

**COST-SHARING AGREEMENT BETWEEN
THE UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)
AND FOUNDATION OPEN SOCIETY INSTITUTE (THE DONOR)**

WHEREAS the Donor hereby agrees to contribute funds to UNDP on a cost-sharing basis towards implementation of project, "*Estructuras Criminales e Institucionalidad Pública en Guatemala*," more fully described in the project document attached hereto as Annex 1.

WHEREAS UNDP is prepared to receive and administer the contribution for the implementation of the project,

WHEREAS the Government of Guatemala has been duly informed of the contribution of the Donor to the project,

WHEREAS UNDP shall designate an Implementing Partner for the implementation of the project (hereinafter referred to as the "Implementing Partner"),

NOW THEREFORE, UNDP and the Donor hereby agree as follows:

Article I. The Term

This Agreement shall be effective as of 15 November 2010 and, unless earlier terminated, shall terminate on 31 August, 2011.

Article II. The Contribution

1. (a) The Donor shall contribute to UNDP the amount of three hundred eighty seven thousand five hundred U.S. dollars (US\$387,500 .00) for activities planned in the project, as stated in the annex to the Agreement. The contribution shall be deposited in:

Bank:	Bank of America
Address:	1401 Elm St. Dallas TX 75202, USA
Account:	UNDP Representative in Guatemala CO USD Account
Account No.:	375-222-0698
SWIFT Code:	BOFAUS3N

By the end of November 2010, the Donor will deposit a lump sum of US\$387,500.00 that will cover cost of activities outlined in the attached annex.

(b) The Donor will inform UNDP when the contribution is paid via an e-mail message with remittance information to registry.gt@undp.org.

2. The above schedule of payments takes into account the requirement that the payments shall be made in advance of the implementation of planned activities. It may be amended to be consistent with the progress of project delivery.
3. UNDP shall receive and administer the payment in accordance with the regulations, rules, policies and procedures of UNDP.
4. All financial accounts and statements shall be expressed in United States dollars.

Article III. Utilization of the Contribution

1. The implementation of the responsibilities of UNDP and of the Implementing Partner pursuant to this Agreement and the project document shall be dependent on receipt by UNDP of the contribution in accordance with the schedule of payment as set out in Article II, Paragraph 1, above.
2. If unforeseen increases in expenditures or commitments are expected or realized (whether owing to inflationary factors, fluctuation in exchange rates or unforeseen contingencies), UNDP shall submit to the Donor on a timely basis a supplementary estimate showing the further financing that will be necessary. The Donor shall use its best endeavours to obtain the additional funds required, but is not obliged to provide additional funds.
3. If the payments referred to in Article II, paragraph 1, above are not received in accordance with the payment schedule, or if the additional financing required in accordance with Paragraph 2 above is not forthcoming from the Donor or other sources, the assistance to be provided to the project under this Agreement may be reduced, suspended or terminated by UNDP.
4. Any interest income attributable to the contribution shall be credited to UNDP Account and shall be used in accordance with established UNDP procedures.

Article IV. Administration and Reporting

1. Project management and expenditures shall be governed by the regulations, rules, policies and procedures of UNDP and, where applicable, the regulations, rules and directives of the Implementing Partner.
2. UNDP headquarters and country office shall provide to the Donor all or parts of the following reports prepared in accordance with UNDP accounting and reporting procedures.

For Agreements of one year or less:

- (a) From the country office (or relevant unit at Headquarters in the case of regional and global projects) within six months after the date of completion or termination of the Agreement, a final report summarizing project activities and impact of activities as well as provisional financial data;
- (b) From UNDP Bureau of Management/Office of Finance and Administration, an annual certified financial statement as of 31 December to be submitted no later than 30 June of the following year;
- (c) From UNDP Bureau of Management/Office of Finance and Administration, on completion of the project, a certified financial statement to be submitted no later than 30 June of the year following the financial closing of the project.

3. If special circumstances so warrant, UNDP may provide more frequent reporting at the expense of the Donor. The specific nature and frequency of this reporting shall be specified in an annex of the Agreement.

