

# **The Impact of International Norms on Civil Society's Ability to Control Corruption: The Case of Guatemala**

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## Abstract

This thesis examines the relationship between international norms and the ability of civil society to control government corruption. Specifically, it focuses on the ability of civil society organizations in Guatemala to utilize international norms against corruption, such as the Inter-American Convention against Corruption (IACC), to control this problem effectively. Based on a theory of social accountability, this qualitative research is aimed at analyzing the nuances of the potential role CSOs may have in holding the government accountable for corrupt actions. Through the assessment of relevant literature, statistics and key informant interviews, key findings reveal that although these indicators may show weaknesses and still demand refinement, the necessary initial infrastructure in terms of anticorruption policies and institutions is already locked in place. These intangibles all stem from the IACC and its peer review mechanism MESICIC, which in turn are effectively used by CSOs in Guatemala to potentially control corruption in the long-term.

*Cette thèse examine la relation entre les normes internationales et la capacité de la société civile de contrôler la corruption gouvernementale. Plus particulièrement, elle se concentre sur la capacité des organisations de la société civile guatémaltèque (OSC) dans l'utilisation des normes internationales contre la corruption, comme celles de la Convention Interaméricaine contre la Corruption (IACC en Anglais), pour le control effectif de ce problème. Sur la base de la théorie de la reddition de comptes sociale, cette recherche qualitative analyse les nuances du rôle potentiel à jouer par les OSC dans l'effort de faire le gouvernement responsable des actes de corruption. L'analyse de littérature pertinente et d'informations statistiques, ainsi que des interviews avec des informateurs clés, montrent que même quand ces indices reflètent des faiblesses et réclament un certain perfectionnement, l'infrastructure initiale en termes des politiques anti-corruption et des institutions est déjà sur place. Tous ces éléments ont leur origine dans la IACC et son mécanisme de révision MESICIC, et sont normalement utilisés par les OSC du Guatemala pour le potentiel control de la corruption dans le long terme.*

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## Abbreviations

AC	Accion Ciudadana
AGIP	Asociacion de Investigadores del Presupuesto
ALAC	Asistencia Legal Anti-Corrupcion
CACIF	Comite Coordinador de Asociaciones Agricolas, Comerciales, Industriales y Financieras
CGC	Contraloria General de Cuentas
CIA	Central Intelligence Agency
CICIG	United Nations Commission against Impunity in Guatemala
CONGCOOP	Coordinadora de ONGs y Cooperativas de Guatemala
COPRET	Comision Presidencial para la Transparencia y Gobierno Electronico
COVAPAZ	Coordinadora Si Vamos por la Paz!
CSO	Civil Society Organization
EG	Encuentro por Guatemala
GANNA	Gran Alianza Nacional
GAFI	Groupe d'Action Financiere
HDI	Human Development Index
IACC	Inter-American Convention against Corruption
IO	International Organization
IR	International Relations
IVE	Intendencia de Verificacion Especial de la Superintendencia de Bancos
MCN	Movimiento Civico Nacional
MESICIC	Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption
MDF	Mercado de Futuros
MFA	Ministry of Foreign Affairs
MINGOB	Ministerio de Gobernacion
MP	Ministerio Publico
NGO	Non-government Organization

OAS	Organization of American States
OC	Observatorio Ciudadano para el Libre Acceso a la Informacion
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
PCTAC	dissolved Presidential Commission for Transparency and Against Corruption
PP	Partido Patriota
PRM	Peer Review Mechanism
REPEJU	Registro Nacional de Personas Juridicas
SAT	Superintendencia de Administracion Tributaria
SB	Superintendencia de Bancos
SIMOP	Sistema de Monitoreo de Obras Publicas de la Camara Guatemalteca de la Construcccion
TI	Transparency International
UN	United Nations
UNDP	United Nations Development Program
UNCAC	United Nations Convention against Corruption
UNE	Union Nacional de la Esperanza
UNESCO	United Nations Educational, Scientific and Cultural Organization
WB	World Bank

## 1. Introduction

As a mechanism of accountability, civil society develops techniques and practices to put a check on governments, and make sure that resources are not misused by public officials for private benefit while holding positions of power. Their domestic efforts could not only influence the creation and formation of norms – becoming norm entrepreneurs – to be discussed in the international arena. Also, they might play a vital role in the multiplicative process of disseminating an international norm domestically and help it be internalized where it is unknown, foreign or even perceived as threatening for the *status quo*.

How have recent international conventions and treaties that have been approved by most countries, impacted domestic efforts around the world to control government corruption? Every country – to a greater or lesser degree – displays corruption within the public and private spheres and experiences the imminent consequences for development. In some cases, it is so entrenched that basically every layer and component of society practices some form of corrupt behavior that makes it more tolerable and even praised. During the past three decades, international organizations have gathered the best practices and mechanisms to prevent and punish corruption, having their member states commit to these premises, as it has been recognized worldwide that this dysfunction seriously injures justice and threatens to tear up the social fabric. Civil society has used these international norms in different ways, contributing partially to set up mechanisms, institutions and local laws that allow the state to restrain itself and control corruption.

This thesis examines the relationship between international norms and the ability of civil society to control government corruption. Specifically, it focuses on the ability of civil society organizations in Guatemala to utilize international norms against corruption, such as the Inter-American Convention against Corruption (IACC), to control government corruption.

To find out to what extent and how international norms impact the ability of civil society to demand, oversee and ensure transparency and accountability on the part of public officials who engage in corrupt acts, the case of Guatemala is qualitatively assessed, looking specifically at the

Guatemalan chapter of Transparency International, *Accion Ciudadana*. This Latin American developing country, which for decades has shown alarming indicators of corruption at the public and private levels, has recently shown slow but steady improvements; particularly, regarding control of corruption<sup>1</sup>. Although control of corruption is performed primarily within the government structure, this thesis focuses on the extent to which international norms affect domestic efforts in the form of civil society to fight government corruption. In particular, the study determines in what ways civil society might be a major actor in holding the government accountable, by using international norms to place checks on the government and control corruption effectively in the long-term.

Based on a theory of social accountability, this research analyzes civil society organizations (CSOs) as vertical mechanisms of accountability, for controlling government corruption. It explores the influence and impact of international norms and how their follow-up and utilization throughout its different stages could end up boosting civil society's potential to control government corruption and attempt to change deeply engrained misconducts. The impact on civil society's ability to actually influence the expected outcome of corruption control is assessed by measuring three key elements, which allow a state to restrain itself and put in place the necessary infrastructure to control corruption: citizen awareness, compliance to peer recommendations stemming from MESISIC, and enforcement of local norms.

Since the unit of analysis is civil society organizations, this is where most of the data collection and theoretical analysis concentrates; nevertheless, International Relations (IR) theory and norm related literature is also referenced, in order to assess the interaction of the sources of norms and how this influences civil society's ability to control corruption. The research has potential for greatly contributing to the literature, bearing in mind in the first place that there is virtually no empirical research on corruption and accountability in Guatemala. There is also a potential theoretical contribution, adding to the literature on social accountability by focusing on civil society as a means to reduce corruption.

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<sup>1</sup> See appendix 1. Although the World Bank's governance indicators gather data from a number of survey institutes, think tanks, non-governmental organizations, and international organizations, this reference aims merely to illustrate a puzzling trend that has shifted in Guatemala in the past few years, where control for corruption has slowly been improving since 2006.



Although the variables under analysis will be the impact of norms on the ability of civil society to control government corruption, civil society organizations as the main units of analysis will be studied, examining *Accion Ciudadana* in depth, since it is the leading organization in the fight against corruption in this country. By focusing on CSOs, it is possible to understand how corruption can be lessened, studying the procedures and practices they have developed before and after the adoption of the norm, and if this can actually have a long-term effect on control for corruption through awareness, compliance of peer recommendations and domestic law application. At the same time, it constitutes a profitable opportunity to assess the use of international norms, to see if they matter and if they do, how.

This research has great potential for having a theory-contributing effect, since it adds to the social accountability theory constructs, enriching the areas related to the tools used by civil society to control corruption. In other words, how social accountability uses international norms, and how this interaction is undertaken and then administered by civil society. Additionally, it addresses IR theory related issues, in an attempt to explain how international norms affect domestic efforts to control corruption.

The key findings of the study suggest that civil society's potential ability to control corruption is increased by the use of international norms, thus contributing to reduce corruption in the long-term once the norm reaches maturity. This maturity is envisioned as an expected point in a process, in which the norm passes through stages of becoming applicable and useful to control corruption effectively. CSOs ability to control corruption in Guatemala is strengthened and empowered by the IACC in the initial stages experienced by the norm, in which the process of installing the necessary machinery and infrastructure to tackle corruption in the long-term is under way.

The indicators utilized to measure the potential success that CSOs have to control corruption remain low in Guatemala; there is still not enough awareness among citizens in general and especially among justice officials who are responsible for the application of local laws, tasks are pending regarding compliance to recommendations that stem from the peer-review mechanism to

follow up on the IACC (called MESICIC), and there is still weak enforcement and application of the relatively young domestic laws put in place to follow IACC. Nevertheless, there is already an installed capacity and know-how that governments can profit from, monitored as well as helped by CSOs, to adjust their current system and manage to reduce corruption effectively and progressively, complementing other domestic efforts already in place such as elections, political parties, the media, and government institutions.

In the following chapters, the assessment of the impact that international norms against corruption (specifically, the IACC) have on civil society's (namely the Guatemalan chapter of Transparency International *Accion Ciudadana*) ability to control corruption in this country, will be developed in the following order. First, the causal mechanism will be addressed, establishing the objectives of this research and hypothesis. Then, the relevant literature will be discussed, including the Inter-American Convention against Corruption (IACC) and its peer review mechanism MESISIC, followed by the explanation of the methodology. The substantive section of the research will begin by analyzing Guatemalan civil society and its connection to corruption, moving onto the discussion of the key informant interviews and results, which provide the final support of key findings and conclusions.

## 2. Definitions

Before moving on to discussing and analyzing the relationship that the international norm has with the ability of civil society to control government corruption, it is necessary to define certain concepts. Above all, it is vital to clarify that just defining corruption is a challenge in itself, and such a complex concept that not only comprises a wide range of conducts and actions, also carries a significant amount of legal content, making it difficult to become a standard across different cultures or through time (Bailey, 2009). Corruption sometimes arises as a necessary evil, due to lack of choices and options for citizens, and it can be found in the public as in the private spheres, taken for granted at times, and spreading without control or disregard.

Corruption covers a wide array of ethical breaches, from bribery, nepotism, and influence peddling, to illicit enrichment and embezzlement. Since this thesis is analyzing the IACC – as the factor that impacts civil society's ability to potentially control corruption – it will concentrate on the act of corruption of illicit enrichment. Therefore, even as the term corruption is quite vast and the Convention contemplates different corrupt acts within its content, there is a need to narrow down the scope of the study to the form of illicit enrichment, centering the interview analysis in this direction in order to avoid the confusion of describing or discussing different concepts at the same time.

Corruption will be defined in this thesis as the violation of the norms of public office for personal gain (Nye, 1967), which is interpreted as a legal standard, a behavior or an action that focuses on the misuse of public office, where the norm is sacrificed or violated, in favor of individual wealth-seeking and benefit. With the accumulation of the violation of the norm, the definition of corruption can also be considered an outcome, becoming a reflection of the institutions in a given society (Svensson, 2005).

Nye's definition centers on corruption in public office and differentiates between the public and private spheres; it focuses on government, public policy making and public-private exchanges, which is the type of corruption that this study analyzes to examine in depth how civil society attempts to control and tackle it. The approach is useful because it broadly refers to the breach of

the social contract between citizens and government, where the public official takes advantage of its position for his/her personal benefit instead of furthering citizens' interests, and civil society then claims that the government keeps its end of the deal in a framework of rule of law.

Nevertheless, it is also important to take informal rules into consideration, as Michael Johnston suggests, which are found within a society that grants different meaning to corrupt actions depending on social or political status. In this light, inequality comes to mind, for the privileged will possibly regard corruption as "the normal" way of accessing solutions to their private problems, while the less privileged will not only condemn these actions but try to work their way through the system to have access to that realm of power, private gain and solutions. Therefore, he proposes to supplement the root analytical definition by adding perception and opinion to describe corruption, in the sense that social conceptions on corruption have an effect on political response to this phenomenon and that there is a difference between both formal and informal approaches. The contrast between the two can be twofold, for citizens can regard as corrupt a behavior or action that is lawful or legal, and also, they can accept or ethically approve of a behavior that is legally prescribed as a crime (Bailey, 2009).

According to John Bailey, there can be two types of abuse of public office: bribery in various forms and levels (money or some "good" exchanged for a publicly controlled good), and political transactions (duties are violated to exchange a public good for a resource that benefits the public official's power of influence), which can happen separately or simultaneously within the same transaction. Additionally, he distinguishes corruption in relation to which arena of politics it takes place in: the input process, the conversion process or black box and the output process. I find relevant to describe these arenas briefly since civil society control can potentially focus on all of them, in regard to the relationship explored in this study.

The input side refers to the arena of interest articulation and aggregation, where bribery and political corruption influence access to the ballot, party competition, election processes, mass participation, and the legal rights that these require. The conversion process is where-policy making takes place, and thus bribery and political corruption may influence rule-making aspects in light of its impact on their personal financial or power resources instead of the public good.

Perceptions of corruption in this arena may have important effects on attitudes at the grassroots level. And lastly, the output arena refers to the administrative-regulatory-judicial arena, where public duties of officials are set out in the norm, but discretion can sometimes be too wide. (Bailey, 2009).

After this theoretical approach to defining corruption, it is relevant to discuss some of the nuances of the concepts managed by the IACC, in order to maintain a connection between this study and one of its main variables and to understand the logic behind the substance of the norm. Among the different types of corruption, the IACC was forced to describe on a practical basis the conducts that put the Convention to work, its commitments and mechanisms, including the need to create legislation in each member state that characterizes extradition, cooperation and assistance, and other measures (Manfroni, 1997). Therefore, member states are bound to combat the described practices and conducts, and commit to help each other to fight corruption, without exhausting or limiting other corrupt acts that each country may contemplate.

The acts of corruption considered by the Convention in article VI are the following: “a) The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions; b) The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions; c) Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party; d) The fraudulent use or concealment of property derived from any of the acts referred to in this article; and e) Participation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.” (OAS, 1996)

This article also states that by mutual agreement among two or more state parties, the IACC shall also be applicable with respect to any other act of corruption not described above. Notwithstanding the possibility that the terms utilized to describe the conducts may become problematic when compared to those in existing laws of each country, with their own juridical traditions (positive or common law), they only constitute guidelines for domestic characterizations in each criminal code.

Paragraphs a) and b) of article 1 describe two types of bribery, passive and active, where the acceptance of money can be the result of a non-requested bribe, yet granted, to a public official (see below) even if he or she is not yet exercising duties, mandate or in office. Paragraph c) describes a figure that in certain legislations can be described as fraudulent management, incompatible negotiations and noncompliance of duties, or any other conducts that could entail the search of illicit benefits from state activities. Paragraph d) describes the concealment of resources or money laundering that in any case assumes taking advantage of public resources in a fraudulent manner. Finally, paragraph e) seeks to include the exhaustive description of other forms of participation including principal, coprincipal, instigator, accomplice or accessory. (Manfroni, 1997)

Furthermore, it is necessary to explain what the IACC defines as a public function, primarily since this concept becomes an object of discussion upon the application and enforcement of local laws reflecting the Convention, as the interviews of this study reveal further on. According to Article 1, Public function means “any temporary or permanent, paid or honorary activity, performed by a natural person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy”. In that same article, public official, government official, or public servant means “any official or employee of the State or its agencies, including those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, at any level of its hierarchy”. Property means “assets of any kind, whether movable or immovable, tangible or intangible, and any document or legal instrument demonstrating, purporting to demonstrate, or relating to ownership or other rights pertaining to such assets”. (OAS, 1996).

The Convention addresses illicit enrichment in a separate article (number IX), as well as international bribery (number VIII), not within the list of corrupt acts, but stating that among those state parties that have established illicit enrichment as an offense, it shall be considered an act of corruption. It is defined as “a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions” (OAS, 1996). This article also sets forth that those state parties that have not established illicit enrichment as an offense shall provide assistance and cooperation with respect to it as provided in the Convention. This concept was first proposed by Argentina, which has included it in its legislation for several decades, generating some resistance due to constitutional concerns for some countries, especially the Anglo-Saxons. After numerous negotiations, the Argentinian version was finally accepted, adding the initial clause “Subject to its Constitution and the fundamental principles of its legal system...” (OAS, 1996).

The composition of this article seeks the preservation of transparency in public functions, which for the negotiators was thought to be essential for the Latin American countries, which at the time had not fully developed effective technology for the detection of crimes at the precise time when they occurred (Manfroni, 1997). The definition and inclusion of illicit enrichment was conceived in the IACC then, as a means to criminally prosecuting a form of corruption, which at the same time is connected to prevention, contemplating the figure of the declaration of assets of public officials, pursuant to Article III, number 4.

This section on definitions would not be complete without framing and defining the central unit of analysis of this study, civil society. The concept of civil society is hard to define and depends on many factors, such as culture, history, ideology and time. In this study, the concept to be utilized will be the one coined by Philip Oxhorn, who develops a collectivist and traditional political economy perspective. In that light, civil society will be understood as “the social fabric formed by a multiplicity of self-constituted territorially and functionally based units that peacefully coexist and collectively resist subordination to the state, simultaneously demanding inclusion into national political structures” (Oxhorn, 2011).

In the case of civil society in Guatemala (as most Latin American countries), it has acquired

different characteristics under the lens of democratization. CSOs found today have evolved and have not only acquired more political space, but strive for different objectives, compared to those during the internal armed conflict, as this study reveals further on. In that sense, this definition becomes useful, primarily due to the concept's focus on non-subordination and the demand for inclusion in the political structures, which entails holding the government accountable.



### **3. Democratization and international norms - Which needs which to control corruption?**

The explanation of the causal mechanism that is at work in this thesis is developed in the following paragraphs, stating what the variables under study are, as well as the indicators to be measured in order to find out the answer to the research question: *To what extent and how do international norms against corruption impact the ability of civil society to control government corruption?*

In recent decades, interest in studying corruption has grown because of the hindering effects that it can have on democracy and development. Corruption becomes more relevant under the lens of democracy, because it strikes at the core of its fundamental values: justice. By converting collective goods into personal gains, corruption represents a basic denial of justice (Johnston, 1996). The concern for corruption hindering the incipient, weak or incomplete Latin American democracies has also grown, as indexes point to failure to control malpractice of this sort at the public level, according to the World Bank<sup>2</sup> and Transparency International<sup>3</sup>.

In this study, democratization plays a crucial role, since it facilitates the influence of two variables that are under analysis, international norms and citizen participation; particularly, the use of international norms and civil society's ability to hold the government accountable. Democratization will be approached, under the guiding principle of citizenship, in terms of transitions from one political regime (authoritarian) to another (democratic), involving equality with respect to the making of collective choices and the obligation of those implementing such choices to be equally accountable and accessible to all members of society. It refers to the process by which rules and procedures of citizenship are either applied to political institutions previously governed by other principles, or expanded to include persons not previously enjoying

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<sup>2</sup> The indicator Control for Corruption taken from Kaufmann, Kraay and Mastruzzi's *The Worldwide Governance Indicators: Methodology and Analytical Issues* (2010), compared across the years 1996, 2000, 2005 and 2010, reveal that only 6 of 19 Latin American countries have made slight progress in controlling corruption since 1996 to the present.

<sup>3</sup> TI's 2010 Corruption Perception Index measures perceived levels of public sector corruption in 178 countries around the world and has reported that three quarters of them ranked below 5 in a 0 to 10 scale – 10 being highly clean and 0 being highly corrupt. Latin American countries, with the exceptions of Chile and Uruguay, are all in that group.

such rights and obligations, or extended to cover issues and institutions not previously subject to citizen participation. (O'Donnell and Schmitter, 1986, pp. 7,8). This approach is appropriate since it refers to a process, not a necessarily completed or consolidated concept of democracy, and becomes useful as the variables under study in this thesis are behaving within this process, presenting some reached and other not-yet-accomplished characteristics, as the study will reveal.

