

XXVII LA JOLLA ENERGY CONFERENCE

Does Transparency Still Matter: The Rule of Law, Combating Corruption and the Energy Sector (Experiences in LAC)

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From the northernmost point in Mexico to the tip of Tierra del Fuego in Chile, Latin American countries are experiencing an energy transformation. Some countries are moving faster than others. Some are struggling with long-running political and social battles that threaten sustainable development.

As reported in the 2018 Corruption Perceptions Index of International Transparency, the continued failure of most countries to effectively tackle corruption is contributing to a crisis of democracy around the world.

Widespread corruption in Latin America & the Caribbean is weakening the democratic system as it erodes the confidence of people in the key values of democracy such as integrity, accountability and transparency. Democracy is being hit at its very

foundations by corruption and even worse by its impunity. These are systemic problems that erode democracy, alienate citizens from the political system, generate distrust and a permanent perception of injustice in our societies.

When politics, instead of being defined by the common good, become driven by personal benefit, collusion of interests between politicians and economic power, the sustainability of the democratic system is in jeopardy.

A Pew Research reports in 2018 that 73% of Latin Americans are dissatisfied with the way democracy is working in their country. By tapping off wealth, corruption is also impoverishing the region's economies. By contrast, according to the Inter-American Development Bank, "When European and Asian countries improved their governance and anti-corruption policies halfway through the last century, it tripled their GDP per capita relative to most Latin American countries."

Corruption and its impunity affects the development of our societies and the growth of our economies. It is not indifferent to the energy sector: we have seen how, in the last few years, the scandals of corruption of several companies (at the national and international level)

have led to the continuous distrust by the citizenry of the political class, destabilizing our democratic systems.

Companies, from small entrepreneurs to multinational companies, are constantly facing various corruption threats with devastating consequences, including bribery and capture of public policies, corporate fraud, the cartels, corruption in supply chains and in international transactions.

Transparency, probity and ethics are essential aspects to restore the credibility of people in the political system. In that context, it is fundamental to strengthen the institutions so that illegal and unethical acts are sanctioned.

No matter how many reforms or agreements the political class achieves in favor of the citizenry, if they does not show signs that it genuinely fights against corruption and impunity, disaffection will continue.

DEER STATE

I will concentrate my presentation on what the international community is doing to collaborate with national governments in the fight against corruption. In particular, I will concentrate in the model used by the OAS General Secretariat in the case of Honduras.

Transparency and integrity and the fight against corruption are central under the leadership of OAS Secretary General Luis Almagro. He has defined anti-corruption efforts as a cornerstone of the new strategy of involvement with OAS member countries.

He has also been very clear that while corruption has always existed, what cannot be tolerated is that it be left unpunished. While he has applauded the efforts by the courts in Brazil to go against well-established politicians and business leaders, he has also called for action in countries where impunity is still the norm.

Based on the Inter-American Convention against Corruption, the OAS is bridging the gap between the text of the Convention and the daily reality of countries in the hemisphere through the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC). When there is political will, MESICIC becomes a valuable tool for countries that want to walk the walk.

Zero Tolerance for Corruption

In recent years, there is a trend in the region to develop, with the assistance of the international community, different models to fight against

corruption. The first initiative was the creation of the International Commission against Impunity in Guatemala (CICIG). CICIG was established in 2007, as a result of an agreement between the Government of Guatemala and the United Nations.

CICIG's model is characterized by its ability to exercise independent criminal investigation or serve as adhesive support (*coadyudante adhesivo*) to investigations initiated by the Public Ministry in crimes committed by criminal organizations which have connections to public officials of the judicial system. For some, this model has led to concrete results in the fight against corruption and impunity, while others believe that this model interferes in national sovereignty and has led to a political turmoil in Guatemala. The CICIG's mandate is due to expire in September 2019 and it is not expected to be renewed.

The OAS, contributing to the fight against corruption and impunity in the region, has established by request of the Government of Honduras, and with the support of Honduran civil society, the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH). MACCIH's model works under a unique type of collaboration called "Active Collaboration" which establishes that the technical advice and work in

anticorruption efforts HAVE to be done in collaboration with Honduran institutions. This model promotes the transfer of institutional capacities.

Political context that triggered MACCIH-OAS

The political scenario in Honduras changed dramatically after the 2009 coup d'état which polarized the political system, and led to fragmentation within traditional political parties took place. The traditional bipartisan system became fractured in a period of few months. On top of that, civil society became hyper politicized, which led to an increase of social and political tension.

