MISSION MADE POSSIBLE:
EXTERNAL OVERSIGHT AND ANTI-CORRUPTION IN FRAGILE STATES

Ministry of Foreign Affairs of the
Netherlands

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INTRODUCTION

Corruption and insecurity reinforce one another in conflict environments. Conflict often weakens state institutions and shifts the balance of expectations and incentives, entrenching corruption, undermining the development of state capacity, and encouraging cycles of impunity that leave whole populations angry and disenfranchised. This can be particularly pernicious when it affects defence and security institutions, turning them from protectors into predators that endanger human security, slow down development, and can perpetuate conflict.

Legislative oversight and judicial review are traditionally viewed as primary checks against corruption and abuse of power. But in many countries, especially those emerging from conflict, legislative oversight and judicial redress are illusory, especially in the secretive defence and security sectors. Instead, these institutions are at best too weak to tackle the endemic levels of state corruption or at worst, are captured by corrupt networks and become part of the problem. Government-run anti-corruption commissions are another frequent response to governance and oversight deficiencies in fragile and post-conflict environments. These have been frequently created without much regard for the context in which they were operating, and characterised by deficient governance frameworks and capacities, non-permissive security conditions, weak accountability, scrutiny and monitoring arrangements – and in some cases, state capture. [1]

In these challenging contexts, change can be difficult to effect from within governments; especially where corruption is entrenched and corrupt networks and have captured a proportion of state institutions, an external impulse for change can be indispensable.[2] Non-governmental bodies can help hold powerful governments and officials to account by creating pressure for change; developing and providing expertise; supporting agents of change within government institutions; and even directly confronting and dismantling corrupt networks.

In Afghanistan, Guatemala and Palestine – all post-conflict states struggling with low capacity and different degrees of state capture - innovative independent initiatives seeking to exercise an oversight role took hold: the International Commission against Impunity (CICIG) in Guatemala, the Joint International Anti-Corruption Monitoring and Evaluation Committee (MEC) in Afghanistan and an NGO-led Civil Forum to Promote Good Governance in the Security Sector (Civil Platform) in Palestine. These initiatives have been strongly rooted in local civil society, and – while maintaining a cooperative relationship – have had a significant degree of independence from governments. All have focused on driving forward public sector accountability in challenging security environments where state capacity was low, but have done so in very different ways, with varying mandates and powers. CICIG is an investigative and capacity-building organisation enjoying a significant degree of international support and, now in its 9th year, a budget of over $12 million.[3] The MEC, a joint

[1] Alan Doig, David Watt, and Robert Williams. "Measuring 'success' in five African Anti-Corruption Commissions," U4 Anti-Corruption Resource Center. May 2005. Accessed July 26, 2016.

[2] AMP – find page

[3] Michael Lohmuller, 'Mandate Renewed, But CICIG Will Not Save Guatemala', *Insight Crime*, 23 April 2015, http://www.insightcrime.org/news-analysis/even-with-mandate-renewed-cicig-will-not-save-guatemala.

national-international committee, focuses on monitoring reforms; and the Platform, a civil society group, attempts to effect changes through informal channels and relationship building conducted out of the public eye. All three have struggled with different limitations and achieved success in different areas of work. CICIG, while it has had success with pursuing and dismantling corrupt networks, struggled to push systemic change. The MEC – with its best-known success being the Kabul Bank Investigation, which uncovered large-scale embezzlement of international aid funds – struggled with helping to curb impunity. And the Civil Platform, which it did succeed in opening a closed-off sector to civil society, is still pushing for many desired outcomes.

These institutions therefore provide different, but adaptable models for furthering security sector accountability in challenging context. This report analyses how the different approaches to furthering security sector accountability can take root in different contexts. Based on literature review and extensive interviews with members of the three initiatives analysed, we provide an overview of the strengths and challenges each body had and analyse the factors that enabled them to make an impact or hampered their actions, such as their mandate and powers, relations to governments, and the degree of public and international support.

Our goal is to provide food for thought for donors, NGOs and governments considering establishing or supporting similar initiatives. This is not meant as a formal evaluation of their effectiveness or impact, but to understand their strengths and weaknesses, and provide learning for similar work in the future. With low government capacity and state capture characterising many a fragile and conflict-affected state, external oversight and monitoring are likely to be valuable tools if the effects of corruption are to be curbed and corrupt networks dismantled.

EXTERNAL OVERSIGHT: CICIG, the MEC AND THE CIVIC PLATFORM AT A GLANCE

Joint International Anti-Corruption Monitoring & Evaluation Committee (MEC)

The MEC was established by Presidential Decree in 2010 after the Afghan government and international donors agreed the need for an autonomous body to track anti-corruption reform efforts. The body is neither governmental nor purely an NGO initiative. It is made up of a Secretariat, and led by six high-level commissioners: three Afghan and three international. This configuration presents it with a unique ability to access part of government and, at the same time, to hold it to account.

Mandate	The mandate stipulates three primary duties: (i) Developing anti-corruption recommendations; (ii) Monitoring and evaluating anti-corruption efforts of the government and the international community; and (iii) Reporting on a regular basis to the President, Parliament, people of Afghanistan, and international community, about the state of the fight against corruption.
Key successes	- The MEC provides research and commentary on areas of risk within government, and continues to be well-supported by donors. - The Kabul Bank Inquiry - requested by the Ministry of Finance - offered the first official analysis of the 2010 crisis; led to an investigation by a Special Tribunal, and the conviction of 21 people in March 2013. - MEC benchmarks were used in Tokyo Mutual Accountability Framework - Assistance rendered to Ministry of Mines in publishing mining contracts - Of 416 recommendations issued, at the time of writing some 44% were completely implemented and 39% were partially implemented.
Enabling factors	- Mixed composition meant internationally-recognised technical expertise, plus ability to navigate the local political context. - Presidential decree served as enforcement mechanism - Political and financial support from the international community - Ineffectiveness of other institutions, e.g. High Office of Oversight - Ability to resist political interference and take on high profile targets
Key challenges	- Lack of government cooperation during the Karzai administration. - International actors slow to provide information on international anti-corruption efforts. - MEC viewed by some government departments as competitor to the government-run anti-corruption agency (HOOAC). - Difficulties communicating messages that resonated with the public - Broader impact (through implementation of changes) not always visible - Internal accountability structures have been slow to develop - Security and political concerns have led to a lack of internal consensus on pursuing areas like defence and security, though this may happen in the future.
Intervening factors	Insecure environment inhibits ability to follow up implementation

Civil Forum to Promote Good Governance in the Security Sector (Civil Platform)

The Civil Platform for Enhancing the Good Governance in the Security Sector ("Civil Platform") was established in 2014 after discussions between AMAN Palestine, Transparency International Defence & Security and the Palestinian Ministry of Interior. It is a platform made up of 12 civil society organisations. Unlike the other oversight bodies analysed in this report, this body was established with comparatively less involvement of the international community or the government. It does not have a formal mandate inscribed in a decree, law or other formal governmental agreement.

Mandate	According to its bylaws, the Platform aims to develop an effective partnership with the security services to work towards three objectives: (i) contribute to the development of the Palestinian national security strategy and public policy as it relates to security issues; (ii) contribute to the development of communication and openness between the security establishment and civil society, and to promote citizens' rights to access to information; (iii) promote community involvement to ensure the effectiveness of accountability systems; and (iv) promote integrity, accountability, and transparency and to build the technical capacity of various institutions in raising awareness around social accountability.
Key successes	• Preparation of a Code of Conduct for the Police, the Preventative Group, and for Civil Defence. • Establishment of complaints unit at MoI; training for MoI officials • Coordination and centralization of civil society work on the security sector • Anecdotal evidence suggests security officials have become more open and work collectively with the Platform, solicit input and take comments into consideration. • The Platform was able to encourage the Ministry of Interior to share information related to criteria for appointments and appraisals. • Built civil society capacity in budget oversight, including for the security sector.
Enabling factors	• By relying on its members to implement projects and programs, the Platform harnesses existing work and therefore has been seen to be more sustainable • Palestine has a long history of an active and vibrant civil society
Key challenges	• The Platform itself has no funding, so implementation of activities is only through member organisations • Difficulty communicating progress and impact

	• Some interviewees external to the platform thought success was largely anecdotal, and that they lacked a clear strategy.
Intervening factors	• No access to information law exists in Palestine • Heavily politicized environment • Civil society space is reducing and few protections offered to CSOs

International Commission against Impunity in Guatemala (CICIG)

The concept of the CICIG emerged from Guatemalan civil society, which pressured the government to request that the UN to create an international body to support the country's justice system. In 2006, the CICIG was established as an independent, international body designed to support the Public Prosecutor's Office (*Ministerio Publico*), the National Civil Police and other State institutions in the investigation of crimes committed by members of illegal security forces and clandestine security structures, to help disband such groups, and to make recommendations on policies that could prevent their re-emergence.