External factors are not necessarily being discarded as influencing domestic regime transitions, as this analysis recognizes scholarly literature that offers alternative explanations to the origins of democratization or even democratic consolidation. There has been a predominant tradition stating that democracy is the outcome of a domestic process, where international actors play a marginal role (see Huntington, 1991, Geddes 1999, Schmitter, 1986), yet others have offered an analytical perspective in which democracy promotion and international organizations are linked and external factors are considered as part of the causal mechanism (Pevehouse, *Democracy from the Outside-In?*, 2002). Upon this recognition, democratization is considered here to be an underlying cause, providing the necessary conditions for civil society to control corruption using international norms, and is not discussed as an outcome. This clarification is relevant in terms of making a distinction on what the role of democratization is in the analysis of the interaction of international norms and social accountability, noting that it provides the necessary conditions for the norms to be used as tools to control corruption.

It is assumed then that in a democratization process, civil society is already an evolved version of an entity demanding a modification of the power structures in an authoritarian regime, and that its main task is to contest the government in order to maintain the balance of power in a democracy. In consequence, this political regime is necessary for civil society's task of holding the government accountable, and consequently obtaining desired results for the general wellbeing. In other words, under a non-democratic polity, even if a process of liberalization has begun, civil society would not be able to contest the government and hold it accountable.

In that same line of thought, democratization is the environment that facilitates the adoption and influence of international commitments that are likely to promote democracy, human rights and civil liberties, among other peace and development-seeking issues. Given that only democratic

regimes are likely to sign such agreements and are pressured into enforcing them, there are already pre-existing democratic features such as freedom of speech and free elections that permeate the accountability dynamics. Accountability should be easier to achieve in a democratic polity, thus allowing for the influence of international norms to be greater. This assumption does not claim that international norms and IOs are not relevant during authoritarian regimes, but only asserts that in a democratization process, it is more likely for civil society to be better able to use international norms against corruption. Therefore, democracy is the underlying condition, giving way for CSOs to potentially control corruption once a state has adopted an international norm related to the issue.

The democratization process on its own, although providing a contesting civil society, may not be enough to control corruption effectively. This could be due to an institutional development - including formal and informal legal frameworks - that is not sufficiently robust to answer citizens' claims to fight corruption. In other words, the fact that democratic institutions have been set up, does not mean that there is enough experience to modify practices that were left unquestioned before that point. The democratic process needs international norms to boost CSOs ability to control corruption in the long-term.

Therefore, resuming the task of finding an answer to the research question, this thesis will unpack how the systemic forces - in the form of international norms against corruption - influence the ability that civil society has developed - domestic forces - to demand transparency and accountability from corrupt public officials. My first objective will be to analyze specific mechanisms, procedures and practices that civil society uses that carry the weight (legitimacy and authority) of the international norm, when exercising social accountability in corrupt acts. My second objective will be to determine to what extent international norms against corruption play a role in shaping the ability of Guatemalan civil society to control corruption, complementing domestic demands and aggregation of interests as a source of social accountability. In other words, to assess the amount of influence that the international norm could have on civil society's ability to control corruption, keeping in mind that it involves a combination of both systemic and domestic forces.

This means that civil society as a vertical mechanism of accountability makes use of international norms – such as the Inter American Convention against Corruption - to empower and strengthen its ability to control government corruption, as a complementary feature to domestic movements, demands and pressure. In this light, the study will address and attempt to find out if this potential capacity may be increased, thus helping to lessen corruption in the long term. As it will be further explained in the methodology, the extent to which the norm actually has an impact on civil society's ability to control corruption will be determined by the level of awareness of the norm that is promoted by civil society, the compliance to peer recommendations given to the state in the context of the international organization that protects and promotes the norm, and the actual application and enforcement of the local laws that stem from the international norm.

Before continuing onto the next chapter it is necessary to address alternate explanations to the outcome of controlling corruption; as explained before, the first one is democracy. This thesis does not discard the importance of democratization for the control of corruption, but asserts that by itself – understanding this as domestic efforts - it may not be able to produce improvements in the dependent variable as strongly as it would with the use of international norms.

Furthermore, since the mid-1990's, empirical research on corruption across nations has provided abundant findings regarding economic, cultural and political determinants of corruption, but these have failed to offer conclusive results regarding democracy as the political cause of corruption (Blake and Morris, 2009). Despite extensive theoretical arguments that link democracy to a lack of corruption, research shows a rather ambiguous relationship between the two (see Rose-Ackermann 1999). It seems that democracy, understood in terms of political freedoms, is only very weakly related to the amount of corruption; however, exposure to democracy does tend to lower levels of corruption over time (Thacker, 2009).

Even though democracy creates new means of acquiring wealth and exercising power and thus allows more opportunities for corruption at the political level, at the same time, democracy stimulates popular demands and pressure for good government and accountability, as means of detection and punishment (Blake and Morris, 2009). This suggests that the emergence of

democracy does not in itself ensure the reduction of corruption. Instead, the role of democracy for checking and controlling corruption centers on its ability to promote institutional and non-institutional accountability mechanisms that take time to develop (Blake and Morris, 2009). These arguments reinforce the thesis that civil society, as an accountability mechanism, is better able to control corruption with the use of international norms, which strengthen its ability to monitor, oversee and demand transparency and accountability.

Another source of potential spuriousness may be the pressure that a state receives from other states that provide international aid or that play a determining role in trade and security issues. In the case of Guatemala, undoubtedly the United States and European countries have great influence on domestic outcomes regarding almost any development-related subject. As it will be explained further on, Guatemala – as most Central American countries – have historically been influenced by external factors that are not only reduced to international organizations, namely the United States and European countries. Therefore, political pressure coming from other state actors could potentially be responsible for the outcome of controlling corruption, and not necessarily be the effect of civil society, empowered by international norms.

While this is a plausible explanation, it is not mutually exclusive with the one offered here. In fact, evidence gathered from my own research and on the available literature (see below) demonstrates that even as external states may have some influence on the outcome of controlling corruption, civil society - along with government institutions, legislation, and other locally-promoted mechanisms -, have directly been responsible for changes in the dependent variable. Demands and pressure for accountability and transparency have triggered control of corruption, ability in civil society that is boosted by the use of international norms such as IACC.

Finally, and before moving on to the relevant literature, it is fair to state the possibility that the slight improvements in the World Bank Governance Indicator of control of corruption in Guatemala that has inspired me to carry out this research, could only be producing superficial and short-term effects. In other words, that during the past decade, with the adoption of international norms to fight corruption (IACC and UNCAC) in Guatemala, initial machinery was built and put to work (institutions, mechanisms and prevention programs, for instance), thrusting

control of corruption momentarily, reflected in this indicator according to perceptions of a number of political actors. But these changes might not necessarily guarantee a long-term improvement, just a mere face-lift.

One of the central arguments of this thesis, though, is that civil society's ability to control corruption, empowered by the use of international norms, can potentially continue to pressure and demand accountability, pushing for the completion of the process of putting the machinery to work in the long-term, maintaining the existing infrastructure and helping the government authorities improve it and refine it. Even if the WB indicator were to plunge at a future point in time, it would not be logical to erase everything and start over, but to mend and enhance what is already installed. It would not be as daunting a task for citizens to continue to pressure and participate, demanding further corruption control.

#### **4. Relevant literature**

A large body of literature has been dedicated to explaining the causes or the effects of corruption. Some of the main causes have been identified as coming from culture, history, weak institutions, and even religious background (Blake and Morris, 2009). Effects, as mentioned above, include major setbacks in democracy and development, including further weakening of institutions, the rise in violence and crime and the perpetuation of poverty. If public funds are diverted for private gain and benefit, the essence of democracy and the goals of development are distorted (Johnston, *The Search for Definitions: The vitality of Politics and the Issue of Corruption*, 1996). Beyond causality, this research is relevant because it focuses on one of its major solutions: accountability.

One classification of accountability, according to Guillermo O'Donnell is horizontal and vertical accountability, which basically boils down to checks and balances (horizontal) and elections and social accountability (vertical). Social accountability can be performed by civil society and the media<sup>4</sup>, complementing the role of political parties which organize citizens to reward or punish the elected officials or representatives. In this light, civil society's role in controlling corruption becomes relevant and constitutes, along with the media, a mechanism of accountability that demands transparency and ensures accountability on the part of a public official.

##### **4.1. Social Accountability**

Accountability refers to the ability to ensure that public officials are answerable for their behavior, where they are forced to justify and inform the citizenry about their decisions and possibly eventually be sanctioned for them. The accountability of political power can be analyzed from a legal and a political perspective. Legal accountability refers to a set of institutional mechanisms aimed at ensuring that the actions of public officials are legally framed, where the separation of powers, recognition of fundamental rights and a system of checks and

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<sup>4</sup> I have chosen to analyze only civil society and not social accountability as a whole, which includes the media, mainly because the link with international norms does not seem as obvious in the case of the media. Their role in controlling corruption is also different, since they are more likely to expose corruption cases or scandals rather than participate actively in the process of monitoring the norm by interacting directly with the government, as civil society does.

balances, curb the arbitrariness of state power. On the other hand, political accountability refers to the responsiveness of governmental policies to the preferences of the electorate, thus becoming linked to democratic representation. It is usually assumed that elections are the central institution for this type of control. Representative governments are therefore both legally and politically accountable, if citizens are able to make public officials answerable for their behavior (Peruzzotti and Smulovitz, 2006).

Furthermore, Guillermo O'Donnell also classifies accountability mechanisms as either horizontal or vertical, where the former refers to an operation of an intrastate system of controls, while the latter implies the existence of external checks. Therefore, vertical accountability implies the existence of the electorate as an external social agent of control, which periodically punishes or rewards elected representatives with its vote (O'Donnell, 2006). But elections are not the only tool for holding politicians and public officials accountable; they need to be complemented by an active civil society and autonomous media institutions. Authors, such as Nuria Cunill Grau, have argued this, suggesting that civil society and the media not only add to the traditional mechanisms of accountability (checks and balances and elections) but can also, on occasions, compensate for many of their shortcomings (Cunill Grau, 2006).

In this sense, this study focuses only on non-electoral vertical mechanisms of accountability, which are mechanisms of control of political authorities and officials that rest on the actions of citizens, through civil society associations and movements, as well as the media. These actions are aimed at monitoring public officials, exposing governmental wrongdoings and activating horizontal agencies of control. This social accountability can be activated by means of institutional as well as non-institutional tools, where legal actions or claims before the judicial power is an example of an institutionally channeled action, while media disclosures are examples of non-institutional ones (Peruzzotti and Smulovitz, 2006).

International norms against corruption could actually play an important role in shaping citizen demands, and aid civil society in monitoring compliance with the norm, as well as its direct interaction in the process of controlling and exposing government corruption. In an attempt to determine whether this is true, this thesis adds on to O'Donnell's theory by specifically looking



at the role of international norms in achieving vertical accountability. At the same time, it builds on International Relations theory, since it asks the relevant question: to what extent international norms matter and how they affect domestic efforts to fight government corruption?

## **4.2. International Norms**

As I mentioned earlier, this research partially draws notions from IR theory that suggest that societies create meaning of the world through a series of individual constructs. Constructivism claims that significant aspects of international relations are historically and socially contingent, rather than inevitable consequences of human nature or other essential characteristics of world politics, as other traditions might suggest, such as Neorealism and Neoliberalism. Constructivism primarily seeks to demonstrate how many core aspects of international relations are *socially constructed*, that is, they are given their form by ongoing processes of social practice and interaction. Alexander Wendt states, for instance, that there are two basic principles of Constructivism: the first, that the structures of human association are determined primarily by shared ideas rather than material forces, and the second, that the identities and interests of purposive actors are constructed by these shared ideas rather than given by nature (Wendt, 1999).

In this light, authors such as Martha Finnemore, have created room for interests and identities of international actors to take a central place in theorizing in international relations. Not being simply governed by a self-help system, as Neorealists suggest, international actors' identities and interests become relevant as a result of a social construction of such ideas. Finnemore examined the way in which international organizations are involved in these processes of the social construction of actor's perceptions and interests, through a systemic approach to understanding state interests and state behavior in the international structure, not as power but as meaning and social value (Finnemore, 1996).

Furthermore, Finnemore also provides a study of three cases of this type of construction related to international norms, in the realms of science bureaucracies in states. She describes the influence of UNESCO in domestic policies towards science and education, the role of the Red Cross in the Geneva Conventions, and the World Bank's influence on attitudes toward poverty

(Finnemore, 1993). She argues that the creation of the teaching mission of these international organizations was a reflection of a new norm<sup>5</sup> elaborated within the international community, where for example, states created science bureaucracies with UNESCO's help to comply with the new norm about states' responsibility for science. Thus, the organizational innovation was supplied to states from the outside, from an international organization, rather than being a product of the characteristics internal or inherent to the state itself (Finnemore, 1993, p. 566).

Finnemore's study is important for the argument I am also presenting, which attempts to confirm whether an international norm, such as the IACC, has the effect of making changes and impacting the way that one part of the domestic realm of a state – civil society – carries out one of its principal tasks of controlling the government, particularly in terms of corruption. This dynamic would be contrasted, as pointed out above, with the internal or domestic characteristics and dynamics that take place in the country, where usually norms are also created, promoted and institutionalized.

The following point, the process through which norms become institutionalized in a given society and actually transform the way people behave, is linked to the previous constructivist ideas. This analysis is useful to this research since CSOs become involved in the process of norm engineering and institutionalization to control government corruption. To illustrate the international norm dynamics and their influence on political change in a given society, the model presented by Martha Finnemore and Kathryn Sikkink (1998) is useful, outlining a life cycle of norms where social construction and strategic bargaining are intertwined.

This cycle of norms has three stages. The first one is norm emergence, when norm entrepreneurs arise with a conviction that something must be changed. These norms use existing organizations and norms as a platform from which to proselytize (e.g. UN declarations), framing their issue to reach a broader audience. In Stage 1, states adopt norms for domestic political reasons. If enough states adopt the new norm, a "tipping point" is reached, and we move to stage 2. This stage is norm cascade, where states adopt norms in response to international pressure--even if there is no

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<sup>5</sup> Finnemore uses norm as a rulelike prescription which is both clearly perceptible to a community of actors and which makes behavioral claims upon those actors. Up to now, this definition fits my own research and is the one I am also using.

domestic coalition pressing for the adoption of the norm. They do this to enhance domestic legitimacy, reputation and esteem needs, attitudes that respond to a need to belong or fit into a group of states or an organization. The third stage, norm internalization, happens over time, when professionals press for codification and universal adherence. Eventually, conformity becomes so natural that states cease to even notice the presence of the norm, attitudes become habits and the norm is finally institutionalized.

### **Cycle of Norms**

	<b>STAGE 1:</b> <b><i>Norm Emergence</i></b>	<b>STAGE 2:</b> <b><i>Norm Cascade</i></b>	<b>STAGE 3:</b> <b><i>Internalization</i></b>
<b><i>Actors</i></b>	<i>Norm entrepreneurs with organizational platforms</i>	<i>States, international organizations, networks</i>	<i>Law, professions, bureaucracy</i>
<b><i>Motives</i></b>	<i>Altruism, empathy, ideational commitment</i>	<i>Legitimacy, reputation, esteem</i>	<i>Conformity</i>
<b><i>Dominant mechanisms</i></b>	<i>Persuasion</i>	<i>Socialization, institutionalization, demonstration</i>	<i>Habit, institutionalization</i>

Source: Martha Finnemore and Kathryn Sikkink. International Norm Dynamics and Political Change (1998) International Organization. (52) 4. pp. 887-917 page 898

Another factor of influence that is found in IR theory is the idea that norms have been able to shape domestic change by tying the hands of those actors who are reluctant to allow a progressive or revolutionary idea to move forward, once they are bound to an international treaty. Daniel Thomas argues that human rights norms mattered more than geopolitical or economic power in the demise of communism and ending of the Cold War. Contrary to conventional views that Soviets could not keep up with American military strength, communism's weakness was triggered by the signing of the Helsinki Final Act in 1975 (Thomas, 2001). This was due to the need Soviets had to bolster their international legitimacy, therefore becoming trapped by the international norm.

Amitav Acharya has also contributed greatly to norm behavior studies by describing how local

agents reconstruct foreign norms to ensure they fit the agents' cognitive priors – an existing set of ideas, belief system and norms that determine and condition an individual or group's receptivity to new norms - and identities. Congruence building therefore becomes key to the acceptance of foreign norms. He argues that norm diffusion in world politics is not simply about whether and how ideas matter, but also whose ideas matter, where local beliefs are part of a legitimate normative order that conditions the acceptance of foreign norms (Acharya, 2004). This work offers insights for this thesis since it explains how foreign norms interact with local beliefs, interests and demands, which are usually aggregated through civil society, therefore allowing for the acceptance of the norm and its subsequent promotion.

One often wonders if transnational forces, those constructed within the international society as part of its constant change and evolution, constituted by international organizations, non-governmental organizations, corporations, transnational social movements and even private military companies (Sperling, 2009) have more possibilities than local forces to change a given misconduct in a given country by means of a norm.

Transnational forces influence states and citizens around the globe, but how do these international influences and practices impact the impunity – accountability equation (where war, poverty, corruption, abusive government and injustice make way for impunity, which at the same time is countered by accountability efforts made by domestic politics and transnational activity)? Transnational forces are engaged in promoting state accountability, such as the case of the World Bank, which endorses policies and good practices to fight corruption in favor of world development. Sperling asks what roles transnational forces, as opposed to the domestic forces, play in affecting the balance between accountability and impunity worldwide. For her, there are five major forces in this regard: economic, political, military, judicial and civic. And furthermore, what makes a state move towards a more accountable form of government?

In a society such as the Guatemalan, suffering from a very slow recovery from civil war, abusive governments and consequent impoverishment, there is a predominant despair in view of the legacy of its historic political, social and economic drawbacks. Injustice, corruption and impunity all make the rule of law and consolidation of democratic institutions a hard task,

whereby accountability coming from domestic political actors – state located and within the social accountability spectrum – is also fragile. Citizenship hardly allows for participation and furthermore, is likely to lose ground once dishonest behavior and individual empowerment – as opposed to social – is praised and promoted. At a given point, civil society may not be willing or even capable of placing a check on the government. Nonetheless, priorities remain and civil society has a set agenda within the state system that despite the attractiveness of easing the pressure, perhaps even the temptation to accept cooptation, organizations continue working to further the internal balance of power.

#### **4.3.The Organization of American States (OAS) and its impact on domestic politics**

Different research studies have been carried out to examine what compels different countries to act in accordance with international organizations (IOs) and what does not. Compliance with international declarations and agreements has long since been a question and focal point of study when analyzing international institutions. In some cases, IOs have been treated as structures of rules, principles, norms, and decision-making procedures through which states act (Krasner, 1983).

Functionalists (see Keohane 1984 and 1988) center attention on why states create IOs to fill certain voids and solve problems of incomplete information and transaction costs, among other barriers to general welfare. This idea that IOs basically have no agency and do what states want is contrasted by theories that hold that IOs develop their own ideas and their own agendas (Barnett & Finnemore, 2004). This constructivist approach treats these bodies as autonomous actors and helps explain the power they exercise in world politics, their propensity toward dysfunctional behavior, and the way they change over time.

In terms of regional organizations such as the OAS, authors have pondered how democratic norms and values may be emerging as a common element that will allow its member states to think of themselves as part of a regional society. Furthermore, part of the progress of democratization in the region may potentially be due to changes and pressures coming from the international environment, keeping in mind rational choices within citizens, striving for better

performance of the state and political representation (Horwitz, 2010). The influence that the OAS has had on the Latin American region for the past decades, despite criticism that the United States and Canada are the sole motors that drive this organization, has been esteemed as a potential shaper of domestic change.

