

The success of CICIG

Explaining a successful anti-corruption agency

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Abstract

The international anti-corruption commission CICIG managed to achieve unexpected success when they dismantled a corruption ring within Guatemala's government. The results are remarkable since Anti-Corruption Agencies (ACA) often fail due to societal corruption, which is a big problem in Guatemala. But CICIG is also controversial since it is an international organisation with the authority to investigate politicians in a sovereign nation. On the other hand, CICIG has been an effective mechanism against the Grand Corruption, a major problem in many nations. The international community has pushed for similar initiatives, but there is still no clear theoretical explanation to the effectiveness of CICIG. This thesis will therefore ask the question; *why was CICIG effective according to theory?* The method used will be Process tracing and it will apply three different hypotheses on the case of CICIG. The hypotheses analyse the support from the societal elites, Quality of Government and CICIGs implementation process. The study finds that the independence and collaboration with Guatemalan prosecutors allowed CICIGs officials to implement a modern investigative organisation. The implementation process explains how CICIG could avoid problems faced by similar ACAs.

Key words: CICIG, Corruption, Anti-Corruption Agencies (ACA), Guatemala, Implementation

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1 *List of Acronyms*

| | |
|-------|---|
| ACA | Anti-Corruption Agencies |
| CACIF | The Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (Comité Coordinador de Asociaciones Agrícolas, Comerciales y Financieras) |
| CIACS | Illegal Security Forces and Clandestine Security Organisations (Cuerpos Ilegales y Aparatos Clandestinos de Seguridad) |
| CICIG | International Commission Against Impunity in Guatemala (Comisión Internacional Contra la Impunidad en Guatemala) |
| FECI | Special Prosecutorial Office Against Impunity (Fiscalía Especial Contra la Impunidad) |
| ICG | International Crisis Group |
| IO | Intergovernmental Organisation |
| MP | Public Ministry (Ministerio Público), the public prosecutor's office. |
| NGO | Non-Governmental Organisation |
| SIDA | Swedish International Development Agency |
| WOLA | Washington Office of Latin America |

2 Introduction

Guatemala was shaken by a corruption scandal starting in April 2015, that would end with president Otto Pérez Molinas resignation in September. His government embezzled millions of dollars for their own enrichment by infiltrating state institutions. The conspirators had skimmed 450 public contracts with a value of 65 million dollars. These conspirators came from every part of the Guatemalan elite, having had major influence over the country. Guatemala has suffered from corruption from this elite for a long time, resulting in weak and corrupt state institutions (The Economist 2016). The investigation against the highest officials is therefore remarkable since corrupt and weak institutions shouldn't be able to investigate and prosecute their own president.

The reason the scandal surfaced, is the investigating institution CICIG (Comisión Internacional Contra la Impunidad en Guatemala) which is an institutional experiment launched by UN together with the Guatemalan state in 2007. The idea of CICIG is that international prosecutors and crime investigators should establish an independent, professional and impartial Anti-Corruption Agency (ACA from now on) to investigate corruption. The idea is controversial since UN-officials then will have the authority to investigate politicians inside a sovereign nation. But CICIG has proven that it is an effective tool against the grand corruption which has plagued Guatemala's institutions. The citizens of Guatemala have also showed great support for the commission since it has proven its independence from the corrupt structures (Sveriges Radio 2015).

CICIGs success put pressure on neighbouring states to implement similar international institutions aiming to investigate corruption (The Guardian 2015). The problem is that the evaluations of CICIG conclude that they *have been successful*, but the evaluations lack the connection with previous ACAs. By looking at previous research on ACAs, we can understand *why CICIG has been successful*. It allows us to determine how they managed to bypass the problems that regular ACAs face. Because ACAs are questioned by scholars who argue that they are used as rhetoric from corrupt elites who want to signal to the world that they take corruption seriously. These arguments are easy to understand since Singapore and Hong Kong are the only ACAs that have had an impact on corruption. Other states who have implemented similar ACAs have failed to influence corruption (Meagher 2005 p.1-2). Before we start establishing similar institutions like CICIG, we need to understand what CICIG did different according to theory.

CICIG has academic relevance since Guatemala is a least likely case for a successful ACA (Teorell & Svensson 2007 p.18, 154-156). An ACA is in need of strong courts, polices, and prosecutors who can investigate, prosecute and sentence the corrupt officials. The government or the political elites also need to support the ACA by giving it resources and professional staff (De Sousa 2009 p15-16). As mentioned before, Guatemala seems to have a

highly corrupt government and weak institutions. It is therefore a puzzle to understand how CICIG managed to investigate the president. But, if you look closely at CICIG there are indications that there was institutional quality and support from the elites. The corrupt political elite allowed CICIG to establish, which indicates there were incentives to battle corruption. The investigation against the president was performed after a collaboration with Guatemala's prosecutor's office, indicating there was institutional capacity. The question is if CICIGs success can be explained by the previous research on ACAs? Was CICIG a result of a successful experiment, or was it a result of a good environment where corruption could be contested?

This thesis will therefore ask the question *why was CICIG effective according to ACA-theory?* The literature review will present three explanations to why ACAs are efficient. The first explanation stresses the Quality of Government as the vital component. This hypothesis stresses that ACAs are dependent on the strong institutions mentioned before. The second explanation stresses the societal elites support for the ACA as the vital component. The third explanation stresses the organisational factors which are; the professional staff, independence and adequate resources. Each explanation will have observable implications that are presented through process graphs. The methodological section will discuss how these implications can be operationalised into three different hypotheses that will be tested according to the method of Process tracing. It will determine if CICIGs successful investigations can be explained by the quality of surrounding institutions, support from societal elites or the implementation process.

3 CICIG

This section will first present a brief background to Guatemala's history and the events that led to the creation of CICIG. The Mandate which regulates CICIGs authorities will then be described along with information about their organisation. An overview of CICIGs achievements will end this section, where the CICIGs success is defined.

3.1 Background

Guatemala has a long history of violence, poverty and corruption. A violent circle started when the socialist president Jacobo Arbenz was overthrown in a coup d'état 1954, orchestrated by the United States who feared a communist threat in Guatemala. The result of the coup was that Guatemala was overtaken by a small but powerful elite who controlled the agricultural resources and the industries. These groups closed the institutions so that no elections were held and the large indigenous Maya population were excluded from any political influence (Insight Crime 2016 p.3-7). The anger grew among the excluded which sparked a civil war that lasted for 36 years from 1960-1996. The war could be described as a guerrilla war, because the state tried to regain control over large rural areas where different guerrilla groups were hiding. The war turned out to be a human catastrophe where some 200.000 people died, many of them from the indigenous population. The state committed massacres and practised scorched-earth tactics to subdue the rebels, which have created deep wounds within the Guatemalan society (SIDA 2009).

