

Victims of Informal Institutions: The Status of National Personnel of the International Commission Against Impunity in Guatemala (CICIG)

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International organizations are famous for the jungle of contractual relationships with its officials and agents. Particularly within the United Nations (UN) system, critical voices are often raised for the way in which non-staff personnel are exploited to carry out the same activities and assume similar responsibilities of staff personnel. The unfair treatment of certain categories of workers has even more dire consequences for non-staff nationals, locally recruited to take advantage of their knowledge of the country and their professional networks. They often have worse contractual conditions in terms of salary and benefits, and they assume higher risks for retaliations. This is particularly concerning for the growing practice of ‘outsourcing’ sensitive functions to informal or hybrid institutions, that has multiplied the forms of precarious and dangerous work.



In these days, a dreadful story is unfolding in Guatemala, involving the human rights lawyer Claudia Gonzalez, former staff member of the International Commission Against Impunity in Guatemala (CICIG). I will first summarize the facts of the case and then present the unclear legal status of national personnel who worked for CICIG, before moving to discuss informal institutions and the legal gaps in which they operate.

The facts in brief

The CICIG was established in 2006 with an agreement concluded between Guatemala and the UN to investigate “illegal security forces and clandestine security organizations”, support, and provide technical assistance to Guatemalan institutions (Article 2). During its mandate, it investigated 124 situations, among which cases of corruption, money laundering, extrajudicial executions, drug trafficking, and government frauds. The agreement expired in 2019, when the Commission opened investigations against the Guatemalan President Jimmy Morales, who did not renew CICIG’s mandate.

Since then, a series of retaliatory actions against CICIG personnel culminated with the arrest and detention of Claudia Gonzalez, on 28 August 2023. Guatemalan national, she worked for CICIG from 2011 to 2019 and is the current lawyer of several former CICIG officials and former Guatemalan prosecutors subject to criminal prosecutions for their work. After her

arrest, she was detained and brought before a pre-trial judge on 6 September. Only on 23 September she was formally accused of abuse of power in connection with her involvement in a case of corruption investigated in 2017. In a closed-door proceeding, her pre-trial detention was confirmed for 3 months, pending investigations. The motivations of the decision are not public, but Guatemalan prosecutor stressed that her work for CICIG implied a status of public official and that she abused the authority conferred to the Commission by Guatemala and the UN.

The Informal Legal Status of CICIG and of its National Personnel

In the preamble of CICIG constitutive treaty, Guatemala and the UN stressed that the Commission is a “non-UN organ”. At first glance, it may look like a rare bilateral international organization: the constitutive treaty created a set of “functionally independent” organs and conferred international personality (Articles 2, 4, and 5). At the same time, the link between the Commission and the UN remained strong. The Secretary General nominated the Commissioner, who performed its function at the level of Assistant Secretary-General. CICIG website stresses that the Commission depended on the UN, who maintains the burden of financing all its activities. UN Development Programme managed CICIG budget and paid its staff (p. 16). Newspapers often calls it a ‘UN-backed’ anti-corruption body, while the UN itself did not refrain from identifying it as its own organ.

The unclear status of the Commission affects its employees, particularly for the enjoyment of privileges and immunities. As a formally separate international entity, the Convention on the Privileges and Immunities of the United Nations (General Convention) does not seem to be applicable. To partially cover this outstanding gap, Article 10 of CICIG constitutive treaty established that “International personnel shall enjoy the privileges and immunities granted to experts on missions for the United Nations”. Guatemala and the UN decided to leave national personnel outside the agreement, excluding the category of workers that needs to be protected the most.

Despite the legal gap in which Guatemalan nationals worked for CICIG, it is possible to make an argument for the application of the General Convention, due to the broad definition of ‘experts on missions’ and the link between the UN and CICIG personnel. One could rely on the fact that the agreement establishing CICIG elapsed under Article 14 and is no longer in force. If CICIG former employees could be considered as UN experts on missions, the General Convention is applicable for facts happening today, and the immunity from legal process “shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations” (Article VI, section 22).

In order to define this category, the International Court of Justice claimed in the Advisory Opinion Applicability of Article VI, Section 22, of the General Convention that:

“[t]he experts thus appointed or elected may or may not be remunerated, may or may not have a contract, may be given a task requiring work over a lengthy period or a short time. The essence of the matter lies not in their administrative position but in the nature of their mission” (para. 47).

Moreover:

“the United Nations has had occasion to entrust missions – increasingly varied in nature – to persons not having the status of United Nations officials. Such persons have been entrusted with [...] conducting investigations or finding and establishing facts. They have participated in certain peacekeeping forces, technical assistance work, and a multitude of other activities. In addition, many committees, commissions or similar bodies whose members serve, not as representatives of States, but in a personal capacity, have been set up within the Organization. [...] In all these cases, the practice of the United Nations shows that the persons so appointed, and in particular the members of these committees and commissions, have been regarded as experts on missions within the meaning of Section 22” (para. 48).

Informal Institutions and their Workforce

CICIG was not a UN organ, it was certainly not a Guatemalan organ, and it was not able to stand on its own as an international organization. To call it an ‘informal institution’ is a way of stating the problem. It simply means that CICIG escaped formal categories, because political will and alleged flexibility led to the creation of an entity in the absence of a legal framework. From today’s perspective, it was a mistake to create CICIG as something separate from the UN when it worked as a UN organ. A Frankenstein was created to please the abstract political request of independence from the UN and non-interference in domestic affairs, which rapidly became interference by Guatemala. Escaping the law to find a political compromise might not be the best starting point for a commission against impunity.

The UN is currently negotiating a similar anti-corruption institution with Honduras, which appears to have an institutional arrangement equal to CICIG. We can hope for the inclusion of immunities for all categories of employees, but the institutional flaws of informalism would remain. International organizations have duty of care obligations towards its workforce that informal institutions created and dissolved in a few years do not possess. The UN has to take all necessary measures:

“to promote full respect for the human rights, privileges and immunities of United Nations and associated personnel, and also [...] to seek the inclusion [...] of the applicable conditions contained in the Convention on the Privileges and Immunities of the United Nations [...]” (GA resolution 70/104, para 18).

It has “the capacity [...] to exercise a measure of functional protection of its agents”, which is broadly analogous to the right of a State to exercise diplomatic protection on behalf of its national (Advisory Opinion Reparation for Injuries, p. 184). It has an internal procedure to gather information and to follow up on the arrest or detention of its staff members, including the right to appear in legal proceedings. At the very least, one should expect that the personnel of informal institutions are informed of the risks and the lack of support they will receive from their employers, or the UN.

In the case of Claudia Gonzalez, the little involvement of the UN is particularly concerning. The Office of the Spokesperson for the UN Secretary General in its daily press briefing of 28 August only “noted with concern” her arrest. On 28 September, a statement of the same Spokesperson referred to CICIG as “that body” and reiterated the deep concern. There is no attempt to claim immunities, no exercise of functional protection, and not even a request for being legally represented, or even for observing, the closed-door proceeding. Hypothetically, if Guatemalan authorities decide to go against CICIG international personnel despite immunities, there would be no institution left to demand the respect of their rights.