In Guatemala, the OAS played a crucial role in deterring key actors in the country from supporting Serrano Elias' self-coup in 1993. The organization not only quickly denounced the *autogolpe* but sent a high-level mission to Guatemala, including the Secretary General. Through several negotiations between the special mission and civil society, Serrano's coup was finally denounced and it did not last long. In this specific case, as well as others in more recent years in Peru and Honduras, for example, the threat of diplomatic and economic isolation spurred by the OAS convinced the military and business elites to solve the crisis peacefully and return the state to constitutional rule (Pevehouse, 2006).

With the help of such examples, this study on the influence that the OAS norm may have on civil society's ability to control corruption pays close attention to the assumption that the IACC may be effective in a country like Guatemala. As it will be explained further on, this country has historically been influenced by external actors (not necessarily enjoying it) and in the opinion of some, has become an exogenous society<sup>6</sup>, one that easily legitimizes foreign power and may even venerate it. Furthermore, as have the rest of Latin American countries, it has voluntarily signed this convention and followed up on its compliance, putting together a series of anti-corruption policies and structures (Guerzovich, 2011). This reinforces the possibility that this instrument will have greater stability than national level advocacy programs and that the government apparatus, jointly with CSOs, can profit from them to develop permanent anti-corruption policies and institutions that will impact control for corruption in the country.

#### **4.4. The Inter-American Convention against Corruption (IACC)**

The IACC was negotiated under the auspices of the OAS, following a mandate agreed to by the 34 heads of state that participated in the Summit of the Americas in 1994. The OAS General

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<sup>6</sup> Interview with Alejandro Urizar, former director of Accion Ciudadana Guatemala, March 2013.

Assembly later instructed the Permanent Council to convene a specialized conference and if considered appropriate, to adopt a draft Inter American Convention against Corruption. The Inter-American Juridical Committee was in charge of the initial drafting and structuring, and on October 4, 1995, experts were designated and called on to participate on the review of the IACC. On February 22, 1996, the Permanent Council approved the convocation of the specialized conference which took place in Caracas, Venezuela in March 1996. Twenty-one countries signed at the closing ceremony on March 27, other countries joined later, and on March 6, 1997 it entered into force (Manfroni, 1997).

The purpose of this Convention is to promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and to promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance (article II).

The Convention is an innovative instrument in international law due to its specific contents and in particular, because for the first time a regional norm was created to regulate a subject that until then had been reserved for local legislation. Contrary to arguments that reduce the importance of international norms due to their lack of real enforcement, a high number of countries signed this treaty upon the general awareness of its necessity, and the regional calling to hold corrupt governments accountable (Manfroni, 1997).

The stability that it offers reduces its quality of being considered optional rather than a structural given in the foreseeable future (Guerzovich, 2011). Additionally, anticorruption advocates in the region could potentially be more advantageous than those of other regions, given that it provides a number of intangibles such as institutional spaces, contacts and technical capabilities that cannot be ignored when assessing the impact that this norm has on civil society's potential ability to hold the government accountable in terms of corruption control.

#### **4.5. The Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC)**

The Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC) is an inter-governmental body established within the framework of the OAS since 2002. It supports the States Parties in the implementation of the provisions of the Convention through a process of reciprocal evaluation, based on conditions of equality among the states. In this mechanism, recommendations are formulated with respect to those areas in which there are legal gaps or in which further progress is necessary.

The peer-review mechanism (PRM) assessment is carried out by an Experts Committee<sup>7</sup>, appointed by signatory countries, on a questionnaire answered by the governments and subsequently compared to a shadow report from civil society. This process concludes with the publication of a report on the situation of each evaluated country regarding implementation and application of the IACC, along with a number of recommendations. The mechanism has been configured as a permanent structure to protect its mission and includes the following organs: the Conference of member states, the member states (which answer the questionnaires), the Experts Committee of member states, the Experts Subgroups and the Secretariat.

The task of channeling citizen incidence from civil society is greatly supported by the IACC and its PRM, allowing it to boost its capacity to control corruption. MESICIC supports civil society participation through several documents, such as the Document of Buenos Aires<sup>8</sup>, which addresses the role of civil society organizations to obtain more elements of analysis upon the examination of a member state. Also, the rules of the Committee of Experts<sup>9</sup> address the

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<sup>7</sup> Experts are designated by each state party, which are responsible for the technical review of the implementation of the Convention by the other states parties, making the Committee of Experts the technical body of the PRM. Each expert shall be the contact or focal point for the Secretariat. The structure of MESICIC also includes the Conference of State Parties, which supervises the implementation of the mechanism as a political body.

<sup>8</sup> This report was the product of the First Conference of States Parties to the Inter-American Convention against Corruption on the Mechanism for Follow-up on Implementation of the Convention, which took place in Buenos Aires on May 2 to 4 of 2001. The report was also approved by the XXXI General Assembly of the OAS through resolution AG/RES. 1784 (XXXI-O/01). See [http://www.oas.org/juridico/english/doc\\_buenos\\_aires\\_en.pdf](http://www.oas.org/juridico/english/doc_buenos_aires_en.pdf)

<sup>9</sup> The Rules of Procedure and other Provisions of the Experts of MESICIC is found in document SG/MESICIC/doc.9/04 of 29 June 2007. See [http://www.oas.org/juridico/english/mesicic\\_rules.pdf](http://www.oas.org/juridico/english/mesicic_rules.pdf)



participation of civil society in Chapter V, specifying how these actors can participate in the process.

There are three possibilities of participating: by submitting proposals, suggestions and observations relating to the methodology of analysis; the submission of reports from civil society to the Committee; and the presentation of proposals for selecting subjects of collective interest for the Mechanism in general and for the experts in particular. Finally, a third document, ‘Methodology for the Analysis of the Implementation of the Dispositions of the IACC Selected in the Framework of the First Round’ defines the subjects and criteria for analysis in each round, stating that the process will be carried out based on answers to a questionnaire filled out by the member state, documents presented by civil society organizations, and any other relevant information obtained by the Committee.

In 2011, the MESICIC incorporated the modality on in-situ visits as an integral part of the review process, presenting an innovative and pioneering initiative in the context of the regional efforts to tackle corruption. In-situ visits complement rounds of evaluation in order to assess compliance by each state party to the Convention. Guatemala was the first country to offer to be evaluated under this new modality, having been subjected to their in-situ visit in April 2013. The results of the visit became part of the review process carried out by the Experts Committee of MESICIC, concluding with the adoption of the Guatemala country report by the Committee at its plenary meeting that took place in September 2013, at the OAS Headquarters in Washington, D.C.<sup>10</sup>

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<sup>10</sup> The final Guatemala country report of September 2013 (Twenty-second meeting of the Committee of Experts of MESICIC) can be found at [http://www.oas.org/juridico/pdfs/mesicic4\\_gtm\\_en.pdf](http://www.oas.org/juridico/pdfs/mesicic4_gtm_en.pdf)

## 5. Methodology and procedure

In general terms, the research has been carried out through a qualitative case-study that focuses on civil society's ability to control government corruption. The time frame under study includes the years between 1996 and 2012, from the period when the IACC was adopted in Guatemala (signed 4 June 1996), then entered into force five years later (3 July 2001), to 2012, the year in which the Anti-Corruption Law was passed in Congress (30 October 2012). Historical content is also analyzed outside this time frame only to provide a political, economic and social overview of the country under study.

The unit of analysis will be relevant civil society organizations, paying special attention to one that focuses its efforts on demanding transparency and ensuring that public officials answer to the citizenry if they have engaged in corrupt acts: *Accion Ciudadana* (the Guatemalan chapter of Transparency International). This organization has been selected because it is the main actor of civil society that participates actively through periodic reports to the OAS in compliance with the Inter-American Convention against Corruption – the mechanisms known as MESISIC, and also because their main activities include achieving greater transparency and control of corruption. Initially, the intention was to analyze other organizations that could be compared to AC under the mentioned criteria, but it was found that this organization played the leading role in corruption issues, working and consulting with other CSOs that perform other activities, for specific purposes. Nonetheless, the analysis did include other CSOs that partially engage in activities demanding accountability and transparency to be better able to compare data.

Several research methods were used including key informant interviews, longitudinal analysis and some aggregate data analysis of institutional statistics. The gathered data includes main interviews with three members of *Accion Ciudadana*, and one former director of the organization. This provides insights regarding how civil society works and interacts with the norm, assessing and comparing the activities they carried out once the norm was adopted and later translated into domestic legislation. This could also potentially help pinpoint the salient characteristics of the lifecycle of the norm in interaction with local demands and interests.

Other relevant actors involved in the general accountability system that controls corruption in Guatemala were also interviewed. These included *inter alias* other CSOs, representatives from the United Nations Commission against Impunity in Guatemala (CICIG), and the office of the Public Prosecutor against corruption (*Fiscal contra la Corrupcion*). The variety of actors interviewed provides a wider array of insights and opinions to be compared and measured, thus making it possible to detect patterns and also to obtain more information on the overall picture. The interviews are aimed at capturing perceptions on the role of the international norm in civil society's capacity to control corruption, specifically within their actions, demands and overseeing activities.

The questions center not only on how the norm has been used, but also on comparing the different periods of development of the Convention in Guatemala, as well as on the insights of these actors regarding an emblematic case of illicit enrichment in the country. The MDF case in the Guatemalan Congress during former President Alvaro Colom's administration (2008) is also analyzed, aiming to determine what - if any - role the IACC might have played. Specifically, this study looks at the monitoring task by civil society, and the results they may have obtained through the use of an international convention within their accountability activities.

In order to establish the extent to which the IACC has impacted the ability of *Accion Ciudadana* and other Guatemalan CSOs to control corruption, or put differently, how civil society is better able to potentially improve corruption indexes in this country with the use of an international norm against corruption, three indicators are measured: awareness, compliance to peer recommendations and law application and enforcement. This means that once the data is collected, it is assessed according to these three factors, making it possible to draw conclusions on the degree of effect that the use of international norms might have on civil society's ability to control corruption.

Awareness will be measured as the understanding, respect and legitimacy that citizens give to the norm, recognizing that this norm is foreign and not locally produced or proposed, yet demanded by the population. Awareness corresponds to the objective of the IACC that focuses on the prevention of corruption. It is based on the assumption that the level of citizen awareness of the

international norm either fosters or discourages the control over corruption.

Compliance with peer recommendations will be measured as the progressive implementation by the state of recommendations provided by the peer-review mechanism (PRM) of the IACC, MESICIC. As it will be explained further on, MESICIC functions in terms of periodic rounds, in which peers and experts generate recommendations based on government and civil society reports (shadow reports), following up on their compliance. This compliance corresponds to the three main objectives of the IACC, namely prevention, detection and sanction of corruption. Therefore, the compliance indicator is generated upon the assumption that as the state gets closer to reaching completion of peer recommendations, the prevention, detection and punishment of corruption is strengthened in the country.

Finally, application and enforcement of local laws that reflect the contents of the IACC will be measured in terms of the adoption and consequent criminalization or codification of misconduct under the norm that will be applied to corrupt acts, as well as its enforcement by local authorities. This application and enforcement corresponds to the objective of the IACC that focuses on sanction or punishment of corruption. Therefore, this last indicator builds on the assumption that when local norms to tackle corruption are in place, applied and enforced, the punishment of corrupt acts is enabled, allowing effective control of corruption or the lack thereof.

This methodology and procedure facilitates the assessment of the impact of international norms on the improvement in control of corruption, which does not depend solely on civil society of course, but also on government authorities. Nonetheless, CSOs pressure the government to put certain mechanisms into place that become institutionalized and persist through different governments. In this light, this will help understand if civil society's capacity to control corruption, boosted by the impact of the international norm, is increasing and will have long-term effects.

### 5.1.Data collection

A total of nineteen face-to face interviews were performed for this study; seventeen during the week of February 25 to March 1, 2013, in Guatemala City, along with two in Washington, DC in the month of March. The purpose of the interviews was to acquire a more profound reading of how the system involved in controlling corruption in Guatemala works nowadays, and throughout the past decade. It was a golden opportunity to personally pose a number of questions and discuss several issues relevant to the research, in order to fully grasp the perceptions and insights of a variety of actors, mostly working or having worked at some point in civil society, as well as in the government or international organizations. The participants were contacted based on prior knowledge of their current work in different government offices, international organizations, and CSOs.

The CSO that what observed and analyzed in depth was *Accion Ciudadana*, the Guatemalan chapter of Transparency International, along with other participants that shared a common knowledge of the system of corruption control in the country (a complete list of participants is provided in Appendix 4). Informants were offered the possibilities of keeping their identities confidential as well as refraining from answering any question, or withdrawing from the study if they so desired.

The prior knowledge mentioned above was a product of an intense labor of networking, searching first for current members of *Accion Ciudadana*, and then obtaining references for people in other organizations that were involved in the accountability system. There was also the primary empirical interest of working with a universe of complementary elements, hence the need for contacting actors from the government, within the Executive branch, as well as Congress, Comptroller General's office, and Public Prosecutor's office, for instance. Furthermore, it was important to include international organizations as part of transnational forces that are likely to influence political outcomes, as well as other specific sectors, such as the private sector. Once the individual complementary actors of the accountability system were identified, and attempted to fit the interactive scenario portrayed for the particular study of explaining how international norms impact civil society's ability to control corruption, they were

contacted through email. Sometimes this was done with the help of contacts who facilitated reference and exchange with the aimed organizations, bureaus and entities; other times it consisted on references from previous contacts, similar to a pyramidal dynamic.

Greater resources, especially time, would have allowed for a more exhaustive sample, but since the aim of this research was to analyze civil society and how it uses international norms to control corruption, it seemed only logical to concentrate on it and include some complementary interviews as balance to the principal ones. This was carried out with the main objective of avoiding bias in generating conclusion that might result from analyzing only the responses and experiences of members of civil society.

Once email contact was active, participants were asked to confirm their approval of participating after a brief but thorough explanation regarding the content of the research as well as the procedure for participating. Consent forms<sup>11</sup> were sent out to all of them prior to being interviewed and were signed and returned on the day of the meeting, except for those interviews conducted through the internet, which were returned by email. Most interviews were conducted in person, except for those that took place through the internet based communication tool Skype, given that the week for personal interviews did not coincide with all participants' availability.

In general terms, participants did not present any resistance to being interviewed for the study, which was actually quite surprising. They were all willing to talk about corruption, accountability and civil society, even though these might have been deemed dangerous subjects. Guatemalan society is still struggling with liberation from a culture of silence, and where once telephone calls were recorded and people followed around by strangers as a result of military oppression and a sign of intimidation, most adults who experienced the internal armed conflict still measure their words and are quite cautious about who they talk to about political or social issues. Nevertheless, most of the participants are used to being in the public eye, perhaps even having been interviewed before by reporters or other academic researchers. The fact that the research was being supported and certified by a foreign university opened doors, in a society

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<sup>11</sup> See appendix 2.

where the foreign is portrayed as superior and legitimate, as it happens in most Latin American countries.

Even though there might be some advances in terms of freedom of speech as well as tolerance for diversity in opinions throughout society in general, participants were offered the option of having their identity kept confidential. It was also explained in the consent form that they had no obligation to participate, that they could opt out at any time before the processing of the data (a specific date was informed), but that if they chose to maintain their identity confidential, it would not be possible to remove them from the study since it would not be identifiable in the notes and reports. This was highly appreciated by a few participants who preferred to keep their identities from being revealed, possibly for fear of their labor status being affected if their opinions did not correspond with those of their organizations or employers.

Sixteen open-ended questions were posed in Spanish to participants during the interviews<sup>12</sup>, which usually took place in their institutional offices, except for three that took place in local restaurants, upon their own request. The questions were part of a script that focused on four main points: the IACC, the MESICIC, the MDF case, and the Criminal Act against Corruption or Anti-corruption Law. All these subjects were related during the interview with civil society's ability to control corruption, how they use the mechanisms available to them, what practices are usual, and how they have been working for the past decade in terms of international norms against corruption and their impact on their work on specific cases such as MDF and the approval of the Anti-corruption Law.

After the data collection, the processing began and the first step was to translate all of the information into English, which was the major time-consuming factor of the process. The answers were arranged in terms of questions and not participants, summarizing the responses, and classifying them into three possible options, in most cases, with the objective of observing trends within each question. These answer options were not posed along with each question to the interviewees, but it was a means to arrange answers that were similar at the moment of processing the gathered data. Once this process was concluded, it was possible to observe

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<sup>12</sup> See appendix 3.

certain patterns among answers, as well as very valuable insights for proposing possible solutions to salient problems, pinpointing pending tasks, as well as future research avenues and policy-making.



## **6. Civil society and corruption in contemporary Guatemala**

Guatemala is a good case for empirically examining the relationship between international norms and civil society's ability to control corruption since intuitively it seemed relevant to observe what corruption can do to a country that struggles to move forward in terms of democratization, and where corruption has existed since the very creation of the state. To observe how certain solutions, such as those coming from vertical accountability, have slowly been put in place with the advance of democracy, seemed even more relevant in light of the seemingly improving trend in terms of control of corruption (see Appendix 1). Guatemala not only has high levels of corruption, but also very weak institutions yet it is recently beginning to implement particular programs and tools to control corruption. These minor improvements are intriguing and worth studying.

Furthermore, it is worth examining the reasons why Guatemala was delayed for five years in ratifying the Inter-American Convention against Corruption, which was signed in 1996 but only entered into force in this country in 2001. One of the reasons for this delay could potentially be related with the elite's rejections of norms of this sort in the context of high historical levels of corruption.

But Guatemala is also an interesting choice since its civil society has grown stronger with democratization, where demands for transparency and accountability originated along with human rights movements. It is possible that domestic demands and aggregated interests developed into growing receptivity and a call for the international norms against corruption to be put in place in this country, thus intensifying civil society organizations' ability to control corruption. In turn, this could be a potential path towards identifying long-term policies for reducing corruption.

### **6.1. Political, economic and social background**

Currently the largest economy in Central America, representing 35% of the region's GDP, Guatemala is at first glance a land of opportunities for investment, progress and growth (Invest in

Guatemala, 2013). One would say it is a healthy economy, just by looking at its macroeconomic data, for its economic growth, inflation and unemployment<sup>13</sup> figures seem fair. There is enough information to assert that it has left its authoritarian past behind and that democracy blossoms. As a developing country, it seems to be moving forward. Nevertheless, many deep rooted problems still persist that keep such development stagnant, a foundation-eroding scourge that includes inequality, impunity and corruption.

Guatemala suffers from all three of these problems as other Latin American countries do, since they generally share similar historical and cultural background, political setting, social dynamics and economic profiles that seem to favor their existence and durability. But perhaps a particular combination of these factors accent this stagnation in development, which draws attention to corruption and how society tolerates it and attempts to control it. Authors have argued that corruption in Latin America has attracted academic interest since most of its countries are engaged in a democratic process. Since the return of democratic rule the majority of the region in the eighties, corruption scandals and cases are now more visible, ranging from illegal campaign funds to bribery at every level, multimillion-dollar frauds and judges selling their decisions, among many more examples (Morris & Blake, 2009).

What does this mean for Guatemala? The consequences and drawbacks that result from corruption in all its forms are quite alarming. They all point to an uncertain future in a region plagued by many other obstacles to the democratic process under way, such as weakened citizen rights, impunity, insecurity, among other problems. There is already an underused installed capacity found in institutions, legal instruments and mechanisms that could work jointly to provide public goods and services demanded by citizens in a transparent way, without privileging any particular group or individual. Guatemalans continue to re-invent their procedures and practices to fight corruption, only to create more and more confusion, bureaucracy and loopholes to keep the system from correcting itself effectively. Notwithstanding this bleak outlook, control for corruption has slightly but constantly improved –

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<sup>13</sup> According to the World Bank, Guatemala has a growth rate of 3.5% (2013) and an inflation rate of 3.8% (2012). According to UNDP, the unemployment rate in Guatemala is of 3.5% (2012).

as it is explained further on, so one wonders if something is being done right in the middle of such whirlwind.

A representative democracy nowadays, Guatemala was once part of the Federal Republic of Central America, after gaining independence from Spain in 1821. The nineteenth century was politically unstable as the rest of the Central American region, mainly leaving “*criollos*” to deal with the transition from a highly overbearing and centralized colonial administration to a republic. Their efforts to build a national culture ran into economic dependency, ethnic division and class struggle, a clash that Guatemalans still face today, as the most unequal society in terms of distribution of wealth in the hemisphere (Grandin, 2000, p. 7).