Mandate	(i) Investigate the existence of illicit security forces that commit crimes that affect the fundamental human rights of the citizens of Guatemala, and identify the structures of these illegal groups (including the links between such groups and State officials) as well as their activities, operating modalities and sources of financing. (ii) Help the State disband such groups, and promote the investigation, criminal prosecution and punishment of crimes they have committed. (iii) Make recommendations to the State of Guatemala regarding public policies—including the necessary judicial and institutional reforms—to eradicate and prevent the re-emergence of illegal security forces.
Key successes	• A measured reduction (25%) in impunity • More than 200 investigations have led to charges against more than 160 current or former government officials, including former and sitting Presidents, Vice President, various former defence and interior ministers, former directors of the National Police, retired generals, politicians, businessmen, drug-traffickers and contract murderers. • Capacity building work has focused on working with Guatemalan attorneys and investigators, training them how to obtain scientific evidence, ballistics, wiretapping (with judge's permission) and has given investigators skills and expertise not available previously. • Creation of special tribunals for CICIG cases
Enabling factors	• Political will within the government generally high • International investigators protected cases from political interference • Legal backing and powers of enforcement (especially wiretapping)

	• Vibrant and active civil society applying public pressure • Strong international support
Key challenges	• Opposition in early years due to claims of violation of sovereignty • Unclear whether investigations are accompanied by long-term systemic reform • Heavy reliance on international expertise, investigators and funding
Intervening factors	• Powerful networks try to block reform and investigations • Corruption in judiciary

ENABLERS AND ROADBLOCKS: WHAT MAKES EXTERNAL OVERSIGHT EFFECTIVE?

The key issue when considering setting up or supporting external oversight initiatives is how to shape and empower them for maximum effectiveness. In our research, we have identified five key factors enabling or hampering external oversight bodies:

- The extent and formulation of the mandate
- The extent and strength of powers
- Access to information
- Relations with governments
- Degree of public support
- Degree of international support

MANDATES AND OBJECTIVES

Though all three groups examined here have adopted reducing corruption as their overall goal, their mandates are different. In Afghanistan the MEC was tasked primarily with monitoring and evaluating government anti-corruption programmes and the development of recommendations. In Palestine the Platform for Enhancing Good Governance tasked itself with building good governance practices within the security sector institutions through research, reform and capacity building of civil society, in order to strengthen its ability to monitor and engage with the security and defence forces. And in Guatemala the CICIG's mandate focused on conducting investigations that could lead to prosecution through the country's judicial system, although it also included some provisions for working on long-term institutional capacity building.

Focus of Mandate	MEC	CICIG	Civil Platform
Investigations		✔	
Monitoring & Research	✔		✔
Recommendations for Reform	✔	✔	✔
Capacity Building		✔	✔

The CICIG's mandate is a particularly interesting case: although the Commission's achievements in dismantling corrupt networks have become one of its main successes and calling cards, its mandate does not explicitly include countering corruption, focusing instead on dismantling illegal parallel security structures, a destabilising legacy of the 1960-1996 Guatemalan civil war. An earlier, broader version of the mandate was rejected due to the government's concerns that CICIG might extend its activities into issues related to human rights abuses and extra-judicial killings during the civil war, which had implicated government forces over the years and could point toward governing elites in peacetime.[4]   But the resulting mandate was sufficiently open

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[4] Guatemalan civil society representative. 07.03.2016. Despite the CICIG's somewhat reduce mandate, the Ministerio Publico still brought forth indictments for genocide and crimes against humanity against president Rios Montt and 18 ex-military officials. See Presentation (as prepared) by Mark L. Schneider, Senior Vice President, International

to interpretation that it allowed the Commission to adjust its priorities to the political environment, choosing, for instance, to focus on corruption rather than human right abuses and achieving similar results.

> *If we had gone in on grounds of armed conflict, it could have been more problematic. But because it was financial corruption, we sent them to jail, prosecuted, some were convicted, some acquitted, but this was not major problem. But this was probably because they were not military offences, 'just' corruption.*
>
> *Former CICIG official, Interview, May 2016*

The Palestinian Civil Platform adopted a mandate enabling it to conduct research and advocacy campaigns around security sector integrity and anti-corruption, bring together civil society groups to make common recommendations, and to work with security institutions to assist with the implementation of reforms. The MEC mandate, on the other hand, was broad in scope: unlike the CICIG or the Platform, the MEC was not limited to tackling one area, but could address issues so long as they were deemed important to curbing corruption in Afghanistan.[5] The implementers also interpreted the MEC's mandate broadly, initiating work across education, pensions, pharmaceuticals, land reform, election campaign finance, as well as analysing specific laws and allowing for inquiries into major corruption scandals.[6]

The construction of the mandate and the setting of objectives underpinned the institutions' overall direction and their ability to design focused efforts. The **CICIG**'s mandate focused on a clear objective, i.e. dismantling illegal security apparatuses, around which the work of the organisation – both in investigations and in long-term reform efforts - has revolved. The Platform's mandate narrows down its focus, directing it to focus solely on the defence and security sector. However, while the clear sectoral focus was helpful, the overall direction and priorities of the Platform do not seem to have been strongly delineated, indicating perhaps lack of clarity in the group's mandate – although this was partly addresses through a workplan developed to guide the body's activities.[7]

The MEC's mandate, while apparently constructed to give the Committee the maximum flexibility, did not provide it with either a specific direction or defined its overall role. MEC members and observers alike disagreed on the Committee's main purpose: although the MEC was mandated to monitor and evaluate anti-corruption reforms, some viewed it more as an anti-corruption commission and so held it responsible for implementation of recommendations.[8] The MEC's mandate also failed to direct the Committee's attention and actions to crucial areas which could have helped mitigate high corruption risks in the country: technical assistance and capacity building, especially in the security and defence sector.[9]

ROOM FOR MANOUVRE: INDEPENDENCE AND RELATIONS WITH GOVERNMENTS

A key aspect of all three bodies analysed here was independence from governments of the countries they were set up in. However, their relationships with state institutions and the powers they had vis-à-vis governments were crucial factors shaping their ability to achieve effects and influence the overall situation in the country. The mixture of separateness, structured cooperation, and independent powers appears to have

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Crisis Group on "Crutch to Catalyst? The International Commission Against Impunity in Guatemala" at Woodrow Wilson Center for Scholars, Washington, DC, 16 February 2016. Available at
https://www.wilsoncenter.org/sites/default/files/mark_schneider_presentation.pdf
[5] MEC official. 08.03.2016
[6] MEC official. 09.05.2016
[7] Palestinian civil society representative. 13.04.2016
[8] MEC official. 09.05.2016
[9] MEC official. 09.05.2016; International policy maker. 09.03.2016

been a powerful cocktail empowering some of the bodies in question and – if one or more elements were absent – posing an obstacle for others.

Both CICIG and the MEC were established with the endorsement and agreement of the country's governments; both, however, were initially perceived as competition to government institutions and encroachment on national powers. For the MEC, being established by a Presidential decree and therefore having the Afghan state stamp of legitimacy was vital for enabling some access to information.[10] But two key issues influenced the Committee's effectiveness: its relationship with the High Office of Oversight and Anti-Corruption (HOOAC), a government body, and degree of access to information.[11]

HOOAC, one interviewee said, "was looking at [the MEC] like a rival ... they only recently recognised the organisation."[12] The Presidential Decree also seems to have muddied the waters, presenting the MEC as a creature of the HOOAC, albeit with independent powers of monitoring.

Article Eight:

The High Office of Oversight and Anti – Corruption, within three months after issuance of this decree, shall recommend and establish a Monitoring and Evaluation Committee, within the framework of this Office, consisting of the national and international experts on the field of fighting corruption.

The Committee is required to assist governmental organs in determining effective development benchmarks and, with the necessary monitoring and evaluations, provide six-month report to the president, national assembly, international community and the public regarding activities on fighting against corruption at the national level as well as on assistance of the international community and donors.

