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Elusive Peace, Security, and Justice in Post-Conflict Guatemala: An Exploration of Transitional Justice and the International Commission Against Impunity in Guatemala (CICIG)

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ELUSIVE PEACE, SECURITY, AND JUSTICE IN POST-CONFLICT GUATEMALA:
AN EXPLORATION OF TRANSITIONAL JUSTICE AND THE INTERNATIONAL
COMMISSION AGAINST IMPUNITY IN GUATEMALA (CICIG)

(Monograph Thesis)

by

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Graduate Program in «Political Science and Transitional Justice and Post-Conflict
Reconstruction»

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of the requirements for the degree of
« Master of Arts Degree»

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ABSTRACT

Guatemala has, until today, struggled to achieve security and justice following the end of nearly half a century of civil war in 1996. One specific institution, the International Commission Against Impunity in Guatemala (CICIG), has been implemented to rectify many of the Guatemalan state's difficulties in establishing and maintaining the rule of law. In this thesis, I look to better explain CICIG's role in Guatemala relative to security and justice in a post-conflict setting: I define CICIG as an institution potentially capable of building societal trust, and I explain how the inclusion of *procedural justice* within *transitional justice* can help it do that. I also explain CICIG's transitional justice-based role, both institutionally and functionally. CICIG is afflicted with issues that have arisen in a post-conflict setting, after all. Finally, I analyze and discuss CICIG's successes and drawbacks relative to both its organizational mandate and the goals of transitional justice, and I make recommendations on how CICIG and/or other similarly constituted institutions could be made to function more efficiently and effectively.

Keywords

Guatemala; CICIG; International Commission Against Impunity in Guatemala; Comisión Internacional contra La Impunidad en Guatemala; Transitional Justice; Procedural Justice; CICIACS; Truth Commission; Trust; Truth; Acknowledgment; Retribution; Commission on the Truth for El Salvador; CEH; Historical Clarification Commission; REMHI; hybrid institution; United Nations; Guatemalan genocide; Mayan genocide; Efraín Ríos Montt; Claudia Paz y Paz; Narcotrafficking; Transnational Drug Trade; Mexican Cartels; Colombia; Cocaine; Constructivism; Civil Society.

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I. INTRODUCTION: GUATEMALA, TRANSITIONAL JUSTICE, AND *THE INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA (CICIG)*

I.1 Background

Guatemala underwent nearly half a century of a simmering, mostly low-intensity civil war. The two main parties to the conflict were the left-wing revolutionary guerillas and a repressive, conservative military-governed state, buttressed by material and ideological support from the United States. By 1996, Guatemala arrived at an internationally brokered and very comprehensive set of peace accords. Following the signing of the peace accords, however, the country experienced an intense post-conflict wave of crime, violence, and related impunity. The 1996 peace accords committed to a comprehensive set of reforms aimed at transforming Guatemalan society away from the huge structural barriers that had long beleaguered the country, especially its Mayan-Indigenous populations which comprise roughly half of the country's citizens. Reforms were initially agreed upon by government, elites, guerilla combatants, and civil society alike—the prevailing wisdom was that they would be rubber-stamped into law through a referendum, a necessity to permit such changes to the country's constitution. Guatemala's elites, however, organized and financed a nefarious though successful campaign,

resorting to fear tactics and intimidation, to reject the adoption of the comprehensive set of equity effecting reforms in the 1999 referendum.¹

To give an idea of the extent of the violence that plagued Guatemala shortly after concluding its peace accords, Guatemala had one of the highest crime rates in Central America, which as a region, has among the highest crime rates in the world.² The murder rate at the height of the post-conflict violence wave, for example, was at 50 homicides per 100,000 people per year,³ with a conviction rate below 2%.⁴ Additionally, amnesties were granted to virtually every soldier and officer in the Guatemalan military, despite widespread evidence of severe and systematic human rights abuses perpetrated by the military and its paramilitary charges.⁵ Compounding the issue even further, many former state military and police officials took advantage of their amnesties and existing wartime networks to engage in criminal activity and networking.⁶ This consisted of either providing clandestine security for criminal activity, or providing logistical and administrative support for such criminal activity while working within state institutions.

By 2003, criminal impunity reached such proportions that domestic and international concerns led to the establishment of the *Commission of the Investigation of Illegal Groups and Clandestine Security Organizations* (“CICIACS”)—the “first attempt to break the cycle of impunity in Guatemala.”⁷ CICIACS was subsequently deemed illegal by the Guatemalan Constitutional Court (“GCC”), but the ruthless murder and attempted cover-up of three Salvadoran members of the Central American Parliament

¹ Janneke van Hemmen, “Influence of NGOs in the Establishment Process of the International Commission Against Impunity in Post-Conflict Guatemala,” (Master of Arts Thesis, Utrecht University, 2012): 32.

² Raquel Aldana, “A Reflection on Transitional Justice in Guatemala 15 Years After the Peace Agreements,” in *Victims of International Crimes: An Interdisciplinary Discourse*, ed. T. Bonacker and C. Safferling, (The Hague: Asser Press, 2013): 299.

³ Michael Shifter, “Central America’s Security Predicament,” *Current History* 110.733 (February 2011): 51.

⁴ Roger Atwood, *Advocates Against Impunity: A Case Study on Human Rights Organizing in Guatemala*, (Washington Office on Latin America (WOLA), December 2008): 3.

⁵ The crimes of genocide, forced disappearances, and torture were excluded, but this was more of a rhetorical distinction in Guatemala—barely any amnesties have been challenged. Naomi Roht-Arriaza. “Making the State Do Justice: Transnational Prosecutions and International Support for Criminal Investigations in Post-Armed Conflict Guatemala.” *Chicago Journal of International Law* 9.1 (Summer 2008): 84.

⁶ “The Americas: Reaching the Untouchables; Guatemala and Organised Crime,” *The Economist* 394.8673 March 13, 2010.

⁷ Matthew Evans Golab, “Guatemala’s Fight Against Criminal Impunity: CICIG, A Hybrid Approach,” (Hon. Bachelor’s Thesis, University of Arizona, May 2010): 29.

effectively forced the government to address criminal violence and impunity within its borders.⁸ The United Nations, Guatemalan civil society, and the Guatemalan government crafted the framework for a “watered-down version” of CICIACS so as to be able to secure it through the GCC.⁹ They removed the previously-extant clause ensuring independent prosecutorial capacity for the commission.¹⁰ The new proposal was titled the *International Commission Against Impunity in Guatemala* (“CICIG”) and it was ratified and entered into force by September 2007.¹¹ The following pages will focus primarily on CICIG, especially as it relates to *transitional justice*.

I.2 Guatemalan Power Relations: A Necessary Consideration

This thesis project goes to great lengths to provide an array of contexts by which to understand CICIG. But in discussions with several scholars concerning the epistemological lens of this project as it was in its closing stages, I realized that a background discussion of Guatemalan power relations would prove to be a helpful rejoinder to my existing analysis. For example, the several chapters in this thesis paint a picture of both optimism and concern at once, relative to CICIG. I believe that such divergent viewpoints are, at the very least, partially evident through my discussion of contemporary Guatemalan history and politics. But, the latent power differentials within Guatemalan society have the ability to shift the “situation on the ground” in directions unforeseen and usually in favour of the deeply entrenched socio-economic, political, and military elites. Realistically, they always have. For example, what looked like a democratic, populist revolution in 1944 was reversed by 1954. Moreover, Guatemala was the site of some of the more comprehensive peace accords in modern history in 1996,¹² while by 1999, all but the most banal of the stipulations made in the peace accords had

⁸ Julia Schünemann, “*Looking The Monster In The Face*”: *The International Commission Against Impunity In Guatemala And The “Rule Of Law-Builders Contract*,” (Initiative for Peacebuilding and FRIDE: A European Think Tank for Global Action, IFP Security Cluster: Country Case Study, Guatemala, October 2010): 15.

⁹ Roger Atwood, *Advocates Against Impunity*, 2.

¹⁰ “Agreement Between The United Nations and the Government of Guatemala for the Establishment of a Commission for the Investigation of Illegal Groups and Clandestine Security Organizations in Guatemala (“CICIACS”),” The United Nations, March 13, 2003, accessed April 15 2015; available from <http://www.un.org/News/dh/guatemala/ciciacs-eng.pdf>: 3.

¹¹ Van Hemmen, “Influence of NGOs,” 41.

¹² Angelika Rettberg, “The Private Sector and Peace in El Salvador, Guatemala, and Colombia,” *Journal of Latin American Studies* 39 (2007): 474.

been effectively scuttled. Finally, just two short years ago, Efraín Ríos Montt was the first former head of state to be convicted of committing genocide, only to be reversed on a technicality ten days later. In fact, at the time of writing, he had been deemed psychologically unfit to stand trial again by medical professionals.¹³

I recognize that an explicit accounting for and explanation of these power differentials will help guide the reader to better understand how Guatemalan society has historically functioned, and in many ways continues to do so today. At the same time, in the interests of focusing primarily on the contemporary era that this thesis deals with, I must necessarily refrain from providing a comprehensive history dating back 500 years. I make the case in the following pages, most notably in Chapter Three and the Conclusion, that sub-sections of Guatemalan society have become involved in demanding accountability from the Guatemalan government with a greater potential for success than the country has ever experienced. That argument notwithstanding, I offer two specific caveats: first, that without a greater transnational focus dedicated to issues related to organized crime which grip not only Guatemala, but various other states in Latin America at varying levels of influence, organized crime will continue to evade law enforcement efforts in any specific country or bilateral partnership between countries. Secondly, without greater sustainability mechanisms built into CICIG, organized crime as well as elite networks fomenting criminal impunity in Guatemala as a means of consolidating power and expanding profits, generally speaking,¹⁴ will be able to “wait out” CICIG’s mandate and then resume once the organization has run its course.

¹³ This recent development took place after the research and writing of this thesis had taken place. It is important to note, however, as it has the potential to effectively and conclusively allow Ríos Montt to evade retributive justice. See “Guatemala: Ex-Ruler Rios Montt Found Unfit for Trial,” *BBC News*, July 8, 2015, accessed August 10, 2015; available from <http://www.bbc.com/news/world-latin-america-33438374>.

¹⁴ One common political economy-influenced argument tends to argue that failing wide-ranging cultural, structural, and constitutional reforms within Guatemala, any attempts at justice will fall short of changing the status quo over the long term. My argument is ostensibly the same, however I outline some ways by which CICIG can do so, such as working directly with civil society organizations to build critical mass and power that has the ability to at least visibly challenge Guatemalan state power; or by changing the organizational mandate so as to train and empower a much greater number of security and justice sector civil servants. For more on the political economy-inspired views of peace and justice in post-conflict Guatemala, see M. Gabriela Torres, “Imagining Social Justice Amidst Guatemala’s Post-Conflict Violence,” *Studies in Social Justice* 2.1 (2008): 7. Also see Nicola Short, *The International Politics of Post-Conflict Reconstruction in Guatemala*, (New York: Palgrave MacMillan, 2007); and Rachel Sieder, “Legal Globalization and Human Rights: Constructing the Rule of Law in Postconflict Guatemala?” In *Human Rights in the Maya Region*, eds. Pedro Pitarch, Shannon Speed, and Xochitl Leyva Solano, 67-90. (Durham: Duke University Press, 2008): 85.

Guatemala experienced “ten years of spring” from 1944 until the Central Intelligence Agency-led *coup d’état* of 1954, where the country toyed with populist democratic governance and agrarian reform.¹⁵ Greg Grandin’s influential treatise on ethnicity and identity in Guatemala outlines post-World War Two socio-economic upheaval as the reason grassroots democracy was able to gain a foothold in the country. That being said, however, Indigenous populations in Guatemala were largely on the margin of that grassroots democracy movement even then, according to Grandin.¹⁶ Put differently, Guatemala’s highly stratified society has historically and contemporarily excluded Mayan-Indigenous populations, even in moments of social unrest and antipathy towards extant societal disparity. Explained differently, for Mayan-Indigenous populations in Guatemala, as Dinorah Azpuru’s academic polling project has uncovered, the nuances between long-standing elites in Guatemala, a newly ascendant middle class, and international community responses like CICIG are all more or less similar—their similarity lies precisely in the foreignness and difference from the values and worldview of Mayan society. As a result, rural Indigenous-Mayan populations tend to feel only a very marginally greater level of trust for CICIG than for existing state institutions, to offer a tangible example of how this phenomenon plays out.¹⁷ Not only that, but Guatemalan Mayan-Indigenous populations have faced disappointment and, at best, a lack of participation, representation, and importance in Guatemala-wide societal processes from time immemorial, which only compounds their collective feelings of apathy and mistrust.

At the same time, one can hardly afford to discount the experiences of millions of Guatemalans who do not fall into a Mayan-Indigenous status, yet fail to meet levels of exclusivity determined by the country’s elites.¹⁸ This point is often lost or obscured by scholars taking a purely constructivist ontological assessment of the socio-political

¹⁵ One particularly useful and succinct explanation of this time period can be found here: Jason A. Klocek, *How Religious Actors Influence the Politics of Transitional Justice: Truth Recovery and Reconciliation in South African and Guatemala*, (Master’s Thesis, Georgetown University, 2009): 56.

¹⁶ Greg Grandin, *The Blood of Guatemala: A History of Race and Nation*, (Durham: Duke University Press, 2000): 223-231.

¹⁷ Dinorah Azpuru, “Political Culture of Democracy in Guatemala, 2010” in *Democratic Consolidation in the Americas in Hard Times: IX Study of Democratic Culture of Guatemalans*. (Nashville: Latin American Public Opinion Project – Vanderbilt University, May 2011): 164.

¹⁸ Since the end of the Guatemalan civil war, these elite statuses are usually now recognized in subdivided units consisting of power deriving from either military-security or socio-economic ties.

realities in Latin America, especially when they approach the issue with a lens focused on political economy. It is a subtlety that ought to be noted—indeed, the point remains that the non-elite masses wrested control from the state’s powerful elites for ten years following World War Two, only to be reversed by an American organized and committed *coup d’état*. The United States government and general public remained “ignorant [and] ethnocentric [of the Guatemalan reality and social history, while being] shrouded in Cold War paranoia.”¹⁹ Gleijeses even goes on to describe the American media as largely having been fully supportive of the state and disbelieving of allegations of American involvement in Guatemalan politics at the time.²⁰ Indeed, it was largely due to major agrarian reforms planned, and Jacobo Arbenz’s Guatemalan administration enforcing a policy of rent-seeking from banana exports from the United Fruit Company, that the United States decided to overthrow the Arbenz government.²¹ The vast majority of scholarly material related to this *coup* barely makes mention of Guatemalan socio-political forces of the era—the Guatemalan elites that emerged in power following the counter-revolution in 1954 are usually pitted as benefactors of American decision-making who could be trusted to maintain the status quo. In other words, those who benefited in Guatemala from the American-led *coup* were the traditional elites. It was American involvement, not an elite-driven process which resulted in the re-disenfranchisement of Guatemala’s vast numbers of non-elite peasants.

One should, however, take note of two points: first, Guatemala’s Indigenous-Mayan populations have never held any modicum of state level power, regardless of where the balance of power lies in Guatemalan society. Secondly, between the emergence of global human rights norms and transnational civil society socio-political power,²² I argue that the potential looms much greater than at any point in recent memory for Guatemala’s most historically dispossessed, its Mayan-Indigenous populations, as well as its *Ladino* rural poor populations, to express some level of power, unforeseen in the

¹⁹ Piero Gleijeses, *Shattered Hope: The Guatemalan Revolution and the United States, 1944-1954*, (Princeton: Princeton University Press, 1992): 367.

²⁰ *Ibid*, 368.

²¹ Marcelo Bucheli, “Good Dictator, Bad Dictator: United Fruit Company and Economic Nationalism in Central America in the Twentieth Century,” *Working Paper*, 2006, accessed August 9, 2015; available from https://business.illinois.edu/working_papers/papers/06-0115.pdf: 6.

²² Kathryn Sikkink, *The Justice Cascade*, (New York: W.W. Norton and Company, 2011): 97.

country's long history to date, through the force of their sheer numbers, if by no other means.²³

I feel confident in summing up Guatemalan socio-political power relations with several suppositions. To begin with, the Mayan-Indigenous populations as well as Guatemala's *Ladino* rural poor have consistently received maltreatment at the hands of the country's/colony's powerbrokers throughout its history. This is a reality that has remained stable and constant throughout hundreds of years. But analysts must look deeper than a mere indigenous-peasant *versus* elite divide to properly understand power differentials and how that power has historically functioned—that is, the elite, powerbroker role in any given time period of Guatemala's recent history is fluid. In 1954, American support for a regime change was the most salient factor in reversing populist gains. In 1999, the prospective gains for Guatemalan society's most socially and ethnically underprivileged as represented by clauses and agreements in Guatemala's 1996 peace accords were effectively defeated by a well-calculated, heavily financed blitz campaign to have Guatemalans vote against their constitutional adoption.²⁴ The most substantial factors in this instance of poor and indigenous disenfranchisement were the interests of the country's long-established socio-economic elites looking to protect their extremely low corporate and personal tax levels, and in avoiding redistribution of land and wealth—the source of this landed class' power. Finally, the reversal of Ríos Montt's prosecution has served the interests of the country's "new entrepreneurs," which differ significantly from those of the country's "traditional oligarchy,"²⁵ and tend to have ties to either the military and/or transnational organized crime. The important lesson to be taken away from these processes which disenfranchise poor and Indigenous Guatemalan populations is that the processes are by no means a static equation. It is never as simple as "elite" versus "indigenous" or "poor." While the latter part of that equation tends to stay more or less stable in Guatemala, what consists of "elite" or at least the powerbroker for

²³ Rachel Sieder suggests that 50-60% of Guatemala's population of 12 million (at the time of writing in 2008) is indigenous. See Sieder, "Legal Globalization and Human Rights," 77.

²⁴ Corinne Caumartin and Diego Sanchez-Ancochea, "Explaining a Contradictory Record: The Case of Guatemala," in *Horizontal Inequalities and Post-Conflict Development*, eds. Arnim Langer, Frances Stewart, and Rajesh Venugopal, (Palgrave MacMillan, 2011): 181.

²⁵ Schünemann, "Looking The Monster In The Face," 13.

socio-political change in Guatemala has been changing with comparative regularity in the post-war period.

Two other key factors in power relations in Guatemala are salient: First of all, international pressure can and has continually effected sociopolitical change in Guatemala in the post-war period, though in a variety of ways. In 1954, American economic and geopolitical interests were the impetus for a conservative, military-backed regime change. By the mid-1980s, global geopolitical pressure for liberalization and democratization was a major factor leading Guatemala's initial shift away from military governance for the first time in over thirty years.²⁶ More recently, the push to establish CICIACS and then CICIG in the early and mid 2000s was prompted by intense international lobbying and pressure from state actors and governmental organizations but also by international civil society decrying the lack of justice and stability in the country.²⁷ With such a historical record to reflect upon, Kathryn Sikkink's theory of the *Justice Cascade* effectively describes the extant interplay in Guatemala between major civil society norm entrepreneurship combined with the international and localized adoption of such norms through legislation and legal precedent.²⁸

Once again I want to remind the reader of my earlier caveats in this section: first, that for CICIG to be a successful institution at combatting impunity in Guatemala, a simultaneous greater focus on combating organized crime from a transnational perspective ought to be adopted. Secondly, greater sustainability mechanisms are required within CICIG's organizational mandate. There are still many obstacles to achieving justice and the enfranchisement of a long-destitute population (and/or populations) in Guatemala. Despite various justice-related successes that can be traced, at least in part, to CICIG's actions, the overturning of Ríos Montt's genocide conviction and subsequent finding of him to be mentally unable to stand trial again is a stark reminder of how fragile and reversible socio-political "progress" still is in the country. I, and many other analysts looking at Guatemala, remain cautiously optimistic though.

²⁶ Rettberg, "The Private Sector and Peace in El Salvador, Guatemala, and Colombia," 474.

²⁷ Roger Atwood argues that CICIG is an example of how "a broad-based [international] coalition, and judicious use of international pressure can make a successful human rights campaign." See Atwood, *Advocates Against Impunity*, 1.

²⁸ This is the basic premise of her entire theory. To read her summary of the theory, see Part IV: Conclusions in Sikkink, *Justice Cascade*, 225-261.

The differences between today and 1954 are important to note here: first of all, human rights have become a normatively powerful institution on the global stage. Secondly, international civil society has developed into a major geopolitical force, and that includes civil society devoted to the promotion of human rights. Thirdly, CICIG is a force that is maintaining the spotlight on Guatemala from within, but also broadcasting the state of its affairs in the country throughout the rest of the world as well, thus creating a mechanism of international accountability. And finally, Guatemalans have reached a crescendo of frustration at the status quo of severe income and social disparity in the country once again,²⁹ unseen at such levels since 1944. While perhaps not likely, all of these simultaneously salient factors have the potential to transform Guatemalan society, at least incrementally, in favour of more socio-economic parity, and lesser impunity. Whether they will actually congeal do so, however, remains to be seen. That being said, I do believe, and this thesis argues at length, that a shift in CICIG's mandate to training greater numbers of civil servants and more deeply engaging civil society, in addition to developing a more comprehensive transnational strategy at controlling and combating international organized crime networks will go a long way in assisting such a societal transformation.

I.3 Methodology

Throughout the following pages, I employ a number of methodological approaches. Broadly speaking, I employ both case studies and process tracing methods to illustrate cause and effect when I deem causation to be important to my analysis. Though some scholars have heavily warned against choosing region-specific case studies,³⁰ or to at least be careful to follow specific criteria when studying regionally focused cases,³¹ David Collier usefully points out that region-specific case studies have provided the bulk

²⁹ Of special note, social media and contemporary technology has apparently been invaluable in assisting this contemporary protest movement to establish a critical mass. See Tim Rogers, "Beginner's Luck: How 9 Strangers Used Facebook to Launch Guatemala's Biggest Protest Movement in 50 Years," *Fusion*, June 14, 2015, accessed July 3, 2015, available from <http://fusion.net/story/150179/how-9-strangers-used-facebook-to-launch-guatemalas-biggest-protest-movement-in-50-years/>.

³⁰ Dankwart Rustow, "Transitions to Democracy: Toward a Dynamic Model," *Comparative Politics* 2.3 (April 1970): 337-363.

³¹ Barbara Geddes, "How the Cases You Choose Affect the Answers You Get: Selection Bias in Comparative Politics," *Political Analysis* 2.1 (1990): 131-150.

of theoretical value to the field which would otherwise render cross-area studies much less valuable.³² Thus, in the first chapter, I utilize both local and more international case studies in an effort to find common ground between them and endowing my analysis with greater cross-case veracity. Ian Lustick specifically calls this technique “quasi-triangulation,”³³ suggesting that it is useful in either corroborating or falsifying the relationship that one is trying to measure. In the first chapter, I am looking to develop a theoretical argument discussing the importance of increased *temporality* and *responsiveness* as a means of enhancing *transitional justice* outcomes.

Chapter Two is split into two distinct parts: locating CICIG’s *functions* relative to transitional justice; and locating CICIG’s *institutional composition* relative to other transitional justice institutions. For the former, I utilize process tracing combined with both “quasi-triangulation” and “explicit triage” to exhibit my theorized relationship between *truth*, *acknowledgment*, and *retribution* relative to CICIG.³⁴ By “explicit triage,” I mean to say that I use existing transitional justice literature concerning truth recovery, acknowledgment, and retribution in order to locate CICIG within the functional *melée* of transitional justice processes. Through the synthesis and analysis of such literatures, I am then able to establish a *triangulation* whereby I can better explain the relationship between CICIG and each of the three interrelated processes. For the latter part of the chapter, I borrow heavily from Przeworski and Teune’s “most similar systems” comparative method.³⁵ My aim for this part of the chapter is to find one or more similar institutions within the transitional justice lexicon to that of CICIG. As the reader will see, my search for similar institutions to CICIG led me to El Salvador’s truth commission: “most similar systems” design then allows me to control for concomitant variation and narrow the potential lessons that can be drawn from such a comparison. That being said, I do not attempt to extract lessons to be learned from the comparison of the two institutions. Rather, my interest was merely in debunking the rather pervasive understanding in the existing literature that views CICIG as a solitary institution. I

³² David Collier, “The Comparative Method,” in *Political Science: The State of the Discipline II* ed. Ada W. Finifter. (Washington: American Political Science Association, 1993): 112.

³³ Ian Lustick, “History, Historiography, and Political Science: Multiple Historical Records and the Problem of Selection Bias.” *American Political Science Review* 90.3 (September 1996): 616.

³⁴ *Ibid.*, 610.

³⁵ For a more detailed description of such methods, see Adam Przeworski and Henry Teune, *The Logic of Comparative Social Inquiry*, (New York: Wiley-Interscience, 1970).

believe that I have established academic value in such a comparison by allowing other academics to take up the task from an institution that had previously been almost universally described as a “unique” or “new” institutional design necessarily imbued with little comparative value as a result of that categorization.³⁶

Chapter Three shifts away from theoretical mapping towards more policy-based analysis. Similar to the second chapter, Chapter Three also has two separate parts to it: First, I analyze the successes and drawbacks of CICIG *relative to its mandate*, and subsequently analyze CICIG’s strengths and weaknesses *relative to its transitional justice functions* which I establish theoretically in the preceding chapter. This methodology, as I see it, is most akin to “thick description,”³⁷ while being guided by an ethos of “quasi-triangulation.”³⁸ Ostensibly, I am looking to draw policy guidance out of the ether of CICIG’s positive and negative outcomes—*thick description* is required, then, to establish the framework by which to *triangulate* policy prescription. By locating a focal point between the positive and negative outcomes that CICIG has affected relative to its mandate and also transitional justice functions, I am better able to establish a richer contextual basis from which to recommend policy that mitigates negative outcomes and enhances and proliferates positive ones.

I.4 Literature

The literature utilized in the following pages, similar to methodology, is something of a mixed bag. My own epistemological academic outlook tends to be heavily influenced by *constructivist* ideas and literature, so there is certainly a notable focus in the literature utilized in this thesis on norm diffusion, civil society influence, and complex symbioses between state and non-state actors. That said, each chapter has its own more specific influences as well. While the constructivist influences will become obvious to the reader throughout the following pages, I would like to outline some of the more diverse or particular influences utilized in each chapter:

³⁶ Schünemann, “*Looking The Monster In The Face*,” 28.

³⁷ For a deeper discussion of “thick description,” see Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973).

³⁸ Lustick, “History, Historiography, and Political Science,” 616.

In Chapter One, I look at the most influential writers on *procedural justice* outside of the *transitional justice* paradigm to initiate my own theoretical underpinnings. Tom R. Tyler and John Rawls serve as the most important theorists I use for bridging the two aforementioned forms of justice. Tyler comes at the discipline of procedural justice from a social psychological background, specifically looking to account for the motivations and determinants for group behaviour.³⁹ John Rawls comes at the same issue with an aim to understand what, exactly, constitutes the foundations of a functional society from a legalist-philosophical epistemology.⁴⁰ Together, Tyler and Rawls form the backbone by which I lay my transitional justice-focused theoretical constructs relative to procedural justice. Outside of their contributions, I lean most heavily on transitional justice-focused scholars who are working on including procedural justice models into their consideration of transitional justice. Nickson and Braithwaite argue for a more robust and less conventional rethinking of transitional justice away from the preeminent legalist conceptions that have long dominated the discipline.⁴¹ I tend to lean on these three influences the most in constructing my conception of *responsiveness* and *temporality* as being the vehicles by which *procedural justice* is activated, while simultaneously being crucial factors in strengthening *transitional justice* processes.

Chapter Two borrows from several strands of transitional justice literature: *Hybrid institutions* in the transitional justice lexicon; the role of *trials and retribution* in transitional justice; the role of *memory* in post-conflict reconstruction; and transitional justice *measures of breaking with the past* in order to forge a new way forward. Ostensibly, the literature I looked at melded a focus on Latin American transitional justice with general theory concerning each of truth, acknowledgment, and retribution, while also trying to account for CICIG's hybrid nature. From a Guatemalan perspective, Lisa J. Laplante,⁴² Anita Isaacs,⁴³ Rachel Sieder,⁴⁴ Janneke van Hemmen,⁴⁵ and Markus

³⁹ For further discussion, see, Tom R. Tyler, "Social Justice: Outcome and Procedure," *International Journal of Psychology* 35.2 (2000): 117-125.

⁴⁰ In my opinion, Rawls' views relative to procedural justice are most directly presented here, John Rawls, "Justice as Fairness as a Political Conception of Justice," in *What is Justice? Classic and Contemporary Readings*, 2nd ed., eds. Robert C. Solomon and Mary C Murphy, (New York: Oxford University Press, 2000).

⁴¹ Ray Nickson and John Braithwaite, "Deeper, Broader, Longer Transitional Justice," *European Journal of Criminology* 11.4 (2014): 445-463.

⁴² Lisa J. Laplante, "Dialogues of Transitional Justice—Memory Battles: Guatemala's Public Debates and the Genocide Trial of Jose Efraín Ríos Montt," *Quinnipiac Law Review* 32 (2014): 621-673.

Schultze-Kraft were most heavily instructive,⁴⁶ as each of these authors melded a particular theme mentioned above with localized Guatemalan and/or Central American experiences. The second chapter analyzes CICIG's role relative to the transitional justice processes of truth, acknowledgment, and retribution. Among the more influential analyses from which I constructed a conceptualization of the role CICIG played *vis-à-vis* truth, acknowledgment, and retribution were produced by the likes of Lieselotte Viaene,⁴⁷ looking at the function of *truth* amongst Guatemalan indigenous populations. Charles Villa-Vicencio,⁴⁸ widely renowned for his path-breaking theoretical work relative to *acknowledgment* and *reconciliation*, was also important in reconciling how each of *truth*, *acknowledgment*, and *retribution* interconnected. Finally, Naomi Roht-Arriaza,⁴⁹ analyzing retributive justice theory in Latin America from a *constructivist* bend, was vital to my understanding of how varying conceptions of justice within a given society can serve to confound efforts to produce justice outcomes. Roht-Arriaza's work was doubly important in the writing of this chapter thanks to how much critical thought her scholarship prompted me to engage in. Her depiction of the historical legacy of impunity in Guatemala really forced me to deeply consider how the state can overcome or at least functionally reconcile itself to such deep-seated historical legacies.

My third and final chapter leans heavily on recent scholarship specific to CICIG, the issues it faces, and its prospects for success. Unfortunately, the majority of work to this end emanates from civil society: non-profit organizations and non-governmental organizations ("NGOs"), mainly. That is not to say that it is without value—lacking in primary research, this thesis literally could not have proceeded without such a rich,

⁴³ Anita Isaacs, "Truth and the Challenge of Reconciliation in Guatemala," in *Reconciliation(s): Transitional Justice in Postconflict Societies*, ed. Joanna R. Quinn, (Montreal: McGill-Queen's University Press, 2009).

