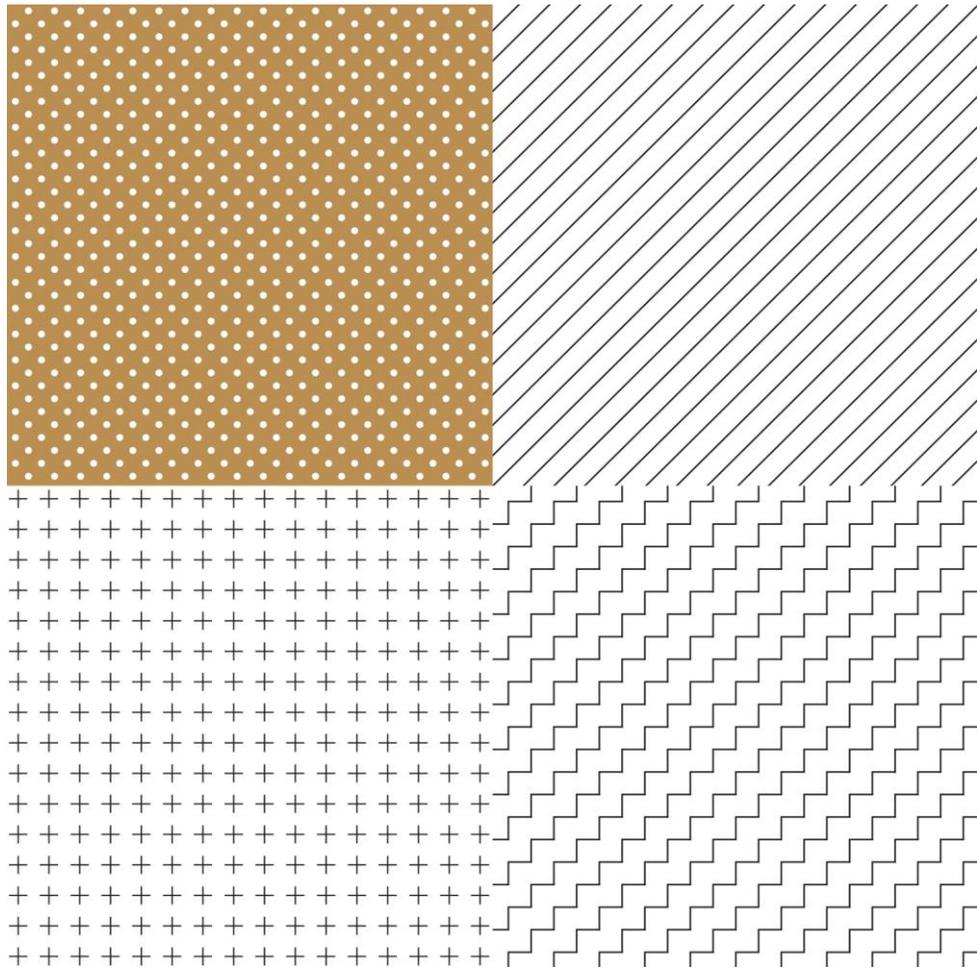


W O S C A P

ENHANCING EU PEACEBUILDING CAPABILITIES



EU support for Justice and Security Sector Reform in Honduras and Guatemala

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Whole of Society Conflict Prevention and Peacebuilding

This desk review of case studies was produced as part of the project "*Whole-of-Society Conflict Prevention and Peacebuilding*" (WOSCAP). In order to complement the other in-depth research cases with a broader view of EU interventions regarding conflict prevention and peacebuilding, this report focuses on cases in other contexts beyond the field research (on Georgia, Ukraine, Mali, and Yemen). The desk review collects documented lessons learned from selected policies in: Kosovo, Afghanistan, Central America (Honduras and Guatemala), and Sri Lanka. The EU has played a substantive role in Kosovo and Afghanistan, while it has played an important role in Sri Lanka and Central America. More information at www.woscap.eu.



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Abstract

This desk study reviews the literature on EU programmes that supported security and justice reform in Guatemala and Honduras, focusing on two programs: the programme in support of the security sector (PASS) in Honduras and the International Commission against Impunity in Guatemala (CICIG). The former was an EU led programme, almost entirely funded by the EU, the latter is a hybrid UN organisation, co-funded by the EU. The first section of the report provides some background information about the political context in the Central American isthmus, and in particular in Guatemala and Honduras. The next section briefly reflects on the development of the relationships between the Central American region and the EU. The longest section of the report discusses the two programmes separately. Each case starts with a brief introduction and some background information, moves on with a presentation of the development of the programme over time, and finalizes with a discussion of different assessments and evaluations of the intervention. The report closes with a reflection on the capabilities of the EU.

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1. Introduction

This desk study reviews the literature on EU programmes that supported security and justice reform in Guatemala and Honduras. The involvement of the European Union (EU) in Central America dates back to the 1980s when wars raged in the isthmus. The (then) European Economic Community (EEC) supported the regional efforts to bring an end to the civil wars. This role as 'peace actor' evolved in the post-settlement period of the 1990s when the EU increased its development assistance to the region, while at a later stage an association agreement was signed with the Central American countries. In the framework of these agreements the EU has also increasingly paid attention to Central America's public security crisis, and to security and rule of law reforms in the region.

The present study is one of the desk studies conducted by Utrecht University in the framework of the EU funded WOSCAP project. The objective of this case study is to provide insight into the capabilities of the EU in the field of conflict prevention and peacebuilding, on the basis of a screening the existing academic publications, reports, policy documents, evaluations, and journalistic articles. This report discusses two programmes that aim to contribute to security and rule of law reform in Central America: the programme in support of the security sector (PASS) in Honduras and the International Commission against Impunity in Guatemala (CICIG). The former was an EU led programme, almost entirely funded by the EU, the latter is a hybrid UN organisation, co-funded by the EU.

In line with the theoretical and methodological framework of the project, emphasis is placed on the processes of intervention and policy making in a complex national and international context (see Martin et al, 2016). Thus, rather than looking for the effectiveness or impact of interventions per se, the report looks at how interventions are developed, influenced and renegotiated in a volatile context, while analysing the different assessments (and criteria for assessment) of a range of stakeholders (local, national and international). The report thus looks at the strategic manoeuvring of the EU in a volatile and complex context. It takes into account the principal actors and events that the EU had to relate to and the assessments, evaluations and portrayals of different stakeholders of the role of the EU.

