Influence of NGOs in the Establishment Process of the International Commission Against Impunity in Post-Conflict Guatemala

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Abstract

This research describes the establishment process of the International Commission Against Impunity in Guatemala (CICIG) and the role of human rights NGOs in this process. It has been said that the CICIG is a civil society initiative and human rights NGOs have been praised for their efforts in the establishment process. Nevertheless, in a country like Guatemala, where elite groups hold a considerable amount of power, where corruption is high, and where personal relations are very important, it remains difficult to pinpoint how far the influence of human rights NGOs reaches. In this research I have assessed the influence of NGOs by describing the process in a detailed way. I have done so in order to built a logical chain of evidence linking NGO participation in the negotiations of the CICIG and the effects of this. I have used a framework, developed by John Casey (1998), for the assessment of NGO influence in policy processes, to guide me in tracing the most relevant aspects of the decision-making process. I concluded that human rights NGOs had significant influence in the agenda setting during the first phase of the establishment process of the CICIG. However, I see that factors, other than the advocacy campaign of these NGOs, were decisive for the final ratification of the CICIG. Most important for this was the change of the network of actors. The network of actors changed from being comprised of only NGO representatives in the first phase, to a mixture of NGO representatives and government officials in the second phase. This shows the importance of context as well as government alliances for the success of NGOs as policy actors.

Keywords: Guatemala; NGO; Impunity; CICIG; Policy process; Civil society; Human rights

.........Thank you!!

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List of Abbreviations

ASIES	Asociación de Investigación y estudios sociales *(Association for Research and Social Studies)*
AVANSCO	Asociación para el avance de las ciencias sociales en Guatemala *(Association for the Advancement of Social Sciences in Guatemala)*
CALDH	Centro para la Acción Legal en Derechos Humanos *(Center for Human Rights Legal Action)*
CEG	Centro de Estudios de Guatemala *(Center for Guatemala Studies)*
CEH	Comisión para el Esclarecimiento Histórico *(Historical Clarification Commission)*
CICIACS	Comisión de Investigación de Cuerpos Ilegales y Aparatos Cladestinos y de Seguridad
CICIG	Comisión Internacional Contra la Impunidad en Guatemala
CIIDH	Centro Internacional para Investigaciones en Derechos Humanos *(International Centre for Human Rights Research)*
DTO	Drug Trafficking Organization
FMM	Fundación Myrna Mack *(Myrna Mack Foundation)*
FOSS	Foro de Organizaciones Sociales especializadas en la Seguridad *(Forum of Social Organisations Specialized in the Field of Security)*
FRG	Frente Republicano Guatemalteco *(the Guatemalan Republican Front)*
GAM	Grupo Apoyo Mutuo *(Mutual Support Group)*
ICCPG	Instituto de Estudios Comparados en Ciencias Penales de Guatemala *(Institute for comparative studies on criminology in Guatemala)*
NGO	Nongovernmental organization
ODHAG	Oficina de Derechos Humanos del Arzobispado de Guatemala (*Human Rights Office of the Archbishopric of Guatemala)*
PP	Partido Patriota *(Patriotic Party)*
SEDEM	Asociación para el Estudio y Promoción de la Seguridad en Democracia *(Association for the Study and Promotion of Security in Democracy)*
SEPAZ	La Secretaría de la Paz *(Secretary of Peace)*
UNE	Unidad Nacional de la Esperanza *(National Unity of Hope)*
UN	United Nations
URNG	Unidad Revolucionaria Nacional Guatemalteca *(Guatemalan National Revolutionary Unity)*
WOLA	Washington Office on Latin America

Chapter 1 – Definition of the problem

1.1   Introduction

Since the end of the 20th century Guatemala has been experiencing increasing violence and the entrenchment of a violent order into the basic structures of the state. It has been said that Guatemala is experiencing low intensity peace[1] in which different forms and high levels of violence enable the capture of the Guatemalan state by complex networks of power. This restrains the development of Guatemala, a country where a large part of the population lives in poverty and fear. Criminal networks are able to expand rapidly because the justice system is weak and impunity levels are high, with the reported 98%. Since the late 1980s, a well-established NGO sector is trying to fight impunity, strengthen the rule of law, and push for security sector reform. These NGOs, which are mostly working within the human rights, security sector reform, and justice sector, have been active in the country for numerous years. They are seen as a relatively productive and successful sector that has gained international recognition for its work. Since the year 2000, they have started a serious advocacy campaign for the creation of an international commission against impunity that would fight impunity within the state system of Guatemala. It has been a long and difficult process with several setbacks, but it eventually led to the establishment of the International Commission Against Impunity in Guatemala (CICIG) in 2007. The advocacy campaign, led by Guatemalan-based NGOs, is an impressive one that definitely deserves attention. In this research I argue that human rights NGOs had significant influence in the agenda setting during the first phase of the establishment process of the CICIG. However, I see that factors other than the advocacy campaign of human rights NGOs, were decisive for the final ratification of the CICIG. In order to understand the context in which this took place, it is important to have some background information on the complex history of Guatemala.

1.2   Guatemala: an introduction

Guatemala is a diverse country in several respects. It has a population of about 13 million people that comprises of over 25 distinct ethno-linguistic groups. The indigenous people, also known as the Mayas, form a large part of the population, estimated at about 50%.[2] The indigenous population has long been suppressed, origins of which can be found in the colonial period. Guatemala experienced three centuries of Spanish colonial rule. During this period, society segregated extensively and inequalities became prominent.[3] It was especially

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[1] (Kurtenbach, 2008)

[2] (Grandin 2000)

[3] (Caumartin 2005:15)

the indigenous population that suffered during those years.[4] The segregation of Guatemalan society continued after Guatemala became independent in 1821. In the years that followed, Guatemala experienced civil wars, dictatorship, and political insecurity, which lasted until 1944. In 1944 dictator Jorge Castañeda was forced to resign in response to a wave of protests and general strikes. The period after his rule is seen as a short-lived democratic period that ended abruptly in 1954 when the United States assisted a coup d'état to overthrow the freely elected president. This event forms the beginning of a military regime in Guatemala.

By the end of the 1960's an armed conflict broke out between leftist guerrillas and the military regime. The conflict started in the capital of Guatemala with insurrections by the urban Guatemalan Labor Party (Partido Guatemalteco del Trabajo, PGT). They were easily defeated by the Guatemalan military, which had been trained by the US and CIA advisors. At the same time, different revolutionary groups were established, that based themselves in the mountainous east of the country where they had a bigger chance of winning the war. During the late 1970s, the different guerrilla groups united and formed the Guatemalan National Revolutionary Unity (*Unidad Revolutionaria Nacional Gautemalteca,* or URNG). When this revolutionary group appeared in the area, the government security forces reacted so furiously, that much of the local population was driven into the arms of the revolutionary movement. This pattern repeated itself, and by the end of the 1970s it appeared that the guerillas were on the verge of seizing the western highlands.[5] During the beginning of the 1980s, the army started a counterinsurgency campaign, which was mostly targeted at Mayan communities in these highlands. The military carried out over 600 separate massacres in the indigenous highlands, sometimes killing entire communities. By 1991, the rebel movement became aware that the ongoing violence in the country was not taking them anywhere, that they were losing terrain and were hardly able to continue their fight. As a result, with pressure from the United Nations, a path for dialogue and negotiation was opened between the two opposing parties.[6] With pressure from the international community, peace accords were finally signed in 1996. In the end, the civil war lasted for 36 years and resulted in the killing of 200,000 people, more than 80 percent of which were of Mayan descent.[7]

The Agreement on a Firm and Lasting Peace, which was signed in 1996, is noteworthy in the length and breadth of subject areas it covers.[8] The agreements spelled out the need for a more equitable distribution of wealth and resources, particularly among the Maya

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[4] (Grandin 2000) ; (Azpuru *et al.* 2011)

[5] (Stoll 1993:4)

[6] (Morán 2002)

[7] (Isaacs 2010) (Grandin 2000)

[8] (Mendoza 2001)

populations. The accords included agreements on agrarian land reform, increased participation of the populations in the development process, and several measures to restore the rule of law and strengthen the justice system. Moreover, it was important in establishing a truth commission also known as the Historical Clarification Commission (*Comisión para el Esclarecimiento Histórico,* or CEH).[9] This commission had three general tasks: firstly, it had to clarify in an objective manner what the human rights violations and acts of violence committed during the armed conflict were and secondly, it had to produce a report containing their findings. The report should not only include a description of what happened during the conflict, but also contain conclusions about the causes of the conflict. Lastly, the commission had to formulate specific recommendations on how to stimulate peace, preserve the memory of the victims, and strengthen the democratic process in the country.[10] In 1999, after 18 months of investigations, the truth commission came up with a report known as Memoria del Silencio. In the report it was concluded that the state forces were responsible for 93% of the human rights abuses committed during the civil war, while the URNG was responsible for 3% of the violations. The most important finding of the CEH was the conclusion that the state forces committed genocide against the Mayan population during the army's counterinsurgency campaign between 1981 and 1983. In relation to the causes of the conflict, the commission concluded that the most important causes basically included the malfunctioning of the entire state system.[11]

The situation in Guatemala nowadays shows that virtually none of the steps to promote justice as outlined in the peace accords and recommended by the CEH have been taken. There have been almost no trials for past abuses, and the ones that did take place mostly involved Mayan members of the civil patrol and not Ladino[12] members of the military of government. No military officers were expelled and the military is still heavily involved in the internal security of the country.[13] Moreover, Guatemala experienced a steep increase in violent crime since the end of the civil war and state institutions are inadequate to deal with this. The police force is weak and prone to corruption, the legal system guarantees impunity rather than upholding the rule of law, the indigenous population is still very much excluded, and the state fails to establish sustainable sources for financing social spending.[14] The

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[9] (Grandin 2000)

[10] (Ross 2006)

[11] (Perlin 1999)

[12] The term ladino is derived from 'latino' and usually refers to the Hispanic population of Guatemala.

[13] (Salvesen 2002:11)

[14] (Isaacs 2010), (Brands 2011)

weakness of Guatemala's state institutions is reflected in its 98% impunity rate .[15] Guatemala is experiencing almost universal impunity, which affects nearly every layer of society.

In 2001, a group of human rights organization in Guatemala launched an advocacy campaign calling for the creation of an international commission to fight impunity in the country. Nearly six years later and after numerous setbacks and obstacles, an International Commission Against Impunity in Guatemala (CICIG) was established. CICIG combines national and international elements. CICIG's task is to support, strengthen, and assist Guatemalan institutions in identifying, investigating, prosecuting, and ultimately dismantling domestic illegal security apparatuses and clandestine security organizations.[16] The CICIG operates within the domestic legal system of Guatemala, while incorporating both international and local staff, and it is funded entirely by voluntary contributions from UN member states. The CICIG is seen as a hybrid mechanism for improving the justice system 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 characteristics of a commission.[17] There has never been a UN sponsored hybrid commission like this one that takes on issues of impunity, organized criminal activity, and corruption within a host government. Because of its uniqueness, it has received quite some attention from scholars all over the world. There has been special attention for the mandate of the program and its role in international criminal justice. However, there is a lack of knowledge on how the commission has been established, who the most prominent actors were in this establishment process, and what the role of civil society organizations was. This research sheds light on this aspect of the commission and will look at the advocacy campaign that led to the establishment of the CICIG.

It has been said that the CICIG is a civil society initiative and NGOs have been praised for their efforts in the establishment process.[18] Nevertheless, in a country such as Guatemala, where elite groups hold a considerable amount of power, where corruption is high, and where personal relations are very important, it remains difficult to pinpoint how far the influence of human rights organizations reaches. I see this case as a very interesting one because it made it possible for me to investigate how a network of NGOs was able to collectively pick up a highly sensitive policy issue and put it on the agenda. I have used the Guatemalan situation as a case study of NGO influence in the policy process. In this research I link this case to the existing literature concerned with NGOs as policy actors, and I especially make use of

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[15] World report 2012, Human Rights Watch
[16] (Hudson and Taylor 2010)
[17] Ibid
[18] (Atwood 2008)

framework to assess the impact of NGOs in the policy developed by John Casey (1998). By making use of his framework, I was able to get an insight into how nongovernmental organization are able to influence the policy process and into the usefulness of Casey's framework to analyze this. The goal of this research is to determine the political participation of NGOs and the impact of different strategies available to them.

1.3   Research question and sub-questions

The central question throughout this research is: 'In what way did the network of Guatemalan NGOs contribute to the creation of the International Commission Against Impunity in Guatemala (CICIG) from the year 2000 onwards?' I will answer this question with the use of a framework created by John Casey (1998), who created an interdisciplinary framework for the assessment of the influence NGOs can exert in policy processes.

In order to answer this central question I have divided it into three separate sub-questions that are based on the framework of Casey outlined in chapter two. The first sub-question looks at the political environment in Guatemala and is formulated as follows: which factors in the sociopolitical environment of Guatemala were important during the establishment process of the CICIG? By giving an answer to this sub-question, this thesis will shed light on the political conditions necessary for NGOs to participate in, and influence the policy process. The second sub-question concerns the policy in question and will look at the nature of the policy conflict of the creation of the CICIG. The second question is as follows: what were the reasons for the creation of the CICIG? Moreover, I will look at the importance of the network of NGOs present during the establishment process and I will analyze how the network evolved over time. This is concerned with my third sub- question, namely: in what way did NGOs work together in order to create a network and how did the NGOs cooperate within the network of actors present during the establishment process? This will shed light on the importance of cooperation and network creation in order to influence the policy process for NGOs. Moreover, it gives us an insight into the importance of international actors in this process and the cooperation between national and international actors.