⁴⁴ Rachel Sieder, "War, Peace, and Memory Politics in Central America," in *The Politics of Memory*, eds. Alexandra Barahona de Brito, Carmen Gonzalez Enriquez, and Paloma Aguilar, (New York: Oxford University Press, 2001).

⁴⁵ Janneke van Hemmen, "Influence of NGOs."

⁴⁶ Markus Schultze-Kraft, "Security and the Rule of Law in Colombia and Guatemala: Priorities, Trade-offs and Interdependencies," *Hague Journal on the Rule of Law* 4 (March 2012): 135-157.

⁴⁷ Lieselotte Viaene, "The Internal Logic of the Cosmos as 'Justice' and 'Reconciliation': Micro-Level Perceptions in Post-Conflict Guatemala," *Critique of Anthropology* 30.3 (September 2010): 287-312.

⁴⁸ Charles Villa-Vicencio, "The Politics of Reconciliation," in *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, ed. Tristan Anne Borer, (Notre Dame: University of Notre Dame Press, 2006).

⁴⁹ Naomi Roht-Arriaza, "Making the State Do Justice."

diverse, and instructive body of literature. But what remains is that such work is usually heavy on policy prescription with less of a focus on theoretical development. The result is that we gain a better understanding of issues plaguing Guatemala and CICIG specifically, but a lack of theoretical development alongside such policy analysis renders the lessons learned in the Guatemala/CICIG case difficult to apply in other settings. Hudson and Taylor, then, proved to be specifically important: Their article in 2010 was the first major academic inquiry into CICIG from the perspective of developing a theoretical model by which to define and analyze it.⁵⁰ Their analysis provided the impetus for several other theory-focused scholars to build upon, such as Donovan,⁵¹ Schünemann,⁵² and Shipp, Jr.⁵³

Peacock and Beltran's investigation, commissioned by the *Washington Office on Latin America*, in 2003 was exceptionally important in crafting Chapter Three because they were among the first and most influential analysts to establish a basic map of the function and flow of *corruption, impunity, and otherwise illicit behaviour* in Guatemala.⁵⁴ Building on their analysis from a policy angle, and extremely useful in better understanding policy implications of CICIG's actions, Briscoe and Stappers,⁵⁵ Eduardo Stein—himself a former Guatemalan Vice President,⁵⁶ and the International Crisis Group were most influential.⁵⁷ The especially difficult part of Chapter Three was to meld the limited theory currently established in relation to CICIG, along with the

⁵⁰ Andrew Hudson and Alexandra W. Taylor, "The International Commission Against Impunity in Guatemala: A New Model for International Criminal Justice Mechanisms," *Journal of International Criminal Justice* 8.1 (2010): 53-74.

⁵¹ Megan K. Donovan, "The International Commission Against Impunity in Guatemala: Will Accountability Prevail?" *Arizona Journal of International and Comparative Law* 25 (Fall 2008): 779-824.

⁵² Julia Schünemann, *'Looking The Monster In The Face'*.

⁵³ Shipp, Jr.'s work, much like that of Joanna Quinn's, was not so influential *vis-à-vis* direct citations in my work, but gave me a very useful background and framework for understanding the politics of security in Central America, which, of course, has a direct relationship with CICIG. George Fitzhugh Shipp, Jr. *The Mano Dura Promise: Dilemmas of Human Rights and Security in New Latin American Democracies*, (Masters Thesis – George Mason University, 2012).

⁵⁴ Susan C. Peacock and Adriana Beltran, *Hidden Powers in Post-Conflict Guatemala: Illegal Armed Groups and the Forces Behind Them*, (Washington: Washington Office on Latin America, 2003).

⁵⁵ Ivan Briscoe and Marlies Stappers, *Breaking the Wave: Critical Steps in the Fight Against Crime in Guatemala*, (The Hague: Clingendael Institute and Impunity Watch, January 2012).

⁵⁶ Eduardo Stein, "Citizen and Government Security Issues in Latin America: Draft Memorandum for Policy Makers," in *A Decade of Change: Political, Economic, and Social Developments in Western Hemisphere Affairs*, (Inter-American Dialogue, September 2011).

⁵⁷ *Learning to Walk Without a Crutch: An Assessment of the International Commission Against Impunity in Guatemala*, Latin America Report Number 36, International Crisis Group, 31 May 2011: 13.

theoretical parameters which I developed in the first two chapters, and then reconcile them with the litany of theory-shy policy papers and reports. That said, I do believe that I have balanced the two in a useful manner from which to proceed for future analysts and policymakers: that is truly the value I was hoping to impart with this chapter.

1.5 Contingencies and Considerations

Before proceeding into deeper analysis of the issue at hand—CICIG, Guatemala, and transitional justice, that is—I want to make several necessary correctives and caveats. With any major article, chapter, monograph, or book, one could probably conceive of a plethora of rejoinders to submit for the reader’s consideration and this thesis is no different. However there are several issues which specifically stand out to me as requiring explanation: To begin with, I want to offer something of an apology to a great many Spanish-speaking scholars and analysts working on Guatemala- and CICIG-related research. The timeframe and requirements of this Master’s degree and related thesis were not all that conducive to especially time-consuming research. As such, I felt that I had two options in my research programme: I could engage both the English- and Spanish-language literature and research, but I would be limited in the quantity and depth of my research due to the extra time that analysis in Spanish would take me as a non-native speaker. The other alternative, the one which I decided to pursue, was to engage the predominantly English-language research, while supplementing such research with occasional Spanish-language research when it was particularly pertinent and/or there was no English-language equivalent. Moving forward, now that I possess a much more extensive background in theoretical and policy-related understanding relative to CICIG and Guatemala specifically, but transitional justice and Latin America more generally, I feel more confident in sacrificing some analytical and quantitative depth in favour of including more Spanish-language sources in my research.

I have also refrained from including *democracy* in my analysis of CICIG, Guatemala, and even transitional justice, *per se*. Analysts such as Teitel,⁵⁸ Sikkink,⁵⁹ or

⁵⁸ Ruti Teitel, *Transitional Justice*, (New York: Oxford University Press: 2000).

⁵⁹ In this article, Sikkink argues the causal logic that because of international civil society actors advancing the cause of human rights in Argentina, the country was forced to become more democratically compliant, which subsequently led to greater accountability and justice for human rights violators. Though not

the publication team of Olsen, Payne, and Reiter all argue that democracy—or the strengthening of democracy—is something of an “end game” or ideal outcome for transitional justice processes.⁶⁰ I make no such claims. To me, this is ‘putting the cart ahead of the horse,’ figuratively speaking. Even a small measure of enhanced justice outcomes ought to be viewed positively. To me, the end goal of a high-functioning liberal democracy obscures meaningful but incremental progress in local and non-retributive forms of justice. These types of justice initiatives and outcomes are often the important forms of justice to survivors of human rights violations.⁶¹ Moreover, I think that I make a strong case that a foundation for intra-societal *trust* is required before one can even begin to think about a truly equitable democracy. It is for this reason that I argue in favour of *procedural justice* being included in the *transitional justice* lexicon in Guatemala and elsewhere. In summary, Guatemala is a long way off from an equitable and liberal democracy, but there are many important steps in between Guatemala’s historic stance of antipathy towards human rights and justice afforded to its Indigenous-Mayan population in particular, and the democratic ideal. In my view, such steps are obscured by an excessive focus on democracy.

One final issue that I wish to clarify is that because CICIG and Guatemala’s security and justice reform processes, as well as its transitional justice processes, are all simultaneous and interconnected ‘works in progress,’ there is a clear potential for theoretical or policy-related inaccuracy. Specifically, we do not have the value of hindsight for current, contemporary events, and so any analysis of CICIG and processes currently taking place in Guatemala, may in fact turn out differently than what I hypothesize. I accept that risk in the hopes that my theoretical construction and analysis will provide a “net benefit” to theorists and policy-minded analysts alike. My theoretical and/or policy-related arguments may turn out to be incomplete and/or require correctives—in fact, I expect that they absolutely will. But my hope and expectation is that my analysis provided will benefit future researchers on a level that outweighs the

explicit, the link between transitional justice and democracy is quite clear. See Kathryn Sikkink, “From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights,” *Latin American Politics and Society* 50.1 (Spring 2008): 25.

⁶⁰ Tricia D. Olsen, Leigh A. Payne, Andrew G. Reiter, “The Justice Balance: When Transitional Justice Improves Human Rights and Democracy,” *Human Rights Quarterly* 32.4 (2010): 980-1007.

⁶¹ Isaacs, “Truth and the Challenge of Reconciliation,” 139.

potential pitfalls. To offer an example of what I am referencing, Hudson and Taylor were the first to attempt to theoretically account for CICIG as a hybrid criminal justice mechanism, only two years into its mandate.⁶² In addition to describing it as a criminal justice mechanism, they also describe it as a “unique hybrid structure,” and suggest that it ought to be replicated in other settings.⁶³ My conclusions about the institution are different than theirs on virtually all accounts. However, without their research and theoretical constructs, most analysts, myself included, would have little to compare CICIG to and few means by which to conceptualize the institution. Their analysis has been invaluable in that I have been able to compare and contrast my own ideas about theory and function against their own, and I have been able to arrive at different conclusions. To explicate the lesson here, if analysts and researchers disagree with my suppositions due to the ongoing and ever-changing nature of the peace, security, and justice situation(s) in Guatemala, I hope that my research in this thesis will at least illuminate and offer insight for other research programmes.

I.6 Organization and Main Arguments

The thesis at hand is modeled in a progressive fashion towards overall, policy-specific recommendations, in contrast with other theses and monographs, which often use chapters as separate parts of a comprehensive argument. To further expound, in the first chapter, I make the case for the definition and application of *procedural justice* within the lexicon of *transitional justice*. The second chapter then builds upon the first in attempting to situate CICIG *within* transitional justice: I use the theoretical concepts discussed in the first chapter to account for how CICIG has the potential to foster, at least on a theoretical level, better transitional justice outcomes by imbuing the process with greater procedural justice. The third and final analytical chapter is significantly longer than the preceding two. While the first chapter develops theoretical constructs to better account for CICIG, the second chapter uses those same constructs to situate CICIG both functionally and institutionally within the greater context and lexicon of transitional justice concepts and institutional arrangements. The third chapter then takes a turn towards policy, based on

⁶² Hudson and Taylor, “The International Commission Against Impunity in Guatemala.”

⁶³ *Ibid.*, 55.

the theoretical and institutional placement discussed in the preceding two. The comprehensive project, then, offers tangible lessons to be concurrently applied to CICIG as it moves forward but also in other similar institutional arrangements, certainly in other Latin American transitional justice processes, if not global ones.

In Chapter One, my main argument is as follows: The establishment of procedural justice measures is an important step in securing trust and common purpose among various factions of a given society, but especially one that is severely divided following internecine conflict. In other words, procedural justice can be conceived of as the measures which allow a society to *break with the past*, and concurrently establish a bright new future. Further to that point, I argue that both *temporality* and *responsiveness* are the vehicles by which *procedural justice* is operationalized, specifically within a *transitional justice* context. I also use the first chapter to argue for greater recognition, greater coordination, and a more sustained focus on procedural justice within transitional justice. In fact, there are several analysts from the sub-field of transitional justice which make the case for some form of procedural justice in their analyses. There are many more who argue for some form of responsiveness or temporality within transitional justice processes without explicitly recognizing that they are ostensibly arguing in favour of greater procedural justice. In short, I am calling for a more sustained discussion on the role of procedural justice within transitional justice while concurrently shining a requisite light on that emerging strand of transitional justice literature.

In Chapter Two, I make two main arguments as to how CICIG fits into the transitional justice mold of *institutions* and *functions*: First, relative to transitional justice *functions*, CICIG directly affects *trust*, which then affects *acknowledgment*, which both in turn affect *retribution*. Together, all three functions signal a *break with the past*, a primary goal of procedural justice as I define it in Chapter One. Moreover, in connecting procedural justice to the transitional justice functions of truth, acknowledgment, and retribution, I argue that *trust* and *acknowledgment* have a symbiotic relationship in how they render CICIG to be something of a ‘*follow-up*’ *truth commission*, a rejoinder to Guatemala’s two significant truth commissions from the late 1990s: The UN-Guatemalan state joint-commissioned *Historical Clarification Commission* (“CEH”) and the Catholic

Church's *Recovery of Historical Memory Project* ("REMHI").⁶⁴ In that 'follow-up' function, I argue that *trust* and *acknowledgment* combine to introduce a measure of greater *temporality* into Guatemala's long-stalled transitional justice process. Meanwhile, I also argue that largely through CICIG's *truth recovery* and *investigative* functions, the state is compelled to *acknowledge* past wrongdoing during and since Guatemala's civil conflict, a long absent recognition in Guatemala's transitional justice process subsequent to the 1996 peace accords. In establishing the truth and acknowledgment of wrongdoing, then, in addition to the heft that legalistic and retributive visions of transitional justice still command,⁶⁵ CICIG has thus prompted Guatemala to enact various measures of *retributive* action relative to human rights abuses during and since its bloody civil war.

Also in Chapter Two, I argue against the predominant understanding of CICIG as a "unique hybrid organization."⁶⁶ In fact, in analyzing several other transitional justice institutions in Latin America, I find that it shares a lot of functional and institutional similarities to El Salvador's Truth Commission from the early 1990s. My aim in institutionally demystifying CICIG and locating its similarities among other transitional justice institutions is to essentially render it more of an instructive, insight-bearing institution for future analysts and policymakers to build off of. Of course, CICIG is not uniformly similar to El Salvador's truth commission ("CTES"). But its similarities far outweigh its differences, so its affected outcomes can be more easily compared and contrasted in order to gain deeper insight into the future desirability and/or deeper understanding of its causal function.

The final analytical chapter, Chapter Three, contains two micro-theses much like the second chapter. The aim of the third chapter is to analyze CICIG's successes and drawbacks. As such, I deemed it necessary to compare CICIG against its mandate and then to compare it against the previously discussed functions that it has the capacity to

⁶⁴ For further reading, see *Guatemala: Memory of Silence*, Commission for Historical Clarification, 1998, 1-86, accessed 25 November 2014; available from <https://hrdag.org/wp-content/uploads/2013/01/CEHreport-english.pdf>.

Archdiocese of Guatemala: REMHI, *Recovery of Historical Memory Project, Guatemala, Never Again!*, (London: Catholic Institute for International Relations, Latin American Bureau, 1999).

⁶⁵ Isabella Bueno and Andrea Diaz Rojas, "Which Approach to Justice in Colombia Under the Era of the ICC," *International Criminal Law Review* 13 (2013): 217.

⁶⁶ Mary Fran T. Malone, *The Rule of Law in Central America: Citizens' Reactions to Crime and Punishment*, (New York: Continuum International Publishing Group, 2012): 12.

affect—truth, acknowledgment, and retribution. In this final chapter, I shift my analytical lens from that of *theory* to *policy application*. Thus, relative to CICIG’s mandate, I argue that the mandate itself was too ambitious in the first place for CICIG to be reasonably expected to adequately fulfill it. There are three parts to the mandate: To investigate illicit and clandestine security organizations and uncover their structures; to assist the state in disbanding such groups through investigation and punishment of their crimes; and to make policy recommendations to eliminate and prevent the re-emergence of the aforementioned groups.⁶⁷ CICIG has been successful at investigating, uncovering, and purging the state apparatus of corruption to a significant degree. However, on the other hand, CICIG’s mandatory strategy of prosecution as a means of disbanding illicit groups in Guatemala is limited in its efficacy and has proven to be unsustainable over the long term: Its prosecution strategy has not secured institutional requirements nor capacities to continue the work that CICIG has started once the institution’s mandate eventually runs its course.

I then make three ‘takeaway’ arguments relative to the successes and failures CICIG relative to its transitional justice functions of truth recovery, acknowledgment, and retributive actions. Related to *truth*, I argue that *Guatemala needs greater institutional-, cultural-, and capacity-related sustainability built into its justice and security sectors in order to prevent a backslide in the prosecutorial successes* that CICIG has helped to secure. Otherwise, it runs the risk of rendering itself a *truth recovery*-focused institution with little ability to use such truth to affect meaningful justice, either restorative or retributive, for Guatemala’s myriad of victims of human rights violations. Related to *acknowledgment*, I make the case that *CICIG and/or the Guatemalan justice sector need to better connect their justice-seeking actions to the victims for whom they are largely trying to affect justice*. To illustrate this point, while much of Guatemala’s urban middle class has been inspired and encouraged by the shift in the country’s ethos impunity-countering ethos,⁶⁸ the most afflicted victims of state intransigence and human

⁶⁷ “Mandate: Agreement to Establish CICIG,” CICIG: International Commission Against Impunity in Guatemala, December 12, 2006, accessed March 3, 2015; available from <http://cicig.org/index.php?page=mandate>.

⁶⁸ For example, significant protests, mostly led by Guatemala’s urban, educated middle class in April, May, and June of 2015 resulted in major changes in the country. Corruption indictments were secured against government officials, and the Guatemalan Vice President, Roxana Baldetti, was even forced to resign over

rights violations are Mayan-Indigenous populations. This population is generally distant and removed from educated, urban sectors which have directly observed CICIG's impact and the shift in justice outcomes within the country over CICIG's tenure. Finally, relative to *retribution*, I argue that a *transnational strategy aimed at both supply and demand of illicit goods being trafficked by transnational organized crime in Latin America is required* for any tangible, long-term success to be experienced by institutions such as CICIG. This, in fact, is the most important conclusion that I draw from my analysis of CICIG's successes and drawbacks within its transitional justice-affecting capacities.

The initial plan for this thesis was to analyze CICIG as a transitional justice institution in the hopes of analyzing whether it would be a desirable or even useful institutional model to apply in the context of another Latin American state's transitional justice process. I come to the conclusion that, given the limited nature of aid and development resources in addition to the growing transnational criminal network size and strength within Latin America, a more robust address to the supply and demand side of illicit goods, especially drugs, ought to be the immediate priority. Without such an address, transnational criminal networks have the capacity to evolve and shift their operations bases so as to avoid law enforcement while simultaneously fomenting insecurity, violence, and injustice. A sub-international address does not have the jurisdiction nor the resources to compete against such a powerful but also amorphous entity.

her ties to the alleged ringleader of a border customs fraud ring. See Elizabeth Malkin, "Wave of Protests Spreads to Scandal-Weary Honduras and Guatemala," *The New York Times*, June 12, 2015, accessed June 21, 2015; available from http://www.nytimes.com/2015/06/13/world/americas/corruption-scandals-driving-protests-in-guatemala-and-honduras.html?_r=0.

1. CHAPTER ONE: PROCEDURAL JUSTICE: A MEANS OF ENRICHING TRANSITIONAL JUSTICE PROCESSES

1.1 Overview

Within transitional justice literature, there has been an increasing call amongst theorists and practitioners to map out the “key steps in peacebuilding that [need] to be taken to secure a stable democratic future.”¹ These “key steps” generally follow some conventional mixture of Martha Minow’s seminal delineation of *retributive*, *restorative*, and *reparative* forms of justice, now a virtual ‘trinity’ in transitional justice literature.² Various scholars are now attempting to carve out normative pathways of transitional justice measures to optimally achieve a definitive resolution of conflict and simultaneously embark upon a post-conflict, generally democratically-conceived era of peace, justice, and good governance. Moreover, some of the most cogent and articulate prescriptions of optimal transitional justice conditions are being crafted by giants in the field of transitional justice, such as Kathryn Sikkink,³ Jack Snyder and Leslie Vinjamuri,⁴

¹ Clara Sandoval Villalba, “Transitional Justice: Key Concepts, Processes, and Challenges,” (Institute for Democracy and Conflict Resolution – Briefing Paper, August 2011) accessed 24 February 2015; available from http://www.idcr.org.uk/wp-content/uploads/2010/09/07_11.pdf: 2.

² Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence*, (Boston: Beacon Press, 1998).

³ Hunjoon Kim and Kathryn Sikkink, “Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries,” *International Studies Quarterly* 54.4 (December 2010): 939-963.

or alternatively, authors who are rapidly becoming virtual “must cites” of the transitional justice arena, largely due to their robust work in the prescriptive realm.⁵

The purpose of this chapter, and this thesis in general, is not to refute or rebut the dominant paradigms and trajectories of transitional justice.⁶ Rather, I am using this chapter in an effort to contribute to a “deeper, broader, [and] longer” transitional justice.⁷ The main aim of this thesis, then, is to situate the *International Commission Against Impunity in Guatemala* (“CICIG”), and the issues which it aims to address, within the larger scope of transitional justice.⁸ Christian Nadeau has written an instructive epistemological rejoinder in his consideration of transitional justice as a field: “Theory should not be imposed on the reality it intends to grasp, but be inspired by that reality.”⁹ Indeed, without some requisite theoretical consideration and supplementation to this end, any such endeavour to both locate and explain CICIG within transitional justice would be incomplete in both analytical and explanatory rhetoric and logic. In other words, rather than ‘shoe-horning’ theory onto a concept,¹⁰ I am heeding Nadeau’s proscription to deepen and broaden the theoretical bases within the field to better account for CICIG and its role relative to transitional justice. Thus, in this chapter, I seek to add-on to or fill in the blanks for what I see as under-theorized pieces within transitional justice’s constituent elements of *retributive*, *restorative*, and *reparative* justice(s), but especially within the liminal spaces of overlap between each of these types of justice. I am seeking to both refine a definition of and make the case for inclusion of *procedural justice* within the vocabulary of *transitional justice*.

⁴ Jack Snyder and Leslie Vinjamuri, “Trials and Errors: Principle and Pragmatism in Strategies of International Justice,” *International Security* 28.3 (Winter 2004): 5-44.

⁵ Olsen, Payne, and Reiter, “The Justice Balance.”

⁶ Though there are certainly some interesting debates taking place along these lines. For more discussion, see, Simon Robins, “Transitional Justice as an Elite Discourse,” *Critical Asian Studies* 44.1 (March 2012): 3-30; see also David A. Hoogenboom, “Theorizing ‘Transitional Justice,’” (Ph.D. diss., University of Western Ontario, 2014)..

⁷ Nickson and John Braithwaite, “Deeper, Broader, Longer Transitional Justice.”

⁸ Of course, to that end, I also seek to evaluate whether such hybrid commissions can be useful tools in the progression of transitional justice in theory and in practice, but this consideration is relatively unimportant to the current chapter.

⁹ Christian Nadeau, “‘What Justice After War?’ Elements for a Theory of Transitional Justice,” *La Vie des Idées*, January 14, 2010, accessed January 26, 2015; available from http://www.laviedesidees.fr/spip.php?page=print&id_article=952.

¹⁰ By “concept” here, I refer to CICIG.

1.2 Introduction

While many analysts in the transitional justice field argue for greater proscriptive, utilitarian theory so as to streamline transitional justice practices, there is still a significant pushback against such trends. Rachel Sieder, for example, argues eloquently for an account of historical and social contingencies, rather than “reducing [justice] simply to a set of institutions.”¹¹ This is arguably what transitional justice literature is guilty of doing when scholars advocate “best practices” models. Guatemala is indeed interesting because it has combined various schemas and models of transitional justice from truth commissions to reparations to prosecutions to amnesties. Yet for much of the past twenty years of post-civil war existence, the country has been plagued by a spiraling crime rate in Guatemala and near-complete impunity for perpetrators of crimes and human rights abuses alike.¹² Such impunity is a contemporary hallmark of Guatemala, but also a relic of a ghastly civil war where the state carried out “acts of genocide” against Mayan-Indigenous populations.¹³ Thus, in Guatemala, one can readily see that while “best practices” theories may outline useful approaches to transitional justice, they are at best imperfect in their proscriptive capacity. They speak better to what works best on average, and perhaps offer a useful general approach to transitional justice—but when discussing post-conflict reconstruction, reconciliation, and the transition from violence to peace, generalities are less than optimal.

The driving question in my consideration of *procedural justice* in the context of the larger *transitional justice* setting is this: *Why* and *where* do dominant *transitional justice* theories fail to account for the disappointing failures of *transitional justice* processes in places like Guatemala. I propose that *transitional justice*, as an academic discipline, has a significant dearth in theorized *temporality* and theorized *responsiveness* relative to its *institutional* and *practical* frameworks. Certain examples of largely

¹¹ Rachel Sieder, “Renegotiating ‘Law and Order’: Judicial Reform and Citizen Responses in Post-War Guatemala,” in *Democratization and the Judiciary: The Accountability Function of Courts in New Democracies*, eds. Siri Gloppen, Roberto Gargarella, and Elin Skaar, (London: Frank Cass Publishers, 2004): 138.

¹² Sieder. “Legal Globalization and Human Rights: Constructing the Rule of Law in Postconflict Guatemala?”: 80.

¹³ *Guatemala: Memory of Silence*, Commission for Historical Clarification.

completed transitional justice processes, such as Argentina or Chile,¹⁴ suggest that *transitional justice* can succeed without a deepened theorization of the field of transitional justice literature. However, as Chandra Lekha Sriram has noted, *transitional justice* mechanisms and processes may also be both destabilizing and, indeed, “inappropriate for the political and legal cultures in which they are set up.”¹⁵ Thus, I use this chapter to make the argument that combined, *temporality* and *responsiveness* are the key vehicles behind the realization of *procedural justice*. Moreover, I believe that *procedural justice*, as a practice and a consideration, ought to become more integral to the practice of *transitional justice*. Essentially, the institutions and processes of transitional justice are not enough to either produce or predict a positive justice-related outcome. Rather, the consideration of time and *temporality* within the framework of transitional justice in addition to the consideration of *responsiveness* to and input from the majority of players in any transitional justice-affected society ought to combine to both lengthen and deepen transitional justice. Though *procedural justice* itself cannot assure the success of *transitional justice* processes, as cases like Argentina and Chile generally attest, it is virtually always missing in places where *transitional justice* mechanisms are met with failure. With the inclusion of *procedural justice* into the *transitional justice* lexicon, I argue that justice outcomes will be consistently and systematically improved, as will be the prospects for reconciliation and the prevention of future violence and human rights violations.

1.3 Procedural and Transitional Justice: Overlap but Lack of Recognition

A large problem with *procedural justice* as a concept is the various ways in which it is used, discussed, and theorized. For example, two of the most prominent theorists of procedural justice, John Rawls and Tom R. Tyler, come at the topic from a legalist-philosophical and social psychological perspective, respectively. They often talk right

¹⁴ Aguilar discusses at length how various processes such as time, societal input, and judicial activism have worked to positively affect all aspects of transitional justice mechanisms adopted in both countries. See Paloma Aguilar, “The Timing and the Scope of Reparation, Truth and Justice Measures: A Comparison of the Spanish, Argentinian and Chilean Cases,” in *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development*,” 503-529, eds. Kai Ambos et al, (Berlin: Springer-Verlag, 2009).

¹⁵ Chandra Lekha Sriram, “Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice,” *Global Society* 21.4 (October 2007): 579.

past one another, or talk about completely separate *spheres of applicability*. That is, Tyler, for example, is talking about group behaviour, while Rawls is discussing the foundations for a functional society. Ultimately, while they are perhaps speaking to different situations and different audiences, at a general level, each of their conceptions of procedural justice is not fundamentally incompatible with the other. Moreover, the rather small amount of literature concerning *procedural justice* within *transitional justice* is largely compatible with the theories of Tyler and Rawls as well. Thus, it seems that a more robust description and theorization of *procedural justice* within *transitional justice* is required—a task upon which I am partly embarking upon to remedy.

Procedural justice has several meanings. There is a significant literature concerning the actual procedures in various mechanisms in the *transitional justice* canon, but this is not generally what I am specifically trying to define and apply.¹⁶ A great deal of *transitional justice* scholars touch upon topics which I argue, and believe that both Rawls and Tyler would likely agree, fall into the realm of procedural justice without necessarily realizing and certainly not acknowledging it. Lundy and McGovern, for example, talk about “justice from the bottom up.”¹⁷ Kieran McEvoy likewise discusses how transitional justice needs to move beyond legalism and “countenance the role of other [non-legal] actors and forms of knowledge.”¹⁸ Each author is directly arguing for greater *responsiveness* from *transitional justice* processes, a core tenet of what I subsequently define as one of two major vehicles behind actualizing *procedural justice*. But neither article discusses the notion of procedural justice directly, nor do they refer to any discernible procedural justice theorists.

Similar to how certain authors have discussed *responsiveness* without making the connection to *procedural justice*, writ-large, other analysts argue in favour of greater *temporal* considerations within *transitional justice* mechanisms. Aguilar estimates that

¹⁶ For example, Mark Freeman discusses “best practices” on how to take statements from victims or how to best publish truth commission findings. Suffice it to say that I am not referring to that when I talk about procedural justice, though perhaps some principles of procedural fairness may apply to both. Mark Freeman, *Truth Commissions and Procedural Fairness*, (Cambridge: Cambridge University Press, 2006).

¹⁷ Patricia Lundy and Mark McGovern, “Whose Justice? Rethinking Transitional Justice from the Bottom Up,” *Journal of Law and Society* 35.2 (June 2008): 265-292.

¹⁸ Kieran McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,” *Journal of Law and Society* 34.4 (December 2007): 411.

impunity for perpetrators of human rights in Spain dating back to its Franco dictatorship era resulted precisely because *transitional justice* mechanisms and even the national narrative about the conflict did not include any considerations of *temporality*: “There is no agreement over the past,” let alone the mechanisms to deal with it.¹⁹ Jennifer J. Llewellyn also references timeframe and *temporality* in her estimation that the lens of *transitional justice* is limiting because it views truth-telling mechanisms as less important in “transitional” periods. By only focusing on the near future, its long-term role in establishing the bedrock for “modeling justice for the future society” is limited.²⁰ Yet, once more, neither Llewellyn nor Aguilar broach the topic of *procedural justice* directly, despite discussing the importance of *temporality*—what I argue is a vital piece relative to *procedural justice*.

1.4 Theorizing a Role for Procedural Justice in Transitional Justice Literature

One issue concerning the topic of *procedural justice vis-à-vis transitional justice* is that it is under-theorized and often unrecognizable.²¹ The subsequent pages aim to change that. But *procedural justice* as a theme, or at least a potential theme, within the *transitional justice* literature, is a topic that is slowly being brought up: James L. Gibson,²² Monika Nalepa,²³ Bernadette Atuahene,²⁴ and various others have touched on the issue. Hancock and Pearson d’Estrée,²⁵ and especially Nickson and Braithwaite,²⁶ argue the most robust and well-considered delineation of *procedural justice* within a *transitional justice* context. As such, I draw most heavily upon their contributions out of the few scholars

¹⁹ Aguilar, “The Timing and the Scope of Reparation,” 526.