Article V. Administrative and Support Services

1. In accordance with the decisions and directives of UNDP's Executive Board reflected in its Policy on Cost Recovery from Other Resources, the Contribution shall be subject to cost recovery for indirect costs incurred by UNDP headquarters and country office structures in providing General Management Support (GMS) services. To cover these GMS costs, the contribution shall be charged a fee equal to 7%. Furthermore, as long as they are unequivocally linked to the specific project(s), all direct costs of implementation, including the costs of executing entity or implementing partner, will be identified in the project budget against a relevant budget line and borne by the project accordingly.

2. The aggregate of the amounts budgeted for the project, together with the estimated costs of reimbursement of related support services, shall not exceed the total resources available to the project under this Agreement as well as funds which may be available to the project for project costs and for support costs under other sources of financing.

Article VI. Evaluation

All UNDP programmes and projects are evaluated in accordance with UNDP Evaluation Policy. UNDP and the Government of Guatemala in consultation with other stakeholders will jointly agree on the purpose, use, timing, financing mechanisms and terms of reference for evaluating a project including an evaluation of its contribution to an outcome which is listed in the Evaluation Plan. UNDP shall commission the evaluation, and the evaluation exercise shall be carried out by external independent evaluators.

Article VII. Equipment

Ownership of equipment, supplies and other properties financed from the contribution shall vest in UNDP. Matters relating to the transfer of ownership by UNDP shall be determined in accordance with the relevant policies and procedures of UNDP.

Article VIII. Auditing

The contribution shall be subject exclusively to the internal and external auditing procedures provided for in the financial regulations, rules and directives of UNDP. Should a biennial Audit Report of the Board of Auditors of UNDP to its governing body contain observations relevant to the contributions, such information shall be made available to the Donor.

Article IX. Advertisement of the Contribution

1. The Donor shall not use the UNDP name or emblem, or any abbreviation thereof, in connection with its business or otherwise without the express prior written approval of UNDP in each case. In no event will authorization be granted for commercial purposes, or for use in any manner that suggests an endorsement by UNDP of the Donor, its products or services.
2. The Donor acknowledges that it is familiar with UNDP's ideals and objectives and recognizes that its name and emblem may not be associated with any political or sectarian cause or otherwise used in a manner inconsistent with the status, reputation and neutrality of UNDP.
3. The Donor may make representations to its shareholders and internal budget officials as required about the fact of the contribution to UNDP. Any other use of the UNDP name or emblem, and any other form of recognition or acknowledgement of the contribution of the Donor are subject to consultations between the Parties, and the prior written agreement of UNDP.
4. UNDP will report on the contribution to its Executive Board in accordance with its regular procedures regarding contributions from foundations. Other forms of recognition and acknowledgement of the contribution are subject to consultations between the Parties, but the manner of such recognition and acknowledgement shall be determined at the sole discretion of UNDP.

Article X. Completion of the Agreement

1. UNDP shall notify the Donor when all activities relating to the project have been completed.
2. Notwithstanding the completion of the project, UNDP shall continue to hold unutilized payments until all commitments and liabilities incurred in the execution/implementation of the programme/project have been satisfied and programme/project activities brought to an orderly conclusion.

3. If the unutilized payments prove insufficient to meet such commitments and liabilities, UNDP shall notify the Donor and consult with the Donor on the manner in which such commitments and liabilities may be satisfied.

4. Any payments that remain unexpended after such commitments and liabilities have been satisfied shall be disposed of by UNDP in consultation with the Donor.

Article XI. Notices

All notices or other communications to the Parties shall be sent to the following address:

To the Donor:

Foundation Open Society Institute
Baarerstrasse 12, CH-6300 Zug, Switzerland
c/o Mr. David Holiday, Senior Program Officer
Latin America Program
Open Society Institute-Washington Office
1730 Pennsylvania Avenue NW, 7th Floor
Washington, D.C. 20006
Tel: (202) 721-5600
Fax: (202) 530-0128
Email: dholiday@osi-dc.org

To UNDP:

Ms. Claudia de Saravia
Programme Coordinator
UNDP Guatemala
5a. Avenida 5-55, Zona 14
Edificio Europlaza, Torre IV, Nivel 10
Ciudad de Guatemala, 01014
Tel: (502) 2384-3100
Fax: (502) 2384-3200
Email: claudia.de.saravia@undp.org

Article XII. Termination of the Agreement

1. After consultations have taken place between the Donor, UNDP and the programme country Government, and provided that the payments already received are, together with other funds available to the project, sufficient to meet all commitments and liabilities incurred in the implementation of the project, this Agreement may be terminated by UNDP or by the Donor. The Agreement shall cease to be in force 30 (thirty) days after either of the Parties have given notice in writing to the other Party of its decision to terminate the Agreement.