Source: Presidential Decree No. 61 on Effective Combat against Corruption. March 18, 2010. English translation by MEC. Available at: http://www.mec.af/files/PD61_English_(translation_by_MEC).pdf

The Decree also does not make explicit provisions for the Committee's access to information; the MEC had no power to compel, and they were often refused information on the basis of confidentiality.[13] In some cases it could be secured through audit-related laws.[14] But access often depended on the political will of individual leaders and the relationships and standing of the Afghan commissioners.[15] This was especially the case in the defence and security sector, where secrecy and presence of corrupt networks made access to information difficult. This made the MEC's work on the army especially difficult: while information on the police could be gathered from the Committee's own research (for example, measuring extortion and other abuses through population surveys or observation), the armed forces remained much more opaque.[16]

A similar issue affected the MEC's ability to push for the implementation of its recommendations. Even with a Presidential Decree, the Committee did not have a way to enforce its recommendations, and government departments were frequently unwilling to cooperate.[17] The MEC, as one interviewee put it, had a mandate but no enforcement tools, and needed to devise ways to minimise the impact of these restrictions.[18] In the early years, it tended to issue recommendations as an attempt to engage ministries, later adding provision of technical support to its repertoire.[19] When conducting Vulnerability to Corruption Assessments (VCAs), interviewees suggest the commission worked hard to secure obtain buy in by working collaboratively, and

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[10] International policy maker. 18.03.2016; Dari original available at: http://www.mec.af/files/PD61_Dari.pdf
[11] Senior military officer. 28.04.2016
[12] International policy researcher. 11.05.2016
[13] MEC official. 16.05.2016
[14] MEC official. 09.05.2016; Senior military officer. 28.04.2016.
[15] MEC official. 09.05.2016
[16] MEC official. 08.03.2016
[17] International policy maker. 16.05.2016; MEC official. 16.05.2016
[18] International policy maker. 16.05.2016
[19] MEC official. 16.05.2016

with dogged persistence, with ministries on implementation plans, and to slowly build up credibility.[20] But the lack of government support in the early years took a toll on the committee members, several of whom resigned.[21]

It wasn't until 2016 that another presidential decree clarified the extent of the MEC's independence and powers. The decree, issued by President Ghani – a supporter of the MEC – provides the Committee with access to information and obliges government departments to implement its recommendations:

> *All the government organizations and international institutions while offering their full cooperation, are obliged to provide the Independent Joint Anti-Corruption Monitoring and Evaluation Committee with the statistics and information needed for the evaluation, and implement the recommendations of the Committee and regularly report the state of implementation of these recommendations to the Independent Joint Anti-Corruption Monitoring and Evaluation Committee.*

> *Article 3, Presidential Decree 115, September 2016*

The evolution in the MEC's competences and independence testifies to the importance of political will and support from the government. The MEC's ability to influence government policy changed radically as President Ashraf Ghani took power. Soon after his election, President Ghani explicitly threw his support behind the MEC: "...President Ghani asked for the recommendations related to the budget. He then started to call a series of meetings to ensure government departments comply with MEC recommendations and that changed a lot for the MEC. Now every related entity has started to implement [MEC] recommendations in this area."[22]

For the CICIG, a cooperative relationship with the Guatemalan government was a key enabler, first bringing it into existence and then insulating it from some of the internal opposition. Although the idea for the Commission came from civil society organisations, the concept was ultimately taken up by two of Guatemala's foreign ministers and formalised through an agreement between the Guatemalan government and the UN establishing the Commission.[23]

> *[The foreign ministers] were the ones who pushed for approval of the commission [...] It took from 2004 until 2008 for it to be established.*

> *Head of TI Guatemala, March 2016*

In its early years, interviewees noted, CICIG was seen as an infringement upon the country's sovereignty and the prerogatives of its government.[24] Opposition - especially on the part of the Conservative Party, which

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[20] MEC official. 16.05.2016; MEC official. 09.05.2016
[21] International policy researcher. 11.05.2016
[22] MEC official. 08.03.2016
[23] Agreement between the United Nations and the State of Guatemala on the Establishment of an International Commission against Impunity in Guatemala (CICIG), 12 December 2006, http://www.cicig.org/uploads/documents/mandato/cicig_acuerdo_en.pdf.
[24] International academic. 22.03.2016; US government official. 23.06.2016. This need for clear sense of ownership and delineation of responsibility has also been noted by anti-corruption experts Doig, et.al. who point towards the need for clear measures of performance in helping set boundaries and distinguish between "factors which are within the [anti-corruption commission's] control and those that are not." See Alan Doig, David Watt, and Robert Williams. "Measuring 'success' in five African Anti-Corruption Commissions," U4 Anti-Corruption Resource Center. May 2005. Accessed July 26, 2016. Available from http://www.u4.no/publications/measuring-success-in-five-african-anti-corruption-commissions/

lobbied for the Commission to be disbanded based on alleged high costs and inadequate results in the first couple of years – was fierce. Interviewees suggest that the CICIG fought back successfully by demonstrating it was working collaboratively with the government. Having had, from the outset, a very clear cooperative relationship with the Guatemalan Public Prosecutor's Office (Ministerio Publico), responsible for investigations and prosecutions (the Commission could carry out investigations, but prosecution would go through the Guatemalan justice system),[25] the Commission could argue that it had a clear channel of communication with the Office and was supporting national institutions. The first CICIG Commissioner worked to cement that relationship by setting up a special coordinating office inside the Ministerio Publico.[26] This does not mean that the relationship was entirely unproblematic: according to some interviewees, difficulties between CICIG and the Ministerio Publico in the early years inhibited effectiveness.[27] But the investment into a cooperative relationship paid off in 2010-2013, when attorney general Claudia Paz y Paz's drive against organized crime saw her push for greater powers and coordination with the CICIG, transferring its 10-person analytical team to the Ministerio Publico, adding 130 employees, and creating units specialized in countering organized crime and corruption.[28]

A cooperative relationship with a government department, however, might not have been enough had CICIG not been endowed with its own, significant, and legally anchored powers equivalent to or greater than those of Guatemalan police and investigative bodies. The Commission's investigative powers included, aside from the ability to access documents and interrogate suspects, the right to apply for wiretaps (introduced by the 2012 anti-corruption law allowing the use of wiretaps in investigations against corrupt government officials) and to use international Mutual Assistance Requests, bringing together international aspects of investigations. These powers allowed the Commission to build powerful case files, with the wiretaps proving essential in prosecuting cases against officials in high echelons of government and providing leads for new cases.[29] With time, wiretapping was complemented by forensic computing to intercept and retrieve electronic communications, important as corrupt networks grew increasingly careful about their phone conversations.[30]

A solid working relationship with some government departments also enabled CICIG to counteract spoilers, increasingly numerous and important as the Commission challenged organised crime networks whose reach extended to government, the business sector, and the media.[31] Spoilers influenced the appointments of new judges, meaning that in some cases even solid investigations would not result in prosecutions due to judicial corruption.[32] In response, the CICIG - with the approval of Guatemalan government – created "islands" of vetted, reliable police officers, investigators and prosecutors, and put in place a vetting process for judges. An

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[25] International academic. 22.03.2016; US government official. 23.06.2016. This need for clear sense of ownership and delineation of responsibility has also been noted by anti-corruption experts Doig, et.al. who point towards the need for clear measures of performance in helping set boundaries and distinguish between "factors which are within the [anti-corruption commission's] control and those that are not." See Alan Doig, David Watt, and Robert Williams. "Measuring 'success' in five African Anti-Corruption Commissions," U4 Anti-Corruption Resource Center. May 2005. Accessed July 26, 2016. Available from http://www.u4.no/publications/measuring-success-in-five-african-anti-corruption-commissions/

[26] The Public Prosecutor's Special Unit Attached to CICIG (UEFAC). The UEFAC changed its name to the Special Prosecution Unit Against Impunity (FECI) in 2010.

[27] See also Open Society Foundation. "Against the Odds: CICIG in Guatemala," March 2016, accessed August 2016. Available from https://www.opensocietyfoundations.org/sites/default/files/cicig-report-20160321.pdf

[28] *Ibid.* p102.

[29] International policy researcher and practitioner. 14.04.2016; Kate Newman and Rodrigo Fuentes. "In Guatemala, a justice experiment gone right," September 5, 2015. Available from http://america.aljazeera.com/articles/2015/9/5/in-guatemala-a-justice-experiment-gone-right.html; Telesur. "Guatemala Corruption Fight Just Getting Started, Expert Says," July 1, 2016, accessed July 26, 2016. Available from http://www.telesurtv.net/english/news/Guatemala-Corruption-Fight-Just-Getting-Started-Expert-Says-20160701-0005.html

[30] International academic. 14.04.2016.