²⁰ Jennifer J. Llewellyn, “Restorative Justice in Transitions and Beyond: The Justice Potential of Truth-Telling Mechanisms for Post-Peace Accord Societies,” in *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, ed. Tristan Anne Borer, (Notre Dame: University of Notre Dame Press, 2006): 85.

²¹ By this I mean to say that despite arguing for more *responsiveness* and *temporality*, the above-mentioned scholars fail to recognize how their arguments are ostensibly related to procedural justice.

²² James L. Gibson, “Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa,” *American Journal of Political Science* 46.3 (July 2002): 540-556.

²³ Monika Nalepa, “Tolerating Mistakes: How Do Popular Perceptions of Procedural Fairness Affect Demand for Transitional Justice,” *Journal of Conflict Resolution* 56.3 (2012): 490-515.

²⁴ Bernadette Atuahene, “The Importance of Conversation in Transitional Justice: A Study of Land Restitution in South Africa,” *Law and Social Inquiry* 39.4 (Fall 2014): 902-937.

²⁵ Landon E. Hancock and Tamra Pearson d’Estrée, “Culture and Procedural Justice in Transitioning Societies,” *Peace and Conflict Studies* 18.1 (2011): 116-161.

²⁶ Nickson and Braithwaite, “Deeper, Broader, Longer Transitional Justice.”

looking at *procedural justice* through the lens of *transitional justice*. Namely, as Nickson and Braithwaite explicitly discuss, “deepening justice” means greater bottom-up citizen-based opportunities to inject more responsiveness into justice mechanisms.²⁷ “Lengthening justice” means opening up time frames for justice so as to suit victims rather than donors, for example.²⁸ Where my theoretical underpinnings diverge from Nickson and Braithwaite, however, is that they view this kind of procedural justice as a means of enacting more realistic expectations for what transitional justice can accomplish and so that more survivors/victims can experience some justice.²⁹ I think that the greater value in procedural justice lies in its *capacity for signaling a new future*, based on fairness, *in a break with a profoundly unfair past*. Until that *basis for trust* has been firmly built and cemented in place, justice in whatever forms it takes will be viewed with skepticism and failure.

However, in using Nickson and Braithwaite as a kind of guideline for creating a deeper and longer *procedural justice* within the paradigm of *transitional justice*, I have found that their reasoning and goals behind such a vision of transitional justice are also perhaps misdirected. While I think that their conception of procedural justice as a means of assuring *some* justice for a greater number of victims/survivors is a relevant concern, I think that procedural justice can and should play a more fundamental role in directing post-conflict reconstruction. Rather than merely positing a parcel of justice into a larger programme of transitional justice, I think that *procedural justice* ought to be *a major guiding ethos* which supports and guides the larger goals of *transitional justice*.

Thus, in my search to include a greater measure procedural justice within transitional justice, I turned to *procedural justice* theorists outside of the field of *transitional justice*: John Rawls and Tom R. Tyler. Notably, Tyler argues that there are four components of procedural justice that influence individuals’ perceptions of fairness: “opportunities for participation;” “neutrality of the forum;” “trustworthiness of the authorities;” and “treatment with dignity and respect.”³⁰ Moreover, Tyler and Blader have found that “fair procedures [are] an antecedent of the type of group culture that is

²⁷ Ibid., 452-53.

²⁸ Ibid., 445.

²⁹ Ibid., 459.

³⁰ Tyler, “Social Justice,” 121.

facilitative of positive group attitudes and internalized values.”³¹ Of final relevance, Tyler also contends that individuals pay more attention to outcomes over procedural fairness when resolving a dispute with someone outside of their social group and/or class.³²

John Rawls, for his part, argues that people are rational actors largely because mutual constraints create an atmosphere which generally compels actors to act rationally and reasonably,³³ at least in political, social, and economic realms.³⁴ In other words, “justice as fairness,” as Rawls titles it, views society as “an undertaking among [individuals] in the light of what they regard as their mutual advantage.”³⁵ Importantly, Rawls was one of the first thinkers to view justice, or at least parts of it, as *procedure-dependent*, rather than predicated solely on the basis of *substantive outcomes*. Tyler’s subsequent research has clarified that indeed, individuals can and usually do demarcate a difference between procedures and outcomes.³⁶ According to Rawls, then, justice cannot be conceptualized outside of procedural fairness: All justice is predicated on *procedural justice*. Rawls ostensibly argues that justice is deeply related to fairness in the sense that grave injustices, inequality, and unfair happenstances can take place. Importantly, however, “justice as fairness” signifies the potential to arrange, regulate, and change situations of extant injustice.³⁷ In Rawls’ own words, “justice as fairness” views society as a “cooperative venture for mutual advantage.”³⁸ He further suggests that individuals in

³¹ Tom R. Tyler and Steven L. Blader, *Cooperation in Groups: Procedural Justice, Social Identity, and Behavioral Engagement*, (Philadelphia: Psychology Press—Taylor and Francis Group, 2000): 78.

³² Tyler, “Social Justice,” 123.

³³ John Rawls, “Justice as Fairness,” in *What is Justice? Classic and Contemporary Readings*, second edition, eds. Robert C. Solomon and Mary C Murphy, (New York: Oxford University Press, 2000): 285.

³⁴ Robert Nozick responded to Rawls’ original arguments in “Justice as Fairness” to say that the theory was neither historically grounded nor cognizant of socio-political power differentials in society. Rawls, recognizing flaws in his theory, has constantly modified and/or clarified it right up until the 1990s. He responded to Nozick suggesting that we view “justice as fairness” as something of a ‘social contract’ based on mutual gains and respect for those, an “overlapping consensus,” rather than an inviolable “conception of ultimate truth” or metaphysical state of being.

John Rawls, “Justice as Fairness as a Political Conception of Justice,” 340.

³⁵ *Ibid.*, 341.

³⁶ Rawls was forced to draw out the distinction between procedural justice and substantive outcome-based justice due to Habermas’ claim that the former did not exist—Rawls argued that it did, but that they were always connected. Tyler and Blader subsequently and empirically confirmed that they are indeed separate. For more discussion, see Jurgen Habermas, “Reconciliation Through the Public Use of Reason: Remarks on John Rawls’s Political Liberalism.” *The Journal of Philosophy* 92.3 (March 1995): 109-131. See also John Rawls, *Political Liberalism*, (New York: Columbia University Press, 1996): 421 and Tyler and Blader, *Cooperation in Groups*, 86.

³⁷ John Rawls, *A Theory of Justice*, (Cambridge: Belknap Press of Harvard University Press, 1971): 87.

³⁸ *Ibid.*, 84.

a society begin at some agreeable point as a necessary condition for justice. According to Rawlsian logic, then, because those at a disadvantage in such a society no longer gain anything by being a part of that society, it would then be irrational to continue on through the status quo. But following the breakdown of a society into violence and grave human rights abuses, as has often occurred in societies engaged in transitional justice processes, the question then becomes how to even bring those individuals back together, let alone establish the basic tenets of a conversation, let alone the create the basis for trust and cooperation. What is unclear is how society can return to its state of trust and cooperation that undergird the societal order. Without trust and cooperation, the potential for violence and conflict still exists, but any attempt to achieve justice is likely to also be looked upon as illegitimate or at least questionable.

Tyler ostensibly argues that group cooperation is predicated predominantly on fair procedure, which then facilitates affinitive attitudes and the development of shared, common values. However, such attitudes and values are blocked from becoming entrenched when social groups and class become salient combative factors in any given society. In such divided societies, *justice outcomes* then become more important than *procedural fairness*. By firmly establishing (or re-establishing) Tyler's four components of procedural justice,³⁹ a society can regain a "group culture that is facilitative of positive group attitudes and internalized values,"⁴⁰ and Rawls' vision of society characterized by "justice as fairness" can once again take hold. Moreover, Tyler and Blader hold that perceptions of procedural justice regularly influence individual attitudes and behaviour more than their determination of person self-interest.⁴¹ Rawls' conception of "justice as fairness" is, thus, confirmed through Tyler and Blader's empirical examination of procedural justice, but its foundations are strengthened: Not only are individuals tied to their "kernel of overlapping consensus"—the basis for societal cohesion—through rational calculations of self-interest, they are further tied to it through perceptions of fairness and just procedure, as Tyler and Blader hold.⁴²

³⁹ To remind the reader, those four components of *procedural justice* are: "opportunities for participation"; "neutrality of the forum"; "trustworthiness of the authorities"; and "treatment with dignity and respect."

⁴⁰ Tyler and Blader, *Cooperation in Groups*, 78.

⁴¹ *Ibid.*, 10.

⁴² Rawls, "Justice as Fairness as a Political Conception of Justice," 344.

1.5 Practical Interaction Between *Procedural* and *Transitional* Justice

One final area that requires explaining is how and where the concepts of *temporality* and *responsiveness* fit into the web of theory that I have explained above. I have thus far argued that Tyler's four components of procedural justice—*voice*; *neutrality*; *trustworthiness of authority*; and *treatment with dignity and respect*—serve as a bedrock of sorts for the whole project of re-establishing the foundations for a healthy societal trust and interaction.⁴³ As such, these four integral elements of procedural justice are a useful place to link up with *temporality* and *responsiveness*. In doing so, I think that transitional justice as a field can be more deeply theorized to include procedural justice within its mechanisms and frameworks. The reason for this, as I discussed above, is that a great deal of literature implicitly argues for increased consideration of one or both of *temporality* and *responsiveness* in transitional justice processes.

The following section takes Tyler's four key factors of procedural justice and contrasts them against certain failures or challenges faced in transitional justice processes in Guatemala and elsewhere around the globe. To that end, Pearson and d'Estrée have also analyzed Tyler's four components of procedural justice with an eye towards transitional justice. Specifically, they argue for a greater attentiveness to local needs, and a shift away from the dominant paradigms of transitional justice, which has historically been more inclined to suggest or even dictate post-conflict justice processes from the top down.⁴⁴

While a stronger focus on local culture is certainly a necessary function of procedural justice, I am looking to narrow that focus even more to include *temporality* and *responsiveness* as the *mechanisms* by which localized individuals, groups, and cultures can be best engaged. To that end, I am using Guatemalan case studies consistently through my exploration of each of Tyler's four components of procedural justice because the (part of the) next chapter will be looking to locate CICIG as an institution within transitional justice theory. I am adding other case studies so as to show that the failure to consider *temporality* and *responsiveness*, two of the key variables of procedural justice, is a problem currently facing transitional justice programs regardless

⁴³ Tyler, "Social Justice," 121.

⁴⁴ Hancock and d'Estrée, "Culture and Procedural Justice in Transitioning Societies," 131.

of the geographical setting. In other words, a weak consideration of *temporality* and *responsiveness* within transitional justice programmes is by no means exclusive to Guatemala. Additionally, I will be alternating *temporality* and *responsiveness* for each of Tyler's four components of procedural justice between the Guatemalan and outside case studies. For example, for the component of *participation*, I will be analyzing Guatemala as a case study and *responsiveness*, meanwhile I will be considering South Africa as a case study and *temporality*. I will then subsequently switch back and forth between country case studies as well as *responsiveness* and *temporality* for each of Tyler's four component parts of procedural justice. In sum, my hope is to show how a lack of *responsiveness* and *temporality* built into transitional justice programmes is a systemic problem which plaguing these programmes in virtually whichever setting they exist.

Put another way, the aim of my investigation is to show a consistent pattern of how a failure to establish procedural justice mechanisms prior to embarking on transitional justice processes has hampered or foiled efforts to effect productive transitional justice advances. Alternatively, sometimes the inclusion of procedural justice mechanisms can be shown to greatly enhance the transitional justice processes and mechanisms at play. I aim to show that either *responsiveness* or *temporality* can be directly observed in either the successes or failures of these case studies. I am not looking to definitively prove that procedural justice is vital for all successful transitional justice processes. Nor am I looking to present an extremely robust account of exactly how procedural justice should engage in all transitional justice processes. My intentions are actually quite humble: I aim to argue persuasively that transitional justice could benefit a great deal from considerations relevant to procedural justice: *temporality* and *responsiveness*.

Finally, a caveat is necessary before investigating each of Tyler's four requisite components of procedural justice. All four are deeply interrelated. So for example, the a survivor/victim being given voice through an interview could also, perhaps even likely, experience not only an opportunity for participation but also feel as though he/she is being treated with dignity and respect. If anything, overlap amongst these four components, and the two added elements of *temporality* and *responsiveness*, only

strengthens the case for an increase in procedural justice considerations within transitional justice theory and mechanisms.

1.5a Voice

The purpose of the *Commission for Historical Clarification* (“CEH”) in Guatemala was to investigate all of the human rights violations which took place during the civil war.⁴⁵ To do so, many non-governmental organizations (“NGOs”) were required to assist the effort in collecting testimonies for the CEH.⁴⁶ However, with an eye towards both participation and *responsiveness*, some observers have argued that a lack of both training and sensitivity to local customs, cultural rights, and the experience of group-based harm on behalf of NGO staff and volunteers severely hampered the process.⁴⁷ Lieselotte Viaene has also commented how this broad approach to the CEH population surveys failed to explore deeper cultural logics which contain needs, perceptions, and attitudes of the Indigenous-Mayan populations.⁴⁸ As such, while the participation of Mayan-Indigenous populations was certainly of use to the CEH and its findings, the interviews likely could have been more revealing if interviewers were more generally attuned to cultural particularities and needs. Here, it is important to remember that, “people define fair treatment in terms of the quality of their social relationship with others in the group.”⁴⁹ Among Mayan-Indigenous populations, there was huge demand for mass grave

⁴⁵ *Guatemala: Memory of Silence*, Commission for Historical Clarification.

⁴⁶ Anita Isaacs, “Truth and the Challenge of Reconciliation in Guatemala,” 124.

⁴⁷ For more on the insensitivity of testimony gathering on a more general level, Impunity Watch has commissioned a study on the lack of gender sensitivity within transitional justice in what I would argue is the most comprehensive analysis of transitional justice-based insensitivity in testimony-gathering published to date. See Karlijn Leentvaar and David Taylor, “*Our Biggest Problem is the Gap Between Principles and Reality*”: *Recurring Obstacles to Gender Sensitivity within Transitional Justice*, Impunity Watch – Perspectives Series, June 2013, 1-19, accessed February 3, 2015; available from http://www.impunitywatch.org/docs/Recurring_obstacles_to_Gender_Sensitivity_Final.pdf. For more information on insensitivity with regards to testimony gathering commissioned by Guatemalan truth commissions, see Christian Tomuschat, “Clarification Commission in Guatemala,” *Human Rights Quarterly* 23.2 (May 2001): 233-258. See also Ruth Rubio-Marin, Claudia Paz y Paz Bailey, and Julie Guillerot, “Indigenous Peoples and Claims for Reparation: Tentative Steps in Peru and Guatemala,” in *Identities in Transition: Challenges for Transitional Justice in Divided Societies*, ed. Paige Arthur, (Cambridge: Cambridge University Press, 2011): 51.

⁴⁸ Lieselotte Viaene, “Dealing with the Legacy of Gross Human Rights Violations in Guatemala: Grasping the Mismatch Between Macro Level Policies and Micro Level Processes,” *The International Journal of Human Rights* 15.7 (October 2011): 1162.

⁴⁹ Tyler and Blader, *Cooperation in Groups*, 116.

exhumations as a means of establishing closure and remembrance.⁵⁰ But the CEH and other ‘justice practitioners’ in the immediate post-war period were ignorant, or at least dismissive, of these concerns. It is easy, then, to see why significant Mayan-Indigenous populations felt as though they were only participating on the terms of the CEH with little *responsiveness* relative to their concerns and conceptions of justice.

Switching over to issues of land restitution in South Africa, Bernadette Atuahene has argued that input, or *responsiveness*, was generally insufficient when dealing with transitional justice measures such as land restitution. To that end, she advances the notion of the importance of “sustained conversation.”⁵¹ She argues that the capacity for commission officials to sustain communication lines with claimants throughout the entire, somewhat arduous, process was the one major variable that “deeply affected whether they believed that the restitution process was fair.”⁵² People feel empowered as citizens when they feel that the state is listening to their voice—they feel as though justice is being “done.” But such a process of communication is an ongoing one, not a ‘one-off,’ as Atuahene illustrates. Moreover, Nickson and Braithwaite, also speaking from a South African perspective, have argued that the *lengthening* of transitional justice could resemble measures like keeping the *Truth and Reconciliation Commission* (“TRC”) open over a longer period. Indeed, as they point out, many victims/survivors are not ready to speak in the immediate aftermath of the traumas they have experienced.⁵³ Braithwaite has also noted the value of sustained conversation in the development of civic trust,⁵⁴ which speaks both to Atuahene’s point directly, and also to the secondary value of lengthening the time frame of truth commissions to collect testimony: The societal conversation regarding the past stays on the table for a longer period of time; has the potential to become more deeply institutionalized; and can often contribute to the development of greater civic trust. Thus, when considering the importance of ‘voice’ to procedural justice, considerations of *temporality* are valuable in that they give that voice a more robust, institutionalized, and ultimately fair expression.

⁵⁰ Isaacs, “Truth and the Challenge of Reconciliation,” 131.

⁵¹ Bernadette Atuahene, “The Importance of Conversation in Transitional Justice,” 934.

⁵² *Ibid.*

⁵³ Nickson and Braithwaite, “Deeper, Broader, Longer Transitional Justice,” 454.

⁵⁴ John Braithwaite, “Setting Standards for Restorative Justice,” *British Journal of Criminology* 42 (2002): 572.

1.5b Neutrality

The neutrality of the state as an arbiter of justice in Guatemala—or its lack of neutrality—has historically been and currently still is deeply compromised by its record of futility.⁵⁵ Compounding the matter is that not only is the system weak, the vast majority of the Guatemalan public views the justice system as favouring the country’s wealthy and powerful elite.⁵⁶ Indeed, only six percent of Guatemalans in 2000 thought that their “basic rights” were protected by the legal system.⁵⁷ Apathy over the situation’s unchanging and deep historic roots, as well as the fear of violence and insecurity amongst both Indigenous-Mayan and lower class populations both serve as barriers to activism and change driven from “bottom-up” processes.⁵⁸ Finally, due to social insecurity and the unresponsiveness of the official justice system, extra-judicial violence amongst all classes in society is viewed as a legitimate recourse to justice.⁵⁹ The long-standing lack of neutrality of the Guatemalan state’s justice system, particularly its favoured approach of impunity for the rich and powerful, has deeply undermined the rule of law in Guatemala. But one cannot separate popular perception of a non-neutral state in matters of justice with the long-standing application of the law to favour only the country’s elites. Extra-judicial, “highly punitive forms of justice” are thus viewed as legitimate by large swathes of the Guatemalan population.⁶⁰ Such vigilante responses undermine the foundations and trust for the rule of law even further than the *temporally* long-standing entrenchment of “justice by and for elites.”

In Northern Ireland, following the 1998 Good Friday Agreement between British Royalists and Irish Republicans to cease violent conflict,⁶¹ there has been a dearth of discussion and acknowledgement of what the Irish euphemistically call “the Troubles.” The British government sought out to change that in the mid-2000s by commissioning the

⁵⁵ Sieder discusses how the weakness of the public prosecutor’s office is one of the biggest obstacles to legal accountability in post-civil war Guatemala, citing an almost zero percent conviction rate in Guatemala City in 2008 compared to the 90,000 criminal complaints filed. See Sieder, “Legal Globalization and Human Rights,” 80.

⁵⁶ Sieder, “Renegotiating ‘Law and Order,’” 152.

⁵⁷ Ibid.

⁵⁸ *Recognizing the Past: Challenges for the Combat of Impunity in Guatemala*, Impunity Watch Consortium – Guatemala, (November 2008): 26.

⁵⁹ Sieder, “Legal Globalization and Human Rights,” 71.

⁶⁰ Sieder, “Renegotiating ‘Law and Order,’” 155.

⁶¹ Seamus Kelters, “Violence in the Troubles,” *BBC News*, February 2013, accessed April 7, 2015; available from http://www.bbc.co.uk/history/topics/troubles_violence.

Northern Ireland Consultative Group on the Past (“CG”). Its basic mission was to develop “public strategies for confronting the most controversial actions of the Troubles.”⁶² Essentially, the British government wanted to bring together governments and civil society in order to address the past—to initiate a process of transitional justice, or at least a national dialogue. Hancock highlights how the Consultative Group was seen as less-than-neutral from the start, at least through the eyes of Irish republicans, given its provenance as an institutional response to “the Troubles” emanating from the British government.⁶³ To compound the matter, “no actual victims or relatives of victims [were] on the panel, and those who were on the panel were chosen by the British government.”⁶⁴ Thus, the Consultative Group was neither neutral, nor was it *responsive* to broad concerns. Even after regular media and public criticism of CG and a vociferous rebuttal against its British-centric establishment by Irish republican political party Sinn Fein,⁶⁵ the Consultative Group continued on in its mandate and activities with little consideration towards *responsiveness* and accountability to the Irish and Northern Irish public and their concerns. That is, nothing more than an indignant op-ed by the Chairs of the CG in the *Belfast Telegraph* claiming both independence and distance from the British government which commissioned the CG in the first place.⁶⁶ Indeed, the CG could not overcome its unpopularity, especially the unpopularity of its subsequently proposed reparations payments. As Tyler has argued, authority viewed as legitimate is likely to be obeyed, and likewise, “when people regard authorities as less legitimate, they are less willing to defer to their decisions because those decisions are fairly made.”⁶⁷ In the case of the CG, its perceived lack of neutrality, aggravated by its inadequate *responsiveness* to both victims groups and republican concerns torpedoed its legitimacy in the eyes of many—enough so that the entirety of its recommendations were tabled and

⁶² Northern Ireland Consultative Group on the Past,” Berkley Center for Religion, Peace and World Affairs – Georgetown University, accessed April 7, 2015; available from <http://berkleycenter.georgetown.edu/organizations/northern-ireland-consultative-group-on-the-past>.

⁶³ Landon Hancock, “Transitional Justice and the Consultative Group: Facing the Past or Forcing the Future?” *Ethnopolitics* 11.2 (2012): 218.

⁶⁴ Ibid.

⁶⁵ “Sinn Fein Comment on Establishment of Consultative Group to Deal with the Past,” Sinn Fein June 22, 2007, accessed April 8, 2015; available from <http://www.sinnfein.ie/contents/9409>.

⁶⁶ Denis Bradley and Lord Eames, “Just Let Us Do Our Job,” *The Belfast Telegraph* January 16, 2008.

⁶⁷ Tyler, “Social Justice,” 120.

a dialogue about “the Troubles”, let alone substantive justice, continues to be elusive in Ireland and Northern Ireland alike.

1.5c Trustworthiness of Authority

Tyler describes ‘trustworthiness of authority’ to be judged as “whether or not that [authority] is benevolent and caring, is concerned about their situation and their concerns and needs, considers their arguments, tries to do what is right for them, and tries to be fair.”⁶⁸ Over the long term, the Guatemalan state has reneged on all of these aforementioned qualities of trustworthiness to the vast majority of its population. Two particular issues illustrate the *temporally*-related lack of trust for authority in Guatemala: First, as both the CEH findings found,⁶⁹ and were later affirmed in the verdict of ex-President Efraín Ríos Montt’s domestic genocide trial, significant Mayan-Indigenous communities were exposed to genocide and ‘*delitos contra los deberes de humanidad*’ in 1982 and 1983.⁷⁰ However, only after the publication of the CEH report *Never Again: Memory of Silence* in 1999 did the Guatemalan military offer a muted apology accompanied by a concomitant denial of responsibility. According to Anita Isaacs, “Guatemalan truth commissions failed to secure either official acknowledgement to enact the reparations called for.”⁷¹ A second prescient issue is summarized by Nicola Short’s observation that the socio-economic agreement as part of the peace accords was almost exclusively based on neoliberal principles of structural adjustments and extensive privatization of state assets.⁷² Yet, despite these reforms, the economic growth rate in Guatemala since the peace accords, up until 2007, was the lowest in all of Latin America.⁷³ Moreover, between 2000 and 2006, Guatemala’s working classes, Indigenous and Ladino alike, “suffered a dramatic increase in the number of workers paid below the minimum wage.”⁷⁴ From the perspective of trustworthiness, as defined by Tyler, the

⁶⁸ Ibid., 122.

⁶⁹ *Guatemala: Memory of Silence*, Commission for Historical Clarification.

⁷⁰ This term roughly translates to a “hybrid form of crimes against humanity and war crimes” as outlined in Guatemala’s Criminal Code.

Susan Kemp, “Guatemala Prosecutes Former President Ríos Montt: New Perspectives on Genocide and Domestic Criminal Justice,” *Journal of International Criminal Justice* 12 (2014): 134.

⁷¹ Isaacs, “Truth and the Challenge of Reconciliation,” 135.

⁷² Short, *The International Politics of Post-Conflict Reconstruction in Guatemala*.

⁷³ Caumartin and Sanchez-Ancochea, “Explaining a Contradictory Record: The Case of Guatemala,” 173.

⁷⁴ Ibid., 174.

Guatemalan state has shown very little benevolence, caring, concern, or fairness. Had this lack of consideration, especially of Indigenous-Mayan communities, seen timely remedy or at least some kind of acknowledgement and response, the state could have at least maintained some level of trustworthiness in the eyes of its Indigenous-Mayan population. But when viewed over the long-term in a *temporality*-focused lens, the state has consistently evaded responsibility for justice and accountability to its poor and Indigenous populations, and little inclination to change that state of affairs at its own behest.⁷⁵

Guillermo O'Donnell has noted that unlawful advantages for public officials and “unlawful encroachment by one state institution upon the proper authority of another” are two key problems related to a lack of trust in a democratic regime.⁷⁶ In extrapolating this principle to justice at a more general level, it is precisely for these reasons that *responsiveness* is so central to trustworthiness: Individuals intimately involved in the process of justice can first-hand see that nobody is receiving undue advantage. Meanwhile, they are also, in effect, party to their own justice-related destiny—the invisible processes of statecraft are reduced.⁷⁷

In Rwanda, for example, Hancock and Pearson d'Estrée have noted how many players in the international community, such as *Amnesty International*, have argued that Rwanda's *gacaca* court system is illegitimate and highly problematic.⁷⁸ Hancock and Pearson d'Estree argue for a more local approach to justice, though. While *gacaca* may not resonate with certain international practitioners of justice and their terms of acceptability, its ‘contextual competence’ in being able to “fit” into familiar models of justice in local communities renders it most appropriate precisely because it is *responsive* to local needs and concerns. Moreover, against the criticism of certain failed *gacaca* processes, Phil Clark has been quick to point out that, once more, *responsiveness* is the key variable at play: Where *gacaca* has failed, its judges have failed in their capacity as

⁷⁵ However, it is important to note, especially given the focus of this thesis, that CICIG has initiated a process of accountability. This issue will be discussed more extensively in the following chapters.

⁷⁶ Guillermo O'Donnell, *Dissonances: Democratic Critiques of Democracy*, (Notre Dame: University of Notre Dame Press, 2007): 78.

⁷⁷ By comparison, there is a significant literature of how the ICTR is viewed as less legitimate and less fair, largely due to its unfamiliar terms and distant location.

⁷⁸ Hancock and Pearson d'Estrée, “Culture and Procedural Justice in Transitioning Societies,” 141.

arbiters responding to local concerns.⁷⁹ Thus, the localized process of justice inherent in *gacaca* has created a transparency of the process of justice and has also included the individuals most affected by and in need of justice.

1.5d Treatment with Dignity and Respect

The national discussion and treatment of “victims” of the Guatemalan civil war is highly divisive and still relevant today. Tyler argues that members of any given society are “very concerned” that their dignity and membership within that society is “recognized and acknowledged.”⁸⁰ Guatemala, from the perspective of the state, has failed on both counts as one can readily see through the administration of reparations payments to victims. Many Indigenous-Mayan peasants were forced, under the threat of violence, to participate in civil/paramilitary patrols (“PACs”) in looking for guerillas and subversives on behalf of the Guatemalan military.⁸¹ Only through constant lobbying and an eventual mass demonstration, which blocked an important national airport in 2002, did former PACs finally receive reparations payments.⁸² Victims and former refugees still had not been paid reparations payments by that time, however. Despite the pressure to initiate a reparations payment program for those victims and a strong recommendation to do so by the CEH in 1999, a “lack of political will” postponed the initialization of their reparations programme (“PNR”) from 2003 until 2005.⁸³ Related to reparations, Isaacs has noted that the social fabric of much of rural Guatemala is deeply divided between ex-PACs, disbanded guerillas and military, as well as victims and former refugees and displaced persons (“DPs”) often living as neighbours.⁸⁴ The reparations payment programs and their uneven, unequal, and inconsistent administration to many of these individuals and communities is often a source of bitter resentment. Viaene’s comment regarding ex-patrols is especially prescient here: “ex-PACs [regularly] expressed their gratitude that

⁷⁹ Phil Clark, “The Rules (and Politics) of Engagement: The Gacaca Courts and Post-Genocide Justice, Healing and Reconciliation in Rwanda,” in *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond*, eds. Phil Clark and Z.D. Kaufman, (New York: Columbia University Press, 2009): 317.

⁸⁰ Tyler, “Social Justice,” 122.

⁸¹ “PAC” is an abbreviation for *Patrullas de Autodefensa Civil*, which translates as “civil self-defense patrols.” Viaene, “Dealing with the Legacy of Gross Human Rights Violations,” 1163.

⁸² *Ibid.*, 1166.

⁸³ *Ibid.*, 1168.

⁸⁴ Anita Isaacs, “Guatemala on the Brink,” *Journal of Democracy* 21.2 (April 2010): 119.

someone was finally listening to them.”⁸⁵ Indeed, the state’s constant postponement of reparations payments, and blindness to specific needs and demands relative to the administration of reparations payments has undermined “the fragile process of rebuilding community trust” in Guatemala.⁸⁶ The state’s reparations regimen has been anything but *responsive*.

The timely restoration of dignity following atrocity can ultimately lead to strong justice-related outcomes, as the Argentinian experience would attest. Monika Nalepa has opined that, relative to transitional justice policies, justice-focused institutions “should be designed so as to maximize their citizens’ perceptions of fairness.”⁸⁷ Tyler and Blader have offered a postulate that recognition and acknowledgement are vital for a process to be considered fair.⁸⁸ In attempting to acknowledge and maximize citizen perceptions of fairness, timeliness must undoubtedly be considered important to those ends. In fact, Emilio Crenzel, in reflecting on the Argentinian truth commission (“CONADEP”), has argued that the *rapid* establishment of a collective public truth as soon as possible after atrocities were committed was vital to CONADEP’s success.⁸⁹ The link between *temporality* and dignity is perhaps not fully obvious, though: In the aftermath of systematic human rights abuses, a *rapid* restoration of those rights and acknowledgement of the suffering associated has the potential to effectively restore trust and common cause within a society and/or state.

