review of Issues*, 35 (3) JOURNAL OF ECONOMIC LITERATURE 1331 (1997).

<sup>18</sup> ALINA MUNGIU-PIPPIDI, *Controlling Corruption Through Collective Action*, 24 (1) JOURNAL OF DEMOCRACY 101 (2013). For further reading, see HEATHER MARQUETTE & CARYN PFEIFFER, CORRUPTION AND COLLECTIVE ACTION U4 RESEARCH PAPER (2015). Available at: <http://www.dlprog.org/publications/corruption-and-collective-action.php>.

<sup>19</sup> David Arellano Gault, *Corrupción como proceso organizacional: comprendiendo la lógica de la desnormalización de la corrupción*, 62 (3) REV. CONTAD. ADM. 810 (2017).

<sup>20</sup> *Id.*, at 811.

<sup>21</sup> Davide Torsello, *The ethnographic study of corruption: Methodology and research focuses*, in ROUTLEDGE HANDBOOK OF POLITICAL CORRUPTION (Gaults de Graaf ed., 2010).

<sup>22</sup> NORAD, *Contextual Choices in Fighting Corruption: Lessons Learned*, NORWEGIAN AGENCY FOR DEVELOPMENT COOPERATION (2011).

<sup>23</sup> LARRY DIAMOND, DEVELOPING DEMOCRACY: TOWARD CONSOLIDATION 92 (Ed. John Hopkins University Press, 1999); Alina Mungiu-Pippidi, *Corruption: Diagnosis and Treatment*, 17 (3) JOURNAL OF DEMOCRACY 86 (2006).

human behavior to pursue their involvement in their particular action or not; it is a holistic stance; it is about networks of people, processes and routines, organizational dynamics, actions that make up a state complexity in which corrupt practices are either present or not. The concept of corruption is very complex. In this article, we hold a comprehensive approach to study the conceptualization and fight against corruption.

Literature on corruption has ignored the role of international commissions in tackling political corruption. Despite the empirical failure of anticorruption reforms in contexts with widespread corruption, the argument provided herein suggests that international commissions have acted as hybrid institutions helping local ones to curb corruption effectively and have contributed to reducing endemic corruption. This has been possible because of the Commission's legal status which guarantees the autonomy of its financial and administrative operations. As an institution with co-prosecutorial faculties, the Commission has had a satisfactory role in the Guatemalan judicial system. As the Commission is independent and remains separate from the political order and preferences, it aids in providing a new order and political equilibrium.

### III. ANALYTICAL FRAMEWORK

Corruption is a very complex phenomenon. Its study has an interdisciplinary perspective, and no single approach outweighs another. All contributions are equally valuable. It is not just about individual acts, but also about social actions and networks that frame and maintain a corrupt system. At a micro level, corruption arises when individual daily actions deal with the public misappropriation of State agencies (bureaucratic corruption or petty corruption). On the other hand, political corruption covers the highest spheres of power, involving political actors ranging from decision-makers, judges, the private sector, or parallel State structures to organized crime. This article analyzes the political corruption dynamics when confronting anti-corruption agencies.

Two points should be explained in detail: a) the fight against corruption from an institutionalist approach and b) hybrid institutions and their dynamics in working with international and local recipients. Regarding the former, we have already mentioned that corruption is mainly analyzed through a cost-benefit approach. To the extent that specialized anti-corruption agencies are established, institutions are expected to be capable of curbing massive acts of political corruption. Anti-corruption agencies (ACAs) have been established in both advanced and more fragile democracies. Empirical evidence suggests that after their implementation, ACAs have been unsuccessful in less democratic contexts.<sup>24</sup>

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<sup>24</sup> FJELDSTAD & ISAKSEN, *supra* note 11, at 25. Tomas Otahal, Petr Wawrosz & Milan Plat, *What is the contribution of the Theory of Redistribution Systems to the Theory of Corruption?* 13 (2) REVIEW

As to the second distinction, international institutions are “a formal, continuous structure, established by agreement between governmental and/or non-governmental members of two or more sovereign states with the purpose of achieving a common interest”.<sup>25</sup> The name of hybrid agencies (HAs) is given to certain kinds of agencies according to the level of participation and involvement of national and international actors. Empirically, some examples consider international participation a mainstay compared to domestic agents; other instances might prioritize national sovereignty over external involvement. For some international relations scholars, hybrid institutions are related to peace courts and State-building assistance.<sup>26</sup>

As far as the literature and empirical recent review show, no hybrid anti-corruption nor anti-impunity agency has preceded the Commission Against Impunity in Guatemala. To some extent, this situation can be explained by the fact that, in order to create the HA, some requirements must be fulfilled. HA have been set up in contexts with adverse circumstances related to maintaining public peace, working with a precarious public order or other core governance activity failures. In the fight against corruption, these institutions have been designed to face contexts of State capture.

Besides Guatemala, this kind of institutional architecture was later developed in Honduras and planned for El Salvador. These countries suffer from devastating conditions of ungovernability. These scenarios illustrate how impunity and political corruption outstripped the rule of law and the State’s capacity to counteract them. Therefore, the institutional design of hybrid anti-corruption agencies (HACAs)<sup>27</sup> represents an initial step towards greater opportunities to curb political corruption. Besides design, other conditions must coexist to have better chances of success.

First, a state capture situation is required. In this particular case, it is worth mentioning the overwhelming failure of institutions for the administration of justice. A captured State is not a failed State in the sense defined by interna-

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OF ECONOMIC PERSPECTIVES 93 (2013); Nicolas Charron, *Mapping and Measuring the Impact of Anti-Corruption Agencies: A New dataset for 18 countries* (November 2008) (unpublished manuscript, Paper presented at the New Public Management and the Quality of Government Conference); WORLD BANK INSTITUTE, ANTI-CORRUPTION COMMISSIONS: PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION? (2004).

<sup>25</sup> CLIVE ARCHER, INTERNATIONAL ORGANIZATIONS 33 (Routledge, 2014) (1983).

<sup>26</sup> GREG FRY & TARCISIUS TARA KABUTAULAKA, INTERVENTION AND STATE-BUILDING IN THE PACIFIC: THE LEGITIMACY OF CO-OPERATIVE INTERVENTION (Manchester University Press, 2008); Stephen Krasner, *Sharing Sovereignty: New Institutions for Collapsed and Failing States*, 29 (2) INTERNATIONAL SECURITY 84 (2004); Aila Matanock, *Shared Sovereignty in State-Building: Explaining Invited Interventions* (August 29, 2013) (unpublished manuscript, Paper presented at the American Political Science Association Annual Meeting, Chicago, IL).

<sup>27</sup> I borrowed the term from Laura Zamudio-González, *Hybrid Anticorruption Agencies*, in INTERNATIONAL INTERVENTION INSTRUMENTS AGAINST CORRUPTION IN CENTRAL AMERICA 19-43 (Zamudio G. ed., 2020).

tional relations; that is, the failure or structural anomie in public goods provisions or services or the inability to meet citizen demands.<sup>28</sup> This has broad consequences for aligning State order. For the purposes of this article, we constrain ourselves to the legal and judicial perspective of State capture; that is, a captured State as an unpunished State where the lack of punishment and the absence of legal compliance prevails. This leads to a situation of institutional weakness<sup>29</sup> and the co-optation of justice performance.<sup>30</sup> There lies the debate: in a perception of systemic and institutional weakness explained by the elites' lack of political will to enforce the rule of law.

Michael Johnston<sup>31</sup> suggests a typology to classify political corruption based on the participation of individuals and institutional strength or weakness. The author argues that the penetration of corruption is complex even in advanced democracies. Johnston defines corruption in consolidated democracies as influence markets and elite cartels while contexts with more fragile institutions are known as oligarchs, clans and official moguls.<sup>32</sup> The main distinction between each category is based on the fact that even when corruption takes on pervasive roles, this situation does not imply a generalized condition in more democratic countries. We are in the presence of isolated events and institutions are strong enough to hold back this problem. In contexts of weaker democracies, corruption is a structural problem, institutions are weak, and State capture is visible.