[31] International academic and policy practicioner. 01.06.2016

[32] Guatemalan civil society representative. 07.03.2016; International academic. 14.04.2016; International academic. 22.03.2016.

early victory in a major case cemented an "island" of 10 young prosecutors within the Guatemalan Ministerio Publico, creating mutual trust and a bond that carried the team through other cases.[33] A similar approach was taken with the CICIG police units whose officers were taken straight from the police academy. The CICIG also pushed for the approval of new legislation that created special tribunals based in Guatemala City, to increase personnel security and circumvent the corrupt judiciary. [34] Finally, high level government buy-in and the development of positive relationships between CICIG and Guatemalan leadership also enabled CICIG to remove spoilers: in one case, the Commission was able to obtain support from the President to remove the attorney general, who had been subject to claims of corruption, and appoint another.[35]

> *If you go against powerful groups, no matter if they are members of army or police or judiciary or business, whoever is part of the powerful group, then you need to go with someone supporting you. You can't be naïve and go alone. Get everyone you can, as many you can, in every case.*
>
> *Former CICIG official, TI Interview, March 2016*

The Platform in Palestine had probably the weakest legal and procedural grounds for accessing information and securing impact for its recommendations. While its relationship with government was formalised through a Memorandum of Understanding with the Ministry of Interior, there was no formal provision for either access to information or implementation of the Platform's recommendations. Although the Constitution formally provides civil society with right of access to information, no specific laws regulate this principle and perceived internal and external threats have restricted information flows, especially in the defence and security sector.[36] The precarious political and security situation in Palestine and the tendency of both the Palestinian government and Hamas to either attempt to co-opt CSOs in political wrangling or exclude them from conversations were further impediments to the Platform's work.[37] According to the head of the NGO AMAN, "ministers and the government were ordered to cooperate with civil society in 2013-2014, but in 2015-2016 the government is almost closed to the whole of civil society."[38] With thirteen conventions between the Palestinian authorities and Israel related to the security sector alone, interviewees accepted that there would effectively be limits on what information the government would be willing to share. [39]

While Platform members acknowledge that restricted access to information does impede their ability to provide meaningful oversight,[40] they have also been able to mitigate these limitations through informal contacts and relationships, and a heavy focus on developing a constructive dialogue with the Ministry of Interior. Platform members framed their work as an effort to build integrity and enhance legitimacy, efficiency and confidence, rather than providing oversight or monitoring. In an attempt to avoid entanglement with political power struggles, the Platform also refrained from speaking directly about corruption, as it was frequently used by Hamas as an accusation against the government and could be associated with support for the organisation.[41] The credibility and relationships that the various members

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[33] International policy researcher and practitioner. 14.04.2016

[34] International academic. 22.03.2016. These special tribunals are supra-territorial in that their authority exceeds any given territory (as is traditionally how Guatemalan law is decided)

[35] Former CICIG official. 29.03.2016; Morris Panner and Adriana Beltran. "Battling Organized Crime in Guatemala," Americas Quarterly. No date. Accessed July 5, 2016. Available from: http://www.americasquarterly.org/node/1899

[36] Palestinian civil society representative. 13.04.2016; AMAN. "It Belongs to You: Public Information in Palestine," 2013, accessed August 4, 2016. Available from https://www.aman-palestine.org/data/uploads/files/ACTION_Palestine_eng_web.pdf

[37] Palestinian civil society representative. 07.03.2016

[38] Palestinian civil society representative. 12.04.2016

[39] Palestinian civil society representative. 12.04.2016

[40] International policy researcher. 26.04.2016

[41] Palestinian civil society representative. 07.03.2016

had developed were used to gain access to information through closed door meetings and the development of relationships with MoI staff. [42]

> *"Whenever civil society is strong enough, has the right knowledge, right skillset, and is open minded and flexible and keeps constant professional relationships with the government, I think they can get information".* [43]
>
> *Palestinian civil society representative, TI interview, April 2016*

Our analysis suggests that for maximum effectiveness, external oversight bodies need to combine a cooperative relationship with governments with concrete, independent powers securing access to information and ability to translate recommendations into government actions. Without that independence, activities of oversight bodies are at risk of being entirely dependent on personal relationships and good will of government departments. Cooperative relationships with the government, on the other hand, help set up and protect nascent institutions, and contribute to their effectiveness.

APPROACH, RESOURCING AND CREDIBILITY

The experience of the MEC and the CICIG suggests that while monitoring and capacity building – which is what both organisations initially focused on – is useful, perceptions of credibility and independence are often built on actions showing willingness to take risks and go against established interests. The MEC's initial focus was on Vulnerability to Corruption Assessments (VCAs), i.e. examination of key weaknesses within systems in order to identify forms, sources, implications, and the extent of corruption. The MEC's choice of priority areas for VCAs the attitude of the department, strategic significance, and whether there was capacity for follow up, including international funding to support subsequent reform. [44] But the VCAs – often based on anecdotal evidence due to the Committee's overstretch, withholding of access to documents, limited access to potential interviewees, and limited expertise on highly technical issues such as military logistical chains and corruption risks within them[45] – were not what put the MEC on the map. Interviews clearly point to the Kabul Bank investigation and report - which uncovered large-scale embezzlement of international donor funds by corrupt networks linked to the Afghan government - as the crucial factor enhancing the Committee's credibility and helping it build standing with both donors and the Ashraf Ghani presidency. [46] The Kabul bank report tapped into concerns of the international community and reform of the bank ultimately became a condition for IMF to extend its credit. [47]

Conducting the investigation was not, however, a straightforward decision; as one official recalls, the MEC was warned that "whatever you do, don't touch Kabul bank". [48] Although the MEC proceeded in this case, observers were disappointed that this turned out to have been a single case and the Committee had not invested in more inquiries. Recommendations and VCAs, interviewees thought, exposed problems, but did little to either address them or enhance the MEC's credibility: taking a stand on controversial issues and tackling entrenched networks was what mattered. [49]

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[42] Palestinian civil society representative. 06.04.2016
[43] Palestinian civil society representative. 13.04.2016
[44] MEC official. 09.05.2016
[45] International organisation representative. 19.05.2016; International academic. 14.04.2016
[46] MEC official. 16.05.2016; Senior military officer. 28.04.2016; MEC official. 09.05.2016
[47] MEC official. 16.05.2016; News18. "IMF Approves new credit program for Afghanistan," November 16, 2011, accessed August 4, 2016. Available from http://www.news18.com/news/india/imf-approves-new-credit-program-for-afghanistan-419140.html ; DFID. "Business Case: Support to the Monitoring and Evaluation Committee, Afghanistan." 2012.
[48] International policy maker. 09.03.2016
[49] Senior military officer. 28.04.2016; International policy maker. 18.03.2016

The CICIG had gone through a similar trajectory, from capacity building to high-profile investigations. In this case, however, the former underpinned the success of the latter. The ability to gather, process and safeguard evidence – from witness testimonies to wiretaps, ballistics, and even forensic entomology – was vital to the investigations CICIG and Ministerio Publico embarked upon, and to building strong cases for prosecution. CICIG's mandate to build capacity and help reform the Ministerio Publico was crucial to building teams capable of conducting highest-quality investigations and safeguard evidence.[50] The current CICIG Commissioner, one interviewee has observed,"has been lucky that the public ministry has been going through the process of institutional strengthening for many years."[51]

CICIG's and Commissioner Velasquez's decision to pursue high-profile investigations - especially against former Vice-President Roxana Baldetti, whose conspicuous and large-scale corruption galvanised anti-corruption sentiments – paid off. While it came with a high cost, not least to CICIG members' personal security – at one time, the CICIG Commissioner had more bodyguards than the President and almost half of the Commission's annual budget was used to provide security for its staff and premises[52] - it has galvanised public support. The CICIG, one interviewee thought, "wouldn't be as successful as it is today if it hadn't taken that gamble against ex-VP Roxanna Baldetti… When we filled the plaza last year during protests you could feel that we were all on the same page: we wanted Baldetti to leave…CICIG was very strategic in basically using all the resources on this…it was the case that would catapult everything else."[53]

What is it that has made CIGIG so powerful?

The power of telling the truth. You can go in the country and do great proposal of reform and it's right and have some support of civil society but if the power doesn't like it because it's against their interests, nothing is going to happen. The power of the investigation to show people something is wrong. If you don't question the power with truth, then it's very difficult to push for reform. Because they have the means not to do the reforms.

Manfredo Marroquin
President, Board of Directors, Transparency International Guatemala

INTERNATIONAL COMMUNITY ENGAGEMENT

The Platform in Palestine has had limited links to international community bodies and donors, primarily due to their own strategy and choices. As one platform member put it, both the government and Palestinian CSOs have had a preference for home-grown solutions to domestic issues, and the Platform has chosen not to leverage donor influence to push the government.[54] But for both the CICIG and the MEC, the story is very different: both bodies have depended on the international community for funding, expertise, and legitimacy, and attempted to leverage donor influence to help push for changes.