Argentina is a prime example of a *rapid* response to post-atrocity restorative justice: CONADEP, Argentina’s truth commission, was commissioned in 1983 by the late Argentinian President Raul Alfonsín.⁹⁰ This truth commission was established immediately following the end of a military rule synonymous with enforced disappearances and massive human rights abuses. In fact, CONADEP was born directly out of response to Argentine human rights groups calling for justice,⁹¹ such as *Las*

⁸⁵ Viaene is referring to their response to her fieldwork in this quotation. See Viaene, “Dealing with the Legacy of Gross Human Rights Violations,” 1162.

⁸⁶ *Ibid.*

⁸⁷ Nalepa, “Tolerating Mistakes,” 509.

⁸⁸ The argument goes that individuals see the process as fair because they feel “valued as [both] people and group members.” See Tyler and Blader, *Cooperation in Groups*, 90.

⁸⁹ Emilio Crenzel, “Argentina’s National Commission on the Disappearance of Persons: Contributions to Transitional Justice,” *The International Journal of Transitional Justice* 2 (2008): 190.

⁹⁰ “In Memory: Democracy Loses a Leader,” *Americas Quarterly* 3.3 (Summer 2009): 16.

⁹¹ Kathryn Sikkink, “From Pariah State to Global Protagonist,” 6.

Madres de la Plaza de Mayo, which consistently demanded “*verdad, justicia, y memoria.*”⁹² The ultimate success of CONADEP lies in how it both acknowledged and affirmed the importance of engagement with victims and the families of victims who had seen their rights violated so egregiously—it restored their dignity.⁹³ Moreover, Sikkink speaks about the importance of establishing a “right to truth” for victims.⁹⁴ The very notion of a “right to truth” asserts a victim-focused approach to justice, while implicitly recognizing, acknowledging, and reaffirming the dignity and primacy of the individual within the state. Because Argentina was able to rapidly re-certify the rights and dignity of its citizens, it avoided a long-term reified entrenchment of injustice due to neglect and lack of interest in the political realm. In short, *temporality* was intrinsically linked to CONADEP’s success in reaffirming respect and dignity to Argentina’s victims.

1.6 Conclusion

At this point, I would like to trace exactly how *responsiveness* and *temporality* relate back to *procedural justice* in general, but also how each of these concepts relate back to transitional justice. In order to repair a ‘broken,’ post-conflict society must return back to a Rawlsian vision of society as a “cooperative venture for mutual advantage.”⁹⁵ Tyler’s four components of procedural justice—*voice*; *neutrality*; *trustworthiness of authority*; and *treatment with dignity and respect*—serve as the bedrock by which mutual trust and goodwill can be established.⁹⁶ Of course, without mutual trust and goodwill, if not outright respect, various individuals and groups in a society have no common cause or reason to come together in such a “cooperative venture,” and societies continue on ‘broken’ and lacking in all forms of justice. My analysis of various case studies was designed to show how *temporality* and *responsiveness* serve as the vehicles by which

⁹² This demand translates directly as “Truth, justice, and memory.” See Karen A. Foss and Kathy L. Dominici, “Haunting Argentina: Synecdoche in the Protests of the Mothers of the Plaza de Mayo,” *Quarterly Journal of Speech* 87.3 (August 2001): 238.

⁹³ Crenzel highlights this in his observation that publishing the names of both survivors and perpetrators was an important step in re-establishing dignity. See Crenzel, “Argentina’s National Commission on the Disappearance of Persons,” 188.

⁹⁴ Sikkink, “From Pariah State to Global Protagonist,” 13.

⁹⁵ Rawls, *A Theory of Justice*, 84.

⁹⁶ Tyler, “Social Justice,” 121.

Tyler's four components of procedural justice are either realized or, alternatively, by which they experience failure.

I want to remind the reader once more, however, that I am attempting to offer a humble account of how transitional justice processes can be enhanced and improved. By no means do I claim that a more focused lens towards *temporality* or *responsiveness* is a simple solution for every problem encountered by transitional justice practices. Nor am I trying to suggest that every "successful" case of *transitional justice* processes has experienced robust *procedural justice* elements. What I am suggesting, however, is that failed transitional justice processes lack at least one of *temporality* or *responsiveness* in their implementation. More generally, I am arguing that a failure to include *procedural justice* elements within transitional justice processes increases the likelihood that such measures will fail, or at least encounter significant problems to overcome. Finally, relating to the larger thesis here, I envision CICIG's role in Guatemala serving, among other elements, a large role relative to procedural justice. As such, I needed to theorize and account for procedural justice in a much more robust way than it had been applied, in my opinion, within transitional justice theory to date.⁹⁷

⁹⁷ However, as I mentioned much earlier, Hancock and Pearson d'Estrée, and especially Nickson and Braithwaite have influenced both my theorization of procedural justice, but also my belief that it is an important consideration when looking at transitional justice processes and mechanisms.

2. CHAPTER TWO: LOCATING CICIG IN TRANSITIONAL JUSTICE: FUNCTIONS AND INSTITUTIONS

2.1 Background

This chapter aims to situate the *International Commission Against Impunity in Guatemala* (“CICIG”) within existing concepts and literatures of transitional justice. These concepts include procedural justice as an important component to such an understanding. Thus, the prior chapter provides the necessary conceptual bases to justify the inclusion of procedural justice within the transitional justice sphere of academia. Now, the task is to *explain how* and *where* CICIG applies to transitional justice. Such a connection is not immediately evident, as CICIG was born out of an intense post-conflict wave of crime and violence—not directly nor evidently related to Guatemala’s civil war or its post-conflict reconstruction era. Thus, one must first understand how CICIG can be linked up to Guatemala’s transitional justice process(es).

Guatemala concluded a comprehensive peace process in 1996, but the majority of reforms to transform Guatemalan society out of conflict were scuttled by a well-funded and well-organized, elite-driven campaign to reject their adoption in a 1999 referendum.¹ Also in 1999, the 90,000 criminal complaints filed in Guatemala City statistically resulted in a zero percent conviction rate.² Additionally, the murder rate per year in Guatemala,

¹ Civil society organizations were fragmented, and a conglomeration of elite interests from military, to business, to the criminal underworld conspired to foil constitutional reforms which would threaten their interests. For more information, see van Hemmen, “Influence of NGOs,” 32.

² Sieder, “Legal Globalization and Human Rights,” 80.

despite experiencing four examples of genocide during its civil war,³ has only dropped 17% from 5556 per year, to 4585 per year.⁴ Finally, amnesties were given to the most egregious of human rights abusers, mostly state security personnel, following the civil war.⁵ Those amnesties generally resulted in many former state military and police officials being “regrouped into crime gangs,”⁶ providing clandestine security for criminal activity, or providing logistical and administrative support for such criminal activity while working within state institutions.

The problem of impunity for crime in Guatemala during its civil war, but also subsequent to it, reached a boiling point by 2003 when domestic and international pressure resulted in an agreement to establish the *Commission of the Investigation of Illegal Groups and Clandestine Security Organizations* (“CICIACS”)—the “first attempt to break the cycle of impunity in Guatemala.”⁷ After political gerrymandering and a crippling Guatemalan Constitutional Court decision deeming CICIACS unconstitutional, the project was tabled indefinitely. However, following the brutal murder and attempted concealment of three Salvadorian members of the Central American Parliament who were visiting Guatemala, international pressure intensified against Guatemala to reign in impunity.⁸ The United Nations and Guatemalan civil society were able to craft a revised commission proposal as a means to counter impunity in the country. Importantly, they removed the politically and constitutionally controversial clause from the CICIACS proposal which had given the commission independent prosecutorial capacity.⁹ The new

³ Laura Arriaza and Naomi Roht-Arriaza, “Social Reconstruction as a Local Process,” *The International Journal of Transitional Justice* 2 (2008): 155.

⁴ Aldana does not specify exactly which years outside of the vague “post-conflict years.” This could be a general figure or it could be a figure related to the worst years of Guatemala’s post-conflict spike in crime. Aldana references the Office of Guatemala’s Archbishop in 2010 as support for this statistic. Aldana, “A Reflection on Transitional Justice in Guatemala,” 299.

⁵ These excluded the crimes of genocide, forced disappearances, and torture, but this was more of a rhetorical distinction in Guatemala—barely any amnesties have been challenged. See Roht-Arriaza. “Making the State Do Justice,” 84.

⁶ “The Americas: Reaching the Untouchables; Guatemala and Organised Crime,” *The Economist*.

⁷ Evans Golab, “Guatemala’s Fight Against Criminal Impunity,” 29.

⁸ van Hemmen, “Influence of NGOs” 41.

⁹ “Agreement Between The United Nations and the Government of Guatemala for the Establishment of a Commission for the Investigation of Illegal Groups and Clandestine Security Organizations in Guatemala (“CICIACS”),” The United Nations, 3.

proposal was titled the *International Commission Against Impunity in Guatemala* (“CICIG”) and it was ratified and entered into force by September 2007.¹⁰

2.2 Introduction

As the preceding section referenced, CICIG’s ties to transitional justice processes are largely the result of a chain reaction. Amnesties were given during the peace process to the vast majority of individuals implicated in the civil war from the political or military sectors, but to nearly all high-ranking elites. Much of the country’s socio-political elite subsequently rigged an electoral rejection of negotiated constitutional reforms dating back to the peace process in a 1999 referendum. Anita Isaacs depicts this as a “clever negotiating strategy” that exemplified the ‘emptiness of promises’ in the Guatemalan context.¹¹ Ostensibly, she suggests that elites agreed to certain equity-enhancing concessions during the peace talks when the international community and civil society were both highly engaged in affecting an equitable peace in Guatemala. However, those same elites knew that they could reverse those concessions in the future by promoting a referendum to accept the key provisions as law. Moreover, Guatemala’s peace accords focused most heavily on the demilitarization of Guatemalan politics and society, as well as the creation of a civilian-controlled national police force (“PNC”).¹² Less attention, then, was given to justice reform.¹³ One final note, Schultze-Kraft has noted that after extensive demobilization in Colombia, “a host of new illegal armed groups have sprung up” many of which are at least partly organized by formerly employed military and paramilitary commanders looking out for their own best interests.¹⁴ While a caveat is important to issue here in that Colombia and Guatemala are by no means identical, the patterns of criminal activity brought about by former combatants following programs of amnesty and demobilization bear striking similarities. As for the aforementioned “chain reaction,” then, poorly planned amnesties and demilitarization, core tenets of Guatemala’s transitional justice and peace-building programme, can be seen to have left

¹⁰ van Hemmen, “Influence of NGOs,” 41.

¹¹ Isaacs, “Guatemala on the Brink,” 111.

¹² PNC is an abbreviation for “Policia Nacional Civil” or “National Civilian Police.”

¹³ Schultze-Kraft, “Security and the Rule of Law in Colombia and Guatemala,” 148.

¹⁴ *Ibid.*, 141.

Guatemala vulnerable to other illicit processes and networks which then interfere with the country's overall post-conflict reconstruction.

Also necessary to qualify and explain is the level on the “ladder of abstraction” by which CICIG must be theorized from a transitional justice standpoint.¹⁵ Many scholars have argued in favour of a disaggregated, more general level of transitional justice theory with a focus on measurements of the “average” conditions necessary to achieve “justice” across very different transitional justice settings.¹⁶ In this chapter, and this thesis in general, I reject such an approach. Indeed, specific geographical contingencies fundamentally alter the kind of justice being pursued, and the means by which it can be pursued. While Snyder and Vinjamuri argue very broadly in favour of amnesties as a means of eliminating potential destabilizing forces, in Guatemala, for example, it is precisely for geographical reasons that amnesties have not worked.¹⁷ That is to say that amnesties combined with networks of transnational organized crime have resulted in a situation in Guatemala which blocks peace, foments violence, and enhances impunity.¹⁸ Thus, at least in Guatemala's case, theories which focus on broad, universally- and internationally-applicable “best practices” for producing justice outcomes fail precisely because of their insensitivity to local geographical contexts. Moreover, conceptions of justice vary across cultures and geographies, so a retributive justice-heavy theory, such as any of the three aforementioned ones, may represent justice among certain audiences, but fall short of affecting meaningful justice for others.¹⁹

¹⁵ Though various scholars have discussed the “ladder of abstraction” as a concept for deciding how broad and/or narrow to focus theory in one's research, one of the most exemplary models on how theory and practice interact is a succinct, examples-based explanation by Leviton. See Laura C. Leviton, “Evaluation Practice and Theory: Up and Down the Ladder of Abstraction,” *American Journal of Evaluation* 36.2 (2015): 238-242.

¹⁶ Some of the scholars which come to mind in taking this “best practices” approach to theory are Sikkink and Kim, “The Justice Cascade”; Snyder and Vinjamuri, “Trials and Errors”; and Olsen, Payne, and Reiter, “The Justice Balance.”

¹⁷ See Snyder and Vinjamuri, “Trials and Errors.”

¹⁸ Deibert meticulously traces extensive linkage between civil war era military and paramilitary networks all the way to current day politicians as well as transnational drug cartels. See Michael Deibert, “Guatemala's Death Rattle: Drugs vs. Democracy,” *World Policy Journal* 25.4 (Winter 2008/2009): 172-175.

¹⁹ Gearoid Millar displays how ritual cleansing as a means of forgiveness in a given culture may be exceptionally valuable and lead to reconciliation, while importing a truth-telling process for the same culture may be more damaging, as that culture may value what he calls the “arts of forgetting.” See Gearoid Millar, “Disaggregating Hybridity: Why Hybrid Institutions Do Not Produce Predictable Experiences of Peace,” *Journal of Peace Research* 51.4 (2014): 509.

In short, from a theoretical standpoint, localized justice processes are vital, especially in cases where transnational forces are at play and in countries with hugely stratified societies like that of Guatemala. One important consideration, though, is that models of transitional justice at an abstract, international level may help to better understand localized justice processes. They offer a roadmap by which subsequent scholars can better conceptualize and track justice developments and also more easily isolate the precise points where such theories fail at a local level. But these more abstract, internationally focused theories fall short in providing proscriptive capacity in Guatemala specifically because of varying societal conceptions of justice,²⁰ and geographical considerations which allow amnesties to be exploited to criminal ends.

Given that one can now see how CICIG, as an institution and process of affecting the reduction of criminal impunity, is related to transitional justice in the Guatemalan context, the chapter now turns to CICIG itself: its *functional* characteristics and its *institutional* characteristics. Thus, the chapter proceeds in two parts according to those distinctions: In the first part, I identify three main functions that CICIG takes on relative to transitional justice in Guatemala: First of all, *it deepens and broadens prior truth recovery efforts*. To use an analogy, a scholar might issue a second or later volume of a book concerning a contemporary issue as a necessary rejoinder to account for previously unavailable information. CICIG serves as a ‘later volume,’ or perhaps later volumes, of truth recovery in Guatemala, relative to injustice and conflict, neither of which has arguably never really ceased despite a formal peace accord.²¹ Secondly, *CICIG serves as a recognition and acknowledgment of Guatemala’s deficit in justice and unresponsiveness to victims’ claims*. Acknowledgment is typically viewed as an important initial step in allowing for “justice, reparations and reform that victim-

²⁰ Viaene discusses how acknowledgment of misdeeds is a vital piece to reconciliation for Indigenous-Mayan societies, whereas the Guatemalan justice system is clearly established along the lines of retributive justice. While the two are not necessarily at odds with each other, they certainly emphasize different justice priorities. See Viaene, “The Internal Logic of the Cosmos,” 293.

²¹ Raquel Aldana’s recognition of a mere 17% drop in murder rates between civil war and post-war Guatemala is a testament to this, as is Preti’s article explaining how structural violence has replaced formal violence in Guatemala, with similar socio-economic results. See Aldana, “A Reflection on Transitional Justice in Guatemala,” 299. See also Alessandro Preti, “Guatemala: Violence in Peacetime—A Critical Analysis of the Armed Conflict and Peace Process,” *Disasters* 26.2 (2002): 99-119.

survivors need and deserve.”²² Thirdly, *CICIG assists and strengthens the state’s capacity for exacting retribution for illegal behaviour*, much of which can be traced either directly or indirectly to the country’s civil war.²³ Of course, as retributive theory goes, accountability is promoted and enhanced through prosecutions.²⁴ Moreover, I make the case that through CICIG’s three main functions of *truth recovery, acknowledgment, and retribution*, the institution both signals a *break with the past* to Guatemalan society, but it also tangibly affects such a break. I described, in the previous chapter, that procedural justice’s most valuable contribution to transitional justice ought to be conceived of as a capacity for signaling a new future, one based on fairness. In other words, CICIG’s three main functions of *truth recovery, acknowledgment, and retribution* combine to render CICIG’s role in Guatemala as being the harbinger of ‘justice as a better future.’²⁵

The final part of this chapter locates Guatemala within the institutional *melée* of tried and tested transitional justice mechanisms. The value in such an exercise is that, first of all, a mere description of CICIG’s activities and capacities does little to advance either academic or policy-related interests—it really only serves a typological exercise which hardly forwards the analysis of the institution. Instead, I take the *Commission on the Truth for El Salvador* (“CTES”) as a similar institution by which to locate, compare, and contrast CICIG within the wide array of hybrid institutions which have been employed in transitional justice processes. By locating CICIG’s institutional similarities in comparison to another previously employed transitional justice mechanism, I attempt to demystify CICIG relative to transitional justice. Moreover, I hope to be able to render some of the extant research on the successes, challenges, and lessons learned from the CTES applicable to CICIG, especially if it is to be an institutional model used in other

²² Anita Isaacs, “At War with the Past? The Politics of Truth Seeking in Guatemala,” *The International Journal of Transitional Justice* 4 (2010): 271.

²³ CICIG was instrumental in prosecuting former President Efraín Ríos Montt for genocide and crimes against humanity according to Taft-Morales. For more information, see Maureen Taft-Morales, *Guatemala: Political, Security, and Socio-Economic Conditions and U.S. Relations*, (Washington: Congressional Research Service, August 7, 2014): 6.

²⁴ Wendy Lambourne, “Transitional Justice and Peacebuilding After Mass Violence,” *The International Journal of Transitional Justice* 3 (2009): 30.

²⁵ Clifford Shearing and Jan Froestad, “Beyond Restorative Justice—Zwelethemba, A Future-Focused Model Using Local Capacity Conflict Resolution,” in *Images of Restorative Justice Theory*, eds. Robert Mackay et al, (Frankfurt: Verlag fur Polizeiwissenschaft, 2007): 17.

transitional justice settings. I do not claim that the CTES is the only or even the most comparable institution to CICIG. Rather, I argue that the CTES provides a good comparison to CICIG due to their broad similarities in terms of origins, organization, and function, although they are far from identical according to any one measure.

2.3 PART ONE: CICIG's Transitional Justice Functions

In the following pages, the first section of this chapter illustrates CICIG's functions of *truth recovery*, *acknowledgment* and *retribution* by analyzing the main elements of the justice sector which it has had influence. I have consciously chosen this order of CICIG's transitional justice-related functions for their temporal sequence. For example, *truth* is a logical necessity in order to affect any type of recognition or *acknowledgment*. Likewise, *acknowledgment* is a necessary condition of *retribution* or punishment subsequent to uncovering the truth and acknowledging it.

To deepen this analysis, I will start off analyzing trials related to CICIG, predominantly that of ex-President Efraín Ríos Montt, and how each of *truth*, *acknowledgment*, and *retribution* are exemplified in pursuing *retributive justice*. Secondly, I will analyze reforms, purges, and policy recommendations spearheaded by CICIG. And finally, I will look at the Guatemalan *National Reconciliation Law*, the general amnesty provision which was the final stumbling block preventing the conclusion of the Guatemalan peace process to that point.²⁶ In looking at the Guatemalan amnesties doled out, I intend to display how CICIG, relative to amnesty in the Guatemalan context was vital to: first, the *uncovering of the truth* of how and where the policy failed; second, *acknowledging its failure*; and third, *taking measures to correct its failure*, including punitive actions which can rightfully be described as retribution.

2.3a Trials

As Anita Isaacs has noted, many survivors of atrocity “connect truth with dignity and repair.”²⁷ Guatemala's two official truth commissions' reports lacked effective popular

²⁶ Sieder, “War, Peace, and Memory Politics in Central America,” 169.

²⁷ Isaacs, “Truth and the Challenge of Reconciliation in Guatemala,” 138.

dissemination mechanisms²⁸ while the state was very effective at suppressing them. As a result, no significant national discourse on the issue of genocide ever took place—that is, until very recently. The conviction of Rios Montt as guilty of genocide and crimes against humanity, then, is significant in that it furthers the recovery and healing processes of survivors by acknowledging the truth in a very public and internationally visible manner that had been previously elusive. The reason for this is that Rios Montt’s trial affected a major “memory battle,”²⁹ one which did not really take place following the release of Guatemala’s two truth commission reports. CICIG, as a hybrid commission under the partial auspices of the United Nations, which assisted in the initially successful prosecution of the first domestically convicted former head of state for genocide,³⁰ was able to muster a great deal of local and international attention. In contrast, Guatemala’s two truth commission reports, those of the *Historical Clarification Commission* (“CEH”) and of the Catholic Church’s *Recovery of Historical Memory* (“REMHI”), never did gain any significant national attention largely due to weak, under-coordinated outreach efforts and lack of accessibility.³¹ As such, a “productive if painful kind of struggle for memory” was finally established by Rios Montt’s conviction,³² nearly 20 years after the end of the conflict, giving a conclusive air and record to the nature of what took place during Guatemala’s civil war. The state, not even the President himself,³³ can no longer claim that genocide never took place.

The Rios Montt trial also served to vindicate and affirm Mayan-Indigenous suffering at the hands of the Guatemalan state.³⁴ The mere fact that CICIG was able to coordinate the requisite evidence, litigation expertise, and navigation within Guatemala’s

²⁸ Ibid., 129.

²⁹ “Memory battle” is a term employed by Lisa J. Laplante in her exploration of how and which ‘truths’ become narrativized in the aftermath of conflict. For more information, see Laplante, “Dialogues of Transitional Justice.”

³⁰ Jillian N. Blake, “Should Domestic Courts Prosecute Genocide? Examining the Trial of Efraín Ríos Montt,” *Brooklyn Journal of International Law* 39.2 (2014): 568.

³¹ Isaacs, “Truth and the Challenge of Reconciliation in Guatemala,” 129.

³² Minow, *Between Vengeance and Forgiveness*, 140.

³³ Taft-Morales, “Guatemala: Political, Security, and Socio-Economic Conditions,” 6.

³⁴ Villa-Vicencio discusses how victims can move on from traumas and victimization through the acknowledgment of their suffering by offenders or at least the state. See Charles Villa-Vicencio, “The Politics of Reconciliation,” 71..

infamously corrupt justice sector marked a “watershed moment.”³⁵ Never before had the Guatemalan state elevated the status of its Mayan-Indigenous population to the level of a high profile, non-Indigenous ‘elite,’ as the Rios Montt trial did. As Viaene has documented, a common Mayan tenet surrounding conflict resolution is that attention to and acknowledgment of wrongdoing is a major piece of “[restoring] social harmony.”³⁶ Thus, the mere investigation and recognition of wrongdoing perpetrated against the Mayan-Indigenous population by the politico-military elite is evidence of Isaacs’ observation that “recognition of historical wrongs [carries] enormous symbolic political weight.”³⁷ The investigation and prosecution of Rios Montt was an acknowledgment of wrongdoing. Given the historical inequity of Guatemalan society, this was a significant achievement of justice unto itself.

Martha Minow has written that “trials create official records of the scope of violence and the participants in it, and that guilty verdicts afford public acknowledgment of what happened, and its utter wrongfulness.”³⁸ In other words, they “speak the truth to the relevant audiences.”³⁹ Moreover, Lisa J. Laplante has argued that “a defining characteristic of post-conflict contexts is a profound tension between those who want to deny or suppress memory in order to ‘move on’ in the name of peace and, on the opposite end of the spectrum, those who struggle to reveal ‘the truth’ to ensure accountability for and recognition of suffering.”⁴⁰ In the case of Efraín Ríos Montt, Elizabeth Oglesby offers a useful understanding as to how retribution can be affected, even despite Rios Montt’s conviction having subsequently been overturned. Oglesby has worked extensively with Mayan-Indigenous genocide survivors, and to her, the most important outcome of the trial has already been achieved: the assignment of culpability.⁴¹

³⁵ Jo-Marie Burt, “Ríos Montt Convicted of Genocide and Crimes Against Humanity: The Sentence and its Aftermath,” *International Justice Monitor*, May 13, 2013, accessed March 15, 2015; available from <http://www.ijmonitor.org/2013/05/rios-montt-convicted-of-genocide-and-crimes-against-humanity-the-sentence-and-its-aftermath/>.

³⁶ Viaene, “The Internal Logic of the Cosmos,” 293.

³⁷ Isaacs, “At War with the Past?” 274.

³⁸ Minow, *Between Vengeance and Forgiveness*, 123.

³⁹ *Ibid.*, 125.

⁴⁰ Laplante, “Dialogues of Transitional Justice,” 622.

⁴¹ Angela Stuesse, “*Si Hubo Genocidio*: Anthropologists and the Genocide Trial of Guatemala’s Ríos Montt.” *American Anthropologist* 115.4 (November 2013): 662.

Trials have the capacity to effect retribution by drawing “a bright line demarcating the normative shift from illegitimate to legitimate rule,”⁴² according to Ruti Teitel. As such, even though official punitive action may never be imposed upon Rios Montt, *truth recovery* and *official acknowledgment* of wrongdoing have already, in a sense, established *a form of retribution*: That is, the elevation of Mayan-Indigenous grievances to be on par, at least symbolically, with the historically privileged Ladino elites in Guatemala. Understood another way, CICIG has been able to affect certain measures of retributive justice in Guatemala through its work in both *shaming perpetrators* and also in *downgrading the capacity of elites to maintain and foment criminal impunity*.

2.3b Justice Reform

Despite long-standing calls by Guatemalan and international civil society groups that the Guatemalan state was corrupt, compromised, and often acting illegally according to its own constitution and laws, there was little proof and lesser recourses to address the situation.⁴³ The United Nations Verification Mission (“MINUGUA”), implemented following the establishment of the 1996 peace accords, issued reports highlighting Guatemala’s problems in “overcoming impunity.”⁴⁴ Most international donors, civil society, and governments alike, implicitly recognized the problem of corruption and impunity in their insistence on primarily funding initiatives run by the UN or civil society groups within Guatemala, as opposed to state-run initiatives.⁴⁵ CICIG has provided a truth-telling service relative to the variety of concerns over corruption and impunity. As

⁴² Teitel, *Transitional Justice*, 7.

⁴³ Amnesty International, Washington Office on Latin America, and Impunity Watch all published extensive reports documenting the aforementioned abuses and impunity exhibited by the state. See *Guatemala's lethal legacy: Past impunity and renewed human rights violations*, Amnesty International, February 28, 2002, 1-80, accessed 9 May 2015; available from <http://www.refworld.org/docid/3d99cccc5.html>.

Peacock and Beltran, *Hidden Powers in Post-Conflict Guatemala*.

Recognizing the Past: Challenges for the Combat of Impunity in Guatemala, Impunity Watch.

⁴⁴ Schultze-Kraft, “Security and the Rule of Law in Colombia and Guatemala,” 150.

⁴⁵ Perhaps useful in displaying the level of impunity and concerns to those ends, Petersen et al found that international donors had significantly fewer qualms about supporting state-led development and transitional justice projects in Rwanda than in Guatemala. Yet Rwanda, according to many analysts, is hardly a model of accountable, equitable governance. See Stina S. Petersen, Ingrid Samset, and Vibeke Wang, “Foreign Aid to Transitional Justice: The Cases of Rwanda and Guatemala, 1995-2005” in *Building a Future on Peace and Justice*, eds. Kai Ambos et al, 439-467. (Berlin: Springer, 2009): 463.

Popkin and Roht-Arriaza argue, “the process of compiling [reports], as much as the final product, [is] important.”⁴⁶ To those ends, CICIG’s function of uncovering the truth has served to validate the human dignity of victims of state violence and criminal impunity by tangibly addressing and investigating their long-standing concerns.

Yet CICIG has not only comprehensively compiled reports detailing criminal networks and their functions within the state,⁴⁷ it has also been involved in purging hundreds of corrupt police officers.⁴⁸ The commission also led an investigation which culminated in charges against and the extradition of ex-Guatemalan President Alfonso Portillo from his Mexico-based evasion of charges for corruption, as well as “embezzling money from the Guatemalan government, during his presidency, totaling \$15 million dollars.”⁴⁹ Finally, CICIG’s various justice sector reform policy recommendations as well as their embedded and “impartial leadership at the [Ministerio Publico]” has led to a strong influence over the dismissal and appointment of various bureaucrats,⁵⁰ including the appointment of the extremely successful former Public Prosecutor Claudia Paz y Paz.⁵¹

CICIG’s role in uncovering the illegal activities which were and continue to be taking place under the auspices of the state serves two purposes. First of all, similar to one of the main hopes for Guatemala’s original truth commission, the CEH,⁵² CICIG’s truth recovery functions help to prevent future abuses with the cover of the state. International and domestic civil society now better understand the tactics which have been used, and can mobilize and investigate more efficiently and effectively with that knowledge. Moreover, the plethora of CICIG-trained justice sector bureaucrats should

⁴⁶ Margaret Popkin and Naomi Roht-Arriaza, “Truth as Justice: Investigatory Commissions in Latin America,” *Law and Social Inquiry* 20(1) Winter 1995: 114.

⁴⁷ But one example of CICIG’s reporting on how impunity-affecting networks function can be found in its latest published report, *Sixth Report of Activities of the International Commission Against Impunity in Guatemala*, CICIG: The International Commission Against Impunity In Guatemala, (August 2013): 13.

⁴⁸ Schultze-Kraft, “Security and the Rule of Law in Colombia and Guatemala,” 154.

⁴⁹ Evans Golab, *Guatemala’s Fight Against Criminal Impunity*, 44.

⁵⁰ The Ministerio Publico is basically Guatemala’s government justice ministry and Attorney General’s office.

Kemp, “Guatemala Prosecutes Former President Ríos Montt,” 153.

⁵¹ To read more about the impressive, near-heroic record of ex-Public Prosecutor Claudia Paz y Paz read, Tove Nyberg, “Smoking the Rats Out: CICIG’s Effort to Strengthen the Justice System in Guatemala,” (Ph.D. Diss., Stockholm University, Spring 2014): 46.