The structure of the report is as follows. The first section provides some background information about the political context in the Central American isthmus, and in particular in Guatemala and Honduras. The next section briefly reflects on the development of the relationships between the Central American region and the EU. As will become clear, in the face of staggering homicide rates and high levels of public insecurity, reform of the justice and security sector became one of the strategic themes of the EU in Central America. The longest section of the report discusses the two programmes separately. Each case starts with a brief introduction and some background information, moves on with a presentation of the development of the programme over time, and finalizes with a discussion of different assessments and evaluations of the intervention. The report closes with a reflection on the capabilities of the EU.

As of yet there is only limited academic literature on the EU programmes aiming for justice and security sector reform in the two countries. In this regard, the publications on CICIG outnumber those on the PASS programme. Therefore a selection was made of what were considered to be key publications on CICIG. However, in the publications on CICIG (which has several funders) relatively little attention has been paid to the specific role of its different

fundings. In contrast, with the PASS programme being a product of the EU and receiving the bulk of its funding from the EU, the writings on this programme all focus on the role of the EU. While this means that a comparison between the two cases on the specific role played by the EU is not possible, the two cases do provide interesting and important lessons about the room of manoeuvre for justice and security sector reform in what can be considered adverse contexts.

2. From war to new insecurity in Central America

The EU became an important actor in Central America in the second half of the 1980s, when national presidents sought for a regional solution to the crisis and promised to make a start with (further) democratisation, and to start negotiations with the armed opposition groups in their respective countries (Guatemala and El Salvador with the guerrilla movements, and Nicaragua with the US-funded anti-revolutionary contras). These regional initiatives reached new traction when the Cold War came to an end. While the Sandinista regime had already accepted participation of the opposition in national elections by 1990 (the opposition won the elections), in 1992 a peace agreement was signed in El Salvador, and in 1996 Guatemala followed suit. The Central American case is generally portrayed as a success story of the new type of 'wider' UN peacekeeping. In the case of Central America the main ingredients of the road towards peace were the demilitarisation of political life and (re) democratisation (van der Borgh 2003).

By the second half the 1990s, civil wars had ended in the region. The withdrawal of the military and the dissolution of armed guerrilla groups led to democratic reforms and – importantly – the rebuilding of the security sector (including purges in the Central American armies). The outcome of the transition in terms of democratisation and institution building has been mixed at best. Guatemala scores 'partly free' and Honduras and 'not free' on the ranking of Freedom House¹, and there is widespread concern about the indices of violence that are among the highest in the world (van der Borgh & Terwindt 2014, 58). The governments in these countries seem to have lost effective control over substantial parts of its territory, and there is increasing concern about the presence of street gangs, the growing presence of narco trafficking, corruption, infiltration of non-state actors in the state and the narrowing space of civil society organizations (van der Borgh & Terwindt 2014, 61-73).

Thus, decades after Central America's civil wars came to an end, Guatemala and Honduras still face serious problems with regard to fundamental political rights and civil liberties. In both countries the rule of law exhibits serious deficiencies and impunity is rampant. Corruption is an endemic feature in both countries, with Guatemala scoring 28 and Honduras 31 on the corruption perception index of Transparency International.² Victor Meza, a Honduran sociologist, characterized Honduras as a country 'with laws, but without rule of law'.³ Edelberto Torres Rivas, a Guatemalan sociologist, argued that the neoliberal downsizing of the state in the late 1980s and early 1990s 'had passed into a dismantling of the Guatemalan state, to a point that it is no longer able to carry out its basic functions such as security, let alone healthcare and education'.⁴ While the situations in Honduras and Guatemala share some important similarities – such as the influence of organized crime on the state and extremely high homicide rates –

¹ www.freedomhouse.org (accessed 19 October 2016)

² www.transparency.org (accessed on 19 October 2016). This is on a scale of 0 (worst score) to 100 (best score) on the corruption

³ Interview by author with Victor Meza, CEDOH, March 2010, Tegucigalpa. In Spanish: un estado 'con derecho', no 'de derecho'.

⁴ Interview by author, Edelberto Torres Rivas, Guatemala City, March 2012.

there are marked differences in the processes of democratisation (and de-democratisation), security sector reform and rule of law reform efforts.⁵

In Guatemala, the Accord for a Firm and Lasting Peace in 1995 brought an end to the civil war and aimed, among other things, to demilitarise Guatemalan politics, to guarantee the rights of the indigenous peoples (forming a majority of the Guatemalan population), and to clarify past human rights violations (van der Borgh & Terwindt 2014, 61). The peace process sought to democratise Guatemalan society and to put an end to the military influence over political life (Pearce 2006, 18. Gavigan 2009, 65).⁶ But the post-settlement transition in Guatemala proved to be extremely problematic. The implementation of the peace agreements led to a downsizing of the army and to changes in the judicial sector, but the economic elites retained a strong hold on the state. Criminal networks operating both within and outside the realm of the state have substantially weakened the state apparatus (Gavigan 2009).

In comparison to the rest of the region, Honduras remained relatively stable in the 1980s (Ruhl 2000). Despite constitutional changes in 1982 and a new impulse to democratisation in the 1990s, Honduran democracy never consolidated. This became painfully clear when the government of president Zelaya – who increasingly took a leftist and populist course – was ousted by a coup d'état in June 2009. The coup – as well as the run-up to the coup – led to a profound political crisis, extremely high levels of polarization in Honduran political and civil society, and an increase in the violations of human rights (van der Borgh & Terwindt 2014, 69-70). The international community strongly rejected the coup and did not recognize the new government led by Micheletti (ibid, 70). International pressure contributed to Honduras organizing new elections in November 2009 (ibid).

However, in the post-coup period Honduras has continued to suffer from enduring insecurity, violence and crime, and the absence of a legitimate monopoly of violence by the state (Schunemann, 2010, 10). Organised crime and drug trafficking have flourished, threatening the population and state institutions. This development has contributed to deepen the crisis, while the crisis itself has also generated new opportunities for criminal interests (ibid, 11). Thus, Honduras features many of the characteristics of a weak state. A professional civil service is virtually absent and partisan disputes over civil service and government positions at every level hinder continuity in programming and compromise overall government efficacy (Schunemann 2010, 10). The judicial system is extremely politicised, and prosecutors are often subject to political pressures (ibid, 13). This has all led to very low levels of credibility of the judiciary in Honduras (ibid, 14).