During the civil war, different societal elites competed for the influence of state institutions and groups like entrepreneurs and militaries tried to wield their influence through corruption (Insight Crime 2016 p.6-7). It is a typical example of grand corruption in developing countries where informal parallel structures use the institutions to pursue their own interest instead of the common good. These kinds of groups also have incentives to close the access to these institutions in order to keep the power (Scott 1969 p.14-16). During the civil war, Guatemala had different military regimes who replaced each other until democracy was established in 1985 (SIDA 2009). But the influence from the parallel structures didn't stop with democracy. Entrepreneurs and landowners saw the benefit of a weak state with low taxes and embraced the neoliberal movements that were present after the cold war (Insight Crime 2016 p.7). This resulted in low tax revenues that underfunded the state institutions which is still a big problem today (ICG 2016 p.4).

To understand why CICIG was created it is important to understand how these informal structures weaken state institutions. Criminal networks turned out to be especially harmful to society as they profit from drugs, human trafficking and contraband of arms. Guatemalans

call these groups CIACS (Cuerpos Ilegales y Aparatos Clandestinos de Seguridad) and they originate from the military's intelligence units and paramilitary organisations. After the peace accord of 1996, these groups reorganized themselves and earned their living from criminal activities. The petty crimes were soon replaced by organized drug smuggling and human trafficking which increased their revenues. These revenues were invested in infiltration of state institutions and especially the rule of law institutions (WOLA 2015 p.5).

These groups infiltrate the state by putting their people in powerful positions within the state institutions, or they pay officials to work for them. The power is used to weaken the judicial institutions so that CIACS can continue their criminal activity with impunity. The weakened justice system triggered a never-ending circle of violence which grew larger and larger due to the increased revenues from drugs and human trafficking. The problem grew when CIACS increased their power over the state and started to collaborate with other powerful interests. 2002 Amnesty international described Guatemala as a "corporate mafia state" that was built on unholy alliances between traditional oligarchs, entrepreneurs, polices, militaries and criminals. The result of this kind of society was one of the world's highest homicide rates where only two percent of the perpetrators were prosecuted and convicted (WOLA 2015 p.6).

3.2 CICIGs mandate

Human right groups along with the UN pushed for actions against CIACS enabling investigations without influence from the societal elites. The solution was to establish an independent commission with a mandate to investigate and prosecute CIACS. Harsh negotiations took place between UN and the Guatemalan government who was suspicious of having UN-officials investigating and prosecuting Guatemalan citizens. A compromise made it possible for the independent commission to investigate independently, but to prosecute they needed to hand over the case to Guatemala's prosecutors office who in Guatemala goes by the name Ministerio o Publico (MP from now on). The commission could although act as complementary prosecutor to MP when the trial was put to court (WOLA 2015 p.8-9). CICIG was created and their mandate started in September 2007 which can be summarized in three points (CICIG):

1. Identify and investigate CIACS
2. Help the state to investigate, prosecute and punish CIACS
3. CICIG should recommend judicial and institutional reforms against CIACS

The mandate has a very clear message that CIACS is the enemy and the first point gives CICIG permission to investigate them with no interference from other institutions. The other two points show that CICIG also have a mission so strengthen Guatemala's own institutions by providing technical assistance to relevant institutions such as MP and the national police

and recommending policy reforms to congress. The staff would contain prosecutors and crime investigators from the international community. The staff would also contain Guatemalan officials which makes CICIG a hybrid institution since it contains international and national officials. The budget is financed by UN donors like Sweden and United States who pay the officials salaries. The president of Guatemala must ask UN for extension of the mandate every second year which gives the president authority to dismiss CICIG when it is appropriate (WOLA 2015 p.9).

3.3 CICIGs achievements

CICIGs main achievement has been to investigate the grand corruption within the government. But it took a long time for CICIG to achieve real success since their establishment 2007, and their real impact on the society came after “la Línea” in 2015, which made them Guatemala’s most trusted institution (ICG 2016 p.3). Between 2007 and 2009, many of the important policy reforms were put in place. CICIG recommended new laws which gave them authority to wiretap, bargain with criminals, and to use witness protection programmes. Meanwhile they established a collaboration unit called FECCI (Fiscalía Especial contra la Impunidad) where career prosecutors from MP collaborated with CICIG officials in important investigations (WOLA 2015 p.10-13). The first years of investigations were more focused on homicides rather than grand corruption. Especially the Rosenberg investigation turned out to be crucial for CICIGs legitimacy.

Rosenberg was a lawyer from the economic elite that in a bizarre attempt to overthrow the president staged his own murder. He first recorded a video where he accused the president of murder and corruption, and Rosenberg accused the president of trying to assassinate him. He concluded by saying “if you are watching this video, I have been killed by President Alvaro Colom”. The next thing he did was to stage his own murder so that the video went viral and many Guatemalans demonstrated against the president and demanded his resignation. CICIG as the only independent institution took on the investigation and could through surveillance cameras and wiretaps dismantle the hitman ring which was responsible of the murder. The phones were seized and through triangulation CICIG could prove that Rosenberg himself had hired and delivered the order for his own execution. The commissioner held a press conference where he presented the evidence and concluded that the investigation was based on scientific facts (Insight Crime 2016 p.43-49). The investigation impressed the citizens since it was very uncommon for murders to be solved and it demonstrated that modern investigative techniques could fight impunity. It also avoided political turmoil and violence over power which made president Colom more willing to cooperate (World Bank 2017 p.7).