Therefore, it is important to highlight that although consolidated democracies with complex corruption problems exist, these problems are not comparable with more fragile democracies where corruption is pervasive. There is much debate on the levels of democratic development and there are no guarantees to ensure that established democracies will not suffer backsliding into authoritarianism. In fact, this is an unfortunate practice in several countries.<sup>33</sup> What is important to bear in mind is the level of penetration of corruption in government institutions. In other words, institutional weakness

<sup>28</sup> Daniel Thürer, *The “failed State” and international law*, 81 (836) INTL. REV. RED CROS 731 (1999); W. ZARTMAN ET AL., COLLAPSED STATES: THE DISINTEGRATION AND RESTORATION OF LEGITIMATE AUTHORITY 1-15 (William Zartman ed., Lynne Rienner Publishers, 1995). John Sebastian Zapata Callejas, *La teoría del Estado Fallido: entre aproximaciones y disensos*, 9 (1) REVISTA DE RELACIONES INTERNACIONALES ESTRATEGIA Y SEGURIDAD 89 (2014).

<sup>29</sup> Steven Levitsky & María Victoria Murillo, *Variación en la Fortaleza Institucional*, 24 REVISTA DE SOCIOLOGÍA 31 (2010).

<sup>30</sup> CICIG, GUATEMALA: UN ESTADO CAPTURADO (2019).

<sup>31</sup> Johnston, *supra* note 10, at 38.

<sup>32</sup> *Id.*

<sup>33</sup> Nancy Bermeo, *On Democratic Backsliding*, 27 (1) JOURNAL OF DEMOCRACY 5 (2016); Anna Lührmann et al., *A third wave of autocratization is here: What is new about it?* 26 (7) DEMOCRATIZATION 1095 (2019). For Latin America experience, see ANÍBAL PEREZ LIÑÁN, PRESIDENTIAL IMPEACHMENT AND THE NEW POLITICAL INSTABILITY IN LATIN AMERICA (Cambridge Univ. Press, 2007).

translated into impunity and lack of enforcement are the criteria used to judge whether a State has been captured in its judicial and justice authorities. Many countries with structural corruption have gained democratic conditions such as political competition, the presence of civil society, and accountability mechanisms, among others.<sup>34</sup> Guatemala, which Johnston considers an example of pervasive corruption, safeguards electoral democratic elements and accountability. As a matter of fact, civil society played a decisive role in fostering the creation of the CICIG. Therefore, it is pertinent to stay with the argument that (un)democratic presences adopt forms that go beyond traditional definitions. Then, it is better to focus on justice administration capture as the leading idea in our argument.

Second, the argument suggests political will as a condition in establishing a hybrid anti-corruption agency (HACA). This step requires a) official acknowledgement of the situation and b) an official request for international assistance. These constitute the ideal circumstances for compliance and may seem fairly simple requirements, but they are not. A country is rarely willing to delegate its sovereignty. Literature on international relations has studied how the degree of delegating sovereignty to a third party brings positive or negative consequences on the provision of public goods<sup>35</sup> or how to design strong domestic institutions on a long-term basis extending beyond external assistance.<sup>36</sup>

International non-governmental institutions are a relatively frequently used tool in international law. Through them, sovereignty is delegated so that one or several external actors can cooperate with local institutions in the provision of a public good (i.e., security, peace, rule of law). The degrees of delegation vary. In some agreements, foreign aid can be reduced to simple advice or recommendations, while in others it implies full delegation; in other words, substituting national authorities for external ones. In this regard, interesting debates have arisen in an attempt to discover how the type and degree of delegation affects the provision of a service.<sup>37</sup>

In the particular case of anti-corruption agencies, the CICIG is the first hybrid organization that seeks to address the problem of systemized corruption in a given context.<sup>38</sup> The fight against corruption has been confined to national agencies. Therefore, the legal nature of the CICIG gains importance because it implies a commitment to the fight against corruption from the per-

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<sup>34</sup> This refers to an incomplete democratization. Even with democratic electoral conditions, accountability mechanisms, it still lacks progress in guaranteeing rights, eliminating corruption, strengthening institutions, and so on.

<sup>35</sup> Aila Matanock, *Governance Delegation Agreements: Shared Sovereignty as a Substitute for Limited Statehood*, 27 (4) GOVERNANCE: AN INT. JOURNAL OF POL., ADM. AND INST. 589 (2014).

<sup>36</sup> THERESA REINOLD, THE CAUSES AND EFFECTS OF HYBRID ANTI-IMPUNITY COMMISSIONS: OUTLINE OF A RESEARCH AGENDA (Global Cooperation Research Papers, 2020).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

spective of cooperation between local and international actors. Likewise, the CICIG was considered a success story by the international community. Thus, some neighboring Central American countries (Honduras and El Salvador) sought to replicate the exercise in their territory.

The hybrid legal nature of the anti-corruption agency implies a balance between different factors: the sovereignty of the host state must not be placed at risk and national institutions must be respected; similarly, domestic, and external efforts should address law-enforcement culture. Interference from powerful political elite networks must be left out. A hybrid design implies an appreciation for local sovereignty, which means that a HACA operates under host State laws, under host State courts and under local criminal procedure. International law is not enforced, so HACAs must be committed with host country's culture of legality and favor policies strengthening national justice institutions.

Another key element acting as a causal mechanism is internal and external inter-institutional cooperation. Any legal and institutional framework requires an adequate chain of enforcement. For that, the actors involved must be willing to cooperate. When facing a scenario which includes national and international actors, coordination and willingness to work together are key elements to succeed. The pact is functional for all parties in the extent that everyone agrees. Thus, the actors feel they are part of the agreement, pursue normative preferences towards democracy,<sup>39</sup> and extend their time frame beyond short-term expectations.<sup>40</sup> Powerful actors should not be excluded from bargaining or if excluded, said actors should not be powerful enough to revert the agreement.<sup>41</sup>

This model is mostly designed for advanced democracies. The Latin America region is plagued with informal institutions and powerful actors operating outside the law. Although it is a bleak picture, institutions can work through inclusiveness, negotiation, cooperation, and legitimacy among stakeholders. Furthermore, an advantage in HACA design is that it combines this duality (formality-informality) and strives to transmit the strength, independence, and impartiality of external demands to the local context.

This argument suggests that the institutional design and internal and external inter-institutional cooperation yield positive results in the fight against political corruption, especially if a holistic<sup>42</sup> approach to combat it is taken

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<sup>39</sup> Aníbal Pérez-Liñán & Scott Mainwaring, *La supervivencia de la democracia en América Latina (1945-2005)*, 68 AMÉRICA LATINA HOY: REVISTA DE CIENCIAS SOCIALES 139 (2014).

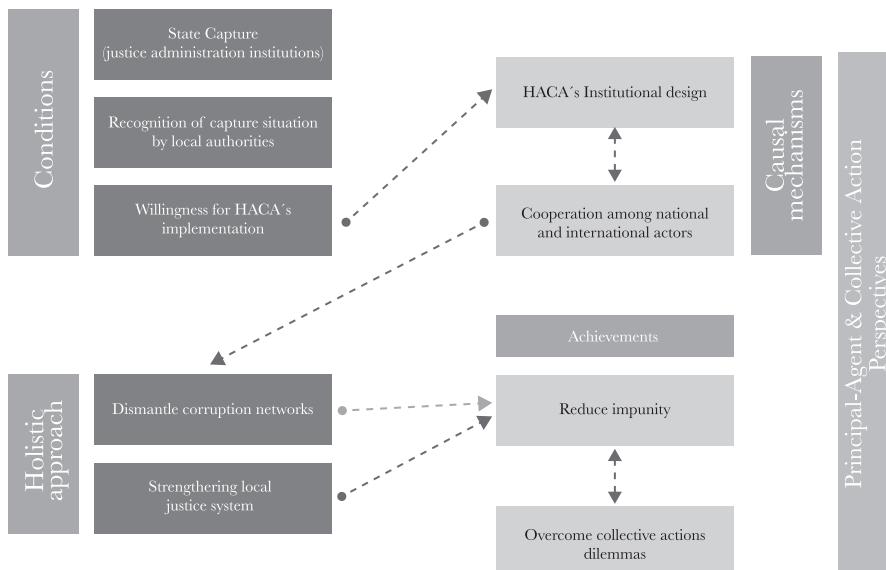
<sup>40</sup> Levitsky & Murillo, *supra* note 29, at 34-37; Guillermo O'Donnell, *Estado, democratización y ciudadanía*, 128 NUEVA SOCIEDAD 62 (1993).