The twentieth century was not any less problematic, jumping from democratic attempts to harsh authoritarian regimes, notorious for its increasing repression, rooted by its colonial heritage of a highly stratified system of exploitation put in place by the Spanish conquerors (see Woodward 1985). After the Second World War, complex changes within the world system and internal class transformations within the country led to the emergence of reformist politicians and populist leaders, essentially representing the interests of urban middle-class groups. The October Revolution (*Revolucion de Octubre*) that took place in 1944 marked the end of Jorge Ubico’s thirteen-year dictatorship and gave way to general elections. Advocates for a mildly socialist alternative development project emerged, such as former presidents Juan Jose Arevalo and Jacobo Arbenz Guzman, who sought the creation of a more open political system and to modernize the economy through import substitution and land reform (Ropp & Sikkink, 1999).

At the boiling point of the Cold War, Arbenz was increasingly confronted by the Eisenhower administration due to security and social threats perceived by the US government. This led to the provision of resources and training on the part of the CIA to Colonel Carlos Castillo Armas, who in 1954 overthrew Arbenz (Cullather, 1999). At this point, repression of dissident elements in society became more centralized at the state level, in contrast with the former traditional style that relied on dispersed private groups and institutions associated with the Guatemalan land-tenure system (Ropp & Sikkink, 1999). The primary mechanism for the centralization of

repression was the strengthening of the existing system of local military commissioners. These were former army officers who performed paramilitary functions in rural areas (see Jonas 1991).

Between 1954 and 1985, a sequence of national civil-military coalitions used this reinforced repressive state apparatus in an attempt to reverse the political and socioeconomic processes associated with the societal effervescence of the late forties and fifties. The result of this military effort was massive; state-level abuse of human rights directed at emerging guerrilla groups, trade-union militants, peasant organizers, and ecclesiastical base communities. During this period Guatemala endured harsh authoritarian regimes, unleashing more intense state terror against the population than at any previous time in their history (Ropp & Sikkink, 1999) (see Medina Quiroga, 1988 and Figueroa Ibarra, 1991). Repression was quite severe, and by the nineties, when a democratic regime was already in place, “authoritarian enclaves” (see Garreton, 1991 and 1995) and structures remained. The military negotiated its retreat from politics in a way that allowed it to maintain its autonomy and avoid legal prosecution for its role in human rights abuses. It is estimated that between 1966 and 1986 nearly 150,000 civilians were killed by the Guatemalan military and paramilitary groups, and 50,000 disappeared. (see Trudeau 1993, Falla 1994 and Stoll 1993)

In 1997, after the negotiation of peace accords between the government and the guerrillas, and two truth commissions were put in place by the United Nations and the Roman Catholic Church, a weak democracy was emerging. It was put to the test on many occasions, such as with the assassination in 1998 of Bishop Juan Gerardi, leader of the truth commission report *Guatemala Nunca Mas*. Events like this one revealed that power and impunity structures had not been dismantled from the pre-democratic era.

Understanding these authoritarian enclaves<sup>14</sup>, or “clandestine security structures” as they have been called by the Commission against Impunity in Guatemala (CICIG), is vital to study the dynamics of corruption in the country, as well as corruption control as an accountability mechanism coming from civil society. Civil society was silenced, although ever-present, during

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<sup>14</sup> Authoritarian enclaves are known as institutional spaces in the state or regulatory spaces in society that adhere to authoritarian norms at odds with those of a democratic regime (Gilley, 2010).

the period prior to the democratic process; today this has improved but they are still confronted with authoritarian organizations that are eager to maintain the status quo, the monopoly of power.

Civil society continues to struggle with much of the authoritarian legacy in Guatemalan society in their task of controlling corruption, which is often engrained in organized crime structures found within the government, the private sector and even civil society itself. For several years, among a highly violent environment, it has been hard to account for assassinations, abuse and other threats to members of CSOs that intend to tilt the balance of power towards an egalitarian system. In the last two decades, a clear pattern of systematic intimidation has been observed towards member of civil society and activists, especially human rights defenders, environmental groups, union and indigenous leaders (Handy, 1998). According to the UN High Commissioner for Human Rights in Guatemala, attacks against human rights defenders has increased since the beginning of the nineties, almost duplicating towards the end of that decade. Its last report states that 282 aggressions have been registered in the *Ministerio Publico* in 2012, showing a slight descent of 10%, though still recording 15 unclarified assassinations in that same year (OHCHR-Guatemala, 2013). Even if there is not enough judicial evidence - partially due to the prevailing corrupt justice system – to validate the difficulties that CSOs still face nowadays in Guatemala, there is a general belief among its members and activists that their line of work is dangerous, according to participants interviewed in this study. There is little doubt that there are still clandestine networks in charge of criminal activities, which also direct recurrent acts of violence against CSO members, journalists and popular organizations leaders (Handy, 1998)

During the period of internal armed conflict in Guatemalan, international organizations developed and spread norms that most countries - including Guatemala - approved, signed and committed themselves to enforcing locally. Regarding human rights norms, for instance, this society was simply too closed and government policy too repressive to allow for even minimal international socialization to occur during the height of the violent internal armed conflict (1978-1983). Many European NGOs, concerned for the safety of their staff, did not maintain branch offices in country, thus severing a potential link to a transnational network (Ropp & Sikkink, 1999). The human rights movement in Guatemala was of course the priority for civil society

during these years, and once they advanced in changing the odds, other interests such as corruption control had a paved way to work on. There is not much information on corruption control during the authoritarian period, which does not mean there was not any. It must have remained concealed, away from public scrutiny, the media, international organizations, and if discovered, silence prevailed. Also, the spoils of corruption were probably divided among fewer players, in comparison to what happens today, since power was concentrated in a small number of high military officials and decision-makers.

These days, Guatemala is a constitutional democratic republic, with a multi-party system, where the President is both head of State and head of Government, and leads the Executive power. Legislative power is exercised by the Congress and the Judicial power is headed by the Supreme Court of Justice, although the independent Constitutional Court is quite powerful, having the task of protecting the legal supremacy of the Guatemalan Constitution. Since the democratic process began in 1985, political parties have been very weak in Guatemala, lacking structure and vision, merely answering citizen demands with populist answers. They have also lacked permanence, extinguishing as organizations but recycling its members into newly labeled parties with similar ideals and proposals. In the democratic history of Guatemala, a political party has never been re-elected; usually the political party defeated in the last election, wins the next one. This is an interesting insight to analyze control for corruption in this country, since political parties have been incapable to represent citizens, place checks on the government, constitute an effective opposition or become a mechanism of accountability that grants options to the citizenry.

As mentioned earlier, this country's economy is fairly healthy and has achieved macroeconomic stability, a reflection of its wealth in resources that does not necessarily depict its poor administration and prevailing symptoms of underdevelopment. With a population of nearly 15 million, it remains predominantly rural and agricultural, although its sources of income have changed in the last decade with services, manufacturing, mining and remittances. According to the World Bank, Guatemala has a lower middle level of income, with a GDP per capita of US\$5,200 and an economic growth rate of 3.5% in 2013. The Guatemalan Monetary Board has projected that in 2014, the country's GDP will grow from 3.3% to 3.9%, envisioning an increase in private and public spending. Exports and imports are also expected to increase, diagnosing a

positive exchange and access to foreign market, the product of several trade agreements (Banco de Guatemala, 2013). In contrast with these more positive indicators, the distribution of income remains highly unequal with more than half of the population below the national poverty line and about 3.5% unemployed (UNDP, 2013).

According to the United Nations, Guatemala's Human Development Index (HDI) value for 2012 is 0.581—in the medium human development category—positioning the country at 133 out of 187 countries and territories. Between 1980 and 2012, its value increased from 0.432 to 0.581, 34% or average annual increase of about 0.9% (UNDP, 2013). In the last decade, some democratic advances have been achieved in terms of installing and developing institutions, though paramount challenges prevail such as improving citizen security, building an inclusive society, and securing resources directed to education, health, safety and infrastructure. These investments, which are critical for fostering development, may be at risk of not prospering due to high levels of corruption. The following section provides a thorough discussion on the situation of corruption in Guatemala for the past decade and how the indicator of corruption control has behaved, shedding light on the potential impact that international norms could have on civil society's ability to control corruption.

## **6.2. Before and after norms to fight corruption**

Guatemala signed the IACC in 1996, ratifying it and allowing it to enter into force five years later, in 2001. The international norm had to follow all the legal steps to bind the state<sup>15</sup> and later on adopt national legislation that would comply with the acquired obligations in the treaty, remaining inoperable until then in terms of application by justice operators and enforcing authorities. Civil society, especially *Accion Ciudadana*, and some legislators embarked on the titanic task of proposing draft laws (from 2001 onwards) that characterized the content of the international norm and criminalized the wrongdoings. A longitudinal analysis of this time frame – before and after norms - sheds light on how certain events could have potentially influenced

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<sup>15</sup> In Guatemala, according to the Constitution, the Executive is in charge of directing foreign policy; entering into international treaties and ratifying them (article 183, section o). The approval of treaties corresponds to the Legislative – Congress – (article 171, section l) prior to its ratification by the Executive. Once this process is completed, the bill returns to Congress for its adoption and publication, where it is specified when the law enters into force.

corruption control in Guatemala and what role civil society might have played with the aid of international norms.

With the aim on analyzing the behavior of the dependant variable in this study, control for corruption, under the assumption that international norms potentially increase civil society's ability to control it, a time period of approximately ten years (2001-2013) is relevant. Statistical information provided by the World Bank and Transparency International provide data to explore what could have potentially caused improvements – or not - in control for corruption and corruption perceptions in Guatemala for the last decade.

According to Transparency International, Guatemala ranked 123 out of 177 countries in the Corruption Perceptions Index<sup>16</sup> of 2013, ending up with a score of 29%. The previous year it scored 33% (ranking 113/174), 27% in 2011 (ranking 120/182), 32% in 2010 (ranking 91/178), 34% in 2009 (ranking 84/180), 31% in 2008 (ranking 96/180), 28% in 2007 (ranking 111/179), 26% in 2006 (ranking 111/168), 25% in 2005 (ranking 117), 22% in 2004 (ranking 122), 24% in 2003 (ranking 100), 25% in 2002 (ranking 81), and 29% in 2001 (ranking 65) (Transparency International, 2013). These rankings show that this country has not significantly improved its performance in terms of perception of corruption by citizens, but remained among the countries that are perceived as having high corruption. Nevertheless, minor increases can be noted at certain points in time, a recovery from 2004 – the lowest point – through 2009 – the highest point, as well as a small boost in 2012 with a recovery of 6 percentage points.

According to TI, a strong correlation between corruption and poverty continues to be evident, since 40% of those countries scoring below thirty percent – the threshold where Guatemala fluctuates -, indicating that corruption is perceived as rampant, are classified by the World Bank as low income countries (Transparency International, 2013).

The World Bank, through its Worldwide Governance Indicators, provides a summary of six aggregate governance indicators together with publicly-available underlying individual

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<sup>16</sup> “The [Corruption Perceptions Index](http://www.transparency.org) ranks countries/territories based on how corrupt a country's public sector is perceived to be. It is a composite index, drawing on corruption-related data from expert and business surveys carried out by a variety of independent and reputable institutions.” [www.transparency.org](http://www.transparency.org)



indicators for each country (World Bank, 2013). The six indicators are voice and accountability, political stability and absence of violence/terrorism, government effectiveness, regulatory quality, rule of law, and control for corruption - the one this study addresses as a means to understand the behavior of the dependant variable -. Control of corruption reflects perceptions of the extent to which public power is exercised for private gain. This includes both petty and grand forms of corruption, as well as 'capture' of the state by elites and private interests (Transparency International, 2013).

Appendix 1 illustrates how Guatemala showed a couple of slight increases in the indicator of control of corruption between 1996 and 2013, namely in 2002, then in 2004, and in 2007 through 2009. It is possible that these minor improvements in the indicator of control of corruption could have been correlated to institutional domestic adjustments in terms of fighting corruption, such as the apparition of the IACC in 2001 – entry into force – and later on in 2008, when the Law of Access of Information was passed in Congress. The first event may have potentially installed the necessary machinery and institutions to begin the follow-up of the Convention, and sprouted the initial awareness on the part of citizens about the contents of the norm. Later on, in 2005, Guatemala became part of MESICIC and started to participate in its PRM rounds, which facilitated the putting in place of tools and mechanisms to comply with MESICIC recommendations, including the drafting of related laws.

Some of the steps that have framed progress in corruption control and accountability in Guatemala include, in 1994, voter's approval of a package of constitutional reforms, including the elimination of a confidential presidential slush fund (*fondos discrecionales*), annual publication of the budget, and shifting the power to appoint the Public Prosecutor and Comptroller General from the President to Congress (Global Integrity, 2006). Also, in 2005, Congress passed legislation ensuring the impartiality of appointment commissions, a law designed to enhance the independence and impartiality of the Supreme Court, the Public Prosecutor, the Comptroller General and the Supreme Electoral Court.

Since the entry into force of the IACC in Guatemala (2001), civil society, under the leadership of *Accion Ciudadana*, and some political parties in Congress – namely *Encuentro por Guatemala*

(EG) and later on *Gran Alianza Nacional* (GANANAL) – have drafted and submitted for discussion a number of draft laws, beginning with the Law of Access to Information. This law remained ignored up to the scandal of the MDF case in June 2008, when civil society, teamed up with legislators from the mentioned opposition political parties and the media, demanded the approval of the bill, which at that particular juncture proved to be essential to control corruption. The objective was to prevent public officials from using public funds under concealment of citizen monitoring and control.

The case that became to be known as MDF, involved the diversion of approximately US\$.10 million (Q.82.8 million) from Congress budget into investments in the stock market, through a financial entity called *Mercado de Futuros* (MDF). Once this scandal was exposed, MDF stated it would return the money in three payments (ElPeriodico, 2008). The responsible public officials and authorities of MDF were tried in courts, finally sentencing Eduardo Meyer (former President of Congress) and Raul Giron (manager of MDF) in 2012 to prison time and fines. Controversy arose even more when the courts punished Giron with 24 years in prison and Meyer only with 3. Citizens demanded that the Anti-corruption Law was also passed as soon as possible, not only to prevent corrupt acts but to sanction the public officials accordingly (Perez, 2012).

The lost money was never returned to the national accounts, as is the case for most of the resources that have been stolen from citizens through corrupt acts. The local newspaper *Prensa Libre* reported in July 2013 that in the last ten years, former public officials of the Executive and Legislative have been accused and tried for the misuse of nearly US\$.300 million (Q.2,456 million), and only US\$.28.5 million (Q.228.5 million) have been recovered. This example of a corruption case that has propelled the approval of long-expected legislation to tackle corruption, as well as the analysis of statistics above, help illustrate what Guatemala has been able to accomplish after the international norms, especially the IACC, highlighting the evolution of civil society's ability to monitor and demand accountability on the part of the government in terms of corruption. The behavior of the dependant variable along the past decade may well be impacted by civil society as a mechanism of accountability, empowered by international norms such as IACC.

### **6.3. Evolution of civil society organizations in Guatemala**

The process of democratization in Guatemala is framed, according to Roddy Brett, between the return to a civilian government in 1986 (Vinicio Cerezo taking office) and the signing of the peace accords in 1996, which chronologically marks the end of the internal armed conflict (Brett, 2008). Nevertheless, this is only a historical reference that will be used in this analysis to explain some of the nuances of Guatemalan civil society during the transition from an authoritarian to a democratic regime, for it is evidently a process that has not ended yet, and civil society continues to endure hardships and challenges that prevent it from fully operating and fulfilling its accountability tasks.

As mentioned before, during the authoritarian years and especially during the Cold War, civil society in Guatemala functioned with a low profile and concealed its efforts to counter political oppression, often being silenced by the dominating military. The main line of work of the few and disarticulated organizations that dared to operate concentrated on human rights defense. They necessarily had to search for the help of international NGO's and international organizations to have their voices heard, precipitating the democratization process.

The Coordinating agency of NGOs and Cooperatives (CONGCOOP in Spanish) has pinpointed the first apparition of these organizations in Guatemala in 1944, when the October Revolution allowed social organization for the first time. In 1954, when Arbenz was ousted, the number of NGOs plunged and remained low due to successive military governments, with only a slight revival in 1976 due to the massive humanitarian aid that flowed after a severe nationwide earthquake. At the end of the seventies, military regimes and the consequent repression caused the number of NGOs to decline again through the middle of the eighties, when the democratic transition began (Fuentes, 2007, p. 22).

In the early stage of political transition, civil society gradually emerged as a collective actor. This culminated in the consulting body of the Peace Accords of 1996, through an organization called the Civil Society Assembly (*Asamblea de la Sociedad Civil*). This revival took place after the end of the authoritarian regimes, in contrast to social mobilizations in the Southern Cone, for

instance. This emerging collective actor was diverse, with a wide range of civil actors mobilizing across civil society, forging new patterns of collective action. The rules began to change as political violence slowly decreased, giving way to new practices and norms associated with the democratic process, triggering the need for new objectives and strategies in civil society and social movements (Brett, 2008). The democratization process and the Peace Accords also opened doors for the international community to set its eyes on Guatemala, and it overwhelmingly supported the process, along with financial aid (Fuentes, 2007, p. 22) .

During the transition, as violence decreased, the culture of silence and concealment also began to disappear, allowing civil society members, activists and journalists to discuss and inform issues involving civil rights, human rights, power transition and even corruption, more openly. NGOs, which partially constitute civil society, emerged in Guatemalan history as relevant actors that have contributed to development. Some of them have also played a vital role of contesting the government and demanding accountability.

To date, the number of existing NGOs in Guatemala is uncertain, although studies indicate that there are approximately 800. Data from the World Bank states that close to 200 perform mostly development-related work and that 54 of them could have annual investments of more than US\$.50,000 (Fuentes, 2007, p. 23). According to the current entity that registers NGOs in Guatemala, the National Registry of Legal Entities (REPEJU in Spanish), 611 NGOs have been registered from 1996 to 2013, performing different development activities (REPEJU, 2013).

There is no legislation that grants the specific right to form civil society organizations (CSOs) in Guatemala that focuses on anti-corruption or good governance; however the Constitution fosters freedom of association (article 34), and a new Law for Civil Society Organizations (Act 2-2003) was adopted in 2003. According to this law, any CSO is free to accept funding from foreign or domestic sources (article 2). There is no norm that requires CSOs to disclose their sources of funding, but articles 13, 14 and 16 of this Law require them to submit financial statements, and to be registered at the tax agency (SAT). Any CSO focused on promoting good governance or anti-corruption must go through legal steps to be able to function, but the government holds no

barriers. There have been a few reported cases, though, in which the offices of CSOs have suffered break-ins by unknown offenders (Global Integrity, 2006).

The Global Integrity score card<sup>17</sup> for Guatemala of 2006 seems to adequately reflect the gap between the formal legal environment that poses no barriers to CSOs and the reality on the ground that often, the country does indeed restrict such activity. Most interviewees in this study asserted that although there is no formal impediment for CSO activities to fight and control corruption, there is still an informal resistance coming from some government sectors and authoritarian enclaves – which are said to be linked to organized crime and networks that are involved in corrupt operations – towards their work. They sense that the issue they attempt to control and eradicate is quite sensitive and that their line of work is dangerous at times.

Democracy brought along the debate of changing the current state of affairs regarding corruption. Civil society in Guatemala still faces the challenge of generating awareness on an issue that is culturally tolerated, debating options to tackle it, as well as demanding concrete adjustments and policies from the government to control it effectively. Citizen participation promotes higher levels of transparency and quality in public management, articulating through NGOs the transition from an emotional or even demagogical expression to consistent and legitimate opinions and criteria regarding corruption (Accion Ciudadana, 2006).