1.4   Research design and Methodology

The research consists of two principle techniques; first of all it includes a review of the writings concerned with the impact of NGOs in the policy process and frameworks available to measure this. The literature review has resulted in a theoretical framework described in Chapter 2. Moreover, the literature review is used to provide a well-informed understanding of the background of the Guatemalan conflict and the political situation of Guatemala. The second data collection method employed in this research consists of semi-structured, in-depth interviews collected during my fieldwork in Guatemala. Through these interviews I

can understand the causal mechanisms relating NGO activities and the state behavior in rule of law building policies. In order to answer the first sub-question, a combination of both techniques was used. For answering the second and third sub-questions I relied mostly on the second data collection method.

The fieldwork took place in Guatemala City, which is the capital of Guatemala. It served as a convenient place for my research for several reasons: most relevant NGOs have their head office in the City, the CICIG is located here, and almost all the embassies are stationed in the capital. During the two months I spent in Guatemala, I have conducted eighteen interviews with professionals from different fields. The interviews were split up into three clusters. The first cluster of interviews was conducted with several directors and employees of national human rights NGOs, think thanks, and academic organizations. The institutions chosen are involved in critical policy analysis and have different levels of involvement and connection with government institutions. Moreover, most of them were involved in the establishment process of the CICIG or have close ties with the work of the CICIG nowadays. All of the organizations have been working in Guatemala for several years and have gained a certain level of legitimacy in the country. The organizations I have talked to include: Centro de Estudios de Guatemala (CEG), Fundación Myrna Mack (FMM), Asociación de Investigación y Estudios Sociales (ASIES), Oficina de Derechos Humanos del Arzobispado de Guatemala (ODHAG), Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG), Asociación de Investigación y estudios socials (ASIES), Centro Internacional para Investigaciones en Derechos Humanos (CIIDH), and Grupo de Apoyo Mutuo (GAM). This selection was based on several criteria. On the basis of previous research and literature search, I made a list of organizations that had been present during the establishment process of the CICIG or are currently working together with the CICIG. Unfortunately, I was not able to interview all of the organizations on my list and only interviewed the ones that were accessible to me. Organizations like WOLA and Human Rights Watch were important international players during the establishment process of the CICIG, however, they are not situated in Guatemala and were not accessible to me and are not included in this research. Moreover, not all the organizations were willing to talk to me. Consequently, the views of some important organizations/persons are missing in this research. The cluster of interviews as described above was most important for an overview of the work of NGOs during the establishment of the CICIG, the tactics that were used in order to influence policy, and to gain insight into the created network of actors and the dynamics within this network.

The second cluster of interviews was held with embassies of relevant countries. This includes the embassies of countries that have supported the advocacy campaign for the

establishment of the CICIG, embassies that are funding the CICIG, and embassies that are generally very active in Guatemala. Among them were the embassy of the Netherlands, Spain, and the United States of America. The data collected from these interviews is important because it provides information from a different perspective and sheds light on the international pressure and cooperation necessary to establish the CICIG. Lastly, I have conducted interviews with former government officials present during the establishment process of the CICIG and people that are currently employed in the CICIG. The interviews with former government officials made sure that I could verify the data gathered through interviews with the different NGOs and gave me an insight into the process necessary to establish the CICIG from the 'other' side. The interview with the CICIG itself is important for the current situation in which the CICIG resides, gave me an overview of the organizations that are currently working with the CICIG and the importance of NGO support for its work. This wide range of informants has provided me with the necessary data in order to answer my research question. A complete overview of the conducted interviews can be found in the bibliography.

Before I conducted the actual interviews I made a topic guide that was able to guide me during the interviews. The topic guide differed for each group of participants. Most of the interviews were arranged by me, however, with some of them I got assistance from Impunity Watch, the organization for which I interned during my time in Guatemala. Most of the interviews were either conducted at the office of the informant or a neutral place in Guatemala City. The length of the interviews ranged from forty minutes to two hours and most of the interviews were recorded with an audio recorder with the approval of the interviewee. With three of my interviewees I had a follow up interview because there were still some questions left or because they had more relevant information for me. The language used during the interviews was in most cases Spanish and no interpreter or translator has been involved. Although Spanish is not my mother tongue, I felt confident enough to conduct my interviews in Spanish. Although most of my informants were able to speak a little bit of English, talking in Spanish enabled them to speak more freely and to answer all my questions in a concise manner. However, the language did pose some limitations from my side because I was sometimes unable to express myself in a way that would be possible in English. The quotes and information presented in this research have been translated by me.

1.5   Significance

Adopting a qualitative approach, this study considers the ways in which the socio-political context and the characteristics of Guatemalan NGOs and the network in which they operate have shaped their strategies and ultimately their political outcomes. By doing so, we can

draw lessons that could be applied to similar efforts elsewhere in Latin America and beyond. This research will illustrate how NGOs put issues on the agenda and how they can influence policy by generating political and societal support. Moreover, this study attempts to advance our understanding of the dynamics of policy influence and the way in which NGOs have influence in the policy process. This research will draw from an interesting case study of Guatemalan coalitions and groups that focused on influencing policy through legislative and/or administrative change. The establishment process of the CICIG has never been analyzed in this way before. By filling this gap, valuable information is giving about the work of Guatemalan NGOs, how they operate, and how they can be successful. This is useful for the organizations themselves, as well as for similar processes in other countries.

1.6   Limitations

Although this research was carefully prepared, I am aware of its limitations and shortcomings. As said before, I had limited access to people and organizations, and not all the organizations that played an important role in the establishment period of the CICIG were willing to cooperate with me. Especially international human rights organizations that have been important players during this period are not part of this research, which has limited the scope. However, in order to ensure the international perspective, I have interviewed several other international actors, such as embassies. Moreover, the language in which I conducted most of the interviews was not my mother tongue. Although I did manage to conduct the interviews in a proper manner, I do recognize that I sometimes missed the vocabulary to ensure the necessary depth in an interview and take on a very critical stance. The main limitation of this research is however, that I cannot assure that I have made the decision-making process from the past transparent enough to prove and draw conclusions regarding the actual influence of nongovernmental organizations. I have used several techniques to reconstruct the process in the most complete way possible, but I am dealing with a weak and corrupt state in which political processes are not always presented in a transparent way and where not all information is disclosed to foreign researchers.

1.7   Outline

This thesis consists of six chapters. This chapter has introduced the topic with a description of recent history of Guatemala and the role of NGOs in post-conflict situation. Moreover, the question whether NGOs in Guatemala are truly operative actors in the policy process is introduced and the case study that will be used in order to assess this is presented shortly. Further, methodology, limitations, and significance have been discussed in this chapter. The second chapter concerns the theoretical framework used to analyze the question posed in Chapter one and gives an overview of the relevant literature. I will reflect on the literature

written on NGOs as policy actors, and I will elaborate on my choice to use the framework to analyze NGO participation in the policy process by John Casey (1998). This includes a description of the different components of his framework, such as the political context, network of actors, and the nature of the policy conflict that will be used to analyze the data. Chapter three explains the nature of the Guatemalan NGO sector, their relation with the state, and the political context in which they have to work. In Chapter four, a close look is taken at the establishment process of the CICIG, the nature of this policy, the actors involved in the establishment, and the role NGOs had during this process. I will look at the centrality and public profile of the policy in question and how this has determined the nature of outcomes of policy involvement by NGOs. Finally, Chapter five will connect the findings from Chapters three and four to the theoretical framework presented in Chapter two and conclusions will be given on the influence NGOs in Guatemala have had in the policy process in the case of the CICIG.

Chapter 2 – Theoretical framework

2.1   Introduction

The propagation of nongovernmental organizations is a striking feature of our contemporary world. The NGO sector is growing exponentially every year in both the Western world as well as in the more developing countries. In many developing countries NGOs perform functions that were traditionally reserved for (local) governments (e.g. education and health care) and in some instances it seems that NGOs are acting like agents of the state.[19] Besides their work in the public sector, NGOs exert a strong and growing pull in the private sector. Big businesses take the critique they receive from NGOs seriously and have, for example, changed the working conditions in their factories. It has become clear that NGOs have some kind of power and it is therefore logical that research on the role and impact of NGOs is substantive. However, before I move to the relevant literature it is important to create a satisfying understanding of how NGOs are actually defined.

2.1.1   Definition

Although NGOs have become recognized actors in international affairs it is hard to find a uniform definition of the term. The term NGO is understood and used in different ways, places, and times and it has been considered difficult to define and agree upon. One of the reasons is that there are many similar terms used for the same notion with slightly different connotations. Some of the definitions found in the literature are: third sector organizations; civil society organizations; grassroots organizations; nonprofit bodies; voluntary organizations; or activist organizations.[20] Other reasons are the multiplication in the number of involved NGOs in recent years, the immense heterogeneity of types, and the erosion of some of their traditionally distinguishing features, such as their private funding, and their independence from public power or the prevailing of volunteer staff over the professional one.[21]

      The term nongovernmental organization was first mentioned by the United Nations in 1945.[22] However, it is important to note that NGOs existed long before the introduction of the term. The connotation of the term NGO has evolved in many ways and has found widespread application. However, the term NGO has sometimes been considered problematic because it only identifies these organizations by something that it is not: non-governmental. The term

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[19] (Spar and Dail 2002)

[20] (Martens 2002:8)

[21] (Abad Castelos 2012)

[22] (Martens 2002:10)

has therefore been criticized for its negative connotations and inaccuracy.[23] Looking at the content provided by the UN it becomes apparent that they mostly leave this open and do not provide us with a useful definition.

According to Martens (2002), there are two major tracks of NGO interpretations that can be distinguished: the juridical approach and the sociological perspective. In his article, he tries to incorporate the most important notions from both branches in order to create a comprehensive definition of NGOs. He defines NGOs as:

> *"NGOs are formal (professionalized) independent societal organizations whose primary aim is to promote common goals at the national or the international level."*

Throughout this research I will make use of this definition because I think it is a comprehensive and all encompassing definition of nongovernmental organizations. Moreover, within the different disciplines, there is a tendency to name NGOs differently. Within political science, NGOs are defined as interest groups, while sociologists tend to define NGOs as social movement organizations.[24] However, I will maintain the term NGO because this term does not directly owe its roots to any one of the academic traditions and because it is mostly used to describe the sort of organization I look at in this research.

2.2   NGOs as actors in policy processes

In order to understand how policy processes can be affected by nongovernmental actors, it is necessary to explain some fundamental concepts with regard to these processes. Public policy is the broad framework of ideas and values within which decisions are taken and action, or inaction, is pursued by governments in relation to some issue or problem.[25] According to Osman (2002), "Policy making is not a simple, but rather complex dynamic process involving series of actions and inactions of varieties of groups with varieties of interests at different stages".[26] Moreover, in public policy processes there are not only public bodies or public officials involved; the role played by non-official or private groups is important to take into consideration. Public policy making is the result of negotiation between various actors. Therefore, the decision-making process is the result of multiple interactions of diverse actors. Important to keep in mind is that these interactions are governed by a set of rules which result from the number of actors involved and the relative power of each of them.[27]

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[23] (Martens 2002)
[24] (Martens 2002:2)
[25] (Brooks, 1989:16)
[26] (Osman 2002:38)
[27] (Gündem 2004)

Many times, the role of non-governmental actors in the political process is ignored. However, with the diversification and growth in number of actors in the last decades it is impossible to ignore the impact of these organizations. NGOs are seeking to influence governments; even NGOs who claim to be non-political often seek to influence governments because governments are seen as the formal decision makers.[28] The acceptance of seeing NGOs as truly important actors in policy processes depends on social and economic conditions of the environment in which they are working. There are many different views on the desirability of NGOs in the policy process. NGOs are sometimes seen as a threat to democracy, while in other contexts they are seen as desirable players that can secure the legitimacy of future democracies.[29]

Looking at the way NGOs participate in the policy process, we see that NGOs have gained experience and credibility in the process. Moreover, it is viewed that the intervention of NGOs as policy actors must be founded upon a solid base of political and cognitive legitimacy. NGOs must have the ability to play the game of participation.[30] Participation is mostly done through institutionalized channels of cooperation or through more confrontational tactics that create lobbying pressures. Cooperation can mostly be seen in the form of commissions, advisory boards and, for example, public hearings that allow actors to comment formally on legislative and administrative proposals. During the last years a growth can be observed in these cooperation mechanisms[31] because it is understood that NGOs are becoming more important players in the policy process. Another way for NGOs to influence policy processes is with confrontation strategies. The legal system as well as other state institutions, such as ombudspersons, allow for some level of confrontation within the state system.[32] ,Of course, there are also ways to confront the government outside of the system, for example with the use of protests and by shaming the government.

In the next section I will have a look at the factors that determine the possibilities for political participation of NGOs and the impact of their participation.

2.3   Influence of NGOs in policy processes

It has become clear that NGOs are becoming increasingly involved players in policy processes; however, for this thesis it is important to assess the *influence* of NGOs in the policy process. The literature concerned with the possible impact of NGOs in the policy

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[28] (Casey 1998:22)

[29] (Casey 1998:50)

[30] (Miller 1994)

[31] (Casey 1998:22)

[32] (Miller 1994)

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process mostly looks at the strategies, tactics and organizational attributes of NGOs in order to see how they can achieve their goals in the best way possible. The underlying assumption of most of these studies is that the correct use of a number of key strategies alongside favorable political circumstances accounts for the impact NGOs have in the public domain. In one of the most influential works on the power of NGOs, Margaret E. Keck and Kathryn Sikkink try to fill in the gaps that exist in the literature about the relative failure or success of non-state actors.[33] In their book, the authors focus on transnational advocacy networks. According to Keck and Sikkink, the key determining factors for the success for transnational advocacy networks are the strength and density of the networks, the vulnerability of the target state, the domestic structures, and the nature of the relevant issue. According to the authors, there are four different ways for NGOs to influence political processes. Firstly, NGOs can make use of a tactic defined as informational politics; this includes the ability to quickly generate politically useable information and move it to where it will have most impact. The second tactic is described as symbolic politics, which encompasses the ability to act on symbols that make sense of a situation for an audience that is frequently far away. Thirdly, they describe the tactic of leverage politics, which refers to the ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence. The last tactic is called accountability politics and this includes the effort to hold powerful actors liable for their previously stated policies or principles.