3. EU relations with Central America

Until the 1980s the EU had a very limited presence in Latin America (Freres 2000, 64). One of the first engagements of the EU with Latin America dates back to the 1980s when civil wars raged in Nicaragua, El Salvador and Guatemala and when the EU supported the San José Dialogue and the so called Contadora Group (Roy 2012, 8. Freres 2000, 69). This dialogue

⁵ Homicide rates for Guatemala and Honduras were 30 and 57 per 100.000 respectively. See Insight Crime, <http://www.insightcrime.org/news-analysis/insight-crime-homicide-round-up-2015-latin-america-caribbean>

⁶ See for an overview of the Guatemalan peace accord <http://www.c-r.org/accord-article/accords-guatemalen-peace-process>

looked for a negotiated solution to the wars in the region, in contraposition to the policies of the US in the region (Freres 2000, 64). In addition to the growing engagement of the EEC in Central America, the inclusion of Spain and Portugal in the EEC (in 1986) was an important factor for the EU to become a major player in Latin America. Whereas the US had been critical about Europe's political role in Central America during the 1980s, in the context after the Cold War, the relationship between the EU and the US was generally positive (Roy 2012, 8). Since 1999, biannual summits between the EU and Latin America have taken place – alternatively in Latin American and European capitals (Roy 2012, 5). Official Development Aid (OAD) of the EU to the region steadily increased in the 1990s (Freres 2000, 69).⁷

The relations between the EU and Central America thus started with a political dialogue, developed to support the peace processes in the region. This dialogue was continued and broadened to socio-economic topics, as well as topics of counter-terrorism and migration (EC 2007, 2-3). In 1993, the EU and Central American government signed a Regional Development Cooperation Framework, which came into effect in 1999 (EC 2007, 2). In 2003, a new Political Dialogue and Cooperation Agreement was signed (EEAS, 2016). In 2007, negotiations for an association agreement were launched, which was signed on 29 June 2012.⁸ Today, the EU and the six Central American countries enjoy a comprehensive relationship encompassing political dialogue, cooperation and a favourable trade regime (EEAS 2016).

As mentioned, in the 1980s EU started its development funding to Central America. Aid was directed at rural development, healthcare and regional integration, among other aspects (Smith 1995, 98-99). In the 1990s, when the civil wars came to an end, Central America became an important recipient of EU development aid (Freres 2000, 76). However, aid was dispersed over a broad range of sectors, and there was no clear strategy concerning its use (EC 2007, 14. EC 2015, 8). The EU developed its first strategy paper for the period 2002-2006. This strategy document focussed on regional integration, the reduction of vulnerability and strengthening the role of civil society (EU 2015, 8). The Regional Strategy Paper for the period 2007 – 2013 identifies as its main objective “to support the process of political, economic, and social integration in the context of preparation of the future Association Agreement between the EU and Central America” (EU 2007, 19). Apart from the strengthening of the institutional system for the process of Central American integration and the reinforcement of the regional economic integration process, “aspects of strengthening regional security” are mentioned (ibid).⁹

The latter is clearly explained in the description of threats offered in the same Regional Strategy Paper (RSP). Here, it is concluded that the rule of law remains weak, while Central America experiences rising levels of violence, violence against women, organised crime, and drug smuggling (EC 2007, 4). The RSP aptly notes that “the combination of widespread violence and perceived impotence of governments to cope with it and impunity, create an environment where the fear of violence becomes a generalized routine, and pervasive dimension of social life throughout the region” (ibid). Thus, the Regional Strategy Paper 2007-

⁷ The legal basis for development cooperation was the ALA regulation of 1992 (EU, 2015: 8).

⁸ The text was ratified by the Central governments in 2013. See for the text of the agreement <http://trade.ec.europa.eu/doclib/press/index.cfm?id=689>

⁹ The RSP is still rather open about the types of measures that can be supported, and announces that details can be found in the regional indicative programmes (EC, 2007, 21). Cross cutting issues in the policies of the EU are gender and conflict prevention (ibid). Interestingly, the paper notes that one of the main risks of the EU is that there exist different visions and definition of security policies in the region (ibid, 23).

2013 announces that the Country Strategy Papers for El Salvador, Guatemala and Honduras will “include a more specific component to tackle the increasing violence among young people as well as to promote youth on the basis of an integrated approach based on preventive measures and taking fully into account human rights” (ibid, 23).¹⁰

4. EU support for Justice and Security Sector Reform in Honduras and Guatemala

In this section two EU programmes that aim to support justice and security sector reform in Honduras and Guatemala are discussed: the programme in support of the security sector (PASS) in Honduras and the International Commission against Impunity in Guatemala (CICIG).¹¹ While the CICIG is an international organisation, that is co-funded by the EU, PASS was an EU programme that sought to make a serious contribution to justice and security sector reform taking a comprehensive approach to public security. The PASS programme started in 2009, but never reached full capacity due to the complex political situation in Honduras, and eventually closed in 2014. CICIG started in 2008. It has since become an important player in the Guatemalan struggle against organised crime and corruption.

4.1 Honduras – Programme in Support of the Security Sector (Programa de Apoyo al Sector Seguridad, PASS)

4.1.1. The PASS programme

The available literature on the PASS programme is relatively scarce, and this brief evaluation is based on a number of reports about the programme (Irias 2013. Long 2015. Schunemann 2010), a 2012 programme evaluation (DRN 2012), the programme’s final report (PASS 2016) and an interview with a staff member of the EU delegation in Tegucigalpa¹². While many questions remain concerning the implementation of the programme, it is possible to present the programme’s main features, and to discuss the challenges it encountered in an adverse context, and to consider the different evaluations of the programme’s strengths and weaknesses.

PASS was an ambitious programme that aimed to strengthen security and justice in Honduras. It was to become one of the largest security programmes of the EU in the world

¹⁰ While Justice and Security Sector Reform (JSSR) have become important goals of EU aid to Latin America in general, the involvement in SSR and justice reform of the EU in Central America was rather new, despite some experience at the end of the 1990s to support the police in Guatemala and El Salvador “to become more professional and more impartial” (Sheriff 2007, 94).

¹¹ The type of SSR that is discussed here differs from the SSR strategies in the early phases after a civil war has come to an end, which may imply the overhaul of the security sector. While SSR reform was agreed upon in the peace agreements of Guatemala, it never fully materialized.

¹² Author’s interview with staff member of EU delegation in Tegucigalpa, Honduras, 1 July 2016 (Skype).

