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# How to ‘make law count’: Lessons from the *Comisión Internacional contra la Impunidad en Guatemala* (CICIG) for the Effectiveness of Hybrid Governance

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## Abstract

The international community has experimented with a variety of tools for promoting the rule of law in weak states, yet with few successes. An innovative tool is hybrid commissions not supplanting the justice system of the target state but fighting impunity from within it. In this contribution I therefore seek to identify the factors that render this novel mechanism of rule of law promotion effective, arguing that a set of factors – support from the Attorney-General, civil society and powerful donors; as well as the commission’s institutional design, its strategy, and the personality of the commissioner – will determine if the changes initiated by the hybrid lead to a deeper transformation of the host state, or if there will be a rule of law rollback as soon as the commission leaves the country.

**Keywords:** rule of law; Comisión Internacional contra la Impunidad en Guatemala; International Commission against Impunity in Guatemala; CICIG; hybridity; governance

## 1 Introduction

When my bicycle was stolen a few months ago in Berlin I immediately reported it to the police. A citizen of Guatemala, by contrast, would probably not bother reporting the theft to the police, knowing full well that the police would be of little help getting the bicycle back; instead, said individual might turn to private actors to recuperate the stolen item and punish the thief. What, then, makes people turn to the law for help? Or, more broadly speaking, what ‘makes law count in social life’ (Krygier, 2005, p. 7)? This question has been considered to be ‘one of the deepest mysteries of the rule of law’ (*ibid.*). I suggest that what makes law count is a belief in the legitimacy and effectiveness of the law as a guarantor of people’s rights, which prompts the addressees of the law to vindicate their rights through the legal system rather than through other avenues. In some parts of the world, such a belief is deeply engrained. In others, however, it is completely absent; here, problems of corruption, organised crime and state capture<sup>1</sup> are often pervasive, disputes are regularly solved through violence rather than legal channels, and impunity is rampant.

The international community has experimented with a variety of tools for promoting the rule of law in these parts of the world, ranging from mere capacity-building to highly intrusive

<sup>1</sup>In a captured state, interest groups exert a disproportionate influence on the formulation of public policies, for instance through the illegal financing of political parties, the buying of parliamentary votes, of presidential decisions, etc. As a result, public institutions cease to serve the common good and instead favor the particularistic interests of those who have managed to co-opt the state (CICIG, 2019, pp. 10–11.).

measures such as the establishment of international tribunals. Yet these measures have often not been effective in making the law count in such hostile environments. A relatively novel tool – which is as innovative and successful as it is under-researched – is hybrid commissions not supplanting the justice system of the target state but fighting impunity from within it. Their prototype was the Comisión Internacional Contra la Impunidad en Guatemala (CICIG), which was unprecedented among ‘international efforts to . . . strengthen the rule of law. It has many of the attributes of an international prosecutor, but it operates under Guatemalan law, in the Guatemalan courts, and it follows Guatemalan criminal procedure’.<sup>2</sup> Unlike hybrid criminal tribunals, CICIG did not use international law and international judges to fight impunity, but sought to build a culture of lawfulness from within the Guatemalan legal system. Honduras, El Salvador and Ecuador subsequently created variants of the CICIG model. Outside of Latin America, the EU created a similar yet more expansive hybrid, the European Union Rule of Law Mission in Kosovo (EULEX). Worldwide, about a dozen countries have contemplated setting up a similar mechanism (WOLA, 2015, p. 29).

Surprisingly, scholars have thus far largely overlooked these novel forms of hybrid governance. While a number of useful policy briefs have been published on the new hybrids,<sup>3</sup> hardly any theory-building work has been carried out.<sup>4</sup> This dearth of research is rather surprising, considering that the new hybrids have been praised for producing ‘transcendental’ effects (WOLA, 2015, p. 27). It remains unclear, however, to what extent they can effect a lasting transformation of the justice systems of their host state and what scope conditions are required for them to operate successfully. In this contribution I therefore seek to identify the factors which render this new form of governance effective. By ‘effective’ I mean the hybrid’s ability not only to investigate, prosecute, train and reform, but also to anchor a culture of lawfulness in the host state that will persist even after the hybrid’s departure. A hybrid’s impact can be gauged through a variety of measures, including quantifiable indicators such as case statistics. Note, however, that what matters is not only the sheer quantity of cases being investigated and convictions achieved. It is equally important to look at *who* is being prosecuted. Do the new hybrids merely go after small fry or are the big fish – those normally considered untouchable – equally targeted? Another relevant indicator for measuring impact is the new hybrids’ legacy in terms of building local capacity, i.e. the creation of what Ciorciari and Krasner have called islands of excellence – ‘entities that provide public services much more effectively and transparently than most surrounding domestic institutions’ (2018, p. 485). Finally, impact can be gauged based on surveys measuring public trust in the hybrid as well as the justice system in general. As we shall see in the empirical section, CICIG fared extremely well on all of these dimensions, but now that the commission has left the country, almost all of its achievements have been undone.

In light of the absence of studies theorising the effects of this new form of governance, I had to derive my hypotheses inductively, based on several months of (mostly) online fieldwork interviewing CICIG staff, political elites, civil society, judges, journalists, etc. All in all, I conducted more than thirty semi-structured interviews throughout the year 2021. Now, what are the main findings emerging from this research project – how did CICIG make the law count? To begin with, we should remind ourselves that the new hybrids are embedded in a web of multi-level governance, which means that their impact is shaped by a number of factors from different levels of analysis, ranging from the global to the local. Three players in particular enable a hybrid commission to carry out its mandate even in the face of host government obstructionism, namely support from powerful donor states, civil society and a co-operative Attorney-General. At the

<sup>2</sup><https://www.cicig.org/history//index.php?page=about>

<sup>3</sup>See, e.g. Call, 2018, 2019; Call and Hallock, 2020; International Crisis Group, 2016; Open Society Justice Initiative, 2016.

<sup>4</sup>While there is a handful of scholarly articles on hybrid anti-impunity commissions, these tend to be single case studies of CICIG that either have no broader theory-building aspirations or do not investigate the effectiveness of this new form of governance (see, e.g. Donovan, 2008; Hudson and Taylor, 2010; Nyberg, 2015; Krylova, 2018; Zamora, 2019).

same time, a hybrid's impact is not merely contingent upon external variables but is equally dependent upon certain internal factors, namely its institutional design, its overall strategy, as well as the personality of the commissioner. The interplay of all of these factors determines if the changes initiated by the hybrid will lead to a deeper cultural transformation, that is, if they establish a 'new way of doing things' in the host state – in that compliance with the law ceases to be an exception and becomes the norm. If no such culture of lawfulness is successfully consolidated in the host state, it is very likely that after the hybrid's departure, a relapse into the bad old habits of impunity will occur.

Obviously, the findings from a single case study should be taken with a grain of salt in terms of their generalisability. More in-depth research will be necessary to arrive at a consolidated framework theorising these novel forms of hybrid governance – the present case study represents merely the first step.