The work of Keck and Sikkink on the impact of NGOs has been highly praised. However, their work has also received substantial criticism by scholars who see that by only examining the political tactics of NGOs in policy processes Keck and Sikkink reduce their influence to how to apply a set of tools to a particular problem. Moreover, Keck and Sikkink have been criticized because their analysis does not fully capture the complex social interrelations at work among states, NGOs, International NGOs, and other actors in the policy arena.[34] Janet Lord (2004) concludes that the work of Keck and Sikkick 'ignores questions of legitimacy, accountability, and performance, and their work does therefore not really include the dynamic of NGO roles'.[35] Lord sees that it is time to deepen accounts of NGO influence and offer a more critical account of, among other things, precisely who within an NGO network is exercising influence and the forms such influence takes.[36] Therefore, Lord looks at the 'social architecture' of relationships between and among NGOs and other actors, as she calls it. She wants to understand the complex roles played by States, NGOs, and other

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[33] (Keck and Sikkink 1998)

[34] (Lord 2004)

[35] (Lord and Janet 2004)

[36] (Lord and Janet 2004:104)

actors in international standard setting and this compels a consideration of political, moral, and legal factors at work in such processes.[37]

The work of Keck and Sikkink focuses mostly on networks of NGOs and looks less at the individual aspects of these organizations. Moreover, Keck and Sikkink are mostly concerned with the strategy and tactics of nongovernmental organizations and some scholars have suggested that this is not enough. According to them, by looking only at the strategies used by NGOs we cannot explain their ability to generate change or influence policy making. Neve Gordon (2008), sees that it is merely the location in social space as well as the economic, cultural, social and symbolic capital of NGOs that determines their social and political impact. Gordon's claim is informed by the observation that, in many cases, there are several NGOs working within the same context (without being a network) employing similar strategies, and yet their political impact differs considerably. In his article, Gordon concludes that the power of an NGO is dependent upon its position within the social space in which it operates. The social space of NGOs is determined by the economic, social, cultural and symbolic capital at its disposal.[38] Moreover, Gordon concludes that power is, as he calls it, a 'double-edged sword'. His analysis shows that alongside the opportunities and influence that come with the accumulation of capital, there is a price to be paid. NGOs with large capital sometimes have to make choices that do not correspond immediately with their ideology. However, they have to make these choices in order to preserve their place within the social space of the given society. Finally, Gordon points out the inadequacy of the established dichotomy between civil society and government, where one's sphere is positioned in opposition to the other.[39] He notes that the borders between the two spheres are fluid and the relationship between the spheres is complex. However, he does not explain how it is possible to assess the place of NGOs in the social space.

The frameworks presented above are mostly based on a single dimension. This is also the case for other studies presenting a framework for analyzing NGO participation in policy process. Some scholars have focused on the political environment, while others predict the influence of NGOs on the basis of internal characteristics of NGOs.[40] Tilly (1999), for example, has presented a framework in which he looks at the worthiness, unity, numbers, and commitment (WUNC) of social movements.[41] Other scholars have looked at the

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[37] (Lord and Janet 2004:106)

[38] (Gorden 2008)

[39] (Godon 2008:12)

[40] (Casey 2004)

[41] (Tilly 1999)

organizational resources of NGOs and have provided instruments for the analysis thereof.[42] These approaches, as well as the ones described above, have their limitations and provide us only with a number of separate partial elements. It is, therefore, hard to give a complete vision of the dynamics involved in NGO participation in policy processes. Moreover, there is relatively little research that directly uses NGOs as the unit of analysis for the study of intervention of non-governmental actors.

In sum, much of the existing literature addresses the organizational characteristics of NGOs in isolation of their environment. Recently, however, writers have acknowledged that while organizational characteristics remain important for our understanding of NGOs, these agencies must be situated more firmly within the structural context in which they operate. Like Gordon (2008), some scholars have tried to bring together elements from different approaches in order to give a more complete view of the NGOs' influence in the policy process. John Casey (1998) developed a complete framework for the analysis of the role that NGOs play in the public policy process. He saw the need for an analytical tool to assess the role of NGOs in the policy process because the existing frameworks only provide separate, partial elements that cannot provide the necessary scope for full analysis.[43] Therefore, Casey developed a unified, multi-disciplinary analysis of the factors that influence the participation of NGOs in the policy process. Such an interdisciplinary analysis should include elements from a variety of academic traditions. He has included the political science perspective of interest group analysis, the sociological perspective of social movement theory and organizational theory perspectives such as resource mobilization theory.[44]

2.4   Integrated framework for the analysis of NGO impact in policy processes

Casey notes that NGO participation is likely to be conditioned by the political opportunities offered by the polity in which they operate; the nature of the politics they are addressing; the characteristics of the organizations seeking to participate and the resources they command; and the network of actors involved (see table 1 for an overview of the factors). He uses these factors to construct a framework for evaluating the outcome of NGO participation in the development of public policies. As a starting point, he takes individual NGOs. However, he does note that the conclusions drawn are generally also valid for coalitions, coordinating bodies, secondary and peak organizations that aggregate and represent them.[45]

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[42] (Maloney 1996)

[43] (Casey 1998)

[44] ibid

[45] ibid

Factors That Determine NGO Influence in the Policy Process

Primary factor	Sub Factors	Possible exclusionary impacts
The Political and Socioeconomic Environment	Dominant Political Discourses • Welfare State Regimes • Strong versus Weak States • Emerging Political Structures Socioeconomic Development Institutional Policy Structures Strength of Political Parties The Repertoire of Actions	Closed polities can exclude NGOs from policy process. Low socioeconomic development impedes the formation of strong NGOs. Strong political parties dominate collective action and exclude NGOs. Certain actions that may be adopted by NGOs which are not considered legitimate.
The Policy in Question	The Nature of the Policy Conflict • Centrality • Universalism • Temporal complexity • Technicality • Public profile The Phase of the Policy Cycle	Certain policies will be considered "off limits" to NGO influence. Policies with entrenched agendas and operating procedures will be difficult to change.
The Characteristics of the NGO(s)	The Ideology and Culture of the NGO(s) Organizational Capacity and Resource Mobilization Membership and Representation The Status of the NGO(s)	NGOs with fewer resources will be less likely to influence. NGO may, for ideological reasons, choose confrontation and be excluded from formal decision systems.
The Network of Actors		An inability to create effective networks will hinder influence efforts.

Source: Casey (1998)

2.4.1 Political and socioeconomic environment

According to Casey, the political and socioeconomic environments in which NGOs operate provides the primary framework for their participation in the policy process. The participation of NGOs in the policy process is country and time specific. NGOs working in developed countries, such as many countries in the Western world, use different tactics in order to influence the policy process than NGOs working in the developing world. In order to contextualize the NGO activity in different countries, Casey makes use of several sub-factors. First of all, he notes that it is important to look at the dominant political discourse of the country in which the NGOs of interest operate. There are three predominant political frameworks that are used to analyze NGO participation: welfare state regimes, strong versus weak states, and emerging political structures. Most important for this research is that, according to Casey, weak-state societies are seen as more pluralist, which may permit closer participation in political decision making because of a more open relationship between public and voluntary sector.[46]

The second sub-factor Casey describes is the socioeconomic development of a country.[47] A higher level of economic and social development is likely to increase the number of NGOs because with a growing middle class a breakdown of class consciousness is observed and this leads to an increase in support for and participation in NGOs. Moreover, in more developed countries there are more funds available, access to lobby technologies is easier, and NGO activities are likely to become more professionalized. Other sub factors used in Caseys framework are the institutional policy structures, which concern a number of key structural elements regarding the formal distribution of public authority and the structure of decision making processes through government institutions, and the strength of political parties. In countries with a fragmented party system and where political parties are weak there is more space and opportunities for the participation of NGOs in the policy process whereas countries with strong parties are more likely to exclude NGOs from participating. The last sub-factor is called the repertoire of actions and included the style of decision making process which is different in each country. These styles and attitudes have the effect of creating a set of repertoire of participation actions. NGOs use these standard operating procedures in order to influence the policy process.[48]

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[46] (Casey 1998:68)
[47] (Casey 1998:64)
[48] (Casey 1998:70)(Casey 2004)

2.4.2. The policy in question

The second primary factor, the policy in question, is divided in two sub-factors: the nature of the policy conflict and the phase of the policy cycle. The nature of the policy conflict looks at the different policy areas and describes five key issues that determine the nature of outcomes of policy involvement, which Casey identifies as: centrality, universalism, temporal complexity, technicality, and public profile.[49] The first issue looks at whether NGOs have more influence when the policy concerns a more fundamental issue, such as the distribution of power or economic resources, or when the issue is less dominant. There are two different views on this: on the one hand it is said that NGOs will be more heavily involved in the fundamental issues and therefore states have to respond to this, while on the other hand people argue that issues of redistribution are off limits for NGOs so participation should not be allowed in these areas. Secondly it is important to look at the universality of the issue. If goods or services are universal, NGOs are less likely to lobby for their extension, while when this is not the case and marginalization or discrimination is perceived against the target population this can be a driver for NGO participation. The third issue looks at whether the issue requires permanent attention or not. It is seen that NGOs are more likely to participate in issues that require intermittent attention and more discrete decisions, because on-going monitoring is a costly affair. Fourthly, when there is already an agreement on the needs expressed and the resources available and the issue is merely technical NGOs are likely to collaborate with the state. Lastly, issues with a less visible profile are likely to see more influence of NGOs because the public is often less involved which gives more margin to a few vested interests.[50]

The phase of the policy cycle is the other sub-factor Casey provides. In political science, the policy cycle is a tool used for analyzing the development of a policy item. The standard version includes the following stages: agenda setting (problem identification); policy formulation; adoption; implementation; and evaluation.[51] NGOs are mostly active in the first phase of this cycle. In order to introduce a problem to the policy agenda they have to convince the relevant policy actors that the problem they are addressing is important. For many NGOs, working in the first phase of the policy cycle allows them to make use of their strengths:[52] "NGOs are more successful in influencing public opinion and in bringing

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[49] (Casey 2004:243)

[50] (Casey 2004:249)

[51] (Stone 1997)

[52] (Pollard 2009)

problems to the public agenda than in determining the form of public policies or in the functioning of public administrations."[53]

2.4.3. The characteristics of NGOs

Another important factor when defining the possible influence of NGOs in the policy process are the individuals characteristics of the NGOs involved. In order to participate effectively, they must choose to participate, choose their participation strategy, and have sufficient resources in order to cover the cost of participation. This factor is also divided into several sub-factors. Firstly, the ideology and culture of the NGO is important because this determines whether they adopt moderate or radical tactics. The strategies adopted by NGOs are informed by their ideological position. NGOs differ both in how they view an advocacy issue as well as in how they seek to affect policy changes. The tactics employed by NGOs depend on their political affiliation, ideology and culture; different strategies may be used in accordance with these factors. Their ideological position shapes the broader tactical style, which in turn determines substantive priorities and the degree of antagonism with which the authorities are approached.[54] Secondly, it is important to look at the organizational capacity and resource mobilization of the NGO, because in order to participate effectively in the policy process, NGOs must have the organizational capacity to oversee government actions, influence the creation of new legislation or lobby for reforms, while at the same time continuing to ensure the means necessary for their own operations.[55]

Thirdly, membership and representation are vital for the participation of NGOs in the policy process. The more people they claim to represent the more power they are likely to have. This is not only important for possible demonstrations or other confrontational activities, but also for the financial support they will receive or the human resources available to them. Moreover, membership is important because it often happens that a member from a certain NGO gets elected or appointed for a government position; and this can give NGOs political assets they can use in the process of influencing policy. The last sub-factor is the status of NGOs. Many of the above outlined sub factors depend on the status a NGO has achieved over time. NGOs that have gained a positive public reputation can draw on their credibility to access the political system and media more easily. If recognized as reliable, respectable, and serious actors, NGOs are more likely to be consulted and to be able to

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[53] (Casey 2004:249)
[54] (Wolf 2008)
[55] (Casey 2004:250)

participate in the policy process. Organizations that lack this status have to come up with different tactics to make their impact felt.[56]

2.4.4   Network of actors

As said before, policy processes are complex processes including many different actors. Together these actors form a network. NGO networks vary in the extent to which they have been formalized. Some networks represent a loose coalition of organizations with similar goals, while others are overseen by a secretariat with members allowed to participate through a formal process of admission. NGO networks are becoming increasingly powerful and are seen as crucial agents in some policy areas.[57] The cooperation within the network and the characteristics of the players present in the network is key in determining NGO influence in the policy process. For individual NGOs, it is essential to understand how they work with other interested actors such as informal groups, influential individuals, or government officials, in order to pursue their goals in the best way possible. Within the network, it is vital to not only look at the formal institutional relations, but also at personal contacts that can greatly influence the work within networks.[58]

2.5   Conclusion

In conclusion, the existing literature on NGOs addresses specific kinds of relations and specific aspects of NGO activities. Recently, however, writers have acknowledged that while organizations characteristics remain important for our understanding of NGOs, these agencies must be situated more firmly within the structural context in which they operate. It is because of this, that I will make use of the framework provided by John Casey (1998) that incorporates these elements in order to see if these organizations have effectively taken part in this particular policy process in Guatemala. Evidence from the existing literature shows that there is little understanding of NGO participation in the policy process and the question remains if NGOs are truly operative actors able to accumulate the power to influence other actors. By analyzing the establishment process of the International Commission Against Impunity in Guatemala and the role of NGOs in this process on the basis of Casey's framework, it is possible to give insight into this question. Moreover, by examining how context, organizational origins, and the network of actors influence the work of Guatemalan NGOs, this thesis advances our understanding of NGO practices, thus contributing to the NGO literature and the study of activism in post-war Guatemala.

