General Secretariat of the Organization of American States

Mission to Support the Fight against Corruption and Impunity in Honduras

(MACCIH-OAS)

Towards institutional strengthening:

“UFECIC-MP/MACCIH-OAS partnership, breaking paradigms”

Sixth Semiannual Report

April 2019
INTRODUCTION

The MACCIH-OAS continues to support the Attorney General’s Office and to recommend strengthening the rule of law in Honduras

The Mission has continued working to fulfill its obligations as set forth in the agreement signed between the OAS and the Government of Honduras.

From October 2018 to April 2019, the Attorney General’s Office filed seven new prosecutorial charging documents, with the Mission’s technical and legal support—“Brother’s Petty Cash,” “Expansion of the ‘Pact of Impunity’ case,” “Fraudulent Social Security Bidding,” “Open Coffer,” “Fraud on the Gualcarque,” and “Patuca III - Collusion and Corruption”—as well as a request for the seizure of assets associated with the “First Lady’s Petty Cash” case.

The judicial branch has issued formal indictments in the first four cases, which are now pending. The other two cases are in the initial stage. The Mission has also provided the Attorney General’s Office with advice and collaboration on an investigation for which international judicial cooperation was required.

The Mission has made a public statement on matters related to its mandate, namely, on the Departmental Fund public expenditure system and the fragility of the accountability system run by the Honduran High Court of Auditors. It has also spoken about the legislative initiative aimed at restricting the Attorney General’s Office’s investigation.

We proposed new text for the draft Law on Effective Collaboration, rooted in comparative law and in line with the recommendations of the Supreme Court of Honduras. The Mission has also proposed amending the Constitution of Honduras to include the classic guarantees for the judiciary, thereby ensuring its total independence, which is not currently provided for, as a basis for the rule of law.

Notably, the Mission’s work has led to the issuance of the regulation creating the judicial branch’s Special Protection Unit for Judges. It has also worked on other public safety measures like gender equality in the police forces and the protection of journalists and human rights defenders.

The Criminal Justice System Observatory has been strengthened and has worked intensively with civil society, organizing citizen forums on salient issues of justice and citizenship, and holding important forums on the cost of corruption.

The Justice Studies Center of the Americas (JSCA) presented a noteworthy and well-founded report on criminal justice in Honduras, the end result of more than a year of field research.

This report forms part of the Mission’s contribution to improving the democratic rule of law in Honduras.

In conclusion, the Mission has been working very hard to unwaveringly fulfill the commitments taken on by the GS/OAS.

Lastly, the Mission would like to thank:

The people of Honduras, for their support for the Mission’s work; they have been doing their utmost to support Honduran institutions in the fight against corruption and impunity;
Civil society, for its increasingly important participation through its organizations, which are ever present at the discussions of the issues facing the nation;

The Government of Honduras, for the institutional relationship we have built based on frank, respectful dialogue.

The donor countries, which have continued to support the Mission, not just financially but also by providing political backing when necessary to ensure the necessary conditions for operation;

The OAS member countries, for the support received from the representatives in the Permanent Council, as well as from the embassies in Honduras;

The support of the GS/OAS team in Washington, as well as the team from the Department of Sustainable Democracy and Special Missions of the Secretariat for Strengthening Democracy.

The Mission’s mandate is set to end in January 2020. According to the public opinion survey of perceptions of the Honduran situation in 2018, conducted by the Reflection, Investigation, and Communications Team of the Society of Jesus, 61.3% of the surveyed individuals want the MACCIH to continue its work in the country, and 35.4% consider the Mission to be the fifth most trustworthy institution in Honduras.

Lastly, none of this would be possible without the firm support of the OAS Secretary General Luis Almagro.
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Executive Summary

This sixth semiannual report of the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH-OAS) describes the achievements and challenges faced by the three divisions of the MACCIH-OAS—the Division for Preventing and Combating Corruption, the Criminal Justice Reform Division, and the Division of Public Security—in executing the mandate established for this Mission in the agreement between the Republic of Honduras and the General Secretariat of the Organization of American States (GS/OAS). This document covers the period from October 19, 2018, to April 19, 2019.

