Anti-Corruption in the Americas

What Works?

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Over the past 15 years, Latin America and the global community have been forced to acknowledge that systemic corruption and organized crime networks have increasingly posed serious existential threats to democracy. Organized crime and related corruption in Latin America have generated the world’s highest rates of homicides, kidnappings, assaults, and drug trafficking for nations not at war, destroying lives and families throughout the region. They also undermine political institutions and the rule of law, which in turn weaken legitimate business, destroy social cohesion, and foster generalized fear at all levels of society.

The Inter-American Convention Against Corruption, adopted in 1996, and the United Nations Convention Against Corruption, adopted in 2003, are evidence of the awareness of the negative effects of organized crime and related corruption. However, they have yet to be implemented sufficiently to make a dent in public perception and the unfortunate reality of widespread corruption as the medium for criminal operations and the nearly uncontested elite domination of economic life in many countries of the region. The Open Government Partnership, agreed to in 2011 by eight nations and which now has 78 country members, is another example of efforts to grapple with the dangers of corruption with a combination of civil society and private and public sector transparency. The Organisation for Economic Co-operation and Development (OECD) and international financial institutions have set out positive norms but have yet to find effective enforcement mechanisms for their requirements. Most recently, the Inter-American Commission on Human Rights in a hemisphere-wide study detailed the negative impact of corruption on human rights, political, civil, economic, social, and cultural factors throughout the region.

Among the most damaging aspects of corruption is its undermining of the law enforcement and justice systems—the rule of law writ large. In recent weeks and months, two of the most effective entities in countering institutional corruption and criminal networks in two of the weakest states in the region,
Guatemala and Honduras, have been forced to end their operations. It appears that a disparate coalition of crime cartels, political figures, and some elements of traditional elites succeeded in having these entities kicked out of both countries. The United States, which played a critical role in the establishment and funding of both institutions, went missing at the most critical moments of the campaigns against the UN-authorized International Commission Against Impunity in Guatemala (CICIG) and the OAS-approved Mission to Assist in Combating Corruption in Honduras (MACCIH).

At a complicated moment in the history of the region, with issues of migration and trade dominating bilateral agendas, U.S. administration policymakers appear to have decided that the governments of Guatemala and Honduras—however corrupt and in league with cartels some officials might be—should not be forced to allow anti-corruption investigatory bodies like CICIG and MACCIH to operate. This decision was opposed by many experts, civil society representatives, and some business leaders in Guatemala and Honduras as well as by former officials, diplomats, and civil society groups throughout the region. This change in policy effectively undercut what had been a bipartisan U.S. policy since the end of the civil conflicts in Central America in the 1990s that had sought to bolster law enforcement, judicial reform, and the rule of law.

The rationale for that action seemingly was reflected as well in the administration’s decision in early 2019 to cut all aid to the Northern Triangle countries of Guatemala, Honduras, and El Salvador in order to advance its policy goal of discouraging illegal migration. The White House determined, despite all evidence to the contrary, that crime, corruption, and violence had little to do with illegal migration.

To examine the issue, it is first necessary to understand precisely how CICIG and MACCIH came into being and what they accomplished. Then it is important to ask what can be done in these two countries to build upon the foundations that CICIG and MACCIH laid rather than fall back into the unacceptable conditions that led to their formation in the first place.

**Guatemala—CICIG**

CICIG formally came into being with an accord signed between the United Nations and the government of Guatemala on December 12, 2006. However, the signing of that agreement was the result of a comprehensive campaign by civil society organizations in Guatemala and supported by think tanks and human rights advocacy groups in Central America, United States, and Europe. In the aftermath of Guatemala’s peace accord in 1996, human rights groups in the country saw a reappearance of armed counterinsurgency militias operating in league with criminal bands, in part with the objective of maintaining impunity for those responsible for war crimes. A revised CICIG accord was negotiated with the new Oscar Berger government in late 2006, and CICIG finally began to function in 2008 in cooperation with a new attorney general (FG), Claudia Paz y Paz, and her public prosecutor’s office (MP), with funding from the United States, Canada, and the European Union, among other donors.