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[56] (Wolf 2008)
[57] (Abelson 2003)
[58] (Casey 2004)

As concluded above, Casey's framework is comprehensive and includes factors from different disciplines. Earlier in this chapter I outlined the advantages of this and explained my choice for this framework. However, the disadvantage of this framework is that it is hard to operationalize because it includes so many different factors. Because of this, I have made the choice to focus on some of the aspects mentioned by Casey that I see as most important in the case of Guatemala. First of all, I will focus on the political environment in which NGOs in Guatemala operate. I will look at the political opportunity structures and the institutional policy structures that allow NGOs to influence the policy process. I think this is an important factor to take into account, because what we see in recent years is a strong growth and development of the human rights NGO sector, which indicates a supportive political environment. On the other hand, human rights NGOs have been the victims of violence and repression, which can be a sign of a repressive policy environment. Secondly, and most important for my research, are the network of actors present during the establishment of the CICIG.

In this thesis, I make use of Casey's framework to measure the influence NGOs had in the policy process concerning the CICIG. However, I see that, due to the complex nature of the concept influence, it is hard to measure, therefore, rather *assess* the influence of NGOs in a qualitative manner. In order to do so I combine different factors, such as access, network forming and intensive process analyses. In order to asses influence of NGOs in the establishment process of the CICIG, I look at what NGOs did in the negotiation process, as well as at the observed effect of these activities in terms of procedural and substantive outcomes. It has been argued by Betsill and Corell (2001), that the most obvious evidence of NGO influence is the connection between the outcome document and the goals of NGOs. According to them, influence occurs when a correlation can be found between the ideas communicated by NGOs during the negotiations and the ideas embedded in the outcome.

In order to draw conclusions about the influence put forth by NGOs in the establishment process of the CICIG, I rely mostly on process tracing. By doing so I build a logical chain of evidence linking NGO participation in the negotiations about the CICIG and the effects of this. I have gathered data from a variety of sources, including primary and secondary documents, interviews, and when possible participant observation, in order to map out the process, and the dynamics between organizations involved, in the most complete fashion. I have used Casey's framework to guide me in tracing the most relevant aspects of the process. In this way, I was able to identify whether and how NGOs shaped the negotiations process as well as the final outcome. Further, I consider the range of effects NGOs had on the negotiations, and by doing so I make a qualitative assessment of the overall influence of NGOs in this process.

Chapter 3 – NGOs in post-conflict Guatemala

3.1.   Introduction

When looking at the development of the NGO sector, it is almost inevitable to look at civil society as a whole, as the emergence of NGOs is closely intertwined with the development of civil society. Civil society has been defined as 'the public space between the state and its citizens, populated by organizations operating autonomously from the state in order to promote the interests and values of particular groups of citizens.'[59] Some of the actors active in civil society can be defined as NGOs having a clear institutional structure, while others are more fluidly organized. For example, the Catholic Church is a prominent player in civil society in many Latin American countries, yet it is almost impossible to describe the church as a unified actor with common strategies. According to van Leeuwen (2010), certain individuals within the Church take up roles in the political debate, while in other instances offices within the Church operate like development NGOs.[60]

In many Latin American countries, the 1970s were a time of rapid social change, development and mobilizations of civil society organizations. During this time, different social sectors began to organize themselves mostly around specific issues concerning marginalized social groups. This was the time during which trade unions were established and campesino movements[61] started to develop. Moreover, different church organizations became active in development politics and education, especially for the indigenous populations present in Central and South America. These civil society actors have been noteworthy players in the transition process from authoritarian to democratic political systems in many countries of Latin America.[62]

In the case of Guatemala, civil society has been developed in opposition to the state. Today, nongovernmental organizations have become a substantial part of the everyday landscape of Guatemala. It has been estimated that there are over 2.500 NGOs working in the country[63] together with many other civil society actors. According to van Leeuwen (2010), civil society in Guatemala is constituted by a diverse range of actors, including peasant and labor movements, media, human rights organizations, platforms of indigenous communities, as well as church organizations, and local development associations. Most of these organizations and associations originated from the civil war and the policy setting that resulted after the signing of the peace accords. Part of the NGO sector in Guatemala is

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[59] (van Leeuwen 2010:94)

[60] (van Leeuwen 2010:95)

[61] Campesino is blablabla

[62] (Macdonald 1997)

[63] (Falisse and Sanz-Corella 2009)

recognized internationally for their creativity and experience in development, coalition-building, and advocacy. In an interview with Alexandra Valkenburg-Roelofs from the Embassy of the Netherlands, she noted that human rights NGOs are described as 'drivers of change'.[64] An employee of the Spanish Embassy expressed his surprise about the political influence of civil society organizations when he first arrived in Guatemala.[65] Gina Werth, from the US embassy, was amazed by their extreme commitment and sees (human rights) NGOs in Guatemala as a counterpower to the government. [66] Moreover, in a study on the civil society of Guatemala, Falisse and Saenz-Corella (2009) described Guatemalan civil society as being vibrant and complex. They see that it is vibrant because of the number of NGOs present in the country, together with many community based organizations, and different churches. They see it as complex because civil society in Guatemala is extremely complicated due to its history and strong polarization that still represents an important factor[67].

In this chapter I will mostly focus on NGOs active in the human rights and security sector. It is important to describe where these organizations originate from in order to understand how they can influence the policy process and the dynamics at stake during the establishment process of the CICIG. Moreover, these organizations face challenges that are very similar to those groups in other countries facing social tensions and political transitions from authoritarian regimes to more pluralistic systems. Consequently, the lessons drawn from their experiences can provide insights that may have great relevance far beyond Guatemala.

3.2 Civil society development

Although most of the nongovernmental organizations active in Guatemala originate from the civil war, there has been an earlier phase of civil society mobilization. According to Kurtenbach (2008), the first phase of civil society mobilization led to the overthrow of the Ubico regime in 1944 and was mostly restricted to the capital of Guatemala. The ten years that followed the coup d'état are seen as a short-lived democratic period during which there was space for civil society organizations to develop. It was at this time that the classical expressions of civil society organizations were structured and established, notably trade

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[64] Author's interview with Alexandra Valkenburg-Roelofs, deputy head of mission and head of development cooperation at the Embassy of the Netherlands, Guatemala City 3rd of May 2012.

[65] Author's interview with Javier Puig, second chief of mission at the Embassay of Spain, Guatemala City 24th of April 2012.

[66] Author's interview with Gina Werth, political affairs officer at the Embassy of the United States, Guatemala City 3rd of May 2012

[67] (Falisse and Sanz-Corella 2009)

unions, both in the public and private sector. Moreover, the government paid attention to the concerns of the majority of the population and initiated land reform. In line with other Central American countries, the Catholic Church was an important player in this development. This period marks the only time in which civil society was able to organize itself freely and participate in the dynamic development of the country at all levels.[68] Nevertheless, the development of these organizations changed in 1970s, during which social change, war, and repression led to new forms of organizations as well as to the polarization of civil society.[69] Military counterinsurgency activities in the late 1970s and early 1980s were responsible for a heavy setback to these social movements[70] and many civil society organizations were heavily repressed during this time. The forms of expression of civil society were mainly underground party organizations that were linked to the guerrillas. The 1970s show the greatest period of repression during which any popular leadership, student-, worker-, or peasant union was to be eliminated. Thousands of officers were killed, and the consequences of this policy of eradication of leadership are still felt nowadays, with a clear lack of leadership experience and historical capitalization being examples of this.[71]

After the democratic opening in 1985, some space opened up for activities of NGOs and other organizations. The organizations that emerged during the 1980s can be classified as issue-organizations, or 'new social movements'. According to Pearce and Howell (2001), the organizations that originated during the 1980s adopted the term civil society to create space for political discussion and to express their longing for democracy and a new social order. Most of these organizations did not have their roots in the resistance movement and they wanted to be autonomous from both political parties and the guerrilla movement. During this time, civil society came to include both popular organizations as well as cultural organizations. Noticeable is the increase in number of independent Mayan organization that focused on the ethnic dimensions of oppression and exclusion.[72] Many of the organizations that emerged during that time focused on promoting democracy and human rights and were heavily supported by international donors.[73] During the end of the civil war, these organizations slowly gained a role in the peace process and the Catholic Church started to take up a leading position in this.[74] With the transition to formal democracy during the nineties, Guatemalan NGOs began to have considerable influence in the policy process. Their

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[68] (Falisse and Sanz-Corella 2009)

[69] (Kurtenbach 2008:385)

[70] (van Leeuwen 2010:95)

[71] (Carrera Guerra 2002), (Palencia, Holiday 1996)

[72] (van Leeuwen 2010)

[73] (Azpuru et al. 2004:53)

[74] (van Leeuwen 2010)

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focus on policy change came principally as a result of two interrelated factors: the political opening presented by the governmental change during the peace accords and the continuing government obstacles that groups encountered when trying to promote human rights. Moreover, it was during this time that the political options for civil society actors broadened and enabled international NGOs and other donors to cooperate more closely with civil society. It was with the help of international organizations and donors that civil society organizations gained some public space for their opinions and debates, which up to then were impossible.[75]

A peak of activities can be observed during the peace negotiations in the Assembly of Civil Society (Asamblea de la Sociedad Civil, ASC), which was established in 1994.[76] The ASC was formed by ten representatives from different social sectors; the representative from the business sector refused to take part in the assembly and boycotted to ASC. United in the ASC, NGOs participated in talks between the government and the Guatemalan National Revolutionary Unity, which were mediated by the UN. The assembly was involved with different topics, and recommendations were formed that were passed to the United Nations and the parties in the negotiations. By letting the ASC give recommendations on certain topics, it was made sure that civil society was involved, at least indirectly, in the negotiations. The ASC was a very important player in the development of the Indigenous Rights Accord.[77]

During the implementation of the peace accords, members of civil society organizations were often named for positions in the so called 'peace institutions' that were responsible for the implementation of the peace accords.[78] These institutions did not have much leverage inside the government but served more as a link to civil society. However, according to Kurtenbach, cooptation also produced conflict inside civil society and thus deepened divisions and fragmentation.[79] This is reflected in their distinct views on how societal changes should be brought about and what the role of civil society organizations should be in this process. Because of these differences, civil society entered a crisis that started with the failed referendum on the constitutional reforms in 1999. As Pearce and Howell describe, fragmentation and division, rather than cohesion and unity, characterized civil society in the late 1990s.[80] It was in this context that many civil society organizations collapsed or fractured and many social movements floundered. Van Leeuwen (2010) notes

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[75] (Kurtenbach 2008:387)

[76] (de Paz 1996)

[77] ibid

[78] (Kurtenbach 2008:395)

[79] ibid

[80] (Howell and Pearce 2001)

that certain organizations were very strong in demanding change from the government during the conflict, but were unable to implement change themselves in post-conflict reconstruction.[81] Besides, civil society was looking for new leaders in order to rebuild and structure the spaces that were gradually won through negotiations. This was not the case for all organizations or movements. Some adapted to the new situation and survived with new approaches and programs. According to Pearce (2006), especially the human rights and security sector reform organizations were able to adapt and reformulate their proposals[82].

The phase that followed immediately after the Peace Accords was characterized by a transformation of the guerrilla organizations in political parties as part of their participation in formal political dynamics. Other important information to note is that after the peace accords were signed, many social movement groups transformed into NGOs in order to get access to funds of the international donor community. The terms and expectations of Guatemalan civil society were geared towards international NGOs and a new kind of national NGOs, which were structured and multiplied to benefit from the finance from international cooperation and the promised sponsorship as stated in the Peace Accords.[83] This has led do an NGO-ization of civil society that, according to Kurtenbach, has several negative effects. She describes that it has made the cooperation between different organizations more difficult because they are competing for the same funds. Moreover, it mainstreamed the discourse and priorities of the organizations to those of the international community, which has led to a distance with the social base. The professionalization happened mostly at the higher level of the organizations, widening the gap between them and their original constituency.[84]

Nowadays, Guatemalan civil society is characterized by young and diverse actors and structures that are still very fragile. Civil society is broad and diverse with some sectors of civil society being rather weak, while other sectors have shown notable strength and resilience. NGOs in Guatemala are organized by sector (e.g. social services, human rights, environmental issues, etc.) and levels of representation, and benefit from a legal framework that guarantees its working space in Guatemalan society. Historically, the NGO sector has been characterized by its variety and its internal contradictions, which have favored its divisions and lack of productive coordination.

The NGO sector in Guatemala includes many different organizations, but as said before, it has been observed that the ones working in the field of human rights, security

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[81] (van Leeuwen 2010)

[82] (Pearce 2006)

[83] (Falisse and Sanz-Corella 2009)

[84] (Kurtenbach 2008:389)

sector reform, and justice are seen as the most successful and proactive. However, as described by Kurtenbach, their work did not become easier after the conflict. Although the war had ended, continuing violence weakened and endangered civil options.[85] Groups and individuals who promote accountability for past violence and the rule of law were, and still are, a continuous target of violence. The above-mentioned organizations are also the organizations that receive special attention in this research because they are the ones concerned with the fight against impunity. This sector of NGOs is mostly urban-based, with a number of quite professional NGOs based in the capital.