(Irias 2013, 23).¹³ The programme foresaw two phases; a first phase in which 9 million euro would be invested (2009-2014), and a second phase of 35 million euro for the period 2014-2020 (Long 2015, 21). The overall objective of PASS was to “contribute to human development in Honduras through the protection of society in the face of delinquency and crime” (Long 2015, 21). With PASS the EU targeted key institutions of the security and justice sector, adopting a three pronged approach: prevention, law enforcement, and rehabilitation with a view to address the root causes of public insecurity (DRN 2012, 45). The EU formulated 10 ‘expected results’ for the programme, such as a clear national legal framework, preventive policies, coordination between institutions, and the strengthening of anti-corruption (Long 2015, 22). The programme started on 3 July 2008, but faced with a large number of problems and challenges it closed in 2014, and the second phase never took off (Long 2015, 22). Instead, the EU decided to fund the EuroJusticia programme, which runs from 2014 until 2018 and has a slightly different focus.¹⁴

Schunemann (2010, 16) argues that the design and administration of the PASS were adequate. The programme took a comprehensive stance addressing all relevant institutions and national counterparts in the security and justice sector, as well as non-state actors (ibid). The idea to have two phases was also welcomed: a first phase to define a national public security policy, to set the basis for comprehensive reform of Security Sector Reform (SSR), followed by a phase to implement the reforms (ibid, 16). Discussions about a comprehensive security policy were already initiated between the EU and the government of Honduras in 2007 (DRN 2012, 46). However, inputs from civil society were not factored into the PASS design, leading to heavy critique on PASS by a number of Honduran civil society organizations (DRN 2012, 46). The EU reacted by starting a dialogue with NGOs and HRDs (DRN 2012, 47). Furthermore, several authors note that the programme suffered from staffing problems. The constant changes of the programme staff as well as the staff of relevant Honduran public institutions hampered its implementation (Long 2015, 26). By 2010, just 1% of the 9 million dollar had been disbursed (DRN 2012, 12). This can largely be attributed to the weak institutions in Honduras and to the political crisis that emerged in June 2009.

Indeed, the weakness of the security and justice institutions in Honduras were both the ‘raison d’être’ of the programme and its major challenge. Thus, the evaluation of the PASS programme by DRN (2012) refers to the incompetence of the Public Ministry, the Ministry of Security, the police, and the Office of the Prosecutor. Moreover, in the period that the programme was designed (as early as 2008), strong political confrontations among the beneficiary institutions emerged, particularly between the Supreme Court and the executive (DRN 2012, 46).

A major challenge of the programme was the acute political crisis - a coup d’état - in June 2009. The government of Michelletti (June 2009 - November 2009) that was installed after the coup was not recognized by the international community, and all donors suspended aid to Honduras (DRN 2012, 4). The EU and the US resumed aid after the new elections in March 2010, and many other countries slowly followed suit (ibid, 5). This meant that the PASS programme was on hold during at least nine months. With the 2010 inauguration of the Lobo

¹³ Priority sectors in the agreement between the EU and Honduras for the period 2007-2013 were reform of public security, combating poverty, and reform of the forestry sector (Irias, 2013, 20).

¹⁴ ‘Honduras lanza ambicioso programa para agilizar la justicia (EuroJusticia) (10/08/2014),

http://eeas.europa.eu/delegations/honduras/press_corner/all_news/news/2014/20140819_2_es.htm (20 October 2016)

administration new negotiations took place about the design of a national security policy (DRN 2012, 46).¹⁵

Systematised information about the PASS programme as of 2010 is scarce. The final report of the PASS programme describes that it took until October 2010 for the programme's international technical assistance (ATI) arrived and that the budget preparations could start (PASS 2016, 13-4). The budget was approved in March 2011. In that year a call for proposals was released in the sphere of prevention and rehabilitation, and a start was made with contracting technical assistance for different tasks (ibid).¹⁶ In the same year the formulation of a new security and justice policy started, and a range of short missions were implemented (ibid). The budget for the programme was over 8 million euro in 2011, approximately 1.8 million for 2012, 2.3 million for 2013, and 0.07 million euro for 2014 (the year the programme closed) (PASS 2016).

The final report of the PASS programme contains information about the activities and impacts per activity. An overview of the distribution of (part of the) funds provides some more insight in the broad range of activities that the PASS programme supported. Approximately 1,2 million euro was channelled through NGOs that worked with specific target groups, such as youth and imprisoned women (PASS 2016, 23-59). Furthermore, 2,2 million was used for the equipment of different state agencies (ibid, 54), 179.000 euro was destined to make the programme visible to the broader public (ibid, 60-8), 700.000 euro was invested in construction work, and 1,6 million euro was invested in technical assistance delivered by an international consultancy firm (ibid, 69).

It seems that the EU delegation recognized at a rather early stage how complex it was to implement the programme. The programme objectives were too ambitious. Especially the cooperation with the Honduran government appeared to be an obstacle. While a draft document for a national security policy was written, it was not implemented. And while a degree of coordination between national agencies working in the field of justice and security was reached, it proved very difficult to work with Honduran institutions given their weak technical and financial capacities.¹⁷ In this regard it is interesting to note that the extension of the programme into its second phase was never seriously considered and that – as mentioned – instead another programme was developed, with a budget of over 31 million euro for the period 2014-2018, of which the EU would contribute over 27 million euro.¹⁸ It is too early to assess this new programme.¹⁹

¹⁵ The UNDP was involved, as well as three partners of PASS (DRN 2012, 47).

¹⁶ These were (a) political, judicial and fiscal training, (b) technical assistance for institutional reforms, (c) technical assistance for legal affairs related to security and justice.

¹⁷ Author's interview with staff member of EU delegation in Tegucigalpa, Honduras, 1 July 2016, Skype.

¹⁸ The EuroJusticia program. See

http://eeas.europa.eu/delegations/honduras/press_corner/all_news/news/2014/20140819_2_es.htm

¹⁹ Since at the time of writing hardly any publications were available on this programme, fieldwork would have been needed. The objective of the new programme is still rather broad, but now lists three (instead of ten) expected results. See Convenio de Financiación Entre La Unión Europea y La Republica de Honduras, DCI-ALA/2013/023-720

<http://www.poderjudicial.gob.hn/Proyectos/EUROJUSTICIA/Documents/Convenio%20de%20Financiamiento%20UE-HONDURAS.pdf> (20 October 2016)

4.1.2. Assessments and evaluations of PASS

As mentioned in the introduction of this report, there is only limited documentation about the programme. Below the assessments made in three research reports, an evaluation of the programme and a final report of PASS are discussed.

Schunemann (2010), reporting in 2010 (when the EU had resumed the PASS programme) assesses the design of the programme positively. However, she places emphasis on the lack of ownership and commitment of national governments, which is vital for this kind of programme (ibid, 16). The author argues that national authorities “do not even support donor activities , let alone come up with strategies, programs, and projects to which the donor community could align” (ibid, 17). While Schunemann acknowledges that there are differences in the commitment of branches of the Honduran government, the key matter was that the Honduran government hadn’t elaborated an overall security strategy by November 2010 and suffered from a lack of political will, leadership and capacity (ibid, 17).²⁰

Two years later, DRN (2012) argues in its evaluation that (by 2012) an assessment of PASS was not yet possible. DRN therefore focussed on the question whether the EU strategy was relevant in the context and ongoing political dynamics (DRN 2012, 43). In this regard, DRN asserts that the EU had to engage in an intense and long policy dialogue which was interrupted by the political crisis in 2009. After the political crisis of 2009, the EU was successful in convincing the government of Honduras to work on a new policy.²¹ A point of critique concerns the limited involvement of civil society in the programme. Reportedly, members of civil society had a very negative perception of PASS and saw it “as a program to strengthen institutions that had an active role in the 2009 events” (ibid, 44).