#### **6.4. Acción Ciudadana (AC)**

Created in 1996, *Accion Ciudadana* is a civil society organization that aims to foster citizen awareness and commitment to building a democracy in Guatemala, and to promote transparency in public management. It became the Guatemalan chapter of Transparency International in 2006; as such, it shares its core values, such as access to information and accountability of its own activities, as well as maintaining its independence by remaining non-partisan, non-sectarian and rejecting funding that would compromise the organization's freedom and opinion. It monitors

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<sup>17</sup> The Global Integrity Scorecard is a quantitative Integrity Indicators scorecard, one of the two core elements of the Global Integrity Report; the other one is a qualitative Reporter's Notebook. "The Global Integrity Report is a guide to anti-corruption institutions and mechanisms around the world intended to help policy makers, advocates, journalists and citizens identify and anticipate the areas where corruption is more likely to occur within the public sector". [www.globalintegrity.org](http://www.globalintegrity.org)

and oversees the work of public institutions, convinced that democracy is possible only to the extent that these institutions effectively fulfill their functions. AC aspires to become the leader organization in a society where transparency and citizen participation is practiced, supporting democracy (Accion Ciudadana, 2013).

Transparency International (TI) defines corruption as the misuse of vested power to obtain a private gain. This definition includes three elements: the misuse of power, a vested power (which can be found either in the private or public realms), and a private gain (which is not limited to personal gain to the one that misuses power, but can include family and friends). This research is focused on how civil society controls corruption found in the government, performed by a public official – elected or appointed – that has been vested with power and authority. But it is not overlooking the fact that in a corrupt transaction or exchange, a private actor is likely to exist, seeking a share of the spoils resulting from the private gain. It does not deny either the role that civil society (and the media) plays in monitoring and reporting corruption in the private sector.

Similarly, *Accion Ciudadana* matches the concept of corruption with situations of favoritism and abuse of power, adding meaning to it by identifying situations where a person or public official, bound legal and morally to work in favor of social interest, trades it for his or her own interest or gain. Public power acquires then a feature that translates into the ability to influence and win the wills and intentions of others to obtain personal improvement and benefits.

This is consistent with cultural tolerance towards corruption in Guatemala, where cheating and other unfair conducts tend to be celebrated and admired, while the just and law-abiding citizens are viewed as weak<sup>18</sup>. In such an environment, how can someone not be attracted to become a public official? It is likely that personal gain will be guaranteed, almost unquestioned, so those affected by corruption will rather wait for their turn to have a slice of the cake than demand transparency and hold authorities accountable. As Peace Nobel Prize Winner Rigoberta Menchú put it:

*“To hold public office (whether through popular election or by appointment) is related to*

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<sup>18</sup> Interview with Gustavo Berganza, sociologist and journalist, February 2013

*political plunder: The position offers a blank check and ensures great enrichment. This is a tacitly accepted rule by all of those who call themselves politicians.” (Blake and Morris, 2009)*

According to *Accion Ciudadana*'s website<sup>19</sup>, the effects of corruption include the following: first, common good is not achieved given that decisions taken by some public official respond only to personal – or a particular group's – motivations, instead of reflecting social or community interests. Second, it prevents the state from guaranteeing fundamental rights such as life, liberty, justice, security, peace and integral development, all embraced in the Guatemalan Constitution. Furthermore, it states that corruption has an impact in the economic, political and social spheres.

In the economic realm, corruption causes the increase in prices of goods and mainly services that are to be provided by the state to the population – such as drinking water, roads, electricity, etc. The poor are the segment of the population that is most affected by corruption, since they are not capable of absorbing these added costs. In the political realm, it reproduces and affirms political exclusion, denying some citizens the access to public office, maintaining social inequality, and nurturing networks of complicity among small minority groups of power that rather than contributing to punishing misconduct, foster impunity. In the social realm, it accentuates citizen differences, limiting the ability of the state to respond to the needs and claims of the population, given that it acts in favor of those who maintain influence, resources and power, in detriment of the rest of the citizens (Accion Ciudadana, 2013).

A late-comer to MESICIC in 2005 - after signing the IACC in 1996 in Caracas, Venezuela, and then having the treaty enter into force in August 2001 - Guatemala missed the first phase of its creation and participated with a very low profile during the first exercises of the Experts Committee. The Berger administration, which took office in 2004, allowed for a favourable institutional scenario for fighting corruption, in general, and for the follow-up on the Convention, in particular (Accion Ciudadana, 2007). This could be possibly linked to international and domestic (through CSOs) pressure to comply with the international treaty that had remained inactive for several years, thus driving the state to start participating actively in the PRM and begin to adjust and install the necessary tools and mechanisms to implement the international

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<sup>19</sup> [www.accionciudadana.org.gt](http://www.accionciudadana.org.gt)

norm. The Presidential Commission for Transparency was created, which besides assuming a number of internal tasks, was also nominated as the focal point or central authority to MESICIC.

Civil Society's interest on learning more about and disseminating the contents of the Convention also increased significantly, focusing on the need to seize the opportunities that the international treaty offered for tackling corruption. *Accion Ciudadana* relied on the experience of Roberto de Michelle, former Argentine member to the Experts Committee, who led the civil society team throughout the first steps of following-up and verifying the compliance to the norm. In May 2004, *Accion Ciudadana* invited other CSOs to participate in the drafting of the first independent report to be submitted to the follow-up mechanism. A workshop followed one month later, in which 16 Guatemalan organizations participated, as well as 6 others from Central America, gaining access to the necessary tools to draft the shadow report.

In July 2004, *Accion Ciudadana* headed the effort to draft the independent report to be submitted to MESICIC, leading a team of organizations including *Asociacion de Investigadores del Presupuesto* (AGIP), *Coordinadora Si Vamos por la Paz!* (COVAPAZ), the Monitoring System of Public Works of the Guatemalan Chamber of Construction (SIMOP/CGC), and *Observatorio Ciudadano para el Libre Acceso a la Informacion* (OC). After 3 months of coordinated work, these CSO's validated the contents of the first draft of the independent report and it was presented to the public in November 2004, through a press conference and a formal presentation to Guatemalan authorities. On January 2005, the report was submitted to MESICIC and finally presented to the Experts Committee in September of that same year.

According to AC, the independent report had a positive impact in Guatemalan society, shown by media coverage and the growing interest in the Convention within political and academic circles. It soon became evident that civil society would take up new challenges, including the fact that certain flaws were pointed out in the first exercise that had to be adjusted by the editing team for future documents. More attention needed to be placed on obtaining sufficient data that allowed for the construction of sustained arguments and conclusions regarding the implementation of the Convention in Guatemala; this paved the way for the Map of Indicators on the Implementation of the Inter American Convention against Corruption in Guatemala (*Accion Ciudadana*, 2007).



AC relied on this methodology of their own design to assess the degree of compliance by the state to all recommendations that stemmed from the rounds in MESICIC as of 2007. Subject units, which are contained in Article III of the Convention – Preventive Measures –, were organized as follows: a) prevention of conflict of interests; b) duty to report acts of corruption; c) system for hiring public officials; d) system of procurement of public goods and services; e) participation of civil society; f) assets and income declaration; and g) protection of public officials and citizens that report acts of corruption (Accion Ciudadana, 2007). This tool has allowed since then a permanent follow-up on the implementation of Guatemala's commitments to the IACC, from the perspective of civil society, thus granting it the necessary independence and power to control corruption effectively.

## 7. Key informant interviews and results

Aside from interviewing three current members of *Accion Ciudadana*, and one former member of this CSO, fifteen other participants were interviewed. These participants were currently, or formerly, part of organizations connected with the CSO under study since they are found within the system of control of corruption in Guatemala. Mainly, they were chosen because they may have critical views of civil society/NGO actions and international norms, therefore adding objectivity to this study, but also because they are stakeholders and interlocutors in the accountability process, demanding or delivering it. The list of participating interviewees follows, to which a number has been assigned in order to identify their answers throughout the next section of interview questions and answers. A description of each participant and organization is provided in Appendix 4:

1. Elder Fuentes Orozco, Public prosecutor (*agente fiscal*) at the **Public Prosecutor's Office** (*Ministerio Publico - MP*), within the Anti-corruption Prosecuting unit (*Fiscalia Anticorrupcion*).<sup>20</sup>
2. Employee from the **General Comptrollership** (*Contraloria General de Cuentas - CGC*)<sup>21</sup>
3. Roberto Ardón, Executive Director of the **Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations** (CACIF in Spanish)<sup>22</sup>
4. Jorge Pérez, former head of the dissolved **Presidential Commission for Transparency and Against Corruption**, which functioned for a four-year period as focal point to MESICIC.
5. Juan Luis Velásquez, former advisor to the dissolved **Presidential Commission for Transparency and Against Corruption**.
6. Adela de Torrebiarte, former **Minister of the Interior** (*Ministerio de Gobernacion - MINGOB*) as well as former activist and founder of CSO *Madres Angustiadas*.
7. Two employees from the **Presidential Commission of Transparency and E-Government** (COPRET).<sup>23</sup> These two individuals have been joined together into one

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<sup>20</sup> For more information see [www.mp.gob.gt](http://www.mp.gob.gt)

<sup>21</sup> For more information see [www.contraloria.gob.gt](http://www.contraloria.gob.gt)

<sup>22</sup> For more information see [www.cacif.org.gt](http://www.cacif.org.gt)

participant slot, since they were interviewed together and their views coincided in all the questions they decided to answer.

8. Leonel Lira, Congressman from the political party *Encuentro por Guatemala- EG*<sup>24</sup>.
9. Anibal Gutierrez, legal and political advisor to the **International Commission Against Impunity in Guatemala (CICIG in Spanish)**.<sup>25</sup>
10. Marta Altolaguirre, former commissioner to the **Human Rights Council of the OAS** and former **Vice Minister of Foreign Affairs**.
11. Gustavo Berganza, **Journalist and sociologist**.
12. Alejandro Quinteros, participant from CSO *Movimiento Civico Nacional - MCN*<sup>26</sup>
13. Edgar Gutierrez, former **Minister of Foreign Affairs** and current director of the Institute of National Problems (*Instituto de Problemas Nacionales*) of San Carlos University.<sup>27</sup>.
14. Francisco Villagran De Leon, former **Permanent Representative of Guatemala to the OAS**.

The members of *Accion Ciudadana* who were interviewed for this study are:

15. Manfredo Marroquin, President of the Board
16. David Gaitan, Project Manager of ALAC (Anti-Corruption Legal Assistance)
17. Marvin Flores, Project Manager
18. Alejandro Urizar, Former Director of this CSO

### 7.1.Interview questions and answers

The following is a record of the responses to the sixteen interview questions. Not all participants to the study answered all questions, since some of them did not have an opinion on a particular item, or in some cases, decided to focus on a specific question or item. Also, some answers and opinions overlapped and were provided by more than one participant.

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<sup>23</sup> For more information see [www.transparencia.gob.gt](http://www.transparencia.gob.gt)

<sup>24</sup> For more information see [www.encuentro.gt](http://www.encuentro.gt)

<sup>25</sup> For more information see [www.cicig.org](http://www.cicig.org)

<sup>26</sup> For more information see [www.mcn.org.gt](http://www.mcn.org.gt)

<sup>27</sup> For more information see [www.minex.gob.gt](http://www.minex.gob.gt)

For these reasons, answers are summarized and categorized into three options for each question (A, B or C), mentioning which participants fit into each category at the end. Questions 6, 10, 12 and 13 only had two criteria for provided answers, which is clear enough in the responses, so the three-option classification is not applied in those questions. This method was chosen exclusively as a means of organizing opinions and to enable the identification of trends or patterns; it is not intended to illustrate a quantitative assessment, since the richness of the study lies in the insights and opinions themselves. Participants were not asked to agree with each of the possible answers, but they were allowed to express themselves freely in each open question they chose to answer.

The synthesis of answers was done after all the interviews were finished, grouping similar answers together to fit a common line of opinion for each question. As the reader will notice, some questions are not covered by all the participants, since some of them chose not to express an opinion about it and this was respected in the study. In the case of questions 6 and 13, since they were aimed exclusively at members of the interviewed CSOs, they do not include all participants, and intend to illustrate only the opinions of civil society. At the end of this section, conflicting as well as coinciding ideas and insights are discussed, as a preamble to the concluding remarks of the study.

### **1. What is your opinion on the Convention: its application, strength, evolution and legitimacy in Guatemala?**

- Answers:
- A. IACC is not applied; it is unknown, lacks strength and legitimacy
  - B. IACC is a strong norm, but lacks application and legitimacy in Guatemala
  - C. IACC is applied; it is evolving as a strong norm and gaining legitimacy

#### **A. *The IACC is not applied; it is unknown, lacks strength and legitimacy***

-IACC use by justice operators depends on entities that promote the norms, such as USAID and other foreign aid agencies. Human rights treaties are used more since they are more widely known. Once the IACC was ratified, failure of enforcement followed due to political resistance coming from powerful pressure groups, eroding the spirit of the treaty. It is a well-constructed norm yet suffers great weaknesses when it comes to implementation; the hemisphere has

different juridical systems and asymmetries in terms of ability to implement the norm. Practices are shared though, and a demonstration effect occurs. (1, 2, 5)

*B. The IACC is a strong norm, but lacks application and legitimacy in Guatemala*

-The IACC has enough strength as a norm, becoming part of national legislation in 2011; although not enough strength for Guatemalan standards. Lack of awareness on the part of public officials, justice operators and law enforcers regarding this and other norms against corruption, makes it irrelevant, and it is perceived as foreign. The culture or practice of application of international laws is still absent. (15, 16, 17, 18)

*C. The IACC is applied; it is evolving as a strong norm and gaining legitimacy*

-IACC is of great benefit for Guatemala because it binds and engages the state. It is relevant and has greatly influenced the way the American hemisphere faces corruption nowadays. It has gradually gained respect and legitimacy, as well as acceptance on the part of member states, including Guatemala, adapting their legislation to the acquired commitments to fight and control corruption. (7, 14)

**2. What has been the role of the Convention in civil society's ability to control corruption and demand accountability in Guatemala? Has it affected its actions, demands and overseeing activities? If so, how?**

Answers:

- A. IACC has no role or effect on civil society's ability to control corruption
- B. IACC is used as a platform that empowers civil society to control corruption in lieu of the government
- C. IACC is used by civil society to push for legislation and public policies to control corruption

*A. The IACC has no role or effect on civil society's ability to control corruption*

-*Accion Ciudadana* has closely followed corruption cases, carried out capacity-building efforts, and pushed for legislation with the flag of the Convention, yet the norm remains unknown and poorly applied, leaving the IACC to linger at a dogmatic level. There is not enough evidence to ascertain that CSO's use international norms to check the government effectively, because there

are equally powerful forces in the political arena that impede the norm from being enforced fully, thus stagnating the process – everything remains the same. Pressure set by CSO's rests on the Constitution, they do not use any international norm to exercise influence in the political arena, but work from a local standpoint and empirical manner, more grassroots than globally connected or supported. (2, 5, 12)

*B. The IACC is used as a platform that empowers CSOs to control corruption in lieu of the government*

-The private sector does not reference international norms but places paramount accent on the Constitution and the freedoms it guarantees. *Accion Ciudadana*, on the other hand, is empowered by international norms in two ways. One is that they visibly control corruption due to the absence of institutions that effectively prevent, eradicate or at least reduce corruption. Also, AC channels citizen expression effectively, monopolizing this role. Transnational forces (including norms) back them up to candidly claim transparency, answerability and accountability. (3)

-Civil society plays the awareness-creating role on practically all international conventions and norms, which points out a great weakness in terms of institutional strength in the government. CSO's should help and accompany, but not monopolize this role. As the Guatemalan chapter of TI, AC has enough legitimacy and respect to promote the Convention and replicate that legitimacy through awareness, using it as their flag that validates their monitoring and overseeing tasks (4, 14)

*C. The IACC is used by civil society to push for legislation and public policies to control corruption*

-*Accion Ciudadana* maintains a permanent agenda against corruption and has made good use of international norms to shape their strategies of influence on national politics. Domestic norms have more impact than international norms, though, where the latter involve an administrative or criminal sanction, while the former do not mean much to citizens. The IACC has no direct incidence on the way civil society controls corruption, but stands as the foundation on which legislators have built laws such as the Law against Corruption and the Law of Access to Information. Within everyday discussions or public negotiations of laws and mechanisms (tools

for accountability and auditing, for instance), the Convention is absent. Reference is made to domestic laws. (11, 13)

-The strategic partnership between civil society and the media allows AC to control corruption, in terms of uncovering the veil that hides what goes on backstage, exposing facts, and finally demanding that the laws are enforced and international treaties, respected. The monitoring, exposing and follow-up activities have increased with the help of the IACC and UNCAC, pressuring to modify behavior and take prevention more seriously. The UNCAC is a vital reference, but the IACC is more practical and useful because of MESICIC. The IACC is a useful tool for CSO's when it comes to controlling corruption, from the standpoint of pressuring for legislation that imitates the international norm. (15, 16, 17, 18)

**3. Can you identify salient differences in the usefulness of the norm during the different stages that the norm encountered - from the moment the norm was demanded, began to be negotiated, approved, ratified and then entered into force? How was civil society involved in this demanding and negotiation process? Were other actors involved?**

Answers:      A. IACC was most useful at the beginning of the process to introduce awareness  
                    B. IACC was most useful when it entered into force and began to be translated into domestic laws  
                    C. IACC was most useful when it entered into force and the state began to follow up and comply with MESICIC recommendations

*A. IACC was most useful at the beginning of the process to introduce awareness*

There is a significant lack of political will to make the IACC applicable and to introduce good practices and self-restraints into national legislation. It may be useful at the beginning of the process to introduce prevention-awareness notions, but anti-corruption laws remain unfocussed and do not fully reflect the true spirit of the international norm (2, 11).

*B. IACC was most useful when it entered into force and began to be translated into domestic laws*

-AC has undertaken active work during the stages the norm has endured, leading to the passing of anti-corruption laws (first with the law of access to information). Joint work with parliamentarians was determinant, such as efforts with Congresswoman Rosa Maria de Frade from the political party GANA, who pushed for the law of access to information in 2008. (8, 13)

-Before the IACC entered into force in Guatemala (1996 to 2001), perhaps only 5% of civil society's attention was set on the norm itself and 95% on local norms; the treaty had basically null importance. It began to be promoted from civil society and not from the government. Good practices began to be developed and positive exchanges took place with other countries. AC has built capacities in government institutions (carrying out workshops in 2007 and 2008 with public prosecutors, for example). Unfortunately, resistance was found to use the Convention as a working tool because it was foreign and had not yet been translated into a national norm (15, 16).

*C. IACC was most useful when it entered into force and the state began to follow up and comply with MESICIC recommendations*

-The IACC has been most useful as a reference to follow up on recommendations that emerge from the MESICIC rounds, through the development by AC of an indicator map. This follow-up tool was created in response to the government initiative (Hugo Maul during Oscar Berger's administration) of designing a road map to comply with recommendations. This let other relevant actors know that the Guatemalan chapter of TI has the ability to influence results and begin to control corruption (18).

**4. How has the state facilitated participation and broadened spaces for civil society and other actors involved in controlling government corruption? Has the Convention had a specific role in this regard? What was it like before the Convention entered into force?**

Answers:

- A. Civil society has more space but abuses its role in accountability, supported by foreign actors, weakening the justice system in the long-term
- B. Civil society has gained space but due to other factors other than IACC
- C. There has been significant progress in terms of openness and citizen participation, and IOs help to consolidate this effort



*A. Civil society has more space but abuses its role in accountability, supported by foreign actors, weakening the justice system in the long-term*

-Civil society has taken up the role of finger-pointing and remains defensive against institutional progress, in order to maintain the monopoly of accountability. This structural shortcoming is the effect of post-civil war survival skills, supported by the international community; CSO's are not organized independently from grassroots but respond only to an external agenda. CSO's have lost their virtue. Citizens have no means of holding the government accountable, because CSOs sometimes become players of the dirty game of misusing public resources (5, 10).

-Civil society is selective when it comes to attitude towards power, sometimes contesting it and others, taking the same side. The cornerstone is justice, in order to combat insecurity, impunity and corruption, so the core effort must be to strengthen the justice system. Political incidence coming from civil society is essential, although they shouldn't be taking up the role of public prosecutors, because when CSO's such as *Accion Ciudadana* take an investigative task on a given case, it will likely help the case progress, but at the cost of altering the system. Justice operators need to regain the control of the investigations and trials without giving up their spaces to civil society (9).