3.3. NGOs in relation to the state

To begin with, it is important to describe the current political situation in Guatemala because this situation has several consequences for the work of NGOs. Guatemala is not a country that matches the typical criteria of a failing or fragile state and it does not fit neatly into the OECD's fragile state typology.[86] However, transparency and governance indicator are falling short by what we could have expected after years of transition to democracy and about ten years of post-conflict peace building efforts. Guatemala can be seen as a fragile state in the sense that political will, institutional capacity, and the delivery of social services fail to guarantee security as well as social, economic, and cultural human rights to its citizens. It is evident that the state fails on several dimensions: the police force is weak and prone to corruption, the legal system guarantees impunity rather than upholding the rule of law, the indigenous population is still vastly excluded, and the state fails to establish sustainable sources for financing social spending.[87]

Looking at the political culture of Guatemala, politics are fragmented and organized on a highly personalistic basis. The political system suffers from a relatively low legitimacy level, with central institutions, like the parliament and political parties, being the least trusted by the citizens of Guatemala. With regard to political parties in Guatemala, most are established around personal relations and not on the basis of a shared political program. These parties are seen as extremely weak and some scholars and journalist even claim that the internal party structure is often so frail that their very status as parties is questionable.[88] This is reflected in the non institutionalization of the parties: parties often collapse as soon as their founder leaves the political stage because no ideology, programmatic agenda, or

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[85] (Kurtenbach 2008:397)

[86] OECD typology fragile state: states where the state power is unable and/or unwilling to deliver core functions to the majority of its people: security, protection of property, basic public services and essential infrastructure. (OECD 2008)

[87] (Isaacs 2010:117)

[88] (Sánchez 2008)

institutional history is keeping the party together. According to Kurtenbach (2008), the political system resembles the structure and the power relations that have been shaped by war, violence, and international interventions.[89] There are two important factors for the continuation of the party system as we know it today: first, the domination of the so-called parallel powers restricts the establishment of a social basis for political organizations that is necessary for democratic consolidation, and secondly, high levels of violence leads to the prioritization of physical survival over other issues.[90] This is picked up by the media and politicians who anticipate on this by promising 'mano dura' (iron fist) policies that are reflected in very authoritarian public policies.

Because of the current situation, policies are very prone to be changed often because the country still suffers from the political culture whereby each new government redefines governmental goals and abandons those of their predecessors. With this, it can be observed that state institutions are very personalized, as their performance is dependent on the specific person in charge. In sum, no institutional governmental culture is built. According to Pearce (2006), it is exactly because of this that an NGO sector outside the state is so important. In the context of weak state institutions and ambiguous or contradictory transitional settings, NGOs can play a key role in reforming several state policies. Pearce describes that academic institutions, research centers, and NGOs are not only advocates to reform, but are also valuable resources for the technical discussion of issues in which the State bureaucracy might have serious limitations.[91] This community must be ready to respond when political opportunities emerge. Most of the times the NGOs are better able to do so because their knowledge of the policy making process has grown in the past years, they are aware of the problems of management and administration, and they have been around for longer than most political parties. According to Edgar Gutierrez, former foreign affairs minister, NGOs or human rights organizations have more legitimacy than political parties in the country and are therefore important players in the democratization process of Guatemala.[92]

3.3.1   Cooperation versus confrontation

Guatemala's history is of major importance for the way in which NGOs cooperate with each other as well as with the government. Pearce (2006) notes that part of this historical legacy includes mistrust, polarized political differences and social differentiations, as well as inequalities around ethnicity, gender and class amongst the NGOs. This affects the dialogue

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[89] (Kurtenbach 2008:297)

[90] (Kurtenbach 2008)

[91] (Pearce 2006)

[92] Author's interview with Edgar Gutierrez, minister of foreign affairs during the Portillo government, Guatemala City, 3rd of May 2012.

between the NGOs and the power holders in Guatemala in a serious way. During the government of Portillo it can be observed that the working space for NGOs was slowly closing up, and the space left for dialogue between the NGO sector and the government was diminishing. Moreover, it was during his administration that corruption grew exponentially. This trend continued under Berger. There were few opportunities left for NGOs to influence policy and work with the state. Moreover, under the Berger government, attacks on human rights organizations grew and formed new obstacles for these organizations.

There are substantial differences in the way of working with the State between the different NGOs active in the country. Differences arise around questions whether NGO representatives can take positions in a government and how lobbying with the government should be conducted. Organizations are constantly struggling with the balance between building relationships within the state in order to influence policy from within, and preserving autonomy and principled positions on all issues. The ones that work more closely with the government are viewed with suspicion by others who argue that it weakens their autonomy and willingness to speak out. On the other hand, the organizations that do have close ties with the government see this as an essential part of their work because they argue that they have opened spaces for dialogue and they are acting as a bridge to the power holders who are unwilling to listen to the organizations who have less close ties. In an interview with Fernando Girón Soto, who works for the Fundación Myrna Mack, he emphasized that working with the state is very hard for many civil society organizations in Guatemala because they generally see themselves as an opposing force to the government. However, he notes that cooperation does not necessarily mean that one has to surrender itself to public policies; it is possible to cooperate with the government while keeping your own views and identities.[93] Some organizations give more value to lobbying and influencing processes with the government than others. These organizations have said to see lobbying as a tool or a strategy in order to achieve their goals while other see it as the end it in itself and sacrifice some of their principles.

Cooperation between NGOs is most of the times not institutionalized and depends on personal contacts, sympathies, and other related factors. However, the differences of opinion between the organizations hinder fervent coordination. Nonetheless, in recent years significant efforts are recognized by certain federating entities such as the Coordination Forum of NGOs Guatemala, to promote coordination and joined work for the construction of

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[93] Author's interview with Fernando Girón, advisor for Fundación Myrna Mack, Guatemala City, 16 April 2012

a shared vision and an agreed agenda for the sector.[94] Especially in the justice and security sector, various efforts have been made in order to coordinate the work of the NGOs better. One of these efforts is the Forum for Social and Security Organizations (Foro de Organizaciones Sociales en temas de Seguridad, FOSS). This forum is institutionally affirmed, has an agreed agenda and an equal distribution between its members in relation to the National Accord. Moreover, other organizations within the human rights and security reform sector saw the need for cooperation and, in recent years, different alliances were established. Examples of this are the Movimiento Pro Justicia[95] and La Convergencia por los Derechos Humanos.[96]

Although civil society is fragmented, it is remarkable to see that organizations are able to find some common ground on some issues while disagreeing on others. It is striking that, although Fundación Myrna Mack is no longer a member of La Convergencia por los Derechos Humanos they are a part of FOSS, which includes some of the organizations present in la Convergencia. It seems that the joining of a coalition is issue specific. Many organizations that join a coalition point out that it generates added value like being a collective brain (e.g. exchanging ideas and visions), creating collective will and collective memory, and generating inter-institutional synergy. Pearce (2006) also notes in her work that during her interviews with different organizations it became clear that NGOs are still able to work with each other even though they have different opinions on a number of topics. She gives an example of Madres Angustiadas, a group of middle class women in support of the death penalty who are working on some public security cases with the Instituto de Estudios Comparadas en Ciencias Penales de Guatemala (ICCPG) who are opposed to the death penalty. According to Pearce, it is a sign of maturity that such differences can be accommodated.[97]

Concerning the impact of NGOs in Guatemala, it has been observed that these organizations have played an increasingly prominent role in the country's political process. According to Falisse and Sanz-Corella (2009), civil society has filled the gaps left by the non-implementation of the peace agreements. The NGOs working on issues of security, justice, and human rights are coordinating their efforts to enable an ongoing monitor of the 101

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[94] (Falisse and Sanz-Corella 2009)

[95] Formed by Fundación Myrna Mack, Familiares y Amigos contra la Delincuencia y el Secuestro (FADS), and Madres Angustiadas (MA)

[96] Formed by Centro para la Acción Legal en Derechos Humanos (CALDH), Centro Internacional para Investigaciones en Derechos Humanos (CIIDH), Fundación Sobrevivientes, Insituto de Estudios Comparados en Ciencias Penales en Guatemala (ICCPG), Oficina de Derechos Humanos de Arzobispado de Guatemala (ODHAG), Seguridad y Democracia (SEDEM), and Unidad de protección a Defensoras y Defensores de Derechos Humanos –Guatemala (UDEGEGUA)

[97] (Pearce 2006)

points of the National Accords. NGOs have gradually evolved from an attitude of dissenting from the state to a more proactive and cooperative attitude. In this regard, it is important to note that since the signing of the Peace Accords, NGOs in this sector have managed to extend their skills in such a way that they have become real advisors for the various branches of government. Moreover, NGOs have acquired a level of coordination, and they have divided subject according to their own specialization. Falisse and Sanz-Corella (2009) note that in recent years, more than 80% of the draft laws on issues of security and justice have been developed with the support and technical assistance of NGOs. Pisani and Van Brabant (2009), who produced an evaluation of Foss, have indicated that Guatemalan civil society has a technical and thematic capacity on various aspects of democratic security that is outstanding by global standards.[98]

3.4   Conclusion

It can be concluded that the development of civil society in Guatemala has been a difficult one. Its development knows several setbacks throughout the armed conflict, during which a repressive regime did not allow the participation of nongovernmental organizations or other civil society organizations. The results of this are reflected in the fragmented and weak civil society of Guatemala. In comparison to other Latin American countries, Guatemala's indigenous movement, that was strong in 1990's, is nowadays relatively weak and lacks major political allies.[99] However, as described in this chapter, there is one sector of Guatemala's civil society that can be seen as an exception: NGOs and other organizations focusing on the rule of law, security sector reform, and human rights are relatively well developed. These NGOs are mostly urban-based and well organized — the contrast with the more rural-based and indigenous NGOs is stark. There are almost no connections or networks between the rural and urban-based NGOs, which has led to the existence of an exclusive group of NGOs working on human rights in the capital of Guatemala.[100] I think it is therefore important to treat this group of NGOs as a separate entity, and conclusions drawn for this group are not applicable to other sectors of NGOs or civil society organizations in the country.

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[98] (Pisani and van Brabant, 2009:36)

[99] (Sieder, 2000); (Bastos and Camus 2003)

[100] Author's interview with Anabella Sibrián, representative of the Dutch platform against impunity in Guatemala, Guatemala City, 22 March 2012

Chapter 4 -NGOs and the establishment of the CICIG

4.1   Introduction

Corruption and impunity have spread through Guatemalan society since the country's restoration of democracy in 1996. Clandestine groups within the public and private sector have remained unconfined. These clandestine groups include international drug traffickers, the so-called hidden powers, consisting of well-placed, corrupt Guatemalans, and transnational gangs.[101] These actors are highly organized, well armed, and form influential powers that operate partly within the state of Guatemala. Since the end of the civil war, these organizations significantly expanded their influence and cause close to twenty deaths per day.[102] Guatemala's weak and corrupt law enforcement institutions have proved to be incapable to control these clandestine groups.[103] According to Briscoe (2008), structured and enduring groups, managing and seeking out lucrative illicit businesses are the most prominent players in Guatemala's criminal landscape, these include international drug trafficking groups (DTOs), and networks of powerful individuals in Guatemala.[104]

DTOs emerged in Guatemala when the country became a prominent player in the inter-American drug trade responsible for the transportation of cocaine from Colombia to the United States. The major drug cartel active in Guatemala is *Los Zetas,* a Mexican organization that claims to posses the Guatemalan drug trade.[105] The Zetas are looking for a safe-haven in Guatemala in order to escape the offensive against DTOs launched by the Mexican government. With a poorly performing judicial system and an impunity rate of 98 percent[106], Guatemala is the ideal safe-haven for DTOs because they can literally get away with murder and other crimes. In December 2010, President Alvaro Colom declared a state of siege and martial law in the district Alta Verapaz, which is located near the Guatemalan border with Mexico, because it was claimed that the region was ungovernable due to the presence of the Zetas.[107] The presence of the DTOs in Guatemala not only causes high crime rates, but it also fuels corruption. All over the world it is visible that drug profits bring about a rise of official corruption, and Guatemala is no exception.[108] Due to DTOs the country is now full of criminal collaborators and infiltrators that are active in local and departmental governments.

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[101] (Brands 2011:228)

[102] (Isaac 2010)

[103] (Human Rights Watch 2009)

[104] (Brands 2010:19)

[105] (Human Rights Watch 2012)

[106] World report 2012, Human Rights Watch

[107] Ibid.