In a rather critical report published one year later, it is argued that PASS was not a success (Irias 2013, 24). While DRN (2012) claims that the EU used its position to start a renewed dialogue with the Honduran government about security policies, Irias (2013) contends that the EU has not been very critical vis-à-vis the Honduran government and that the EU de facto supported the militarization of security policies and criminalization of social struggles. Interestingly, the author makes a comparison with the ‘belligerent position’ taken by the EU in the 1980s, a period in which the EU was not yet a development actor of any importance (Irias 2013, 26). The report claims that the EU and its member states – providing over 40% of foreign assistance to the country - could have exerted much more pressure. However, according to Irias (2013), the contrary is the case: while the EU had become a very important donor in Honduras, the voice of the EU and its member states is very weak.

In a report discussing several programmes in Honduras and Guatemala, Long (2015) argues that the PASS programme’s main contribution has been the construction of a comprehensive security policy (Política Integral de Convivencia y Seguridad Ciudadana) (ibid, 29). The programme also made some contributions to the issue of how persons are treated in the judicial system, while it led to an improvement of the justice operators’ material, formative and technical resources. Long (2015) also concludes that PASS developed in an extremely complex context, with the government showing limited political willingness to implement proposed reforms in the justice sector and the police (Long 2015, 30). The main risks of the

²⁰ The lack of commitment is reason for Schunemann to argue that PASS should be excluded from direct budget support (ibid, 20).

²¹ As mentioned DRN does not evaluate the implementation of this new strategy.

programme were identified as the continuing lack of political will, the infiltration of narco traffickers in the security and judicial sectors, and the constant rotation of Honduran security sector personnel. This led to the conclusion that PASS was much too ambitious and that it lacked the ability to adjust to the Honduran context (ibid, 30).

The PASS programme's final report comes up with a number of lessons learned (PASS 2016). It is interesting to note that the final report questions the programme's high ambition level, arguing that the high number of expected programme results (ten in total) contributed to the intervention difficulties and that more focus in this regard would have helped to concentrate and rationalize the use of resources (PASS 2016, 77).

4.2 Guatemala - the International Commission against Impunity in Guatemala (CICIG)

4.2.1 Background and mandate

A lot has been written about the experience of the International Commission against Impunity in Guatemala (*La Comisión Internacional contra la Impunidad en Guatemala*), or CICIG. CICIG is "an international organization established to investigate and support the prosecution and dismantling of criminal networks under Guatemalan legislation and within Guatemala's justice system, whose goal is to build capacity in local state institutions" (WOLA 2015, 4). It was "the first hybrid justice mechanism that was not established in the context of transitional justice to enhance accountability for past crimes, but to build capacities for weak judicial structures" (Maihold 2016, 8). On 1 August 2007, the Guatemalan Government approved an agreement with the UN to establish the CICIG with the following mandate:²²

- "Determine the existence of illegal security groups and clandestine security organizations, their structure, forms of operation, sources of financing and possible relation to State entities or agents and other sectors that threaten civil and political rights in Guatemala, in conformity with the objectives of this Agreement;
- Collaborate with the State in the dismantling of illegal security groups and clandestine security organizations and promote the investigation, criminal prosecution and punishment of those crimes committed by their members;
- Recommend to the State the adoption of public policies for eradicating clandestine security organizations and illegal security groups and preventing their re-emergence, including the legal and institutional reforms necessary to achieve this goal."²³

Accordingly, CICIG has several powers to carry out its mandate, among others: "to collect, evaluate and classify information, to promote criminal prosecutions, and to provide technical

²² An earlier attempt to break this cycle of impunity with the establishment of the Commission of the Investigation of Illegal and Clandestine Security Organizations (CICIACS) failed in 2004. See Hudson & Taylor (2010, 57).

²³ Article 2 of the Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala ("CICIG"), http://www.cicig.org/uploads/documents/mandato/cicig_acuerdo_en.pdf (20 October 2016)

advice to the relevant State institutions.”²⁴ Originally, CICIG’s mandate would have possessed the power to initiate prosecutions on its own, but the prosecutorial functions were limited to ensure that the Guatemalan Constitutional Court would not declare the treaty unconstitutional, as occurred with a previous attempt at establishing an international investigative commission called the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations in Guatemala CICIACS in 2004. Furthermore, the mandate lacks a clear enforcement mechanism for non-compliance which hinders its power to request cooperation. Nevertheless, Hudson & Taylor (2010) argue that “CICIG’s mandate is unprecedented among UN or other international efforts to promote accountability and strengthen the rule of law, as it is the first hybrid mechanism whose subject matter jurisdiction is not related to serious human rights violation but rather to dismantling organized crime. CICIG is more rooted within the local legal system than UN hybrid tribunals, but gives the international community a more systematic influence over local institutions than technical assistance programmes” (Hudson & Taylor 2010, 55).

The CICIG’s annual budget averaged some \$20 million but was reduced by 25 percent since 2011 due to budget cuts (Muggah 2013, 89). As a financial and political independent body within the UN, it finances itself through voluntary contributions from member states, and the UN Secretary-General names the commissioner who chooses his own staff. The President of Guatemala decides whether or not the mandate should be extended for another two-year period (ICG 2016, 2). The EU was one of the funders of the programme and contributed 2 million euro to support the implementation of CICIG in the period from December 2009 to February 2011. 2,5 million euro was added in the period from November 2010 to September 2011 for support, with 4 million euros to support the extended mandate from October 2011 until August 2013 (Muggah 2013, 164-5). The total budget for 2015 however was 23,6 million euro (30,2 million dollar), with the EU contributing 4 million euro, 6,25 million euro from the US, 7,2 million euro from Sweden, and 6,2 million euro from other donor countries.²⁵ The EU claims that “since its offset the EU, along with EU Member States (mainly Sweden, Spain and The Netherlands) and other major donors like the United States and Canada, has played a crucial role in supporting CICIG, both politically and financially”.²⁶ However, the EU policy documents do not enter in great detail about the EU’s precise role in CICIG.