<sup>41</sup> *Id.*

<sup>42</sup> This implies taking into account a comprehensive and not an individual perspective of the dynamics of corruption in which this problem is the result of a set of (in)actions and processes in which “various actors - individual and collective - with interests and diverging agendas.” *See* Gault et al., *supra* note 19, at 95.

into account and resources are invested in domestic institutional strengthening. The consequences show a tendency to a reduction of impunity when dismantling criminal networks. In turn, HACAs gain a favorable opinion in citizen perception and favorable insights to overcome collective actions.<sup>43</sup> This social phenomenon is a crucial outcome to reactivate public trust in the institutions for the administration of justice and in popular support. An individualistic stance on corruption is thus abandoned as it becomes a social request and a collective demand. The argument described above is illustrated in the following figure:

FIGURE 1: THE IDEAL OPERATION OF HACA's



SOURCE: Author.

#### IV. THE CONTEXT OF GUATEMALA'S ENDEMIC CORRUPTION

Guatemala suffered a violent civil war (1960-1996) with massive human rights violations, extrajudicial assassinations, and thousands of civilian disappearances. To bring an end to the conflicts and after much negotiation, peace agreements were made. Their main objectives were to pacify/ the country and minimize the presence of Illegal Clandestine Security Apparatuses (*cu-*

<sup>43</sup> To overcome collective actions problems (dilemmas) refers to the idea of lack of individual incentives that discourages social action to pursue a common (mainly beneficial) goal. This situation refers to a failure to achieve a social gain due to the fact of self-interested and rational individuals who are unwilling to cooperate or if cooperating they fail in coordinating.

*erpos ilegales y aparatos clandestinos de seguridad; CIACS).* These groups consisted of illicit networks that infiltrated the highest spheres of power. Despite efforts (the United Nations were involved in several peace processes),<sup>44</sup> progress was non-existent and the CIACS continued their operations. In 2000, the National Police of Guatemala reported 2904<sup>45</sup> homicides per 100,000 inhabitants. By 2007, this number reached 5781. Guatemala, along with the other Central American Northern Triangle countries (El Salvador and Honduras), has one of the highest homicide rates in the world.<sup>46</sup> This comes with endemic impunity, political prisoners and a security crisis. These countries underwent continuous authoritarian regressions<sup>47</sup> and their institutions remain very weak.<sup>48</sup> This situation ignited public opinion. Civil society as well as domestic authorities asked for international help. After several attempts, a petition came into being in the form of the Agreement on the Establishment of the International Commission Against Impunity in Guatemala (CICIG by its Spanish acronym).

In addition to the situation of violence and the general weakness of the political institutions in the Guatemalan system, the administration and prosecution capture situation is alarming. The head of the executive branch has been able to submit to the legislature by buying congressmen to approve the presidential political agenda. The judicial system is plagued with irregularities, a lack of transparency and accountability, and many higher-ranking judicial positions driven by appointment favors. Furthermore, organized crime has infiltrated institutions and reached decision-makers. Economic and private elites are also colluded with the partial justice system and in many cases operate by illicitly financing electoral campaigns in exchange for million-dollar contracts.<sup>49</sup>

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<sup>44</sup> Brands, *supra* note 3.

<sup>45</sup> CICIG, *Informe de Cierre EL legado de justicia en Guatemala; Informe Anual de Labores CICIG 2019 ¡Juntos Lo Hicimos!, COMISIÓN INTERNACIONAL CONTRA LA IMPUNIDAD EN GUATEMALA* (2019).

<sup>46</sup> Dinorah Azpuru, *Peace and Democratization in Guatemala: Two Parallel Processes*, in COMPARATIVE PEACE PROCESSES IN LATIN AMERICA, (Stanford, Stanford University Press, 1999); ADRIANA BELTRÁN & SUSAN PEACOCK, HIDDEN POWERS IN POST-CONFLICT GUATEMALA (WOLA, 2003), available at: <https://www.wola.org/sites/default/files/downloadable/Citizen%20Security/past/Hidden%20Powers%20Long%20Version.pdf>.

<sup>47</sup> See Polity IV Project: Political Regime Characteristics and Transitions, available at: <https://www.systemicpeace.org/polity/polity4.htm>; Anibal Pérez-Liñán et al., *Presidential Hegemony and Backsliding in Latin America, 1925-2016*, 26 (4) DEMOCRATIZATION 606 (2019).

<sup>48</sup> STEVEN LEVITSKY, ET AL., THE POLITICS OF INSTITUTIONAL WEAKNESSES IN LATIN AMERICA (Cambridge Univ. Press, 1st ed. 2020); *Judicial Corruption in Central America*, (Foundation for Due Process), available at: [http://www.dplf.org/sites/default/files/1196715002\\_0.pdf](http://www.dplf.org/sites/default/files/1196715002_0.pdf).

<sup>49</sup> CICIG, *supra* note 30; FUNDACIÓN MYRNA MACK, IMPUNIDAD Y REDES ILÍCITAS: UN ANÁLISIS DE SU EVOLUCIÓN EN GUATEMALA (2019).

### 1. CICIG

In response to a petition drawn up by civil society and supported by both the public and private sectors, the Guatemalan government signed an agreement with the United Nations to create the International Commission Against Impunity in Guatemala (*Comisión Internacional de Combate a la Impunidad; CICIG*) in December 2006. The CICIG differs from other kinds of already created international commissions.<sup>50</sup> While some scholars highlight the underlying nature of the Commission as a transnational justice figure,<sup>51</sup> many others stress its hybrid status.<sup>52</sup> The CICIG has a hybrid configuration that combines cooperation between international authorities and national authorities.

The CICIG functions stipulated in the Agreement on the establishment are: a) to investigate and dismantle illegal groups and clandestine security organizations (CIACS) that have infiltrated the State and undermined human rights; (b) to collaborate with the State to dismantle CIACS; and (c) to provide public policy recommendations designed to eradicate CIACS and prevent their return, including judicial and institutional reforms.<sup>53</sup> In the first article of the aforementioned agreement, CIACS are defined as groups that illegally undermine citizens' ability to exercise political and civil rights and that have links to State officials or that can create impunity for their actions (Art. 1).

The CICIG is a hybrid institution which balances international and domestic political institutions and actors. Unlike other UN missions (i.e., peace or aid) where UN intervention is considerable in appointing, supervising, funding, etc., the UN only intervenes in the CICIG to appoint the Commis-

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<sup>50</sup> International assistance institutions were originally created by the United Nations in order to accompany peace processes in collapsed States after traumatic events like civil wars. See Stephen Krasner, *Sharing Sovereignty: New Institutions for Collapsed and Failing States*, 29 (2) INTERNATIONAL SECURITY 29 (2004). For instance, Sierra Leone and Guatemala went through civil wars and both countries were supported by the UN after the end of its internal conflicts. The UN has helped to clarify past events such as genocides, large-scale crimes, and human rights violations through the creation of Historical Truth Commissions (i.e., Ecuador, Ayotzinapa in Mexico, Sierra Leone). In some cases, sovereignty is fully delegated (trusteeships); in others, the mission pursues a shared sovereignty *modus operandi*, while in yet others, the UN serves as an advisor and policy guide. None of these missions includes years of overseeing investigations or cooperation and staff collaboration. The CICIG focuses on Guatemala's current situation of impunity.

<sup>51</sup> Tove Nyberg, *The International Commission Against Impunity in Guatemala: A Non-Traditional Justice Effort*, 28 (1) REVUE QUÉBECOISE DE DROIT INTERNATIONAL 157 (2015).

<sup>52</sup> Michael, Günther, *Intervention by Invitation? Shared Sovereignty in the Fight against Impunity in Guatemala*, 101 EUROPEAN REVIEW OF LATIN AMERICAN AND CARIBBEAN STUDIES 5 (2016); THE INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA: A WOLA REPORT ON THE CICIG EXPERIENCE (Washington, DC: The Washington Office on Latin America, June 2015).