The period in between 2010-2014 could be described as ineffective since CICIG managed to investigate high-profile cases but failed to sentence them. The case of ex-president Alfonso Portillo is characteristic since there was evidence that he had embezzled 15 million dollars,

but the judges acquitted him despite the evidence. CICIG could not go against the powerful interests that had influence over the courts. This is also one of the biggest challenges for CICIG who from the start has recommended the appointment committees to select the most experienced judges for courts. But the corrupt system is still present and the judges are selected from different interests. But at the same time the MP experienced an institutional transformation thanks to Claudia Paz y Paz who during that time managed to capture many untouchable criminals, convict cartel members and prosecute old military leaders for atrocities committed during the civil war. But due to those military trials, she went against the powerful elites and was forced to resign despite her experience and success as head of MP (Open Society 2016 p.5-6)

It was at that point that CICIG really made an impact on Guatemala's society. Corrupt interests had dismissed Claudia Paz y Paz, and the president Otto Perez Molina made it clear that CICIG's mandate would not be extended in 2015. A crucial factor for the following events was the arrival of the commissioner Ivan Velásquez who was highly experienced in prosecuting political corruption from his native country Colombia. He claimed that CIACS had started to infiltrate the government and turned CICIG's main activities to economic frauds. CICIG started to investigate the money and the connection between politicians and criminals. The investigations were quite telling since they showed how profoundly corruption was influencing the society. One investigation showed that the sentenced murderer Byron Lima controlled an extortion business inside his own prison. He could go out whenever he wanted, use computers and cell phones, and receive visits. Another investigation managed to capture Haraldo Mendoza, the leader of a criminal organisation regarded as untouchable. CICIG also filed a report about the campaign financing which showed that large parts of the campaign funding derived from unknown donors. But the most important investigation was when CICIG investigated custom fraud, an investigation which changed the political landscape (ICG 2016 p.5-6)

April 16th 2015 was the date when CICIG along with the MP revealed a corruption scandal which would be called "la Linea scandal". The investigation showed that government officials embezzled millions of dollars in custom duties, and that the embezzlement was orchestrated from the president and vice-president's offices. They could also prove that officials gave public hospital contracts to unqualified contractors who provided the hospitals with inadequate resources. Each week the MP and CICIG discovered more and more corruption scandals due to eight months of investigations where they had used wiretapping, financial records and seized text-messages. This made it possible to prosecute without witnesses and instead rely on scientific evidence. During these scandals, the media played a crucial role when they broadcasted and sometimes performed their own investigations into corruption. The scandals also awoke the public opinion against corruption and impunity. Indigenous people, civil society and business corporations united in massive demonstrations which took place every Saturday for 20 weeks. Finally, the president resigned in September 2015 and in

the following election the anti-politician Jimmy Morales won the presidential election with the slogan “Neither corrupt, nor a thief” (ICG 2016 p.7-10, Ivan Velásquez¹ 2017).

CICIG showed that it is possible to fight corruption with rule of law and professional institutions. The World Bank (2017 p.13) concludes that CICIG is a successful initiative that has strengthened Guatemala’s rule of law by increasing the likelihood of corrupt officials getting caught. WOLA (2015 p.2) has pointed to the fact that CICIG has the capacity to reach the untouchables, establishing the fact that no-one is above the law in Guatemala. It has been a new kind of mechanism where UN in collaboration with a sovereign nation created a hybrid institution who had the capacity to investigate the grand corruption

¹ This source is a free translation of Ivan Velazquez speech that where held in April 2017. CICIGs Swedish officials did the translation through an audio file and a written document.

4 Literature review

This section will first define corruption and the policies against it. ACAs will then be presented along with the explaining factors of its success or failures. These causal factors will then be categorised into three different theories which stresses that ACAs success are dependent on either the Quality of Government, support from societal elite or the implementation process. Each of these hypotheses contains observable implications which will be presented through process-graphs. These implications will then be operationalised in the following analyses

4.1 Definition of corruption

Transparency international defines corruption as “the abuse of entrusted power for private gain”. Corruption is classified into three categories which are petty, grand and political corruption. Petty corruption occurs during the interactions between citizens and the public officials. The bribe is an essential tool in petty corruption since it is the price a public official demand in order to perform a public service (Jain 2001 p.5). Petty corruption is harmful when it gets imbedded in the daily culture of the society. To put this in a context, you can think of a banker who innocently gets ticketed by a traffic cop for a speeding breach that never occurred. Instead of paying the ticket, the banker offers 50% of the tickets value directly to the cop. They both see their benefit and accept the transaction. The societal problem starts when the police officer uses the same money to bribe his children’s teacher for their education. The teacher then uses the money to bribe the same banker for getting a mortgage loan. This is a corrupt circle which creates inefficiency and inequality in a society. It is inefficient since the public funds are misused by the teacher and the police. The corrupt banker also increases the cost of doing business which is inefficient in the private sector. It is unequal since only the people with money get access to public service.

Grand corruption occurs at the top of the political system and the political elite are the actors who misuse their power. They allocate the resources for their own benefit instead of the public interest (Jain 2001 p.3). Guatemala suffers from grand corruption because CIACS have infiltrated the rule of law institutions by putting their people inside the institutions. The corrupt officials allow CIACS to act with impunity so they can continue their criminal activity (WOLA 2015 p.6). Political corruption focus on the legislators who are influenced by private instead of public interests. Different corporations can pay bribes for a congressman to pass a law or use a veto against it (TI). The difference between grand and political corruption is that

the officials hold different positions (governing and legislative) but they both work for other interests than the citizens.

4.2 Anti-corruption models and policies

Susan Rose Ackerman (1978) was the first one to analyse corruption from a principal-agent perspective. The model contains one agent and one principal who interact because the principal wants the agent to perform a service for him. The agent works for himself and it is up to the principal to change the agent's incentive to work for him. The agent and the principal are unequal since the agent has discretionary power and asymmetric information which he will misuse for his own benefit (Meagher 2005 p.9). The broad model makes it possible to put different actors as the agent in the analyses. A bureaucrat can act as the agent towards the government because the government employs the bureaucrat. The bureaucrat has better information than the government since he knows more about the area where he works. The bureaucrat can misuse this position and enrich himself instead of working for the government. A corrupt government can also be an agent and the citizens its principals, and the government misuses its power to enrich themselves instead of the citizens. A bureaucrat and a citizen can also be analysed with a principal-agent model, where the citizen (principal) needs to change the bureaucrats (agent) incentive with a bribe (Rothstein 2013 p.3-4).