2. Notwithstanding termination of this Agreement, UNDP shall continue to hold unutilized payments until all commitments and liabilities incurred in execution/implementation of all or the part of the project, for which this Agreement has been terminated, have been satisfied and programme/project activities brought to an orderly conclusion.

3. Any payments that remain unexpended after such commitments and liabilities have been satisfied shall be disposed of by UNDP in consultation with the Donor.

Article XIII. Amendment of the Agreement

The Agreement may be amended through an exchange of letters between the Donor and UNDP. The letters exchanged to this effect shall become an integral part of the Agreement.

Article XIII. Settlement of Disputes

1. The parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to this agreement or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with UNCITRAL Conciliation Rules then obtaining, or according to such procedure as may be agreed between the parties.
2. Any dispute, controversy or claim between the Parties arising out of or relating to this agreement or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph within (60) sixty days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The arbitral tribunal shall have no authority to award punitive damages. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

Article XIV- Privileges and Immunities

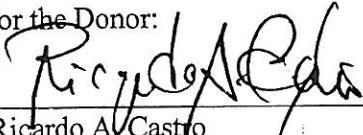
Nothing in this agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including UNDP.

Article XV. Entry Into Force

This Agreement shall enter into force upon signature and deposit by the Donor of the first contribution-payment to be made in accordance with the schedule of payments set out in Article I, paragraph 1 of this Agreement and the signature of the project document by the concerned parties.


IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement in the English language in two copies.

For the Donor:



Ricardo A. Castro
Authorized Representative
Date: 10-27-2010

For the United Nations Development Programme:



w/ René Mauricio Valdés
Resident Representative
Date: November 2nd, 2010.

ANNEX 1

CRIMINAL STRUCTURES AND THE PUBLIC INSTITUTIONS IN GUATEMALA

I. BASES

The International Commission Against Impunity in Guatemala/CICIG is an agency created by virtue of the Agreement signed by the Guatemalan Government and the United Nations on December 12, 2006, ratified by Congressional Decree number 35-2007.

The International Commission's core function is to cooperate with the State to break up the clandestine organizations and illegal security organs, and to foster the investigation, prosecution, and penalization of the crimes committed by their members, as well as to recommend policies for adoption by the State, including the necessary legal and institutional reforms, designed to eradicate the clandestine organizations and illegal security organs, and prevent their reappearance, while acting with absolute functional independence in the execution of its mandate. Pursuant to Article 3, parts a) and l), of that Agreement, the CICIG has the power to: a) Collect, evaluate, and systematize information furnished by any persons, government agencies or private entities, non-governmental organizations, international institutions, and authorities of other States; l) Publish general and topical reports on its activities and their outcomes, including recommendations consistent with its mandate.

In the framework of the multiple activities performed by this commission, such as judicial investigations, intervention activities, drafting of proposals, etc., information whose systemization and publication will be of interest to different sectors of Guatemalan society is collected and produced. That information is essential to improve understanding of the illegal security organs, clandestine security organizations, and illegal structures which operate in the country, and in particular their relationships with State institutions.

At the same time, these reports play an important role in the context of the Commission's mandate to systematize and disseminate the Commission's information on different criminal organizations, as well as the ways in which State agencies' complicity or acquiescence has enabled them to act, permitted their development, or allowed them to operate with impunity.

The Commission has already disclosed information collected and produced by it in a variety of media, through its intercession in court cases, through lectures and interviews given by the Commissioner, through the documents which accompanied the CICIG's proposals or actions in the process for selection of judges, and finally, through

topical reports¹. Accordingly, the aim in this case is to intensify this activity, also bearing in mind the conclusion of the mandate and the data referring to facts which it was not appropriate to submit to the courts but information on which may be important for gaining an understanding of the criminal structures in Guatemala and for taking action against them, whether judicially, administratively, or through the Comptroller's Office.