1. The Division for Preventing and Combating Corruption continues to provide support to prosecutors and the courts in high-impact cases against corruption networks, through the Attorney General’s Office’s Special Prosecution Unit to Fight Corruption-Related Impunity (UFECIC/MP). The following cases were brought to the courts during the period of this report: “Brother’s Petty Cash,” “Fraudulent Social Security Bidding,” “Open Coffer,” “Fraud on the Gualcarque,” and “Patauc III-Collusion and Corruption.” A demand was also filed for the forfeiture of assets in the “First Lady’s Petty Cash” case. With these six new cases, the UFECIC-MACCIH integrated teams have managed to prosecute a total of eleven cases since they were established in 2017.

2. The Reform Unit of the MACCIH-OAS Division for Preventing and Combating Corruption has continued to work on preparing new draft laws and has taken up some previously presented proposals, such as the Law on Effective Collaboration, which was officially submitted to the executive branch in February 2019. That same month, the Governmental Unit for Supporting and Backing the MACCIH (UGAR-MACCIH) was sent the draft Law on the Judiciary Council and the Legal Profession, designed to establish guarantees for judges and magistrates. The Mission also performed legal analyses of the Organic Law on the Court of Auditors, which can undermine the Attorney General’s Office’s powers and authorities on treasury matters, and of the Law on the Management, Execution, and Accountability of Public Funds. In its fifth semiannual report, the MACCIH-OAS recommended the creation of a law on prosecutorial and judicial careers. To that end, technical teams made up of representatives of the Mission and the Attorney General’s Office were formed.

3. The Mission has made progress on training the members of the UFECIC, as well as on defining the system for certifying complaints. In addition, manuals were prepared for justice workers and for the training processes in the prosecutorial and judicial schools, and workshops were held for members of the Attorney General’s Office communications team.

4. The MACCIH-OAS Criminal Justice System Observatory redefined its internal organization, creating four committees: Dissemination, Monitoring and Follow-up, Regulatory, and Decentralization. The civil society organizations approved the organizational structure at the assembly held in November 2018. The process for creating the Decentralized System was also determined. This system will operate in six regions of the country, according to the principle of representativeness of the various sectors of Honduran civil society.

5. The Mission Observatory also began working on its report on the state of criminal justice in Honduras, which will follow the methodology used in other studies performed in Central America.
6. From January to March, the Mission held citizen forums to strengthen Honduran civil society’s capacities for combating corruption and impunity. These forums addressed issues like the draft Law on Effective Collaboration, vulnerable groups, judicial independence, the JSCA report and its proposals, and access to public information. An international forum for journalists, focused on investigative and impartial journalism to fight corruption, was also held in March. It is expected that the Work Plan will be carried out and that its first chapter will be published. Furthermore, the Observatory’s contact and support networks have been expanded.

7. The diagnostic assessment of the operation of the Honduran criminal justice system, prepared by the Justice Studies Center of the Americas (JSCA), was presented. This empirical investigation was carried out in four of the country’s departments (Atlántida, Copán, Cortés, and Francisco de Morazán). It presents a number of recommendations and concrete proposals, broadly speaking, on how to handle judicial branch data on corruption matters so as to improve the country’s institutions to fight corruption while at the same time promoting respect for the rights of victims and the accused.

8. During the period of this report, the MACCIH-OAS Division of Public Security continued working for the protection of journalists, human rights defenders, social communicators, and justice workers, and it prepared a diagnostic assessment of perceptions of the situation of judiciary and Attorney General’s Office employees and officials.
1. DIVISION FOR PREVENTING AND COMBATING CORRUPTION

1.1. Active collaboration with and support for the Attorney General’s Office: Achievements of the UFECIC-MP/MACCIH-OAS integrated teams

Article 3.1.1 of the Agreement signed by the Government of Honduras and the General Secretariat of the OAS (GS/OAS) to establish the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH-OEA) provides for the creation of a mechanism for active collaboration with the institutions of the Republic of Honduras. At the Attorney General’s Office, integrated criminal investigation and prosecution were implemented under the Interinstitutional Mechanism for Bilateral Cooperation, with the purpose of establishing good practices in anticorruption processes. To that end, the Special Prosecution Unit to Fight Corruption-Related Impunity (UFECIC-MP) was created. With this Attorney General’s Office Unit, the MACCIH-OAS provides active support in large corruption networks or high-impact cases through the integrated criminal investigation and prosecution teams, strengthening both prosecutors and the courts.