<sup>53</sup> Commission Against Impunity in Guatemala (CICIG; Spanish acronym) Agreement Between the United Nations and the State of Guatemala on the Establishment of an International Commission against Impunity in Guatemala, December 2006.

sioner. UN assistance is limited to guiding policy and reforming proposals, as well as mutual staff cooperation. The Commission does not have independent prosecution faculties. However, it serves as a *querellante adhesivo*<sup>54</sup> in which the CICIG Commissioner acts as a joint complainant (co-prosecutor) or *querellante adhesivo* and does not at any point imply sharing sovereignty. Local Guatemalan institutions (Public Ministry, National Police) carry out investigations, criminal prosecution, and the administration of justice. All procedures follow Guatemalan national laws.<sup>55</sup> The CICIG intervenes to accompany criminal investigations and prosecution processes. Under the principle of complementarity, the Commission has independent investigation capacity but is constrained to present cases to the Public Prosecutor.<sup>56</sup> The CICIG does not have enforcement mechanisms or penalties for non-compliance either.<sup>57</sup>

Initially, CICIG functions focused on dismantling criminal networks. Later, the mandate was adjusted to focus on fighting impunity. The CICIG is an unprecedented institution *ex profesamente* designed to aid in the eradication of impunity and political corruption within an endemic corruption context. Independence of its functions was secured with its political, financial, and administrative autonomy. The CICIG is not financially accountable to the UN or to the Guatemalan State, but rather to international donors, such as the United States, Sweden, Canada, the Netherlands, and the European Commission, among others. Accountability is monitored through annual reports. Political autonomy is consequently achieved because the Commission does not rely on the Guatemalan government, but rather acts as an external collaborator. The CICIG's initial term lasted two years and has been renewed five times until 2019.<sup>58</sup>

## V. HOW EFFECTIVE WAS THE CICIG IN CURBING GRAND CORRUPTION IN GUATEMALA?

The CICIG contributed to the reduction of political corruption in Guatemala. Such was its success that some neighboring countries replicated the model and others have considered implementing a similar structure. The

<sup>54</sup> *Querellante adhesivo* or Adhesive claimant. Article 116: "In crimes of public action, the aggrieved party with civil capacity or his representative or guardian in case of minors or incapable, or the tax administration in matters of its competence, may provoke criminal prosecution or adhere to that already initiated by the Public Prosecutor's Office". *See* Guatemala Criminal Code.

<sup>55</sup> *Id.*

<sup>56</sup> Laura Zamudio-González, *supra* note 5, at 493.

<sup>57</sup> Andrew Hudson & Alexandra W. Taylor, *The International Commission Against Impunity in Guatemala: A New Model for International Criminal Justice Mechanisms*, 8 (1) JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE March 53 (2010).

<sup>58</sup> Renewal must be authorized by the president.

achievements are mainly observed on two levels: high-profile captures and the dismantling of the illicit political economic network CIACS and to a lesser extent to the strengthening of the local justice system. The awakening of civil society is another positive consequence that is rarely analyzed and is having interesting repercussions. Quantitatively speaking, indicators give a picture of a number of effective trends.<sup>59</sup> All this together has had repercussions for civil society, which has played an increasingly active role in the fight against corruption. However, the CICIG is not a panacea. It is not because an institution, no matter how well-designed and advanced it may be, requires other factors to put an end to something as complex as political corruption. The cooperative environment was increasingly hostile because the political and economic elites will never be willing to give up power or their historical benefits. It is therefore an incessant struggle. However, the CICIG offers fresh and different elements to the fight against systemic corruption.

From a theoretical point of view, the CICIG presents significant challenges. The anti-corruption community has focused on studying ACAs while ignoring hybrid agencies. This work tries to advance in providing new insights from the anticorruption theoretical debate to this new empirical reality. Thus, it is argued that the CICIG and HACAs are functional to the extent that they make it possible to predict behaviors based on incentives. In other words, as mentioned before, in contexts with structural corruption, reducing the incentives so as not to be corrupted is fruitless since the most pragmatic logic of action for agents and principals implies acting corruptly. But when a third party intervenes (a hybrid agency), the incentives and, therefore, ways of acting, become more predictable.

Similarly, the CICIG and these types of agencies fit well with collective action theory.<sup>60</sup> The CICIG was able to devise suitable scenarios to overcome

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<sup>59</sup> “In 12 years of work, CICIG worked on 1540 indictments in 120 cases involving over 70 illicit networks that were damaged if not dismantled”. (Call & Hallock, *supra* note 4, at 22); Moreover, between 2018-2019, 43% of the convictions handed down during the entire period of existence of the CICIG were obtained (CICIG, *Informe Legado de Justicia*, 2020, 51). Similarly, the efficiency rate of joint work between the FECI (Specialized Prosecutor’s Office against Impunity), for its acronym in Spanish, and the CICIG is close to 85%, which far exceeds the national average. (*Id.*, 52; Miguel Zamora, *Institutional Inosculation: The International Commission Against Impunity in Guatemala, International Rule of Law Mechanisms, and Creating Institutional Legitimacy in Post-Conflict Societies*, 57 (3) COLUMBIA JOURNAL OF TRANSNATIONAL LAW 583 (2019)). Regarding violence, the country homicide victim rate per 100,000 people assessed by UN Office on Drugs and Crime dropped from a basis of 45.4 in 2008, which reflects one of the highest rates in Guatemala contemporary data, to 22.5 in 2018. *See:* UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC), available at: <https://dataunodc.un.org/content/data/homicide/homicide-rate>. *See also:* FACT SHEET: THE CICIG’S LEGACY IN FIGHTING CORRUPTION IN GUATEMALA, WOLA, (August 27, 2019), available at: [www.wola.org/analysis/cicigs-legacy-fighting-corruption-guatemala](http://www.wola.org/analysis/cicigs-legacy-fighting-corruption-guatemala).

<sup>60</sup> Collective action theory was first proposed in 1965 by Mancur Olson’s The Logic of Collective Action. This theory has had a broad impact in social sciences and have been adapted to many social situations. The fight against political corruption is an example of it.

the collective action problems of its recipients. Civil society was a key element in the fight against corruption in Guatemala. Different types of NGOs, human rights groups and civil society have always served as allies of the Commission. In the ideal model, the objective is to move from a society governed by a particularistic logic towards one guided by universalist principles.<sup>61</sup> In practice, this is far more complex. Although this outcome was not achieved, it is helpful to identify the victories in the CICIG's performance, as well as to learn what to expect from it.

ACAs have been implemented in many countries with many examples in Asia, Africa, and Eastern Europe. Despite following an exemplary model led by the World Bank and legitimized by transnational NGOs like Transparency International, most of them have had disappointing results.<sup>62</sup> The underlying reasons have to do with a lack of autonomy, a lack of budget, and a lack of investment in institutional capacities.<sup>63</sup> Successful examples are very particular to special contexts and to not very democratic practices.<sup>64</sup> However, beyond that and as the literature on the subject has shown, this failure is associated with a theoretical misunderstanding of the dynamics of corruption in contexts with pervasive corruption. As mentioned in the literature review, the main agent theoretical approach is not the most appropriate to design such models.

In the principal-agent theory, the principal and agents are differentiated among themselves; their interests are equally separate. It is normally assumed that principals are good, that they pursue the common welfare and, in general, that they are interested in exposing corruption. Likewise, agents are assumed to be bad; by enjoy discretionary spaces for action and information asymmetry, agents take advantage of the situation to meet their short-term objectives. These conditions increase the incentives for their private interest to prevail over that of the collective. Following this logic, anti-corruption reforms seek to increase punishments, decrease spaces for discretion, and set in motion policies such as transparency of resolutions to reduce schemes that encourage corrupt practices.

However, in contexts of systemic corruption, there are neither principals nor agents who enforce the law. The principals are not interested in doing so and benefit from the situation or, if they did want to report corrupt behavior, they know that no results would ensue or perhaps it is simply more costly to

<sup>61</sup> Mungiu-Pippidi, *supra* note 18, at 94.

<sup>62</sup> FJELDSTAD & ISAKSEN, *supra* note 11.

<sup>63</sup> Alan Doig, Dave Watt & Robert Williams, *Why do developing country anti-corruption commissions fail to deal with corruption? Understanding the three dilemmas of organizational development, performance expectation, and donor and government cycles*, 27 (3) PUBLIC ADMINISTRATION AND DEVELOPMENT 251 (2007).