## 2 Hybridity in global governance

Before analysing the novel governance arrangement represented by CICIG in greater detail, it seems useful to situate it within the broader academic literature on hybrid governance, which has produced relevant insights but also exhibits certain lacunae. In recent years there has been a surge in scholarly interest in the concept of hybridity (see, e.g. Lemay-Hebert and Freedman, 2017; Millar, 2014; Peterson, 2012), which can be defined as the interaction of external and local actors in the carrying out of governance tasks. There is a voluminous literature on hybrid peacebuilding, for instance (see, e.g. Forsyth *et al.*, 2017; Mac Ginty, 2010; Mac Ginty and Richmond, 2016; Nadarajah and Rampton, 2015), which, however, tends to focus mainly on critiquing the liberal peace rather than systematically investigating the effects of hybridisation.

Another manifestation of hybridity in global governance is the phenomenon of hybrid criminal tribunals (see, e.g. Carolan, 2008; Chehtman, 2013; Cohen, 2007; Cruvellier, 2009; Dickinson, 2003; Higonnet, 2006; Horowitz, 2013; McAuliffe, 2011). In contrast to the hybrid peace literature, this scholarship does address the effects – or legacy – of hybrid tribunals, albeit only sporadically. Legacy can be defined as 'a hybrid court's lasting impact on bolstering the rule of law in a particular society, by conducting effective trials to contribute to ending impunity, while also strengthening domestic judicial capacity' (Office of the United Nations High Commissioner for Human Rights, 2008, pp. 4–5). Now, even though the importance of legacy is widely recognised, actual successes, 'although not entirely absent, have been few' (*ibid.*, p. 5). As the Office of the United Nations High Commissioner points out in a stocktaking of the performance of various hybrid tribunals,

[i]n Kosovo and Timor-Leste, the introduction of hybrid capacities was very much in response to the immediate challenges and needs on the ground, as opposed to being part of a strategic and long-term international intervention. In Cambodia and Sierra Leone, legacy initiatives face the political complications of introducing international capacities into existing domestic legal systems. In Sierra Leone, legacy has also been hampered by pressures to conduct trials within a certain time frame and allocation of resources. In Cambodia, it remains to be seen whether the addition of international personnel will be sufficient to withstand the political interference evident in the domestic justice system' (*ibid.*).

In sum, the existing literature on hybrid governance has tentatively identified (yet not systematically tested) a number of factors that seem to shape the impact of hybrid criminal tribunals, including resources, strategy, or the level of political interference; and as we shall see in the empirical section, these factors also played a role in the case of CICIG. Overall, a detailed, systematic and also comparative analysis of the effects of hybrid governance arrangements in different issue-areas is still missing – an analysis which could then provide the building blocks of a broader theory of hybridity in global governance.

### 3 The rule of law, the culture of lawfulness and the norm life-cycle

Now, investigating the effects of hybrid governance on the rule of law requires a definition of the outcome of interest: put differently, what exactly do I mean by the rule of law, and how does one differentiate between the rule of law in technical terms and a culture of lawfulness that arises over time from this technical adherence to rule of law precepts? In this article I define the rule of law in general terms as the requirement that a community be governed by legal rules, not the whims of men (or women). The concept of rule of law culture,<sup>5</sup> by contrast, requires more elaboration. Brian Tamanaha posits that for the rule of law to be robust, those addressed normatively must take the law for granted: ‘This attitude . . . is a shared political ideal that amounts to a cultural belief . . . When this cultural belief is not pervasive . . . the rule of law will be weak or non-existent’ (2007, p. 13). By contrast, in countries where such a culture of lawfulness does exist, the addressees of the law display:

‘a positive attitude toward legal norms as might be demonstrated by a socio-political context in which both ordinary citizens and public officials manifest a serious commitment to principles and institutions of the rule of law. They demonstrate commitment by generally complying with its basic principles and institutions, insisting on their compliance, criticizing those who fail to comply with them, and finally, taking whatever action is necessary to correct any lack of compliance’ (Zimmermann, 2007, p. 24; see also Nelken 2016, p. 46).

Hence there is a difference between the rule of law in a procedural sense as a technical requirement that the legal rules which govern a community be transparent, publicly promulgated, uniformly applied, and so on – which can be achieved through external capacity-building, for instance – and the public consciousness, the cultural belief that grows *over time* from such a technical adherence to legality. We thus need to look ‘behind the formal account of law’ in order to understand how exactly legal obligation arises, that is, how fidelity to the law is generated, as Brunnée and Toope point out in their interactional account of law (2011, p. 308).

In order to grasp how exactly such fidelity to the law is internalised over time, it is useful to take a fresh look at the concept of the norm life-cycle developed by Finnemore and Sikkink, according to which norms evolve in three stages: (1) emergence, (2) cascade and (3) internalisation (1998). In the first two stages the dominant mechanisms are persuasion (1), institutionalisation, socialisation and demonstration (2). What is still missing, however, is an internalisation of this ‘new way of doing things’, which will be achieved in the third and final stage of the norm life cycle, where the rule of law becomes ‘reified’, i.e. it achieves a taken-for-granted quality, where it is not continually contested but appears natural, as the normal way of doing things (3). This is when we can speak of a culture of lawfulness, which critically hinges on citizens not only internalising the new norms themselves but also developing trust that public institutions will adhere to the principles stipulated by the rule of law. Internalisation happens through ‘practices that sustain legality over time’ (Brunnée and Toope, 2011, p. 308). These practices generate fidelity to the law, that is, a sense of commitment among those addressed normatively. In the third stage of the norm life-cycle, individuals thus become accustomed to turning to the law for protection, rather than resorting to other ways of protecting their rights such as violence or bribery. Citizens thereby engage ‘in a robust practice of legality’, which requires a broad-based and consistent participation in the application of the law (*ibid.*). This underlines the need to embed black-letter law in societal understandings shared by so-called communities of practice, as positive law will remain ‘a dead letter’ in the absence of an internalised cultural belief in its legitimacy (*ibid.*, p. 313).

Importantly, promoting the rule of law is not a purely technical exercise that is only about reforming laws, training personnel and fortifying institutions. It is a highly political project that

<sup>5</sup>In this article I use the terms rule of law culture and culture of lawfulness interchangeably.

will touch upon the vital interests of powerful players who had thus far benefited from the culture of impunity. Cultural change therefore ‘creates high-stakes winners and losers’ (McKay, 2015, p. 16). If effective, a deep transformation of state structures will touch the nucleus of power in the host country, and it is very unlikely that this will happen without intense political backlash. Hybrid commissions must therefore build compliance constituencies in order to protect themselves against political interference. They will need to understand the panorama they are faced with – who wins, who stands to lose from their intervention; and whom to ally with in order to reduce the intensity of the anticipated backlash. In short, they need to engage in a (multi-level) stakeholder analysis, as the following case study demonstrates.