⁵² Isaacs, “Truth and the Challenge of Reconciliation in Guatemala,” 118.

also contribute to downgrading the potential for illegal activities and networks to affect impunity in Guatemala.⁵³

Similar to CICIG's role in using prosecutions as both a tactic and a threat in order to downgrade the capacity for Guatemalan elites to escape justice and foment impunity, the publication of knowledge of their illicit networks and clandestine dealings also inhibit their capacities to continue their illicit activities in a "business as usual" manner. Victims and survivors of crimes that have been met with impunity, during the civil war and subsequent to it, have seen the uncovering of truth lead to tangible changes: institutional reform, arrests, purges, and even prosecutions against individuals previously considered "untouchable."⁵⁴ These changes are symbolically important and, thus, "[legitimize] the ongoing struggle" by victims, civil society organizations, and activists.⁵⁵ CICIG has uncovered the truth about how Guatemala's "hidden powers" and "clandestine groups" are organized, as well as how they typically function. By rejecting the status quo and insisting on reform, lustration, and even prosecutions, CICIG has tacitly acknowledged past injustices and helped the Guatemalan state onto a track of "[starting] to build the public's faith in justice or respect for the rule of law" that has been absent in Guatemala since time immemorial.⁵⁶ Finally, by exacting retributive justice measures against perpetrators of crimes and corruption, CICIG has utilized the truth it has uncovered, and acknowledged its unacceptability—its related purges and prosecutions serve to either rehabilitate and/or deter future would-be offenders.⁵⁷

⁵³ For example, an outcry over the corrupt election process of over 100 judges for Guatemala's Supreme Court and appellate courts is but one recent example of tangible gains being made through capably trained and committed legal professionals, especially those becoming involved with civil society. Several judges, accompanied by various civil society organizations, challenged the corrupt election process and forced Guatemala's Constitutional Court to suspend the appointments of the recently elected judges mired in scandal. For more information, see Marguerite Cawley, "Following Outcry, Guatemala Suspends Election of High Court Judges," *In Sight Crime*, October 10, 2014, accessed April 12, 2015; available from <http://www.insightcrime.org/news-briefs/guatemala-suspends-election-high-court-judges>. Also see Jose David Lopez, "Jueces Advierten Sobre Medidas a la CC," *El Periodico* October 8, 2014.

⁵⁴ "The Americas: Reaching the untouchables; Guatemala and Organized Crime," *The Economist*.

⁵⁵ Isaacs, "At War with the Past? The Politics of Truth Seeking in Guatemala," 274.

⁵⁶ Aldana, "A Reflection on Transitional Justice in Guatemala," 302.

⁵⁷ Michael Wenzel, Tyler G. Okimoto, Norman T. Feather, and Michael J. Platow, "Retributive and Restorative Justice," *Law and Human Behavior* 32 (2008): 375.

2.3c Undercutting the Policy of Amnesty

Guatemala's transitional justice programme has been undermined by impunity. CICIG has served an important function in exhibiting how the amnesty program, established during peace talks at the end of Guatemala's civil war, was planned and enacted poorly. Impunity has been insured through "clandestine groups" with a dogged "determination to prevent justice for past abuses and to oppose military and intelligence reform."⁵⁸ Importantly, such "clandestine groups" are primarily composed of former military and paramilitary commanders.⁵⁹ They tend to be contracted out as security or 'muscle' by the "hidden powers" which "collude to control lucrative, illegal activities" as well as conspiring to sustain monopolies and oligopolies over important industries.⁶⁰ Policymakers have historically recommended amnesties behind the logic that they will produce more "truth and openness,"⁶¹ and an opportunity of transition for combatants away from conflict-fomenting activities and back into a post-conflict society. Through extensive research, documentation, and the production of compelling evidence to support illustrations and prosecutions of corrupt officials working within the state, CICIG has shown how the peace accord amnesties, embodied in the *National Reconciliation Law*, have led to a weakened post-conflict state. The previously formalized socio-political networks for exerting control over Guatemala until the end of the civil war have been "progressively replaced by pervasive informal political-criminal networks with transnational linkages."⁶² Naomi Roht-Arriaza argues that CICIG has shown that "impunity for past crimes and impunity in the present are inextricably bound together" by tracing the migration of former combatants into criminal enterprises and networks that exist today.⁶³

Thus, CICIG has ostensibly evidenced, with Guatemala as its case study, how previous combatants can and do use amnesties to reconstitute their networks and

⁵⁸ Peacock and Beltran, *Hidden Powers in Post-Conflict Guatemala*, 7.

⁵⁹ Roht-Arriaza: "Making the State Do Justice," 101.

⁶⁰ Peacock and Beltran, *Hidden Powers in Post-Conflict Guatemala*, 6-7.

⁶¹ Aldana, "A Reflection on Transitional Justice in Guatemala," 302.

⁶² Schultze-Kraft, "Security and the Rule of Law in Colombia and Guatemala," 152

⁶³ Roht-Arriaza, "Making the State Do Justice," 101.

expertise into lucrative, illegal activity, rather than reintegrating into society.⁶⁴ The aforementioned qualities of “truth and openness” associated with amnesties are not characteristic of Guatemala’s post-conflict realities of deceitful and furtive activity being perpetrated by much of the same set of individuals which were granted amnesties in 1996. The obvious conclusion to be made is that amnesties, in the Guatemalan context, did not function in a positive, peace-building manner. CICIG has been able to exhibit why the extolled logic of amnesties, commonly advocated throughout the transitional justice literature, fails to take root in Guatemala, and in other areas where the rule of law is weak to begin with.⁶⁵

Through extensive documentation and detailed analysis, CICIG has not only served a truth-telling function relative to the poorly planned amnesty program in Guatemala. By uncovering the causal processes which have rendered amnesty as a “constructive acknowledgment of the past” a failed project in Guatemala,⁶⁶ CICIG has affirmed and acknowledged the outrage and frustration expressed by civil society when it established the *National Reconciliation Law*.⁶⁷ This recognition has important repercussions in its capacity to coax the average Guatemalan back into the fold of national civic life, from which he has long been excluded and to which he feels ambivalent at best. Indeed, as Tom R. Tyler has opined, a member of any given society is “very concerned” that his personal dignity and social inclusion is “recognized and acknowledged.”⁶⁸ Viewed from this light, CICIG’s confirmation of civil society’s dismay and fears over the *National Reconciliation Law*, offers the potential to start to “reweave a badly frayed communal social fabric” where the state has long ignored civil society and the majority of citizen concerns.⁶⁹

⁶⁴ For an excellent breakdown of the issues surrounding amnesties from a ‘peace versus justice’ perspective, including the specific argument which I cite, see Louise Mallinder, “Can Amnesties and International Justice Be Reconciled?” *International Journal of Transitional Justice* 1.2 (2007): 208-230.

⁶⁵ Schultze-Kraft discusses how this is not only an issue in Guatemala, but also in the context of Colombia and its struggles between establishing the rule of law, justice reform, and demobilization/amnesty its attempts to shift the state and society away from conflict. See Schultze-Kraft, “Security and the Rule of Law in Colombia and Guatemala,” 155.

⁶⁶ Minow, *Between Vengeance and Forgiveness*, 137.

⁶⁷ Sieder, “War, Peace, and Memory Politics in Central America,” 169.

⁶⁸ Tyler, “Social Justice,” 122.

⁶⁹ Isaacs, “At War with the Past?,” 261.

CICIG has actively worked to promote and build capacity for domestic prosecutions through the training of Guatemalan legal staff; investigation of perpetrators of grave crimes; and the recommendation of institutional reform in the justice sector. Its main tools in the battleground of transitional justice tactics pitting prosecution against amnesty,⁷⁰ however, are *truth* and *acknowledgment*. CICIG-based research and analysis has exposed the truth about the failure of amnesty to realize its stated goals. By displaying a recognition and acknowledgment of amnesty's shortcomings, CICIG aligns itself with the vast array of civil society actors and the victims of crime and impunity. Thus, the failure of amnesties and truth commissions to affect significant justice in post-civil war Guatemala, combined with a large critical mass of victimized actors in Guatemalan society, set in motion a preference and capacity for the prosecution of human rights abusers, both past and present. Indeed, it is worth remembering, in light of the failure of Guatemala's amnesty provisions to affect a move towards justice and away from conflict, that prosecutions "are not a panacea for human rights problems."⁷¹ They are, however, at least empirically proven to "contribute to the institutional and political changes necessary to limit repression."⁷²

2.4 PART TWO: Locating CICIG Amongst Transitional Justice Institutions

Arguably the most up-to-date and comprehensive volume of hybrid criminal justice institutions is *Hybrid and Internationalised Criminal Tribunals: Selected Jurisdictional Issues* by Sarah Williams.⁷³ However, CICIG goes unmentioned in the 400-page volume, and the focus of the tribunals listed is almost entirely based on prosecution. As I have previously discussed in this chapter, CICIG is characterized, at least in a transitional justice context, as an institution which has certainly focused on prosecutions, but it has a significant truth-telling and acknowledgment properties inherent to its functional purview, as well. Andrew Hudson and Alexandra W. Taylor, then, have defined CICIG

⁷⁰ Snyder and Vinjamuri have been arguably the most ardent supporters of targeted amnesties in transitional justice processes. For a more comprehensive understanding, see Snyder and Vinjamuri, "Trials and Errors."

⁷¹ Kathryn Sikkink and Hunjoon Kim, "The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations," *Annual Review of Law and Social Science* 9 (2013): 282.

⁷² *Ibid.*

⁷³ Sarah Williams, *Hybrid and Internationalised Criminal Tribunals: Selected Jurisdictional Issues*, (Oxford: Hart Publishing, 2012).

as a 'hybrid institution' "both because it is neither entirely national nor international and because it combines the independent investigatory and limited prosecutorial powers of a tribunal with ultimate deference to the domestic judicial system characteristic of a commission."⁷⁴ They go on to explain how they believe that CICIG is best characterized as an institution constitutive of a voluntary, bilateral agreement between the host country and the United Nations (UN) Secretary General.⁷⁵

The other examples that fit under their distinct typology of where CICIG "fits" in their web of criminal justice institutions, as of 2010, are the Pakistani-UN commission to investigate the assassination of former Prime Minister Benazir Bhutto and the joint United States (US)-Bulgaria *Regional Criminal Justice Initiative* (RCJI). The Bhutto commission is little more than a truth commission, however, while RCJI embedded US prosecutors into Bulgarian institutions with the goal of training justice sector employees and proposing legislative changes.⁷⁶ One issue with Hudson and Taylor's typological location of CICIG is that neither of these above-mentioned examples is remotely comparable, geographically speaking, with Guatemala. David Collier discusses how region-specific case studies have provided the bulk of theoretical value to the field of political science.⁷⁷ Confirming this observation, forced disappearances and transnational drug networks, to name two examples, have been salient issues in the transitional justice processes of several Latin American countries in remarkably similar ways.⁷⁸ A Latin America-focused lens, then, in finding a comparative similarity to Guatemala's transitional justice process appears to make sense. To that end, the most valuable comparable hybrid institution to CICIG that I have found is the *Commission on the Truth for El Salvador* ("CTES").

⁷⁴ Hudson and Taylor, "The International Commission Against Impunity in Guatemala," 55.

⁷⁵ *Ibid.*, 60.

⁷⁶ *Ibid.*

⁷⁷ Collier, "The Comparative Method," 112.

⁷⁸ For example, Guatemala and Colombia have experienced amnesties resulting in decommissioned military or paramilitary commanders taking their expertise over to transnational drug networks and continuing activities which actively destabilize their respective states. For more information, see Markus Schultze-Kraft, "Security and the Rule of Law in Colombia and Guatemala." Additionally, enforced disappearances became a hallmark of Latin American civil wars, largely due to the Latin American transnational communist witch-hunt known as *Operation Condor*, whereby counter-insurgency tactics were shared and replicated by various right wing Latin American states in alliance with each other and the United States. For more information, see Patrice McSherry, "Operation Condor: Clandestine Inter-American System." *Social Justice* 26.4 (Winter 1999): 144-174.

2.4a CICIG as a “Follow Up” Truth Commission

My belief is that Hudson and Taylor ought to have categorized the CTES along the same criteria as the Bhutto Commission, RCJI, and CICIG. To begin with, according to their analysis, CTES fits into another hybrid institutional model of embedding “international judges and prosecutors directly into existing domestic institutions.”⁷⁹ They go on to argue that the CTES was a joint Salvadoran-UN investigation into “death squads and illegal armed groups... composed of domestic and international investigators [and] empowered to present a public report of its findings and refer information regarding crimes to the Salvadoran prosecutor.”⁸⁰ In reality, however, the only major substantive difference between CTES and CICIG is that CICIG has been endowed with an “unprecedented” mandate which is designed to actually help to dismantle organized crime while simultaneously assisting the state develop its justice and legal system to functional capacities.⁸¹

Though CICIG is considered a hybrid institution, I want to argue that it is little more than a reformulated truth commission. CICIG is ostensibly a “follow-up” truth commission to Guatemala’s original one(s), designed to “investigate,” “identify,” and “make [policy] recommendations.”⁸² As I have discussed at length in the preceding pages, Guatemala’s transitional justice processes largely derailed due to rampant impunity, which sees a direct link with the 1996 amnesty applied in the name of transitional justice. Thus, given that CICIG’s main responsibility is to investigate and counter impunity based on those illicit networks, it is not such a stretch to say that it is a truth commission with a capacity to affect greater institutional reform and retributive justice measures to counter injustices. Again, the two features which distinguish CICIG from CTES (and most other truth commissions) are: first, a capacity and mandate to assist the state’s justice system prosecute criminals; and secondly, it has not emerged directly out of conflict and peace negotiations. Naomi Roht-Arriaza, however, has convincingly exhibited how all truth commissions have applied institutional and procedural feedback learned from prior

⁷⁹ Hudson and Taylor, “The International Commission Against Impunity in Guatemala,” 59.

⁸⁰ *Ibid.*, 60.

⁸¹ Schultze-Kraft, “Security and the Rule of Law in Colombia and Guatemala,” 151.

⁸² “Mandate: Agreement to Establish CICIG,” CICIG.

commissions around the world. She evidences how Chile's truth commission model was based on finding a middle ground between those of Argentina and Uruguay; South Africa largely modeled its truth commission on the Chilean model; and Rwanda applied a "confession-for-leniency" model based on what took place in South Africa.⁸³ In short, all truth commissions exhibit some model of "hybridity" or institutional and procedural creativity—Guatemala's CICIG simply takes this step beyond the typical incremental changes usually made by the latest incarnations of truth commissions.

2.4b CICIG and CTES: Strong Similarities

In several important areas, CICIG and CTES are similar, yet there are important differences. As far as similarities go, their respective origins and constitutions; their styles of using truth to affect justice; and their mandates and techniques to affect institutional reform are all each quite closely related. CICIG's mandate is, however, more robust which explains some of its broader mandate in comparison to CTES, as does the fact that it was constituted after being removed from conflict for over ten years when it began its work, whereas CTES was borne directly out of conflict with tensions still running very high.

CICIG, much like CTES, was established in a fractious domestic setting where the decision to involve international actors was made to ensure "accountability where internal political conditions might not otherwise permit."⁸⁴ In the case of El Salvador, the military-political establishment, as well as the country's traditional economic elites, were effectively neutralized by a militarily competent guerilla force as well as a "new 'modern' elite."⁸⁵ Similarly CICIG was an "unprecedented" negotiation between Guatemala and the UN Secretary General which reflected the "fragmentation of the country's elites."⁸⁶ This dynamic is representative of a similar 'modern' elite battling against a traditional elite over the trajectory of the state, especially the economy. As such, due to the polarization and political stalemate based on domestic socio-political

⁸³ Roht-Arriaza, "The Role of International Actors in National Accountability Processes," 43.

⁸⁴ Popkin and Roht-Arriaza, "Truth as Justice," 115.

⁸⁵ Rettberg, "The Private Sector and Peace in El Salvador, Guatemala, and Colombia," 469.

⁸⁶ Schultze-Kraft, "Security and the Rule of Law in Colombia and Guatemala: 137.

conditions, El Salvador turned to the UN to assist it carry out a truth commission.⁸⁷ Similarly, Guatemala's ex-President Oscar Berger, fearing the loss of societal control to "illicit networks," in addition to strong domestic and international civil and governmental pressure, led to his administration (2004-2008) negotiating with the UN to establish CICIG under its current mandate.⁸⁸ Thus, in both El Salvador with its CTES, and later in Guatemala with CICIG, international assistance was a requirement due to a fragmented and, in the case of Guatemala,⁸⁹ dangerous socio-political conditions.

CTES and CICIG have also employed a *modus operandi* of focusing on "emblematic cases."⁹⁰ In the case of El Salvador, the CTES focused on 33 specific cases.⁹¹ Its team of international investigators deemed the scale of civil war era abuses to be far too vast to focus on every individual case with its limited time and resources—instead, it focused on broad patterns. CICIG has explained its focus on "emblematic cases" as a means of developing general public trust in Guatemala's state institutions, while generating a feeling that impunity is being addressed.⁹² While CTES and CICIG have approached their investigations based on different motives, the same underlying principles apply. That is, first, that the necessary truth being uncovered is observable in broad patterns. Secondly, that the symbolism of uncovering impunity and wrongdoing is just as, if not more, important as the information itself.

CTES and CICIG also both aimed to combine truth recovery with retributive capacities. This is less clear in the case of CTES because the government ostensibly rejected its report and recommendations, due to intense political pressure. Indeed, various pundits condemned the CTES final report for "failing to meet expectations for national reconciliation."⁹³ Thus, the report was widely castigated and the commission's mandate did not involve any explicit retribution-affecting capacities to counter its rejection.

⁸⁷ Popkin and Roht-Arriaza, "Truth as Justice," 87.

⁸⁸ Schultze-Kraft, "Security and the Rule of Law in Colombia and Guatemala," 146.

⁸⁹ Various analysts have commented how dangerous life is for members of both civil society and the justice sector in Guatemala—International Crisis Group has documented, for example, how "CICIG investigators move in armoured cars with armed bodyguards. Most have left their families in their home countries while they do their dangerous work." Additionally, however, their local counterparts "lack the same legal as well as physical protection." For more, see "Guatemala: Squeezed Between Crime and Impunity," Latin America Report 33, International Crisis Group, June 22, 2010: 21.

⁹⁰ Donovan, "The International Commission Against Impunity in Guatemala," 823.

⁹¹ Sieder, "War, Peace, and Memory Politics in Central America," 2001: 171

⁹² Nyberg, "Smoking the Rats Out," 38.

⁹³ Sieder, "War, Peace, and Memory Politics in Central America," 2001: 171.

Additionally, Popkin and Roht-Arriaza describe how a long history of a weakly institutionalized rule of law in El Salvador worked against the commission. Ostensibly, small institutional changes and justice measures would not be enough to secure assurances that abuses would not take place again, nor that the effects of justice would serve as a firm precedent.⁹⁴ The country required massive structural changes for that to happen. For CTES, without the capacity to affect significant institutional reform, nor retribution, “some measure of truth became in effect a substitute, not a complement, to justice.”⁹⁵ By “naming and shaming” the individuals that CTES found guilty of perpetrating human rights abuses, they were able to exact some measure of justice. Indeed, Viaene has discussed how *shame* takes on retributive properties.⁹⁶ Moreover, in discussing former President Efraín Ríos Montt’s trial earlier in this chapter, I explained how *truth* and *acknowledgment* served as a tool by which the *social and legal status of victims is elevated* to near equality of their transgressors who have historically received immunity for their crimes. In short, CTES recognized that the “long tradition of judicial dysfunction and complicity made it unlikely, at least in the short term, that any judicial process would follow its report.”⁹⁷ As a result, the commission attempted to affect creative retributive justice measures on its own.

CICIG, on the other hand, did have a mandate to both “investigate *and* prosecute clandestine security groups.”⁹⁸ As the first part of this chapter discussed, CICIG used its investigative mandate to *uncover truth* and *acknowledge wrongdoing*. It then used a variety of tactics ranging from purges to prosecutions and even shame in order to exact retribution against an oft-intransigent state apparatus and bureaucracy. On the surface, CTES’ retributive-exacting capabilities are vastly inferior to those of CICIG. It did, however, aim to utilize the same retributive logic. To recap, both commissions have used the truth that they have investigated to compel their respective states into action. Even

⁹⁴ Popkin and Roht-Arriaza, “Truth as Justice,” 102.

⁹⁵ *Ibid.*, 113.

⁹⁶ Viaene discusses how transgression can be transformed, according to the ‘cosmovision’ of certain Mayan-Indigenous groups, through instilling shame in a criminal transgressor. Shame effectively changes the power dynamics between the transgressor and transgressed to elevate the latter and lower the former in terms of social capital. For more, see Viaene, “The Internal Logic of the Cosmos as ‘Justice’ and ‘Reconciliation,’” 298.

⁹⁷ Popkin and Roht-Arriaza, “Truth as Justice,” 106.

⁹⁸ Donovan, “The International Commission Against Impunity in Guatemala,” 815.

though CICIG had a formal mandate to do so while CTES did not, they both acted according to the same ethos of affecting retribution.

One final major similarity between CTES and CICIG is the attempt both have made to enact institutional reform in their respective jurisdictions through a dual tactic of *shame* and *international pressure*. Using similar “naming and shaming” tactics to their efforts to achieve retribution for wrongdoing, CTES was able to *de facto*, rather than *de jure*, force a turnover of the entire Salvadoran Supreme Court roster of judges, all of whom had been implicated with corruption charges.⁹⁹ Despite the Salvadoran government’s claims of ‘bias’ and ‘abuse of sovereignty’ against CTES’ foreign commissioners,¹⁰⁰ the *shame* combined with *international pressure* resulted in compliance with some of the commission’s recommendations. The UN applied pressure through the at-once carrot and stick of foreign aid funding which proved effective.¹⁰¹ Meanwhile, the spotlight and focus rendered by the official and international nature of a UN-sponsored commission with foreign commissioners ensured that President Alfredo Cristiani reluctantly complied with certain sanctions, lustrations,¹⁰² and institutional reform proposals where little political will existed to do so without such pressure. The *shame* of being seen, on the international stage, to evade compliance altogether was deemed more politically costly than enacting and observing at least some of CTES’ recommendations.

CICIG adopted a very similar strategy of utilizing both *shame* and *international pressure* in order to enact institutional reforms. First, CICIG has been important in empowering civil society by inviting them to investigate illicit groups alongside CICIG’s foreign investigators. Van Hemmen has described the value in internationally-constituted ‘hybrid institutions,’ like CICIG, in that they “harness the credibility of international law” while simultaneously “[pointing] at the obligation of the Government to act upon the [peace] agreements.”¹⁰³ Although civil society organizations in El Salvador were important to the country’s peace process, they were much stronger in Guatemala, both in

⁹⁹ Popkin and Roht-Arriaza, “Truth as Justice,” 103.

¹⁰⁰ Sieder, “War, Peace, and Memory Politics in Central America,” 171.

¹⁰¹ Popkin and Roht-Arriaza, “Truth as Justice,” 104.

¹⁰² Over 100 civil servants were sanctioned, transferred, or dismissed as a result of CTES findings and recommendations. For more, see Sieder, “War, Peace, and Memory Politics in Central America,” 172.

¹⁰³ van Hemmen, “Influence of NGOs in the Establishment Process,” 44-45.

terms of capacity and also international linkages.¹⁰⁴ Guatemalan civil society's association with CICIG has forced the government to listen and cooperate, representing a formidable alliance of domestic and international concerns.

A second major avenue by which CICIG has improved institutional reform processes is through the training of large numbers of legal professionals in Guatemala.¹⁰⁵ This training has resulted in the growth of domestic civil society, but has also served to develop extensive links between domestic and international civil society. What is clearly taking hold is a new generation of well-trained legal professionals in Guatemala, and many of them are contributing in important ways to the growth of civil society. As their influence within both civil society and the state apparatus grows, the state must subsequently become more responsive to them, because they are able to carefully navigate through state procedures and institutions. They are also able to hold other legal professionals to account,¹⁰⁶ while also commandeering international attention and support against Guatemala's corrupt practices under the auspices of state institutions.¹⁰⁷ Thus, CICIG has empowered civil society by providing them 'cover' and international legitimacy, but also by training individuals who can navigate the system and hold their government to account by 'speaking its language,' so to speak.

Similar to CTES, CICIG has parlayed its international prestige as a UN-affiliated body into an ongoing spotlight on the Guatemalan government to ensure compliance in at least some of its recommendations—Aldana suggests that public officials in the justice department “feel watched for the first time.”¹⁰⁸ Despite lacking the political will to adopt

¹⁰⁴ Koonings does not explicitly make this claim—rather, I have made this inference based on his separate analyses of El Salvador and Guatemala. See Kees Koonings, “Civil Society, Transitions, and Post-War Reconstruction in Latin America: A Comparison of El Salvador, Guatemala and Peru,” *Iberoamericana: Nordic Journal of Latin American and Caribbean Studies* 32.2 (2002): 45-71.

¹⁰⁵ “Technical Assistance,” CICIG: Commission Against Impunity in Guatemala, accessed 9 April 2015; available from <http://www.cicig.org/index.php?page=technical-assistance>.

¹⁰⁶ In response to the civil society appeal against corrupt judicial elections, one of the judges elected, Claudia Escobar Mejia, decided to step down in protest against corrupt procedures. See, Carmen Quintela and Jose David Lopez, “Magistrada de Apelaciones Reelecta Renuncia por Vicios en El Proceso,” *El Periodico* October 6, 2014.

¹⁰⁷ “Public Statement: The Law Society of Upper Canada Expresses Grave Concern About the Suspension and Admonishment of Judge Iris Yassmin Barrios Aguilar, Tribunal President of Guatemala's Court for High Risk Crimes,” The Law Society of Upper Canada, May 29, 2014, accessed April 12, 2015; available from http://www.lsuc.on.ca/uploadedFiles/For_the_Public/News/News_Archive/2014/Public%20Statement%20re%20Judge%20Aguilar%20-%20GUATEMALA%20English.pdf.

¹⁰⁸ Aldana, “A Reflection on Transitional Justice in Guatemala,” 310.

all institutional reforms and recommended policy changes,¹⁰⁹ the government does feel compelled to work with CICIG and “reform will, therefore, come slowly, but it is being accomplished.”¹¹⁰ In large part, this compliance is sustained by international pressure on Guatemala, such as American Vice President Joe Biden’s urging that Guatemala “must cooperate with efforts to reduce levels of impunity in the region as a condition for receiving a \$1 billion aid package from the US.”¹¹¹ Of course, in neither country and with neither commission is compliance guaranteed, but the dually imposed tactic of *shame* and *international pressure* have been used in both instances with a surprisingly high degree of success against unlikely odds.

2.5 Conclusion

In seeking to establish where, exactly, CICIG ought to be conceived of in its relation to transitional justice, I want to bring the reader back to the previous chapter. That chapter established the need to account for *procedural justice* within *transitional justice*, writ-large. Moreover, I postulated that the most important value of considering procedural justice within the larger ‘project’ of transitional justice is its capacity to signal a new future, one based on fairness, in an attempt to break with a profoundly unfair past. To this point, I have not explicitly explained the tie between the first chapter and this, the second, one. I shall now endeavour to resolve any potential puzzlement as to how the two are related.

This chapter has attempted to explain CICIG’s main functions and locate it within the transitional justice lexicon of relevant functions and institutions. From a basic functional level, I have argued that CICIG serves a *truth-telling* role. This *truth* is employed by CICIG to at least reveal the potential for *acknowledgment* of suffering and/or general wrongdoing. Through *truth* and *acknowledgment*, victims of violence

¹⁰⁹ *Amparos*, for example, are a legal tool in the Guatemalan judicial system which are meant to be used for constitutional challenges in the court. Instead, they are now usually used to distract and delay justice by those with a vested interest in advancing the cause of impunity. Despite CICIG’s long-standing recommended changes to the *amparo* laws, legislators are very reticent to improve justice enhancement measures which impinge on their own interests. See *Learning to Walk Without a Crutch*, International Crisis Group, 13.

¹¹⁰ Evans Golab, *Guatemala’s Fight Against Criminal Impunity*, 51.

¹¹¹ Louisa Reynolds, “President Perez Molina Refuses to Renew CICIG’s Mandate,” *Americas Quarterly*, March 16, 2015, accessed May 10, 2015; available from <http://americasquarterly.org/content/president-perez-molina-refuses-renew-cicig-mandate>.

and/or injustice are able to obtain closure through some form of *retribution*, which CICIG has also shown itself capable of affecting. This is where *procedural justice* comes into play: Each of these functions, both individually and collectively, work to *signify change* and offer a reason for Guatemalan citizens to come together in a “cooperative venture” with the hope that past injustices can be overcome.¹¹²

Specifically, I have argued that CICIG functions as something of a ‘follow-up’ truth commission. After concluding Guatemala’s two major truth commissions, a large function of CICIG has been to analyze and investigate how and to where Guatemalan society has progressed since that time. As the reader will recall, I have argued that *temporality* and *responsiveness* are the vehicles by which Tom R. Tyler’s components of procedural justice are then activated.¹¹³ To those ends, CICIG’s functions of *truth* and *acknowledgment* have explicitly posited a measure of *temporality* into the process of truth recovery in the Guatemalan context. Indeed, although it has not affected a “sustained conversation” to the level of regular communication that Bernadette Atuahene argued was important to the South African victims’ understanding of both fairness and justice,¹¹⁴ it has reinitiated the ‘conversation’ between Guatemalan victims and the state that had been only briefly opened and then closed by Guatemala’s two truth commissions. At the very least, the potential to develop greater civic trust within Guatemalan society is presented where it had previously ceased to exist.

With an eye towards *responsiveness*, CICIG has enacted extremely important reforms, lustrations, and prosecutions—even if the value of these is only symbolic in the short term. First of all, the state has become more responsive to civil society in its close relationship with CICIG: Guatemala’s civil society has grown its international ties and improved its domestic competencies. It is now able to sustain a spotlight on the actions of the state while conjuring international pressure to ensure the state’s compliance. Of course, such steps may indeed be temporary as Guatemala’s current President Perez Molina has refused to renew CICIG’s mandate which could very realistically result in a backslide in the potential for long-term, sustained justice and societal equity. That being

¹¹² Rawls, *A Theory of Justice*, 1971: 84.

¹¹³ As a reminder, the four components are voice; neutrality; trustworthiness of authority; and treatment with dignity and respect. Tyler, “Social Justice, 121.

¹¹⁴ Atuahene, “The Importance of Conversation in Transitional Justice,” 934.

said, the training that CICIG has provided to individuals in the justice and security sector, as well as the extensive domestic and international civil society roots that have developed through CICIG's coordination ought to lead to more equitable, if not democratic, outcomes in comparison with Guatemala's recent past.¹¹⁵ Together, *temporality* and *responsiveness* symbolize a *break with the past* for the long-alienated majority of Guatemalan citizens, and at the very least, they offer *hope* for a better future.

