What is MACCIH?
What is the MACCIH?

MACCIH is the Organization of American States’ “Support Mission Against Corruption and Impunity in Honduras” (MACCIH-Spanish acronym), and it is the second international commission against corruption and impunity (ICACI) established to date.

The first ICACI was created in 2007, after the government of Guatemala signed an agreement with the United Nations to establish the “International Commission Against Corruption and Impunity in Guatemala” (CICIG-Spanish acronym). Under this first-of-its-kind agreement, the UN’s CICIG would be headed by international experts, financed by donations from the international community, and share legal authority with the Guatemalan legal system in regards to investigating and prosecuting corruption related cases. CICIG had an original mandate of two years, which has been extended every two years since its establishment.

The world’s second ICACI was created by the MACCIH Agreement signed on Jan. 19, 2016 between the Government of Honduras and the Organization of American States (OAS). Like CICIG, MACCIH is headed by international experts, financed by donations from the interguanational community, and crucially, shares a degree of legal authority with the government over issues of corruption and impunity. MACCIH has a four-year mandate.

Important key terms

**International Commission Against Corruption and Impunity (ICACI)** - a unit of a multi-national (multi-lateral) organization that receives shared legal authority from a national government over issues of corruption and impunity under the terms of a written agreement.

**Shared Legal Authority** - The government by written agreement concedes a degree of authority to an international entity to operate independently inside its national legal system with powers that normally only the government could exercise.

Important Concepts

**Occasional Corruption** - Occasional corruption is irregular, episodic corruption where individuals or small groups take advantage of temporary defects in the corruption detection system. Occasional corruption is universal, is found in all countries, and can be limited but never eliminated from any government system.

**Structural Corruption** - where corruption is an integral, regular and well recognized component of the functioning of the government—is not universal. Structural corruption of the national government is found in certain usually identifiable countries.

In nations that are structurally corrupt, it is extremely difficult to reform the system from within because the government structure itself directs and participates in the corruption as a regular practice in alliance with powerful business interests. In structurally corrupt countries, often many of the highest authorities in the government and many of the country’s most important businessmen are actively involved, because they have effective impunity from the law and are therefore taking very little risk. Eliminating the certainty of high-level impunity for government officials and top business leaders is essential for dealing with structural corruption in a country.
Why a ICACI is important

An ICACI could potentially offer an effective way to attack structural corruption in many countries. An ICACI allows internal reformers--inside the government, inside the legal system, and inside civil society--to combine their resources with a specialized corruption-focused international entity backed by the international community. Working together, the internal reformers and an ICACI can potentially develop the technical capacity and political weight to take on a structurally corrupt governing system--a system that would otherwise be impervious to internal reform pressure alone.

Difference between the CICIG and the MACCIH

*CICIG* – case focused / *MACCIH* – system focused

Each ICACI must be customized to the needs of the country where it would be employed. This customization can be seen in the differences in focus between CICIG and MACCIH. Although both organizations are tasked with taking on impunity and corruption in specific countries suffering from structural corruption, the two organizations have been designed with a different orientation:

- **CICIG is “case” oriented.** The scope of authority focuses on investigating and prosecuting selected individual cases of corruption that can dismantle corrupt clandestine structures inside the government (many structures with current or past military connections), and by so doing attempt to end a culture of high level impunity in the country. CICIG’s authority is largely restricted to pursuing criminal cases.

- **MACCIH is “system” oriented.** MACCIH has significantly less shared legal authority to pursue individual cases of corruption, but a much broader overall mandate than CICIG to address impunity and corruption as a system to be attacked simultaneously on multiple fronts, and unlike CICIG, MACCIH’s mandate specifically includes addressing the role of the business sector in national corruption.

To review the difference in focus, we first note that CICIG has the shared legal authority to independently investigate corruption cases and to join with the public prosecutor in bringing legal cases to court. In contrast, MACCIH does not have this authority to independently investigate cases or join as a formal participant in a court case. Instead, MACCIH’s shared legal authority, while still important, is limited to its ability to: 1. “select, certify, oversee, and actively collaborate” with those who investigate corruption cases in the public prosecutor’s office; 2. its involvement in “the selection and certification” of the judges in the special anti-corruption courts; and 3. its authority to “oversee and evaluate” the functioning of nearly every component of the Honduran executive and judicial systems in the country that detects, gathers evidence about, and prosecutes corruption.

But, in addition to its degree of shared legal authority, MACCIH, unlike CICIG, has been granted a broad mandate to propose and promote reforms and legislation that effect the entire Honduran system. The MACCIH reform mandate includes not only reforms to the complete anti-corruption regime in Honduras (to include reforms of the business sector), but also reforms to improve the Honduran criminal justice, political finance, and public security systems as a whole. In short, MACCIH has less shared legal authority than CICIG, but MACCIH has a much broader system-wide reform mandate.