<sup>64</sup> Bertrand de Speville, *Anticorruption Commissions: The Hong Kong Model Revisited*, 17 (1) ASIA-PACIFIC REVIEW 47 (2010).

be honest in a context of structural corruption. Agents will not comply with the law because there are no incentives to do so and/or they benefit from the status quo. In keeping with this idea, all possible lines of contention-reporting corruption are immersed in a perverse game. Therefore, it is a vicious circle in which all participants benefit or at least do not see their status reduced or else have the widespread and sustained belief that there is no way out of the situation. The latter is linked to the contributions of the theory of collective action. We know that since people's behavior is influenced by shared expectations as well as by individual and short-term interests, in an environment of systemic corruption there is no apparent solution through the incentive model.

In such a national systemic context, there is no clear difference among the main agents. Anyone can adopt this role. It does not matter if the main actors are citizens or the bureaucracy; local authorities conveniently maintain a cycle of impunity that benefits everyone. Ordinary citizens are accomplices because they are unwitting participants in daily corruption, knowing that it is the way things work.<sup>65</sup> Other types of citizens have close ties with the government, and this allows them to mutually benefit to the detriment of the collective interest. Legal reforms may be enforced, exceptional legal frameworks may be enacted, or model institutions may even be designed, but political will is what allows or inhibits activating all mechanisms for change. As long as there is no transition towards universalism or the idea of the State as a common good, electoral democracies cannot consolidate real and complete democratization.<sup>66</sup>

Thanks to HACAs incorporation into national rules, the incentive model changes.<sup>67</sup> I have mentioned that the legal nature and CICIG faculties are crucial factors in the institution's performance against corruption. In a system of systematized political corruption (State of capture, particularism, or competitive particularism), citizens have very low expectations that judicial institutions will actually punish the corrupt (high-level cases) because they know that the guilty parties are protected by a pact of impunity,<sup>68</sup> or the persecutions are fake. However, with the establishment of the CICIG, the rules have changed: new actors have been incorporated and interests have been adjusted.

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<sup>65</sup> DONATELLA DELLA PORTA & ALBERTO VANUCCI, THE HIDDEN ORDER OF CORRUPTION: AN INSTITUTIONAL APPROACH 126 (Routledge, 2012).

<sup>66</sup> Pippiddi, *supra* note 18, *supra* note 23, MICHAEL JOHNSTON, CORRUPTION, CONTENTION, AND REFORM. THE POWER OF DEEP DEMOCRATIZATION (Cambridge Univ Press, 2014).

<sup>67</sup> It is worth mentioning that in the consolidated cases of Hybrid Commissions to Combat Corruption (Guatemala and Honduras), the request for help began from civil society and later governments requested assistance from international organizations.

<sup>68</sup> Steven Levitsky & María Victoria Murillo, *Lessons from Latin America: Building Institutions on Weak Foundations*, 24 (2) JOURNAL OF DEMOCRACY 93 (2013).

A relevant component is the figure of the CICG Commissioner, who is designated by United Nations. However, Guatemalan State laws are obeyed, and trials are carried out in national courts under local legislation. Likewise, although the Commissioner is empowered to carry out independent investigations, he works closely with local law enforcement agencies. That is, the Commissioner emerges as a mixed figure who respects national sovereignty but enjoys autonomy by being appointed by an international body and financed by different countries (European Union and USA).

Under the principal-agent model, the agents —whether citizens, the bureaucracy or domestic law enforcement authorities, etc.— ask for compliance regarding the Commissioner (in)actions because they have delegated key responsibilities (sovereignty) to him/her. The Commissioner is outside the State logic of cost-benefit distribution and incentives. The Commissioner is an external agent that, although a rational agent that pursues personal interests, is alien to State logic (social trap, vicious circle). To the extent that an external (international) actor intervenes as a Commissioner with sufficient faculties, the balance of power is altered; the vicious circle can be fragmented because the logic of complicity between State actors is unraveled. An external Commissioner is the innovative element that makes it possible to forge a possible virtuous circle.

CICIG is different from other HACA's in its nature as an independent investigator and joint complainant (co-prosecutor) with the Office of the Public Prosecutor. In no other agency has such delegation existed. As mentioned before, HACA hybrid agreements should ignore absolute sovereignty delegation or avoid signing a shared sovereignty agreement. This initially happened in Guatemala and the Constitutional Court invalidated the arrangement.<sup>69</sup> It is essential to strive for a balance. In Honduras, the logic of delegation was different and perhaps this has contributed to its short life and lower impact.<sup>70</sup> The MACCICH<sup>71</sup> (Misión de Apoyo contra la corrupción en Honduras, by its Spanish acronym) existed briefly (2016-2021) and also fell under the pressure of civil society after a corruption scandal was exposed.<sup>72</sup> Furthermore, the conditions of capture in Honduras were truly alarming. Like Guatemala,

<sup>69</sup> Arturo Matute, *Guatemala Stumbles in Central America's Anticorruption Fight*, INTERNATIONAL CRISIS GROUP, available at: <https://www.crisisgroup.org/latin-america-caribbean/central-america/guatemala/guatemala-stumbles-central-americas-anti-corruption-fight>.

<sup>70</sup> Honduras did not have an external Commissioner to investigate independently and prosecute together with the Office of the Public Prosecutor. The Office of the Prosecutor and the Office of the Attorney General were the only institutions authorized to prosecute.

<sup>71</sup> ACUERDO DE CREACIÓN ENTRE EL GOBIERNO DE HONDURAS Y LA ORGANIZACIÓN DE ESTADOS AMERICANOS, available at: <http://www.oas.org/es/sap/dsdme/maccih/new/mision.asp>.

<sup>72</sup> The corruption scandal arose as a result of channeling funds from the Honduran Social Security Institute to the campaign of then-president Juan Orlando Hernández. This action provoked outrage and citizen demonstrations which demanded the resignation of President Hernández and the creation of the Honduran Commission against Impunity.

Honduras had the second highest homicide rate in the world in 2015, as well as widespread violence from organized crime and gangs.<sup>73</sup>

In its short life, the MACCIH made significant achievements such as assisting in the capture of 133 people and 14 high-profile investigations including former first lady Bonilla de Lobo who was sentenced to 58 years in prison.<sup>74</sup> However, it did not have independent investigative powers or independent powers to prosecute.<sup>75</sup> Another issue that may have influenced its brief existence lies in the fact that the Mission in Honduras did not have the physical presence of a Commissioner as it did in Guatemala. The equivalent of a CICIG Commissioner in the Honduran case was the head of the MACCIH, a position delegated to the Secretary General of the OAS (Organization of American States), Luis Almagro.

In analyzing the MACCIH's legacy, call notes that the OAS made the Mission's work difficult because of excessive interference. Such intervention did not occur in Guatemala. The creation of other HACAs in El Salvador and Ecuador were promised. El Salvador launched its Special Commission against Impunity in El Salvador (CICIES for its Spanish acronyms) in November 2019. The CICIES follows a structure similar to that of the MACCIH in Honduras. The OAS General Secretary is one of the most empowered actors advising El Salvador's criminal and policy reform. Similar to the MACCIH, the Salvadorean case is not endowed with the power to pursue independent persecutions or act as joint complainant (co-prosecutor). In sum, the CICIES resembles an advisory body rather than a formal institution to tackle corruption.<sup>76</sup>

With the inclusion of an international agent, information asymmetry<sup>77</sup> spaces are reduced while discretionary spaces for action are more controlled. Similarly, enforcement incentives expand because an external agent represents an outsider to the interests created previously in the political game.<sup>78</sup>

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<sup>73</sup> Charles T. Call, *International Anti-Impunity Missions in Guatemala and Honduras: What Lessons for El Salvador?*, 21 CLALS WORKING PAPER SERIES (2019).

<sup>74</sup> *Id.*

<sup>75</sup> Reinold, *supra* note 36, at 15.

<sup>76</sup> *Id.*

<sup>77</sup> Information asymmetry refers to the idea that powerholders always have access to extra information compared to the one citizen possess. This information is essential to deal with public issues and make public decisions. No matter how transparent a State is, some official information never discloses.