*B. Civil society has gained space but due to other factors other than IACC*

-Foreign aid programs such as USAID, more than the IACC itself, have enabled participation of CSO's in investigations regarding corruption cases, advising, capacity-building and training the Anti-Corruption Prosecuting unit of the Public Prosecutor's office, thus occupying a relevant space in corruption control through prevention and overseeing. The whole political architecture is still open to many corrections, but the citizens themselves are neither demanding nor pressuring enough. It may be due to the patronage system culture – *clientelismo* -, where corruption is not even questioned. Nevertheless, 25 years ago, the ability to control corruption and demand accountability in this sense was null, the state exercised censorship, and basic rights were not guaranteed. Now the state has lost part of its repressive power and at least in an artificial way, the IFOs back up the efforts toward a more open society, as well as transparent and accountable governments (1, 11).

*C. There has been significant progress in terms of openness and citizen participation, and IOs help to consolidate this effort*

-There is a perceived greater degree of citizen participation that has changed over the past decades, as part of the democratic process. There is, nonetheless, deep concern for weak institutions and follow-up on ongoing anti-corruption policies. The approach of IACC is to force states to address corruption and transparency issues in an integral manner, not as a government but as a country, opening up spaces for civil society. Apathy is no longer the prevailing attitude; youth is participating more than ever and is more fearless than their precedent generation, which grew up under repression. The emerging political class must beware, though, because future leaders can either detonate the revolution citizens are crying out for, or become part of the same corrupt and weakened state (4, 6, 12).

-*Accion Ciudadana* started working at the beginning of the nineties, when the term corruption was not even recognized by politicians, let alone public servants. Creating awareness of what acts and behaviors are defined as corrupt has been a long and difficult process, creating resistance along the way, after decades of enduring authoritarian regimes that kept these actions concealed, therefore unacknowledged to citizens. Entities that appeared when democracy came around and that were conceived as instruments for self-restraint, such as the MP and the General Comptroller, became part of the problem and not the solution. The figure of the Anti-corruption Prosecutor suffered the same fate when it was created in 2001. A closer work relationship was expected but this took a very long time and much was lost along the way (15, 16, 17).

**5. Has the Convention been a tool for demanding transparency and exercise accountability in attempting to control corruption? If so, how? How has its incidence changed through time?**

- Answers:
- A. The IACC is not an effective tool for demanding transparency and accountability, because the laws that stem from it are weak
  - B. The IACC is an effective tool for demanding transparency but citizens still don't demand accountability
  - C. The IACC is an effective tool for demanding transparency and accountability.

*A. The IACC is not an effective tool for demanding transparency and accountability, because the laws that stem from it are weak*

-Several years after its entry into force, one of the first pieces of legislation to reflect some of the precepts contained in the Convention - the Law of Access to Information – is still not applied fully. There is high resistance from the state to reveal information which, under law, is open to the public. Public officials hand out information under pressure, instead of doing it because it is expected as part of their duties. The IACC has not been used properly to demand transparency and accountability because once its contents are transferred into a domestic law, the burden of proof is reversed (falling on the accused); subjects are guilty until proven innocent. This has not enabled the institutional development to combat corruption effectively. The Convention has provided guidelines to perform more effective checks and balances, but the dilemma in Guatemala is that the system does not always apply to everyone, and at times it is used as a tool of revenge between conflicting political factions. (2, 5, 8).

*B. The IACC is an effective tool for demanding transparency but citizens still don't demand accountability*

-Citizens do not exercise the right to demand accountability, so CSO's seem to be left alone in the fight. What really drives these organizations then? Is it really about citizen's interests or what foreign financing groups want to promote? The only right Guatemalans exercise in terms of accountability is voting. In the government radar, participation and control over it on behalf of citizens is nearly void (9).

-There have been a good number of civil society initiatives that have been put in place to promote transparency in public administration, as well as accountability. These organizations are very active in demanding compliance with internal laws that tackle corruption; domestic norms have more weight than the international – which are also embodied in the national legislation but have a lesser effect (11).

*C. The IACC is an effective tool for demanding transparency and accountability.*

-There has been progress regarding corruption control by citizens, who are now more likely to report and present claims to proper authorities. The Law of Access to Information prompted this practice and many institutions – public and private – have provided tools and channels to report

wrongdoings, thus shifting the old culture of silence and concealment. It was citizens, through CSO's and the media, who demanded the passing of this law; in turn, it has become a success for CSO's. In-situ visits within the MESICIC PRM greatly contribute to openness and transparency, since not only CSO's check on the government, but other countries get to assess the situation of corruption, present recommendations and demand compliance to the norms (13, 15).

-The Anti-Corruption Law lifted the IACC's profile and it began to be used as a tool to address under-analyzed matters such as influence peddling; even the private sector began to get involved. A multi-sectorial panel was formed to discuss the law, coordinated by *Accion Ciudadana*, where the treaty was mentioned numerous times, discussing the law deeply in light of the Convention. There was no jurisprudence in the region before this treaty, so AC used it as spearhead. The Convention has been present as main foundation during this whole process of demanding legislation to tackle corruption, provided not only reference but defence and endorsement. The entire process endured by the approval of the Law of Access to Information, for instance, had specific outcomes that improved corruption control indexes, as well as perception. The World Bank and GAFI modified its own perception as to what Guatemala could offer in terms of controlling corruption and strengthening accountability mechanisms (16, 17, 18).

**6. [For CSO participants only] Do you recall specific corruption cases/investigations or actions on behalf of civil society in which the Convention was utilized, be it as reference, implementation tool or mechanism, as means to increase civil society's ability to control corruption?**

-Aside from AC, the rest of CSO's do not formally work with treaties or rely on other international backing to demand transparency or condemn government corruption. Control is exercised by demanding the prevalence of rule of law (3, 12).

-There are not specific corruption cases or investigations in which AC has used the Convention specifically as reference or tool to control corruption, because there is still very little knowledge among public prosecutors, judges and other justice operators on the matter. Now that the Law of Transparency and the Anti-Corruption Law are in place, some progress has been achieved, but the challenge remains for these actors to be able to prove in courts, with the available evidence (15, 16, 17).

**7. What is your opinion on MESICIC: its application, strength, evolution and legitimacy in Guatemala?**

- Answers:
- A. MESICIC is not an effective tool, it remains weak
  - B. MESICIC is a strong mechanism but the problem is the lack of institutions to comply with recommendations
  - C. MESICIC is an effective tool to control corruption

*A. MESICIC is not an effective tool, it remains weak*

-MESICIC is not an effective tool because governments submit the periodic reports instead of the member states. Guatemala's role within this PRM has been weakened by the fact that there is very poor inter-institutional coordination and that there is not a permanent entity that heads this effort, thus producing weak documents and poor anti-corruption policies. The past administration did not carry out a proper transition or even explained how periodic reports to MESICIC should be drafted and presented. (7).

*B. MESICIC is a strong mechanism but the problem is the lack of institutions to comply with recommendations*

-Regarding the challenges posed by the PRM, the lack of institutional continuity is the most relevant. Instead of installing a permanent unit that oversees the execution of recommendations and other binding commitments, the wheel is reinvented every four years. Any project or policy implemented by one administration in the right direction to fight corruption is discarded by the next. The quality of government periodic reports depends on the person that drafts them at that particular time, affecting the reports and compromising the whole PRM. MESICIC is a useful mechanism in terms of denouncing which aspects of each recommendation are not being addressed by the government focal point. Since this entity is not permanent it does not preserve a national position or policies. Therefore, CSO power in the mechanism is even stronger (2, 5,15, 16, 17).

-There are pros and cons to MESICIC: advantages include the active participation of CSOs in the PRM. Up to Perez Molina's government, the relationship government-CSOs was cordial and productive, but that is not so nowadays; the current administration does not seem to want to

cooperate with civil society in corruption matters. Disadvantages include elements that need strengthening such as respect to CSO reports, as well as automatic appointment of national focal points as anti-corruption experts within the in-situ visit mechanism. These experts are not necessarily qualified or experienced; the misuse of this tool could end up weakening the PRM. (16, 17)

*C. MESICIC is an effective tool to control corruption*

-MESICIC is the added value of the IACC because it supports the demand for compliance of the norm. Additionally, it provides the region with a working tool through which the PRM is not reduced to finger-pointing, but more about integral correction of a burden that all countries carry (4, 14).

-Shadow reports presented by CSO's in the Americas are the core of civil society's role in the accountability process, because they are an alternate source of information provided to the Conference of member states when evaluating each country. MESICIC is a much more familiar concept than the IACC, and it is taken seriously, since failure to take action produces political consequences. It is a pioneer PRM in the fight against corruption and it continues to evolve; an example is the recently adopted in-situ visits that the mechanism performs. The UN and OCDE recognize MESICIC's achievements and endurance, turning to its accumulated experience to look into the future of these PRMs (15, 18).

**8. How does civil society participate in MESICIC? How has its participation and incidence been reflected through time on civil society's role of exercising accountability? What is the role of other actors, such as the Public Prosecutor against corruption?**

Answers:

- A. The role of civil society is harmful and does not further the state's interests in fighting corruption
- B. The role of civil society continues to evolve as trust grows
- C. The role of civil society is positive, of facilitators, creating awareness and demanding accountability

*A. The role of civil society is harmful and does not further the state's interests in fighting corruption*

-Criticism coming from *Accion Ciudadana* is not at all helpful in MESICIC; Guatemala should submit one state report, after meeting and answering the questionnaire together, as well as implement the recommendations jointly. Integral work is necessary to tackle corruption and comply with international norms (7).

*B. The role of civil society continues to evolve as trust grows*

-AC, like other CSOs in the Americas, are always ahead of the governments in terms of knowledge and information regarding corruption and international norms, as well as mechanisms, procedures, protocols and practices. The focus given to periodic reports has at times been of a defensive nature, but this may be due to the governments' interpretation of what local civil society is called to do at the MESICIC rounds. The first meetings at the First Round were tense and filled with mistrust between governments and CSOs of the whole region. The watchdog role of CSO's was not recognized nor appreciated; they were seen with suspicion, since their critiques could potentially be coming from the opposition at home. As the PRM moved forward, trust and respect increased and a constructive dialogue occurred. (14).

*C. The role of civil society is positive, of facilitators, creating awareness and demanding accountability*

-During Colom Argueta's administration (2008-2011), two great achievements were reached regarding MESICIC: participation from CSO's, especially AC, was furthered; and Guatemala offered to be the first OAS country to host an in-situ visit. This initiative strengthened Guatemala's position in the hemispheric realm, reaffirming its commitment to tackle corruption. CSOs present recommendations that go beyond criticism in MESICIC; these recommendations enable, open up spaces and facilitate CSO's ability to control corruption. They react during particular junctures, but their independence has far more impact in the long term on the outcomes, since legitimacy is paramount (4, 18)

**9. How do you perceive the evolution of the internalization of the international norm in Guatemala? What was the role of the state and the international community**

**(international organizations, NGO's, diplomatic corps, multinationals, etc.) in Guatemala during this process?**

- Answers:
- A. The evolution of the norm has not been successful; too much still needs to be done
  - B. The norm will be successful as soon as it is fully internalized
  - C. The evolution of the norm was linked to democratization and the promotion of human rights and it thrives

*A. The evolution of the norm has not been successful; too much still needs to be done*

There is very little progress in law-making that truly applies the IACC's objectives. This endeavor has been left in the hands of CSO's and the private sector, instead of the public sector. Hyper-corruption is paralyzing the state, while anti-corruption laws undergo heavy negotiations and end up being murky at best. Laws related to transparency, probity and embezzlement lack strength and the Executive branch is unable to enforce these laws anyway due to institutional weakness. The answer lies on prevention, application of ethical principles, and rules of procedure to reduce discretionality (10).

*B. The norm will be successful as soon as it is fully internalized*

There are several laws that reflect the principles embedded in the Convention, which have been promoted in Congress and now are slowly becoming a reality. Of course, there are many actors in the Legislative branch that would rather delay or oppose such laws, but slowly, the IACC is being internalized (8).

*C. The evolution of the norm was linked to democratization and the promotion of human rights and it thrives*

When Guatemala entered into the Convention, it matched a domestic process that demanded changes to the prevailing paradigm, especially regarding transparency, since the state had historically been opposed to access to information. Freedom of press and other human rights that were recognized when the peace process came along facilitated the internalization of the IACC and MESICIC. Since 2004, the three administrations that have been in office have had different approaches regarding focal points, some being more experienced than others. (14)



**10. If you could visualize a map of how corruption control takes place in Guatemala, which would be the main actors you identify? What is their relationship to the Convention and the MESICIC? Do they use these tools in their accountability activities?**

-The ultimate overseeing and supervising entity in charge of controlling corruption is the General Comptrollership, aided by the Public Prosecutor and the Judiciary. Civil society should participate also, but AC has become hesitant to get involved, creating apathy among citizens towards COPRET. CSOs are only eager for media coverage, and even if their critiques can be used as guidelines to make certain changes, only the state entities are entitled to control corruption through checks and balances (7).

-The agencies that should cooperate with the focal point in the preparation of the reports to MESICIC are the General Comptrollership, the SAT, the Intendancy of Special Verification at the Superintendence of Banks, the Anti-Corruption Public Prosecution and the Executive Branch, usually through the office of the Vice President. During Colom's administration (2008-2011), a Vice-Ministry of Transparency was created within the Ministry of Finance, but it disappeared at the end of UNE's government; this opportunity that should have been taken to institutionalize the national focal point. In theory, the following actors should be involved in the task of controlling corruption in Guatemala; notice that the actors already exist, but they do not function properly or at least to their full potential:

*Mandate:* General Comptrollership

*Criminal investigation:* Public Prosecutor's office (MP) through the Anti-Corruption Public Prosecution with the aid of CICIG

*Justice:* Courts

*Legislation:* Congress

*Executive:* COPRET

*Private Sector:* CACIF, Chamber of Construction, et al.

*Technical support:* Special Verification Intendence (IVE) at the Superintendence of Banks (SB) and Superintendence of Tax Administration (SAT)

*Social Accountability:* CSOs (*Accion Ciudadana* et al) and the Media (16, 17)

-*Accion Ciudadana's* relationship with other actors in charge of controlling corruption is determined by three factors: 1. the political party that is in office; 2. the organizing capacity within CSO's, which has greater weight with mediatic presence and international aid; and 3. the political juncture. In 2005, when the first Guatemalan reports were submitted to MESICIC, a strategy inspired on a successful Argentine model was used. The citizens' monitoring power was organized through a network of organizations that became acquainted with the Convention, its follow-up mechanism and the shadow report, thus creating "demand" for corruption control (18).

**11. Regarding the MDF case of the Guatemalan Congress during former President Alvaro Colom's administration (2008), what was civil society's role in demanding the investigation and prosecution of the responsible public officials? How were other actors involved? Do you recall specific details that might link the Convention to the accountability process?**

- Answers:
- A. The role of CSOs was weak, apathy prevailed
  - B. The role of CSOs was aggressive and relevant, yet did not achieve much
  - C. The role of CSOs was positive and a lot was achieved

*A. The role was weak, apathy prevailed*

In the MDF case, the level of social apathy towards the embezzlement was surprising. Citizens did not appear to be outraged by the waste of resources and there was no pressure, so the authorities were very relaxed (5).

*B. The role of CSOs was aggressive and relevant, yet did not achieve much*

-The role of the media and CSOs in conducting investigations, legal prosecution and finally achieving a court ruling in the MDF case is a constructive one. Unfortunately, even after softly sanctioning the corrupt officials, there is still no sign of the missing money, lost while invested in the stock market. This case propelled the Law of Access to Information, but all those years it took were costly for Guatemala, letting corruption become more and more sophisticated (2, 11).

-In the MDF case, the General Comptrollership was a petitioner during the procedures, yet could not detect any investments using the millions extracted from Congress back in 2008. There was

serious negligence at the time, since no investigation was performed within the financial system, where a clue to the destination of the missing funds could have solved the case sooner and the assets returned to Congress. The General Comptrollership did not promote any of the sanctions that it should and could have in the MDF case: criminal complaint, fines or economic sanctions, and - the most important one – administrative procedures whereby the charges include the retrieval of the misplaced funds. It is imperative that discretionality is avoided at the moment of reducing fines, because the Law of Probity (assets declaration) is still very weak and allows the reduction of 99% of the fines, which for some offenders is so low, that illicit enrichment is worth the risk (2, 8).

-In the MDF case, the punishment was quite soft, but the law could only allow for low sanctions at the moment. The deviation or, as some say, “the vanishing” of the money could not be approached as a case of money laundering since there was no information on anyone actually receiving the resources. The only responsibility that was questioned from the President of Congress was that at the moment of assuming office, he did not check and sign the accounting books like he was supposed to, which allowed for resources to be easily extracted. The signing of the books is not as serious an offense as taking part in the deviation of public funds. (1)

### *C. The role of CSOs was positive and a lot was achieved*

Civil society exercises pressure through the media in an attempt to translate international norms into national legislation, the way AC worked through the MDF case to pressure for the approval of the Law of Access to Information (13).

## **12. What might have been the role of the Convention regarding formal procedures/trial followed and monitored by civil society in terms of this embezzlement case, from the filing of complaints, including the accusation phase, through court sentences or rulings?**

-This emblematic case served as a platform to influence and pressure for the approval of the Law of Access to Information in 2008. AC managed to impact the long-awaited passing of this bill, focusing not on the public official or the judge or the prosecutor, but on the lack of accessible information regarding public funds, which should have been available for all to see and

scrutinize. Eight draft laws were presented and ignored one after the other, reflecting the low priority given to the fight against corruption as well as to international treaties. The MDF corruption case became the catalyzer of the long-awaited legislation. The IACC and MESICIC had put pressure long enough, but only in the name of theory; the MDF case proved they were right. (8, 15)

-The court sentence against Eduardo Meyer is an important precedent for future cases of this kind, but in the public eye the money is still missing and harsher punishments are demanded. Adjustments must be made to all laws designed to tackle corruption effectively and get court rulings and punishments. This can positively influence the population's perceptions on corruption, but this is precisely what is still lacking (15, 16, 17).

**13. [For civil society participants only] In what ways, if any, have the actions and overseeing activities carried out by civil society in this particular case, contributed to the strengthening of the accountability role regarding control of corruption in Guatemala? What has the role of the Convention been in this strengthening of civil society's ability to control corruption, if any?**

With the aid of the media, there was firm demand for the clarification of the misuse of public funds in Congress, claiming transparent investigations. It was an opportunity to further the anti-corruption agenda, beginning with the Law of Access to Information and afterwards, the Anti-Corruption Law (15, 16, 17)

**14. Do you recall specific cases of government corruption which succeeded through court sentences or rulings? How was criminal prosecution applied from the point when the Convention entered into force?**

Answers:      A. There have not been any successful cases of corruption in Guatemala  
                    B. There was only one successful case of corruption in Guatemala  
                    C. There have been several successful cases of corruption in Guatemala

*A. There have not been any successful cases of corruption in Guatemala*

The Guatemalan justice system has not yet enforced the available laws to the point of sanctioning corruption enough as to deter others from similar wrongdoings. The lack of a robust and permanent accountability institution that coordinates all actors involved in the task of self-control regarding corruption, one that is committed to follow up on cases, report to citizens and international organizations, and in general performs the role of answerability, is a great weakness (4, 10, 15).

*B. There was only one successful case of corruption in Guatemala*

The embezzlement case of IGSS that took place in 2003 is perhaps the only successful case where a public official was sanctioned for severe corrupt actions. Some of the money was recovered and the responsible public servant sent to prison (8, 17)

*C. There have been several successful cases of corruption in Guatemala*

Some emblematic cases have contributed to national jurisprudence and the spread of anti-corruption awareness, such as the case of Marco Tulio Abadio (former General Comptroller), the Guatemalan Institute of Social Security (IGSS) scandal – in which around Q.360 million were extracted from funds destined to seniors and annuity, and some of the money was recovered -, and the Dubon Palma case and political party financing. It depends on what we expect from those “successful” court rulings, since as in the MDF case, sanctions were not harsh enough to discourage corrupt practices. The new Anti-corruption Law may have stronger teeth now for court rulings to be more effective (2).