Anti-corruption efforts should therefore be aimed at changing the agent's reality, by forcing him to work for the principal. A duty to be transparent is one way to eradicate the asymmetric information. Another way is to strengthen the rule of law so that the opportunities of getting caught increase for the agent. Better salaries will change the incentive to take bribes because the agent already earns enough money. Many developing countries have done these kinds of reforms but the problem is that it has had little effect on corruption (Rothstein 2013 p.2-3). The failures could be explained as a collective action problem where the agent follow the pattern as the other agents do. If there is a culture of corruption, the agent will continue the corrupt practices because everybody else is doing it. The agent will ask himself "Well, if everybody seems corrupt, why shouldn't I be corrupt.?" (ibid p.9) Corrupt and non-corrupt societies have mechanisms to fight changes. Few societies go from non-corrupt to corrupt because there are norms against corruption. The norm is embedded in the society which will make the citizens report and punish corruption. Corrupt societies on the other hand tend to accept corruption as a way of life which makes it hard to establish non-corrupt norms within the society. Societies are either particularistic or universalistic where the norms fight back at any attempt to change the corrupt or non-corrupt culture (ibid p.15-17).

A problem is that we have little knowledge about how we can change a society's corrupt culture. Avinash Dixit (2016 p.25) describes how scholars argue between the policies fixing incentives or enforcement. Fixing incentives are better salaries and professionalised working conditions for the bureaucrat. Those reforms will change the incentives since the bureaucrat doesn't need to accept bribes. Enforcement policies are aimed at strengthening the rule of law

and increase the chances to investigate and punish corruption. This will change the incentive because a corrupt official will re-calculate his decision because he knows there is a chance of getting caught. Those who argue for enforcement often support the creation of ACAs because the idea of an ACA is to increase the chances of being prosecuted for corruption.

4.3 Definition of ACA

ACAs are independent institutions that investigate malfeasance in both the private and public sectors. The main idea is to act as an enforcer against corrupt citizens which lowers the opportunities for corrupt actions. The ACA should also adopt preventive measures by recommending policy reforms to the government, or help the citizens to understand the cost of corruption (Meagher 2005 p.2). A successful ACA must have a broad mandate to investigate both the public and private sector. The staff should contain experts on corruption and investigations, so that they can perform their investigative authorities in an efficient way. Adequate resources are also important because the ACA needs to employ the experts with competitive salaries and decent working conditions. The most vital component of an ACA is the independence from the government and other institutions. Without this, the ACA will not be able to investigate the grand corruption since the politicians themselves, are the ones that influence the ACA. Few ACAs manage to fulfil these criteria which explain the meagre results of most ACAs. De Sousa (2009) explains that ACAs fail due to external or internal factors. The external factors are the grand corruption that are characterised by a corrupt political elite which doesn't give the ACA independence or adequate resources. External factors could also be an elevated level of petty corruption where bribes are so embedded in the society that one single agency can't change the corrupt culture despite the political will from the government. Internal factors are situated within the agency since bad leadership, inadequate knowledge, and corrupt officials makes it impossible for an ACA to fight corruption (ibid 2009 p.3, 15-16)

Especially developing post-conflict states have small chances of fulfilling the criteria that a successful ACA needs. Heilbrunn (2012 p.13-18) have examined ACAs in Sierra Leone and Timor Leste and compared the experiences. Sierra Leones agency lacked the support from the political elite, because the elite profited from corruption. Even if the agency found proof for corruption, the elite still controlled the courts which ruled in the elite's favour. Timor Leste on the other hand had a political will to fight corruption, but due to a harsh occupation from Indonesia, it was hard to find educated officials to run an effective agency. The whole state had the same problem, so corrupt officials had little to fear from the ACA. This reflects the internal and external factors which determine if ACAs are efficient or not.

4.4 Explanations to the success of ACAs

To understand CICIGs success, the internal and external factors need to be analysed to see if they were present in this case. The external factors influence the ACA from the outside, and it can be divided into two hypotheses which is the support from societal elites or the Quality of Government. These hypothesis stresses that these components must be present for an ACA to succeed. The question that will be answered in the analyses is if these causal factors where present in the case of CICIG. *Did they have support from the societal elites? Did the surrounding institutions had good quality?* The support from societal elites will be exemplified by John St Quahs (1999,1994) studies of ACAs in Southeast Asia. It is chosen because it provides a thorough description of how elites fight corruption through ACAs with clear implications that can be tested in the analyses.

The quality of surrounding institutions will be exemplified by Rothstein and Teorells theory of impartiality. It is chosen because they have clear implications of how quality of government works which can be tested in the analyses. The internal factor is situated within the ACA and evaluates the personnel, leaders and freedom for the organisation. It stresses the implementation process which have to function in order to achieve success as an initiative. Heeks & Mathisen (2012) have launched their theory Design-reality Gap where they have described how ACAs should be implemented successfully. The theory will be analysed under the headings of Implementation since it is easier to recognize the concept of implementation rather than Design-reality Gap. Just like the previous theories, this is chosen because it has clear implications which can be tested in the case of CICIG. The theories have also been chosen because it allows us to analyse different objects by looking at relevant institutions, the societal elites and CICIG themselves.

4.4.1 *Quality of government*

Rothstein and Teorell (2008) argue that corruption is a result of a low quality of government which is characterised by unprofessional officials, partial appointment process and inefficient service for the citizens. The low quality of government erodes legitimacy which makes it harder for states to collect taxes and supply the citizens with public services. Corruption is a part of the lack of legitimacy because it reinforces the partial culture which creates the collective action problem. When corruption is present, it will reinforce the lack of legitimacy since citizens have no reason to pay taxes as they will go to corrupt thieves. Both the officials and the citizens will act according to the corrupt game which is expected from them. This theory argues that the battle against the culture of petty corruption is the most important component if you want to fight corruption.

The solutions are the concepts of impartiality and legitimacy. A state needs legitimacy from the citizens and the best way to get it, is to provide output legitimacy with impartiality.

The idea can be explained from the principal-agent model where the official is the agent and the citizen is the principal. When the principal needs a service, the official will provide the service with efficiency, professionalism and impartiality. The principal will see the benefit from the service and will be willing to pay taxes as the money will go to impartial public service. The government should implement this by shaping their policy reforms towards impartiality, better salaries, professionalism and meritocratic appointments. The collective action problem could be solved by implementing the policies slowly and discrete. Corruption should not be attacked directly with anti-corruption policies or institutions like ACAs. Those direct attacks will make those who profit from corruption to fight back. Corruption should be attacked indirectly with policy reforms which create quality of government. The goal is to create Weberian legitimacy for the state which will eradicate corruption in the long run, since corrupt practices will become unnecessary when the officials produce impartial output legitimacy (ibid).



Figure 1: The institutions need to full fill these criterions to be considered legitimate institutions Meritocracy is the appointment process that guarantees that the official is appointed after its merits and skills. Professionalism is the education that the official has received to perform its duties. Efficiency is the way the official performs the service. Impartiality is the equality that the official give to each citizen.