Ironically, the increased participation of non-political actors which demanded a voice in decision-making turned dysfunctional because the system still operated under the old assumptions of a two-party system instead of readjusting to the new realities.

There are three main events that helped move forward the anti-corruption agenda in Honduras, and that contributed to the creation of MACCIH:

- The continued political and social polarization.

- The investigation led by CICIG in Guatemala that led to the incarceration several politicians in Guatemala.
- The corruption scandal in the Honduran Institute of Social Security (Instituto Hondureño de Seguridad Social – IHSS) in March 2015 which involved the use of funds from this government agency for electoral purposes. This major scandal ignited social unrest and the creation of a new movement against corruption and impunity in the country - the so called “Indignados”.

The Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH)

MACCIH is a unique model in its nature, both for the OAS and the region – it was designed by the OAS based on experiences of other countries, but with a singular emphasis on the Honduran context. Its main objective is to reform and strengthen the Honduran institutions.

For the OAS, MACCIH is a HONDURAN model to fight corruption and impunity. It is an instrument tailored to respond to the needs and demands of the country.

The purpose of MACCIH is to dismantle corruption networks in Honduras. Its work will focus on improving

the quality of services delivered by the justice system of the country.

This Mission resulted from several rounds of exchanges and dialogue held during the second semester of 2015 between the GS/OAS, government officials and Honduran political, economic and social stakeholders, which contributed constructively to the design of this groundbreaking initiative.

The Agreement between the Government of the Republic of Honduras and the General Secretariat of the Organization of American States for the establishment of MACCIH signed on January 19, 2016 reflects the mandate of the mission.

MACCIH was launched in Tegucigalpa on April 19th 2016. Currently the MACCIH team is comprised of 64 international and national persons.

The Mission is implemented through an innovative approach of cooperation called "active collaboration" - which means that MACCIH engages directly with the involved institutions from the judiciary in order to move forward the integrity agenda.

To accomplish its objectives, the MACCIH is structured in four divisions:

- **The Division for Preventing and Combating Corruption** focuses its work in the collaboration with national entities in the investigation and prosecution of corruption cases and the proposal of specific new laws or reforms that will contribute to anticorruption efforts, including regulations for the private sector. This area is also working with the MESISIC in the creation of a national Anticorruption Plan to implement the recommendations presented by this mechanism.
- **The Division of Criminal Justice System Reform** carries out an assessment of the Honduras Justice system and will propose recommendations to improve this system. In addition, this division works closely with civil society in the construction and implementation of an observatory of the criminal justice system which will monitor and evaluate the progress of the Honduran justice system reform.
- **The Division of Political Electoral Reform** worked on drafting the Law on Financing, Transparency, and Oversight of Political Parties and Candidates (“Clean Politics Law”), and its implementation mechanism to control the flow of illegal money

into political campaigns, which is the core of corruption. This means to 'vaccinate' the political system by controlling the money of elections.

- The **Division of Public Security** together with Honduran Institutions works to implement the recommendations proposed in the evaluation report of the National Public Security System (SNSC) and to collaborate in the implementation of the Law to Protect Human Rights Defenders, Journalists and Public Officials.

1. Results Achieved

In the first 3 years since its field deployment, MACCIH has yielded significant achievements:

The Mission:

- Collaborated in the elaboration of the Law on Financing, Transparency, and Oversight of Political Parties and Candidates ("*Clean Politics Law*")
- Established a Unit of Clean Politics to oversee elections and electoral prosecutors;
- Established a new Prosecution Office against corruption, with certified prosecutors;
- Established a new Judicial Circuit to judge cases of corruption, with certified judges;

- Trained prosecutors, judges and other law professionals;
- Supported the prosecution of 11 cases of high corruption; one of them is related to corruption in granting contracts to a hydroelectric plant, which was related to the murder of an indigenous leader and human rights defender in Honduras.
- Collaborated in the elaboration of regulations to implement the Law to protect public officials, human rights defenders, lawyers, journalists;
- Trained police members to deal correctly with violations of human rights of vulnerable groups (domestic violence, violence against LGBTI);
- Established an Observatory of Criminal Justice to be organized by civil society in order to oversee the activities of Honduran judicial system and to publish an annual report of the state of criminal justice;
- Presented several bills and draft legislations to enhance the system to fight against corruption, such as the plea bargain bill;
- Presented a proposal of Constitutional Amendment to provide guarantees for Honduran judges, in order to protect judicial independence.

We are convinced that MACCIH will contribute to foster a culture of ethics and integrity in Honduran society so

that politics may once again put the wellbeing of citizens first.