The MACCIH-OAS has four work teams, each one led by an international prosecutor and made up of international experts who transfer capacities, skills, and best practices to their UFECIC-MP counterparts. An international judge also provided technical advice.

Notably, since the UFECIC was established in August 2017, the integrated teams have prosecuted a total of 11 cases to date, uncovering corruption networks. This is a record in the fight against corruption in the country.

1.2. New integrated criminal investigation and prosecution cases brought to court. Breaking paradigms

The joint UFECIC-MP/MACCIH-OAS investigations have continued, and charges have been brought in four more cases, which means that to date a total of 11 cases have been brought to court, leading to the prosecution of 104 people, of which 72 were civil servants and 32, private individuals. Monetary losses to the State of 302,950,000 lempiras (approximately US$12.6 million) have been identified.

The information to be provided herein on these cases will only include that which can be made public, in strict compliance with the duty of confidentiality and nondisclosure established in the Agreement creating the MACCIH-OAS and in Honduran criminal procedure.

1.2.1. The “Brother’s Petty Cash” case

After receiving a Suspicious Operation Report on January 8, 2018, the MACCIH-OAS/UFECIC-MP partnership actively worked on this case through the integrated criminal investigation and prosecution teams, which discovered the following facts:

The Secretary of State in Administration and Presidential Financial Management was appointed on February 1, 2010, by agreement No. 65-210 issued by the Secretary of State in the Offices of the Interior and Justice; he held the position until 2014. On January 21, 2011, using his powers, he

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1 The UFECIC-MACCIH integrated teams have brought the following eleven corruption cases to court: the “Network of Congressmen,” the “First Lady’s Petty Cash,” the “Pact of Impunity,” the “Pandora” case, the “Forfeiture of Illegal Assets” (based on the Pandora case), the “Brother’s Petty Cash,” “Fraudulent Social Security Bidding,” “Open Coffer,” “Fraud on the Gualcarque,” “Patuca III - Collusion and Corruption,” and asset seizure in the “First Lady’s Petty Cash” case.
proceeded to open the following accounts, among others: (a) a checking account in the name of the Presidential Palace/Administration, for making salary/payroll payments; and (b) a checking account in the name of the Presidential Palace/Presidential Honor Guard, for covering security expenses, with an initial amount of 40 million lempiras.

Another defendant received security from the Presidential Honor Guard, as the brother of the then-president of the Republic of Honduras; he was assigned 11 servicemen.

The investigation revealed that between 2010 and January 2014, the defendant wrote at least 12 checks from the Presidential Palace/Administration checking account and at least 72 checks for 100,000 lempiras each from the Presidential Palace/Presidential Honor Guard checking account: 42 checks to the person identified as protected witness Omega 1 and 30 checks to the person identified as protected witness Alpha 1, for a total of 8.4 million lempiras.

It is important to note that neither of the two beneficiaries Omega 1 or Alpha 1 had an employment, commercial, nor contractual relationship with the State of Honduras during the period investigated, meaning that there were no legal grounds for them to be issued these checks.

The person responsible for the monthly collection of the checks later ordered the beneficiaries of the checks to endorse them, and then deposited them in his personal checking account. When he ordered the endorsement of the checks, he justified their issuance as food and cleaning expenses for the members of the Presidential Honor Guard who provided the security he needed as the president’s brother.

The Armed Forces Military Legal Auditor has reported that it is the Joint Chiefs of Staff (Estado Mayor Conjunto) who are responsible for the food and clothing. In this specific case, the Joint Chiefs of Staff provided food and lodging for the security staff, and if there was a need to travel to another area of the country, the security staff’s travel expenses would be paid for through the General Administration of the Presidential Palace, upon request of the Presidential Honor Guard.