Over the next decade, with Paz y Paz and then her successor, Thelma Aldana, CICIG expanded the MP’s capacity by offering innovative techniques for criminal investigations and helped the MP establish a specialized investigative unit against impunity (FECI), a special methods unit to manage court-ordered wiretapping, and a forensics and criminal investigations unit. CICIG recommended asset seizures mechanisms and witness protection reforms that were approved by the FG or adopted by the national legislature. One of the key institutional reforms helped establish high-risk courts where judges, prosecutors, and investigators were vetted and protected to avoid coercion in their conduction of complex cases of corruption involving cartels, politicians, and economic elite. CICIG drafted and helped the MP present
bills to Guatemala’s congress to strengthen criminal penalties for human trafficking, bribery, and abuse of authority. The current attorney general, Consuela Porras, continues to pursue those cases before the high-risk court.

Throughout this period, CICIG maintained the support of civil society organizations and the population at large, consistently with a more than 75 percent public approval rating. The results are impressive:

- Justice reform activities supported by CICIG contributed to a 5 percent annual decrease in Guatemala’s murder rates and a fourfold increase in convictions.

- CICIG worked with the MP to take down around 60 complex criminal networks that operated from municipal levels coercing, co-opting, and corrupting official action. CICIG helped the MP to investigate and prosecute 100 high impact cases, indicting 660 individuals of which, as of last year, 310 were convicted. A dozen of the highest impact cases are being pursued by the current FG.

- Between 2012 and 2018, the MP recovered $30 million, 158 vehicles, 86 properties stolen from the government—all now being used to bolster Guatemala’s government capacity. In 2015 alone, some $535 million was estimated to have been lost through corruption, including the customs fraud known as “La Linea” where an estimated $120 million in customs dues went missing, some going to former president Otto Pérez Molina and his vice president Roxanna Baldetti. Both were prosecuted and the latter was convicted and sentenced to 15 years in prison.

- Perhaps the most significant impact took place in changing public appreciation for the work of the MP and the rule of law. CICIG and the MP investigations resulted in the indictment and/or conviction of three presidents, a vice president, a supreme court magistrate, political party officials, cabinet ministers, prison officials, police and army officers, and economic elites. Public perception in Guatemala no longer believed “untouchables” could never be punished for criminal acts.

The institutional reforms fostered through the work of CICIG and the MP remain in place and continue to draw public support. As case after case touched powerful legislators, top political party officials, ministers, and traditional economic elites, anti-CICIG sentiment grew. When the MP brought cases against now-former president Jimmy Morales and his son and brother (both later acquitted), Morales joined the anti-CICIG movement. Due to the president’s policy reversal, a segment of the private sector shifted from accepting the role of CICIG to opposing its continuation, and in fact lobbied the United States to drop its support for the institution, despite CICIG’s positive record. The combined effort resulted in President Jimmy Morales decision not to extend CICIG’s mandate, allowing it to expire in September 2019.

The current MP has continued to support the work of FECI and most recently indicated her opposition to a last ditch effort by departing members of Congress to essentially give a “get out of jail” free card to convicted corrupt officials.

**Honduras—MACCIH**

In Honduras, MACCIH came into being in January 2016 following widespread public protests in the aftermath of revelations of $300 million being stolen from the Honduran Social Security Institute by those in charge and significant amounts shown to have been funneled to the 2013 election of President Juan Orlando Hernández. In contrast to CICIG, MACCIH in many respects had independence in its four
focus areas of preventing and combating corruption, criminal justice system reforms, electoral finance reforms, and public security reforms.

As with CICIG, the actual prosecutions were dependent on the decision of the attorney general’s office (MP). The key difference from CICIG was MACCIH’s lack of independent decisionmaking to initiate cases. MACCIH convinced the MP to establish a vetted anti-impunity unit, the Specialized Prosecutorial Unit Against Impunity and Corruption (UFECIC), modeled on Guatemala’s. They have worked together closely. One of the positive aspects of the MACCIH agreement was the creation of a civil society-linked observatory on the functioning of the country’s judicial system.

In its first year, MACCIH prosecuted the former vice president of the judicial council, which oversees the country’s judges, for influence peddling. Another case targeted the “Los Cachiros” drug cartel, which moved drugs from Colombia across the Honduran border to Guatemala and ultimately to the United States, and its links to former president Porfirio Lobo Sosa and to President Juan Orlando Hernández’s 2013 campaign. That investigation ultimately wound up in the prosecution and conviction in the United States of Hernández’s brother. Similarly, the former president of the Supreme Court Jorge Rivera Avilés was indicted, as were the former director of the Social Security Institute and several dozen other institute officials and the former president of the national telecom company.