4.4.2 Societal elite theory

James C. Scott (1969) is a recognized scholar for his comparative study of corruption in developing countries. He finds that political elites and their bureaucrats have easy access to the formal institutions. The political elite is therefore keen to keep its positions, and other interests like entrepreneurs or foreign investors are excluded from the formal institutions. Corruption and informal institutions will therefore be the only way that the excluded groups can obtain any influence in the country’s policies and legislations. Scott argues that the parallel structures and closed political systems make it hard for developing countries to fight corruption. It creates a norm of grand corruption where different societal elites benefit from corruption at the expense of regular citizens with no money or influence (ibid).

John ST Quah (1994, 1999) has developed this theory when he examined ACAs in Southeast Asia. He saw that ACAs in Hong Kong and Singapore, with smaller institutions and a unified political elite managed to establish progressive laws against corruption where ACAs implemented those new laws. The goal was to lower the opportunities of corruption by giving the ACAs the adequate resources, independence and professional officials. The next step was to create quality of government by giving state officials better salaries, decent education and meritocratic appointments. Thailand and the Philippines on the other hand lack the

coordination possibilities since they are larger states with larger populations compared to the city states. They also have a weaker leadership since different societal elites misuse the power for their own benefits. ACAs in those countries fail because they aren't supported by the societal elites which profit from corruption. Quah's main argument is that it is the societal elites that trigger the quality of government by a unified leadership which uses ACAs to implement progressive laws against corruption. The main problem is the grand corruption and when the elite solves the collective action problem and see their mutual benefit in a non-corrupt society, they will then create quality of government for the agents (ibid).



Figure 2: The following implications indicate whether the societal elites support anti-corruption policies. Incentives determine whether the elite has reasons to fight corruption. Progressive laws are transparency laws, investigative laws and longer sentences for corruption. Support for the ACA is the way to implement the laws. Support is characterised by adequate funding, expert personnel and independence to investigate corruption.

4.4.3 Implementation-process

Heeks & Mathisen (2012) have asked the question *why do so many anti-corruption initiatives fail?* They analyse all initiatives where ACAs are included. Their main argument is that initiatives fail due to inadequate implementation. Corruption is different all over the world and the previous discussion between quality of government vs. societal elites is harmful because it assumes that there is a *one-size-fits-all-model* that works all over the world. Some states have a need for discrete policy reforms while others have a need for a stronger rule of law. A country in Africa has different corruption than Hong Kong, and when an ACA designed after Hong Kong's problem gets implemented in Africa, it fails because of conceptual travelling. Heeks & Mathisen introduce the concept of **Design-reality gap** which is the gap between the design of the initiative and the reality that the initiative faces. The design creates expectations which the reality can't live up to. The design of Hong Kong assumes that the personnel are educated, have access to the latest technology and have decent salaries. In reality, there are no technical tools, no educated personnel and low salaries, which makes it impossible for African ACAs to deliver the same results as Hong Kong achieved. Hong Kong's design is also efficient against the petty corruption, but states in Africa may have bigger problems with the grand corruption, causing the ACAs to aim their resources at the wrong kind of corruption.

Heeks & Mathisen describe a good implementation as the initiatives that manage to close the gaps between design and reality. There must be design knowledge which is characterised by experts on corruption, technical knowledge and leaders who manage to act strategically, in order to follow the designs objectives. But the design knowledge can't function without the

knowledge about local power structures and the function of corruption. Heeks & Mathisen use the Bolivian tax reform as the role model of how to implement an initiative successfully. Officials with knowledge of how to eradicate corruption within the tax system collaborated with the local officials that had worked in the department and knew how the power structures functioned. Another vital component was the slow implementation of the reform. A big bang approach would have eradicated the collaboration between the design and reality because a collaboration takes time. The design knowledge must adapt to the local reality. What Bolivian tax reform did was to replace a corrupt system with a more transparent and non-corrupt system. But to do that, you must know how a non-corrupt system looks like, but you must also know how the corrupt system works in order to change it. Heeks & Mathisen describe these initiatives as hybrid-initiatives where the design-reality-gap is closed by a mix of design-knowledge and local knowledge. They also argue that the design-knowledge must have the independence to act rational and to adopt the design to the reality (ibid).

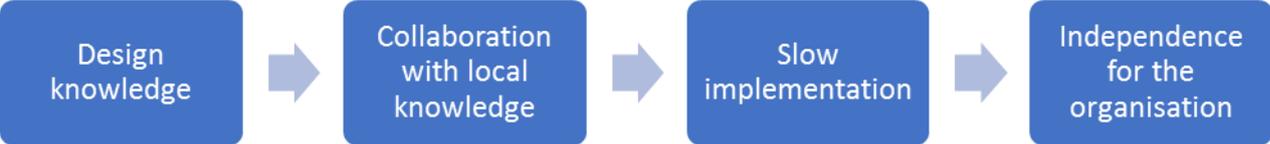


Figure 3: The following implications determine whether the ACA has been a good anti-corruption implementation. Design-knowledge is characterised by experts on corruption and investigations. Collaboration is the way that the ACA-officials collaborate with ordinary officials who work in close institutions. Slow implementation is the time it takes for the collaboration to be effective. Independence is the possibility for the ACA to set their own objectives and act according to them.

5 Method

This section will first introduce process-tracing as the chosen method. The operationalisation paragraphs will discuss how the implications can be interpreted in the material about CICIG. It will also define the objects which each hypothesis analyses. The material will present the collection of empirics which have been taken from four different actors.

5.1 Process-tracing

The previous theoretical section has presented three different theories connected to the internal and external factors determining whether ACAs are successful or not. The question is: Which of these factors can explain CICIGs success? The method of Process-tracing will let each theory be tested on the case, in order to conclude how each theory explain the events. Process-tracing are chosen because it allows us to understand CICIG from different perspectives which will create a broad explanation to *why CICIG was effective*. George & Bennet have described Process-tracing with a domino metaphor. You have 50 bricks on the table but a blind is covering brick 2-49 so you can only see the first and last brick. Both have fallen at the same direction but because of the blind you can't be sure that they felt due to a shaking table. Process tracing is when you lift the blind and study if brick 2-49 point in the same direction which is evidence that the first brick has caused the 50:th to fall. In figure 5 you can see the same idea where Y is the last brick representing CICIGs success. X1 is the first domino representing Quality of government as the causal factor. The points between the X and Y are the implications or the blinded dominoes that this study will reveal (Teorell o Svensson 2007 p.247-249).