## 4 Making the law count: CICIG in Guatemala

### 4.1 The genesis of CICIG

In the Northern Triangle of Latin America, which comprises Guatemala, El Salvador, and Honduras, the problem of state capture by illegal groups is pervasive and impunity is the norm. The region has been plagued by alarming levels of violence caused by remnants of civil war-era clandestine intelligence and paramilitary forces, organised crime and their allies in political and business circles. An unholy alliance of these actors has by now captured almost all of the institutions of the state of Guatemala, leaving the local justice system incapable of fighting the prevailing culture of impunity. As Carlos de Castresana, former head of CICIG, told me: ‘The dark forces from the civil war have captivated all the justice system because it was the guarantee of their impunity.’<sup>6</sup> Similarly, Iván Velásquez, CICIG’s last commissioner, regretted that ‘[l]a situación de gran corrupción en este país es alarmante, es gigantesca’.<sup>7</sup>

CICIG was established in 2006 pursuant to an agreement between the United Nations and the Guatemalan government in order to address the threat emanating from the persistence of clandestine security networks, corruption and organised crime in Guatemala.<sup>8</sup> The commission was composed of both local and international staff, but it operated under Guatemalan law and in Guatemalan courts. It was mandated to both investigate and co-prosecute organised crime and corruption. The exercise of both investigatory and prosecutorial powers under national law by a hybrid commission was a first in the history of anti-corruption initiatives. It also had the authority to remove obstructionist public officials and to contribute to longer-term structural reform, for instance through the professionalisation of investigation methods, the creation of ‘islands of excellence’, namely specialised High-Risk Tribunals dedicated to adjudicating complex criminal cases and a special unit within the Attorney General’s Office, which has become known as FECI (Fiscalía Especial Contra la Impunidad). CICIG got kicked out of Guatemala in 2019 after it decided to prosecute the Guatemalan President Morales and his family for corruption, which triggered a massive political backlash that the commission did not survive.

While CICIG produced solid results in the first years of its existence, its task seemed sisyphian:

‘As late as 2014, it did not seem to matter how many cases CICIG and the Office of the Public Prosecutor mounted against corrupt presidents, ministers, military officers, government employees, mayors, members of Congress, police, judges, or lawyers ... the temporary vacuums would be filled by new actors eager to bend the country’s deeply ingrained clientelistic structures and practices to their benefit ... it seemed set to leave Guatemala fundamentally unchanged, with the culture and structures of impunity intact’ (Open Society Justice Initiative, 2016, p. 39).

<sup>6</sup>Interview, 22 February 2021.

<sup>7</sup>Interview, 24 February 2021.

<sup>8</sup>[https://www.cicig.org/uploads/documents/mandato/cicig\\_acuerdo\\_en.pdf](https://www.cicig.org/uploads/documents/mandato/cicig_acuerdo_en.pdf)

This changed in 2015, when CICIG's investigations triggered a political earthquake which offered 'Guatemala its best hope for change in 20 years' (*ibid.*). CICIG and the Ministerio Público had exposed two massive corruption scandals (called La Línea and the IGSS – Guatemalan Institute of Social Security) which implicated President Molina and Vice President Baldetti. The revelations triggered large-scale street protests which became known as the 'Guatemalan Spring'. Baldetti eventually resigned and was later arrested. Further investigations produced incriminating evidence that Baldetti and Molina themselves were the ringleaders of La Línea. Molina was ultimately forced to step down as well and was equally arrested. The democratic awakening triggered by CICIG's investigations is widely seen as one of the commission's most important achievements: 'Its signal legacy is demonstrating to a jaded Guatemalan citizenry that the most powerful people in the country can be held to account for criminal behavior . . . The mission also demonstrated that, given the political space, national judicial institutions could work' (Call and Hallock, 2020, p. 65).

Apart from bringing down a sitting president and his deputy, CICIG produced a range of other astonishing results in its thirteen-year-lifespan: it achieved a 25 percent reduction in the impunity rate and undertook more than 200 investigations that led to charges against more than 160 high-level government officials (Transparency International, 2017) – with an impressive 85 percent success rate in resolving cases (WOLA, 2019). Critically, CICIG built trust in the Guatemalan justice system, trust that historically did not exist: Survey data indicate high rates of public approval, with CICIG becoming the most trusted institution in Guatemala (Paredes, 2018). Also, citizens' trust in the Guatemalan justice system as a whole increased significantly as a consequence of CICIG's work (WOLA, 2019). As one civil society activist told me, 'CICIG allowed Guatemalans to have dreams about a better future'.<sup>9</sup> The subsequent diffusion of the CICIG model across Latin America is another indicator of its success.

Many of my interviewees observed that CICIG's most important legacy was exposing the actual degree of capture of the state by the mafia coalitions, which everyone sensed, but CICIG was the first actor to bring it to light. As one former high-level official told me, 'we knew we weren't doing well, but we didn't know up to which point the democratic system had been deprived of its content, . . . that we were a democracy captured by organized crime'.<sup>10</sup>

In sum then, CICIG proved wildly successful in the short- to medium-term, but now that the commission has left the country most of its achievements have been undone by the dark forces running the country, and we are seeing a quite dramatic rule of law rollback in Guatemala (International Legal Assistance Consortium, 2020). This begs the question how one can account for the effects of this new type of hybrid actor? An important structural feature of the new hybrids is that they are embedded in a web of multi-level governance, interacting not only vertically with the sending organisations at the global or regional levels, but also with actors and institutions within the host state, as well as other actors at the horizontal level outside of their host state such as important donors. In the following, I will examine how these external factors as well as factors internal to the commission shaped CICIG's impact.

#### 4.2 External factors

An important question about hybrid governance arrangements that needs to be addressed at the outset is whether they should be affiliated with a global or regional sending organisation. This decision in turn has significant repercussions for the hybrid's ability to discharge its mandate effectively. Unlike the other hybrid commissions in Latin America, which were created through an agreement between the host state and the Organization of American States (OAS), CICIG was created through an agreement between the UN and the state of Guatemala. This was sensible as

<sup>9</sup>Interview, 12 February 2021.

<sup>10</sup>Interview with Edgar Gutierrez, former foreign minister of Guatemala, February 2021.

the OAS is widely seen as too politicised, weak, and itself corrupt, hence my interviewees agreed that it would be better to associate a hybrid commission with the UN rather than the OAS.<sup>11</sup> This assumption is also borne out by the track record of the other hybrid commissions which operated in Honduras and El Salvador, whose impact was significantly undermined by the lackadaisical support they received from the OAS and the lack of credibility the OAS enjoyed as a promoter of the rule of law in its member-states.

Privileging affiliation with a global body over affiliation with a regional organisation of course does not mean that the relationship between the hybrid and its global partner is not going to be fraught with difficulties. CICIG and the UN found themselves in an oftentimes tense relationship, with CICIG complaining about lack of UN support especially towards the end of its mandate, when the commission was under relentless attack by the dark forces that had captured Guatemala, ultimately resulting in the commission's expulsion. Some of my interviewees expressed regret that the UN did not have CICIG's back in public when Guatemalan state institutions including the President, Congress and the Attorney-General did everything in their power to obstruct CICIG's work.<sup>12</sup> As a variety of UN agencies and programs were operating in Guatemala, the UN was hesitant to throw its full weight behind CICIG, as it feared retaliation from the government against other UN programmes.<sup>13</sup> A CICIG official told me that when the commission first entered Guatemala, everyone expected it to write a few reports but not to upset the existing balance of power in the country.<sup>14</sup> The investigations of high-ranking officials that CICIG subsequently undertook was, according to one interviewee, very difficult to reconcile with the diplomatic approach of the UN.<sup>15</sup> CICIG staff told me that the UN would have actually preferred CICIG to keep a lower profile, engaging in technical co-operation instead of taking on the country's most powerful.<sup>16</sup>

In sum then, support from the sending organisation is an important factor enabling the hybrid to carry out its mandate, and absent such support the commission's ability to resist political backlash at the domestic level will be undermined. Secondly – although this may not be generalisable beyond Latin America – it is preferable to associate a hybrid with a global rather than a regional sending organisation, as the regional organisation might lack the credibility to act as a promoter of the rule of law.