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[50] Guatemalan civil society representative. 01.06.2016
[51] International academic. 22.03.2016
[52] Open Society Foundation, 2016.
[53] International academic. 14.04.2016.
[54] Palestinian civil society representative. 12.04.2016

But in other cases, donors and other international organisations can play a critical role in the success or failure of anti-corruption bodies.[55] In Guatemala, continuous support from the international community has significantly added to the credibility, resources and independence of the CICIG. This support would materialise as financial support for CICIG's budgets; as international expert secondments; and public statements in defence of the Commission putting pressure on the government.[56] Donors' involvement also meant that CICIG's reform and capacity building agenda was supported by other actors, including USAID, UNDP, EU and bilateral programmes focusing on strengthening the judiciary.[57]

The mixture of domestic and international experts available to CICIG meant that the Commission could combine two types of expertise and facilitate capacity transfer to Guatemalan prosecutors and investigators. While the process is long-lasting, it is likely to result in diminished reliance on external support and greater sustainability of the institution.[58] But international community support (including the US, UK, and Nordic countries[59]) brought other benefits, including leveraging pressure when political will within Guatemala was dwindling, and when conditionality needed to be applied to either push for changes or protect the CICIG.[60] Political pressure was an effective tool: in a display of international community unity, 15 ambassadors lobbied the Guatemalan Congress to extend CICIG's mandate at one time.[61] Equally, conditionality of funding and assistance to Guatemala became a tool employed by the international community to force compliance when cooperation was lacking: in one case, the US government and the US Senate, led by Patrick Leahy, refused to authorise further assistance to Guatemala unless the CICIG's mandate was renewed.[62] Despite pushback from the Guatemalan government - prior to the CICIG's mandate being renewed in 2015, the President had strongly implied that "the CICIG's time was "coming to an end" – the Commission's mandate and independence has so far been protected.[63]

The MEC benefitted from international engagement in similar ways, receiving funding, expertise (three international commissioners and international secretariat members), and some pressure to help with implementation of recommendations and reform progress. One international official described this unconditional support – especially from UK and Danish aid agencies - as a driving force behind the MEC; another stressed that long-term international community support helped the MEC wither the first years of low government support, sustained the pressure, and maintained continuity of efforts.[64]

However, application of conditionality of funding and assistance in support of the MEC appeared to be more timid than that offered to CICIG, tempered perhaps by the high stakes the international community had invested in Afghanistan and the preference to prioritise technical assistance when agreed benchmarks were

[55] Alan Doig, David Watt, and Robert Williams. "Measuring 'success' in five African Anti-Corruption Commissions," U4 Anti-Corruption Resource Center. May 2005. Accessed July 26, 2016.

[56] Open Society Foundation. "Against the Odds: CICIG in Guatemala," March 2016, accessed August 4, 2016. Available from https://www.opensocietyfoundations.org/sites/default/files/cicig-report-20160321.pdf

[57] International academic. 22.03.2016; US government official. 23.06.2016. This need for clear sense of ownership and delineation of responsibility has also been noted by anti-corruption experts Doig, et.al. who point towards the need for clear measures of performance in helping set boundaries and distinguish between "factors which are within the [anti-corruption commission's] control and those that are not." See Alan Doig, David Watt, and Robert Williams. "Measuring 'success' in five African Anti-Corruption Commissions," U4 Anti-Corruption Resource Center. May 2005. Accessed July 26, 2016. Available from http://www.u4.no/publications/measuring-success-in-five-african-anti-corruption-commissions/

[58] Former CICIG official. 29.03.2016

[59] International academic. 22.03.2016; International academic. 14.04.2016

[60] Former CICIG official. 29.03.2016

[61] Former CICIG official. 29.03.2016

[62] International policy researcher and practitioner. 14.04.2016

[63] Michael Lohmuller. "Mandate Renewed, But CICG Will Not Save Guatemala," InSight Crime, April 23, 2015, accessed July 26, 2016. Available from: http://www.insightcrime.org/news-analysis/even-with-mandate-renewed-cicig-will-not-save-guatemala

[64] International policy maker. 18.03.2016; International organisation representative. 19.05.2016; MEC official. 09.05.2016

not being met.[65] International funding was only rarely withdrawn due to a lack of progress on the implementation of National Priority Program for governance and/or the MEC-derived benchmarks which replaced the 2010 Tokyo Mutual Accountability Framework (TMAF): in 2013,Scandinavian countries terminated some aid flows due to lack of progress on reform.[66] One interviewee was clear that this was a lever which could have been utilised to a much greater extent: "I think it was finally starting in 2012 – conditionality/threatening – I don't think a lot happened before. I would posit that if MEC [implementation] numbers are up, that is because countries have threatened to pull funding."[67]

The MEC would also on occasion need to protect its independence from donor interference. Although donors – including the US, UK and the UN – at times helped protect the Committee from the attempts of the Karzai government to shape their work,[68] at other times their political involvement in the country resulted in attempts to micro-manage the MEC, especially on sensitive issues and at times of increased pressure. One commissioner recalled needing to tell donors that "we would prefer not to get their money and do work independently".[69]

International: building block of credibility

All three bodies have made significant use of international expertise and the credibility it brought to further their agendas. In Palestine, research produced by Transparency International's Defence and Security Programme - the Government Defence Anti-Corruption Index, which assessing corruption risks and vulnerabilities in the defence and security sector – was a catalyst for the establishment of the Platform and provided it with the expertise to kick-start conversations with the government. AMAN, one of the founding organisations of the Platform, used the publication of the Index to launch consultations with other civil society organisations; their conclusion that a sustainable civil society oversight mechanism over the security sector was needed gave rise to the Platform.[70] The Index was also a key way to build the capacity of the Platform itself before it began to engage the MOI. Due to the highly technical and secretive nature of the defence sector, civil society is often at a disadvantage when trying to work with defence officials; the expertise offered by an international assessment helped the organisations prepare for direct contact with the MOI.[71] As one Platform member explained, "Being able to say that this report is not a Palestinian report, it's international, was important. The credibility of the research is high because it was prepared by independent international organisation that is professional and has lots of experience in this area."[72]

> *"Civil society organisations in Palestine need solid and strong content, especially when it comes to security institution because the country is a black box so we need a lot of data, research, to really strengthen our knowledge in this area before we go and speak to the security institutions.*
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> *Palestine civil society representative, TI interview, April 2016*

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[65] International policy maker. 16.05.2016

[66] Senior military officer. 28.04.2016. A 2016 review of Norwegian assistance indicated that there are stricter controls applied to NGO support than to support for the trust funds. See Arne Strand and Nils Taxell. "Review of Norwegian development assistance to Afghanistan 2011-2014", Chr. Michelsen Institute. 2016, accessed August 4, 2016. Available from http://www.cmi.no/publications/5852-norwegian-development-assistance-afghanistan

[67] Senior military officer. 28.04.2016

[68] International policy maker. 09.03.2016

[69] MEC official. 08.03.2016

[70] Palestinian civil society representative. 07.03.2016.

[71] Palestinian civil society representative. 06.04.2016; Palestinian civil society representative. 07.03.2016

[72] Palestinian civil society representative. 07.03.2016

In Afghanistan, too, the combination of local and international expertise was cited by many as a key strength of the MEC.[73] The combination of international and national committee members provided the Committee with access to information on one hand and neutrality and perceived resistance to attempts at influencing it on the other.[74] Technical assistance and international perspective brought on board by international members could be married with the national knowledge and relationships of the Afghan members – two complementary and indispensable factors influencing the Committee's effectiveness.[75] While there was, on occasion, resentment of the international members and suspicion as to them being influenced by donors, overall the combination of the national and the international was seen as an asset widening the Committee's perspective and widening its freedom.[76]

CICIG brought to Guatemala international experts in the different areas, including the three Commissioners: Carlos Castresana, Costa Rican Francisco Dall'Anese and Colombian Iván Velásquez. Velásquez, the current commissioner, brought with him a solid track record of tackling criminal organisations and paramilitaries entrenched within the Colombian government.[77] Similarly to the MEC, the international side of the CICIG provided the Commission with independence (despite close cooperation with government departments) and freedom of manoeuvre. In the words of a CICIG Commissioner, "[y]ou can't influence us [...] We aren't linked to the business class, or military, or judges or lawmakers. That gives us enormous freedom."[78]

Assessing donors

While the Platform had little to no engagement with international donors and the CICIG relied on them for assistance and support, the MEC was the only institution mandated to analyse donor activities in Afghanistan and make recommendations to donors in addition to Afghan authorities.