Shifting the focus over to locating CICIG amongst the litany of transitional justice institutions that have been employed over the years, I have argued that CICIG is quite similar, from a functional-institutional standpoint, to the *Commission on the Truth for El Salvador* ("CTES"). Let me make the case for why establishing a comparable institution is important: Hudson and Taylor describe CICIG as a "unique hybrid structure."¹¹⁶ That statement and understanding, on its own, renders CICIG a relatively mysterious and less-recognizable entity. By establishing close geographical and institutional similarities with another transitional justice institution, CTES, academics can begin to demystify and deconstruct CICIG. To be clear, I make no claims that CTES is the *most* similar institution by which to compare CICIG. Rather, it simply matches up well with a variety of CICIG's institutional *and* geographical qualities. Most importantly, though, the conclusion from this analysis is that if we are able to locate CICIG in a larger tradition and history of transitional justice mechanisms, we have a larger pool from which to derive lessons, insights, and understanding.

As for how to classify CICIG within the transitional justice's institutional clutter, its first and foremost role is that of an investigatory commission, albeit a hybridized one with prosecutorial and reformative capacities built into its mandate. With regards to its similarities with CTES, then, both commissions have similar bilateral negotiated origins and functions. Moreover, they both work creatively within their constitutional compositions to affect tangible justice outcomes. Finally, they have both also used their mandates, and similar techniques to boot, in order to affect institutional reform. That said,

¹¹⁵ Boix discusses how the distribution of resources is the fundamental necessity of a successful transition to democracy. While this thesis is carefully and consciously avoiding the association between transitional justice and democracy, the same logic applies in terms of equity and justice—in this case, civil society has the ability to distribute political power, or 'resources,' through mass organization. See Carles Boix, *Democracy and Redistribution*, (Cambridge: Cambridge University Press, 2003): 52.

¹¹⁶ Hudson and Taylor, "The International Commission Against Impunity in Guatemala," 55.

they do also have significant differences. CICIG's mandate is broader than that of CTES, which perhaps explains some of its more robust and high profile efforts to affect justice, as well as having the reputation of possessing a particular "uniqueness."¹¹⁷ CICIG was also created after being removed from conflict for over ten years when it became functionally operational, while CTES was constituted directly out of peace negotiations to end its brutal civil war. One could reasonably assume that tensions and passions were much higher in the latter case, and political stakes were probably perceived to be much more dire. But overall, CTES provides a useful foil by which to compare, contrast, and locate CICIG amongst institutions that have been used in transitional justice processes.

¹¹⁷ van Hemmen, "Influence of NGOs in the Establishment Process," 11.

3. CHAPTER THREE: EVALUATING CICIG'S SUCCESSES AND STRUGGLES

3.1 Overview:

The past two chapters have ostensibly laid out the criteria by which CICIG can be evaluated. In the first chapter, I initially endeavoured to argue for the definition of *procedural justice* within *transitional justice* processes. I am hardly the first to make this argument, but there does appear to be a lack of consensus, definition, and even recognition that there is a stream of transitional justice scholars all making similar or at least compatible arguments. In other words, many arguments are being made that fall into my definition of *procedural justice*, but the individuals making the arguments do not necessarily realize or acknowledge that their arguments qualify as procedural justice, *per se*. Thus, my first aim is to bring more scholars towards a consensus and definition on specific elements that render transitional justice more successful or at least mitigate elements which would render its processes more susceptible to failure. By including elements of *temporality* and *responsiveness* (i.e. procedural justice), the larger project of *transitional justice* is able to take the form of representing and signaling a new future for that given society based on greater equity. Moreover, and perhaps more importantly, *procedural justice* is inherently inclusive. Thus, it implicitly, though often explicitly as well, serves to reject a past marred by violence and injustice. Finally, temporality and responsiveness inject *local* considerations into processes of transitional justice. In contrast, I would argue that many transitional justice processes and ideals to date have

been theorized at abstract, internationally applicable levels of analysis.¹ I am arguing that through the procedural justice vehicles of temporality and responsiveness, the theorization and practice of transitional justice in Guatemala and other localized contexts can be based on a discursive, two-way feedback loop. Such a process would optimally take into consideration local beliefs, practices, and contingencies, while foiling these considerations against previously attempted transitional justice processes in other settings in addition to even more abstract transitional justice theory(/ies). Overall, by including procedural justice mechanisms within a society's given transitional justice process, there is a greater chance for success in affecting a socio-political trajectory characterized by justice and equity.

In the second chapter, I argue that CICIG ought to be understood along both institutional and functional lines. Functionally, I argue that CICIG is best conceived as a hybridized truth commission, similar to that of the *Commission on the Truth for El Salvador* ("CTES") from the mid-1990s. The one major difference, I argue, is that CICIG is enabled to assist in prosecutions of those found to be acting illegally. From a functional standpoint, I argue that CICIG's value in a transitional justice context falls into three distinct, though related, functions: *truth recovery*; *acknowledgment*; and *retribution*. Moreover, procedural justice is partially woven into CICIG's functions through a combination of *truth recovery* and *acknowledgment*. Ostensibly, they serve to initiate *temporal* considerations by finally establishing a "deep conversation" and engagement at both a society-wide and even global level for crimes committed both during and since the country's civil war.² That conversation had been denied to Guatemalan victims of human rights abuses and state malfeasance immediately following the release of both truth commission reports due to the societal fear of elite retribution and violence that has persisted in various forms for most of Guatemala's history,³ part of the larger crime rate

¹ Once again here, I refer back to the likes of Sikkink and Kim, Snyder and Vinjamuri, and Olsen, Payne, and Reiter, as evidence of a prevalent trend in transitional justice literature of theorizing at the abstract level, and subsequently applying the theory at a local level.

² Villa-Vicencio argues that truth commissions are a dialogue between partners, a "deep conversation," as opposed to communication directed at one another between state parties and victims. See Villa-Vicencio, "The Politics of Reconciliation," 65.

³ One can readily extrapolate the extent of such a fear through an observation made in an Open Society Foundations report in March of 2015. Even today, "fear of serious crime for ordinary Guatemalans is immense," despite a significant drop in crime rates and impunity since the especially violent years of 1998-

that CICIG has slowly but steadily helped to erode.⁴ Moreover, due to CICIG's close work with Guatemalan civil society, the state is now more compelled to respond to its civil society's demands. This is a result of its improved capacity to sustain a spotlight on the infamously corrupt Guatemalan state's actions while commanding the international legitimacy and support to compel state compliance.

This current chapter, then, builds on the prior two chapters in that I analyze the strengths and flaws of CICIG to fulfill the transitional justice roles of *truth recovery*; *acknowledgment*; and *retribution*. Yet CICIG was not exclusively envisioned as a transitional justice mechanism and/or institution. It was also a practical response to a state almost incapable and generally unwilling to “provide justice and public safety in an efficient and equitable way to all citizens,” a hallmark of a “failed state.”⁵ Combined with the instability that radiates outward from Central America, fomented by transnational drug-related crime, the international community was, and still is, deeply concerned and heavily focused on Central America.⁶ By analyzing CICIG's successes and failures relative to its mandate and transitional justice outcomes, my hope is that policymakers, especially when targeting transnational drug crime in Latin America, will have a bevy of comprehensive takeaways to apply moving forward.

3.2 Introduction

The following chapter will proceed in two parts. First, I will analyze the established mandate of CICIG and to what extent it has been successful at fulfilling its mandate. Specifically, CICIG's three main objectives are: to investigate illicit and clandestine security organizations and uncover their structures; to assist the state in disbanding such groups through investigation and punishment of their crimes; and to make policy recommendations to eliminate and prevent the re-emergence of the aforementioned groups.⁷ Tove Nyberg argues that due to the amnesties following Guatemala's civil war,

2008. See *Unfinished Business: Guatemala's International Commission Against Impunity (CICIG)*, Open Society Justice Initiative Briefing (New York: Open Society Foundations, March 2015): 8.

⁴ Mike Allison, “How to Reduce Crime in the World's Most Violent Country,” *Aljazeera*, August 11, 2013, accessed April 23, 2015; available from <http://www.aljazeera.com/indepth/opinion/2013/08/2013810135741207607.html>.

⁵ Stein, “Citizen and Government Security Issues in Latin America,” 68.

⁶ Briscoe and Stappers, *Breaking the Wave*, 39.

⁷ “Mandate: Agreement to Establish CICIG,” CICIG.

many former human rights abusers have subsequently become involved in the security organizations that have helped to establish organized crime and increased impunity in the country.⁸ It is precisely this link between civil war atrocities and contemporary criminal impunity-related instability in Guatemala that renders an analysis of CICIG with an eye towards transitional justice-related strengths and weaknesses to be important.

Thus, this chapter will argue that CICIG has experienced a “mixed bag” of successes and failures relative to its mandate: It has been successful at investigating and uncovering criminal ties and networks as they are related to state institutions. It has also successfully assisted in prosecuting and/or purging corrupt civil servants within state institutions. However it has not been nearly as successful at investigating and uncovering the intricacies of illicit groups outside of their connections to the state. Finally, it is rather difficult to meaningfully analyze success or failure in CICIG’s mandate to “make recommendations to the State of Guatemala regarding public policies to be adopted,” given that it has no ability to ensure full compliance to such recommendations.⁹ Overall, CICIG’s mandate underestimated the nature and capabilities of transnational, drug-related criminal networks, by which its mandate to disband them through prosecution is unrealistically hopeful in retrospect.

As for the three *transitional justice* functions which CICIG fulfills—*truth recovery*, *acknowledgment*, and *retribution*—I will argue that, similar to my evaluation of CICIG’s success *vis-à-vis* its mandate, CICIG has experienced significant successes and has also been met with significant challenges. I also argue that important lessons can be drawn from each function: Relative to *truth recovery*, a greater focus is and has been needed to improve the capacity of the institutions and the skills of the civil servants in Guatemala’s justice and security sectors, but also work to cultivate and build capacity amongst civil society. Corresponding to *acknowledgment*, a greater civil society presence is required to connect and/or translate CICIG, Guatemala, and the international justice norms to indigenous and *campesino* communities and individuals—and *vice versa*. Finally, in considering *retribution*, a transnational body or task force is required to

⁸ Nyberg, “Smoking the Rats Out,” 54.

⁹ “Mandate: Agreement to Establish CICIG,” CICIG.

combat transnational crime in Latin America, most of which is facilitated and financed through the drug trade.

3.3 Efficacy of CICIG: A Focus on its Mandate

The CICIG mandate has three main goals for the commission: to investigate and ostensibly uncover illicit, clandestine groups; to disband illegal groups through prosecutions; and to make recommendations for public policy.¹⁰ Evaluating the success of policy recommendations in a vacuum without accounting for results is a difficult task, however. For the sake of illustration, let us consider the issue surrounding *amparo* laws: *Amparos*, to give some background, were originally designed as a legal tool to instigate constitutional challenges.¹¹ Given how *amparos* have now been commandeered as a tactic to regularly obstruct and delay justice by those with a vested interest in advancing the cause of impunity,¹² it was prudent for CICIG to recommend changes to *amparo* laws.¹³ However legislators, as the International Crisis Group has documented, are very reticent to approve justice enhancement measures which regularly impinge on their own interests.¹⁴ Naturally, then, changes to *amparo* laws have not been forthcoming. Under current Guatemalan President Perez Molina, there has even been a notable backslide of CICIG-induced justice and due process achievements in Guatemala; thus it is difficult to imagine how changes to *amparo* laws could take place in the near future.¹⁵

There is some hope for greater institutional change, however. President Perez Molina had repeatedly stated that CICIG's mandate would not be renewed up until April 2015, a claim he was forced to back away from due to two specific events. First of all, the United States placed immense pressure on Guatemala, even sending Vice President Joe Biden to meet personally with President Perez Molina. Renewing CICIG was reportedly

¹⁰ Ibid.

¹¹ *Amparo*, directly translated, means "protection."

¹² Sieder, "Renegotiating 'Law and Order,'" 148.

¹³ Nyberg, "Smoking the Rats Out," 44.

¹⁴ These interests can be either tangible or *potential*. *Amparo* has historically been a useful technique to avoid prosecution and/or investigation of legislators and politicians.

Learning to Walk Without a Crutch, International Crisis Group, 13.

¹⁵ To give an example of the newly established climate of intimidation, both the Attorney General and Judge who administered former President Ríos Montt's genocide trial have both been censured and removed from their posts.

Taft-Morales, *Guatemala: Political, Security, and Socio-Economic Conditions*, 6.

an item at the very top of Biden's agenda.¹⁶ Secondly, in conjunction with the Public Ministry ("MP"),¹⁷ CICIG acted in a dramatic, self-preserving fashion by moving to "dismantle a network allegedly siphoning off customs revenue" in late April 2015.¹⁸ Huge protests and related pressure have been brought to bear against Guatemala's elected leaders as a response to the fraud scandal. Indeed, Perez Molina's Vice President Roxana Baldetti was forced to resign over the pressure resulting from the issue, as her former private secretary is said to be the ringleader of the operation.¹⁹ Feeling immense pressure over the scandal, Perez Molina, in May 2015 alone, "has fired or accepted the resignations of his vice president, tax chief, two energy ministers, security minister, environment minister and head of intelligence," in a desperate attempt to hold onto the Presidency against a cacophony of calls for his resignation.²⁰ One ought to be cautious in viewing the latest episode of governmental malfeasance and corruption as a watershed moment or harbinger of lasting change though. After all, a former Guatemalan President, Alfonso Portillo, was charged and extradited to the United States for embezzlement with CICIG's assistance.²¹ Yet corruption and impunity went largely unhindered for several years after Portillo left office.

Analysts can and should remain hopeful that lasting change is finally coming to Guatemala. That the country's citizenry has very recently developed its first "modern mass protest movement" of note in the wake of the recent customs scandal is an encouraging sign that justice and accountability have finally gained a foothold in

¹⁶ "Latin American Politics: US Promotes Aid Package, Urges Renewal of CICIG Mandate," Economist Intelligence Unit ViewsWire, March 6, 2015.

¹⁷ "Ministerio Publico" or *MP* is essentially the Attorney General's ministry in the Guatemalan government.

¹⁸ Sophie Beaudoin, "CICIG Acts as Decision on Mandate Extension Nears," *International Justice Monitor*, Open Society Justice Initiative, April 21, 2015, accessed 7 May 2015; available from <http://www.ijmonitor.org/2015/04/cicig-acts-as-decision-on-mandate-extension-nears/>.

¹⁹ Elizabeth Malkin, "Roxana Baldetti's Resignation as Vice President Shadows Guatemala's Politics," *New York Times*, May 10, 2015, accessed May 11, 2015; available from <http://www.nytimes.com/2015/05/11/world/americas/roxana-baldettis-resignation-shadows-guatemala-politics.html>.

²⁰ Michael D. McDonald, "Guatemalans March in Calls for President to Resign," *Bloomberg Business*, May 30, 2015, accessed June 2, 2015; available from <http://www.bloomberg.com/news/articles/2015-05-30/guatemalans-prepare-to-march-as-president-faces-pressure-to-quit>.

²¹ *Two Years of Work: A Commitment to Justice*, CICIG: International Commission Against Impunity in Guatemala, (Guatemala, 2009): 16.

Guatemalan politics.²² However, as Roderick Leslie Brett reminds us, Guatemala does possess a long history of “institutionalised impunity,”²³ not to mention the pervasive and violent influence and power that transnational narco-trafficking networks continue to assert.²⁴ Thus, given the ease by which CICIG has been able to recommend necessary policy changes, and the reticence of legislators to enact those policy changes when they threaten legislators’ core interests, “policy recommendation” is a difficult mandate by which to meaningfully determine success. Moreover, even in the case of successful policy implementation, it has been largely fruitless relative to quelling transnational organized criminal activities. In evaluating the success of CICIG, then, I think I can comfortably discard the mandated goal of “recommendations for public policies” as an evaluative mandate and instead focus on the former two goals in its mandate: to investigate illicit groups; and to disband and promote prosecution against them.

The investigatory mandate that CICIG was originally designed to undertake contains two provisions: “CICIG should investigate the existence of illicit security forces and clandestine security organizations.”²⁵ The second provision contains that CICIG should “identify the structures... activities, operating modalities and sources of financing.”²⁶ Relative to this mandate, CICIG was quite successful in investigating the existence of such organizations. Its investigations resulted in various trials uncovering corruption and malfeasance in the National Civil Police (“PNC”) and by former President Alfonso Portillo.²⁷ However, it also faced some significant obstacles: To begin with, there is little evidence to suggest that there is any deep and intricate understanding of how these organizations and networks function, eight years after CICIG’s establishment.

²² This is, indeed, quite a controversial claim when taken to be understood academically as opposed to the pejorative meaning which I believe Goyette intends. Ostensibly, I do not think that Goyette refers to the post-enlightenment period. Rather, my reading of his use of the term reflects something of “recent memory” understanding. That the vast majority of people in Guatemala, let alone the rest of the world do not remember the 1944 social revolution in the country is the main point. Jared Goyette, “A Guatemalan Spring? Youth-Driven Protests Demand Resignation of Leaders,” *Public Radio International*, May 2, 2015, accessed May 14, 2015; available from <http://www.pri.org/stories/2015-05-02/guatemalan-spring-youth-driven-protests-demand-president-s-resignation>.

²³ Roderick Leslie Brett, *Social Movements, Indigenous Politics and Democratization in Guatemala, 1985-1996*, (Boston: Brill, 2008): 85.

²⁴ Diane M. Nelson, *Reckoning: The Ends of War in Guatemala*, (Durham: Duke University Press, 2009): 232.

²⁵ “Mandate: Agreement to Establish CICIG,” CICIG.

²⁶ Ibid.

²⁷ Taft-Morales, *Guatemala: Political, Security, and Socio-Economic Conditions*, 18.

It follows, then, that without much in-depth understanding of the phenomenon that the institution is designed to address, the task of disbanding criminal networks is rendered that much more difficult to complete. On the one hand, corruption within Guatemalan state institutions appears to be well understood and regularly uncovered and prosecuted.²⁸ Yet individuals working in Guatemala's justice system face ongoing "threats and violence,"²⁹ and CICIG's latest published report fails to document any significant identification and delineation of criminal networks outside of the auspices of the state.³⁰ Thus, CICIG has effectively investigated and uncovered corruption and illicit activity within state apparatuses, but has been much less successful at developing a comprehensive understanding relative to illicit structures and organizations beyond the purview of the state.

CICIG's investigations have ultimately been hindered by two more problems. First, CICIG's failure to consult and strategize with civil society in its early goings set the stage for some tense relations with Guatemalan civil society which took time to overcome and prevented effective investigative collaboration early in its mandate.³¹ Second, CICIG has been far too beholden to individuals. As Helen Mack, a major player in Guatemala's human rights community, has noted, a lack of institutional capacity for investigations was overshadowed by the impressive capacities of former Public Prosecutor Claudia Paz y Paz.³² CICIG's close relationship with former Public Prosecutor Claudia Paz y Paz also served to obscure its lack of institutional capacity for investigation, and this has subsequently come to the fore as a problem since the controversial dismissal of Paz y Paz in 2014.³³ CICIG never did fully develop and realize a strong institutional capacity for undertaking and coordinating complex investigations on its own, let alone within the state apparatus.

CICIG's final mandate yet to be discussed so far is that of helping the state both disband and prosecute illicit security groups and their ties to organized crime—

²⁸ *Sixth Report*, CICIG, 13.

²⁹ *Ibid.*, 35.

³⁰ *Ibid.*

³¹ Hudson and Taylor, "The International Commission Against Impunity in Guatemala," 63.

³² Nyberg, "Smoking the Rats Out," 46.

³³ "Latin American Politics: US Promotes Aid Package, Urges Renewal of CICIG Mandate," Economist Intelligence Unit ViewsWire.

sometimes this informal network is referred to as Guatemala's "hidden powers."³⁴ As I have mentioned, CICIG has made notable steps forward in promoting justice and achieving major trials and prosecutions against individuals connected with "government institutions, [politics] or drug-trafficking organizations."³⁵ CICIG was also instrumental in rendering Guatemala as "the first country to convict a former head of state [Efraín Ríos Montt] of genocide in its own court system" in 2013.³⁶ Yet one issue preventing CICIG from disbanding and prosecuting illicit groups is its lack of institutional resilience. For example, Briscoe and Stappers have noted that CICIG's efficacy has been significantly reduced due to President Perez Molina's organizational and philosophical differences with the commission.³⁷ CICIG is also still heavily dependent on political will within Guatemala. The current system of limited accountability affords privileges to individuals ranging from elites to former military types, and even extending deeply into Guatemala's middle class.³⁸ Meanwhile, indigenous and/or *campesino* populations tend to view politics with a lack of knowledge and interest,³⁹ largely borne of long-standing disenfranchisement. Thus, until very recently, there has been little domestic impetus for a significant increase in the country's political will to change the status quo of impunity. That may be changing with the massive protest movement spawned by CICIG and the MP's revelation of a huge government customs fraud conspiracy, but the social movement is very young, and Guatemala's elites have a long history of reasserting their control.

The Economist Intelligence Unit recently opined that public mistrust in institutions and high levels of impunity in Guatemala are both likely to contribute to increase socio-political instability in the country in the near future.⁴⁰ Similar problems—public mistrust and high levels of impunity—have been ongoing since the end of the

³⁴ Essentially, this refers to "an informal network of powerful individuals who use their positions and contacts in the public and private sectors to benefit economically from illegal activities and to avoid prosecution for any crimes they commit." See Peacock and Beltran, *Hidden Powers*, 2.

³⁵ Hudson and Taylor, "The International Commission Against Impunity in Guatemala," 65.

³⁶ Ríos Montt was subsequently exonerated through the Guatemalan Constitutional Court's declaration of a mistrial, but the conviction remains significant, especially given that his exoneration is based on a technicality and not on any substantive details. See Taft-Morales, *Guatemala: Political, Security, and Socio-Economic Conditions*, 6.

³⁷ Briscoe and Stappers, *Breaking the Wave*, 19.

³⁸ Nelson, *Reckoning: The Ends of War in Guatemala*, 234.

³⁹ Azpuru, "Political Culture of Democracy in Guatemala, 2010," 168.

⁴⁰ Taft-Morales, *Guatemala: Political, Security, and Socio-Economic Conditions*, 2.

country's civil war, begging the question what, if any, effect that prosecutions have had on undermining impunity and downgrading illicit security groups. Moreover, current Guatemalan President Perez Molina, once a strong ally for CICIG,⁴¹ has taken an adversarial role against the commission as his presidency has progressed.⁴² The Guatemalan people, for their part, have no interest in paying more taxes to a system they see as corrupt.⁴³ Without more funding for a domestic address to reducing corruption and security concerns, and without the country's permission to continue a joint international-domestic commission to do so, the problem of impunity is likely to persist and perhaps even increase. So while CICIG has successfully instigated and assisted with prosecutions, these have had little effect on creating longer-term sustainability in combatting impunity and illicit activities within the purview of the state.

The state is beginning to revert to a culture of impunity once more under President Perez Molina, suggesting that successful prosecutions have not strongly affected the disbandment of illicit security groups. This speaks to two separate issues: First of all, the mandate itself was flawed in its conception that prosecutions would help to disband illicit networks. At the same time, the prosecutions and disbandment were not mutually exclusive in CICIG's mandate. They were both to be pursued as separate but related goals. As such, while CICIG was quite successful in its strategy of prosecuting emblematic cases,⁴⁴ the clear lack of inertia and lack of sustain combined with continued large-scale impunity and public mistrust in state institutions suggests that CICIG's attempts to downgrade and dismantle illicit criminal groups has been largely unsuccessful.

⁴¹ Perez Molina, as a Presidential candidate, was strongly and publicly in favour of CICIG as of 2007. Likewise, he renewed CICIG's mandate in 2013. For more on Perez Molina's support for CICIG see Atwood, *Advocates Against Impunity*, 12.

⁴² There is some speculation that Perez Molina's about-face with regards to CICIG came as a result of its decision to pursue the prosecution of former President Efraín Ríos Montt for genocide. Much of this may stem from the fact that Perez Molina was a high ranking military official during the civil war, and was stationed in areas which saw some of the most brutal violence perpetrated. See Blake, "Should Domestic Courts Prosecute Genocide?" 607-608. See Briscoe and Stappers, *Breaking the Wave*, 20.

⁴³ Evans Golab, "Guatemala's Fight Against Criminal Impunity," 61.

⁴⁴ Donovan, "The International Commission Against Impunity in Guatemala," 823.

3.4 Efficacy of CICIG: A Focus on *Transitional Justice*

Before entering into a thicker analysis of CICIG's strengths and drawbacks relative to the *transitional justice* processes of *truth recovery*, *acknowledgment*, and *retribution*, a short explicatory note is required. In the interests of space and also because various analysts and organizations have published quality academic work on CICIG's successes and failures, I will not be explaining them in significant depth. But, indeed, my intent with this part of the chapter is to analyze and situate CICIG's strengths and weaknesses relative to the three aforementioned *transitional justice* functions. Thus, I intend to offer a brief overview of CICIG's successes and drawbacks, but will spend the bulk of my analysis on the "overall picture," so to speak, and even more so on the implications or "takeaways" from such analysis.

The majority of academic work concerning CICIG thus far has fallen into four main camps, though with a significant amount of overlap. Though this list is by no means exhaustive, it does offer a useful, if broad, overview of CICIG-specific analysis. First, there are those who are tracking and analyzing CICIG's progression as an institution, such as Dinorah Azpuru's extensive polling and analysis of public opinion relative to CICIG;⁴⁵ CICIG's own "annual" and "thematic" reports;⁴⁶ or van Hemmen's tracking of NGO influence relative to CICIG's successes.⁴⁷ A second strand of analysis has approached the study of CICIG from a legalist and/or normative point of view looking at its capacity to improve "justice" outcomes within Guatemala.⁴⁸ For example, the International Crisis Group has focused on the importance of institutional design and capacity building,⁴⁹ while Briscoe and Stappers, writing a report on behalf of *Impunity Watch*, are most concerned with improving a combination of legal and cultural constructions in Guatemala as a means of improving "future policies in security and justice."⁵⁰ A third stream of CICIG analysis seeks to improve CICIG directly through policy adjustments, seeing it as a vital cog in improving any number of peace, justice,

⁴⁵ Azpuru. "Political Culture of Democracy in Guatemala, 2010."

⁴⁶ Reports," CICIG: International Commission Against Impunity in Guatemala, 2015, accessed 3 March 2015; available from <http://www.cicig.org/index.php?page=reports>.

⁴⁷ van Hemmen, "Influence of NGOs in the Establishment Process."

⁴⁸ Worth noting is that most analysts have at least a partially distinct means of conceptualizing justice, especially if their background and influence falls outside of a formal legalist tradition.

⁴⁹ *Learning to Walk Without a Crutch*, International Crisis Group.

⁵⁰ Briscoe and Stappers, *Breaking the Wave*, 46.

democracy, and/or human rights outcomes in Guatemala. Falling into this camp are the likes of Julia Schünemann, who authored a report on joint behalf of the *Initiative for Peacebuilding* and *FRIDE: A European Think Tank for Global Action*,⁵¹ as well as a report commissioned by *Open Society Foundations*. Another strand of literature concerns those who view CICIG as a useful but ultimately insufficient tool for combatting crime and injustice due to its domestic—as opposed to transnational—mandate. Michael Deibert sees CICIG as having performed some important functions, but that it is unable to effectively help Guatemala establish good governance and counter impunity without eliminating or heavily downgrading transnational drug trafficking that afflicts the country.⁵² Likewise, Michael Shifter sees regional security, justice, and good governance as requiring “shared responsibility” by regional actors.⁵³

While each strand of the aforementioned literature holds valuable insight, the approach of my investigation is slightly different. I aim to add to a very limited scholarship of taking lessons learned from the CICIG experience in Guatemala, and using them to improve CICIG’s operations in Guatemala, but also to render them applicable in other, specifically regional, contexts as well. To that end, Roger Atwood, at the *Washington Office on Latin America* (“WOLA”), argues that “CICIG holds many lessons for advocates seeking to protect the rule of law and end impunity in Latin America,” outlining “inclusion,” “flexibility,” “international pressure,” “seizing the moment,” and “political will” as the key factors.⁵⁴ While I undertake to uncover and apply lessons from the CICIG experience in Guatemala and elsewhere in Latin America, I am looking to take away lessons from the CICIG experience specifically related to transitional justice processes. Even more specifically, the previous chapter defined *truth recovery*; *acknowledgment*; and *retribution* as the functions that CICIG effects, relative to transitional justice, with elements of procedural justice incorporated into the dual processes of truth recovery and acknowledgment. Thus, the following analysis briefly establishes an overall appraisal of successes and struggles of CICIG relative to the three aforementioned transitional justice processes, and then argues for progressive takeaways

⁵¹ Schünemann, “*Looking The Monster In The Face*,” 29-30.

⁵² Deibert, “Guatemala’s Death Rattle: Drugs vs. Democracy,” 167-175.

⁵³ Shifter, “Central America’s Security Predicament.”

⁵⁴ Atwood, *Advocates Against Impunity*, 14.

in Guatemala and elsewhere in the region. By “progressive takeaways,” I mean that in the previous chapter, I described *truth* as preceding *acknowledgment* and *acknowledgment* as subsequently preceding *retribution*. Likewise, any aims at making CICIG more effective (or less ineffective, perhaps) in Guatemala or elsewhere would likely best follow a progression beginning with *truth*.

3.4a Truth

Three significant CICIG successes at *truth recovery* are worth mentioning: First, it has uncovered how illicit activity is connected between the state and *clandestine groups*. In a model example, CICIG was instrumental in uncovering a layered conspiracy, the “Matus affair,” which followed a trail of malfeasance all the way from El Salvador-based organized crime and its interests up to some of the highest ranking bureaucrats inside of Guatemala’s *Ministerio Publico* (MP) and its Ministry of the Interior.⁵⁵ Secondly, CICIG has investigated such networks to the point of recognizing the ties between Guatemala’s civil war and its related atrocities to the present day, with the continued human rights violations that regularly take place. This is a particularly important “link” between *truth recovery* and *transitional justice* relative to CICIG—prior to CICIG’s arrival, these theorized networks were little-known, hence being named as “*hidden powers*” in a 2003 report commissioned by WOLA.⁵⁶ Any information published about such elements within Guatemala “would be absorbed by illicit networks, who [sic] would then adapt themselves immediately so as to avoid detection.”⁵⁷ Thirdly, CICIG has effectively secured a greater opportunity for civil society and community organizing that both assist disenfranchised citizens to develop a voice within the state without being quelled by the forces of impunity—while Guatemalan civil society was once mostly cowed by threats of violence and a sense of hopelessness.⁵⁸ It is now a vital piece, emboldened by CICIG’s

⁵⁵ Between the two ministries, all elements of justice and security are ostensibly covered. The affair essentially linked transnational organized crime all the way up to some of Guatemala’s highest diplomats. See *Two Years of Work*, CICIG, 16.

Courtney Carvill, “Guatemalan Democracy: Hanging on by its Fingernails,” Council on Hemispheric Affairs, *Washington Report on the Hemisphere* 29.13 (July 2009): 6.