Apart from the international level, actors and institutions at the national level equally exert a significant impact upon the hybrid's ability to promote the rule of law. In Guatemala there is a quite clear division between the 'bad guys' – those actors who have sought to obstruct the administration of justice at every step of the way (also called the pact of the corrupt (Shetemul, 2021) – and the 'good guys' (very few) who continue to fight for the little bit that is left of the rule of law in the country. Currently, the only remaining defenders of the rule of law among Guatemala's state organs are FECCI, the High-Risk Tribunals and the Office of the Human Rights Ombudsman. To this date, FECCI is valiantly continuing its anti-impunity efforts in Guatemala, but its staff is exposed to permanent harassment and intimidation, which culminated in the firing of FECCI's head Juan Francisco Sandoval after FECCI initiated investigations into a corruption case surrounding President Giammattei (Abbott, 2021). Subsequently, Sandoval had to flee to the United States. The High-Risk Tribunals are another important element of CICIG's legacy and a vital ally for FECCI. Nowhere in Latin America does something similar to these high-risk courts exist, courts with specialised judges who

<sup>11</sup>See, e.g. interview with Ana Gabriela Contreras, Lawyers without Borders Canada, 3 March 2021; interview with Ana Isabel Garita, former CICIG chief of staff, 25 February 2021; interview with Edgar Gutierrez; interview with Manfredo Marroquín, president of Acción Ciudadana, 2 March 2021.

<sup>12</sup>See, e.g. interview with Ana Gabriela Contreras.

<sup>13</sup>*Ibid.*

<sup>14</sup>Interview with Ana Isabel Garita, 25 February 2021.

<sup>15</sup>*Ibid.*

<sup>16</sup>*Ibid.*

understand high-profile and complex criminal cases.<sup>17</sup> The High-Risk Tribunals' judges have continued to enable FECEI's investigations to the extent of their competence but in doing so, they put their own lives at risk.<sup>18</sup> And then there is the Office of the Human Rights Ombudsman, who had equally offered consistent support to CICIG and continues to be one of the few pockets of resistance within Guatemala. However, its resolutions are of a merely symbolic character.<sup>19</sup>

And finally, the last defender of the rule of law among the state organs of Guatemala was the Constitutional Court, which has time and again spoken truth to power and whose judges have been subjected to constant threats, influence peddling and harassment, because the Constitutional Court had been able to put a brake on some of the most egregious attempts at corruption. But with the nomination of new Constitutional Court magistrates handpicked by members of the pact of the corrupt, the highest judicial organ of Guatemala has also fallen into the hands of the 'dark forces' (Shetemul, 2021).

The pact of the corrupt (*ibid.*) had brought down CICIG in 2019 and continues to influence the executive, legislature and judiciary to date. By now almost all state institutions have been captured by the pact of the corrupt. If we look at them one by one, the President obviously plays a critical role in determining the fate of an anti-impunity commission, *inter alia*, because it is the President who decides about renewing or terminating the mandate of the commission. When CICIG took up its work in Guatemala it enjoyed strong support from then-President Alvaro Colom, whose presidency the commissions actually saved through its investigations into the famous Rosenberg case (Franklin, 2010). Then came Otto Perez Molina, who CICIG toppled through its investigations into the La Línea scandal (Arellano, 2015). Molina was succeeded by Jimmy Morales who in turn brought down CICIG when the commission decided to investigate Morales and his family for corruption (Papadovassilakis and Sullivan, 2021). We can thus observe an interesting sequence here, with CICIG saving the presidency of Colom, ending the presidency of Molina, and then being itself killed off by Morales. Guatemala's current President Alejandro Giammattei is widely perceived as being a member of the pact of the corrupt; when he was sworn in, defenders of the rule of law sounded the alarm that, given his ties to Guatemala's 'dark forces', there would be a rule of law rollback during his tenure, and his track record so far bears this assumption out (Abbott, 2021). When FECEI began investigating Giammattei for corruption, FECEI head Sandoval was sacked and forced to leave the country. The irony is that Giammattei was one of the first people to be investigated by CICIG in its early years, when he was suspected of being responsible for extrajudicial killings committed when he was director of the penitentiary system. One interviewee said that 'quite incredibly' he was exonerated for these killings, because the judges ignored relevant evidence during the proceedings – which is another indicator of the degree of capture of the Guatemalan state organs.<sup>20</sup>

Apart from the executive, the legislature also plays a critical role in shaping the impact of hybrid governance arrangements, *inter alia*, because it has to approve the legislative changes that are initiated by the hybrid commission. In a functioning democracy, the parliament should provide a check on the power of the executive, but in Guatemala, the majority of the legislature and the executive are both members of the pact of the corrupt (Estrada, 2021). Congress has repeatedly attacked the Constitutional Court, for instance by seeking the impeachment of independent-minded Constitutional Court judges which has been seen as a frontal attack on judicial independence (Office of the United Nations High Commissioner for Human Rights, 2021).

<sup>17</sup>Interview with a civil society representative, 17 February 2021.

<sup>18</sup>Interview with a civil society representative, 12 February 2021.

<sup>19</sup>Interview with Edgar Gutierrez.

<sup>20</sup>Interview with a civil society representative, 12 February 2021.



So here we have an inter-branch conflict between the legislature on the one hand and certain parts of the judiciary, namely the Constitutional Court on the other hand. But the irony is that the Constitutional Court is not only being attacked by the other branches of government, but also by actors within its own branch of government, namely the Supreme Court, so here we also have an intra-branch conflict within the Guatemalan judiciary (Freeman, 2020). The judges on the Supreme Court are selected by so-called ‘postulation commissions’ made up of judges, law school deans and lawyers, and these are in fact ‘far from neutral gatekeepers’ (*ibid.*). Guatemala’s economic and political elites are pulling the strings behind the scenes of the election of Supreme Court magistrates, using bribes and other illicit means to make sure that ‘their’ candidates end up controlling the bench (*ibid.*). FECCI has long investigated these ‘parallel commissions’ (Ministerio Público, 2021) and has revealed a vast scheme to capture the judiciary, but the Supreme Court keeps preventing FECCI from stripping powerful politicians involved in these commissions of their immunity.