Perhaps the starkest warning that no one was above the law any longer was the conviction and sentencing to 58 years in prison of former first lady Rosa Elena Bonilla de Lobo for fraud and embezzlement of public funds.

The beginning of the end for MACCIH was its role in investigating the “Pandora” case, which identified scores of legislators who used phony nongovernmental organizations to transfer millions of dollars in public funds to their own campaigns. As in Guatemala, a movement of officials, party leaders, and business leaders targeted by the anti-corruption body brought pressure against President Hernández, urging him not to extend MACCIH’s mandate. The U.S. administration was also missing in the critical weeks leading up to the final decision on January 19, 2020, when the future of MACCIH was hanging by a thread. The Congressional Research Service, in an unusual statement following the failure to extend MACCIH, described MACCIH’s successful prosecution “of 80 cabinet ministers, legislators, and other government officials” and its 75 percent popular approval.

The statement also cited apparent divisions within the U.S. government, noting the visit of the acting secretary of homeland security to Honduras 10 days before the January 19 deadline. The acting secretary’s statement commended President Hernández for migration cooperation but did not once mention MACCIH. This action contrasted with the tweet issued the day before on January 18 by the State Department’s acting assistant secretary for the Western Hemisphere Michael Kozak, which read “Deeply disappointed that despite commitments to do so, #Honduras failed to extend @OEA_MACCIH anti-corruption effort.”

U.S. lawmakers from both parties, including appropriators, condemned President Hernández’s decision to close down MACCIH.

What Happens Now in Guatemala and Honduras?

As a consequence of the operations of CICIG and MACCIH in recent years, more effective laws, regulations, and policies have been established that have confronted the culture, power, and private interests that have historically ruled Guatemala and Honduras. The international community—including bilateral donors, the United Nations, the OAS, foundations, and think tanks—needs to step up to help those forces such as
CICIG and MACCIH willing to defend the rule of law. Effectively combatting corruption when it is directly linked to transnational criminal activities may also require better sub-regional coordination—and perhaps a sub-regional investigative body.

Criminal organizations from transnational cartels operating from Colombia to the United States, maras, and local corruption-linked gangs share information and pursue soft spots in law enforcement across Central American borders. A Northern Triangle countries or Central American investigatory institution authorized by each country’s attorney general and law enforcement body and, where needed, by their legislatures may need to be established. The Central American Integration System provides some sectoral regionwide exchanges, but the magnitude of cross-border crime may require an investigative and prosecutorial entity with more authority and capacity.

Guatemala’s new president Alejandro Giammattei announced in his inauguration on January 14, 2020 the establishment of the Presidential Commission to Combat Corruption within the executive branch, including direct participation by key ministries and agencies. Giammattei’s naming of Oscar Dávila, a former MP prosecutor who helped prosecute drug trafficking cases, was applauded by many people who had supported CICIG, including former attorney general Thelma Aldana. The OAS, United Nations, World Bank, IMF, and other regional experts should be tapped to identify best transparency practices that might be supported by the new commission. Engaging Guatemalan and other anti-corruption civil society organizations could quickly boost the commission’s capabilities and credibility and alleviate almost inevitable concerns regarding its perceived lack of autonomy and independence from the executive. The commission also should adopt protocols to assure the rapid and confidential transfer of information indicating any criminal violations to the MP for prosecution.

Specifically, in Honduras and Guatemala, the international community, including with bipartisan U.S. backing, needs to:

- Direct development cooperation, justice support, and diplomatic muscle to support the anti-impunity FECI in the Guatemala MP, still headed by the same excellent special counsel Juan Francisco Sandoval. Similar aid should go to the new Unit of Special Counsel Against Corruption Networks Corruption Impunity (UFERCO) in Honduras named by the attorney general in the aftermath of MACCIH’s departure, also keeping the outstanding attorney who had led UFECIC, Luis Javier Santos.

- Join in providing protection to those attorneys, judges, investigative journalists, and activists engaged in the anti-corruption movement. Such protection efforts have been supported by donors in Colombia and elsewhere and now need to be targeted to the most vulnerable in Honduras and Guatemala.

- Advocate and condition other benefits on the use of the protection mechanisms outlined by the Inter-American Commission on Human Rights with respect to victims, witnesses, and whistleblowers of corruption.