Many transactions were made to and from the account registered in the defendant’s name. During the dates on which the checks drawn for Alpha 1 and Omega 1 were deposited, there were significant sums of money already in the account. This led to a mixing of assets, resulting from combining the funds from the account holder’s business operations with the funds from the public treasury, through the deposit of at least the 84 aforementioned checks.

On November 5, 2018, the Special Prosecution Unit to Fight Corruption-Related Impunity (UFECIC-MP), with MACCIH-OAS technical support, presented charges before the natural judge of the Supreme Court against two defendants in the “Brother’s Petty Cash” case, for the alleged crime of fraud and embezzlement of public funds to the detriment of the public administration.

Subsequently, the UFECIC-MP, with support from MACCIH-OAS experts, expanded the accusation against them of the alleged crimes of fraud and embezzlement of public funds to the detriment of the public administration. Given that, at the initial Supreme Court hearing, the UFECIC-MP prosecutors maintained that after the charges presented on the previous November 6, they received new relevant information according to which the number of checks issued and the amount of public funds appropriated were substantially higher, reaching 13,728,000 lempiras.

The Supreme Court of Justice issued a formal indictment against the two accused individuals, who are being held criminally liable as perpetrator and accomplice, respectively, for the joinder of
125 counts of fraud and 125 counts of embezzlement of public funds to the detriment of the public administration. The Court likewise placed both defendants under house arrest.

This case is now pending.

1.2.2. The “Fraudulent Social Security Bidding” case

This case is particularly significant for the MACCIH-OAS, since the Honduran Social Security Institute (IHSS) is one of the institutions that has been most impacted by acts of corruption. This case investigates one of the Institute’s largest financial outlays, which has been called unjustified and fraudulent.

According to the investigation conducted by the UFECIC-MACCIH integrated team, there is enough evidence to demonstrate that in 2010, members of the IHSS board of directors, well aware of the Institute’s precarious financial position and deficit, began to broach the alleged need to modernize the biomedical equipment of the Tegucigalpa and San Pedro Sula hospitals.

The discussion of this modernization took place without consideration of the hospitals’ true biomedical needs or their infrastructural and staff capacities, and culminated in a proposal for a modernization that would cost approximately US$50 million. In this context, the international bidding process for the procurement and maintenance of the biomedical equipment was started. Although the IHSS itself had declared a state of emergency due to its financial deficit, suspending all procurement processes, this process continued nonetheless.

The investigation determined that the bidding process was designed to prevent the participation of international companies by establishing requirements that could only be fulfilled by domestic ones; furthermore, even for the Honduran companies the requirements were excessive. Because of these conditions, only one company ended up participating in the bidding process. Notably, it did not comply with all of the requirements called for in the bidding specifications, for which reason the process should have been called off and a new bidding process should have been held. However, this did not occur. The company was considered to be qualified, its bid was accepted, and in April 2011 the contract was awarded for US$95,244,166.54, almost double the initial estimate for the modernization (US$50 million).

In June 2012, the IHSS board of directors approved the modification and expansion of the contract by US$23,668,761.80, making the final contract amount US$118,912,928.34, when in fact a new bidding process should have been held.

Another of the most striking findings is that the biomedical equipment offered and supplied by the company was overpriced, at 114% of its market cost. Furthermore, the equipment was not delivered by the contractual deadlines, which affected the need for maintenance. However, the IHSS’s monthly payments were not delayed.

One factor that demonstrates that the contract was unwarranted is that more than seven years after it was awarded, some of the biomedical equipment has still not been used and remains in storage.

On December 3, 2018, the UFECIC-MACCIH integrated team filed charges before the professional criminal court judge with national jurisdiction over corruption against 12 individuals who had served as members of the board of directors of the Honduran Social Security Institute in the 2010-2012 period, for the crimes of fraud, public servants’ breach of duty, and abuse of authority.
On this point, it should be noted that the judge agreed to the prosecution’s request and issued arrest warrants for all of the accused individuals.