Another critical actor within the judiciary who significantly shapes the work of hybrid anti-impunity commissions is the Attorney General’s Office (Ministerio Público), currently led by Maria Consuelo Porras who was appointed during the regime of Jimmy Morales. Her appointment was essentially based on the need of that particular president and of the sector that supported him to ensure their own impunity.<sup>21</sup> One interviewee called Porras an ‘enabler of corruption’ and regretted that the work of the Ministerio Público (MP) suffered a serious blow when she took over the reins of the institution.<sup>22</sup> The MP does not move one millimeter without Porras’ consent as all of FECCI’s investigations have to be authorised by her. FECCI staff told me that Porras has used a variety of stalling tactics to obstruct their work, for instance by ordering not to investigate high-level officials, by taking away sensitive cases from FECCI and giving them to other units within the MP, where they ultimately died, as well as by encouraging the filing of legal complaints against FECCI’s head Sandoval and other FECCI staff.<sup>23</sup> A former MP employee who had to flee the country told me that apart from FECCI, the rest of the MP falls into two categories: one half of the staff is corrupt, the other half are people who do not want to get into trouble, who do not want to be him, the prosecutor who had to flee the country because he turned against Porras.<sup>24</sup>

The critical role played by the Attorney-General in shaping the impact of a hybrid commission is underlined if we take into account variation at the helm of the MP over time: Claudia Paz y Paz and Thelma Aldana, Porras’ predecessors, were highly committed prosecutors who effectively collaborated with CICIG and whose support proved crucial to enabling the commission to carry out its mandate effectively – despite the obstructionism CICIG faced from other powerful actors in Guatemala. Regrettably, however, one of the major lessons learned from the case of CICIG is that those who become too successful in promoting the rule of law will sooner or later have to fear for their jobs, their reputation and sometimes even their lives<sup>25</sup> – it comes as no surprise then, that both Aldana and Paz y Paz have had to flee Guatemala in the meantime (Associated Press, 2021), and that they were replaced by an Attorney-General who acts as a guarantor of impunity.

In sum, the case of CICIG demonstrates that even in the face of host government obstructionism and a relatively unco-operative legislature, a hybrid can still have a considerable impact on the rule of law if it enjoys the support of critical players within the judiciary such as the Attorney-General’s Office. Absent such support, however, it will become extremely difficult for the hybrid to effect major changes in the host state.

<sup>21</sup>Interview with Iván Velásquez, 24 February 2021.

<sup>22</sup>Interview with a civil society representative, 12 February 2021. See also interview with Ruth del Valle, former head of the Comisión Presidencial de Derechos Humanos de Guatemala, 15 February 2021.

<sup>23</sup>Interview with a former FECCI prosecutor, 3 March 2021.

<sup>24</sup>*Ibid.*

<sup>25</sup>Interview with Claudia Escobar, former magistrate of the Court of Appeals of Guatemala, 11 February 2021.

Now, thus far we have only looked at important *state* actors who are in a position to affect the hybrid's work; however, relevant stakeholders are not only to be found within state institutions but also at the societal level. Guatemalan civil society was and still is very active in supporting CICIG as well as FECI and mobilising against impunity. However, large-scale mobilisation has been hindered by a number of factors. On the one hand, people are afraid. The Giammattei government has violently suppressed street protests, and many interviewees also pointed to Guatemala's historical legacy of terror: 'Quien reclama lo matan, quien dice algo en la prensa lo matan.'<sup>26</sup> Another relevant factor is the Covid-19 pandemic, which has equally reduced the potential for mobilisation in the streets, as have deteriorating socio-economic conditions. My interviewees stressed that too many people in Guatemala are primarily concerned with everyday survival; to them the rule of law is a luxury, not an everyday necessity. As one interviewee put it, the government benefits from having a hungry people.<sup>27</sup> While large-scale street protests supporting CICIG and the rule of law did occur in 2015 in the context of the Guatemalan Spring, this was a somewhat singular event, prompted by CICIG's investigations into the La Línea scandal, which triggered outrage among the population who then allied with important business actors, ultimately achieving the resignation of President Molina. However, the united front later dissipated, *inter alia* because of the absence of a common political agenda. After CICIG's departure, mobilising for the rule of law became even more difficult; as of December 2021, there is not sufficient pressure from the societal level to challenge the hegemony of the pact of the corrupt.

Another important societal actor and potential ally for a hybrid anti-impunity commission is the business sector. In Guatemala, apart from the president, it is the big business families – also known as G-8 – who run the country (Arzu, 2010). In its early years CICIG enjoyed the support of Guatemala's business elite including the powerful Chamber of Commerce (CACIF) because CICIG had initially limited its investigations to political actors. Up to the Guatemalan Spring, the private sector had thus benefited from an increased environment of legality, which facilitated foreign direct investment. Castresana told me that when CICIG first entered Guatemala, the business elites were very polite, because they did not take CICIG seriously and also because they wanted to improve the governability of the region.<sup>28</sup> But when CICIG under its last commissioner Iván Velásquez started investigating the financing of elections by the private sector, this alienated many of CICIG's former allies and prompted the business elites to join President Morales' attacks against CICIG. Overall, support from the population and the private sector is critical to a hybrid's survival – especially when the commission comes under attack from state actors. Where no such support is forthcoming, the hybrid's ability to resist backlash will be severely restricted.

Yet the hybrid's fate is not only influenced by actors *within* the host state, but also by powerful external players, such as important donor states. In the case of CICIG, it was United States support that often tipped the scales when the fate of the commission was at stake. Considering the capture of Guatemala's Congress by the pact of the corrupt, one of my interviewees joked that the main opposition party in Guatemala is actually the Democratic Party of the United States, which has displayed a much greater interest in fighting impunity in Guatemala than local parties.<sup>29</sup> Most of my interviewees agreed that the US had and still has a major impact upon the fate of CICIG or any future commission, and all expressed hope that with the incoming Biden administration, anti-impunity efforts in Guatemala would receive a strong boost.<sup>30</sup>

President Obama was a staunch supporter of CICIG's work and critically contributed to ensuring the commissions survival, for instance by convincing then-President Molina to renew

<sup>26</sup>Interview with Maria Eugenia Solís, human rights lawyer, 2 March 2021; see also interview with a civil society activist, 8 March 2021.

<sup>27</sup>Interview with a former CICIG staff member who worked in Iván Velásquez' office, 6 April 2021.

<sup>28</sup>Interview, 22 February 2021.

<sup>29</sup>Interview with Edgar Gutierrez.

<sup>30</sup>See, e.g. interview with Manfredo Marroquín; interview with Jordan Rodas Andrade, Human Rights Ombudsman of Guatemala, 18 February 2021.

CICIG's mandate. The great advances CICIG had made especially under its last commissioner Velásquez critically hinged on the support from then-US Ambassador Todd Robinson, as well as the Swedish Ambassador Anders Kompass, both of whom were said to be rather 'undiplomatic' in their unequivocal and outspoken support for CICIG, and who formed a critical triangle that helped CICIG's success tremendously.<sup>31</sup> However, Obama's successor Trump showed little interest in fighting impunity, and his indifference ultimately sealed the fate of the commission (Sheridan, 2019). While all of my interviewees accorded the United States great weight and said that CICIG's future would have likely looked different, had the Trump administration not abandoned CICIG, they disagreed on whether or not the Biden administration could achieve the establishment of a new commission with teeth – ranging from interviewees who said that 'the Gringos can achieve whatever they want'<sup>32</sup> to interviewees who argued that while in the past the US embassy in Guatemala only had to click its fingers to get what it wanted, there was much more resistance these days.<sup>33</sup>

My interviewees also believed that the Biden Administration has profound knowledge of the situation in Guatemala and a sincere interest in eliminating the root causes of migration, namely poverty, corruption, and organised crime.<sup>34</sup> So far, the Biden administration has used all rungs of the diplomatic hierarchy to send a clear message to Guatemala that they are serious about fighting impunity. However, one interviewee pointed out that the incremental approach the Biden administration seems to envisage – to first try technical co-operation and intensified assistance to national prosecutors – would lack effectiveness as it would do nothing to overcome obstruction at the national level, for instance the constant sabotaging of high-profile investigations undertaken by Consuelo Porras.<sup>35</sup>

In sum then, when faced with backlash in the host state, a hybrid benefiting from an alliance with powerful donor states, significant societal support, and a co-operative Attorney-General will still be able to carry out its mandate effectively. Vice versa, if these stakeholders do not have the hybrid's back, the host state's obstructionism will likely lead to the hybrid's demise.