**15. The entry into force of the Law against Corruption – Criminal Act against Illicit Enrichment - at the end of 2012 seems to be a success for the implementation of the Convention in Guatemala. What are your insights in this regard and what is the cost of doing it ten years after the Convention was ratified by the country? What was civil society’s role in achieving the final step in the internalization of the international norm?**

- Answers:
- A. The costs are high in terms of citizens’ perception of vulnerability and despair
  - B. The costs are high in terms of institutional damage
  - C. The costs are high in terms of lack of investment in development

*A. The costs are high in terms of citizens' perception of vulnerability and despair*

The costs are immeasurable. National coffers have been open for more than ten years allowing for a sophisticated corruption structure to take over, including clientelism and poor public projects. These spaces are expected to be closed with the new legislation but the future of the law remains uncertain. The cost is high because it is too late. State weaknesses have worsened, therefore hindering the adoption of policies that actually make the law applicable. But if it is hard to tackle corruption with the law, it is even harder without it. The country has been left completely vulnerable. The law is definitely the best tool for CSOs to control corruption and continue to exercise monitoring activities, but the real danger lies in judges and prosecutors, who interpret the law and use different criteria to set jurisprudence for subsequent cases. Another great danger is that if the justice system and institutions remain weak and manipulated by politicians in power, the law could potentially be used to go after the opposition or whoever gets in the way of illicit business deals (4, 3, 8).

*B. The costs are high in terms of institutional damage*

-Late approval by Congress of the Anti-corruption Law sends a discouraging message to society: that corruption does not deserve to be punished in Guatemala. There was monumental pressure for this law to remain in discussion and not be passed; it was born with forceps, and went through too many modifications that ended up in weak law that was better than nothing. Up to now, there is no strategic litigation on emblematic corruption cases; all we have is the weak law and political influence. The norm is defective, but it can be used strategically by civil society, focusing on stimulating public reporting and whistleblowing, empowering it by the people, and filling the gaps it has (9).

-It took ten years to achieve the delayed law, a promise that took too much time to come true. In Congress, the main concern was that if the anti-corruption law was not passed, foreign countries and organizations would be disappointed and stop foreign aid. Secondly, legislators worried that offenders could not be properly sanctioned unless a more robust law that would modify the Criminal Code was put in place. And finally, the political scandal became unbearable for UNE (Colom administration) as the next elections approached. The political erosion caused by public indignation was nothing compared to the social and economic costs of holding up numerous draft

laws for such a long time. Not only money was lost but also institutional credibility and legitimacy due to impunity, harder to recuperate than resources themselves (15).

*C. The costs are high in terms of lack of investment in development*

The costs are high when we add up the resources lost to corruption that could have been invested in development. Also the signals that society perceives are devastating. The media and CSOs are doing an excellent job in exposing corruption and creating awareness to get the population involved. Citizens notice that corruption in the higher spheres of society trickles down not as tiny drops that have no incidence or effect, but as a waterfall of consequences, including lack of resources, opportunities, growth and justice (1).

**16. With the approval of the Law against Corruption, what do you foresee will be the effects in the long term of having entered into the Convention? Will this strengthen the role of civil society in controlling corruption? If so, how?**

Answers:      A. The law will not have an impact on corruption control, it is too weak  
                    B. The law will take time to do its job, but it is better than not having it  
                    C. The law will effectively control corruption in the long-term along with other factors

*A. The law will not have an impact on corruption control, it is too weak*

More laws do not necessarily make a better country and this new Anti-corruption Law is not the solution. It is the justice system that needs to take on the tasks they were conceived to do with the adequate investigations, prevention systems and convictions (12).

*B. The law will take time to do its job, but it is better than not having it*

-Civil society now has a more tangible legal instrument to work with (Anti-corruption Law), but the country will take as many years to recover from corruption as it took to spoil, although exponentially. Institutional stability is imperative so we can see positive results in the future. There are still many misconceptions and obstacles in Congress that are yet to be resolved. For instance, there is a general perception that the law might be used as an instrument of revenge from one faction to another, from those politicians in office to their predecessors. The whole

political class must be renovated, including civil society, which at times has also irresponsibly generated more antagonism than dialogue (4, 6).

-The final draft of the Anti-corruption Law was edited from original versions in an attempt to refine and clarify certain ambiguities of interpretation. But while loopholes were being closed in the law, it also began losing its teeth; but it can still bite. Four major complements are still under analysis in Congress: first, the law that regulates public trusts, because it has been misused and abused, and the Superintendent of Banks should be able to audit any account where public funds exist. Second, the organic law of the General Comptroller's office, to modify its election process and its financial independence – this authority currently responds to Congress, which in turn does not hold it accountable, meaning that the CGC barely oversees or controls corruption in Congress. Third, the lifting of banking secrecy in suspicious accounts so that the Superintendent of Banks has faster access and funds are able to be tracked down in cases of embezzlement and money laundering. And fourth, regulations regarding contracts entered into by the state, so that companies that do not have proper financial background are kept out of public bid processes (8).

### *C. The law will effectively control corruption in the long-term along with other factors*

-The media and some specialized CSOs are in charge of informing the public about the new law, its consequences, what changes the Criminal Code has experienced and what these changes imply for the fight against corruption. There is a formation process under way. CACIF has collaborated with these efforts along the lines of rethinking an integral plan for Guatemala, which includes the rescue of values and norms of social coexistence (3).

-The passing of this law was a crucial step that took everyone by surprise since the lack of political will was obvious. There was external pressure that was not necessarily connected to the IACC; US Congressmen came to Guatemala and demanded the passing of the bill, or else US visas would be cancelled for legislators that opposed the law. Now that the law is in place it is necessary to continue monitoring its application. CSOs, especially AC, must continue to lead this action because COPRET does not seem to be successful at it (13).

-CSOs carry out a much more active and vigorous role than a decade ago, and continues to progress in that direction. Their objective of evaluating and controlling public management and the use of public resources, in particular, is more far-reaching than ever. No doubt, the IACC and



the domestic laws that touch on the same subjects have strengthened their role for controlling corruption (14).

-While it may have a number of shortcomings, this law is paramount to further the anti-corruption fight; it addresses some of the issues that the IACC embraces that were not present in any other domestic law. Norms themselves have no power to change a certain conduct, but institutions must apply them properly and dissuasion is a key element. Before the anti-corruption law, the penalties were Q300.00 (about US\$35.00) and one year in jail; anyone would rather steal public resources when the punishment is so low. Prison time has now been raised to twenty years in some corruption and money laundering cases, plus the obligation to compensate the state. Aside from legislation, government and civil society's attention is to be focused on increasing levels of citizen participation and openness, improving mechanisms to control corruption, as well as setting up international mechanisms that include sanctions from the OECD, for instance, or pressure from the OAS (15, 16, 17, 18).

## **7.2. Discussion of key findings**

In order to establish the extent to which the IACC has impacted the ability of *Accion Ciudadana* and other Guatemalan CSOs to control corruption, or put differently, how civil society is better able to potentially improve corruption indexes in this country with the use of an international norm against corruption, three indicators have been measured: awareness, compliance to peer recommendations and law application and enforcement. The collected data has been assessed in terms of these three factors, making it possible to draw conclusions about the effect that the use of international norms might have on civil society's ability to control corruption. Participant answers to the interview questionnaire have also been analyzed under the light of the four main subjects addressed (IACC, MESICIC, MDF case and the Anti-corruption Law).

In the first section of answers that focus on the IACC, from 1 to 6, there was a noticeable disagreement regarding the strength and usefulness of the IACC by civil society. Most of the participants not working in AC thought the norm was lacking a functional connection with corruption control. The main critiques concentrated on the lack of awareness and application of the international norm as a treaty, a foreign and general body of provisions and guidelines,

agreed on by member states to the OAS, but that do not necessarily reflect on the local realities. Public prosecutor Fuentes and journalist Berganza made reference in the original records of the interviews to Human Rights norms, which have endured, according to them, a similar process before becoming known to citizens, justice operators and legislators. The process of awareness and later enforcement of the international norms has taken time and faced many challenges, but as the domestic forces pressure and demand its application, and the international community injects its influence as well, the norms evolve in strength and gain legitimacy.

On the other hand, members of AC stated that the IACC is the backbone of their monitoring, overseeing and accountability activities they carry out daily. They asserted that the norm is strong enough to change attitudes and corrupt behavior in Guatemala, admitting that there is still much work to be done in terms of perception and recognition of its relevance. Nevertheless, throughout the interviews, *Accion Ciudadana* placed much value on the small steps that have been taken by the state to apply the Convention, 18 years after Guatemala signed the treaty, which on a positive note seem not to be halting, but persevering in the task of adjusting and upgrading the system of control of corruption.

The majority of the informants agreed that the international norm is more likely to be respected and deemed legitimate by the population if it is translated into a local norm, becoming fully integrated into national legislation. From this standpoint, it is more likely to become a strong and effective mechanism to pressure and check the government from civil society. These organizations have a much greater potential to control corruption in the government with a local law in hand, instead of a distant and abstract notion for legislators, investigators (prosecutors) and judges. Once the step of adopting local laws against corruption was taken, as many of the informants expressed, the way was paved to more effectively prevent, detect and sanction corruption – which are the fundamental objectives of the IACC, reflected in this study through the indicators of awareness, compliance to MESICIC recommendations and enforcement of local laws -.

Question number 2 addressed the role that the IACC played in terms of its usefulness for civil society in their overseeing and monitoring activities regarding government corruption; this shed

light on the question about how CSOs use international norms to control corruption. *Accion Ciudadana* was mentioned by all participants as leaders of the efforts to follow corruption cases, build capacities among justice operators, create norm awareness, and follow-up on the implementation of the treaty by the state through domestic programs, institutions and laws. Participants such as Ardon from CACIF, Perez from the dissolved Presidential Commission for Transparency and Against Corruption (PCTAC), and Villagran, former Permanent Representative of Guatemala to the OAS, signaled towards the absence of institutions that effectively take on the above mentioned tasks, and how AC has enough legitimacy (especially for being the national chapter of TI) and a permanent agenda against corruption that at times allows it to gain a wider space and a powerful stance to check on the government in terms of corruption.

Regarding the space and participation that civil society has in Guatemala nowadays, and the role that the IACC might play in this regard, it was interesting to notice how some participants (such as Velasquez from the dissolved PCTAC and Gutierrez from CICIG) showed great concern, not for keeping CSOs from being able to control corruption, but for the overwhelming power they now had, compared to pre-democratic times. This was especially true for *Accion Ciudadana*, which was described by many as having too much influence due to its connection with the media and backing international NGOs, namely Transparency International. On the one hand, openness and citizen participation were celebrated, but on the other, too much could potentially reduce the government's institutional capacity, and affect the justice system in the long-term. This coincides with concerns for CSOs occupying accountability spaces that traditionally belong to political parties and elections, but that in Latin American countries tend to lose ground and legitimacy.

The majority of the stakeholders found the translation of the norm into domestic legislation to be paramount for the consequent effects of controlling corruption to actually occur. Also, that great effort must still be put into creating awareness and consolidating knowledge of the provisions of the norm, as well as the logic that lies behind its adoption. There were pessimistic and other more positive perspectives regarding the laws that have been adopted as part of the commitment to the IACC. The General Comptrollership participant, Velasquez from the dissolved PCTAC, and Congressman Lira from *Encuentro por Guatemala*, had critical opinions towards the recent

laws that have been adopted to fight corruption, since their application has not yet reached a point of effectiveness that can be measured through successful cases that include court rulings and punishments that deter other public officials from engaging in corrupt acts. On a more positive outlook, participants from AC and Gutierrez, former Minister of Foreign Affairs, thought the current laws that have stemmed from IACC are in the process of being internalized and continue to open avenues to create awareness, promote the reporting of corrupt actions, and involve the private and public sectors in the endeavor of changing attitudes and behavior towards corruption.

Overall, under the approach of analyzing the responses in terms of the study's indicators, this initial section touches on the lack of awareness that still remains in terms of the content and spirit of the IACC, which according to some should be treated with the same passion as human rights to boost its long-term effect. Nevertheless, many of the interviewed participants agreed on awareness having sprouted from recent approval of an important body of legislation, as well as exposed corruption cases, which inform citizens about the hindering effects that these wrongdoings, as a basic forms of cheating, can have on development, including perpetuation of poverty. Therefore, this section shows that awareness of the norm's contents are low, yet once it was translated to domestic legislation it acquires another shape and citizens begin to understand the logic behind the advocacy efforts, coming especially from *Accion Ciudadana*.

Continuing onto the next group of questions, the ones related to MESICIC, from 7 to 10, there was a fair amount of agreement on the value of the PRM and how this mechanism has become in fact the facilitator of compliance to the provisions of the ICAC in terms of anticorruption policy-making and legislation. This infrastructure of necessary institutional elements pave the way for future improvements in the corruption control indicator, even though continuity and permanence are lacking – mainly since Guatemala has yet to institutionalize a permanent national focal point to MESICIC. Furthermore, the quality of compliance and follow-up to recommendations could be thought as being compromised in the first stages of the lifecycle of the norm, which might not necessarily harm the long-term results. As many of the stakeholders asserted, all the intangibles that are there to reinforce the fight against corruption must be improved and refined, making the best of them.

The role of civil society in the PRM of the IACC was controversial for some of the participants, especially the informants from COPRET, who thought AC should have a softer approach to demanding compliance to the round recommendations. Nonetheless, the majority recognized the added value of having a different source of information, based on an independent methodology AC developed to measure compliance to the norm. The critiques CSOs were taken by some as being based on foreign agendas and commitments, as it was expressed by Velasquez from the dissolved PCTAC, but this study reveals that there is very little information that confirms that and could make that argument hold. A constant in most of the answers of different, and even contrary actors, was the constant presence of discourse framed on ideology, a “survivor from the internal armed conflict”, according to Gutierrez from CICIG.

The opinions coming from COPRET (currently the national focal point to MESICIC) towards the role of civil society in the PRM, became an eye-opener in terms of the alarming lack of experience and knowledge regarding how a mechanisms such as this one works. The rules of the Experts Committee and other documents that support the participation of civil society in MESICIC seemed to be unknown to these participants, who insisted that *Accion Ciudadana* should not submit a shadow report to the periodic reviews, but help COPRET answer and submit only one document on behalf of Guatemala. This problematic approach supported once again the need for urgently installing a permanent institution that takes on the task of being the national focal point to MESISIC and other PRMs, allowing it to accumulate the necessary experience and knowledge to follow up on recommendations, as civil society has up to date, in order to control corruption jointly and perhaps more effectively.

In terms of the evolution and internalization of the norm, there were contrasting opinions as to the success it has had. Altolaguirre, former vice Minister of Foreign Affairs, mentioned once again that government institutions should take responsibility for the application of the IACC’s objectives and provisions, and not leave it solely to the responsibility of CSOs, adding that there was still much to be done. Villagran, former Permanent Representative of Guatemala to the OAS, stated on the other hand that the norm thrives, riding on the momentum of the democratization process and the legacy of the process endured by human rights norms. *Lira*

*from Encuentro por Guatemala* asserted that the IACC is slowly but surely becoming internalized, although there are still forces in Congress that rather delay or oppose further changes to legislation that promote transparency and the fight against corruption.

The question on the relevant actors that influence the Guatemalan dynamic of corruption control, provided answers that illustrated what the ideal framework would have to look like once the recommendations of the IACC are completely embraced. The need to permanently install a national focal point was a claim that arose in every single interview, urging this policy change. Frustration was especially expressed from the standpoint that in the past administration, a permanent unit within the Ministry of Finance had already been created, only to be dismantled once the current government took office.

The members of *Accion Ciudadana* shared a more positive outlook on the future of the system of control of corruption in Guatemala, which might be explained simply from the perspective that they have been around since the apparition of the Convention, thus having worked with a wide array of institutions, public officials and leaders, some more committed than others with the fight against corruption. AC is not having the best relationship with the current administration at the moment, but this could potentially change and a framework of cooperation among agencies, including civil society, is likely to become a reality.

The former section was analyzed primarily under the indicator of compliance to recommendations from MESICIC, since the PRM is precisely designed to do this. Responses mainly centered on the importance of the mechanism, and that compliance to recommendations was not only critical, but should be profited by the government to keep track of advance. At this point, it seemed to be taken only as a means to bring the accumulated efforts down, but under a more positive lens, compliance was seen as intermediate. In other words, that even though the effective application of certain policies and institutions was not complete, especially regarding the national focal point, the rest of the machinery was working.

The questions that made reference to the MDF case, 11 through 14, did not present as much disagreement as the former ones, shedding light on the origins of the first law that was drafted in

response to the IACC, the Law of Access to Information. Those participants who were familiar with the case asserted also that even as it ended up in a court sentence, and punishments were given to offenders, these sanctions were soft and there was not enough weight of the laws in the investigations or legal procedures. The district attorney against corruption remains weak in terms of matching legislation to sanctions and the fines remain too small for the magnitude of the crimes.

From a general stance, though, the MDF case was viewed as a necessary evil that in the long-term provided several lessons for controlling corruption in the government, boosting at the same time the necessary legislation that was absent before and could have not only prevented the deviation of public funds in Congress, but also applied harsher punishments. As it has occurred with other corruption cases, *Accion Ciudadana*, political parties from the opposition, the media, and international actors (such as the US Embassy) teamed up to demand transparent investigations and to make the pertinent adjustments within the already existing justice system. The anti-corruption agenda was strengthened and refocused on the pending tasks, which in turn match MESICIC recommendations.

Regarding the considerations on possibly successful cases of corruption in Guatemala, there were contrasting opinions as well. A pessimistic perspective dominated the answers, in which informants such as Perez from the dissolved PCTAC, former vice Minister of Foreign Affairs Altolaguirre, and Marroquin from AC, expressed that they did not perceive that Guatemala had yet achieved a successful corruption case, mostly focusing on the absence of strong-enough punishments to deter public officials from engaging in corrupt acts. Other participants, Lira from *Encuentro por Guatemala* and Flores from AC, identified the embezzlement case of the Guatemalan Institute of Social Security (IGSS) in 2003 to be the only successful corruption case. The participant from the General Comptrollership, on the other hand, provided a number of examples of successful cases. This suggests that the contrasting answers provided were coming from different perspectives as to the meaning of a successful corruption case that ends up in an effective court ruling and punishment.

The final section of the questionnaire, focusing on the Law against corruption or Criminal Act against Illicit Enrichment (questions 15 and 16), provided an interesting discussion on what the major costs had been for Guatemalan society, upon setting back the approval of anti-corruption legislation for several years. Some informants, such as public prosecutor Fuentes, focused on material costs, and others, the representative from CACIF, *Encuentro por Guatemala*, CICIG and AC, focused on institutional costs, such as plunging credibility and the prevailing perception of state vulnerability and despair. The future of this law was viewed as having certain shortcomings, but necessarily would begin to shape domestic outcomes in the long-term through characterization of the corrupt acts and consequent punishment.

There is still much work to be done also when it comes to the law pertaining to elections and political parties [*ley electoral y de partidos politicos*], since matters such as campaign financing – a source of illicit funds and the way they are spent - is not duly regulated. This point was raised by Congressman Lira from *Encuentro por Guatemala* and former vice Minister of Foreign Affairs Altolaguirre. In this light, political campaigning that takes place every four years (and each period for a longer time, thus keeping politicians in constant campaign) is likely to become the perfect opportunity to negotiate contracts, bids, nominations, postings and set up an endless array of corrupt transactions that conclude once power is reached and “favors” are paid back.

The final discussion by most informants regarding the foreseeable effects of the Law against Corruption in Guatemala, placed great importance on taking advantage of the existing legislation to combat corruption and that it will most likely further civil society’s ability to control corruption. Most participants asserted that the IACC, internalized through domestic legislation, would have a positive impact on the continuing efforts of civil society to monitor, oversee and demand accountability on the part of the government regarding corruption. Congressman Lira pinpointed some of the complementary adjustments that the Guatemalan legislation still needs to be fully equipped to fight corruption effectively, and other actors such as the private sector mentioned the relevance of also adding an integral approach for rescuing values and norms of social coexistence. Quinteros from MCN placed more value on rescuing the justice system and improving it, instead of creating more laws that do not guarantee results in the fight against corruption. This informant was perhaps the only one that questioned the actual usefulness of the



law and focused on the weakness of the fundamental structure instead.