4.2.2 CICIG in action

The implementation of CICIG’s mandate has varied over time, and largely depended on the different priorities held by the different commissioners of CICIG and the key developments in the national context that deeply affected the work and even the continuation of CICIG. Below the various approaches and most important political developments in Guatemala will be

²⁴ These are the first three of the twelve points mentioned in article 3 of the Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala (“CICIG”), http://www.cicig.org/uploads/documents/mandato/cicig_acuerdo_en.pdf (20 October 2016)

²⁵ *Annex 1 of the commission decision on the Project to support the International Commission against Impunity in Guatemala (CICIG)’s exit strategy until September 2015* (2013) p. 12, [http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/comitologie/ros/2013/D027667-01/COM-AC_DR\(2013\)D027667-01\(ANN1\)_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/comitologie/ros/2013/D027667-01/COM-AC_DR(2013)D027667-01(ANN1)_EN.pdf) (26 October 2016)

²⁶ *Ibidem*, p.5.

sketched for the three commissioners that led CICIG in the period between 2008 and the present.

The first commissioner was the Spanish jurist Carlos Castresana known for high-profile anti-corruption investigation and for the case against ex-Chilean dictator Pinochet. In his almost three years of service, he hired staff and negotiated the establishment of a special prosecutor's office within the Public Ministry (MP). Castresana insisted he began operations with a set of ultimate strategic targets: illegal structures in the security institutions, political mafia in the judicial sector, and the networks linking organized crime to the state (OSJI 2016, 92).

During his term, the political turbulence around the death of Guatemalan lawyer Rodrigo Rosenberg on 10 May 2009, greatly affected the CICIG's work and visibility. Rosenberg left a video statement behind in which he accused President Colom of ordering his assassination. Colom denied the charges, but protest marches and the media demanded investigation. CICIG was asked by Colom to carry out the investigation and under strong pressure from the international community the major political parties agreed. Even though the Rosenberg case was outside CICIG's mandate, they were viewed as the only entity capable of carrying out a credible investigation (OSJI 2016, 93). As the fate of the Colom administration hung on the result of the CICIG investigation, the Guatemalan Congress adopted reforms, gave prosecutors access to modern forensic investigative tools and extended CICIG's mandate until 2011. Thus, the study on CICIG conducted by the Open Society Justice Initiative argued that under Castresana "CICIG had moved from the margins to the center of Guatemalan politics" (OSJI 2016, 47). This new position was solidified when Castresana announced that "after years of trying to link the government to the killings [of Rosenberg's clients] (...), Rosenberg had actually arranged his own killing in an effort to destabilize the government" (OSJI 2016, 51).

Castresana was succeeded by the Costa Rican Attorney General Dall'Anese in 2010. During his three years, CICIG's major achievement was helping to professionalize the Public Ministry under Claudia Paz y Paz, the new Attorney General. Paz y Paz, a former human rights activist, would play an extremely important role in upending "the status quo of corruption in Guatemala" (Gagne 2016). Paz y Paz "expanded the criminal analysis unit, building databases capable of accessing police records, vehicle registrations and telephone and video information in order to cross-reference evidence to identify and dismantle criminal structures, not just individuals" (ICG 2016, 4). CICIG lent experts to work alongside Guatemalan prosecutors on money laundering, advised on the creation of specialized units, strengthened the 'Special Methods Unit' which oversaw communications intercepts resulting in the prevention of 231 murders in 2013 alone, and improved the witness protection programmes (ICG 2016, 4). Paz y Paz's leadership in reforming the MP earned her a nomination for the Nobel Peace Prize in 2013 (Gagne 2016).

Despite these efforts, CICIG's annual report of 2012 stated that most of the investigated cases "are currently stagnating due to a number of legal remedies that prevent criminal prosecutions from continuing" (ICG 2016, 5).²⁷ CICIG's analysis concerning impunity practices differentiated three social domains: First, "the traditional and emerging economic groups who use money, career opportunities, business, family, school, and other relations to co-opt members of the political parties, the executive branch and its agencies, Congress, and

²⁷ ICG (2016) refers to pages 13 and 39 of the Report on the Fifth Year of Activities of CICIG, published on 11 September 2012.

the media” (OSJI 2016, 95). Secondly, these economic and political elites use the same connections and methods “to influence judges, prosecutors, the police, and the army to procure favourable administrative or judicial decisions or to block prosecutions or investigations” (ibid, 95-6). When needed, they might draw upon operational groups: “private security organizations, narco-traffickers, former or current police or military officers, and members of criminal gangs, all working for hire” (ibid, 20). Impunity patterns often grew out of “a clientelistic culture of doing favours to move up within the organization”, even within state institutions including the Office of the Public Prosecutor (ibid, 96).

As CICIG failed to win several major cases, the future of CICIG was uncertain when the Columbian Supreme Court judge Velázquez took over as commissioner in 2013. The extension of Claudia Paz y Paz as attorney general was denied by the government, and despite international pressure from (I)NGO's, the US, the EU and the media, President Pérez Molina made clear that he would not support a further extension of CICIG's mandate after its expiration in September 2015 (ICG 2016, 5).²⁸ Despite being told by the Vice-President that he would “not have enough time left in its mandate to open new cases”, Velázquez focussed on five priorities: contraband, administrative corruption, illegal campaign financing, judicial corruption and drug trafficking/money laundering (OSJI 2016, 71). He renamed CIACS (Spanish initials for Illegal Clandestine Security Apparatuses) to RPEIs (Spanish initials for Illicit Political-Economic Networks) because the illicit security groups had evolved into “conspiracies to secure and exercise power by economic means” (ICG 2016, 6).

Velázquez and the MP delivered blows against criminal conspiracies in each priority area, including investigations on nine Congress members, five judges and a prosecutor. However, the numbers of murders, kidnappings, and extortions were on the rise. Despite the enormous national and international pressure to renew CICIG's mandate until 2017, the President persisted that “it was time for Guatemalan justice institutions to assume their responsibilities without CICIG” (OSJI 2016, 77). US Vice-President Biden went to Guatemala to condition the prospect of an 1 billion dollar programme in aid for security, good governance and economic growth on an extension of the Commission's mandate, but Pérez Molina insisted he would not be ‘blackmailed’ into continuing (ibid, 79).

This changed however with CICIG's 2015 revelation of ‘*La Linea*’; a network of senior officials who allegedly conspired to defraud the state of customs revenue. During the eight-month investigation a massive amount of evidence was collected, resulting in the arrest of 21 top officials including the Vice-President's private secretary as alleged ringleader. *La Linea* was followed by the capture of 20 police officers accused of extrajudicial executions, and the revelation of a medical scandal in which a corrupt contract contributed to 36 deaths. This forced the president to prolong the mandate, as CICIG exposed large scale long term corruption and continued to uncover apparent administrative, judicial and Congressional corruption. Its success created a momentum in which Guatemalan citizens openly demanded an end to impunity, the resignation of the vice-president whose private secretary was the alleged leader of the customs revenue fraud, and ultimately the immunity and the resignation of the president himself (ICG 2016, 8-9; OSJI 2016, 78-9).