### 4.3 Internal factors

While the preceding section has focused on *external* influences shaping the hybrid's impact, merely focusing on these variables would paint an incomplete picture. In addition, one must take into account factors *internal* to hybrid governance arrangements, which I have grouped into three categories, namely design, strategy and personality.

In terms of institutional design, the factors that emerged as relevant from my interviews were above all the length and scope of the hybrid commission's mandate, the responsibilities of the commissioner, and the role of immunities of commission staff. Regarding the length of the mandate, some interviewees stressed that a hybrid commission should be given an initial mandate of more than five years, ideally around ten years, because strengthening the rule of law is a long-term exercise, and CICIG only had an initial mandate of two-years that needed to be renewed constantly.<sup>36</sup> This put a lot of stress on the commission and exposed it unnecessarily to the vagaries of (domestic and international) politics. In terms of scope, my interviewees considered CICIG's mandate to be ideal – also compared to the competencies of other hybrid commissions in Latin America – because on the one hand, it gave the commission the powers to investigate and

<sup>31</sup>Interview with historian José Alfredo Calderón, 19 February 2021.

<sup>32</sup>Interview with Manfredo Marroquín.

<sup>33</sup>Interview with José Alfredo Calderón.

<sup>34</sup>See, e.g. interview with Edgar Gutierrez.

<sup>35</sup>Interview with a former FECCI prosecutor, 3 March 2021.

<sup>36</sup>Interview with Ana Gabriela Contreras; interview with Manfredo Marroquín.

co-prosecute effectively, to remove obstacles to its investigations, and to launch longer-term institutional reforms.<sup>37</sup> A more intrusive mandate would have likely entailed greater sovereignty concerns and would have triggered a more intense political backlash. As Castresana told me: ‘We had no power, so that was a big problem but also a big opportunity. When we arrived the Attorney-General didn’t take us seriously and the Minister of the Interior didn’t take us seriously either.’<sup>38</sup> But then CICIG went ahead and removed one tenth of the national police, fired the Attorney-General, and five high-court judges, in order to clear the way for effective prosecutions.<sup>39</sup> A weaker mandate, by contrast, would likely hinder the hybrid to overcome obstacles to its work that a captured state will inevitably throw into its way.

There were other institutional design aspects, however, that some of my interviewees criticised as flawed. One interviewee suggested installing a triumvirate instead of an individual at the helm of the commission, as this would reduce the risk of fatal errors committed by an individual commissioner (I shall return to this point later on).<sup>40</sup> Another lesson learned is that the immunities enjoyed by the hybrid’s international staff should be equally enjoyed by its national staff. As CICIG’s Guatemalan employees did not benefit from the kind of immunity that its international staff enjoyed, the former group was left in a very vulnerable position when CICIG left the country.<sup>41</sup> Guatemalans who used to work for CICIG have been targeted with multiple lawsuits, spurious complaints directed against them in tandem with smear campaigns in social media and harassment, which has prevented many of the local ex-CICIG staff to find new employment or even live in Guatemala in peace. Many had to leave the country and fear that if they were to return, they would face jail time – and this, in Guatemala, as one former CICIG prosecutor told me, means not just an inconvenience but possibly even death.<sup>42</sup> Hence, much of the significant local capacity created by CICIG has now been lost. In sum then, the preceding analysis suggests that an initial mandate of five+ years, a medium-level of delegation, a dispersion of authority at the helm of the commission, and an extension of immunities to local staff will increase the effectiveness of hybrid governance arrangements.

A second important internal factor are the strategic choices made by the commission’s leadership. Strategic choices ought to be made at every step of the way – for instance regarding how to build local capacity, how to sequence investigations, how to prepare for exit, etc. An important element of strategy is devising a plan for the transfer of capacity, because that is what hybrid governance arrangements are established for in the first place – not to assume sovereign functions of the host state indefinitely, but to enable the target state to effectively provide public goods itself in the future. CICIG’s strategy for capacity transfer revolved around the basic idea of local ownership in the form of close collaboration between externals and locals. As Castresana emphasised: ‘We began to work hand in hand in a humble approach. I asked how can I help you? . . . We brought the infrastructure, the knowledge, etc. and it worked very well . . . I don’t know what happened after I left, but during my tenure of three years I could see them grow professionally.’<sup>43</sup> Another CICIG staff member told me that the strategy for capacity transfer was basically learning by doing.<sup>44</sup> Instead of lecturing local staff in how to prepare and present cases, CICIG pursued a collaborative approach: ‘Nosotros pensábamos siempre que la manera de preparar era trabajando, no dictando conferencias, no dando clases, que ha sido la manera mas tradicional de cooperación de la comunidad internacional.’<sup>45</sup> The most important element of

<sup>37</sup>See, e.g. interview with Cynthia Fernandez, Konrad Adenauer Stiftung, Oficina de Guatemala, 16 March 2021.

<sup>38</sup>Interview, 22 February 2021.

<sup>39</sup>*Ibid.*

<sup>40</sup>Interview with Manfredo Marroquín.

<sup>41</sup>Interview with Ana Gabriela Contreras.

<sup>42</sup>Interview with a former FECCI prosecutor, 3 March 2021.

<sup>43</sup>Interview, 22 February 2021.

<sup>44</sup>Interview with Ana Gabriela Contreras.

<sup>45</sup>Interview with Iván Velásquez.

CICIG's capacity transfer strategy was its co-operation with the MP and the Policía Nacional Civil, where CICIG helped to build and consolidate a new mind-set, a new understanding of the rule of law. As a high-ranking CICIG official told me:

'Se formó un grupo de funcionarios públicos que comenzaron a pensar en esa forma diferente o legitima de aplicar la justicia . . . Se impregno en la cultura . . . de algunos operadores de justicia esta idea de que hay que rescatar a la justicia, que la justicia tiene que cumplir con sus funciones – consolidación del estado de derecho, de transparencia, eficiencia, efectividad, etc. Eso me parece a mi la contribución mas grande.'<sup>46</sup>

According to Castresana, it was very challenging to build capacity in the first place, as in the police sector, for instance, it was not easy to find personnel that had not been corrupted: 'We had a very difficult time selecting them, we could not find one decent police officer, all policemen didn't pass the polygraph test.'<sup>47</sup> In order to build a basic level of trust, Castresana therefore decided to take the polygraph test himself and also obligated CICIG's non-Guatemalan staff to take it, which was met with great reluctance by CICIG's European employees.<sup>48</sup> CICIG then proceeded to recruit and train 100 cadets who were not corrupted (yet) because, as Castresana said, they had not had the chance to be corrupted.<sup>49</sup> CICIG moreover selected fifteen prosecutors, who had to take a polygraph test every month.<sup>50</sup> The long-term effects of this strategy have been mixed, however, as the police unit created by CICIG has been dissolved in the meantime and the FECCI prosecutors it trained continue to be under attack from all sides.