[108] (Brands 2011:233)

A second major criminal actor in Guatemala is known as the *poderes ocultos*. These groups are historically rooted in Guatemala's' political system and include prominent businessmen, current and former military officers, politicians, civil servants, and defense and law enforcement officials.[109] According to a report on the hidden powers in Guatemala, the "hidden powers oversee and profit from a variety of illegal activities that they carry out with little fear of arrest or prosecution (...). Along with their influence in the state bureaucracy, the hidden powers have relationships with most of the political parties in Guatemala".[110] These powers have their own way of dealing with government officials or civil society groups that threaten their influence. They resort to violence when journalists, human rights activists, or other individuals challenge them. According to the report by Peacock and Beltran, "the result is a self-perpetuating, downward spiral of violence that jeopardizes the rule of law and functioning of democracy in Guatemala".[111]

Furthermore, these groups are suspected of being involved in illegal activities on a large scale and have faced little prospect of being prosecuted due to the high impunity rates. The continued existence of these illegal and clandestine security organizations is one of the most serious issues faced by Guatemalans working in the human rights sector. In order to counter these illegal structures, NGOs have been committed to fight impunity in the country for many years. According to these organizations, impunity can be seen as another crime. According to Sandino Asturias, director of CEG, impunity is an act of denial and can be seen as one of the gravest problems affecting Guatemala and other Latin American countries. Moreover, impunity is a reflection of a judiciary system that does not work. It can be seen as an expression of a society that is not under the rule of law. [112] On the nature of the impunity in Guatemala, Jorge Santos, director of the CIIDH, has said that impunity in Guatemala is linked to past abuses committed during the civil war for which the perpetrators never had to face punishment.[113] This pattern of impunity created a culture: a culture of impunity, and almost everyone suffers of the existence of this culture in Guatemala.[114] Human rights NGOs have suffered particularly because the clandestine groups active in the country are responsible for a large number of threats and attacks against human rights defenders.[115]

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[109] (Brands 2011:234)

[110] (Peacock and Beltran 2003:1)

[111] Ibid

[112] Author's interview with with Sandino Asturias, director of the Centro de Estudios de Guatemala, Guatemala City, 27 March 2012

[113] Author's interview with Jorge Santos, director of Centro Internacional para Investigaciones en Derechos Humanos en Guatemala, Guatemala City, 28 March 2012

[114] See footnote 111

[115] (Human Rights Watch 2012)

In recent years, the situation has become more severe. Especially during the government of Portillo, between 2000 and 2004, the influence of clandestine groups became more evident and widespread. This is also felt in the NGO sector where attacks, threats, and abuses against human rights activists have increased significantly since the year 2000.[116] It is in this light that human rights organizations, together with the Government of Guatemala, turned for outside help to combat impunity in the country. The government had to admit the fact that they were not able to counter these clandestine groups themselves. The first attempts to establish a commission that could strengthen the judicial system and fight impunity were made in 2001.[117] Local human rights NGOs, together with the Guatemalan Human Rights Ombusman, proposed the creation of a Commission to Investigate Illegal Groups and Clandestine Security Organization (*Comisión de Investigación de Cuerpos Ilegales y Aparatos Cladestinos y de Seguridad,* or CICIACS). However, after an investigation by the Constitutional Courts, the proposal was put on hold because several aspects of the agreements were seen as unconstitutional.[118]

Nevertheless, when three Salvadorian members of the Central American Parliament were killed during a visit to Guatemala, international pressure on the Guatemalan government to improve the human rights situation in the country intensified. This led to renewed negotiations in order to come up with an adjusted proposal that would follow up on the CICIACS. This adjusted proposal was presented as the International Commission Against Impunity in Guatemala (CICIG). The CICIG was ratified by the Guatemalan Congress in August 2007 and entered into force on September 4, 2007.[119] The process leading up to the creation of the CICIG was a difficult one, and many people argue that it would have been impossible without the pressure and work of several NGOs. In the next sections, this process of influencing policy will be described in a detailed manner together with the factors that enabled NGOs to eventually come to an agreement with the government.

4.2   First proposal: CICIACS

The situation as described in the introduction should be understood as a partial representation of a broader state of affairs. Threats and attacks against human rights defenders show a general disregard for basic human rights, as well as the willingness of some sectors to use violence in order to maintain the political, economic, and cultural systems that generate violence.[120] As said before, the attacks against human rights defenders became a

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[116] (UDEFEGUA 2010)

[117] Author's interview with Mario Polanco, director of GAM, Guatemala City, 19 April 2012

[118] (International Crisis Group 2011)

[119] Ibid.

[120] Author's interview with Sandino Asturias, director of CEG, Guatemala City, 27 March 2012

serious problem in 2000 and several human rights NGOs tried to put this on the government agenda. It was in the year 2001 that small groups of prominent human rights organizations decided to join forces and take drastic action to place the issue of attacks on human rights defenders on the public and international agenda, because the issue was disregarded before.[121] These organizations included the Center for Legal Action on Human Rights (Centro para la Acción Legal en Derechos Humanos, CALDH), the International Human Rights Research Center (Centro Internacional para Investigaciones en Derechos Humanos, CIIDH), the Mutual Support Group (Grupo de Apoyo Mutuo, GAM), the Institute of Comparative Studies in Criminal Sciences of Guatemala (Instituto de Estudios Comparados en Ciencias Penales de Guatemala, ICCPG), Human Rights Office of the Archdiocese of Guatemala (Oficina de Derechos Humanos del Arzobispado de Guatemala, ODHAG), and Security in Democracy (Seguridad en Democracia, SEDEM).[122]

Directors of these organizations began meeting with each other in 2001 to discuss possible responses to the attacks. In this first phase, the most important was to reach agreements on common grounds and to look for international alliances. During these first meeting they started by making a checklist of the Peace Accords together with a list with characteristics of the clandestine security groups.[123] It became clear that it would be very difficult to pose a criminal prosecution of these structures within the Guatemalan justice system. Although they focused on analyzing the coordinated nature of the attacks and the responsibility of the Guatemalan government to respond to them, they did not approach the government yet. The coalition worked together with the Association for Advancement of Social Science in Guatemala (AVANCSO), and produced a scientific document, named: *'La seguridad no se negocia'*, on the attacks of human rights defenders.[124] The report identified patterns in the attacks against human rights defenders. The attacks tended to be carried out in cycles. In some months there were almost no attacks, while in other periods there have been records of near-daily attacks. The attacks tend to appear during certain political events, such as the publishing of a report or the participation in a court case. Therefore, the report concluded that the attacks appear to be coordinated rather than spontaneous, and also that the attacks flow from a consistent set of actors.[125] No claims were made that the attacks were carried out by a single group, however, the consistency between them did suggest a high level of organization. According to the report, these attacks were aimed at creating terror within the human rights community. With this information and with pressure of the international

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[121] Author's interview with Mario Polanco , Director of Grupo Apoyo Mutuo, Guatemala City, 19 April 2012

[122] (Coalition for the CICIACS 2004:4)

[123] Author's interview with Claudia Samayoa, Director of UDEFEGUA, Guatemala City, 25 April 2012

[124] (Coalition for the CICIACS 2004:14)

[125] (Coalition for the CICIACS 2004:11)

community, the six directors were able to arrange two meetings with the Portillo government in April and May 2002.[126]

These meetings resulted in two concessions from the government. First of all, the government acknowledged the existence of illegal groups and clandestine security networks together with their coordinated nature. Secondly, president Portillo surprisingly agreed to set up a Presidential Commission for the Investigation of Threats and Intimidation Denounced by Members of Human Rights Organizations.[127] This concession did not lead to any actual commission or research process, but it did create some space and time for the NGOs to continue their research. Moreover, the first concession of the government together with the recommendation by the UN to create an ad hoc commission to investigate clandestine groups encouraged the NGOs to continue the process of establishing an international commission.[128]

During the first meetings there were suggestions to create a truth commission or an international tribunal. However, at that moment in time, especially an international tribunal was not viable. In order to generate other possibilities, the NGOs started an alliance with WOLA (Washington Office on Latin America) in order to reflect on the *Grupo Conjunto* that had been active in El Salvador. During the whole year of 2002, the six NGOs worked to come up with a proposal.[129] During this time, they took the Joint Commission for Investigation of Illegal Armed Groups with Political Motivation (Grupo Conjunto) in El Salvador as an example. This commission was created in 1993 in response to a recommendation of the United Nations-sponsored Truth Commission and to the upsurge in death-squad assassinations in late 1993. Although the research done by the commission did not lead to the sentencing of individuals involved in these clandestine groups, the final report did acknowledge the existence of illegal armed groups. The commission concluded that some of the clandestine group activities in El Salvador, while not a part of official state policy, are directed, supported, covered up or tolerated by members of the military and police institutions, and the judicial and municipal organs. Grupo Conjunto documented twenty-five cases that showed links between ex-paramilitaries, organized criminal networks, the national police, and government officials.[130] The Guatemalan NGOs, therefore, saw this commission as very relevant for their situation. However, the jurisdictional scope of Grupo Conjunto was rather limited and lacked the power to arrest or prosecute suspects. They were able to

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[126] (Coalition for the CICIACS, 2004:25)

[127] Author's interview with Claudia Samayoa, director of UDEFEGUA, Guatemala City, 25 April 2012

[128] Author's interview with Mario Polanco, director of GAM, Guatemala City, 19 April 2012

[129] (Coalition for the CICIACS 2004:11)

[130] (Hudson and Taylor 2010:59)

organize and supervise a team of investigators comprised of Salvadoran and international experts that could present evidence to prosecute. In relation to this, the commission presented evidence to the Salvadoran government on individuals associated with these criminal organizations. The limitations of this commission are reflected in the fact that not a single criminal case was ever brought forward on the basis of evidence gathered by them, partly due to the lack of political will of the Salvadoran authorities.[131]

On the one hand, NGOs were enthusiastic about Grupo Conjunto and said that it was necessary to reunite their efforts in order to create something similar. Nevertheless, skepticism was raised because the results of Grupo Conjunto were far from optimal and several human rights advocates saw that a Guatemalan commission would never succeed in probing impunity very deeply.[132] This skepticism was most prominent around the international alliances that thought there was no point in creating an investigation commission when nothing would be done with the findings of that commission. They were afraid of a similar situation as with the Historical Clarification Commission, where virtually none of their recommendation were enacted. In order to find a more suitable way of fighting clandestine security networks, the NGOs, together with WOLA and the law faculty of Harvard University, started to look at other transitional justice mechanisms in comparison with Grupo Conjunto.[133] Grupo Conjunto had offered some valuable lessons for the creation of a similar commission in Guatemala, such as how a country emerging from civil war could seek assistance and aid of the international community, able to respond to an internal security crisis. They also showed how even when the prosecuting powers of the devised body are limited, it could still contribute to the executive's ability to control the problem by clarifying the extent of the problem and by naming some of the actors involved. However, researchers from Harvard University did not see this example from El Salvador as the most suitable and effective one for Guatemala. They suggested that the proposal should be more like the special court for Sierra Leone. This is a judicial body set up by the government of Sierra Leone and the United Nations to prosecute persons responsible for serious human rights violations.[134]

The special court for Sierra Leone is a so-called hybrid or third generation court. These courts were developed in order to blend the international and the local. It has been theorized that hybrid mechanisms can draw upon the strengths of international justice and the benefits of local prosecution. On the one hand, hybrid mechanisms are able to harness the credibility of international law and rely on the legitimacy particular to these institutions,

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[131] (Coalition for the CICIACS 2004:13)

[132] Author's interview with Claudia Samayoa, director of UDEFEGUA, Guatemala City, 25 April 2012

[133] (Atwood 2008:5)

[134] (Granovsky-Larsen 2006)

which lends hybrid courts a degree of authority in acting as a fair mechanism for holding perpetrators accountable. [135] On the other hand, hybrid mechanisms can be structured to tap into local expertise, create legitimacy and relevance for local audiences, and rebuild local judicial systems by training local lawyers and judges to follow international legal norms in national legal systems.[136] The NGOs found legal ground to create a similar commission in the Peace Accords. In the Agreement on Human Rights it was said that in order to maintain unlimited respect for human rights, there must be no illegal or clandestine security. Moreover, the Accords included that the Government of the Republic has an obligation to combat all manifestation of these above-mentioned groups. With the documented evidence of these groups, the NGOs pointed at the obligation of the Government to act upon the agreements made before and they created a concrete proposal for a hybrid international commission in relation to this.[137]

During the end of 2002, the NGOs came up with a proposal for the creation of the International Commission for the Investigation of Illegal Armed Groups (Comisión de Investigación de Cuerpos Ilegales y Aparatos Cladesitnos de Seguridad, CICIACS). Before the official publication of the proposal, the six organizations requested the support of the Guatemalan Human Rights Ombudsman to complete the process. Sergio Morales Alvarado, the Human Rights Ombudsman at the time, agreed to cooperate and together with the NGOs, issued an official resolution asking the government to create a special international commission in January 2003.[138] This commission would probe clandestine groups that "continue violating people's rights to life, integrity, security and dignity." The proposal explained the rationale for the commission and a preliminary profile of the structure and authority. In the first instance, the commission was presented to be a research body that would investigate and produce a report on armed groups responsible for the attacks against human rights defenders. The findings would then be passed on to the public prosecutor's office, which could then consider initiating a criminal prosecution. With the creation of the first proposal, a series of negotiations started between Sergio Morales Alvarado, the NGOs, and the government of Guatemala. Edgar Gutiérrez, then Minister of Foreign Affairs, recalls that he requested a facilitation of these negotiations by the head of the Americas Division of the New York-based organizations Human Rights Watch, José Miguel Vivanco, a Chilean lawyer.[139] By many of the human rights organizations this was perceived as an insult. According to Claudia Samayoa, the coalition was not exactly favorable towards Vivanco

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[135] (Higonnet 2005)

[136]ibid

[137] (Coalition for the CICIACS 2004:10)

[138] (Coalition for the CICIACS 2004:21)

[139] Author's interview with Edgar Gutiérrez, former minister of foreign affairs, Guatemala City, 3 May 2012

because he had previously congratulated the government of Portillo on the human rights situation in Guatemala while, at the time, this was not at all appropriate. However, the organizations also saw the need for a mediator during the negotiations and finally supported the inclusion of Vivanco.[140] Eventually these negotiations led to an agreement of the Government to create the commission. The government of Guatemala appointed former Ambassador to the Court of St. James, Maritza Ruiz de Vielman to handle the negotiations between the state and the UN for the creation of the CICIACS.[141] Ruiz de Vielman drafted an initial agreement in which the Government of Guatemala would establish the CICIACS under the Secretary of Peace (SEPAZ), a domestic institution in which the NGOs had little confidence. Because of this, the NGOs were not supportive of the idea and Morales communicated with Edgar Gutierrez that the NGOs, together with the international community would not support the proposal unless it would be set up as an international commission. Edgar Gutierrez notes that this was a misunderstanding and that actually the Government also wanted an international commission.[142] In this light, Gutierrez asked Ruiz de Vielman to rewrite the proposal and he sent her to New York in order to lobby with the UN and start the official exchange of letters.[143]