- Support the work of civil society organizations, journalists, and private sector bodies already engaged in transparency and anti-corruption.

What lessons can other nations—and their governments, civil societies, and businesses—glean from the Guatemalan and Honduran experiences with independent, hybrid international anti-corruption agencies in pursuing their own efforts to address public concerns regarding corruption?
El Salvador under its new president, Nayib Bukele, already has set up the International Commission to Combat Corruption in El Salvador (CICIES). Thus far, it only operates under an agreement with the OAS, and the depth of its final authorities and investigative independence authorities remain a work in progress. The good news is that Bukele’s determination to confront past corruption and prevent future corruption is a visible challenge to his own administration’s capacity to implement best practices. Hopefully, next steps will incorporate the kinds of independent investigative capacity and institutional reforms that CICIG and MACCIH showed can be undertaken in partnership with domestic MPs. It also can build on the direct U.S. government law enforcement advisers in the public ministry that have shown some impressive prosecutions both under the previous attorney general and now under Raúl Melara. As in Guatemala, taking advantage of offers of involvement by expert civil society organizations would boost public confidence in CICIES’ work. According to the latest data released early in 2020, President Bukele has already seen a welcome drop of another 35 percent in the country’s homicide rate.

In the Americas, over the past decade, the rising exposure of corruption has brought resignations, indictments, or convictions of heads of state, ministers, and police and army leaders, not to speak of an increasing number of private businesspersons. This corruption has resulted in the loss of hundreds of millions of dollars, if not more, in public revenues that have benefited private interests. The Brazilian Odebrecht construction scandal revealed more than $1 billion paid to officials in at least 15 countries in the region. It is essential to communicate regionwide the best and most effective mechanisms, including hybrid international and national entities, for investigating and prosecuting corruption.

The crucial and most effective characteristics of those hybrid bodies are the following.

First, they should have the independence to undertake investigations, receive complaints from whistleblowers and others, and have access to all government information required to conduct those investigations.

Second, they need to have anti-impunity units partnered with attorneys general, with strong vetting against bias, political favoritism, and corrupt pasts. They should both appear to and actually be beholden to no one other than the law. Actual prosecutions should be pursued by the national attorney general offices to avoid any conflict with domestic constitutional provisions. Also, it is evident that these anti-corruption entities are better served when they are able to ensure that the MPs get top billing in the investigations.

Third, for the most complex corruption cases linking criminal networks, political parties, and elites, an independent high-risk court with judges, prosecutors, and attorneys vetted and screened for corruption should be established, as was done in Guatemala.

Fourth, establishing close contact with civil society and open information exchange to the extent possible with the media can help explain the priorities of the investigating entity. There must be a greater recognition of the need to be able to prioritize carefully the vast array of potential corruption cases.

Finally, clear authority for the hybrid investigative institutions to address all of the factors allowing corruption—whether campaign and political party finance, police or military misuse of intelligence, conflict of interest, and illicit networks involving banking, corporate, or business interests—need to be incorporated into the mandates of these institutions.

While the recent demise of both CICIG and MACCIH was a setback for the concept of this type of international body, the determination of El Salvador’s president to move forward with a similar effort, initially with OAS assistance, should be encouraged with further U.S. and UN support. At the same time, the in-
ternal expert community that focuses on issues of rule of law and judicial reform should undertake a
careful study of the CICIG and MACCIH experiences and propose new models of such institutions that can
withstand the political backlash that brought an end to them. Closer, sustained, and expanded coordina-
tion, training in and sharing of forensic and technological methods among donors, to include the European
Union, Canada, Colombia, Argentina, Chile, and Uruguay, would be a positive development. Accepting
independent international investigative support like CICIG and MACCIH required national government
acceptance and depended ultimately on national attorneys general making the prosecutorial decisions.
That will not change.

It is also clear that many of the countries in question cannot realistically be expected to effectively develop
their own anti-corruption prosecutorial capacities without significant international assistance bolstering
nonpartisan independent investigative capacity, modern forensic methods, and critical protections across
reformed judicial institutions. In the end, the dramatic choice in many of the countries of the region
comes down to either ceding some limited degree of sovereignty to a hybrid international and national
entity or ceding national law-based sovereignty to the much better financed and ruthless forces of interna-
tional organized crime as has so often taken place in the region.

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