To be fair one should note that the fact that capacity was not transferred to the greatest extent possible not only had to do with external obstacles planted by high-level state officials but were also, to a lesser extent, due to CICIG's lack of an exit strategy – a fact which even CICIG staff self-critically noted.<sup>51</sup> CICIG, and on this all of my interviewees agreed, thought it would be in Guatemala for a much longer period of time and did not anticipate its abrupt expulsion – therefore CICIG did not have a well-designed exit strategy.<sup>52</sup> Even though a number of protocols had been put into place, in the end there was a lot of pressure and very little time to complete the exit in an orderly fashion. One of my interviewees criticised that:

'CICIG was working as if they were going to stay in Guatemala forever . . . When CICIG was leaving they tried to transfer some of these capacities, knowledge, but also persons, they tried to transfer them to the Ministerio Público, this should have happened before, when CICIG was in a good place, but this never happened.'<sup>53</sup>

Another shortcoming of CICIG's capacity transfer strategy was that it failed to produce a spillover effect onto other areas of the justice system. According to one interviewee, the capacity transfer was only effective in units that worked directly with CICIG, such as FECCI, but that there was no multiplier effect in other sectors.<sup>54</sup> Another interviewee explained that CICIG did wish to bring its capacities to other agencies in other parts of the country but that it simply did not have the time, and that with an extension of the mandate by another two years or so this might have been possible.<sup>55</sup>

<sup>46</sup>Interview with Ana Isabel Garita, former CICIG chief of staff, 25 February 2021.

<sup>47</sup>Interview, 22 February 2021.

<sup>48</sup>*Ibid.*

<sup>49</sup>*Ibid.*

<sup>50</sup>*Ibid.*

<sup>51</sup>Interview with Ana Isabel Garita, former CICIG chief of staff, 25 February 2021.

<sup>52</sup>See, e.g. interview with Ana Gabriela Contreras.

<sup>53</sup>Interview with a civil society representative, 17 February 2021.

<sup>54</sup>Interview with Cynthia Fernandez.

<sup>55</sup>Interview with a former FECCI prosecutor, 3 March 2021.

To conclude, in terms of strategy, a hybrid's impact upon the rule of law will be maximised if the following conditions are met: close on-the-job collaboration between externals and locals, the insulation of local staff from corrupting influences, an exit strategy allowing for the absorption of locally created capacity, and a plan for producing a spillover effect onto the justice system as a whole.

A final variable that is related in many ways to the strategy factor explored in the preceding section is the personality of the commissioner. The CICIG experience clearly demonstrates the importance of the personality factor, as its two relevant commissioners Castresana and Velásquez differed greatly in their respective personalities, which in turn had a significant impact upon the commission's work. Castresana kept a high public profile and according to some, maybe loved the limelight a little too much.<sup>56</sup> A contributing factor to Castresana's resignation as CICIG head in 2010 was a public smear campaign accusing him of an extramarital affair – a campaign which in turn reflected negatively on the work of the commission. In a personal interview Castresana admitted that his public profile might have been useful in the short-term to raise awareness for CICIG's work, but in the long-term 'I paid a very high price. When they wanted to destroy the commission, they targeted me with a smear campaign because it was much easier to destroy the commissioner than the commission. The commission has to have a high profile but not necessarily the commissioner.'<sup>57</sup>

Another way in which the personality of the commissioner influenced the commission's work was the tension between pragmatism and principle that the personalities of Castresana and Velásquez embodied, respectively. Whereas Castresana can be said to have been guided by an ethics of responsibility in deciding whom to investigate and prosecute, Velásquez' case selection was motivated exclusively by an ethics of conviction, which ultimately led to the commission's demise: when Velásquez decided to investigate President Morales and his family for corruption, this created an immense political backlash that CICIG did not survive. Velásquez did so even though the offences committed by the Morales family did not even qualify as grand corruption. Castresana emphasised that the head of a hybrid commission ought to weigh the goods that are at stake and anticipate the political consequences of his or her decisions.<sup>58</sup> According to him, the principle of opportunity should therefore guide the investigations launched by a hybrid commission, which means that the commission should base its decisions about whom to investigate not only on considerations of legality but also anticipate the impact of its investigations on political stability and democracy.<sup>59</sup> Some have criticised Castresana for his alleged opportunism, for instance for his proximity to the economic elites who supported CICIG in the first years of its existence. According to some interviewees, Castresana 'didn't want to touch the economic elites' because he needed the 'less bad guys' to fight the 'worse guys'.<sup>60</sup> When Velásquez took office, he destroyed the alliance between CICIG and the economic elites that Castresana had carefully built by launching a number of high-profile investigations into crimes committed by the private sector, especially illegal campaign financing. Velásquez himself recounted a meeting in which the economic elites had asked him how far CICIG would go in investigating the economic sector, to which he replied: 'Hasta donde exista prueba'.<sup>61</sup> The only thing he could say is that CICIG would not discriminate. This was the point at which the economic elites turned against CICIG, launching a concerted lobbying campaign in the United States, visiting the State Department, Congress, and the Trump Administration in order to convince key US officials to get rid of the commission. This was certainly a contributing factor to

<sup>56</sup>Interview with José Alfredo Calderón, 19 February 2021.

<sup>57</sup>Interview 22 February 2021.

<sup>58</sup>*Ibid.*

<sup>59</sup>*Ibid.*

<sup>60</sup>Interview with Ricardo Saenz de Tejada, Universidad de San Carlos de Guatemala, 11 March 2021.

<sup>61</sup>Interview, 24 February 2021.

CICIG's demise. Various interviewees suggested that investigating Morales was Velásquez' fatal mistake.<sup>62</sup> Other interviewees however, expressed sympathy for Velásquez' decision, calling him a 'fiscal de corazón',<sup>63</sup> whose decision to go after the Morales family 'era una decisión más en la línea de un fiscal ... que fue muy distinta como te explicaba, a la línea que trabajo del señor Castresana'.<sup>64</sup> Velásquez, according to one interviewee, would have liked to prosecute everybody at the same time, thereby alienating a number of powerful players who then joined forces to bring the commission to its knees.<sup>65</sup> There is a general agreement that CICIG was a successful experiment which the powerful who were targeted by CICIG simply could not tolerate.

In sum then, a commissioner who bases case selection on the principle of opportunity, and sequences investigations strategically will be in a better position to shield the hybrid from backlash in the host state. By contrast, if too many fronts are attacked at the same time and strategic alliance-building ceases to be a priority, this will likely erode the hybrid's support base and thus its ability to survive.

## 5 Towards a theory of hybrid governance

The preceding analysis has identified a number of factors shaping the impact of hybrid governance mechanisms which we can now link to the concept of the norm life-cycle presented earlier, in order to arrive at broader theoretical generalisations. In each phase of the norm life-cycle the hybrid exercises important transformative functions for the consolidation of the rule of law. I have grouped these into three main categories, namely the

- 1) capacity-building function,
- 2) the watchdog function,
- 3) and the catalyst function.