<sup>78</sup> In a study on the potential of the CICIG as an international intergovernmental organization, Zamudio González refers to the CICIG's ability to survive in a hostile political environment and invest itself as a self-directed actor. This implies that the CICIG as an organization, as well as an actor, was able to adapt and reinvent itself in terms of its relevance, tasks, and organization in the face of external threats. The agency in the CICIG is personified in the figure of the Commissioner who was able to draw up adequate strategies and make the pertinent decisions that allowed him to renew the mandate of continuity of the Commission as well as to "expand the object of investigation of CIACAS (Illegal Corps and Apparatus Clandes-

Genuinely independent and autonomous institutions boost popular legitimacy. In an environment of particularism, political and economic elites reinforce each other. Those close to power receive benefits and the closest circles reward the government. One way to alter this pact of impunity is to incorporate outsiders. This power is now embodied in the figure of the Commissioner. Thus, the new rules of the game are now set in motion where success depends on the collaboration of the new players.

A crucial complementary element relies on internal and inter-institutional cooperation. Unfortunately, in practice, this was very difficult to carry out since the political and economic elites were not willing to give in. The CICIG is facing an extremely complex situation due to the fact that the Commission has attempted to overthrow the Guatemalan co-opted State. According to different reports prepared by the CICIG on the *modus operandi* of illicit parallel networks,<sup>79</sup> the Executive anchored its presence in Congress by bribing congressmen to approve the president's policies. The judiciary is a disputed field regarding the appointments of magistrates and ministers.<sup>80</sup> A privileged part of the private sector is colluded with public sectors as it seeks to finance political campaigns to later reap benefits through contracts and other tenders.<sup>81</sup> Organized crime plays a dominant role in public decisions. On the other hand, the Commission remains close to civil society, NGOs, independent media, some private sector actors, and international support. The relationship with the United States of America is crucial as it is its main donor.

An interesting element is the relationship between the CICIG and the Office of the Public Prosecutor or of the Attorney General, a government institution in charge of investigating and prosecuting crimes. Despite the levels of State capture, the role of the prosecutor was essential. In places with systemic corruption like Guatemala where most of the government powers have been overtaken by political corruption, a light of hope shines with the role of the Attorney General, which has remained on the sidelines. An ideal working scheme would be one made up of a proactive, independent, Commissioner and Prosecutor. This has not happened, at least not working together as a team. The Attorney General is appointed by the President of the Republic. The Executive branch always protected itself by strategically nominating public officials. Thus, the Claudia Paz y Paz (2010-2014) appointment as prosecutor is surprising given that she always maintained a

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tino) to RPEI (Illicit Political Economic Networks), which involves a broader phenomenon.”, Zamudio-González, *supra* note 56, at 516.

<sup>79</sup> CICIG, *supra* note 30; CICIG, *supra* note 45.

<sup>80</sup> There is what is known as parallel commissions, where political operations are carried out illegally and in which the appointments of judges related to certain interests were agreed upon with legislators beforehand. There is also a network of lawyers at the service of criminal networks. See CICIG, Informe Comisiones de Postulación: Desafíos para asegurar la independencia judicial (2019).

<sup>81</sup> CICIG, FINANCIAMIENTO DE LA POLÍTICA EN GUATEMALA (2015).

proactive policy to combat impunity. What is not striking is that she has not been reelected.

The Commissioners faced four main challenges: developing a strategy, negotiating with the opposing sector, bargaining with their main ally, the Public Prosecutor, and pushing legal and judicial reforms through Congress. Given the size of the capture, the main reforms to discuss included modifications in the justice system and one related to the political party financing. Since the Commission renewal depends on results and structural reforms may take long to approve, the Commission's short-term objective focus lay in tackling historical impunity. Therefore, the strategy consisted in capturing high-profile cases. To this end, the CICIG, the Commissioner and his work team undertook independent investigation or in some cases did so with the assistance of the Office of the Public Prosecutor.

The CICIG had a twelve-year lifespan (2007 to 2019). The first years of the Commission were years of adaptation and institutional legitimacy. Presidential power was invested by the leftist government of Álvaro Colom (2008-2012). The CICIG sought to establish cooperation with other government agencies. An important moment occurred in 2011 when the Office of the Public Prosecutor was inaugurated by Claudia Paz y Paz, who turned out to be one of the best prosecutors in the history of Guatemala. With their work in collaboration with the Commissioner, they were able to investigate and prosecute organized crime heads, as well as high-profile cases against the military and high-level government officials. Former dictator Efraín Ríos Montt was sentenced to 80 years in prison. These were infallible and historical examples of the fight against impunity. Even though the Constitutional Court overruled the decision days later, without CICIG's and Prosecutor Paz's relentless work, these resolutions would not have never come to light.

In 2013, Otto Pérez Molina and Roxana Baldetti assumed the presidency and vice-presidency of the country, respectively, under the auspices of the right-wing Patriotic Party. The political environment was hostile to the CICIG because it was a space that privileged the military past and status quo. Commissioner Iván Velasquez's arrival marked the beginning of one of the most momentous periods, one which greatly echoed in its recipients. Citizens in Guatemala were able to observe tangible CICIG's results. It can also be considered the political juncture that drew the closest to a political change. The whole equation made sense when the Commission conducted investigations and exposed major corruption scandals. With the strong support of the United States of America and a population fed up with corruption, these events triggered a political earthquake in 2015. Some analysts even dubbed it the Arab Spring in Guatemala.

*La Linea* was the most explosive and consequential case during the CICIG's term. Since the early 1970s, mafias and criminal groups had been illegally trading goods through Guatemala's main customs ports. Even if the situation started off a gradual democratization at the end of the civil war and dur-

ing Rosendo Portillo's government (2000-2004), the customs port persisted as an iceberg, a complex high-level political and economic corruption network infiltrated by both organized crime and the political elites.<sup>82</sup> In April 2015, Ivan Velázquez and the Attorney General disclosed the corruption network named *La Linea* in customs services with the involvement of the local tax authority (the Tax Administration Board or SAT), the National Police Service and other political authorities. *La Linea* charged importers fees to fraudulently lower the tariffs on goods they brought into Guatemala.<sup>83</sup> “(...) The fixers contacted importers to arrange for drastically reduced customs duties in exchange for commissions using a telephone number they called *the line*”<sup>84</sup> A group worked inside the SAT to coordinate customs operations while another faction managed the outside operations with the shipping containers. After more than one year of investigation, the CICIG and the Attorney General revealed at a press conference that President Perez Molina and Vice-President Roxana Baldetti were top leaders of the *La Linea* criminal organization.<sup>85</sup> All of these events unleashed discontent in civil society and people took to the streets for more than 20 weeks demanding that both the president and the vice-president resign. Both political figures were finally arrested and prosecuted.<sup>86</sup>

The CICIG exposed yet another prominent case. Although the Guatemalan Institute of Social Security (IGSS) was a hot spot for many other corruption scandals, the public health institution was the center of illicit public procurement contracts for medication. Additional significant corrupt affairs concerning senior administrative officials and even the energy sector<sup>87</sup> and the national civil police<sup>88</sup> came to light. Aceros de Guatemala was another striking case of tax evasion and collusion between the economic elites and the private sector.<sup>89</sup>

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<sup>82</sup> Open Society Justice Initiative, *Against the Odds*, CICIG in Guatemala (2020).

<sup>83</sup> *CooptaciÓn del Estado de Guatemala*, CICIG, (August, 2010), available at: <https://www.cicig.org/casos/caso-cooptacion-del-estado-de-guatemala/>.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Political Turmoil in Guatemala: Opportunities and Risks*, INTERNATIONAL CRISIS GROUP, (August 15, 2020), available at: <https://www.crisisgroup.org/latin-america-caribbean/central-america/guatemala/political-turmoil-guatemala-opportunities-and>; A. Rojas et al., *Miles de guatemaltecos manifiestan durante mÁs de 18 horas contra corruptos*, PRENSA LIBRE (May 31, 2015), available at: <https://www.prensalibre.com/guatemala/comunitario/manifestacion-guatemala-renuncia-30mgt/>.

<sup>87</sup> Juan Alberto Fuentes Knight, *State Capture and Fiscal Policy in Latin America*, PLAZA PÚBLICA, (2016), available at: <https://www.plazapublica.com.gt/content/state-capture-and-fiscal-policy-latin-america>.

<sup>88</sup> Michael Lohmuller, *Guatemala's Government Corruption Scandals Explained*, INSIGHT CRIME, (August 15, 2020), available at: <https://www.insightcrime.org/news/analysis/guatemala-s-government-corruption-scandals-explained/>.