⁵⁶ Peacock and Beltran, *Hidden Powers*, 6.

⁵⁷ Briscoe and Stappers, *Breaking the Wave*, 21.

⁵⁸ CICIG details how a large number of the complaints brought forward to them followed a pattern consisting of attacks and killings of union leaders and human rights activists. See *One Year Later*, CICIG: International Commission Against Impunity in Guatemala, (Guatemala, September 2008): 4.

assistance in capacity-building and sustained international pressure, in pushing for transparency and accountability from the state.⁵⁹

CICIG's *truth recovery* successes are rather evident in any cursory reading of them, but its weaknesses most effectively frame the lessons which analysts are likely to benefit from in crafting another CICIG-like institution in the future. First of all, it is questionable whether the capacity and willingness exist in Guatemala to independently investigate and push for the prosecution of high-powered criminal elements, even after nearly eight years of CICIG's existence. The appointment of an allegedly corrupt Attorney General, Conrado Reyes, back in 2010,⁶⁰ and more recently, the refusal to renew the contract of the exceedingly successful former Attorney General, Claudia Paz y Paz,⁶¹ evidence that "a single person can ruin the work of years in a matter of days by removing capable and committed individuals from their posts."⁶² Essentially, the state has not been thoroughly enough transformed—in terms of political culture, individual and departmental capacity, and institutional design—to render CICIG's achievements self-sustaining.

Another weakness related to CICIG's *truth recovery* function is that truth alone, as the relative state inaction following the published results of two damning truth commission reports would attest,⁶³ is no guarantee of *acknowledgment*, let alone *retribution*. Another lesson to be taken from Guatemala's two truth commission reports is that distant, "self-serving," and "insensitive" truth commissions can actually produce

Additionally, Briscoe and Rodriguez Pellecer discuss a reticence on behalf of civil society, prior to CICIG being commissioned, in the regular engagement in politics—the reasons for this are left to presumption, but the never-changing nature of the corrupt state as well as the danger of such a task are likely major reasons. See Ivan Briscoe and Martin Rodriguez Pellecer, *A State Under Siege: Elites, Criminal Networks and Institutional Reform in Guatemala*, (Netherlands Institute of International Relations: *Clingendael*, The Hague: September 2010): 31.

⁵⁹ Isaacs discusses at length the symbiotic role between civil society and CICIG has been nurtured and promoted by CICIG. See Isaacs, "Guatemala on the Brink," 113.

⁶⁰ "Guatemalan Attorney General Sacked," *BBC News*, June 11, 2010, accessed 25 May 2015; available from <http://www.bbc.com/news/10299442>.

⁶¹ *Guatemala*, Freedom in the World 2015, Freedom House, accessed May 23 2015; available from <https://freedomhouse.org/report/freedom-world/2015/guatemala#.VXkSFOchxgJ>.

⁶² Schünemann, "Looking The Monster In The Face," 28.

⁶³ The CEH report stated that the state was responsible for "acts of genocide," yet the report was effectively repressed and ignored by the political establishment and the majority of Guatemalan society. The declaration of genocide can be found in, *Guatemala: Memory of Silence*, Commission for Historical Clarification, 41.

more harm than good.⁶⁴ CICIG's offices are in Guatemala City, and it has centralized most human rights cases away from rural areas in Guatemala.⁶⁵ These realities, combined with the commission's international influences, would suggest that sensitivity and cultural appropriateness are not especially high priorities. One final weakness relative to CICIG's capacity for truth procurement is that, due to the extent of corruption and impunity in Guatemala, CICIG is forced to narrow its agenda, with one of its criteria being "the short and long-term political impact of the case on the fight against impunity."⁶⁶ Individuals experience a form of reparative justice through "interaction, debate and discussion, but also... affirmation and acknowledgment of a person's pain," as Lieselotte Viaene describes.⁶⁷ With such a limited analysis of cases, CICIG must necessarily bypass a significant level of truth recovery as well as the potential for acknowledgment and repair. While CICIG does offer some semblance of "justice as a better future" in its attack on institutionalized impunity and criminality in Guatemala,⁶⁸ most victims of criminal impunity will likely never receive a comprehensive accounting of the truth behind their victimization under CICIG's present structure.

To synthesize the previous discussion on CICIG's strengths and weaknesses relative to its function as a truth-producing element in Guatemalan society, there is now a much greater understanding of the illicit behaviour afflicting Guatemala. The networks, their functions, and the *modus operandi* of criminal elements within Guatemala have been largely demystified through CICIG's efforts. But the end goal of such understanding is still vague. With Guatemala's many victims, its vastly disparate socio-economic relations, and its poor governance, the understanding of illicit behaviour in Guatemala still needs to be connected with justice-producing mechanisms. Ostensibly, there is a weak link, from a transitional justice standpoint, connecting CICIG's *truth recovery* function to the subsequent *acknowledgment* and *retribution* functions that CICIG also undertakes. Given that CICIG was, at least partly, "created as a step in a transitional

⁶⁴ Isaacs, "At War with the Past?" 259.

⁶⁵ Aldana, "A Reflection on Transitional Justice in Guatemala," 2013: 311.

⁶⁶ *Two Years of Work: A Commitment to Justice*, CICIG, 12.

⁶⁷ Lieselotte Viaene, "The Role of Cultural Contexts in Transitional Justice Processes—Maya Q'eqchi' Perspectives from Post-Conflict Guatemala," (Ph.D. diss., Ghent University, Belgium: 2011): 173.

⁶⁸ 'Justice as a better future' is envisioned as something of a break with a profoundly unjust past, as described by the authors. See Shearing and Froestad, "Beyond Restorative Justice—Zwelethemba," 17.

justice process,”⁶⁹ the “weak link” I describe can be best categorized as a failure to address individuals’ grievances and concerns for justice while simultaneously failing to directly establish adequate institutionalization, capacity, and a change in Guatemala’s political culture which would render the state self-sufficient in maintaining an effective justice system. Some of this, of course, is outside of CICIG’s power, such as “the lack of political will to pass inalienable legislation to fight impunity.”⁷⁰ Yet, as Rebecca Tran noted, as of May 2011, it has “devoted itself almost exclusively to the prosecution of corruption cases, leaving little time to execute the badly needed institutional reforms.”⁷¹ To remedy the pitfalls that CICIG currently experiences in its *truth procurement* functions, it must either find a way to expand its activities or it must shift its priorities.

While investigations and subsequent prosecutorial assistance have served as the backbone of CICIG operations since its inception in 2007, the state’s lack of justice-related self-sufficiency eight years later is a relevant concern. Guatemala has failed to significantly change its institutions and institutional culture to render it capable of successfully maintaining CICIG’s level of professionalism and prosecutorial success. Meanwhile, the state’s civil servants and related institutional capacity to undertake investigations and prosecutions is heavily limited by the number of individuals which CICIG has trained. While CICIG regularly boasts its successes in training public officials, as of its latest published report, it claims to have directly trained 236 public officials, an “additional 138 officials [which] have benefitted from skills transfer,” and a rather vague claim that “certain offices have received technical support.”⁷² While perhaps the techniques imparted and officials trained were of high strategic value, such numbers represent a pitiful quantity against the backdrop of four government ministers, two police directors, and 1700 police officers which have been publicly named for their complicity in corruption or otherwise criminal activity. Moreover, over 50 prosecutors and investigators as well as 12 other staffers have been removed from the MP at CICIG’s request.⁷³ In sum, CICIG’s strategy of pursuing investigations and prosecutions is not

⁶⁹ Nyberg, “Smoking the Rats Out,” 5.

⁷⁰ Schünemann, “*Looking the Monster in the Face*,” 23.

⁷¹ Rebecca Tran, “Guatemala: A Stalled Peace,” Council on Hemispheric Affairs, *Washington Report on the Hemisphere* 31.8 (May 2011): 4.

⁷² *Sixth Report*, CICIG, 23.

⁷³ *Unfinished Business*, Open Society Foundations, 6.

resulting in institutional improvement nor is it building sufficient capacity amongst public employees.

CICIG could remedy this increase issue by increasing its \$20 million annual budget supplemented mostly by 13 donor governments and over 200 employees.⁷⁴ Doing so would mean being able to maintain its successful operations currently under way, and expand its capacity-building operations. But increased donor reliance has significant risks involved: “Donor fatigue” has scuttled various aid and development projects,⁷⁵ while overreliance on volatile economies has plagued others.⁷⁶ Another option for CICIG would be to shift its core organizational strategy. CICIG could evolve its role into one of coordinating third parties—aid organizations, governments, and civil society—to undertake capacity-building tasks while maintaining its strong investigative/prosecutorial work. However, such a strategy, would render its “relatively successful donor coordination in a field where donor support is often provided in an uncoordinated piecemeal fashion,”⁷⁷ to the wayside. Donors tend to act according to their interests and abilities, which admittedly sometimes leads to “backsliding” in terms of justice outcomes.⁷⁸

A particularly appealing final option aimed at the transitional justice goal of connecting truth with acknowledgment and retribution, would be to augment the organizational timeframe so as to better affect long-term sustainability as well as improve localized experiences of justice. CICIG, or a future, similarly constituted institution, could take a couple of years to focus solely on relationship building, training, and capacity building, and slowly build its way up to investigative capacity. With proper training and tools, civil society actors would be better able to affect justice at a localized level, whereby they could correspond, interview, and investigate human rights complaints in the vast abyss of victims of human rights abuses, past and present, in Guatemala. In

⁷⁴ Matanock has the most recent numbers relative to budget and staff that I have come across, while CICIG’s list of donor governments is the most recent numbers I have been able to uncover. Aila M. Matanock, “Governance Delegation Agreements: Shared Sovereignty as a Substitute for Limited Statehood,” *Governance: An International Journal of Policy, Administration, and Institutions* 27.4 (October 2014): 605. See also *Sixth Report*, CICIG, 4.

⁷⁵ Sieder. “Legal Globalization and Human Rights,” 82.

⁷⁶ Briscoe and Stappers, *Breaking the Wave*, 18-19.

⁷⁷ Schünemann, “*Looking The Monster In The Face*,” 10.

⁷⁸ Briscoe and Stappers, *Breaking the Wave*, 36.

doing so, they would be contributing CICIG's truth recovery efforts and also providing greater evidence for its prosecutorial mandate. The Guatemalan church-based REMHI report employed such a method of truth recovery, lauded by many analysts as more locally and culturally appropriate than that of the CEH report,⁷⁹ which was an internationally-influenced commission more akin to how CICIG is constituted and functions today.

Moreover, if CICIG spent the time to effectively train significant numbers of investigators, prosecutors, and police officers, it would exponentially enhance its investigative capacity in years subsequent, while ensuring greater domestic ownership over the process. One of the largest problems experienced by the Guatemalan national police force (PNC) after its establishment in 1997 was a rapid and "serious internal degradation" into corruption after being well-trained by Spanish law enforcement experts.⁸⁰ The PNC simply had no oversight or accountability structures in place.⁸¹ Valuable CICIG staff, currently being used mostly for investigations, could oversee a much larger number of CICIG-trained Guatemalan public employees in the security and justice sectors, while regularly scanning for irregularities, corruption, and malpractice. Essentially, by spending more resources to build up Guatemalan civil society while simultaneously training more justice and security officials, CICIG could initiate a "ratchet effect" of a mutually securing feedback loop between civil society and Guatemala's justice and security sector. Civil society, especially through the spotlight and legitimacy bestowed upon it by both CICIG and concurrent increase in international civil society and governmental links, would better be able to hold Guatemala's public institutions to account. Justice and security ministries and institutions in the Guatemalan government would feel more compelled provide greater security and justice for Guatemalan citizens due to this civil society pressure. Buttressed heavily by an increase in international connectedness, Guatemalan civil society has been successful securing greater domestic prosecutions in recent years,⁸² while also successfully coordinating the

⁷⁹ Isaacs, "Truth and the Challenge of Reconciliation in Guatemala," 135.

⁸⁰ "PNC" is an abbreviation for Policia Nacional Civil, or National Civilian Police.

⁸¹ Briscoe and Stappers, *Breaking the Wave*, 13, 29.

⁸² Kate Doyle, "Justice in Guatemala," *NACLA Report on the Americas* 45.1 (Spring 2012): 39.

campaign to constitute CICIG in the first place.⁸³ It is also regularly the point of first contact and communication with many disenfranchised victims in the country. Kathryn Sikkink's well-respected argument that international civil society has the potential to compel normative compliance behind global justice norms appears to hold true in Guatemala's case.⁸⁴ CICIG, or a similarly constituted institution in the region in the future would be wise to make a concerted effort at capacity building amongst both state and civil society forces, prior to (further) embarking on a heavy program of investigation and prosecution.

3.4b Acknowledgment

Relative to its effects on *acknowledgment* within Guatemala's seemingly never-ending transitional justice process, CICIG has succeeded in three key areas: First of all, it has been able to affect a low level acknowledgment for virtually every Guatemalan citizen which has been victimized through human rights abuses and subsequent impunity. It has done this by focusing on "a number of paradigmatic judicial cases, which have been intended to expose the methods and concealed structures of criminal activity across the country."⁸⁵ I previously mentioned that CICIG's inability to recover *truth* in the vast majority of human rights cases was a weakness. But relative to *acknowledgment*, this strategy of pursuing "emblematic cases" has uncovered broad patterns of state malfeasance and citizen mistreatment which serves as an implicit "public acknowledgment of what happened, and its utter wrongfulness."⁸⁶ Even though a full accounting of the facts is being overlooked, a broad *acknowledgment* of familiar patterns of state wrongdoing provides some consolation and the opportunity for closure. Secondly, through the recognition of victims and the publishing of names in the process, even though full *retribution* may not be affected, the shame bestowed upon perpetrators through such a process utilizes the same logic by which truth commissions attempt to re-

⁸³ Atwood, *Advocates Against Impunity*, 4.

⁸⁴ Sikkink, *The Justice Cascade*, 97.

⁸⁵ Briscoe and Stappers, *Breaking the Wave*, 15.

⁸⁶ Minow, *Between Vengeance and Forgiveness*, 123.

bestow dignity upon victims,⁸⁷ and has been viewed as a successful acknowledgment in a variety of settings. It helps to re-establish a shared moral understanding by recognizing that a moral norm was previously transgressed.⁸⁸ Finally, through its investigative and prosecutorial actions, CICIG has begun to develop a critical consciousness based on *truth*: Yes, the state has been acting illegally. But such a consciousness also extends to *acknowledgment*: No, such behaviour is not acceptable. The fact that Guatemalans are recently taking to the streets in massive demonstrations for “the first time in decades” is a testament to a developing unhappiness over what has ostensibly been a commonplace occurrence in the country throughout its history.⁸⁹

For CICIG’s successes relative to *acknowledgment*, however, it has also experienced some unforeseen drawbacks: First, some acknowledgment of state wrongdoing can serve to exacerbate existing social tensions, especially in highly victimized, stratified indigenous communities. Gearoid Miller writes that international efforts to administer hybrid institutions “are unlikely to produce predictable local experiences, but may have unpredictable and potentially even conflict-promoting effects.”⁹⁰ Given that CICIG has pursued a retribution-heavy strategy, and that “all legal systems fail to meet many of the expectations citizens have of them,”⁹¹ it is hardly surprising to see “some communities turning to extra-institutional vigilantism including cases of extrajudicial executions.”⁹² More acknowledgment is being effected at the state level, but little is being done to effect justice among localized populations. Secondly, and highly related to the first point, CICIG’s lack of a communication and outreach strategy in its early going harmed its capacity to earn the trust of Guatemalans.⁹³ Indeed, victims and their families and/or the lower socioeconomic stratum in Guatemala view CICIG

⁸⁷ Audrey R. Chapman, “Truth Finding in the Transitional Justice Process,” in *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*, 91-114, eds. Hugo Van Der Merwe, Victoria Baxter, and Audrey Chapman, (Washington: United States Institute of Peace, 2009): 93-94

⁸⁸ Pablo de Greiff, “The Role of Apologies in National Reconciliation Processes: On Making Trustworthy Institutions Trusted,” in *The Age of Apology: Facing Up to the Past*, 120-136, eds. Mark Gibney *et al.*, (Philadelphia: University of Pennsylvania Press, 2008): 131.

⁸⁹ Jo Tuckman, “Guatemala on Brink of Crisis After Vice-President Falls to Corruption Scandal,” *The Guardian*, May 15, 2015.

⁹⁰ Millar, “Disaggregating Hybridity,” 506.

⁹¹ Nickson and Braithwaite, “Deeper, Broader, Longer Transitional Justice,” 445.

⁹² Schünemann, “Looking The Monster In The Face,” 13.

⁹³ *La Comisión Internacional Contra la Impunidad en Guatemala: Un Estudio de Investigación de WOLA sobre la Experiencia de la CICIG*, Informe, Washington Office on Latin America (WOLA), (March 2015): 31.

with less confidence and trust than most of their compatriots.⁹⁴ This revelation brings into question how much effect CICIG-affected acknowledgment actually has on the average indigenous and/or poor *ladino* Guatemalans who have been disproportionately victimized, both past and present, by state intransigence and its related ambivalence. Finally, CICIG's predominantly "international" means of operating and organizing establishes an air of elitism and distance between it the majority of human rights victims. The difference between the Mayan outlook on justice versus that of CICIG is particularly poignant: "What benefit would a prosecution bring for [survivors]? If the intellectual perpetrators [of human rights crimes] are in prison they cannot help victims,"⁹⁵ one Mayan genocide survivor asked. It is unclear that CICIG-instigated *acknowledgment* is even recognized or understood by certain victims of atrocity.

I think it prudent to suggest that CICIG, or at least the tangible outcomes related to its activities, has more effectively cultivated *acknowledgment* outcomes than it has *truth recovery*. This may be slightly confusing, as the theoretical backdrop of CICIG's role relative to transitional justice that I have conceived is predicated on the notion that *truth* precedes *acknowledgment*, which then precedes *retribution*. What I am suggesting here is that CICIG has achieved significant truth recovery successes, but that reform is required to better institutionalize those successes. Without any institutional reform to cement such successes, once CICIG's mandate eventually runs out, individuals interested in undermining the rule of law in Guatemala will be able to exploit the existing justice and security sectors in similar ways that they have been to date. Perhaps most importantly, a greater reach into the periphery of Guatemalan society is a fundamental necessity for acknowledgment to affect those most persecuted. One must remember, of course, that Guatemala is highly stratified along lines of both race and class. On the one hand, CICIG's previously described "shallow reach" has affected acknowledgment in the country, resonating significantly with the country's significant, educated urban *ladino* population. The massive anti-corruption protests taking place through April and May of 2015 were led by this frustrated middle class,⁹⁶ even though there is little history of mass

⁹⁴ Azpuru, "Political Culture of Democracy in Guatemala, 2010," 164.

⁹⁵ Viaene, "The Internal Logic of the Cosmos as 'Justice' and 'Reconciliation,'" 296.

⁹⁶ Tuckman, "Guatemala on the Brink of Crisis After Vice-President Falls to Corruption Scandal," May 15, 2015.

demonstrations in Guatemala, let alone over government corruption which is generally taken as a given.⁹⁷ But, of course, that same *acknowledgment* and *responsiveness* that seems to have gripped Guatemala's *Ladino* middle class is still largely absent among the country's "fifth column": its mostly rural Mayan-Indigenous population. For the majority of Guatemala's Mayan-Indigenous population, generations of dispossession, "acts of genocide," extreme poverty, and state-sponsored violence have left them largely uninterested in politics,⁹⁸ while rendering the state justice system "irrelevant" to them. In sum, while CICIG has effectively touched off a nerve in the collective psyche of Guatemala's middle class through its *transitional justice*-related *acknowledgment* function, it lacks *responsiveness* and relevance to the demographic which arguably needs it and stands to benefit from it the most.

The "takeaway" I have argued in favour of, following my analysis of CICIG's function as a *truth recovery* mechanism, is that there is a need to enhance civil society's own truth recovery capacities while also assisting it to develop greater international linkages. I have additionally argued that CICIG should—either moving forward in Guatemala, or in other similar situations, should it be used as a model elsewhere—shift its organizational mandate to be much more extensively focused on training and subsequent oversight of Guatemalan public officials and institutions.

Moving forward to how such activities might help *truth recovery* affect *acknowledgment*, the idea is to basically appropriate *civil society as an interlocutor*. The highly "legalist" activities being coordinated by CICIG and its constituent parts of the Guatemalan state and United Nations are representative of a political culture of Westphalian diplomacy. To the many Mayan-Indigenous communities and individuals in Guatemala, which as of 1996 only had 69 per cent enrolment in even basic primary education,⁹⁹ the norms and customs inherent in such a worldview are foreign and located half a world away.¹⁰⁰

⁹⁷ Azpuru's polling several years back confirms that an exceedingly large majority of Guatemalans have an extremely low amount of trust in their government. For a more general discussion on this issue, see Azpuru. "Political Culture of Democracy in Guatemala, 2010."

⁹⁸ *Ibid.*, 168-169.

⁹⁹ Caumartin and Sanchez-Ancochea, "Explaining a Contradictory Record," 170.

¹⁰⁰ Briscoe and Rodríguez Pellecer, *A State Under Siege*, 38.

Civil society has a potentially vital role to play: Indigenous-Mayans generally do not trust the state, and a CICIG staff, despite their best intentions, are still largely unfamiliar and untrusted. Indeed, Anita Isaacs notes that local NGOs and civil society actors with culturally sensitive and patient approaches to interacting with Mayan-Indigenous populations “stand in stark contrast to the environment truth commissions provide,” referring to the impersonal touches of investigators from the CEH.¹⁰¹ Connecting Mayan-Indigenous communities to the justice processes being undertaken by CICIG and the Guatemalan state is a vital transitional justice process, given Guatemala’s history. Civil society can play a role in introducing Mayan-Indigenous communities and individuals to measures of both broad truth recovery of state and public official malfeasance. More importantly, civil society can help to explain or translate the process of acknowledgment that CICIG is affecting within the state in the hopes of “[restoring] social harmony” built on the confirmation of wrongdoing.¹⁰² The importance of CICIG building up institutional and individual capacities within the state, relative to truth and acknowledgment then, is to initiate a productive relationship between the state and Indigenous and/or *campesino* communities based on the provision of “justice and public safety in an efficient and equitable way,”¹⁰³ as a follow-up to the truth and acknowledgment functions which civil society will have then assisted CICIG perform.

3.4c Retribution

Relative to the transitional justice value of CICIG’s retributive functions, there are three particularly salient ones: First, CICIG’s prosecutions of emblematic cases have been met with significant successes. The commission was integral in rendering Guatemalan indictment of former President Efraín Ríos Montt as “the first national indictment for the crime of genocide.”¹⁰⁴ In its various successful retributive actions like prosecutions and purges, CICIG’s actions have simultaneously vindicated the suffering of victims at the hand of the state, deterred would-be perpetrators of illegal behaviour in the immediate future, while establishing prosecutorial norms and expectations for the Guatemalan

¹⁰¹ Isaacs, “Truth and the Challenge of Reconciliation in Guatemala,” 134.

¹⁰² Viaene, “The Internal Logic of the Cosmos as ‘Justice’ and ‘Reconciliation,’” 293.

¹⁰³ Stein, “Citizen and Government Security Issues in Latin America,” 68.

¹⁰⁴ Christina M. Fetterhoff, “El Testimonio Ixil Pesa Mas: Reflections on the Guatemalan Genocide Trial One Year Later,” *Human Rights Brief* 21.2 (2014): 24.

public. Secondly, successful retributive actions have offered a sense of finality and closure to victims directly implicated by such actions. As discussed above, CICIG has been heavily limited in the depth of its investigations. The three functions of uncovering the truth of wrongdoings, even through emblematic cases representative of broader patterns, in addition to the acknowledgment that such action was indeed wrong, and finally some form of retribution are symbolically important: They allow for a broader understanding of justice which appeals to those seeking retributive measures,¹⁰⁵ and others seeking restorative outcomes.¹⁰⁶ In short, they create the conditions necessary for “reconciliation as coexistence,”¹⁰⁷ and potentially a modicum of trust based on an “expectation of a shared normative commitment” moving forward.¹⁰⁸

One final but major success for CICIG’s retributive functions is that the requisite coordination behind investigation and retributive actions that CICIG pursues serves a state-building as well as community-enhancing function. On the one hand, CICIG has helped to build up the capacity of the state by eliminating one of the main obstacles to effective justice and security outcomes: lack of information-sharing.¹⁰⁹ On the other hand, CICIG has offered and subsequently nurtured a kernel of hope amongst Guatemalans that their country’s long-standing problems of insecurity and impunity are being downgraded: The country’s homicide prosecution rate rose from five percent to 30 percent in three short years under CICIG’s tutelage and a highly talented Attorney General, in Claudia Paz y Paz.¹¹⁰ As the April and May 2015 protests against government corruption suggest, such successes in justice outcomes are emboldening ordinary Guatemalans to demand accountability where such an impulse did not previously exist.

¹⁰⁵ This quest for retribution most commonly takes place where police presence and judicial reach are lacking in some of the more rural areas of Guatemala, often resulting in an increase in “vigilante justice.” See Donovan, “The International Commission Against Impunity in Guatemala,” 815.

¹⁰⁶ Arriaza and Roht-Arriaza make the argument that the “Mayan belief system stresses the goal of community reintegration, not punishment, for those who have committed a crime.” See Arriaza and Roht-Arriaza, “Social Reconstruction as a Local Process,” 169

¹⁰⁷ De Greiff, “The Role of Apologies in National Reconciliation Processes,” 124.

¹⁰⁸ *Ibid.*, 125.

¹⁰⁹ Briscoe and Stappers, *Breaking the Wave*, 40.

¹¹⁰ Claire O’Neill McCleskey, “Homicides Fall for Third Consecutive Year in Guatemala,” *InSight Crime: Organized Crime in the Americas*, January 3, 2013, accessed May 25, 2015; available from <http://www.insightcrime.org/news-briefs/homicides-fall-third-consecutive-year-guatemala>. To provide a frame of reference, 70-80% of homicides are prosecuted in Canada. See Gary Mason, “A Nation on the Brink,” *The Globe and Mail*, January 5, 2008.

CICIG's attempts to effect retributive measures have faced some very significant drawbacks—likely the most significant amongst the transitional justice functions that it engenders. First, Perez Molina's refusal to renew the wildly successful former Attorney General Claudia Paz y Paz in addition to his prior insistence on letting CICIG's mandate lapse without renewal suggests that, "as vital as the prosecutions and reforms of recent years have been, they remain fragile and reversible."¹¹¹ Secondly, even with all of Guatemala's justice and security gains with CICIG's help, organized crime was said to be firmly in control of seven of Guatemala's twenty-two provinces, as of 2010.¹¹² Indeed, where Amnesty International once referred to Guatemala as a "corporate mafia state," it runs a legitimate risk of becoming a state under the control of a transnational corporate drug mafia,¹¹³ which is able to traverse borders in Central America with relative freedom.¹¹⁴ Without a more comprehensive and coordinated cross-border response to the cocaine drug trade from the Andes to North America, CICIG's retribution seeking activities will remain largely unsustainable with limited reach inside the state.

Similar to truth recovery, CICIG's successes relative to *retribution* show few signs of being self-sustaining over the long-term. In *truth recovery*, this is largely because the capacities and institutions are underdeveloped. That is a partial reason for its lack of sustainability in *retributive* function as well, but the much more significant issue confounding CICIG's capacity for *retribution* over the long-term is transnational drug crime's relentlessness and unpredictability. Also, as I discussed earlier in this chapter while analyzing CICIG's strengths and weaknesses relative to its mandate, CICIG has failed to effectively track and understand criminal networks—as well as the flow of both drugs and money within such networks—outside of their ties to corrupt officials within Guatemala's government institutions.¹¹⁵ While transnational organized crime networks have a significant capacity to wield influence inside of Guatemala, neither CICIG nor Guatemalan authorities adequately understand how these networks function, nor do they have a means of downgrading them without transnational coordination. Because illicit

¹¹¹ *Unfinished Business*, Open Society Foundations, 8.

¹¹² Panner and Beltran, "Battling Organized Crime in Guatemala," 42.

¹¹³ Deibert, "Guatemala's Death Rattle," 175.

¹¹⁴ Lovell details how Guatemala's leading daily newspaper, *Prensa Libre*, has claimed that Guatemala is "unable to guard even minimally, by land, sea, or air, our nation's borders." See, W. George Lovell, "Postcard from Guatemala," *Queen's Quarterly* 121.4 (Winter 2014): 569.

¹¹⁵ Briscoe and Stappers, *Breaking the Wave*, 27.

drug networks have operations in various states and are able to move people, drugs, and money across borders with comparative ease, no single state will be able to stifle their activities and influence altogether. In order to downgrade or eliminate transnational drug networks and their influence in Guatemala or anywhere else in Latin America, a transnational, multi-country effort augmented by comprehensive intelligence and information sharing will undoubtedly be required.

As I have argued thus far, *truth* and *acknowledgment* are both generally pre- or co-requisites for *retribution* to be effected. Additionally, *truth* and *acknowledgment* are integral to establishing and maintaining *procedural justice*'s constituent agents of *responsiveness* and *temporality*. The key cog in this entire process is a robust civil society. If civil society has the capacity to uncover *truth*, connect *truth* with *acknowledgment*, and then forward the process of justice by pushing for *retributive* or *reparative* actions, then it can also apply the necessary focus and carry the necessary normative clout to assuage the Guatemalan state into normative and legal compliance. Indeed, in Guatemala, a stronger, more internationally connected civil society means: First, a greater pool of truth, recognizing the "importance of speaking truth to power";¹¹⁶ secondly, a more internally unified society in pursuit of accountability;¹¹⁷ and finally, an insistence on the application of global justice norms, which almost universally include some form of *retribution* or *reparation*.

Once transnational drug crime is entered into the proverbial fracas, however, civil society's capacity to capture a greater provision of *truth*, internal demographic cohesion, and *retributive* action all becomes a moot point. While the Guatemalan state must, on some level, be accountable to global justice and political norms,¹¹⁸ transnational drug

¹¹⁶ As Isaacs argues, a higher quantity of truthful testimony results in an invigorated population; the jumping off point of beginning to rebuild shattered lives; and the inability for the state or anybody else to deny the truth—effectively paving the way towards acknowledgment. See Isaacs, "At War with the Past?" 261.

¹¹⁷ I urge the reader to remember that large numbers of middle class *ladinos* in Guatemala are pushing for greater accountability from the state of late. However, Guatemala's Indigenous population, making up for around 50% of the country's population, is largely jaded and disconnected from state politics. To that end, greater critical mass is generally associated with a greater capacity for pressuring the state. Schünemann argues in favour of international civil society activism within Guatemala because of its ability to strategize and organize behind critical mass and alliances capable of better pressuring the state. See, Schünemann, "Looking the Monster in the Face," 29.