It has been reported that officials from the United Nations were, in first instance, quite skeptical about the proposal. The experience of Grupo Conjunto was not very promising and they were doubtful about the political willingness of the Government of Guatemala.[144] So, when the United Nations became involved in drafting a final proposal in 2003, they looked for a new form that looked more like the hybrid court of Sierra Leone. The commission had to be more powerful, independent, and with a much more ambitious mandate. The commission changed from being a commission of investigation to being an autonomous body for research and prosecution of illegal groups and clandestine security. In the final arrangement, it was agreed that the commission, which would be composed of both national and international actors, could investigate illegal groups regardless of the willingness of the Attorney General. The commission would serve as an investigative and prosecutorial body with the power to join prosecutions already initiated by the Public Prosecutor's Office, and the power to initiate prosecutions by itself, if actions from the Public Prosecutor's Office were not forthcoming. Furthermore, members of the CICIACS would have full access to all institutions and civil and military files, and they would have the power to ignore instructions from the government or

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[140] Author's interview with Claudia Samayoa, director of UDEFEGUA, Guatemala City, 25 April 2012

[141] (Coalition for the CICIACS 2004:26)

[142] Author's interview with Edgar Gutiérrez, former minister of foreign affairs, Guatemala City, 3 May 2012

[143] (Coalition for the CICIACS 2004:28)

[144] (Atwood 2008:6)

any other non-CICIACS source.[145] It becomes evident that the commission was to be created in such a way that it would bypass the largely ineffective Public Prosecutor's Office. The state of Guatemala then entered into an agreement with the United Nations to form this commission in January 2004.[146] However, it was during this time that opposition against the CICIACS began to increase. Mario Polanco notes that, initially, public opinion seemed favorable towards the commission. This changed with some vigorous campaigns in the media and in Congress that discredited the commission as an infringement of Guatemalan sovereignty.[147] The President at the time, Oscar Berger, openly expressed his support for the commission, but according to Sandino Asturias, director of the Center for Guatemalan Studies, this was just to receive the support of international donor countries who were in favor of the commission. In fact, Berger was widely seen as unwilling to put a lot of effort into bringing the commission into existence.[148] The international community was aware of this and started to push a little harder for the creation of the commission. This eventually led Berger to formally ask the Constitutional Court to issue a binding ruling on CICIAS. Investigations by the Court found that several aspects of the agreement were unconstitutional.[149] It is stated in the constitution that the Public Prosecutor is the only prosecutorial body of the Guatemalan state and it could therefore not allow the CICIACS to take up this role as well. Because of this, the initiative was put on hold in August 2004.

4.3   To be continued: CICIG

The rejection of the CICIACS was a huge setback for the human rights organizations. Important lessons were to be learned from the failure of CICIACS. As documented in a study by WOLA[150], the organizations became aware of the fact that international pressure, even at very high levels, could not serve as a substitute for political will from key actors within the government. Furthermore, the organizations had underestimated the power of the business sector whose influence in government policy remains large.[151] In the study by WOLA, Marlies Stappers, at the time head of the Plataforma Holandesa, notes that the NGOs were not able to build a broad-based coalition to push for the approval of the commission and this can be seen as a major strategic error.[152]

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[145] (Atwood 2008:7)

[146] (Coalition for the CICIACS 2004:5)

[147] Author's interview with Mario Polanco, director of GAM, Guatemala City, 19 April 2012

[148] (Atwood 2008:7)

[149] (Hudson and Taylor 2010:58)

[150] (Atwood 2008)

[151] (Atwood 2008)

[152] (Atwood 2008:8)

Surprisingly, the refusal by the Constitutional Court of CICIACS did not stop the Berger government to continue to revise the agreement and revive negotiations with the UN. This was quite unique since previous efforts at peace accord implementation had been unsuccessfully implemented or dropped after earlier setbacks. In order to create a new proposal, the Berger government created a working group that sought an alternative. This working group was composed of the Presidential Commission for Political Reform, the human rights ombudsman, the Bar Association, and the Center for the Defense of the Constitution.[153] A letter was sent to the UN in November 2004 reaffirming the commitment of the Government of Guatemala to CICIACS. However, no strategy of overcoming congressional and judicial opposition to elements of the CICIACS concept was identified. Moreover, he expressed interested in the creation of a Special Prosecutor to combat organized crime in Guatemala and asked the UN to provide international experts to help staff the office. The human rights organizations reacted disappointedly and angry at this proposal.[154] Their concern was that the Special Prosecutor, one in place, would become an inadequate substitute for CICIACS, not a supplement. Moreover, there was a general feeling of disappointment because the Government of Guatemala had not contacted or consulted with the NGOs during the creation of the new proposal, and this did not foster warm feeling from the human rights community towards the government because they felt their work during the creation of the CICIACS was not valued.[155]

However, the Berger administration continued with their efforts to reformulate the proposal in order to overcome the objections raised by the constitutional court. Important during this process was the active role of two human rights oriented officials within the Berger administration; Vice President Eduardo Stein, formerly employed by the UN, and Presidential Human Right Commissioner Frank La Rue, founder of CALDH. They convinced Berger to empower them to accompany the negotiation process. Together with the foreign minister Jorge Briz and some representative of human right organizations, including Helen Mack, director of the Myrna Mack Foundation, they constituted the group with the task to create the final proposal for creating a similar commission as the CICIACS.[156] The final proposal created by this group was presented by Eduardo Stein in January 2006, to the parliamentary commission, the Human Rights Ombudsman, the human rights movement and later on to the UN. It has become clear, that during this stage of the negotiations, the

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[153] (International Crisis Group 2011:5)

[154] (Atwood 2008:11)

[155] Author's interview with Jorge Santos, director of CIIDH, Guatemala City, 28 March 2012

[156] (Kennis 2012)

government of Guatemala, with the important efforts of some individuals, took the lead in the establishment process.

Contacts with the UN were reestablished with the intention of reaching a treaty-level agreement for the creation of the commission. In the WOLA study, Martha Doggett, at the time senior officer and head of the Guatemala desk at the United Nations Department of Political Affairs, notes that this was an important departure from CICIACS, which had been worked out essentially between NGOs and the government. According to Doggett, the UN officials felt that they had insufficient involvement in drafting the agreement intended to create the commission.[157] This time, the United Nations were actively involved in the drafting of the proposal that was made by the government of Guatemala, and on December 11, 2006, an agreement to create the International Commission Against Impunity in Guatemala (Commissión Internacional Contra la Impunidad en Guatemala, CICIG), between the government of Guatemala and the UN was reached.[158] The CICIG was presented as a commission that combines both national and international elements. CICIG's task is to support, strengthen, and assist Guatemalan institutions in identifying, investigating, prosecuting, and ultimately dismantling domestic illegal security apparatuses and clandestine security organizations.[159] The CICIG operates within the domestic legal system of Guatemala while incorporating both international and local staff and it is funded entirely by voluntary contributions from UN member states. The CICIG is seen as a hybrid mechanism for improving the justice system 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 characteristics of a commission.[160]

It becomes clear that the mandate of the CICIG was limited in comparison to CICIACS. In contrast with the first proposal, CICIG could not issue subpoenas or initiate prosecutions on its own. Many human rights activists have therefore criticized this proposal and saw the CICIG as a weak deduction of CICIACS. Moreover, Jorge Santos, director of the CIIDH, expressed his reservations and criticized the CICIG for its non-retroactive application to past illicit activities. He saw that past activities should be investigated by the CICIG because those who now run organized crime groups violated human rights and committed

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[157] (Atwood 2008:10)

[158] (Atwood 2008:10)

[159] Hudson and Taylor (2010)

[160] Ibid

crimes in the past.[161] Nevertheless, most of the NGOs agreed to support the proposal and the lobby continued. Again, the proposal still had to be approved by the Congress, and Berger did not seem to be in a hurry to do so. According to some of the human rights activists, no lobbying had been done. Berger had announced the CICIG and two months later nothing had been accomplished

This all changed during February 2007 when three Salvadoran members of the Central-American Parliament, who were on a visit in Guatemala City, were killed. On February 19 2007, these politicians, together with their driver, were found dead, their car burnt down and their bodies ridden with bullets. Two days later, four police officers, including the head of the organized crime unit of the Guatemalan National Police, were arrested for their alleged involvement in the killings.[162] This was clear evidence of how deeply criminal groups had overrun Guatemala's security forces. The killing of the Salvadorians was seen as an opportunity for the criminal justice system of Guatemala to change the image of a country, seen as a paradise of impunity, if they would do everything to solve the crime. However, the killings were never solved and the image of Guatemala being a paradise of impunity became even stronger.[163] After their arrest, the suspects were brought to the most secured prison of Guatemala, where they would be interrogated by FBI against aiding in the investigation. This never happened because all four suspects were killed in their cells right before they could be questioned. In the aftermath, a Guatemalan prosecutor investigating the case was also killed. These events brought the influence of illegal actors on functioning of the Guatemalan state to the forefront and caused international pressure on Guatemala's government to improve the human rights situation in the country.[164]

In relation to the crimes described above, Vice President Eduardo Stein admitted that organized crime had infiltrated the Guatemalan Police. From this moment onwards, the ratification of the CICIG moved quickly. The murders helped put a human face to the concerns about unchecked organized crime and clandestine security groups and spurred support for accountability and a desire to do something.[165] Berger had to make sure that the proposals of the CICIG would be ratified in order to calm the country and assure the international community that there was a credible response and a solution on the way. Moreover, with the elections approaching, Otto Perez Molina, presidential candidate of the Patriot Party (PP) and Alvaro Colom, candidate for the National Unity for Hope Party (UNE),

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[161] Author's interview with Jorge Santos, director of CIIDH, Guatemala City, 28 March 2012
[162] Prensa Libre, 14 July 2008
[163] (Atwood 2008:12)
[164] Ibid.
[165] (Kennis 2012)

got behind the agreement, which meant that Berger had no other choice than to throw all his energy behind the ratification of the CICIG in order to make sure that his own party's presidential candidate, Alejandro Giammattei, still had a chance to win. However, the initiative was still opposed by the Guatemalan Republican Front (FRG), which held the second-largest bloc of seats in Congress.[166]

In order to ratify the CICIG in Congress, an advisory opinion form the Constitutional Court was asked, as was the case with CICIACS. In May 2007, the Constitutional Court ruled in favor of the creation of the CICIG, saying that it did not violate state sovereignty. The first vote in Congress failed because some members were not able to attend the vote. The only way in by which the entire Congress would vote would be if the issue would be made a matter of national urgency. However, by doing so, a 2/3 majority is required for the approval of the commission. With the back-up and fervent support of the international community[167] the agreement to create CICIG was eventually passed with 110 votes in favor, 5 against, and 43 lawmakers absent. The CICIG was ratified by the Guatemalan Congress in August 2007 and entered into force on September 4th 2007,[168] under the direction of the Spanish judge Carlos Castresana. It is clear that the road to ratification of the CICIG was not smooth and the resistance from several political parties poses an ongoing challenge to the success of the commission.

4.4   Network of actors

It has become clear that the establishment process of the CICIG was long and complex. It is impossible to understand how the CICIG was established without knowing about the CICIACS process. The most important foundations for the CICIG were made during the establishment process of the CICIACS.

Looking at the network of actors involved in both processes clear differences can be observed. During the first phase of the creation of the CICIACS proposal, a coalition of NGOs played an important role. It was the coalition that put the attacks on human rights defenders on the national political agenda. It should be noted, however, that the formation of a coalition was not self-evident. Since the peace accords, when human rights organizations worked closely together, differences between the organizations caused fragmentations within the human rights sector. Relations between the organizations were difficult and competition over resources had caused a certain degree of antagonism. However, the attacks against human

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[166] Ibid.

[167] The United States Senate issued a statement in July in which was stated that further U.S. security assistance to Guatemala would be ended if its Congress failed to approve CICIG.

[168] (International Crisis Groups 2011)

rights defenders in recent years, created a common enemy. Most of the directors of NGOs present during the process recall the difficult relations between the organizations and how this influenced the first meetings.[169] In order to overcome these differences they had to concentrate on the bigger problem and forget the differences that caused the fragmentation between the organizations in the first place.

Important in this process was the help and support of some international actors. Mario Polanco remembers how the coalition got help from the Dutch platform against impunity and the embassy of the Netherlands: 'They saw that if we would not be able to work towards a common goal and unite our strength it would be impossible to fight impunity in a constructive way'. In order to facilitate rapprochement between the organizations, the Guatemalan NGOs were invited to come to the Netherlands. According to Mario Polanco, 'the Dutch saw the necessity for a change of scenery and, more importantly, no telephone service in order for us to focus on what was really important at that time'.[170] The meetings in The Hague were only between the Guatemalans, who talked with each other for days in a row. Mario Polanco sees this week in The Hague as one of the most important moments in the process because it was there that they were able to agree on an agenda and a way of working together. Moreover, it was there that the idea of forming an international commission emerged.