In conformity with Article 4, Number 2, the CICIG has the power to reach agreements with other States and international organizations to the extent they may be needed for it to perform its activities and fulfill its functions. And Article 7, Number 1, provides that the CICIG's expenses are to be covered by voluntary contributions from the international community.

II. GENERAL OBJECTIVE

Foster the strengthening of the analysis and systematization of the information relating to the criminal structures linked to the cases investigated by the International Commission Against Impunity in Guatemala (CICIG).

Specific objectives:

- a) Collect, analyze, and systematize information which makes it possible to contextualize and support the legal and political strategies for the cases litigated by the CICIG.
- b) Collect, analyze, and systematize information related to the criminal structures associated with the leading institutions of the Guatemalan State.
- c) Analyze and systematize information on the leading officials involved in the structures in question, and formulate recommendations for purging the implicated public agencies.
- d) Generate criteria and judgments to enable the information collected or systematized by the CICIG to be transferred to and used by the Guatemalan public and private institutions in accordance with standards and rules for access and confidentiality of information.

¹ Informe sobre funcionamiento de las comisiones de postulación para Corte Suprema y Cortes de Apelaciones (Report on Operation of the Nominating Committees for the Supreme Court and Courts of Appeals), 2009. Informe sobre adopciones (Report on Adoptions), 2010.

III. ACTIVITIES:

A. Production of reports

Production of (three) topical reports describing the criminal structures and practices linked to the leading cases and topics addressed in the CICIG's activities. Each of the reports will be based on information collected on topics and cases investigated by the CICIG, will contain a description of the criminal networks' mode of development and particularly their relationships with State institutions, and will contribute to identifying the individuals who are responsible for or directly linked to those structures' existence and development.

Three semi-annual reports will be produced in a first stage. By the end of the first half of 2011, after the first *three* reports have been completed, an evaluation may be performed to determine the desirability and feasibility of producing another *two* topical reports or a report which systematizes the most important findings in a variety of areas. The decision will necessarily be dependent on the information then available regarding the exact conclusion of the CICIG's mandate. The production of two additional reports is envisaged, to the extent the resources for them are obtained.

The three semi-annual reports will emerge from the information that the CICIG obtains over the course of its investigations, making it possible to improve the systematization and identification of patterns that clarify the existence of parallel structures and clandestine security organs in multiple State institutions, as indicated in the Agreement. The topics will be:

1. *The structures of the security forces linked to the different forms of crime.*

PNC [National Civil Police] officials, together with others who have been involved in grave incidents. Extrajudicial executions, social cleansing actions, weapons trafficking, and theft of illegal drug shipments.

The report will attempt to describe these structures, their ties to other social institutions and actors, and the cases in which efforts have been made to break them up.

2. *The penetration of the Attorney General's Office and the Judiciary by criminal structures, and the experiences of the Nominating Committees in 2009 and 2010.*

Since Peace Accords were signed, the Attorney General's Office and the Judiciary have been co-opted by criminal structures and by political and economic power holders to ensure impunity in the cases for which the latter are investigated. Along these lines, the so-called "Little Office" was created as a parallel structure within the Attorney General's Office to safeguard the interests of groups engaged in the commission of such illegal acts as kidnappings and human rights violations.

It was also discovered that, to co-opt the Judiciary, attorneys, lobbyists, and politicians influenced the election of judges to the Courts of Appeals and the Supreme Court of Justice through the Nominating Committees, to ensure that candidates identified with their interests were elected. This same approach was used in the election of the Attorney General, and it resulted in the election of a person linked to organize crime groups such as those involved in drug trafficking and illegal adoptions.

Finally, it was found in a study on unlawful adoption processes in Guatemala that some of the Judges of the Children's and Adolescents Courts are members of networks that traffic in children for unlawful adoption purposes, and practices of this kind were also detected within the Judiciary, which will be described in this report.