The last two sections were analyzed under the indicator of application of local laws and its enforcement by authorities, since the questions regarding the MDF case and later on the Anti-Corruption Law concentrated mainly on finding out how the IACC was being put into practice and if it was actually having a measurable effect on corruption control. It was found that civil society has played a central role in aggregating interests and demands required for norm diffusion, helping translate the international norm into domestic laws, through acceptance and its subsequent promotion, as explained in the study by Acharya. It became evident, after analyzing the data from interviews, that local beliefs in Guatemala condition the acceptance of the foreign norm, taking time to develop a conscious commitment to the shift of attitudes and behavior towards corruption.

Throughout the interviews, all of the informants took advantage of the open-ended question design to raise issues related to the study that were not necessarily implied in the questions, but were linked to the issues at hand. The public prosecutor, the Congressman and the participant from the CGC asserted that it has taken quite some time for the Guatemalan justice operators to embrace the definitions found in the IACC, such as the definition of public official. It was mentioned that during the MDF case, the President of Congress argued he was not a public official or servant, but a “dignitary of the Nation”, publicly elected and vested with superior powers that exempted him from the responsibilities that were allegedly brought against him. These anecdotes are valuable and necessary, they believed, since they depicted how these relatively recent concepts should not be approached in a corruption case.

Among other interesting points that were spontaneously discussed by participants was the reference to organized crime and how authoritarian enclaves remain entrenched in these networks, having monumental control over state decision-making – usually tainted by corruption – and remaining as obstacles for civil society to effectively control corruption. This supports the arguments of authors that have touched on this subject regarding human rights in Guatemala, addressed in chapter 6, which refer to authoritarian enclaves as having been the receptors of power once the democratization process initiated. The informant from CICIG stated that a great

part of the complexity found in the corrupt and ineffective Guatemalan justice system relies on the transition of power from the military to civilian, democratic governments, starting in 1985. At this point power did not properly transit and distribute into the hands of citizens and institutions; instead it spilled, falling back into the hands of traditional stakeholders, some of which up to this day continue to believe they are responsible for the country's wellbeing and protection of the *status quo*.

In this study, awareness was measured as the understanding, respect and legitimacy that citizens give to the norm, under the principle that this norm is foreign and not locally produced or proposed, yet demanded by citizens. Therefore, after analyzing the data of this study, it is concluded that there is still low awareness in justice operators and other government authorities of the provisions of the IACC and its subsequent local laws, which discourages the preventive objective of this international norm. Nevertheless, most stakeholders consider that the task of awareness creation carried out by CSOs in Guatemala has been very successful and will continue, thus potentially being able to impact the prevention factor of corruption control.

Compliance to peer recommendations was measured as the progressive completion that the state has reached of recommendations reported by the MESICIC. This compliance corresponds to the three main objectives of the IACC, namely prevention, detection and sanction of corruption. Data obtained from the interviews indicate that compliance to peer recommendations is fair, getting closer to reaching completion of peer recommendations, thus strengthening the prevention, detection and punishment of corruption in the country.

Finally, application and enforcement of local laws that reflect the contents of the IACC was measured in terms of the adoption and consequent characterization of the norm to be applied to corrupt acts, as well as its enforcement by local authorities. This application and enforcement corresponds to the objective of the IACC that focuses on punishment of corruption. Therefore, after analyzing the input provided by interviews, it is concluded that local norms to tackle corruption are in place, and in the process of becoming effectively applied and enforced, thus initiating the process of sending the message to population that corruption will be punished, thus allowing effective control of corruption.

## 8. Conclusion and summary

This thesis has posed the relevant question of how and to what extent do international norms affect domestic efforts to fight government corruption, using an intriguing case study, contemporary Guatemala, to explore the causal mechanism. To find out in what ways civil society might be a major actor in holding the government accountable, by using international norms to place checks on the government and control corruption effectively in the long-term, a qualitative assessment was carried out, looking specifically at the Guatemalan chapter of Transparency International, *Accion Ciudadana*.

The gathered data and key findings have suggested that civil society's potential ability to control government corruption is increased by the use of international norms, thus contributing to reduce corruption in the long-term. Based on a theory of social accountability, this research has analyzed CSOs as vertical mechanisms of accountability, exploring the influence of international norms and how their follow-up and utilization throughout its different stages can boost civil society's potential to control government corruption and change deeply engrained misconducts. The assessment of the literature, contrasted with key findings of the interviews, has revealed that domestic change is likely to be impacted by international organizations, and specifically international norms.

The research has potential for greatly contributing to the literature, bearing in mind in the first place that there is virtually no empirical research on corruption and accountability in Guatemala. There is also a potential theoretical contribution, adding to literature on social accountability, by focusing on civil society as a means to reduce corruption. Additionally, it addresses IR theory related issues, in an attempt to explain how international norms affect domestic efforts to control corruption.

The impact on civil society's ability to actually influence the expected outcome of corruption control has been assessed by measuring three key elements, which allow a state to restrain itself and put in place the necessary infrastructure to control corruption: awareness, compliance to peer recommendations and enforcement of local norms. Key findings of the study suggest that civil

society's potential ability to control corruption is increased by the use of international norms, thus contributing to reduce corruption in the long-term once the norm reaches maturity. CSOs ability to control corruption in Guatemala is strengthened and empowered by the IACC in the initial stages experienced by the norm, in which the process of installing the necessary machinery and infrastructure to tackle corruption in the long-term is under way.

The indicators utilized to measure the potential success that CSOs have to control corruption remain low in Guatemala; there is still not enough awareness among citizens in general and especially among justice operators who are responsible for the application of local laws, there are pending tasks regarding compliance with recommendations that stem from MESICI), and there is still weak enforcement and application of the relatively young domestic laws put in place to follow IACC. Nevertheless, there is already an installed capacity and know-how that governments can profit from, monitored as well as helped by CSOs, to adjust the current system and manage to reduce corruption effectively and progressively, complementary to other domestic efforts already in place such as elections, political parties, the media, and government institutions.

Civil society, as a more experienced entity and having a permanent anti-corruption agenda, can continue to strengthen its ties with the media and international actors with the aim of reaffirming the demand that citizens have for a transparent government and mechanisms that prevent the diversion of resources, which in a developing country is critical. The perception of not having any options when it comes to choosing leaders and policies, that all governments steal, and the tolerance towards corrupt behaviors in society in general, can potentially be improved through a more intense participation on the part of citizens. The fact that *Accion Ciudadana*, as the Guatemalan chapter of Transparency International, is the only CSO that has a permanent strategy towards corruption control, and uses international norms to do so effectively, might suggest that it can become a platform for an increasing body of organizations that come up with a permanent solution that moves beyond international organizations.

Furthermore, the degree of impact that an international norm can have on civil society's ability to control corruption can be enhanced by several of the socio-political characteristics that

Guatemala displays, such as the following: a) having characteristics of an exogenous society; b) international norms tend to be considered legitimate at least from a theoretical perspective; c) institutions are weak enough to allow civil society and external actors to gain influence and exercise pressure within the decision-making process (as much as organized crime and authoritarian enclaves); d) civil society maintains a strategic connection with the media and international organizations and NGOs (including international financial aid); and e) the absence of political parties that take on the tasks of vertical accountability, thus allowing for social accountability actors to gain ever more space.

These characteristics, which undoubtedly are not only found in Guatemala but in many other countries around the world, could potentially constitute the necessary conditions for an international norm to successfully impact civil society's ability to control corruption in the long-term, initiating the engine that consequently installs the mechanisms, programs, legislation and practices that create habit in a society to substitute attitudes and behavior from the past.

The redefinition of the political class that is to rule Guatemala in the future must take this issue into account, focusing on the institutions that have been in place since the democratic era began, such as political parties, and overseeing institutions that make the accountability system work effectively. A socially, culturally and economically divided country like Guatemala has still much work ahead in terms of letting go of ancestral practices and attitudes towards corruption, but as it occurred with human rights, the journey may encounter obstacles but the destination is surely to be reached.

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## 10. Appendices

### Appendix 1



Source: World Bank, Worldwide Governance Indicators

Worldwide Governance Indicators						
Indicator	Country	Year	Number of Sources	Governance Score (-2.5 to +2.5)	Percentile Rank (0 to 100)	Standard Error
Control of Corruption	Guatemala	1996	4	-0.82	22.93	0.27
		1998	4	-0.85	23.90	0.21
		2000	6	-0.68	28.29	0.23
		2002	6	-0.50	37.56	0.18
		2003	8	-0.67	30.73	0.19
		2004	11	-0.54	35.61	0.17
		2005	11	-0.63	32.68	0.18
		2006	14	-0.74	25.85	0.16
		2007	14	-0.69	27.18	0.16
		2008	13	-0.62	32.04	0.16
		2009	12	-0.48	38.28	0.18
		2010	13	-0.48	37.62	0.17
		2011	14	-0.47	38.86	0.16
		2012	14	-0.61	30.62	0.15

Source: World Bank, Worldwide Governance Indicators

## Appendix 2

### **FORMAL WRITTEN CONSENT FORM**

You are hereby being invited to participate in the research study for the Master of Arts (MA) in Political Science thesis *The Impact of International Norms on Civil Society's Ability to Control Corruption: The Case of Guatemala*. This project seeks to analyze the relationship between international norms and the ability of civil society to control government corruption, by studying civil society organizations in Guatemala and how they utilize the Inter-American Convention against Corruption to control government corruption. To find out to what extent and how international norms influence the ability of civil society to demand, oversee and ensure transparency and accountability on the part of public officials who engage in corrupt acts, the case of Guatemala will be qualitatively assessed, attempting to reveal to what extent and in what ways civil society might be a major actor in holding the government accountable.

Participants will be interviewed during approximately 45 minutes by the principal researcher one time only, in person at their offices or agencies, or by means of an internet based communication tool such as Skype (Please note that possible risk of interception of data transmitted via the Internet exists, as well as workplace monitoring of computer activity, if responding from a workplace computer). There will be no use of electronic recording devices; the insights, comments and opinions provided will be recorded only by note-taking. The gathered notes will be securely stored in hardcopy inside a locked filing cabinet at the principal researcher's home; once the data is processed, the results will be kept in the principal researcher's personal computer, which is password protected. All material will be handled by the principal researcher and will be shared in person only with the MA thesis supervisor, if needed. The dissemination of results of this research study will be published only in the mentioned MA thesis and the information provided will not be used in further research or publications.

All the information provided will be handled with the highest level of ethics and responsibility. If you wish, your identity will be kept confidential and identifiable information such as name, organization and title will be removed from notes and/or reports. During the interview, you are under no obligation to answer any question you do not feel comfortable with, for any reason. Your insights and comments will be collected strictly for academic purposes, which in turn would greatly contribute to political science theory in social accountability and international relations. You are under no obligation to participate and may withdraw at any time before 30 March 2013. Nevertheless, if you choose to keep your identity confidential and identifiable information removed from notes, withdrawal will not be possible once the interview has concluded.

Please check the box if you agree to participate in this research study: ☐

Please check the boxes if you grant permission to be identified in this research study in:

Notes ☐

Reports ☐

If you have any questions or concerns regarding your rights or welfare as a participant in this research study, please contact the McGill Ethics Officer at (514)398-6831 or [lynda.mcneil@mcgill.ca](mailto:lynda.mcneil@mcgill.ca).

## Appendix 3

### **INTERVIEW QUESTIONNAIRE**

1. What is your opinion on the Convention: its application, strength, evolution and legitimacy in Guatemala?
2. What has been the role of the Convention in civil society's ability to control corruption and exercise accountability in Guatemala? Has it affected its actions, demands and overseeing activities? If so, how?
3. Can you identify salient differences in the usefulness of the norm during the different stages that the norm encountered - from the moment the norm was demanded, began to be negotiated, approved, ratified and then entered into force? How was civil society involved in this demanding and negotiation process? Were other actors involved?
4. How has the state facilitated participation and broadened spaces for civil society and other actors involved in controlling government corruption? Has the Convention had a specific role in this regard? What was it like before the Convention entered into force?
5. Has the Convention been a tool for demanding transparency and exercise accountability in attempting to control corruption? If so, how? How has its incidence changed through time?
6. [For civil society participants only] Do you recall specific corruption cases/investigations or actions on behalf of civil society in which the Convention was utilized, be it as reference, implementation tool or mechanism, as means to increase civil society's ability to control corruption?
7. What is your opinion on MESICIC: its application, strength, evolution and legitimacy in Guatemala?
8. How does civil society participate in MESICIC? How has its participation and incidence been reflected through time on civil society's role of exercising accountability? What is the role of other actors, such as the public prosecutor against corruption?
9. How do you perceive the evolution of the internalization of the international norm in Guatemala? Can you recall specific details related to the demands coming from civil society before the norm began to be discussed? What was the role of the state and the international community (international organizations, NGO's, diplomatic corps, multinationals, etc.) in Guatemala during this process?
10. If you could visualize a map of how corruption control takes place in Guatemala, which would be the main actors you identify? What is their relationship to the Convention and the MESICIC? Do they use these tools in their accountability activities?
11. Regarding the case of embezzlement in the Guatemalan Congress during former President Alvaro Colom's administration (2008), what was civil society's role in demanding the investigation and

prosecution of the responsible public officials? How were other actors involved? Do you recall specific details that might link the Convention to the accountability process?

12. What might have been the role of the Convention regarding formal procedures/trial followed and monitored by civil society in terms of this embezzlement case, from the filing of complaints, including the accusation phase, through court sentences or rulings?
13. [For civil society participants only] In what ways, if any, have the actions and overseeing activities carried out by civil society in this particular case, contributed to the strengthening of the accountability role regarding control of corruption in Guatemala? What has the role of the Convention been in this strengthening of civil society's ability to control corruption, if any?
14. Do you recall specific cases of government corruption which succeeded through court sentences or rulings? How was criminal prosecution applied from the point when the Convention entered into force?
15. The entry into force of the Law against Corruption – Criminal Act against Illicit Enrichment - at the end of 2012 seems to be a success for the implementation of the Convention in Guatemala. What are your insights in this regard and what is the cost of doing it ten years after the Convention was ratified by the country? What was civil society's role in achieving the final step in the internalization of the international norm?
16. With the approval of the Law against Corruption, what do you foresee will be the effects in the long term of having entered into the Convention? Will this strengthen the role of civil society in controlling corruption? If so, how?

## Appendix 4

1. Public prosecutor (*agente fiscal*) Elder Fuentes Orozco, works in the **Public Prosecutor's Office** (*Ministerio Publico - MP*), within the Anti-corruption Prosecuting unit (*Fiscalia Anticorrupcion*). As defined in the Constitution (article 251), this institution is auxiliary of public administration and the courts with autonomous functions, having the main objective of ensuring law-enforcement. According to the Organic law of the Public Prosecutor's Office, it promotes criminal prosecution and leads investigations regarding crimes of public action, acting with objectivity, impartiality and devotion to the principle of legality.
2. One of the participants in the study, who requested that his identity be kept confidential, works for the General Comptroller's office or **General Comptrollership** (*Contraloria General de Cuentas - CGC*), a decentralized technical entity in charge of auditing income and expenditures of all state entities, whether local, decentralized, autonomous, even individuals who receive public funds or carry out public collections. (Constitution articles 232-236).
3. Roberto Ardón is the Executive Director of the **Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations** (CACIF in Spanish), an organization that represents the very core of the country's private sector. The funding principles of the activities carried out by this entrepreneurial CSO are three: the general interest prevails over the particular, the free market system is the best means to achieve the nation's economic and social progress, and the base for the harmony of interests stems from the strict adherence to constitutional and legal norms.
4. Jorge Pérez, former advisor to ex-Vice-President Rafael Espada during the government of Alvaro Colom Argueta (the period when the MDF case took place), was in charge of the dissolved **Presidential Commission for Transparency and Against Corruption**, which functioned for a four-year period as focal point to MESICIC.
5. Juan Luis Velásquez is also a former advisor to the dissolved **Presidential Commission for Transparency and Against Corruption** and was in charge of drafting the periodic reports on behalf of the Guatemalan government to that PRM.

6. Adela de Torrebiarte is former **Minister of the Interior** (*Ministerio de Gobernacion – MINGOB*) as well as former activist and founder of *Madres Angustiadas* (a CSO concerned about the rising level of violence and insecurity in Guatemala). She is presently leading a program within the police force called Inspectorate for Accountability on Police Performance.
7. Two employees of the **Presidential Commission of Transparency and E-Government (COPRET)** were interviewed, who requested that their identity be kept confidential. According to its official website, this entity was created through Government Agreement 360-2012 on December 26 of 2012, to support actions of institutions within the Executive Branch in the application of international conventions regarding transparency, e-government, anti-corruption and open government. At the beginning of President Otto Perez Molina's administration, the entity was created as the Secretariat for Control and Transparency (SECYT), but the Constitutional Court ordered it to be shut down after finding its creation process contrary to the Constitution. The participants asserted that this new bureau has the benefit that it has been created for a period of six years, forcing the next administration to continue with the same institution to combat and shed light on corruption cases involving former and current public officials.
8. Leonel Lira is a Congressman for the political party *Encuentro por Guatemala- EG*, which holds three seats in the 158-member parliament but has constituted itself since 2006 as the political party dedicated to fight corruption. It was founded and is still led by former human rights activist and Congresswoman Nineth Montenegro.
9. Anibal Gutierrez is a legal and political advisor to the **International Commission Against Impunity in Guatemala (CICIG** in Spanish), a one-of-a-kind UN entity directed at aiding and accompanying the justice system in investigation and prosecution on high-impact cases that involve parallel power structures. According to Gutierrez, the illegal and highly complex structures that CICIG intends to dismantle are usually infested with sophisticated corruption networks that include public prosecutors, the judiciary, law enforcement, politicians, mayors, and congressmen, which in turn permeate the structures and lubricate the machinery's hinges.
10. Marta Altolaguirre is former commissioner to the **Human Rights Council of the OAS** and former **Vice Minister of Foreign Affairs**. She is an active lawyer that often takes on



special cases related to human rights and in connection to international law. Highly critical of the institutional despair experienced by her country, she discussed the strengths and weaknesses of the Convention's implementation in Guatemala.

11. **Journalist and sociologist** Gustavo Berganza, has performed research on the role of the media during elections in Guatemala, on social accountability, and has been working on systematizing the process of approval and implementation of the law of access to information. He is currently a columnist for relevant newspapers and magazines in Guatemala.
12. Alejandro Quinteros is part of the CSO *Movimiento Civico Nacional* - MCN, one of the most aggressive organizations composed mainly of youth representation that exercises social accountability in all political processes, aiming to renovate the political class in Guatemala. It was formed upon the turmoil that arose after the death of Guatemalan lawyer Rodrigo Rosenberg and is nowadays an important pressure group, which within its activities includes advising citizens who report government corruption and civic monitoring in Congress.
13. Economist and political scientist Edgar Gutierrez is former **Minister of Foreign Affairs** and current director of the Institute of National Problems (*Instituto de Problemas Nacionales*) of San Carlos University. The MFA of Guatemala has closely followed the process and served as diplomatic channel during the different stages that the IACC, as well as the UNCAC, have endured up to their entry into force, including the follow-up of the IACC implementation through MESISC, in coordination with CSO's and government institutions.
14. Francisco Villagran De Leon is a Guatemalan career foreign officer and former **Permanent Representative of Guatemala to the OAS**, serving during the period that led to and followed the approval of the Convention. He represented Guatemala at many of the MESICIC rounds and accompanied the focal points and civil society that participated in such meetings at the OAS in Washington, D.C.

The members of *Accion Ciudadana* who were interviewed for this study are President of the Board Manfredo Marroquin, ALAC (Anti-Corruption Legal Assistance) Project Manager David Gaitan, Project Manager Marvin Flores, and former Director of this CSO, Alejandro Urizar.