4. **Donor coordination**

The MEC will review the effectiveness of international assistance in support of anticorruption efforts, and make recommendations to the international community in connection with changes in policy, practice, and direction; funding levels or priorities; quality and quantity of technical assistance, and/or conditions/terms of support, including direct budget support.

Despite donor engagement and commitment to the MEC, however, their enthusiasm for submitting to the Committee's assessments was limited: according to one MEC official, donors viewed the MEC as performing a national function and were less responsive to its attempts to oversee the efforts of the international community.[79] Recommendations to the international community were also frequently left unaddressed or delayed. The MEC's attempts to get the US government to adopt a common approach to contractor vetting – a shared database and blacklist, and consistent approach to administrative sanctions for wrongdoing – were unsuccessful. While the International Security Assistance Force's (ISAF) Joint Command drew heavily on MEC reports,[80] ISAF's Task Force Shafafyiat ('Transparency' in Dari and Pashto), responsible for coordinating international and Afghan anti- and counter-corruption actions, was slow to follow the MEC's

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[73] International organisation representative. 19.05.2016; MEC official. 09.05.2016
[74] International organisation representative. 19.05.2016; MEC official. 09.05.2016
[75] MEC official. 16.05.2016
[76] MEC official. 09.05.2016; International policy researcher. 11.05.2016
[77] International academic. 22.03.2016
[78] David Luhnow, "Guatemala Outsources a Corruption Crackdown," The Wall Street Journal, September 11, 2015, accessed July 26, 2016. Available from: http://www.wsj.com/articles/guatemala-outsources-a-corruption-crackdown-1442001944
[79] MEC official. 16.05.2016
[80] MEC official. 08.03.2016; International policy maker. 16.05.2016

recommendations and, when MEC criticism of slow implementation of its recommendations became public, contact and cooperation were broken off.[81]

OUTREACH: CIVIL SOCIETY, MEDIA AND THE PUBLIC

OECD research has found that institutional efforts against corruption are prone to fail without the active involvement of civil society.[82] For CICIG, links with and support of civil society was crucial, having led to the Commission's creation in the first place. But continuing NGO support over the years was equally important, helping maintain support for the Commission and helping channel public sentiment.

> *"The human rights lobby was key in establishing and changing perception over years – I'm talking about small NGOs related to citizen security, memory, indigenous rights, all very important in convincing part of general public of the practical argument. None of us like having foreigners in internal issues but we can't do it by ourselves. The system is so corrupt, just so, so complicated that we need people from outside with technical capabilities – it took 5-6 years for this message to permeate to the general public."[83]*

> *Guatemalan civil society representative, TI interview, March 2016*

But public support for CICIG has also been the function of the Commission's decision to take a more aggressive stance against corrupt networks and to actively pursue them. Interviewees suggested that

support, initially low, rose over the years, as "people have taken to the streets to support the CICIG and yield a massive and special recognition to the commissioner Ivan Velasquez."[84]

CICIG's focus on investigating corruption was supported by civil society consultations conducted by Ivan Velasquez Gomez, CICIG Commissioner since 2015. The consultations, one expert argues, yielded an understanding of power distribution in the Guatemalan society and of priority issues that the different segments of society wanted to see resolved. Corruption emerged as a crucial area, "the place in the criminal realm where different criminals get together [...] it seems to have been the logic that if corruption is combatted, the other areas will follow."[85]

> "The success of the CICIG is because the last commissioner focused on what people are looking for; groups, networks of corruption inside and outside the government who are using the state as a way to enrich themselves. They aimed at the big fish of corruption; the president, ex vice-president, and now congressman in prison."[86]

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[81] MEC official. 16.05.2016

[82] OECD. "Specialised Anti-Corruption Institutions: Review of Models," 2008, accessed July 26, 2016.

[83] International academic. 14.04.2016; Former CICIG official. 29.03.2016; Guatemalan civil society representative. 07.03.2016.

[84] International academic. 14.04.2016; International policy researcher and practitioner. 14.04.2016. Guatemalan civil society representative. 01.06.2016

[85] International academic. 22.03.2016

[86] Guatemalan civil society representative. 07.03.2016.

CICIG had also made use of Guatemala's well-established media and a network of investigative reporters, whose observations and small-scale investigative reporting often provided fodder for subsequent CICIG investigations. As one interviewee pointed out, "[o]ne of the traditional newspapers had run a story on the President and VP 2 years before the CICIG sent them to jail."[87] The attention that the media and civil society paid to CICIG also helped it create and sustain political will for reform. One report noted that CICIG's first Commissioner, Carlos Castresana, skilfully used public and media outreach to mitigate the impact of spoilers on CICIG's work.[88] The subsequent shift in focus from capacity building to investigations and further skilful outreach to the media – from weekly press conferences announcing subjects of investigations to radio and news programmes that focus on recent CICIG work, which have collectively come to be known as 'CICIG Thursdays'[89] – have generated mass public support. On August 27, 2015, 100,000 people gathered in Guatemala City, at the country's largest protest ever, to hear Congress' vote to remove the President's immunity so he could be tried for charges related to corruption.[90]

Neither the MEC nor the Platform utilised public support and the media to this extent. The MEC, for example, might enjoy significant support among reform-focused and technocratic communities, but not among the general public, which does not tend to be aware of the Committee.[91] This is despite the high-profile inquiry into the Kabul Bank and its role in diverting aid funds to corrupt networks, which, while it had put the Committee on the map for donors, did not enhance its public presence in Afghanistan.[92] Recently, however, the Committee has increased its public outreach and presence in the media, establishing a comprehensive website, a Communications Department and an Outreach Unit for Afghanistan's provinces, hoping to raise its profile beyond the Kabul community. [93] The Committee has also not utilised engagement with Afghan CSOs to a significant extent, partly due to the limited number of NGOs working in Afghanistan on anti-corruption issues, and partly due to doubts as to their efficacy.[94]

Although the MEC usually conducts press conferences and press releases, there appears to have a been desire on the part of donors for the MEC to increase its outreach to the provinces, to increase exposure of the MEC's work to previously untouched areas of the country.

SOURCE: MEC Facebook page.

The Palestinian Platform, a coalition of NGOs, has been skilful in leveraging its constituent NGOs, often possessed of complementary skills and networks of contacts. Palestine has strong civil society, although the work on security sector was relatively weak, as the sector was seen as a black box.[95] AMAN, the founding organisation, has worked in Palestine since 2000 and was able to leverage its brand and credibility to attract other CSOs toward the initiative. AMAN's partners brought in additional leverage and access to the MOI, helping AMAN gain access to the Minister himself in order to build up support for the Platform.[96] Publicly, however, the Platform has kept a very low profile, with no website, social media platform or major public events, having decided to take a low-key approach due to the security and political situation in Palestine: "

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[87] International academic. 14.04.2016

[88] Open Society Foundation. "Against the Odds: CICIG in Guatemala," March 2016, accessed August 2016. Available from https://www.opensocietyfoundations.org/sites/default/files/cicig-report-20160321.pdf, p. 4

[89] Stephen Dudley, 'How Colombia's Judge Already Won Guatemala's Election', *InsightCrime*, 20 October 2015. Available at http://www.insightcrime.org/news-analysis/how-a-colombia-judge-already-won-guatemala-s-elections

[90] Kate Newman and Rodrigo Fuentes. "In Guatemala, a justice experiment gone right," September 5, 2015. Available on http://america.aljazeera.com/articles/2015/9/5/in-guatemala-a-justice-experiment-gone-right.html ; International academic and policy practicioner. 01.06.2016

[91] nternational organisation representative. 19.05.2016; MEC official. 09.05.2016; MEC official. 18.03.2016

[92] MEC official. 16.05.2016; senior military officer. 28.04.2016

[93] MEC official. 08.03.2016

[94] International policy maker. 09.03.2016

[95] International policy researcher. 26.04.2016

[96] Palestinian civil society representative. 07.03.2016

[the Ministry] were ready to have internal meetings, meetings behind closed doors – in these meetings we could criticise them, flag up issues and challenges. ... going public ... would have been a killing point."[97]

OPERATING OVERSIGHT: GOVERNANCE AND RESOURCING FOR EFFECTIVENESS

If external factors – from government support to civil society and media outreach – and selected priorities were instrumental in enabling the effectiveness of independent oversight bodies, their internal governance and leadership were equally important in enabling them to utilise opportunities and provide a sustainable working environment. Appropriate leadership and staffing; clear terms of reference and the choice of strategic priorities; a clear decision-making process; and access to sustainable resourcing have all been factors in shaping the oversight bodies' actions and effectiveness.