3. *The presence of structures linked to the counterinsurgency war within Guatemala's economic, military, and State institutions.*

The investigation of the case of diversion of funds by ex-President Alfonso Portillo and ex-officials of his administration in 2001 revealed the existence of a structure that had been operating in Guatemala since the time of the internal armed conflict. This structure has been identified with an elite group in the Guatemalan Army's Intelligence Directorate, known as "The Lodge," which engaged in illegal intelligence activities, smuggling, and weapons trafficking during the 1980s and the early 1990s.

It is important to determine its present-day prevalence, not only in political terms but also in terms of its financing from illegal activities committed in reliance on its presence within the State.

If the project is expanded to permit the production of more topical reports, and to the extent the necessary funds are obtained, we propose the production of two more reports which could be chosen from among topics such as those mentioned below, or alternatively, the collection of certain essential data on these topics in a report which systematizes a variety of findings.

1. *Weapons trafficking networks within the National Civil Police and the Armed Forces.*
2. *Drug trafficking networks and their links to State institutions, chiefly the National Civil Police and the Armed Forces.*
3. *The financial sector linked to political and private-sector corruption in Guatemala.*

Acts by members of Guatemalan political groups and the private sector involved with the customary forms of misallocation of public funds and financing for illegal security structures were identified in several of the cases investigated by the CICIG.

Methodology

Each of these reports will be produced on the basis of the following methodology:

- a) Survey and systematization of the information previously collected by the CICIG.
- b) Formulation of an outline for the report.
- c) Collection of complementary information through interviews and documentary analysis.
- d) Systematization of the information collected through interviews and documentation analysis.
- e) Production of a preliminary report to be discussed with international and national analysis and trusted State officials and leaders at the different levels of dissemination and publicity for the information.
- f) Final editing of the report.

Systematization and organization of the information transfer or publication processes.

Knowing what information can be published without violating the rights of individuals or impairing pending court cases is useful for both the thematic reports' production and the organization of the process of transferring the information to the public agencies that can make use of said information and manage access to it by the citizens who so require.

This activity implies, in the first place, development of the databases needed to produce the reports, as well as the recording and organization of the information collected for them. In the second place, criteria must be adopted for the organization, conservation, and transfer of the information in the Commission's hands which might be useful to the authorities of the Guatemalan State and interested civic leaders. The information collected or systematized for the production of the topical reports is included in the latter group.

Development of databases

The databases are required, first for the development of the topical reports, and additionally as a way to organize the information that can be transferred to State institutions after the CICIG's mandate has concluded.

Efforts will be made to that end in the design of the specific databases for each document, but also to ensure that they can be integrated into a broader database or system of organization and conservation of information.

An expert should be hired to design and cooperate in the development of the databases required to support the reports, as well as the graphics, mappings, and complex tables.

Adoption of criteria and procedures for organization, conservation, and transfer of the information upon the conclusion of the CICIG's mandate.

A challenge facing non-permanent international agencies is that of transferring to national institutions the information that might be useful to enable the receiving State's agencies to continue with the policies and actions that motivated the international intercession.

Moreover, the information produced might be useful to investigators of civic and social organizations concerned with policy issues; accordingly, it is necessary to determine which public agency will manage access to that information.

The experience of organizations having the structure and functions of the International Commission Against Impunity is of short duration, making it important for such criteria to be adopted; those used by other international institutions of a similar nature can be adapted to that end.

Consultations with other institutions interested in the same kind of systematization, conservation, organization, and transfer of information are envisaged for this activity. It would also be useful to hire a specialist in the field.

IV. EXPECTED OUTCOMES

- Three topical reports
- Development of topical databases
- Systematization of information to be transferred to the appropriate public agencies
- Adoption of confidentiality criteria to safeguard sensitive information
- Transfer of useful information to State agencies and civic organizations.

V. THE PROJECT'S DURATION AND TIMETABLE

The project is designed to have a 9-month duration, renewable.