5.2 Operationalisation

5.2.1 *Quality of surrounding institutions*

The hypothesis will determine whether CICIGs investigations can be explained by the quality of surrounding institutions. Since CICIG is a rule of law initiative the institutions present in the area should be the objects of the analyses. MP, Police and the Courts are therefore natural objects since they are the institutions that CICIG interact with. Rule of Law is also a human right which UN and USA have written reports about. These reports have already tried to answer if Guatemala's institutions provide decent rule of law for its citizens. Those sources will provide an overall picture of the institutions, but there are also smaller indications that need to be included in the analyses. NGOs can provide a narrower picture of CICIGs relation with the institutions. Especially Insight Crime and Open Society have written detailed reports about the Courts, MP and CICIG. The material has already tried to answer the implications in figure 5 which will be presented in the analyses.

5.2.2 *Support from societal elites*

The hypothesis will determine if the support from societal elites can explain CICIGs investigations. The analyses will rely heavily on Insight Crimes report about Guatemala and its elites. The analyses will not go into detail about the separate groups within the elite since it is not relevant to the hypothesis. The elite will therefore be one entity influencing the institutions Government and Congress through formal and informal networks. CICIGs relation with government and congress will therefore be the central analytic object. The implication *incentive to fight corruption* will be determined by answering the question why CICIG was established. Since the politicians in Guatemala asked for CICIG, there must be incentive to do something about corruption. Progressive laws will be determined by looking at the laws approved by congress. Support for the ACA will be an analysis of CICIGs policy recommendations and how and if they have been implemented by congress and government.

5.2.3 *Implementation-process*

The hypothesis will look closely at the implementation-process and CICIGs internal factors. Design-knowledge will analyse CICIGs staff and its commissioner to determine if they have expert knowledge on corruption. Collaboration will be focused on the relation between MP and CICIG. Slow implementation will be an analysis of CICIGs strategies and objectives throughout the period in between 2007-2015. Independence will be determined by the way CICIG managed to redesign itself, to be able to deal with the corrupt reality in Guatemala. It will also be a discussion whether CICIG may have been influenced by UN or Guatemalan

interests. SIDAs decision material will be important since they have donated money to CICIG, motivating it by analysing CICIG as an organisation.

5.3 Material

Unfortunately, I don't speak Spanish which has limited my collection of material. Especially material close to Guatemala and CICIG would have been valuable giving me a much broader picture of CICIG and how it is perceived in Guatemala. Instead I have tried to gather material from four different actors. The first actors are the IOs World Bank and UN which have good institutional knowledge and have written reports about how Guatemala provides rule of law to its citizens. The other actors are States within the international community which in this material are USA and Sweden. USA have in their human rights report about Guatemala evaluated the police, prosecutors, courts and prison system on how they adhere to the human right to a decent rule of law. That material is useful when the theory of Quality of Governments implication is tested. Sweden on the other hand, through the embassy in Guatemala, motivates its donation to CICIG referring to decision material justifying their donation. That material is useful when we test whether CICIG was a good implementation or not.

Then there is the third actor which is the NGO in this case represented by WOLA, Open Society Foundation, International Crisis Group (ICG) and Insight Crime foundation. These sources are maybe not as recognized as the World Bank or USA, but they have proven vital since they have studied Guatemala the from inside, and have written the most detailed reports about CICIG. Their material is also based on interviews with CICIG-employees and other Guatemalan officials. Insight crime was for me the most unknown source but it has been the most useful one, since it has given a great background to CICIG, through an analysing document of Guatemala's political elite and a report about Guatemala's institutional problems in between 2010-2015. Insight Crime is a research centre about organized crime in South America, and they are funded by the British, Swedish, Canadian embassy and the American University. The fourth actor is CICIG themselves which as an organisation has left material such as their yearly reports and speeches from the commissioners. When I asked for material from CICIG, they sent me a translated speech from the commissioner where he described how CICIG was established, and why they have been successful.

6 Analyses

This section will test three different hypotheses on the case of CICIG. The analyses will discuss the previous implications and how it can be applied to this case. The summaries under each hypothesis will conclude whether the hypothesis is true or false.

6.1 Quality of Government

Hypothesis: Can the surrounding institutions explain CICIGs investigations against the grand corruption?

Especially MP has been praised as a well-functioning institution (World Bank p.10, ICG p.16, UN p.4). The reasons are the laws which were passed 2009/2010 when wiretapping and witness protection programmes were established. Another crucial factor was the meritocratic appointment of Claudia Paz Y Paz who successfully implemented the new laws and reconstructed MP (Insight Crime 2014 p.3-8). It all started when CICIG in 2010 managed to remove the newly appointed chief of MP, who was accused of being corrupt (WOLA 2015 p.20). The constitutional court removed him and the president picked a new head of MP based on meritocratic recommendations from CICIG (Open Society 2016 p.55). Claudia Paz y Paz got the job due to her experience and merits as an attorney. She immediately got the chance to prove her leadership because the drug cartel Los Zetas tried to establish themselves in the northern parts of Guatemala. Los Zetas started by killing civilians and captured and killed a prosecutor in Coban to send a message that they did not fear the state. Claudia Paz y Paz reorganized MP and managed to capture and prosecute hundreds of Zeta-members through wiretaps, informant bargains and high-risk courts. MP had responded to Los Zetas, showing that Guatemala was not for them and that the state had tools to capture them. Paz y Paz received a high recognition for her work especially from US Drug Enforcement (Insight Crime 2014 p.8-11)

Paz y Paz leadership showed clear results since impunity rates fell with 23 percent and MP sentenced 6,188 criminals in 2013 compared to 2884 in 2008. Paz y Paz then started a campaign that would gain international recognition but also sealing her fate at MP. She started to prosecute old military leaders for crimes against humanity during the civil war. Especially the general and politician Efraim Rios Montt was a success case, since he was the leader of the bloodiest campaigns during the 80s. The court convicted him along with other high militaries which gave the victims some compensation. But the backlashes started after the trials since the constitutional court overturned the sentence just ten days after the it had been passed. And Paz y Paz was dismissed from her position and wasn't re-elected despite her

merits and experiences (Insight Crime 16-24). The new head of MP Thelma Aldana turned out to be a crucial factor when MP along with CICIG started to investigate the grand corruption within the government through the “La Linea” investigation. It is important to remember that CICIG performed the investigation together with MP. MP and CICIG have gained great recognition due to their investigations among Guatemala’s citizens (Open Society 2016 p.79 World Bank p.10-11)