Selecting effective leadership that would constitute the 'public face' of the oversight body and shape its internal processes was a challenge faced by all. The MEC, in a bid to ensure the participation of high-calibre individuals, recruited its international members through a public announcement and nomination process including a special recruitment commission comprised of partners including DFID, Danida, USAID, and the UN.[98] On the Afghan side, interviewees noted that selection was at the discretion of the Afghan government, making members essentially political appointees. [99] The President could veto the international members, but the international community could not veto the Afghan members.[100] This has had some downsides: the President's role in establishing the MEC, nominating national members, and confirming those proposed by the international community granted him significant influence over the Committee. Lack of legal protection for the commissioners, little clarity over how they might be dismissed, and considerations of future safety and employment has made some of the national members fearful of rustling feathers; at worst, some commissioners may have effectively been afraid to oppose the government; at best, they were cautious due to relationships within government. [101] However, the presence of six Committee members did help create checks and balances which offset the potentially negative impact of any one member. The equal number of international and national committee members meant neither international nor national members were able to dominate decision-making and discussion.

> *[T]he courage to confront the power relies mainly on individuals. You will be bearing a big risk to confront current president on some issues – you have to think of how independent it can become whilst still enjoying the support of the power."*
>
> *MEC official, TI interview, March 2016*

The MEC also faced challenges in recruiting a strong, effective manager for its Secretariat, a role which was widely seen as indispensable to the Committee's success or failure. Head of Secretariat, interviewees agreed, needed to be skilful in supervising the production of high-quality research, proactively implementing the Committee's priorities, managing and motivating staff, navigating the interface between national and international issues, and getting the best out of available international advisers – which the MEC stratified across junior and senior posts.[102] At CICIG, that role was at least partly fulfilled by its UN-appointed, international Commissioner. With the first two Commissioners laying the ground for the recruitment and

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[97] Palestinian civil society representative. 13.04.2016

[98] International policy maker. 09.03.2016; MEC official. 08.03.201. In the early stages, however, there was no announcement or formal process for the selection of international members.

[99] International policy maker. 18.03.2016; International organisation representative. 19.05.2016; MEC official. 16.05.2016

[100] International policy maker. 09.03.2016

[101] International policy maker. 09.03.2016; International policy maker. 18.03.2016.

[102] International policy maker. 09.03.2016; International policy maker. 18.03.2016; MEC official. 08.03.2016.

training of professional staff, the third Commissioner's skills in effective management of the Commission and its staff enabled the Commission to achieve its most significant successes.[103]

For the Platform in Palestine, credibility of its members was a crucial enabler. AMAN and other founding organisations developed a set of criteria that guided the selection of Platform members, including their experience in working in or with the security sector, their credibility, geographical distribution (including organisations working in the West Bank and Gaza), annual budget and board, and international credibility and experience.[104]

> *"If there is one question mark on the work of one of the members, you will fail in your cooperation or targeting this sector. You have to check possibility of all members that has good credibility in civil society, long experience working public sector in general."*
>
> *Palestinian civil society representative, TI interview, March 2016*

Once members and mandates were in place, internal governance procedures and agreeing priorities became
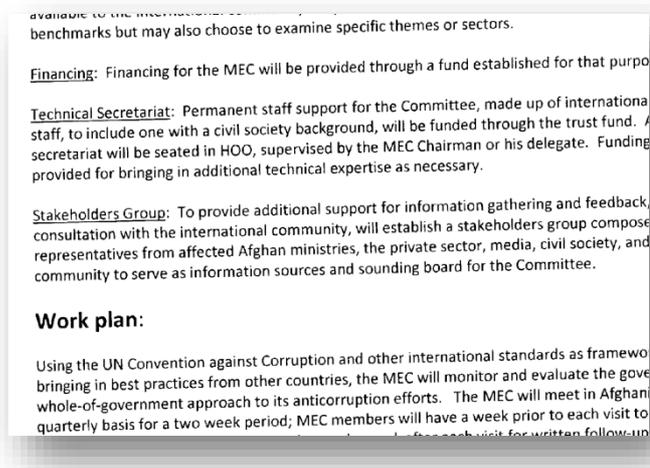
key. The MEC's terms of reference (TORs), the document defining the institution's priorities, tasks, and ways of achieving them, seem to have been overly detailed in some aspects and inadequate in others. While they did not define the Committee's strategic priorities or the areas it would first engage in (it was only in 2016 that a strategy for the MEC was developed[105]), they set detailed workload expectations for the members, including 1 week of preparation, 2 weeks of activity, and 2 weeks of follow-up per Committee meeting.[106] The TORs also gave the MEC a horizontal decision making structure, with the requirement of a majority vote for each decision – thus ensuring that neither internationals nor Afghans could gain a majority vote by themselves and encouraging compromise.[107] But this also meant that division of opinions could result in stalemate and block the Committee's work – and in some cases be exploited by the executive director and donors to get more power or scrap some of the Committee's plans.[108]

The CICIG's governance procedures were far more vertical than those of the MEC, vesting much greater powers in a single individual: the Commissioner, empowered to select staff and manage the Commission's work.[109] This type of structure perhaps allows for quicker decision-making and more efficiency, but it also put a lot of power into the hands of one individual. Whether it works well therefore greatly depends on the individual at the top.[110] The first CICIG Commissioner in particular had ample room to shape the composition

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[103] Guatemalan civil society representative. 07.03.2016; Guatemalan civil society representative. 01.06.2016; International academic. 14.04.2016

[104] Palestinian civil society representative. 07.03.2016; Palestinian civil society representative. 06.04.2016

[105] MEC official. 16.05.2016

[106] MEC official. 16.05.2016; International policy maker. 18.03.2016

[107] International policy maker. 18.03.2016

[108] MEC official. 08.03.2016

[109] Guatemalan civil society representative. 07.03.2016.

[110] Guatemalan civil society representative. 07.03.2016.

and priorities of the Commission, due to the absence of a strategy and internal processes: when CICIG was set up in 2007, there was no workplan, no strategy, no budget, no staff, and little independent funding to pay salaries, recruit for the Commission, or finance transport and supplies. While a lot of staffing and resourcing issues were tackled within the first year of the Platform's existence, CICIG's first Commissioner noted that if they had been planned for earlier, the Commission could have been more effective earlier.[111]

At the MEC, staffing posed similar constraints. The Committee started out with just 10-12 staff in total and lacking senior international advisors to support the secretariat.[112] These numbers were widely seen as inadequate to the Committee's workload, with one report on land grabbing requiring 2-3 individuals over the course of a year and a VCA report looking at process of issuing ID cards needing 1 person over 4-6 months.[113] Recently, however, staff numbers grew to 5 international and 16 national personnel, and are expected to keep growing with the recently adopted strategy.[114]

For the Palestinian Platform, a workplan – established on the basis of corruption risks diagnosed by the Government Defence Anti-Corruption Index – and a set of procedural bylaws were important ways of coordinating among its member organisations, which took forward individual activities.[115] The Platform's management committee, staffed by representatives from academia and organisations promoting press freedom and human rights, was responsible for the creation of the bylaws, developing an annual workplan, and maintaining the relationship with the Ministry of Interior.[116] Loose links between Platform members and lack of dedicated, sustainable funding meant that for implementation, the Platform had to rely on members integrating anti-corruption or enhancing good governance within the security sector within their strategies, programmes or annual plans.[117] At the time of writing, approximately half of all platform members had successfully incorporated anti-corruption elements and interventions into their organizational plans,[118] but not all Platform seemed to be aware of the workplan. One member, for instance, noted the need to ensure members don't leave the platform and implementation proceeds in accordance with the accepted strategy and priorities.[119] Others suggested that rather than having a management committee, the Platform should have relied on its largest contributor – AMAN – to provide a secretariat and lead its work.[120] However, the process of adopting the strategy and bylaws was in and of itself an important capacity-building exercise: "…the bylaws [are] an important advancement. You'd be surprised how long it took to get to that stage – because SSR was dominated by the Americans and the EU. To have local organisations talk about this is very important in itself."[121]

Accountability: who watches the watchdogs?