ACTION PLAN												
ACTIVITIES	Months											
1. REPORTS	01	02	03	04	05	06	07	08	09	10	11	12
Report 1												
1. Hiring of a team for each of the reports, consisting of typists and data processors, investigators, analysts, and experts in the field.	X											
2. Formulation of a report outline	X	X										
3. Survey and systematization of the information already collected by the CICIG	X	X	X	X								
4. Collection of complementary information through interviews and documentary analysis			X	X	X							
5. Systematization of the information collected through interviews and documentary analysis				X	X							
6. Production of a preliminary report to be discussed with international and national analysts and with trusted government officials and leaders at the different levels of dissemination of and publicity for information					X	X	X					
7. Final editing of the report							X	X				
Report 2												
1. Hiring of a team for each of the reports, consisting of typists and data processors, researchers, analysts, and experts in the field.	X											
2. Formulation of an outline for the report	X	X										
3. Survey and systematization of the information already collected by the CICIG	X	X	X	X								
4. Collection of complementary information through interviews and documentary analysis			X	X	X							
5. Systematization of the information collected through interviews and documentary analysis				X	X							

6. Production of a preliminary report to be discussed with international and national analysts and with trusted government officials and leaders at the different levels of dissemination of and publicity for information					X	X	X							
7. Final editing of the Report							X	X						
Report 3														
1. Hiring of a team for each of the reports, consisting of typists and data processors, investigators, analysts, and experts in the field		X												
2. Formulation of an outline for the report		X	X											
3. Survey and systematization of the information already collected by the CICIG		X	X	X	X									
4. Collection of complementary information through interviews and documentary analysis				X	X	X								
5. Systematization of the information collected through interviews and documentary analysis					X	X								
6. Production of a preliminary report to be discussed with international and national analysts and with trusted government officials and leaders at the different levels of dissemination of and publicity for information						X	X	X						
7. Final editing of the Report								X	X					
2. DATABASE AND ORGANIZATION OF INFORMATION														
Activities	Months													
	01	02	03	03	04	06	07	08	09	10	11	12		
1. Design of Database		X	X											
2. Creation of software for design of analytical reports				X		X								
3. Generation of information organization criteria				X		X								
4. Adoption of criteria for the organization, access, and transfer of information														

5. POSSIBLE SECOND STAGE (dependent on extra funding)												
Activities	Months											
	01	02	03	04	05	06	07	08	09	10	11	12
Report 4												
1. Hiring of a team for each of the reports, consisting of typists and data processors, investigators, analysts, and experts in the field							X					
2. Formulation of an outline for the report								X				
3. Survey and systematization of the information already collected by the CICIG							X	X				
4. Collection of complementary information through interviews and documentary analysis							X	X	X			
5. Systematization of the information collected through interviews and documentary analysis								X	X	X		
6. Production of a preliminary report to be discussed with international and national analysts and with trusted government officials and leaders at the different levels of dissemination of and publicity for information									X	X	X	
7. Final editing of the Report										X	X	X
Report 5												
1. Hiring of a team for each of the reports, consisting of typists and data processors, investigators, analysts, and experts in the field							X					
2. Formulation of an outline for the report								X				
3. Survey and systematization of the information already collected by the CICIG							X					
4. Collection of complementary information through interviews and documentary analysis							X	X	X			
5. Systematization of the information collected through interviews and documentary analysis								X	X	X		
6. Production of a preliminary report to be discussed with international and national analysts and with trusted government officials and leaders at the different levels of dissemination of and publicity for information									X	X	X	
7. Final editing of the Report										X	X	X

VI. BUDGET:

Item	Amount	Quantity	Period in months	Total Requested in USD	Own funds in USD	Total in USD
Transportation (air fare)	3000	6	0	18000		18000
Internal transportation					5000	5000
Equipment and offices					40000	
Plotter	5000	1	0	5000		5000
Computing equipment	1000	1	0	1000		1000
Portable computing equipment	1200	1	0	1200		1200
Per diem (DSA)	195	(30 x 4)	6	140400		140400
HUMAN RESOURCES						
Project Coordinator ⁱ	2000	1	9		18000	18000
Senior Analyst	8000	3	6	144000		
					108000	108000
Investigative Analysts ⁱⁱ	2000	6	9			
					50000	50000
Contributions of legal and police investigators						
						42000
Database and Information access Experts	7000	2	3	42000		
Typists/data processor	1500	2	6	10500		10500
TOTAL				362100	221000	583100

ⁱ 20 % of the time of the Head of the Information and Analysis Area

ⁱⁱ Half time for already hired senior analysts