In many ways, MACCIH should be viewed as a “second generation” ICACI. The first generation, CICIG, focused mainly on legal cases. The second generation, MACCIH, focuses more on corruption and impunity as a structural system that must be addressed on multiple fronts—not only with legal cases (as essential as they...
are to ending high-level impunity), but also with comprehensive reform of the governing and legal structures as well as the practices of private business.

General Overview of MACCIH's Mandate and Organization

MACCIH participates in two general types of activities:

1. **Shared Legal Authority.** Shares legal authority with the Honduran government directly over certain parts of the legal system related to corruption cases.
2. **Reform Recommendation and Promotion.** Makes recommendations and promotes the implementation of reforms in the Honduran governmental and legal systems to include the business sector.

To carry out these activities MACCIH is divided into four separate divisions, most with subunits.

1. **Division for Preventing and Combating Corruption**
   - Unit for “support” “active collaboration,” and “supervision” of the Honduran legal system investigating and prosecuting corruption (Shared Legal Authority)
   - Unit to “follow up on the [OAS] recommendations” for implementing the OAS’s Inter-American Convention Against Corruption (Reform Recommendation and Promotion)
   - Unit for “reforms and advice to the [Honduran] system to combat corruption,” specifically to include reforms of the business sector as well as the public sector (Reform Recommendation and Promotion)

2. **Division of Criminal Justice System Reform**
   - Unit for “criminal justice system reform” (Reform Recommendation and Promotion)
   - Creation of a non-governmental “Criminal Justice System Observatory” (that will engage in Reform Recommendation and Promotion)

3. **Division of Political and Electoral [Finance] Reform:**
   - “to support creation…of framework on political and electoral financing” (Reform Recommendation and Promotion)

4. **Division of Public Security**
   - Unit for “monitoring the recommendations” of the OAS’s/Government of Honduras’ National System for Citizen Security (Reform Recommendation and Promotion)
   - Unit for promoting the application of the Honduran law “for the Protection of Human Rights Defenders, Journalists, Media Personnel, and Justice Officials” (Reform Recommendation and Promotion)

In reviewing the breadth of MACCIH’s mandate and its organization into 4 divisions, it is important to note that only the first division—Preventing and Combating Corruption—deals directly with corruption and with impunity for corrupt acts. The remaining three MACCIH divisions have mandates to work on reforms of entire national systems—criminal justice, political finance, and public security—far beyond whether those reforms have any direct links to corruption and impunity or not. This broad reform mandate seems to indicate a belief that in a country like Honduras, with deeply embedded structural corruption, that taking on the corruption directly will not be sufficient—that reform of entire systems must be part of a successful effort. It will be an interesting test to see what an ICACI with such a far reaching mandate can accomplish.
Some Highlight Information on the MACCIH Units

1. The MACCIH Unit with Shared Legal Authority

Unit for support, supervision, and active collaboration:

**NOTE:**
This is the only unit that has shared legal authority with the Honduran government and the only unit with the term “supervision” in its name. All other MACCIH units engage only in reform recommendation and promotion activities.

This unit is composed of “international judges, prosecutors, police officers, and professional forensics experts, as well as national professionals.” The three sections from the MACCIH Agreement laid out below describe the heart of MACCIH’s shared legal authority. The key verbs indicating the shared legal authority are underlined below, and include: “select,” “certify,” “oversee.”

- **Attorney General’s Office:**
  To provide technical advice, oversee, evaluate, and actively collaborate with a group of judges hearing corruption cases, prosecutors, investigators, and forensic specialists from the Attorney General’s Office, by delegation of the Attorney General, selected and certified by the MACCIH to gather information and to investigate and prosecute cases of corruption and corruption networks.

- **Anticorruption Judges and Prosecutors:**
  To select, certify, advise, oversee, and evaluate a group of judges hearing corruption cases and prosecutors of the Attorney General’s Office who, by delegation of the Attorney General, compile information and bring public criminal action against cases of corruption and corruption networks.

- **Full Spectrum of Honduran Judicial and Executive Entities Responsible for Providing the Input to and the Processing of Corruption Cases:**
  To provide technical advice, oversee, and/or evaluate the performance of the following institutions: the Attorney General’s Office, the judiciary, the Judicial Council, the Police Investigation Directorate of the Secretariat for Security, the Office of the Inspector General of the Republic, the Inspectorate of Courts, the National Banking and Insurance Commission, the High Court of Auditors, the Executive Office of Revenue, and other entities of the State of Honduras, in pursuing public and/or administrative criminal actions, investigation, prosecution, and criminal and/or administrative punishment in cases of corruption and in recovering the proceeds of corruption cases.

2. The MACCIH Units for Reform Recommendation and Promotion

**Unit to follow up on the recommendations of the MESICIC:**
Honduras ratified the Inter-American Convention against Corruption in 1998 and then in 2001 signed the Declaration of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC). The OAS’s MESICIC does periodic assessments of a country’s compliance with the Convention and makes formal recommendations for implementing the Convention. MESICIC has had very limited positive effect in structurally corrupt countries like Honduras. MACCIH is attempting to put teeth behind MESICIC by dedicating an entire unit whose purpose is to create a “National Plan of Action” to implement all the recommendations of the MESICIC. After coming up with a National Plan, this
unit is tasked to create “a mechanism” for overseeing the implementation of the National Plan of Action to implement the MESICIC recommendations.

