

## LEGAL SYSTEM OF HONDURAS

Pursuant to Article I of its Constitution, Honduras is a state organized under the rule of law, sovereign, constituted as a free, democratic, and independent republic to safeguard for its inhabitants the enjoyment of justice, liberty, culture, and economic and social well-being.

Sovereignty vests in the people and from the people emanate all the powers that are exercised by representation. By Decree No. 242-2003 dated January 20, 2004, Article 5 of the Constitution was amended to institute the referendum and the plebiscite as means of consulting the citizens. This constitutional amendment is pending ratification.

Article 4 of the Constitution establishes that the form of government is republican, democratic, and representative. There are three branches of government – Legislative, Executive, and Judicial – which are complementary and independent, with none being subordinate to either of the others.

The Legislative branch is exercised by a Congress of Deputies, elected by direct vote.

The Executive branch is exercised by the President on behalf of and for the benefit of the people, and in his or her absence, by the Vice-President of the Republic.

In the case of the Honduran presidential system, the President of the Republic, according to the Constitution, is both head of state and head of government, chief of the Executive branch, and chief of the public administration.

Article 303 of the Constitution, as amended, establishes that the power to impart justice emanates from the people and is imparted free of charge in the name of the State by independent magistrates and judges, subject only to the Constitution and the laws. The Judicial branch is made up of a Supreme Court of Justice, the Courts of Appeal, the Courts of First Instance, and other entities as indicated by law.

According to the checks and balances among the branches of government, legislative acts (statutes), for example, may be reviewed by the Judicial branch, through an action of unconstitutionality; administrative acts may also be reviewed by the Judicial branch, by bringing a contentious-administrative action; the Executive may veto a law (suspensive veto); the Congress approves or disapproves certain contracts and the international treaties entered into by the Executive, approves and modifies the General Budget, and approves the budgets of the autonomous institutions.

We can point out the following summary of the checks and balances of the branches of government provided for in the Constitution:

- Legislative Checks: according to Article 205 of the Constitution, its powers include the following:

- (1) To participate in the election of the high-level authorities indicated in Sections (9) and (11) of that article.
- (2) To approve or disapprove contracts that contain exemptions, incentives, and fiscal concessions, or any other contract that will produce or prolong its effects to the next administration of the Republic (power 19).
- (3) To approve or disapprove the administrative conduct of the Executive, the Judiciary, the Supreme Electoral Council, the Superior Court of Accounts, , the Public Prosecutor's Office (*Procuraduría General de la República*) the Environmental Prosecutor's Office, the Public Ministry, the National Human Rights Commissioner, the National Registry of Persons, decentralized institutions, and other auxiliary organs of the State (power 20).

- (4) To question the secretaries of state and other officials in the central government, decentralized agencies, state enterprises, and any other entity in which the State has an interest, on matters relating to the public administration (power 22).
- (5) Control over the Armed Forces, which fall under the President of the Republic, in setting the number of permanent members of those forces (power 25).
- (6) Control over the treaties entered into by the Executive (power 30).
- (7) Control over the revenues and outlays of the central government and the decentralized institutions, when approving the Budget of Revenues and Outlays for both entities (powers 32 and 33).
- (8) Control over agreements related to public credit (power 36).
- (9) A posteriori control over public expenditure through approval or disapproval of the execution of the General Budget of Revenue and Expenditures of the Republic and the budgets of the decentralized and deconcentrated institutions. The Superior Court of Accounts should rule on such liquidations and summarize its views of the efficiency and effectiveness of the management of the public sector, including an evaluation of expenditure, organization, management performance, and reliability of the control of internal audits, the accounting plan, and their application (power 38).
- (10) Control of public revenues (power 40).
- (11) Control to preserve the integrity of government or state assets (power 41).

- Checks of the Executive branch:

- (1) Co-legislation: (a) Introducing legislation (Articles 213 and 245, power 9 in the Constitution); (b) approval and promulgation of legislation (Article 215 of the Constitution); (c) publication (Article 221 of the Constitution); (d) suspensive veto (Article 216 of the Constitution).
- (2) May appeal to the Congress to hold special sessions or propose that it extend the regular sessions (Article 245, power 6 in the Constitution).

- Checks of the judicial branch:

- (1) Constitutional review of the laws (Articles 184, 185, and 316 of the Constitution).
- (2) Control of the legality of the acts of the Executive, decentralized institutions, and Superior Court of Accounts, through the Law on Contentious-Administrative Jurisdiction.

On legislative matters, the issuance of a new Code of Criminal Procedure (in 2002) resulted in a profound criminal law reform. The Code replaced the written and inquisitorial system, to give way to oral and expeditious proceedings. As a result of this, the Public Ministry (prosecutors) actively participates in judicial proceedings, with respect to the legal principle of the presumption of innocence, witness protection, new laws for a speedier trial, etc.

The Supreme Court of Justice created a legal mechanism to achieve coordination of the different institutions in the justice sector, stemming from the implementation of the new criminal procedure. Based on the foregoing, the “Inter-institutional Commission on Criminal Justice” is operating effectively, made up, among others, of the Supreme Court, the Public Ministry, the Public Prosecutor’s Office, the Public Defender’s Office, the Superior Court of Accounts, the Ministry of Security, the Ministry of Interior, and the National Congress.

The National Penitentiary System is being reorganized through a proposal arrived at by consensus in the Inter-institutional Commission on Criminal Justice that was discussed with civil society.