In combination with a strengthened Public Prosecutors Office and massive public demonstrations, Velázquez's strategy of focusing on high-impact cases targeting the key

²⁸ Open society Justice Initiative, *Against the Odds, CICIG in Guatemala*, p. 69.

structures and practices proved successful. “The final blow was delivered” when, on 21 August 2015, Velázquez announced that “additional evidence (...) demonstrated that President Pérez Molina and Vice President Baldetti were the leaders of *La Linea*. (...) The Public Prosecutor immediately requested the president’s detention. Pérez Molina resigned on 2 September and was arrested, arraigned and imprisoned the following day” (OSJI 2016, 85). In the following elections, a political outsider, TV comedian Jimmy Morales, became the new president. He expressed strong support for CICIG and requested an extension of CICIG’s mandate until 2020.

4.2.3 Assessments and evaluations of CICIG

Below we assess a number of evaluations and assessments that were made in reports and academic articles on (a) the mandate, structure and activities of CICIG, and (b) the political context and junctures in which CICIG functioned.

CICIG is a unique structure. It is not a standard UN body, but rather a hybrid entity. This entails advantages and disadvantages. The Open Society Justice Initiative (2016, 91) argues that CICIG was able to act independently in providing leverage on judicial institutions and focussing on contemporary institutional weaknesses and criminal structures.

“The Commission is able to move creatively and quickly in an area distant from UN experience, use funds for intelligence purposes, and work efficiently with other governments to share information, arrange for witness protection, and procure arrests. It does not have to dedicate substantial resources and personnel time to justify or seek approval of the details of its budget, strategy, or operations from UN oversight committees. It could develop its own staff recruitment procedures, avoiding the UN’s lengthy processes. Commissioners are free to speak out strongly without concern over the UN’s institutional caution when working with member states (OSJI 2016, 97).”

However, not being a standard UN body also has a number of disadvantages, as Taylor & Hudson (2010, 69-70) argue. The CICIG agreement only provides immunity for its international but not its domestic staff, causing significant unease within Guatemalan civil society. Some consider the UN should only enter this type of agreements when the local state provides immunities to all staff members. And since CICIG does not derive its mandate from an UN organ, it does not receive UN budget funding and must rely on voluntary contributions from member states. Furthermore, the lower standing within the UN led to bureaucratic problems like the inability to bestow UN benefits, such as pensions and diplomatic passports, and difficulties in rallying support within the UN (Taylor & Hudson 2010, 69-70).

The Open Society Justice Initiative also criticized the broad mandate of CICIG, which led to the “lack of clarity about CICIG’s purpose (to map the influence of criminal-political networks or assist the government in tackling organized crime groups) and scope (complete a few key paradigmatic cases or provoke major reform) [and] would shadow the Commission across the arc of its first eight years” (OSJI 2016, 92). Moreover, the Open Society Foundation noted that CICIG’s structure as an international prosecutor’s office with only a small core staff had consequences on its capacity to formulate policy (ibid, 98). “First, CICIG was late to

establish a political affairs unit, limiting the outreach to the commissioners. [...] Second, CICIG waited too long in developing public communication capacity”, relying on politically biased private media to portray its successes. Third, “the Commission struggled to meet its goals for institutional support, capacity-building and skill-transfer”, which it could have prevented by establishing a unit for this task (ibid, 99).

CICIG not only played an important role with regard to high-level arrests, but also in terms of addressing corruption. Discussing the activities of the first years of CICIG, Hudson & Taylor (2010) argue that CICIG presented two packages of legislative reforms in 2008 and 2009, while non-cooperative, obstructionists or corrupt government and judicial officials were successfully disciplined. In this period 1700 allegedly corrupt police officers were purged and 10 public attorneys resigned. Thus, the power to recommend disciplinary proceedings against appointed government officials, unique to CICIG, had a significant impact even without the explicit enforcement mechanisms (Hudson & Taylor 2010, 68-70). On a critical note, Schloss argues (2015) that “while CICIG was quite successful in its strategy of prosecuting emblematic cases, the clear lack of inertia and lack of sustain combined with continued large-scale impunity and public mistrust in state institutions suggests that CICIG’s attempts to downgrade and dismantle illicit criminal groups has been largely unsuccessful” (Schloss 2015, 78). In this regard, CICIG proved to be quite successful in investigating the existence of such organizations, but less so in gaining understanding of how these organisations and networks work, which continues to make the disbandment of such structures, especially those beyond the purview of the state, difficult (ibid).

A major challenge to CICIG was a lack of domestic political will. The Open Society Justice Initiative (2016) noted that, from the outset of the programme, “the UN’s Department of Political Affairs was aware that most technical assistance programs for security and rule of law reform fail because they provide support to already-captured institutions and cannot address the broader political structures subjecting these institutions to elite interests” (OSJI 2016, 91). In this regard, CICIG was able to play an important role at key political junctures, leading in one case to the arrest of the President Pérez Molina. However, Schloss (2015) questions “whether the capacity and willingness exist in Guatemala to independently investigate and push for prosecution of high-powered criminal elements, even after eight years of CICIG’s existence” (Schloss 2015, 82). The appointment of allegedly corrupt officials may ruin the work of years in matter of days as “Guatemala has failed to significantly change its institutions and institutional culture to render it capable of successfully maintaining CICIG’s level of professionalism and prosecutorial success” (ibid, 82). This author also argues that “without any institutional reform to cement such successes, once CICIG’s mandate eventually runs out, individuals interested in undermining the rule of law in Guatemala will be able to exploit the existing justice and security sectors in similar ways that they have been to date” (Schloss 2015, 89).

On a positive note, Schloss (2015) argues that CICIG has been successful in uncovering how illicit activity between the state and clandestine groups is connected, and how the atrocities of the civil war are related to the continued daily human rights violations. In doing so, CICIG created an opportunity for civil society and citizens to push for transparency and accountability from the state without being quelled by “the hidden powers” (Schloss 2015, 81). This has led to a certain optimism that lasting change is finally coming to Guatemala. “Its first ‘modern mass protest movement of note’ in the wake of the recent custom scandal is an

encouraging sign that justice and accountability have finally gained a foothold in Guatemalan politics”, according to Schloss (2015, 47). While the social movement is still very young, and “Guatemala’s elite have a long history of reasserting their control” (ibid, 77), “CICIG has empowered civil society by providing them ‘cover’ and international legitimacy but also by training individuals who can navigate the system and hold their government to account by ‘speaking its language’, so to speak” (ibid, 64).