¹¹⁸ Many analysts believe that it was predominantly international pressure, for example, that pushed the Guatemalan government to initiate a peace process in the early 1990s. See Shipp, Jr. *The Mano Dura*

crime is by its very composition immune to such norms. Its use of “theatrical violence” in Guatemala suggests that its leadership is actively flaunting its immunity to such norms.¹¹⁹ Meanwhile, the ease by which criminal operatives and narcotics navigate national borders in Central and South America, despite heavy American pressure and huge sums of funding for security initiatives in the region, is evidence of its ability to evolve and evade accountability altogether. In conclusion, while any given state is prone to either diplomatic and/or civil society pressures, sophisticated transnational criminal entities are not. Thus, as long as transnational crime networks have an array of polities from which to organize and operate, eliminating their existing influence and entrenchment in Guatemala will be exceedingly difficult through strictly domestic interventions such as CICIG. A well-coordinated regional strategy is vital in order to combat the disorder, crime, and levels and modes of violence more severe than anywhere else in the world.¹²⁰

3.5 Conclusion

CICIG’s mandate is primarily to investigate illicit groups; disband them through prosecutions; and to make policy recommendations to combat impunity and the regeneration of such groups. By the criteria of its own mandate, CICIG has seen some, but ultimately very limited, successes. It has experienced success at uncovering illicit links within the state apparatus but has been much less adept at uncovering and enabling the dismantling of illicit links beyond the purview of the state. Moreover, continued, ongoing impunity as well as a recent ‘backslide’ in justice outcomes under President Perez Molina both suggest that despite various successful prosecutions, a strategy of dismantling illicit networks through prosecution is largely unsustainable and limited in its efficacy to boot. Finally, relative to making policy recommendations, it is largely a moot point to evaluate the success of policy recommendations divorced from their outcomes.

Promise, 52.

To list another example, former Guatemalan Vice President Eduardo Stein has referenced “internal and international pressures” as being the most “formidable” impetus for CICIG’s initial constitution. Given how privy he was to the state decision-making apparatus, one would be hard pressed to find more compelling evidence of the power of global normative pressure on the Guatemalan state. See Stein, “Citizen and Government Security Issues in Latin America,” 68.

¹¹⁹ Briscoe and Stappers, *Breaking the Wave*, 21.

¹²⁰ Shifter, “Central America’s Security Predicament,” 51.

But outcomes related to policy recommendations are not a part of CICIG's mandate, thus this criteria is nearly impossible to judge on its own.

In essence, CICIG's mandate can be viewed as having been wildly ambitious and lacking in a requisite understanding of the illicit structures it was tasked with disbanding. A better understanding of transnational drug crime's strength and influence suggests to me that most hopes for reforming the state to be able to control impunity and corruption within its borders would be moot without a transnational address to such crime. Coupled with an analysis of transitional justice processes and outcomes in Guatemala affected by CICIG largely points in the same direction—transnational drug crime has the potential or even likelihood of undercutting any justice and security reforms that CICIG could hope to domestically affect.

For the three elements of *transitional justice* functions—*truth*, *acknowledgment*, and *retribution*—that I have argued CICIG effects, I have suggested a major takeaway for each so as to better augment CICIG's successes. For *truth*, I make the case that as of now, CICIG has failed to institute a means of self-sustain into the institutional and individual capacities of Guatemala's security and justice sectors. For *acknowledgment*, I argue that CICIG has probably been the most successful of all three *transitional justice* functions. That is, it has successfully cultivated and imbued a set of recognizable justice norms within the state which have subsequently been taken up by Guatemala's *ladino* middle classes. However CICIG needs to find a way of connecting that zeitgeist with Guatemala's significant Indigenous-Mayan populations in order to affect justice where it is most needed. Much of Guatemala's indigenous population has merely tuned politics out for reasons, perhaps partly due to lack of education, but also due to a litany of disenfranchising state actions directed against them over time. By working to improve civil society capacity, CICIG can cultivate greater resources for truth procurement, but can also further develop the critical mass necessary to domestically hold the Guatemalan state to account. After all, civil society generally functions as a "gatekeeper" between indigenous populations and the state apparatus,¹²¹ and can help to navigate and explain the actions of one to the other and *vice versa*. Finally, for *retribution*, a transnational or at

¹²¹ John L. Comaroff and Jean Comaroff, "Introduction," in *Civil Society and the Political Imagination in Africa: Critical Perspectives*, 1-43, eds. John L. Comaroff and Jean Comaroff, (Chicago: University of Chicago Press, 1999): 28.

least regional, coordinated effort is urgently required to combat destabilizing and unpredictable influences emanating from transnational, narcotics-based criminal networks. Guatemala faces the prospect of severe backslide in CICIG's hard-earned justice outcomes without some means of downgrading the capacity and influence of regional drug crime.

Guatemala, then, requires greater sustainability built into its justice and security sectors; greater *responsiveness* and connectivity between disenfranchised populations and the justice-seeking actions of CICIG; and a regional and/or international strategy to combat transnational organized crime. Ideally the latter requirement would precede the rest—CICIG works on a fixed mandate, and it will be hard-pressed to enable greater sustainability into Guatemala's justice and security sectors as long as transnational crime can so brazenly circumvent the state's influence. Thus, without a coordinated strategy against Latin American drug crime networks, CICIG's work faces a losing battle over the long term.

But Guatemala has shown an impressive array of improvements in its justice and security sectors over the past few years despite a concomitant “wave of organized crime and corruption that is quickly inundating Central America's latest nascent narco-state.”¹²² But by focusing on increasing the capacities and international connectedness of Guatemala's civil society, CICIG can improve its *truth recovery* and *acknowledgment* functions by increasing its pool of available testimony but also through connecting Guatemala's significant indigenous populations to the political arena: Greater numbers of voices lead to better justice outcomes due to the pressure they can exert on the state. CICIG ought to maintain a focus on changing the institutional culture, improved prosecution and impunity-reduction metrics, and building on and channeling the “state of effervescence [and readiness] for change” that large segments of Guatemalan citizenry have exhibited in April and May of 2015.¹²³ But the fact remains that some sort of substantial, coordinated international address to transnational drug crime in Latin America is probably the most important factor, over the long-term, in successfully

¹²² Steven S. Dudley, “How Mexico's Drug War is Killing Guatemala,” *Foreign Policy* 20 (July 2010): 2.

¹²³ Louisa Reynolds, “Guatemala: How a Corruption Scandal Forced the President's Hand,” *The Christian Science Monitor*, May 21, 2015, accessed May 26, 2015; available from <http://www.csmonitor.com/index.php/World/Americas/2015/0521/Guatemala-How-a-corruption-scandal-forced-the-president-s-hand-video>.

addressing CICIG's mandate of enhancing accountability and justice in Guatemala. That same address is, at once, the most important long-term factor in securing and enhancing greater outcomes relative to CICIG's transitional justice functions of truth; acknowledgment; and retribution as well.

4. CONCLUSION

The preceding pages have spanned a broad spectrum of analysis on topics ranging from institutions to theoretical constructs, both generally pertaining to Guatemala, CICIG, and *transitional justice*, writ-large. I have also discussed processes and outcomes related to those institutions and theories from the intrastate to regional and even global levels of analysis. To begin with, then, this concluding chapter summarizes the main arguments inherent in the roughly one hundred pages written to this point. However I would also like to leave the reader with some “takeaways,” so to speak. To that end, then, I will discuss the prospect of establishing a CICIG-like institution elsewhere in Latin America. Finally, I want to take the final portion of this conclusion to recommend some areas or strands of research which I think would serve as useful rejoinders to the research and discussion surrounding CICIG, *procedural justice*, and *transitional justice* in Latin America, but perhaps useful in other areas of the globe which I am less familiar with, academically-speaking.

4.1 Summary of Main Arguments

Chapter One focuses predominantly on the importance of considering *procedural justice* within *transitional justice* processes. The main argument I have promulgated is that *procedural justice* ought to be conceived of as the signaling of a new future and breaking with the legacy of a profoundly unfair past. By establishing “fair procedures,” as defined

by Tom R. Tyler,¹ a post-conflict society marked by violence and grave human rights abuses can then, and I would argue only then, enter into what John Rawls described as a “cooperative venture for mutual advantage.”² Using examples specific to Guatemala, but also comparing and contrasting such examples against other transitional justice processes throughout the world, I make the case that the vehicles by which Tyler’s “fair procedures” can be realized are *temporality* and *responsiveness*. Put another way, *temporality*, a focus on timely justice processes and outcomes, and *responsiveness*, a focus on the needs and desires of victims, both signal a new future and *a break with the past*, allowing for individuals to be able to start to trust state institutions.

An additional, but secondary, purpose of the first chapter is to argue in favour of an increased recognition, definition, and, indeed, discussion of what *procedural justice* is and what it looks like in the context of *transitional justice*. Many analysts have argued for greater responsiveness and/or temporality in transitional justice processes without much consideration of existing arguments to those ends. Alternatively, other academics have argued for greater procedural justice without even an implicit recognition that they are, in fact, employing concepts and ideas highly related to procedural justice. By recognizing that many academics are touching on similar issues without necessarily engaging with one another, I hope that the field of transitional justice will take heed and recognition of such a state of affairs and look to be more inclusive, engaging, and constructive with one another and build upon prior work related to procedural justice.

Chapter Two seeks to locate CICIG within transitional justice from both *institutional* and *functional* perspectives. Relative to function, I argue that CICIG deepens and broadens prior *truth recovery* efforts. Building off of its *truth* function, CICIG serves as an *acknowledgment* that the Guatemalan state has failed to affect justice and is additionally unresponsive to its citizen-victims of injustice. And finally, CICIG’s *truth* and *acknowledgment* activities serve to augment and strengthen the state’s will and capacity for exacting *retribution* against injustices perpetrated, both during and subsequent to the country’s long civil war. After all, once the truth is revealed that the

¹ To remind the reader, Tyler’s four components of ‘fair procedures’ in his influential definition of procedural justice are: ‘opportunities for participation;’ ‘neutrality of the forum;’ ‘trustworthiness of the authorities;’ and ‘treatment with dignity and respect.’ See Tyler, “Social Justice,” 121.

² Rawls, *A Theory of Justice*, 84.

state or its deputies have acted illegally, and an acknowledgment of the state's actions as both legally and normatively wrong has been affected, it becomes much more difficult for the state to evade tangible action to rectify such issues. Especially given the historically preeminent legalistic and retributive vision of transitional justice, the result of such truth and acknowledgment induced by CICIG in Guatemala has prompted the hybrid institution and the state to enact some form of *retributive action* in many cases.³

Together, the three transitional justice functions of truth, acknowledgment, and retribution serve to allow CICIG to herald “justice as a better future” to Guatemalan society.⁴ At once one can see the close relation between *procedural justice* and *transitional justice* with such a revelation, remembering that “a history of unaddressed massive abuses is likely to be socially divisive, to generate mistrust between groups and in the institutions of the state, and to hamper or slow down the achievement of security and development goals.”⁵ Thus, a key transitional justice aim is to affect a different and better future for a society moving away from the conflict-ridden and unjust circumstances that preceded it. I argue that *trust* and *acknowledgment* work together to situate CICIG as something of a “follow-up” truth commission which posits a measure of temporality into Guatemala's long-standing,⁶ or perhaps more appropriately, long-stalled, transitional justice process. Moreover, *retributive* action resulting from such *trust* and *acknowledgment* functions introduces a measure of *responsiveness* against long-standing victimization and state intransigence.

The second part of Chapter Two looks at CICIG from an *institutional* standpoint. I deemed it to be important to establish some comparable, regionally relevant institution by which to compare CICIG. On the one hand, I argue that CICIG acts as a *de facto* “follow-up” truth commission to Guatemala's two truth commissions of the late 1990s. More importantly, CICIG is often referred to in exceptional terms, which is at once both empirically incorrect and also unhelpful.⁷ It is unhelpful because it mystifies and renders

³ Bueno and Diaz Rojas, “Which Approach to Justice in Colombia Under the Era of the ICC,” 217.

⁴ Shearing and Froestad, “Beyond Restorative Justice—Zwelethemba,” 17.

⁵ “What is Transitional Justice,” ICTJ: International Center for Transitional Justice, accessed June 19, 2015; available from <https://www.ictj.org/about/transitional-justice>.

⁶ The potential for measures of *temporality* are introduced. Obviously such a claim is more of a theoretical argument than an absolute certainty.

⁷ One of but many analysts to do so, Mike Allison describes CICIG as a “unique hybrid domestic-international commission.” See Allison, “How to Reduce Crime in the World's Most Violent Country.”

the institution incomparable, a less than ideal prospect for analysts looking to gain insight from its composition, function, and/or results. Moreover, such a reference is factually incorrect and requires an address—for example, Guatemala’s CICIG shares a significant number of similarities with El Salvador’s *Commission for Truth in El Salvador* (CTES): Both were born of bilateral, negotiated talks between the UN and a member state; both have exhibited innovative actions to circumvent constitutional and *realpolitik* constraints; and both have tackled the issue of impunity by directly agitating for institutional reform. Of course, I detail several differences as well, such as the broader mandate which CICIG has been endowed with, as well as quite divergent time frames between the two cases. CTES, of course, was established immediately following the conclusion of the Salvadoran civil war; meanwhile CICIG was constituted over ten years after the conclusion of Guatemala’s civil war. But the point of such a comparison is, more than anything, to illustrate how CICIG is not especially unique or unprecedented. By situating CICIG amongst other similar institutions, I aim to uncloak the specter of *uniqueness* that so many analysts have been quick to apply to the institution. In doing so, I hope to encourage greater insight into the applicability of similar institutions in other future settings. Moreover, such a comparison allows analysts to better understand, map, and conceptualize CICIG in a more concrete manner, as a “follow-up” truth commission.

Chapter Three, similar to Chapter Two, is divided into two parts. The overall aim of the chapter is to evaluate CICIG’s successes and its drawbacks. But CICIG must be analyzed according to two criteria: First, it was a negotiated institution conceived by the UN and Guatemalan state, and *it ought to be evaluated against the mandate by which it was officially constituted*. But secondly, given that CICIG holds the potential to affect the three main transitional justice functions of truth recovery, acknowledgment, and retribution, *its efficacy should also be evaluated in relation to those functions* as well. CICIG’s mandate was far too ambitiously constituted for the organization to be reasonably expected to be able to fulfill. Relative to its mandate, then, CICIG has experienced a mixed bag of successes and drawbacks. It has been relatively successful at investigating, uncovering, and purging the state apparatus of corruption. That having been said, its strategy of prosecution as a means of disbanding illicit elements infiltrating

the state in Guatemala has been limited in efficacy and is largely unsustainable over the long-term, due to weak institutionalization and capacity development.

Relative to CICIG's truth, acknowledgment, and retribution functions, three main takeaways can be observed, respectively: First, *Guatemala requires greater sustainability built into its justice and security sectors*. Secondly, *CICIG and/or the Guatemalan justice sector need to better connect their justice-seeking actions with victims of injustice* in order to see justice both recognized and acknowledged as a means of redeveloping trust and cooperation within Guatemalan society. And finally, *a transnational strategy (or strategies) aimed at both the supply and demand of Latin American-procured and trafficked drugs is required for any tangible, long-term success at reducing violence, human rights violations, and blockages to transitional justice successes* over the long term. By addressing each of these issues that CICIG has encountered, the institution would be better able to effect procedural justice, especially through enhanced responsiveness to the victims of injustice. Also, one must also remember that temporality and responsiveness usually go hand in hand. In this instance, if CICIG fails to affect sustainable transitional justice outcomes now, then CICIG as a "follow-up" truth commission to Guatemala's two truth commissions from the late 1990s will also likely fail to affect *closure*. Thus, a failure to achieve *responsiveness* theoretically has directly negative repercussions concerning the institution's capacity to affect *temporality*. As a result, the vehicles, as it were, used to achieve procedural justice would be effectively sunk. To remind the reader of my theoretical supposition, a lack of procedural justice, then, negatively impacts the potential for positive transitional justice outcomes.

4.2 Establishing CICIG-Like Institutions in Colombia or Elsewhere?

Transnational criminal networks with an interest in a weak rule of law, judicial impunity, and infiltration of state institutions, have been exceptionally successful at gaining a foothold in Latin America. Despite 25 years of coordinated, transnational action by states in the region to combat transnational crime, "[that] still has not stopped security from

deteriorating in most of the countries in the hemisphere.”⁸ It is for this very reason that I decided against analyzing the utility of a CICIG-like institution in Colombia, or any other post-conflict state in Latin America currently dealing with a transitional justice process.⁹

Transnational crime in Latin America remains “semi-autonomous,” “amorphous,” and “focused on controlling territory [while wielding] superior training and tactics.”¹⁰ For these reasons, among others, such as a lack of a strategy aimed at reducing demand from North American and European illicit drug markets, any Latin America-based strategy aimed at improving the rule of law and enhancing justice outcomes will be met with fierce resistance and constant evolution from such illicit networks. For example, former Mexican President Felipe Calderon’s pet project, the *Merida Initiative*,¹¹ has resulted in cartels stepping up their efforts—and successes—in penetrating state institutions so as to wield favour and influence through corruption. The same transnational cartels have also expanded their “usage of heavy armament and military tactics” directed against the state and its institutions.¹² In any event, with criminal networks constantly evolving to evade state and international sanction, and a surplus of already institutionally weak states in the region, transnational crime has a very favourable atmosphere by which to further incubate, even if it means changing its locales so as to evade law enforcement.¹³

Even if Guatemala or any other state becomes capable of securing stronger institutional capacities and cultures relative to security and justice, such successes will likely just foist the problem of organized crime-related violence, corruption, and impunity onto another state (or number of states) in the region. To offer but one example of the potential for this hypothetical situation, joint American-Colombian efforts against

⁸ Gino Costa, “Citizen Security and Transnational Organized Crime in the Americas: Current Situation and Challenges in the Inter-American Arena,” *SUR – International Journal on Human Rights* 9.16 (June 2012): 145.

⁹ Colombia itself should not yet be considered a “post-conflict” state, but it has certainly downgraded its civil conflict over the past twenty years to a very significant degree.

¹⁰ Steven Dudley, *Transnational Crime in Mexico and Central America: Its Evolution and Role in International Migration*, The Regional Migration Study Group: Migration Policy Institute and Woodrow Wilson International Center for Scholars (November 2012): 17.

¹¹ The Merida initiative is a joint Mexican-American strategy aimed at downgrading the capacity for cartels to flaunt insecurity, human rights, and the rule of law in Mexico, but residually throughout the region as well. “Merida Initiative,” U.S. Department of State, accessed June 19, 2015, <http://www.state.gov/j/inl/merida/>.

¹² Tomás Ayuso, “Latin America’s Response to Narco-Fueled Transnational Crime,” *Washington Report on the Hemisphere* 29.1 (2009): 3.

¹³ Briscoe and Stappers, *Breaking the Wave*, 4.

Colombian drug cartels in the 1980s and 1990s did not lead to a reduction in criminal activity, reduction in drug flows, or a reduction in violence and corruption. Instead, the violence, corruption, and drug flows simply adjusted, evolved, and migrated. When the United States and Colombia effectively cut maritime trafficking routes to North America from Colombia, Colombian cartels responded by creating an alliance with Mexican ones whereby the Colombians have relinquished distribution to the Mexicans.¹⁴ Despite extensive amounts of domestic and international funding spent on law enforcement in Colombia and relative short term successes at securing the rule of law, ex-paramilitaries and ex-guerilla combatants in Colombia are now rapidly becoming more deeply involved in the transnational drug trade, often even working in conjunction with one another, and transforming both the Colombian internal armed conflict and the prospects for its resolution.¹⁵ Worth noting is that once more, similar to Guatemala's recent socio-political trajectory, an observable link exists between combatants responsible for war-time human rights abuses and current day criminal activity. As I argued in the previous chapter, this link between civil war combatants and contemporary criminal impunity has direct ramifications for transitional justice processes.

The main reasons, then, why I have decided to hold off on recommending a CICIG-like institution elsewhere in Latin America as a means of securing more comprehensive transitional justice outcomes are as follows: First, without a comprehensive regional-transnational address to the supply-side of drugs and other illicit commodities, establishing an institution like CICIG in another country will ultimately be inadequate over the long-term for securing a "break from the past."¹⁶ It may force transnational criminal elements to innovate and shift their *modus operandi*, but it would not eliminate the market for illicit goods nor prevent criminal elements from undermining the rule of law either in different ways or in other nearby jurisdictions. Moreover, the international donor and development communities are hesitant to make long-term

¹⁴ Ayuso, "Latin America's Response to Narco-Fueled Transnational Crime," 3.

¹⁵ Bueno and Diaz Rozas, "Which Approach to Justice in Colombia Under the Era of the ICC," 215.

¹⁶ Indeed, Gino Costa has noted that there have been a significant number of useful inter-American responses to transnational crime over the past 25 years but that "this important development must be consolidated because it still has not stopped security from deteriorating in most of the countries in the hemisphere. See Costa, "Citizen Security and Transnational Organized Crime in the Americas," 145.

commitments,¹⁷ while also determining much of their aid and development spending according to the state of their economy rather than the needs of donor recipients.¹⁸ In other words, there are limited resources from the international community—and those limited resources would be best spent on “[developing] comprehensive, long-term policies that can reverse this negative trend [of increasing transnational organized crime].”¹⁹

A supply-side address to drug trafficking is highly unlikely to be successful without a demand-side approach to the problem as well, which falls into the realm of North American and European policy domains. One means of regulating the drug trade, downgrading its propensity for violence, and reducing harm amongst drug users has been gaining hold in some policy circles: legalizing and/or decriminalizing narcotics.²⁰ Yet, noting that there is no “miracle cure” to the legal and social ills of illicit drugs and their trade,²¹ and the failure or limited success of supply-side addresses,²² Latin American states are beginning to place greater pressure on Europe and North America. Specifically, the United States is being increasingly called upon to reduce the demand for drugs in its respective jurisdictions.²³ While decriminalization or legalization may be one means by which to address to the demand-side of the drug industry, public awareness campaigns explaining the societal detriment that transnational criminal networks responsible for the cultivation, transport, and marketing of drugs in Latin America may also be necessary.

¹⁷ Schünemann, “*Looking The Monster In The Face*,” 16.

¹⁸ Briscoe and Stappers, *Breaking the Wave*, 18-19.

¹⁹ Costa, “Citizen Security and Transnational Organized Crime in the Americas,” 145.

²⁰ For example, the government of Portugal has legalized drug use and has experienced lower violent crime rates, lower addictions rates, and lower health care costs, to name but several benefits. See Wiebke Hollersen, “‘This is Working’: Portugal, 12 Years After Decriminalizing Drugs,” *Spiegel Online*, March 27, 2013, accessed May 25, 2015, <http://www.spiegel.de/international/europe/evaluating-drug-decriminalization-in-portugal-12-years-later-a-891060-2.html>.

Former Colombian President, Cesar Gaviria, has argued that “certain drugs be legalized and others be provided to addicts by the state so as to allow the government to better control and regulate their use.” See, Talor Gruenwald, “Ex-Colombian President Proposes State Provide Drugs to Addicts,” *Colombia Reports*, June 5, 2015, accessed June 10, 2015, <http://colombiareports.com/ex-colombian-president-proposes-state-provides-drugs-to-addicts>.

²¹ Hollersen, “‘This is Working’: Portugal, 12 Years After Decriminalizing Drugs.”

²² Eradication of coca plants is a central tenet of the US government’s “Plan Colombia” and its general aim to reduce and control drug trafficking in the Americas. Eradication, as a policy, has been an abject failure—in 2014 alone, Colombia experienced a 40% increase in coca planting. See, “The Futility of Coca Eradication,” *The Economist*, May 16, 2015, accessed May 25, 2015 <http://www.economist.com/news/americas/21651298-while-cocaine-remains-illegal-latin-america-has-find-better-ways-fight-mafias-it>.

²³ Ayuso, “Latin America’s Response to Narco-Fueled Transnational Crime,” 5.

Given the connection between drug use and public health, Randolph and Viswanath have instructively noted while researching public awareness campaigns relative to public health that public awareness campaigns are “*uniformly* considered to be powerful tools capable of promoting healthy social change.”²⁴ Regardless of the options of supply- and demand-side approaches pursued, a transnational address to transnational organized crime is absolutely vital in securing greater security and justice outcomes in Guatemala, but elsewhere throughout the entire region as well.

4.3 Research Directions Moving Forward

To conclude this thesis, I would like to highlight the areas of my research which I believe deserve greater attention moving forward from civil society investigation, especially as it pertains to academia. To those ends, I will chronologically outline some of the key themes that have consistently left me perplexed and with the desire to further investigate. In the interests of keeping this thesis focused and within a reasonable length and purview, I have refrained from doing so myself to this point. So, to begin with, *procedural justice* is really just in its infancy relative to *transitional justice*. A greater degree of theoretical discussion of how and where it fits into the field would be a useful means of consolidating and building off of the extant research within the field,²⁵ but also in drawing greater influence from outside of specifically transitional justice-focused scholars. I have defined my own vision of how procedural justice fits into the lexicon, but such ideas merit much more frequent and coordinated discussion and debate.

Another useful area of research would be to build upon my rudimentary classification of CICIG as a hybrid, bilaterally negotiated truth commission similar to CTES. By building off of the initial classification I have established, conducting deeper

²⁴ Whitney Randolph and K. Viswanath, “Lessons Learned from Public Health Mass Media Campaigns: Marketing Health in a Crowded Media World,” *Annual Review of Public Health* 25 (2004): 433; emphasis added.

²⁵ Several academics have been working to include *procedural justice* within the *transitional justice* lexicon. Most influential and comprehensive, in my opinion, is that of Nickson and Braithwaite, but Hancock and Pearson d’Estrée as well as Kieran McEvoy have each contributed useful publications to that end too. See, Ray Nickson and John Braithwaite, “Deeper, Broader, Longer Transitional Justice;” Hancock and Pearson d’Estrée, “Culture and Procedural Justice in Transitioning Societies;” and McEvoy, “Beyond Legalism.”

institutional and causal investigations behind these and other similar institutions, the field's understanding of the roles that hybrid and/or "follow up" truth commissions can and do undertake would be a valuable addition to existing truth commission literature. Most importantly, a greater investigation into which conditions are most precipitous for either CICIG's and/or CTES' success and/or failure would be useful. Through such an investigation, analysts could better determine the success of CICIG- or CTES-like hybrid truth commissions moving forward with more veracity. Alternatively, perhaps hybrid truth commissions such as CICIG or CTES are less preferable to another institutional arrangement. Such a proposition is beyond the purview of this thesis, for the most part, outside of my recognition and explanation that a transnational address to transnational crime ought to precede any CICIG-like institutional response to transitional justice issues that plague the region today. Despite my classification of CICIG as a "follow-up," hybrid truth commission of sorts, I have only opened up the discussion, as opposed to having definitively established much beyond that.

Perhaps of most interest to me, an enigma that constantly left me wanting for the dearth in the literature, but also because of how useful it would have been to my research program, is the nature of how hybrid institutions like CICIG and civil society both interact and have the institutional capacity to potentially interact in different ways yet to be observed. Hybrid institutions are only now starting to make a dent, so to speak, in post-conflict and transitional justice literature. There are, however, various *constructivist* theories of civil society and state, with authors including Naomi Roht-Arriaza and especially Kathryn Sikkink among the most active in the pursuit of such research with an eye towards Latin America and transitional justice.²⁶ Analysts can, and I certainly have, garnered much insight into how civil society, states, the international community, and hybrid institutions all work together to positively affect transitional justice outcomes based on the work of scholars like Roht-Arriaza and Sikkink. I have attempted to provide certain causal explanations for how such actors interact often based on their prior work,

²⁶ For Roht-Arriaza's most relevant contribution to this theme in the Guatemalan context, see Roht-Arriaza, "Making the State Do Justice." One of Sikkink's most recent books actually outlines a theory, "the justice cascade," about international norm diffusion and state action related to justice that she has been working on for well over a decade. See Kathryn Sikkink, *The Justice Cascade*.

but certainly greater focus and insight is required to either confirm, augment, or thicken the understanding that I lay out in the preceding pages.

Finally, another major area requiring further research and discussion is the relation between transnational criminal networks in Latin America and transitional justice. What factor or set of factors is most responsible for the state of transnational crime in Latin America, and how do they relate back to the region's legacies of civil armed conflict, injustice, and human rights violations? This general predicament, in itself, is very much a "chicken or egg" quandary. While the "reasons for conflict" in a particular state and the region in general have long been debated, the rise of transnational criminal networks in Latin America over the past 25 years are only now starting to occupy a central spot in social science literature. As such, a greater attention to law enforcement, transnational crime, and post-conflict justice is an area that ought to accompany the, up until now, mostly policy-focused investigation of transnational criminal networks in Latin America. CICIG's initial mandate is a strong testament to the fact that transitional justice has been heavily focused on justice *vis-à-vis* the state—and in the case of Guatemala, such a focus has promoted an unrealistic vision and set of institutional goals for the institution to tackle. I am suggesting that transitional justice-focused scholars must recognize the extant literature relative to the region which views transnational crime and justice outcomes in a highly covariate relationship. From there, *transitional justice* analysts with an eye towards Latin America can then develop an even thicker understanding of post-conflict justice processes in the region.

Outside of the first research suggestion of exploring procedural justice, an underlying theme permeates the rest of the preceding research directions that I have outlined. That could best be described as a need to treat transitional justice as a dynamic, ongoing, longer-term process. Too much of the transitional justice literature with regards to Guatemala and Latin America is retrospective. Though there is certainly great value in such academic endeavours, there is also a need to engage in cutting edge research as the processes of *transitional justice* are unfolding. CICIG, for example, has been the subject of surprisingly little social scientific inquiry despite now being eight years old and having very significantly influenced the socio-political landscape of Guatemala and Central America. Significant issues in public policy, for every country in the Americas and many

beyond, are shaped by current events taking place in Guatemala and other Latin American nations nearby: Issues concerning large parts of the world related to immigration to law enforcement to the economy are all affected by Latin America's socio-political landscape. I hope that my analysis of Guatemala and CICIG, particularly in the third chapter, has shone some light on what is effectively the "canary in the coalmine." To that end, my overall "takeaway" for research directions moving forward relative to transitional justice, Guatemala, and Latin America in general, then, is for analysts to take a more active interest in researching and publishing on contemporary events, even if the conclusions we are able to draw are incomplete and cloudy at best. By analyzing CICIG concurrent to its mandate, we are able to better augment and change its course when it appears to be struggling. Doing so should allow for better transitional justice outcomes for individuals in Guatemala who have been victimized past and present. However, such research would also help to supplement policy decisions by countries dealing with the residual effects of socio-political developments in Guatemala and elsewhere in the region, from law enforcement, to migration, to the maintenance of trade markets.

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