While both the MEC and the CICIG were required to report to donors on a regular basis, the oversight arrangements were somewhat lax. At the MEC, the Committee Chair – rotating between international and national members every six months – is responsible for overseeing the head of the secretariat and the overall

[111] CICIG. "Strengthening the Institutions." May 21, 2012. Available from http://www.cicig.org/index.php?page=0016-2012051E ; International Crisis Group. "Crutch to Catalyst? The International Commission Against Impunity in Guatemala," Latin America Report No 56. January 29, 2016. Available from: http://www.crisisgroup.org/~/media/Files/latin-america/Guatemala/056-crutch-to-catalyst-the-international-commission-against-impunity-in-guatemala.pdf

[112] MEC official. 18.03.2016

[113] International policy maker. 18.03.2016

[114] International policy maker. 18.03.2016

[115] Palestinian civil society representative. 07.03.2016; Palestinian civil society representative. 13.04.2016; Palestinian civil society representative. 12.04.2016

[116] Palestinian civil society representative. 07.03.2016

[117] Palestinian civil society representative. 07.03.2016; Palestinian civil society representative. 06.04.2016

[118] Palestinian civil society representative. 12.04.2016; Palestinian civil society representative. 07.03.2016

[119] Palestinian civil society representative. 06.04.2016

[120] Palestinian civil society representative. 13.04.2016

[121] International policy researcher. 26.04.2016

work of the organisation.[122] However, numerous interviewees have expressed concern about weaknesses in the Chair's oversight role in practice.[123] Two Executive Directors have been removed due to allegations surrounding financial mismanagement, lack of management and irregularities related to pay and travel.[124] In late 2015, The Wall Street Journal reported that foreign donors threatened to stop funding to the group after questions surfaced over its spending and the resignation of some officials.[125] One senior official at the MEC described a lack of accountability and failures in organisational infrastructure, complaining that it took about 4 months for a lot of basic organisational procedures and policies to be established.[126] Initially a small team, the MEC relied more on trust between individuals than on procedures, which began to pose problems once it came to disbursement of funds.[127] With no financial policies, staff performance plans, or disciplinary actions, the organisations functioned in an ad hoc fashion and ran significant risks of abuse and diversion of resources.[128]

In Guatemala, the Commissioner technically reported to the UN and the Guatemalan government.[129] In reality, however, the oversight arrangements were too vague to provide real oversight from either side.[130] A commissioner for the CICIG noted that the only substitute for oversight was meeting the ambassadors: "Every couple of weeks, I met important ambassadors. … I explained CICIG activities to them and listened to their suggestions." Although the CICIG release annual reports detailing all activities, there was no evidence of how budgets were utilised – an oversight for a body aiming at tackling government corruption and abuse.

[122] MEC official. 08.03.2016
[123] International organisation representative. 19.05.2016
[124] International policy maker. 09.03.2016
[125] Jessica Donati. "Foreign Donors Threaten to Pull Funding to Afghanistan Anticorruption Group," The Wall Street Journal, December 4, 2015, accessed July 26, 2016. Available from: http://www.wsj.com/articles/foreign-donors-threaten-to-pull-funding-to-afghanistan-anticorruption-group-1449169765
[126] MEC official. 16.05.2016
[127] MEC official. 16.05.2016; MEC official. 08.03.2016
[128] MEC official. 16.05.2016
[129] Guatemalan civil society representative. 07.03.2016.
[130] Former CICIG official. 29.03.2016

CONCLUSIONS

External oversight and investigative bodies can be instrumental in helping to improve governance and dismantle corrupt networks in post-conflict and fragile states. CICIG, one interviewee stated, was 'a lifeline to peace'. Setting up these bodies, however, will not be effective if it's done without effective policies and procedures, with weak government support, or with unsustainable resourcing. Our research indicates that the following issues are crucial in shaping the effectiveness of external oversight bodies.

Mission and Mandate. The scope of the mandate played a significant part in determining the functions and impact of the organisations. On one end of the spectrum stands the CICIG which has a clear objective and specified powers of enforcement, though it took many years and significant political will to establish. On the other end of the range is the Civil Platform in Palestine which has no powers of enforcement and has seen modest impact in its two years, but was comparatively easier to establish. In the middle is the MEC, with a monitoring focus and some degree of enforcement through the presidential decree and some aid conditionality. There is a trade-off: the more powerful the organisation's mandate and enforcement power, the longer it takes establish and the more favourable the operating environment has to be (in terms of access to information laws and political will).

Another factor worth considering is the scope of the mandate – the lack of clarity over mandates and TORs have held back all three organisation to a great or lesser extent and in some cases hindered clear public communication of what the organisation is for. Clearly there are also pros and cons to the breadth of the mandate – more focussed activity can bring greater impact, but too much restriction around the mandate can be risky before the organisation has been tested against political realities.

Credibility and Expertise. Whether an anti-corruption body is more focused on investigations or on analysis, there is a clear need to demonstrate expertise and knowledge to build credibility. In some environments bringing in international expertise can assist in building this credibility; in others, the presence of international experts becomes politicised as international experts are viewed as a form of foreign influence. Mixed groups will also face challenges in terms of communication and decision-making, and in the longer term any external technical expertise needs to be made locally sustainable.

Obtaining Government and Political Support. Genuine and long-lasting reform tends to come about when there is political will at the top. But political will may not be essential for an oversight and analysis group, particularly if the purpose is to try to help create and sustain political will. In Palestine, the Platform was wholly independent and NGO-run and was therefore able to create less measurable impact (though it is also a newer group, so it is difficult to compare directly). And over time, the local capacity the platform can help build may be used to create and sustain political will through advocacy.

In Guatemala, CICIG's work was predicated on a collaborative and cooperative relationship with leading figures and department in government, especially the Attorney General's office. Its impact has been measurably high, but there were potential risks or at least constraints in this approach. The organisation's impact was only sustainable because it was accompanied by strong external pressures, such as donor influence and grassroots pressure that generated the political will needed for the CICIG to do its work. The strength and sustainability of such support must therefore be an important consideration in terms of design.

Generating public support through tangible results. It has been important for the CICIG to demonstrate it is responding to impunity in order to obtain support from the public. The support generated through high level cases have, in turned, enabled further work of the CICIG and made it more difficult for spoilers to speak out against it. Critics highlight that CICIG has had challenges implementing more long-term structural changes and that "after eight years in Guatemala and with significant investment [...] CICIG is still struggling to

transfer its know-how and foster an independent judicial system".[131] In other contexts, such as Palestine, where civil society is more closed, it is more difficult to rally support from the public around heavily politicised issues of corruption. Corruption prevention, when properly resourced and focused, "can close loopholes and tighten processes and make a significant impact on reducing corruption, particularly in relation to wider reform objectives."[132] But the work of prevention is less visible -- in Afghanistan, the role of public outreach has not been as prevalent, in part because the nature of the work (monitoring, evaluation) is less tangible to everyday Afghans than prosecutions of senior officials.

Collaboration with Other Initiatives. In Guatemala the CICIG was seen initially as encroaching upon national sovereignty. In Afghanistan, the MEC was seen as a competitor to the government-run HOOAC and there appeared some confusion about its role within the anti-corruption landscape. And in Palestine the NGO Platform was designed to bring together multiple organisations around a common aim. In all these examples there was a clear need for the initiatives to identify how they would work with other institutions. In Guatemala this meant that CICIG developed close partnerships with the attorney general's office and gradually moved away from capacity building (which was being worked on by other organisations already) and focused on investigations. In Palestine we saw that the Platform's main organisers ensured that they brought together all credible and reputable NGOs working on issues related to the security sector and good governance to present their concerns through one voice. In Afghanistan, the MEC stood apart through the quality and quantity of its outputs which demonstrated activity and independence that was not visible in the government-run anti-corruption body.

The international community and other levers of support. In both Afghanistan and Guatemala, having the international community throw its weight behind the MEC and CICIG has been critical to their effectiveness. Along with funding, the international community can provide vital political support, and in some cases have used the threat of withholding aid to push for reforms. However, while international donors can be a major ally and conditionality on funding can be useful, they are also political actors with interests and allies; particularly when the work of anti-corruption groups touches on sensitive individuals or institutions, or on the behaviour of donors themselves, they may not be so supportive. So it is important to examine other possible pressure points which can help encourage reform. The example of Guatemala, in particular, has shown us how influential the power of civil society and the media can be in driving support.

Adopting a long-term perspective. Even the most influential of the three bodies – CICIG – did not become successful overnight. Building up a credible, well-functioning oversight body, with expert staff, effective policies, agreed-upon priorities and strategy, and a level of public and government support that insulates it from spoilers takes time. National and international stakeholders considering the establishment and support of external oversight bodies need to sign up for the long haul, and to adjust expectations: the first years of these organisations may be challenging and even chaotic, but if used to build up expertise and credibility, can underpin successes later on.

[131] Michael Lohmuller. "Mandate Renewed, But CICIG Will Not Save Guatemala," InSight Crime, April 23, 2015. Available from: http://www.insightcrime.org/news-analysis/even-with-mandate-renewed-cicig-will-not-save-guatemala

[132] Alan Doig, David Watt, and Robert Williams. "Measuring 'success' in five African Anti-Corruption Commissions," U4 Anti-Corruption Resource Center. May 2005. Accessed July 26, 2016.