Transplant Pains: What's at Stake in Guatemala's Constitutional Showdown?

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Jimmy's Business was to Make you Laugh

As one half of the "Nito and Neto" comedy duo, Guatemalan President Jimmy Morales was already a celebrity in 2015, when then-President Otto Pérez Molina was forced to step down following accusations of wide-ranging corruption made by the International Commission Against Impunity in Guatemala (CICIG, for its initials in Spanish). It was then Jimmy's turn, who ran for office on an anti-corruption platform for the *Frente de Convergencia Nacional*, a party with close ties with the Guatemalan military, and won.

It is now Morales' administration that is being accused, by the very same UN-backed Commission, of widespread corruption. And yet, unlike his predecessor, Morales seems unwilling to yield. First, he announced he would not renew the CICIG's mandate. And then, he barred the head of the Commission from returning to Guatemala. The Constitutional Court, though, decided push back, and ordered for the head of the Commission to be allowed back. The scene is thus set for an imminent constitutional showdown between the embattled Guatemalan judiciary and Jimmy, the President, whose business are no laughing matter anymore.

Transplanting Anti-Impunity

The CICIG is a first-of-its-kind initiative. A decade after a peace agreement ended one of the last Cold War conflicts in Central America, impunity and lack of trust in the judiciary had become endemic in Guatemala. The original idea for the Commission emerged from Guatemalan civil society, which, by the turn of the century, was struggling to find an alternative to deal with a 95% rate of impunity. While the option of a Truth Commission was discussed, the main inspiration turned out to be the "Joint Group for the investigation of politically motivated illegal armed groups", established in 1993 as part of the UN Mission in El Salvador. Loosely following this precedent, a first effort of creating an independent investigative institution was made in 2003, when the *Commission for the Investigation of Illegal Groups and Clandestine Security Organizations in Guatemala* was proposed. The effort failed: the proposal was never ratified by Congress, and some of its elements were stricken down by the Constitutional Court.

A couple of years later, however, a new proposal for the current CICIG prospered. A key trigger was the killing of three members of the Central American Parliament by members of the Guatemalan Police in 2007. The officers responsible were then murdered in prison within a week. Civil society was outraged, and a wide consensus was achieved for the creation of an international, UN-backed, institution against impunity.

Following steep pressure, the Commission was established. An international agreement between Guatemala and the UN, approved by both the Guatemalan Congress and Constitutional Court, created the operation, which was then implemented through a set of domestic constitutional amendments. The CICIG has both national and international staff, the power to independently investigate crimes, file criminal complaints, participate as interested third party in judicial proceedings, and act as "co-prosecutor" in some instances. However, it lacks the power to independently prosecute or judge perpetrators. It has, moreover, a technical assistance role, providing training to the Guatemalan criminal system.

In a bit over a decade, the Commission has spearheaded complex investigations that would have otherwise remained in impunity. In 2009, the CICIG untan-

gled the killing of Rodrigo Rosenberg, a well-connected lawyer of Guatemala City. Two days after the murder, at the funeral ceremony, a video was projected featuring Rosenberg himself speaking from beyond the grave:

"If you are watching this message, it's because I was murdered by President Alvaro Colom…"

Chaos ensued. Political stake-holders swiftly asked the President to resign, and the President resisted. A veritable political crisis was in the making, and the only way out was by turning over the investigation to the CICIG. The Commission stepped in and, eight months later, uncovered an amazing scheme: Rosenberg had ordered his own killing and, by doing so, had also tried to topple the President. If this sounds like the stuff of literature, well, that's because it almost is.

The Commission also investigated gross human rights violations and important corruption scandals. In 2011, it revealed systematic extra-judicial executions in the *Pavón* and *Infiernito* prisons, which led to several criminal procedures in Guatemala, and to the prosecutions, in Switzerland, of the ex-Chief of the Guatemalan Police (sentenced to 15 years), in Spain, of the ex-Minister of Interior (acquitted), and, in Austria, of a high-level police office (acquitted). Moreover, the CICIG also investigated the wide-ranging scheme of customs and tax evasion that lead, eventually, to then-President Pérez Molina's resignation, only a few days before the general election that brought Jimmy Morales to power.

Transplant Pains

The CICIG is a clear experiment of top-down institutional change. Facing growing impunity, a new institution was implanted, drawing on the political capital of an international organization and the funding of international donors, with the hope that, under the leadership of a foreign expert, better local political dynamics would emerge. And, to a certain point, it *has* succeeded; hence the World Bank lauding the CICIG's model in its World Development Report of 2017, as a plausible alternative for "better rule enforcement", and to enhance the capacity of "state legal institutions for credible commitments" (at 65, 67, and 94)

So, as President Morales and the Constitutional Court face each other, there is also an underlying clash of views about what exactly the CICIG is doing in Guatemala.

On the one hand, the CICIG is an institutional transfer, whose success should be measured against an appropriate threshold — namely, whether the transplanted institution has integrated in the prevailing political dynamics of the reception site and transformed local practices, fostering sustainability and local ownership. By this measure, the CICIG is a (qualified) success. Through its investigations, the CICIG has stirred the Guatemalan political landscape. But, outside CICIG, Guatemalan institutions are still deeply permeated by organized crime. It is, in a way, a "shock therapy" to end impunity that has, however, deployed a less prescriptive approach than its economic equivalent. It has cooperated with domestic judiciary and, instead of replacing local authorities, has skillfully leveraged its independence, and technical know-how, to open spaces for the judicial function in the Guatemalan democracy. In that sense, the work of the Commission has strived to empower Guatemalans in the process. And, as civil society takes over the streets in support of the Commission's work, there is clearly no shortage of "local ownership" of this particular institutional transfer. The Commission has successfully taken "root", as is evidenced by the Constitutional Court's stance. We can only hope these roots are strong enough – hence the importance of civil society, and other international allies, to actively support it.

But Mr. Morales' strategy evidences a different mindset. When the President's son and brother were put in jail following a Commission investigation, it became clear that Mr. Morales was playing an end-game. He would not be cornered into resignation. And, to resist pressure, he would parlay his role as head of state into the support of the key player in Central America, which no multilateral forum is able to match: the Unites States of Donald J. Trump. Hence, Guatemala opened its Embassy in Jerusalem on May 2018 and, despite the fact that the US provides almost

40% of the CICIG budget, the Trump administration has remained silent on Mr. Morales' intention to eliminate it, refusing also to join the other donor countries in a statement of support.

Ultimately, Mr. Morales believes the CICIG's source of legitimacy is not Guatemalan civil society, but its international financing and support. You kill that, you kill the Commission – despite of whether it has taken root or not. His logic is horizontal and reciprocal, keen on shaping the factual narrative of Guatemalan politics to fit his political goals.

But this may not be as easy anymore. Whatever happens, Guatemalans cannot "unsee" what they have seen, or "unhear" what they have heard. Ultimately, the Commission's main success may be that its investigations have provided the Guatemalan political process with a non-moving pivot — a *factual basis* that can be relied upon, even by fierce political opponents. And this is no mean feat for an office that is, at the end, just a couple dozen civil servants lending a hand to a weak local prosecutorial office, bearing only, but nothing less, than the power of the law.

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