5. Concluding reflections on EU capabilities and Justice and Security Sector Reform in adverse context

As mentioned in the introduction of this report, a comparison between the role played by the EU in the two initiatives discussed in this report is not possible on the basis of the discussion above. While the PASS programme was created and led by the EU, the reports and evaluations of the programme provide relevant information about the EU efforts to support and push for security sector reform in Honduras. In the case of the CICIG, the specific role played by the EU is hardly discussed in the literature. This is not surprising, since CICIG is a hybrid UN institution, supported (both financially and politically) by a range of international actors – the EU being one of them. The reports and articles on CICIG focus on the practices and challenges of this institution in fighting impunity in Guatemala. While some attention is given to the roles played by international actors, as well as civil society organisations, the information about the role and contribution of the EU is almost absent. So, the PASS programme provides information about the EU capabilities to support security sector reform in an adverse political context, whereas the experience of CICIG provides information about features and practices of an institution (supported but not founded by the EU) that has been praised for its innovative ways of dealing with impunity. Below a number of themes relevant to the WOSCAP project will be discussed.²⁹

5.1 Mandates – comprehensiveness or focus

It is interesting to note that both PASS and CICIG took into account many of the characteristics of the ‘comprehensive approach to security’ that the EU adheres to. CICIG as a hybrid institution had a broad mandate, while the objectives of the PASS programme were ‘comprehensive. However, in both cases it has been argued that the goals were too ambitious.

With regard to the PASS programme, various authors are positive about the programme’s design, precisely because the programme took a comprehensive approach, paid due attention to the process of developing a national framework first (in phase 1), was willing to invest a large amount of money in the sectors of security and justice, and took a long term approach. However, in the final report of the PASS programme, the high ambition level of the programme is questioned. CICIG has received similar criticism. The reports of the Open Society Justice Initiative (2016) and of the International Crisis Group (2016) deal with “CICIG’s

²⁹ See www.woscap.eu for an overview of the project.

perennial problem of defining its mission and narrowing its broad mandate” (Dudley 2016). This critique implies that there are limits to the agenda that international actors can implement, and that this is still insufficiently recognized. This seems a valid point of critique and is relevant to take into account in the face of ‘overambitious’ programmes that tend to ‘spread too thin’. However, while a clear sense of purpose is a strength, one may also argue that a broad(er) mandate can allow international actors to adapt to changes in the political context.

It is fair to say that, in the case of Honduras, the EU was aware of the need to adapt to the versatile and complex environment and acted on it. The idea of having two phases and the fact that the programme never entered the second phase in which larger investments (35 million euro) would be made, shows that the EU was aware of the risks and willing and able to conclude that the programme simply didn’t live up to the EU’s expectations. Also, the efforts to dialogue with national government stakeholders about security policies are an example of the EU’s efforts to create political and institutional support for the reforms and its awareness of the deeply political nature of these kinds of reform. Furthermore, faced with an extremely complex context, the EU demonstrated a capacity to adapt. Instead of continuing the PASS program, it started a different, more focussed program, EuroJusticia. While it is too early to assess the EuroJusticia program, the fact that the EU changed course and decided to invest in a different program, instead of moving on with a second phase of PASS, suggests a capacity to revise and redesign its engagement.

5.2 The challenge of (non) ownership in adverse contexts

The main challenge of both initiatives was the very national political context in which they deployed. Both initiatives relied on local actors in the implementation phases and aimed to strengthen local government actors in the security and justice sectors. The success of both largely depended on the capacity of PASS and CICIG to cooperate with the right actors, and to counter the ones that were not cooperative to the type of reforms and measures that were proposed. In this regard, the PASS programme faced a very complex situation which further deteriorated when the programme had just started. Within the Honduran government a sense of ‘ownership’ was virtually absent and there was ‘no one to align with’. The national ‘owners’ in charge of national security and justice policies had different ideas, interests and ‘routines’ that were not or only partly in line with the type of reform that the EU promoted.

The EU has been criticized for not putting enough pressure on the Honduran government (Irias 2013). On the basis of the reports reviewed, it remains hard to assess whether and how the EU used its leverage (e.g. development aid). Also, while at a relatively late stage civil society was consulted by staff of the PASS programme, a number of organisations remained sceptical about the programme, that they saw as “a programme to strengthen institutions that had an active role in the 2009 coup d’état” (Irias 2013, 34). Thus, PASS was not able to forge a reform-oriented coalition in the way that CICIG had done.

In that regard, the case of CICIG had a very different starting point. CICIG was rooted in a civil society initiative in Guatemala that was supported by international actors (Maihold 2016, 13). In that regard, CICIG was not simply an ‘external’ initiative, but the result of a long process of political lobbying to make sure that the Guatemalan government accepted the mission. In terms of the ownership of the initiative, the discussion in the previous section

shows that the support of the Guatemalan government and state apparatus was mixed at best. CICIG has been able to cooperate with reform-oriented actors. However, this cooperation was and remained a 'tricky balance', since CICIG had to cooperate with the very elites that it was investigating (Dudley 2016). This also explains why despite successes of CICIG, the prospects for longer term capacity building and longer term reform continue to be problematic. In this regard, the recent mobilization in support of CICIG and against the corrupt are interesting and important. However, the road towards rule of law in Guatemala is still a long one.

5.3 Synergies and international cooperation

While the PASS programme was led and funded by the EU, CICIG received political and financial support from a broad range of actors. It can be argued that in comparison to PASS this 'teaming up' of international actors has been crucial for CICIG's resilience. Indeed, the combination of having a hybrid institution that counts on support from a range of international actors seems to be one of the great strengths of CICIG. It is clear that, at key moments, actors used their political and financial leverage to put pressure on the Guatemalan government, for instance when the mandate of CICIG had to be extended. In addition to the financial support of different organizations like EU, international NGOs and US government representatives played an important role at key moments. For instance, the Open Society Justice Initiative (2016) mentions "the intensifying lobbying campaigns in favour of a CICIG extension" (OSJI 2016, 79) in 2014 in which organizations like WOLA, the Open Society Foundations, representatives of the US Congress and the Under-Secretary of State for Latin America all endorsed the mission. While the EU claims that it played a crucial role in supporting CICIG, both politically and financially, there is as of yet very limited information about the precise role played by the EU, for instance about the ways in which the EU lobbied for the continuation of CICIG. Nevertheless, the choice of the EU to support CICIG from its very start points at the EU's capacity to align with other influential actors, both at the national and international level.

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