In spite of MP’s transformation, the other judicial institutions are still weak and unprofessional (ICG 2016 p.3). The police are accused of corruption, extrajudicial killings and torture. The courts fail to provide fair and timely trials due to inefficiency, corruption and intimidation of judges (US DOS 2015 p.1). The courts appointment process is not transparent and the selected judges aren’t the most experienced and competent (UN 2016 p.5). This is something that CICIG have tried to influence by recommending the most experienced judges to the seats, but the appointment committees have chosen other candidates (Open Society 2016 p.9). The fact that the constitutional court could overturn the conviction of Rios Montt shows that the institutions still suffer from corruption and partiality. The dismissal of Paz y Paz also indicates that meritocracy is not present in Guatemala’s institutions (WOLA 2015 p.29). CICIG have tried to recommend a Career law that would give officials right to public office based on their merits. This law is pending and it is clear that powerful interests fear this meritocratic change (ICG 2016 p.3). Another indication is that all reports conclude that all the institutions suffer from inadequate funding from the state. MP is only present in 10% of Guatemala’s municipalities (Velasquez speech 2017) and the forensic investigation department is also underfunded (UN 2016 p.5). The reason is that Guatemala has one of the lowest tax revenues in the hemisphere. Tax revenues are only 13% compared to the regional average of 21%, demonstrated in overcrowded prisons, orphanage homes and weak judicial institutions (ICG p.13).

Summary:

MP alone has increased their quality and showed indications of meritocracy, professionalism, efficiency and impartiality. To explain CICIGs success it is important to always include MP and their institutional transformation. The problem is that the police and courts haven’t increased their quality since inefficiency, unprofessionalism and partiality are still huge problems. The police and the courts cannot explain how CICIG managed to investigate the grand corruption. It is quite the opposite of the hypothesis, since it argues that all institutions need to increase their quality, not one single institution. The hypothesis is therefore not true.

6.2 Support from societal elites

Hypothesis: Can support from societal elites explain CICIGs investigations against the grand corruption?

It is important to understand that Guatemala is a weak state where different interests use the institutions in their favour. Insight crime wrote a report about the elite and concluded in the

introduction that these groups influence the state through formal lobby organisations and informal corruption networks. The formal networks can be exemplified by the powerful business organisation CACIF (Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras) where bankers, industrialists and other important economic actors are represented. They are an assembly of the economic elite who influences the state to keep their low taxes and small institutional size. Then there are the informal networks characterised by grand corruption between government officials and private interests. For example, the ministers of government have lower salaries than CEOs in the private sector, but the ministers get bonuses on top of their salaries, paid by business corporations (Insight Crime 2016 p.8-10) This indicates that the elite lacks the incentive to battle corruption since they benefit from it, and the government is in fact employed by the powerful elites. According to recent ACA theory it is hard to understand why CICIG even got established.

The answer lies in an increasing demand for drugs from the US. This demand combined with weak institutions and a strategic position to smuggle drugs make Guatemala the perfect hub in the transportation system of drugs from South America to USA. Roughly 90% of all the cocaine consumed in USA transit from Guatemala and only 0.5% is seized inside Guatemala (Insight Crime 2016 p.13). As mentioned before, CIACS increased revenues causing infiltrated rule-of-law institutions, which isn't good for anyone. Foreign investors avoid Guatemala which is bad for the economic elite, USA gets frustrated because of Guatemala's inability to stop the drug trafficking, the citizens in Guatemala are killed without any trials and the elite's powerful positions are threatened by CIACS. This explains why CICIG was created, it explains the laws that allowed modern investigative techniques, which wasn't allowed before since it threatened the elite's informal structures (WOLA 2015 p.3-6). It is an indication of the consensus within the Guatemalan society that CIACS needed to be dismantled, the support for CICIG and the will to do something about their weak state institutions. But there was no will to fight corruption itself, since grand corruption was so embedded in the government. The laws that were approved were crime investigative laws and not anti-corruption laws. Insight Crime (2016 p. 65-68) argues that CICIG had support from the societal elites in the establishing years, and that it was vital during the initial phases. CICIG would not have been able to navigate in the complicated system without support from the societal elites.

If we go back to Quah's theory of societal elites, it can explain the first years and the establishment of the ACA. But there are many indications that the societal elites support stopped after 2011. The policy reforms that CICIG suggested were dismissed in congress and their meritocratic recommendations were not implemented (Open Society 2016 p.9). The elite also controls large parts of the media channels, who generated smear campaigns against CICIG, which made many citizens suspicious of CICIGs work and their interference in Guatemala's sovereignty. Two commissioners have also resigned due to these smear campaigns (Insight Crime 2016 p.53,63). Despite the lack of support from the elite, the newly elected president Otto Perez Molina extended CICIGs mandate 2013. It was surprising since he had old connections to the military and the criminal networks and was a part of the corrupt system. He motivated his decision by pointing to the fact that CICIG achieved good results in the collaboration with state institutions, and the increased capacity of MP. The president was also in a critical situation since Los Zetas had just tried to gain influence in Guatemala and he

really needed well-functioning institutions to avoid that threat (Open Society 2016 p.64). But the support stopped after Paz y Paz genocide trials and CICIG was on the brink of losing its mandate 2015.

At this point the theory of societal elites has a really hard time to explain what happened. It was after the military trial and just before the La Lines that Molina expressed that CICIG would lose its mandate. CICIG had nothing to lose and started to investigate the grand corruption and the connection between government officials and private interest. CICIG had no support from the elites but they had support from the international community and the officials at MP (Open Society 2016 p.72-73) That support was enough to follow the money and start a theatre of corruption, displayed through the medias which made the citizens express their frustration in massive demonstrations, forcing the president to resign (Velazquez speech 2017). CICIG is now the most trusted institution and has huge public support for their work (ICG 2016 p.13). A state ACA would not be able to investigate its own president since he is the one ruling over it. A regular ACA would also have been corrupted by societal elites when it started to find uncomfortable facts. The answer lies in the mandate that CICIG is not dependant on anyone but UN and the support from MP. This is a demonstration how you can get around the problem of the societal elite's theory.

Summary

The establishment of CICIG cannot be explained without societal elite theory since the traditional elite was really threatened by CIACS. The elites supported CICIG if they investigated CIACS, but not when they tried to influence the corrupt structures inside the government. The high-level investigations were performed without the support from elites which is the opposite of the hypothesis claiming that ACAs are dependent on societal elites. This hypothesis is therefore not true.