Another important element in the creation of a strong network during the CICIACS process was the inclusion of the Human Rights Ombudsman. Polanco and Fernando Girón Soto, security analyst for the Myrna Mack Foundation calls to mind that the role of human rights ombudsman Sergio Morales was supportive from the initial phase onwards. He provided a positive backup and support for the initiative. With his endorsement, the NGO coalition felt more supported by international human rights organizations and the bigger international community, and this opened a larger political space, both nationally and internationally.[171] This vision is not shared among all the participant of the coalition. Nery Rodenas, director of the ODHAG, argued that the role of Morales was halfhearted. According to Rodenas, Morales was not engaged in defending the initiative aggressively when he had the chance to do so.[172] Maritza Ruiz de Vielman does note that the support of Morales was

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[169] Author's interview with Mario Polanco, director of Grupo Apoyo Mutuo, Guatemala City, 19 April 2012

[170] Ibid

[171] Author's interview with Fernando Girón, advisor for Fundación Myrna Mack, Guatemala City, 16 April 2012

[172] (Coalition for the CICIACS 2004:29), Author's interview with Nery Rodenas, director of ODHAG, Guatemala City, 19 April 2012

central, but also remarks that the previous work of the human rights organizations was intense and very valuable.[173]

In comparison to the CICIACS process, the establishment of the CICIG went differently. Giron has indicated that the coalition of NGOs was not flexible enough to overcome the disappointment of CICIACS and they were unable to unite their forces again in order to reevaluate their objectives and strategies to move forward. Although Berger had agreed to revise the agreement and revive negotiations with the UN, Claudia Samayoa has pointed out that most of the human rights organizations continued to feel opposition to the idea of a commission created by officials in the Berger administration Most of the organizations were opposed to collaborating with the government, while the Myrna Mack Foundation[174] did see an opportunity to follow up on their previous efforts and was in favor of further negotiations with the Berger administration. This caused an irreversible fragmentation within the human rights coalition.[175]

Moreover, a shift can be observed in the involvement of NGOs in shaping the proposal for the CICIG. The coalition of NGOs had been intensely involved in the drafting of the CICIACS proposal, and although the NGOs stayed involved and concerned with the issue after it was rejected, the process of creating the CICIG took place outside of civil society.[176] According to Nery Rodenas, director of ODHAG, the drafting of the CICIG proposal was an effort of individuals within the government, with the only exception being Helen Mack.[177] Eduardo Stein and Frank La Rue were both very important in this process and many of the NGOs have expressed their faith in these persons. Polanco has noted that Stein was an expert in international negotiations and La Rue had been very interested in the CICIACS proposal. Moreover, he notes that they, and especially La Rue, had strong ties with the human rights movement and it was because of this that they were trusted with the task of revising the proposal.[178] The involvement of Helen Mack was not strange in this matter given that she was on good terms with Berger and Eduardo Stein and had a close relationship with Frank La Rue. Girón noted that this has been particularly important given the reality of Guatemala in

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[173] (Coalition for the CICIACS 2004:29)

[174] It must be noted that it was mostly the individual effort of Helen Mack and not the Myrna Mack Foundation as a whole that eventually led to cooperation with the Berger administration.

[175] Author's interview with Fernando Girón, advisor for Fundación Myrna Mack, Guatemala City, 16 April 2012

[176] Author's interview with Nery Rodenas, director of ODHAG, Guatemala City, 19 April 2012

[177] Ibid.

[178] Author's interview with Mario Polanco, director of GAM, Guatemala City, 19 April 2012

which personal relations are of great importance. [179] It can be concluded that the network of actors active during the CICIG proposal has an entirely different character then during the CICIACS proposal. Individuals alliances between government officials and individuals from the NGO sector were established and formed a new, quite spontaneous, network.

With the presentation of the CICIG proposal, many NGOs expressed their reservations regarding the proposition. Some saw that CICIG would foment impunity. They were concerned over the Commission's lack of independence, and were questioning its effectiveness given that it would work with the National Civil Police (PNC) and the Public Prosecutor's Office, which have been infiltrated by criminal organizations. However, the coalition of human rights organizations did agree on the fact that they had to support CICIG and form their opinion publicly in order to make sure that the CICIG would be ratified. Rodenas remembers that although they did not see the CICIG as the ideal proposition, they were sure that help from the international community was needed and at that moment CICIG was their best chance to change the situation in Guatemala. [180]

4.5   Conclusion

In case of the CICIG, it has become clear that human rights organizations played an important role in the establishment process of the commission. They were the ones that put the issue on the agenda and started the first serious effort to draft a proposal for a commission. According to many different people from the human rights sector, but also from outside this sector, the CICIG would not have been possible without the work and pressure of the NGOs. According to Marco Canteo, director of ICCPG, the role of civil society organizations was fundamental and it would have been very difficult to establish the CICIG without the help of civil society organizations. [181] Sandino Asturias, director of Centro de Estudios de Guatemala (CEG), recalls that the coalition of human rights NGOs was, and still is, an important force for the establishment and the current work of the CICIG. [182] Fernando Girón notes that it was especially Helen Mack who played a decisive role in the establishment process, but she could only do so because she could build on the work previously done during the CICIACS proposal by the coalition of NGOs. [183] As stated by Edgar Gutierrez, former minister of foreign affairs, human rights organizations in Guatemala are very vigilant actors

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[179] Author's interview with Fernando Giron, advisor for Fundación Myrna Mack, Guatemala City, 16 April 2012

[180] Author's interview with Nery Rodenas, director of ODHAG, Guatemala City, 19 April 2012

[181] Author's interview with Marco Antonio Canteo, Director of ICCPG, Guatemala City, 27 March 2012

[182] Author's interview with Sandino Asturias, Director of CEG, Guatemala City, 19 April 2012

[183] Author's interview with Fernando Girón, advisor for Fundación Myrna Mack, Guatemala City, 16 April 2012

who occupy an important role in society. Without the presence of these organizations, the issue would not have been put on the national agenda.[184] However, the influence of NGOs in Guatemala is certainly not endless and there are other explanations that could account for the establishment of the CICIG.

In order to examine alternative explanations it is first of all important to ask the question: why did President Portillo Agree to CICICAS? From the beginning, it seemed clear that the Constitutional Court would probably not approve CICIACS, because there were too many opponents. However, Portillo's support for CICIACS did give him credits from the international community, and it could be that Portillo sought to derive whatever benefits and prestige he could get in the short term, without much concern for any long-term costs, because he was quite sure CICIACS would never be established. Other explanations are that the role of the US government was crucial for the approval of CICIACS by Portillo. Because of pressure from advocacy groups, the US government became convinced that CICIACS was needed in order to effectively fight the drug trade. They used their leverage on foreign assistance in order to convince the Portillo administration to support it.

Looking at the second phase, it is surprising to see that the negotiations continued after the decision of the Constitutional Court. There are different explanations for this. It might be that the Berger administration had already seen that specific benefits would be received after fulfilling elements of the peace accords. This had been the case when the military was significantly reduced from 27,000 troops to 15,000. As a response to this, US Defence Secretary released 3.2 million dollar in US military aid that had been on hold for 15 years. It could have been the case that Berger thought additional aid for security related issues would be released when the government showed initiative on fighting impunity. This could also be an argument for why Berger signed CICIG and ushered it through Congress. By doing so, Berger could have claimed a victory against impunity and promote his own leadership on the measure within the international community. Another possibility is that the whole CICIACS process had increased the awareness of the organized crime problem and further steps had to be taken, according to Berger.

In conclusion, the interplay between the political opportunity structures, the political circumstances, and the pressure of the international community was crucial for the establishment of the CICIG.

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[184] Author's interview with Edgar Gutierrez, former minister of foreign affairs, Guatemala City, 3 May 2012

Chapter 5 – Discussion

5.1   Discussion of the findings

This thesis aims to identify to what extent NGOs in Guatemala are able to influence the policy process. The central question of this research is: *'In what way did the network of Guatemalan NGOs contribute to the creation of the International Commission Against Impunity in Guatemala (CICIG) from the year 2000 onwards?'* From the information that has been provided in the previous chapters several conclusions can be drawn. In the following section I will go over the findings of this research by answering and discussing the three sub questions presented in chapter one.

The first question concerns the political environment of Guatemala and looks at the political conditions necessary for NGOs to participate in, and influence the policy process. In general, different levels of participatory opportunities can be observed. The findings in this research illustrate that the political environment of Guatemala can be described as adverse. Human rights NGOs in Guatemala had the chance to develop themselves significantly during the end of the civil war, this resulted in a relatively well-organized NGO sector with substantial legitimacy. This suggests that the policy environment has been supportive towards NGO participation in the policy process. Moreover, political parties in Guatemala are described as weak, underdeveloped, and know low levels of institutionalization. Because of this, political parties do not dominate collective action and leave participatory space for NGOs. According to many NGO directors, the weakness and under institutionalization of political parties leaves room for NGOs to participate in policy- and decision-making processes. Nevertheless, human rights NGOs are under heavy pressure due to the attacks against human rights defenders in recent years. This serves as evidence for a repressive policy environment. These are important factors when looking at the degree of influence human rights organizations are able to exercise.

In a context like Guatemala, where there is an adverse political environment, different rules apply for the participation of NGOs in policy processes than the ones described in Casey's framework. The framework developed by Casey focuses mostly on Western countries and does not cover weak state contexts like Guatemala, where the rule of law is undermined by different actors. Besides, Casey does not take into account the importance of international players in local politics. In this research, it has become clear, that pressure from the US was of vital importance for the ratification of the CICIG. With this knowledge, it seems that the influence of Guatemalan NGOs was twofold. On the one hand they influenced the policy process *directly*, by negotiating with the government of Guatemala. And on the other hand, the international lobby, of Guatemalan NGOs, in order to make sure

that international actors would put pressure on the government of Guatemala, serves as evidence for *indirect* influence put forth by these NGOs. The pressure placed on the government of Guatemala by the US could be a case of the boomerang effect, described by Keck and Sikkink (1998). The boomerang effect could illuminate why Guatemalan NGOs wanted to approach international actors, but it does not explain why these international actors mobilized. Further research is needed in order to draw conclusions about this.

The second research question concerns the nature of the policy conflict around the creation of the CICIG. The anti-impunity nature of the CICIG policy has been important for the degree of influence that could be exercised by NGOs. Impunity is a pressing issue and posses one of the greatest challenges to governments in Latin America. The NGO sector working on anti-impunity policies in Guatemala is a distinct group that can be seen as rather successful and proactive, as well as relatively well organized and coordinated. In contrast to political parties in Guatemala, NGOs have quite a long history of working with issues of impunity and rule of law building. They have knowledge of the current situation in which Guatemala resides, know relevant government officials, and have earned a certain degree of legitimacy. These circumstances are detrimental for effective NGO intervention.

The expanding attacks against human right defenders in recent years, made the issue of impunity even more relevant and urgent for human rights NGOs. They were able to present the government of Guatemala first hand evidence of an existing pattern of abuses, that was closely related to the issue of impunity. By providing the government with evidence for the existence of clandestine security networks, NGOs were able to make their fight against impunity a public fight and put their concerns on the political agenda. I see this as one of the most important achievements of human rights NGOs in their fight against impunity. Although they were not able to achieve immediate policy change, they did put something in motion and accomplished a continuation of the negotiations, which eventually led to the creation of the CICIG.

The third question looks at the importance of the created network of actors during the establishment process of the CICIG. As can be concluded from this research, the establishment of a network of NGOs was vital for the creation of the CICIG. For a long time, NGOs were unable to cooperate properly. Differences, whether personal or of other nature, between organizations posed a barrier for collaboration. This changed in the year 2000, when the attack against human rights defenders became more severe and created a common enemy. With the help of several international actors NGOs were able to join their forces. Their ability to create an effective network has fostered their influence efforts. However, this was mostly the case during the development of the CICIACS proposal. When the CICIACS

proposal was seen as unconstitutional by the constitutional court, this was a huge setback for the involved organizations. Several directors of NGOs have noted that they were unable to overcome this fiasco together. The network of actors that emerged after the disappointment of the CICIACS was of a more spontaneous nature and consisted of government individuals such as Frank La Rue and Eduardo Stein, and NGO representative Helen Mack. They voluntarily took up the initiative and created a different type of network with different alliances.

Clear differences between the network of actors created during the first phase of the negotiations (CICIACS), and the second phase (CICIG) of the negotiations can be found. The networks differ in their nature and composition. The most important difference lies in the relation with the government of Guatemala. The first network consisted of different human rights NGOs concerned with the issue of impunity, whereas the second network consisted of individuals from the NGO sector as well as from the government. In his framework, Casey does not deal with the second type of network. Casey's framework takes NGOs as a whole and leaves no space for the maneuvers of individuals. In the case of the CICIG, this has been an important factor. The first network of actors were not able to establish and international commission to fight impunity. The second network did achieve the establishment of such a commission. This shows the importance of a combined network with government alliances for successful influence by NGO representatives. In the case of the CICIG, it has become clear that individual actions inside and outside of the state were decisive for the ratification of the CICIG. This makes me conclude that the influence of NGOs during the second phase of creating an international commission to fight impunity was less and of an indirect nature. However, one should not forget that this process was a continuation of the work that was done by the human rights organizations before.

In sum, in order to assess the influence of NGOs in the establishment process of the CICIG, I have looked at the evidence regarding NGO activities and resources from the year 2000 onwards, and I took into account the subsequent effects of their behavior. I have shown that NGOs engaged in the intentional transmission of information. They have provided government officials with information about the nature of the problem. With the help of international actors, they were able to put the issue on the political agenda and they came up with a concrete proposal to fight impunity in Guatemala in a constructive way. This was later used to craft the proposal for the creation of the CICIG. I have shown that government officials have taken this information into account and have considered the proposal to be a viable option. This suggests that NGOs have been quite effective at communicating their position and have influenced the governments' decision to establish the CICIG. However, the creation of the CICIG would have never been possible without the

pressure put on the Guatemalan government by some key international actors, and without the political will of some individuals within the Berger administration. I therefore conclude that NGOs in Guatemala did influence the policy outcome, however, only to a limited extend, and the influence was, especially in the second phase, indirect in nature.

A lesson that can be learned from this thesis is that NGOs can play an important role in improving the human rights situation of a country when they find or create space for participation in the policy process. By creating a strong network of actors, and with the help of international alliances, they have the ability to become legitimate players in the policy process. This is not only important in the Guatemalan context, it is also provides prospects for the human rights NGO sector in other countries.

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