<sup>89</sup> *Id.*

Besides public administration, the CICIG also targeted congressional malfeasance. Some deputies were indicted for peddling and fraud related to the GISSA scandal and many others were charged with embezzling money to secure votes in the legislature. The Commission unveiled the Patriotic Party's alarming corruption to fund campaigns and elections. The case revealed promised preferential treatment for State contractors in exchange for illegal campaign funding. The co-op State case uncovered a criminal structure led by President Perez Molina and Vice-President Baldetti. The CICIG and the Office of the Public Prosecutor discovered that, once in office, the Patriotic Party was able to offer at least 450 preferential State contracts.

Civil protests were the natural consequence of society having had its fill of corruption. When the case of *La Linea* was revealed, civil society organized and called for a massive mobilization demanding the resignation of President Otto Pérez Molina and Vice President Baldetti.<sup>90</sup> The citizen movement complaint was organized by urban-youth sectors<sup>91</sup> which was convened through Facebook under the hashtag #RenunciaYA<sup>92</sup> (#Quit Now). The movement leaders made it clear that no political party was behind them and called for peaceful protests. Tens of thousands demonstrated in the streets against corruption asking for specific demands. These demands were met almost instantaneously. In addition to civil society rage, an important group from the business sector<sup>93</sup> supported the initiative.

After the success of #RenunciaYA and Baldetti's resignation, other protests were also organized via Facebook insisting that Pérez Molina leave office<sup>94</sup> and other cities joined the demonstrations. As a result, more than 20 high-profile public officials resigned. Besides cleaning up politics, the mobilization group called for general elections and an electoral reform on public financing.<sup>95</sup> After Molina's ousting, new elections were held. Candidates from official parties (the Patriotic party and the opposition party LIDER were also

<sup>90</sup> *Sectores se unen para exigir renuncia de Otto Pérez*, PRENSA LIBRE (August 28, 2015), available at: [www.prensalibre.com/guatemala/politica/sectores-se-unen-para-exigir-renuncia-de-otto-perez](http://www.prensalibre.com/guatemala/politica/sectores-se-unen-para-exigir-renuncia-de-otto-perez).

<sup>91</sup> Walter Flores, *Youth-Led Anti-Corruption Movement in Post-Conflict Guatemala: 'Weaving the Future'*, 50 (3) IDS BULLETIN 37 (2019).

<sup>92</sup> Tim Rogers, *How 9 strangers used Facebook to launch Guatemala's biggest protest movement in 50 years*, SPLINTER (March 15, 2021), available at: <https://splinternews.com/how-9-strangers-used-facebook-to-launch-guatemalas-bigg-1793848431>.

<sup>93</sup> An important business sector from the Committee of Agricultural, Commercial, Industrial, and Financial Associations (CACIF) joined the movement. For more details, see, Walter Flores & Miranda Rivers, *Curbing Corruption after Conflict: Anticorruption Mobilization in Guatemala*, SPECIAL REPORT, (2020), available at: <https://www.usip.org/publications/2020/09/curbing-corruption-after-conflict-anticorruption-mobilization-guatemala>.

<sup>94</sup> *Guatemalans Force Corrupt President and VP to Resign*, GLOBAL NONVIOLENT ACTION DATABASE (2015), available at: <https://nvdatabase.swarthmore.edu/content/guatemalans-force-corrupt-president-and-vp-resign-2015>.

<sup>95</sup> Gabriella Torres, *How a Peaceful Protest Changed a Violent Country*, BBC News (2015), available at: <https://www.bbc.com/news/blogs-trending-32882520>.

involved in corruption scandals) were left out. The winning candidate was an outsider, who managed to position himself favorably with an electoral platform focused on the fight against corruption.

When Jimmy Morales<sup>96</sup> was sworn in as president in 2016, the demonstrations quieted down. Morales lobbied to terminate the Commission's mandate after Commissioner Velasquez accused him of illicit financing in his electoral campaign. After the mobilizations, the CICIG felt victorious and empowered partly by citizens and partly by international bodies supporting it. The Commissioner tried to take advantage of this situation and continued to claim acts of corruption that allegedly reached the political and economic elites. The business sector (CACIF) which had originally backed the public outcry, withdrew its support after being immersed in accusations of corruption. Thus, a group of political and economic elites exposed by MP and CICIG revelations joined efforts to sway the United States against the anti-corruption movement in Guatemala, demanding the departure of the Commissioner and the non-renewal of his mandate.<sup>97</sup> A crucial circumstance in the adverse outcome of the Commission's future was then-President Trump's indifference and lack of financial support.<sup>98</sup>

The CICIG was able to overcome collective action problems. Breaking the logic of collective action implies breaking circles of complicity, as well as the idea of an individualistic and short-term fight against corruption. When corruption is systematically plagued, agents and principals behave passively towards corruption. Nonetheless, the theoretical model suggests that HACAs contribute to break collective action problems, generate consequences of social awareness and foster the control of corruption through civil society. The most desired goal is to move from particularism to universalism. In order to achieve that objective, three interconnected moments need to take place: the first one is to do away with collective action problems; then, corruption must be attacked by civil society; finally, there must be a transition towards the idea of State universalism.

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<sup>96</sup> *Former TV comedian expected to become Guatemala's next president*, THE GUARDIAN (2015), available at: <https://www.theguardian.com/world/2015/oct/25/guatemala-president-election-comedian-jimmy-morales>.

<sup>97</sup> Elisabeth Malkin, *Guatemala President Who Championed Honesty Orders Anticorruption Panel Chief Out*, NEW YORK TIMES (Aug. 27, 2017), available at: [www.nytimes.com/2017/08/27/world/americas/jimmy-morales-guatemala-corruption.html](http://www.nytimes.com/2017/08/27/world/americas/jimmy-morales-guatemala-corruption.html).

<sup>98</sup> Richard Messick, *The Legacy of Guatemala's Commission Against Impunity*, GLOBAL ANTICORRUPTION BLOG (2019), available at: <https://globalanticorruptionblog.com/2019/09/11/the-legacy-of-guatemalas-commission-against-impunity/>; Richard Messick, *Dear American Congress, Please Don't Destroy Guatemala's Best Hope for Combating Corruption*, GLOBAL ANTICORRUPTION BLOG (2018), available at: <https://globalanticorruptionblog.com/2018/05/16/dear-american-congress-please-dont-destroy-guatemalas-best-hope-for-combating-corruption/>; Mathew Stephenson, *The CICIG Crisis in Guatemala: How the Trump Administration Is Undermining US Anticorruption Leadership*, GLOBAL ANTICORRUPTION BLOG (2019), available at: <https://globalanticorruptionblog.com/2019/02/19/the-cicig-crisis-in-guatemala-how-the-trump-administration-is-undermining-us-anticorruption-leadership/>.

Collective action problems are overcome when genuine changes are perceived in public institutions. Positive effects in the fight against corruption includes convictions in high-level cases, as well as dismantling corrupted and illegal networks. These events demonstrate the effectiveness of the work done by justice-seeking institutions. In fragile democracies, citizens usually have a negative opinion towards State institutions. Thanks to the CICIG's achievements and further social awakening, citizens have come to shape a more positive attitude toward such institutions. Overall, this situation generates a more constructive attitude towards institutions and towards the fight against corruption because citizens no longer see corruption as an elusive and unrelenting evil. Rather than viewing corruption as the generalized and socially perceived behavioral norm, citizens behold a possible way out. In quantitative terms, this can be observed in the historical levels of trust towards the CICIG.<sup>99</sup> Similarly, during the CICIG's lifespan, statistics reveal the increase in the number of complaints filed by the Office of the Public Prosecutor.<sup>100</sup> These data can explain a great deal when compared to data from neighboring countries.

The second moment implies giving free rein to civil and genuinely non-partisan protests to repudiate corruption. How and why do citizens decide to take to the streets? According to the collective action theory applied to the fight against political corruption, when facing public exposure of a corruption scandal, society remains indifferent. It is interesting and theoretically enticing to analyze the circumstances under which a corruption scandal generates such a response from civil society to motivate the general public to mobilize, especially in contexts as complex as those in Latin America. In the Guatemalan case, the CICIG positively influenced citizen uprisings. Citizen awakening brings together young people, urbanites, students, the middle class, human rights defenders, NGO activists and even some business sectors.<sup>101</sup> These protests continued for months and achieved very specific objectives and results. The agenda always focused on issues related to transparency, accountability and the fight against corruption. An elite group led the movement, remained non-partisan and extended their influence by means of the communicative power of social networks (especially Facebook).