Beginning with the capacity-building function, a hybrid commission's contribution to the creation of new infrastructure and the training of local actors will set into motion the mechanisms of institutionalisation and socialisation that characterise phases I and II of the norm life-cycle. At this stage, the hybrid acts as a norm entrepreneur who seeks to 'lock in' a set of norms strengthening the rule of law in the host state, and who then socialises local justice operators into adherence to these norms. In that sense, the rule of law has been established in the host state through technical co-operation, judicial reform, etc., but what is still missing is an internalisation of this 'new way of doing things'. This is when we can speak of a rule of law culture. As the example of Guatemala shows, CICIG had planted the seeds for this cultural change, yet in the absence of support from important players, and due to a number of shortcomings and strategic errors internal to the commission, this new culture could not be consolidated, which is why now, after CICIG's departure, we are seeing such an intense backlash against the rule of law in Guatemala.

A second important function and a recurring theme in my interviews is the watchdog function exercised by a hybrid commission. This function enabled CICIG to level the playing field in Guatemala at least to a certain extent, because when CICIG first entered Guatemala there was a great imbalance between the mafia coalitions that had captured the state on the one hand and the defenders of the rule of law on the other hand. My interviewees stressed how the presence of CICIG boosted the confidence of independent judges who felt very much supported by CICIG 'because they were handing down rulings against horrible people' and CICIG had their back.<sup>66</sup>

<sup>62</sup>See, e.g. interview with a civil society representative, 17 February 2021; interview with Manfredo Marroquín.

<sup>63</sup>Interview with Ana Isabel Garita.

<sup>64</sup>Interview with Cynthia Fernandez.

<sup>65</sup>Interview with Manfredo Marroquín.

<sup>66</sup>Interview with a civil society representative, 17 February 2021.

One of my interviewees described the watchdog effect as follows: ‘Any judge in any country would be scared to indict a former president [referring to the Rios Montt case] . . . and what CICIG was doing was providing these judges with moral institutional support to do this, knowing that anyone who would attack a high-risk judge would be attacking CICIG.’<sup>67</sup> My interviewees described how CICIG’s presence functioned as a deterrent against corruption and that more and more Guatemalan judges felt compelled to act with integrity because they knew that CICIG would hold them accountable. Even though during CICIG’s tenure the justice system was still permeated by corrupt judges, the latter would think twice before violating the rule of law, because ‘they felt observed’.<sup>68</sup> Now that CICIG has left the country its absence has become acutely felt for the lone remaining defenders of the rule of law. So, the watchdog function is a temporary function that will not outlast the hybrid’s tenure.

The catalyst function by contrast seeks to preserve a hybrid’s legacy beyond its departure, which brings us to the third and final stage of the norm life-cycle. Before CICIG, one interviewee told me, Guatemala was ‘a country that accepted everything’, because it seemed normal to the population that politicians were corrupt and that cops were thieves.<sup>69</sup> Only when CICIG publicly deconstructed this belief in the inevitability of corruption and crime was there a great sense of indignation and mobilisation against impunity. One interviewee pointed out that CICIG had created ‘something transcendental’ in Guatemala – that people were not afraid anymore to speak out about corruption and crime.<sup>70</sup> CICIG also helped build public trust in the justice system, which was a momentous step forward for the rule of law in a country like Guatemala with its difficult history and prevailing mistrust of public institutions. At the same time, thanks to CICIG’s collaboration with local justice operators, a group of officials emerged which began to ‘think in a different . . . form of applying justice’ which then ‘impregnated itself in the culture’.<sup>71</sup> An important element of building a rule of law culture is instilling in local justice operators a sense of pride and professionalism, which is something Castresana emphasised when he said that ‘[w]e gave pride to prosecutors in Guatemala; before we arrived, they were insulted in the streets and when we left they were applauded’.<sup>72</sup>

When CICIG left, Guatemala had not yet reached phase three of the norm life-cycle, as a commitment to the rule of law may have been internalised by many local justice operators, but clearly not by the political and economic elites. While CICIG had made great strides in terms of institutionalisation and socialisation, when it left the local justice system had not yet evolved its own checks and balances to a sufficient degree. Hence, as soon as the CICIG watchdog left Guatemala, the system of checks and balances it had represented collapsed, and the pact of the corrupt quickly reconquered the territory it had previously ceded to the commission, which is why now we are seeing such a massive rule of law rollback in Guatemala.

## 6 Conclusion

What makes law count? In this article I sought to explain how novel forms of hybrid governance can help consolidate the rule of law in areas of the world where it has historically been strongly contested. I sought to flesh out the factors which render this new form of hybrid governance effective, dividing them into external variables and factors internal to the hybrid organism. Based on the interview data collected as well as an analysis of primary documents and the secondary literature, I identified three external variables in particular that enable a hybrid commission to

<sup>67</sup>*Ibid.*

<sup>68</sup>Interview with a former FECCI prosecutor, 3 March 2021.

<sup>69</sup>Interview with a civil society activist, 1 March 2021.

<sup>70</sup>*Ibid.*

<sup>71</sup>Interview with Ana Isabel Garita.

<sup>72</sup>Interview, 22 February 2021.



carry out its mandate even in the face of host government obstructionism, namely support from powerful donor states, civil society, and a co-operative Attorney-General. Additionally, the following internal factors proved decisive for the success of hybrid governance arrangements: their institutional design, their overall strategy, as well as the personality of the commissioner. The interplay of all of these factors determines if the changes initiated by the hybrid will lead to the consolidation of a culture of lawfulness in the host state, in the sense that those addressed normatively will have internalised a sense of fidelity to the law.

In order to grasp how exactly fidelity to the law is generated, I drew upon the concept of the norm life-cycle, according to which norms evolve in three stages. It emerged from the preceding analysis that in each phase of the norm life-cycle the hybrid exercises important functions for the consolidation of the rule of law, namely the capacity-building function, the watchdog function, and the catalyst function. While the capacity-building and watchdog functions are limited to phases I and II of the norm life-cycle, the catalyst function aims at protecting a hybrid's legacy even after its departure. If the hybrid mechanism does not succeed in establishing a culture of lawfulness in the host state (phase III of the norm life-cycle), a rule of law rollback after its departure is to be expected – as Guatemalans painfully experienced after CICIG left the country. Had CICIG achieved a transition to stage three of the norm life-cycle, maybe nowadays Guatemalans would indeed consider it to be worthwhile to report a stolen bicycle to the police.

Yet again, these are findings that were derived from a single-case study – their generalisability thus hinges on whether or not they will pass future tests on a broader set of cases. At first glance, the other Latin American hybrid commissions display many of the dynamics observed in the case of Guatemala and suggest that the hypotheses derived from the CICIG case could have broader applicability: The Misión de Apoyo contra la Corrupción y la Impunidad en Honduras (MACCIH) was shut down in 2020 after it got in the way of the Honduran political elite, including President Hernández. Its Salvadoran counterpart, the Comisión Internacional contra la Impunidad de El Salvador (CICIES) was kicked out of the country one year later, after investigating the Bukele government's alleged misuse of Covid-19 funds. Finally, the envisaged Comisión de Expertos Internacionales de lucha contra la corrupción en Ecuador (CEICCE) never really got off the ground, due to the Moreno government's lack of commitment to fighting impunity. While this suggests a more general pattern, whether or not the factors identified in this paper are idiosyncratic conditions peculiar to the case of Guatemala or actually have broader theory-building potential can only be clarified by future in-depth research on those other hybrid governance arrangements.

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