6.3 Implementation-process

Hypothesis: Can the implementation process explain CICIGs investigations against the grand corruption?

CICIG has design knowledge since educated and professional prosecutors and crime investigators are employed with the unit. SIDA personnel have in their decision material expressed their concern since CICIG is a very expensive initiative where the personnel have competitive salaries. There is also a high security cost since staff members are intimidated and in need of protection (SIDA² 2013 p.1). An example of expert-knowledge is that Swedish crime investigators have been working at CICIG taking part in the investigations (Polisen

² This source is SIDAs decision material where the donation to CICIG are motivated

2012) The three commissioners have also been extremely qualified with experience from high-profile cases (Open Society 2016 p.4-6). CICIG has also collaborated with local knowledge since their mandate force them to prosecute the cases through MPs prosecutors. CICIG has implemented this with the collaboration unit FECCI where CICIG along with career prosecutors collaborate in the investigations. An example of the collaboration is “la Linea” which was an interaction between the local and design knowledge (WOLA 2015 p.10).

CICIG has also been a slow implementation with realistic objectives. CICIG was established as a support for MP to lower the increasing homicide-rates and the impunity rates at 98% (WOLA 2015 p.9). It was expected to build up the state capacity and through collaboration strengthen Guatemala’s rule of law. The first years were spent on building networks and recommending the policy reforms which were necessary during the following investigations (Insight Crime 2016 p.65). But CICIG grew into the system and learned how it worked since many of the high-profile investigations failed in court (Open Society 2016 p.9). After the failures, they understood that the grand corruption was the real problem in Guatemala making it impossible to create a decent rule of law. Therefore, they reshaped their investigation towards the grand corruption thus revealing the “la Linea scandal”.

This is an example of how CICIG as an organisation has adopted to the corrupt strategy of its opponents and redesigned itself. The reason is the broad mandate describing that CICIG has the authority to investigate anything, if it is aimed at CIACS (Insight Crime 2016 p.36). This is combined with a substantial authority for the commissioner, who has power to set the strategy without influence from either the UN or Guatemala’s government (SIDA 2013 p.11). This creates an ability to react to the corrupt reality. CIACS often reshape and find new ways to infiltrate state institutions demanding CICIG to be free to pursue the hunt with new methods (Velásquez speech 2017). It is also interesting to see how CICIG at the beginning relied on the support from the political elite, and when they turned against CICIG after 2010, they already had a collaboration with officials at MP. When MP and CICIG dismantled corruption in the government, CICIG received legitimacy from the people who now regard them as the most trusted institution (ICG 2016 p.13).

There is no doubt of CICIGs design-knowledge and their collaboration with local officials, but the objectives and the independence have not always been positive factors. CICIG is highly dependent on the commissioner’s strategic decision since CICIG wasn’t effective through the period 2010 until 2014, and failed to make any impact during this period (Open Society 2016 p.5-6). The leadership was described as poor reflecting on the different kinds of crime investigations. At first CICIGs objective to investigate murders and reach CIACS from that direction turned out to be ineffective if you compare it to the impact from “la Linea”.

Summary

CICIG has design-knowledge and has collaborated with local officials, mainly MP. That particular collaboration was implemented slowly and explains how CICIG and MP could investigate its own president. The slow implementation made CICIG act rational and adjust their strategy, enabling it to deal with the grand corruption. This shows that CICIG as an ACA has been independent, which has given it great recognition from the citizens. All implications have proven correct which makes this theory accurate in the case of CICIG.

7 Conclusion

So why have CICIG been successful according to theory? Both societal elite's theory and surrounding institutions can only explain parts of the success. Support from the societal elites explains their establishment and why CICIG received support in the initial phases (Insight Crime 2016 p.65-68). But the elites were keen on fighting CIACS and not corruption itself. They did not allow meritocratic laws and they did not approve meritocratic appointments in the courts (Open Society 2016 p.3). But they allowed MP to change because they were important against CIACS but also Los Zetas who tried to conquer territory in Guatemala. MP's transformation during Claudia Paz y Paz strengthened the rule of law by implementing the new laws having been passed by the authorities. The crime statistics improved and MP has since then been a stronger institution. But MP also suffers from underfunding along with the courts and polices which still suffer from corruption (ICG 2016 p.3, US DOS 2015 p.1) When Paz y Paz prosecuted militaries for atrocities during the civil war, the elite responded through corrupt courts and the dismissal of Paz y Paz. The corrupt and underfunded institutions go against Teorell and Rothstein theory since all institutions need to have quality, not just one.

The internal factors and the collaboration with MP made it possible to investigate the grand corruption through the "la Linea" investigation. CICIG had good design-knowledge due to the professional staff and a commissioner with experience in grand corruption investigations. That knowledge was mixed with local knowledge through the collaboration-units with MP. CICIG was also a slow implementation which in the initial phase gave them modern tools like wiretapping and witness protection, which were used in their investigations. CICIG had also seen many prosecutions fail due to corrupt courts or other external factors. They understood that grand corruption was the real problem. But the most vital component for CICIG was that it had independence to act inside this corrupt environment. When they were close to lose its mandate, they had nothing to lose and independently investigated the most powerful networks inside the government.

CICIG have shown that ACAs can investigate the grand corruption with good internal factors. Independence and collaboration with local knowledge allowed them to get around the external factors which often determines the success or failures of regular ACAs. CICIG have shown that an efficient ACA in a corrupt environment will have an impact, since it can hold the corrupt officials accountable in the courts or in fair elections. The politicians will be forced to play by the democratic rules, since an effective ACA will investigate the irregularities. But it is important to always remember ACAs limitations. One single institution cannot eradicate corruption since it is a problem that needs to be fixed through the whole society. ACAs can only trigger change from the top which hopefully will trickle down to influence the petty corruption. CICIG investigated the top and changed the political landscape which opened up for a less corrupt government. But CICIG's contribution needs to be consolidated through policy reforms towards Quality of government which eradicate corruption in the long run. That process will be performed by the Guatemalan society and not CICIG. But there must be triggers for institutional change, and CICIG is an example how

these triggers look like. CICIG have also shown that the international community can trigger these changes by providing ACAs with good internal factors.

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SIDAs decision material can be sent upon request
The translation of commissioner Ivan Velasquez speech can also be sent upon request.