<sup>99</sup> See, for example: Elizabeth J. Zechmeister & Dinorah Azpuru, *What Does the Public Report on Corruption, the CICIG, the Public Ministry, and the Constitutional Court in Guatemala?* LATIN AMERICAN PUBLIC OPINION PROJECT (2017); Zamora, *supra* note 59, 580; *Los guatemaltecos confían más en la CICIG que en la iglesia católica*, PRENSA LIBRE (2015) available at: <https://www.estrategiaynegocios.net/lasclavesdeldia/868160-330/cicig-instituci%C3%B3n-mejor-valorada-por-guatemaltecos-presidencia-la-peor>; David Lunhow, *Guatemala Outsources a Corruption Crackdown*, THE WALL STREET JOURNAL (Sep. 11, 2015), available at: <https://www.wsj.com/articles/guatemala-outsources-a-corruption-crackdown-1442001944>.

<sup>100</sup> Zamora, *supra* note 59, at 586.

<sup>101</sup> Walter Flores, *supra* note 91.

Despite its obtaining specific historical results, the social movement suffered setbacks. For instance, it failed to connect with the longstanding structural reforms demands exacted by indigenous groups. Moreover, the movement did not seem to have a leader with whom negotiate. Additionally, protesters assumed that with the resignation of President Molina and Vice President Baldetti, things would improve on their own.<sup>102</sup> Social unease persisted and emerged again in 2017, when President Morales unilaterally decided not to renew the CICIG mandate. The 2015 #RenunciaYA movement turned into #JusticiaYA. Morales's anger apparently stems from the disclosure of illicit donations made to the Jimmy Morales campaign. While young people were protesting in the streets, President Morales manipulated the State machine against the CICIG to declare Ivan Velasquez as *persona non-grata* and end the legacy of the Commission.

During that time, civil society received a second important impact. #JusticiaYA joined forces with other interest groups, such as "trade unionists, indigenous leaders, students, some members of the middle class and sectors of the private group,"<sup>103</sup> and together they created the *Alianza por las Reformas*, a conglomerate of civil society organizations promoting structural reforms in Guatemala. Their demands included the resignation of Morales and other members of Congress, as well as electoral reforms to end private financing, the permanence of the CICIG and the creation of a specialized group to draft a new Constitution.<sup>104</sup> In the end, although Guatemalan society continued to act, national and international contexts had changed. There was no international support to continue financing the CICIG and the anti-corruption movement. The US stopped its funding, in part due to the indifference of the Trump administration and in part due to lobbying of Guatemalan political and economic elites against the work of the CICIG. In sum, these events thwarted the survival of the CICIG and possible large-scale changes.

The last component towards major political change advocates the strengthening of local institutions. According to the literature on institutional weakness,<sup>105</sup> institutions can be strengthened or at least activated by an external event, a systematic crisis, civil war confrontations, international pressure or even insistence from civil society. In the Guatemalan experience, the CICIG was created in response to political crisis and violence. The request for its establishment surged from the demands of civil society. The CICIG was not a panacea, but even then, the Guatemalan HACA paved the way

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<sup>102</sup> Flores & Rivers, *supra* note 93.

<sup>103</sup> *Id.*, at 14.

<sup>104</sup> *Id.*

<sup>105</sup> Levitsky & Murillo, *supra* note 29; LEVITSKY, *supra* note 48; Levitsky & Murillo, *supra* note 68; BO ROTHSTEIN, THE QUALITY OF GOVERNMENT: CORRUPTION, SOCIAL TRUST, AND INEQUALITY IN INTERNATIONAL PERSPECTIVE (University of Chicago Press, 2010).

for justice institutions to be strengthened and reactivated. The Office of the Public Prosecutor and the Intelligence Units against Corruption are good examples of that. Institutional strengthening and high-profile captures (dismantling corruption networks) point at their outstanding legacy. Furthermore, the active participation of civil society in the fight against corruption is a very remarkable achievement in contemporary Guatemalan history. Nevertheless, components of the political system such as political will, internal and external scenarios, as well as the restructuring of lawful and unlawful networks, pose both an analytical and an empirical puzzle to be solved in order to transition towards complete democratization.

## VI. CONCLUSIONS

This article has analyzed the effectiveness of the CICIG as a hybrid agency in the fight against systemic corruption. Although the Commission is not a magic bullet and pursues its own interests like any other actor, the CICIG acted effectively. To a large extent, this was made possible by its institutional design and, to a lesser extent, cooperation between local and international actors. In addition to its positive results, the CICIG challenges the dominant theories on combating corruption in capture contexts. Contrary to what is established in the principal-agent theory, institutions with their own ideas of incentives are well-equipped to counteract political corruption and impunity in countries with systematized corruption. Correspondingly, the CICIG was able to overcome typical collective action problems in democracies with fragile institutions.

Institutional design is a key issue. A balance between local and external interests seems to be a good solution for a problem as complex as that of Guatemala or any other context with similar conditions of capture and impunity. Such a balance implies that national sovereignty is respected, and hybrid agencies are sufficiently empowered. For this to happen, the protection of sovereignty must be guaranteed since the Commission's task must respect national laws and procedures. CICIG functions were also limited by having to deliver the results of its investigations to the Office of the Public Prosecutor so as to jointly prosecute the corresponding charges.

Inter-institutional and international cooperation merits discussion. This essay highlighted the importance of cooperation at various levels. First of all, the Commission came to life as a result of the cooperation between Guatemalan institutions, particularly the negotiation between the Executive branch with international bodies (UN). Second, at the local level, the Office of the Public Prosecutor was the CICIG's main ally. This point is worth mentioning since it proves that despite the pervasive environment of impunity and capture, some actors and institutions are self-contained, can move beyond short-

term goals and back regulatory democratic tendencies<sup>106</sup> over short-term results. Third, the CICIG has other allies: much of its mandate was legitimized by the relentless support of civil society, some business sectors, and to a large extent the international community (especially donors).

The CICIG worked according to the principal-agent theory because the circle of impunity was fragmented. Whenever the balance of power shifts, whenever law enforcement institutions are activated (mainly the Office of the Public Prosecutor), and to the extent that incentives change because an external actor enters the scene, favorable results are predicted. At this point, this article has already noted the CICIG's achievements: deactivating corruption networks, strengthening local justice system, reducing impunity by punishing public and private officials at the highest level, and finally incorporating civil society as an actor in the fight against corruption. Positive results were possible thanks to the proper functioning of the institutions, as well as proactive leadership on behalf of both the Commissioner and Attorney General.

A less explored field, but one with a great impact, is the role of civil society in combating corruption in capture contexts. The CICIG contributed considerably to the awakening of society. As explained in this article, in an ideal sequential model, a society seeks to move towards universalism or complete democratization. In this case, the first step was to overcome collective action problems. This only happened when citizens stopped being indifferent to corruption, when they began to actively take part in politics through demonstrations and, generally speaking, by being a counterweight sector to unilateral actions. Along the same vein, the next step consisted of making society aware that it had the power to control systemic corruption. The mobilizations against the impunity of presidents, vice-presidents and former presidents lasted for months and were constant from 2015 until the disappearance of the CICIG. These movements will go down in Guatemala's history as genuinely historic.

The final step is not conclusive. In this regard, no significant change was achieved because systemic corruption is still anchored in government bodies. Political and economic illicit networks hinder the progress of democratization. For much of the CICIG's existence, the Commission faced opposition from State institutions. They were not willing to compromise. Circumstances change; actors sometimes cooperate and sometimes do not. The indifference of the Trump administration as a regional leader in tackling corruption was an unfortunate situation. Even worst were the attempts by the political and economic elites (led by President Jimmy Morales) before the US Congress to discredit the Commission's legacy.

Hardly, the institution, in the sense of either its definition or incentives, has succeeded in performing transformative tasks. Evolving towards more

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<sup>106</sup> Pérez-Liñán, *supra* note 39.

substantive democracies is a complex process as it is not linear and suffers regressions. Long-term political will is crucial. HACAs present an innovative approach to combat malfeasance although research on this empirical phenomenon is lacking. Finally, in the presence of HACAs or new institutional designs, corruption scholars must rethink anti-corruption theories from both perspectives: principal-agent and collective action.