This unit will be an interesting experiment in seeing if an ICACI can be used to effectively help a host country comply with an international anticorruption treaty signed by the host country.

**Unit for reforms and advice to the [Honduran] system to combat corruption:**
This unit will be composed of “…eminent international jurists and forensics experts specializing in combating corruption. This Unit shall propose legal and institutional reforms to the Honduran system for combating corruption, including:

- To combat corruption in the private sector to prevent and suppress wrongdoing, bribery, and misappropriation of funds or embezzlement;
- To reform the legal and institutional framework for preventing and combating public corruption in Honduras.”

It is important to note the inclusion of the “private sector.” Unlike CICIG, the second generation MACCIH Agreement specifically empowers MACCIH to include reform of the business community as it relates to corruption.

**Unit for criminal justice system reform:**
This unit is composed of experts from the OAS’s Justice Studies Center of the Americas (CEJA-JSCA) based in Chile. This unit will “prepare a diagnostic assessment of the situation of the Honduran criminal justice system that…will comprehensively analyze the performance and results of the criminal justice system, as well as specific aspects of each of the system’s institutions, such as: governance systems, institutional hierarchical positioning, levels of autonomy, capacity to fulfill institutional mission, internal work processes, and internal organizational models. Finally, a set of recommendations of different depths and scopes will be developed for strengthening the quality, effectiveness, and legitimacy of the Honduran criminal justice system.”

**Unit to establish a non-governmental Criminal Justice System Observatory:**
As a second part of the effort to reform the criminal justice system, MACCIH will be responsible “for establishing a private academic and civil society organization to supervise and promote implementation of reforms of the criminal justice system.” The non-governmental observatory will have no enforcement powers but can systematically produce academic and civil society based research and reports that will shine a public spotlight on the performance of the entire criminal justice. the MACCHI Agreement specifically states: “The observatory shall be integrated by academic and civil society organizations that will be guided by a permanent evaluation matrix of the justice system. The objective of the observatory is to supervise and promote the adequate implementation of the reforms to the criminal justice system.”

**Division of political-electoral [finance] reform:**
This small division does not have a “unit” and its mandate is to “provide advice for the preparation of the law on political and party financing.” The final objective is to have legislation on political and party financing “developed, approved and implemented.” Although not directly connected to individual corruption cases, this bold attempt to attack the “original sin” from which so much of the structural corruption emerges—illegal and improper political and campaign finance—points to the breadth of MACCIH’s design and ambition.

**Unit for monitoring the National Public Security System:**
In collaboration with Government of Honduras, The OAS’s Department of Public Security has produced evaluations of the National Public Security System (SNSE) of Honduras that last of which was presented to the Government of Honduras in 2014. This MACCIH unit will work with “The Attorney General’s Office,
the Secretariat for Justice, The Secretariat for Defense, civil society, among others” to implement the security reforms in SNSC.

**Unit for the Protection of Human Rights Defenders, Journalists, Media Personnel, and Justice Officials:**
In May 2015, Honduras adopted the Law for the Protection of Human Rights Defenders, Journalists, Media Personnel, and Justice Officials. This unit will “assist in the implementation and application of this legislation to protect those who contribute to the criminal and administrative prosecution of cases of corruption and corruption networks and to the strengthening of the criminal justice system.” It Is also tasked to do such things beyond the anti-corruption scope such as “contribute to promoting the human rights and fundamental freedoms recognized in the international legal instruments of those who promote and protect human rights, freedom of expression, and judicial work.”

**SOME MACCIH STATISTICS (Sept 2016)**

- Term: 4 years - unless renewed
- Leadership: Juan Jimenez – former Peruvian Minister of Justice and former Peruvian Ambassador to the OAS. Title is “Special Representative of the Secretary General and Spokesman for MACCIH.”
- OAS Chain of Authority and Support: The Special Representative reports directly to the Secretary General. MACCIH is administratively and logistically supported by OAS’s Secretariat for Strengthening Democracy.
- 1st Year Budget: approx. $ US 9 million
- Major international donors: USA, Canada
- Other International Donors: European Union, Italy, Japan, Germany
- Planned personnel: approx. 70—a mix of international experts and Honduran nationals
- Website: http://www.oas.org/es/sap/dsdme/maccih/new/default.asp

---

**Welcome to our new series: the Democracy Lab Citizen Guides**

Our Citizen Guides help citizens to break down and understand complex issues and organizations that affect their political, economic and social environment. This Citizen Guide will help you to understand the MACCIH, a crucially important new actor in the fight against corruption in Honduras and a potential model for use in other countries.

Copyright 2016 The Democracy Lab

**Cover photo:**
Left: Luis Almagro - Secretary General OAS
Right: Juan Jimenez (former Peruvian Minister of Justice) - Chief of MACCIH