On December 10, 2018, the judge issued formal indictments against all of the individuals accused of the crimes and awarded a temporary stay of proceedings to one of the accused individuals for only one crime. The accused were restrained from leaving the jurisdiction of the criminal proceedings, through non-detention precautionary measures that were handed down against them, including house arrest for three of the accused; two others have been imprisoned for this case, as well as for another prior case.

Currently the defense is appealing the formal indictment of this case and the Attorney General’s Office is appealing the non-detention precautionary measures.

1.2.3. The “Open Coffer” case

On December 11, 2018, the UFECIC-MP filed, before the Supreme Court of Justice, a prosecutorial charging document for the alleged crime of embezzlement of public funds to the detriment of the public administration of the State of Honduras. In this document, the UFECIC-MP presented evidence to demonstrate that the accused embezzled a total of 21.1 million lempiras (equivalent to US$879,166.66) of Honduran state funds, which were deposited in a bank account in the name of the Planeta Verde Association, in the manner that follows: (a) 2 million lempiras from the Presidential Palace, (b) 3 million lempiras from the National Congress, and (c) 16.1 million lempiras from the Ministry of Finance. The document also states that these funds were transferred to the personal accounts of principal and alternate members of Congress as well as of their family members and third parties.

Notably, the Attorney General’s Office may prosecute cases without the High Court of Auditors having taken any preliminary administrative action. However, analysis of the documents supporting the allocation of funds from the Presidential Palace, National Congress, and Ministry of Finance shows that the High Court of Auditors performed a review on November 7, 2016, for which reason the UFECIC-MP/MACCIH-OAS integrated team performed the investigation that revealed the following findings.

In 2015, several members of the National Congress and their alternates, all now accused, asked the President of the Republic to instruct the Ministry of Finance to allocate funds, through the government’s social assistance program, to the financing of social projects through the nongovernmental organization Planeta Verde Association (APV) designed to improve living conditions for Honduran citizens and to be executed in various departments, including Atlántida, Choluteca, Cortés, Francisco Morazán, Intibucá, La Paz, Lempira, Ocotepeque, Santa Bárbara, Valle, and Yoro.

These funds, which came from the Presidential Palace, National Congress, and Ministry of Finance, were deposited into the Planeta Verde Association account and then immediately thereafter deposited into the personal accounts of the members who had made the request, their family members, and third parties.

In requesting these funds, the now-accused members became the guarantors thereof. Consequently, their responsibility was not limited to requesting and obtaining the capital outflow, but also included ensuring and verifying that the government funds were used for the purpose for which they had been requested and not spent on anything else, let alone used to increase their and their close family members’ wealth.
The members’ choice of the nongovernmental organization Planeta Verde Association was not a random one; rather, it was part of a preconceived plan that enabled them to easily appropriate the public funds, since the NGO was a front organization and many of the projects did not align with the objectives for which it had been created.

This statement is self-evident, given that the more than 21 million lempiras of public funds that were deposited into the Planeta Verde Association account in a period of less than three months—August 28 to November 9, 2015—were removed therefrom in the same period—September 2 to November 10, 2015—and transferred to the personal accounts of the members of the National Congress, their families, and other individuals, despite this money having been allocated to reduce the poverty of the Honduran people.

It should be underscored that this case demonstrates the ineffective nature of the public spending accountability mechanisms. In its July 31, 2018 Executive Report on the Accountability of the Public Sector in 2017, the High Court of Auditors found the public sector internal audit units to be weak and unreliable. After the initial hearing, the appointed natural judge resolved:

(1) To issue a formal indictment against six persons as perpetrators of the crime of embezzlement of public funds;
(2) To issue a formal indictment against three persons as perpetrators of the crime of fraud against the State;
(3) To issue a temporary stay of proceedings for seven accused persons;
(4) To definitively dismiss the criminal investigation for some of the accused individuals; note that the Attorney General’s Office and the defense both filed an appeal against this.

1.2.4. The “Fraud on the Gualcarque” case

This case has national and international implications as it derives from the more than 40 complaints filed with the Attorney General’s Office by Bertha Cáceres, the Lenca indigenous leader and environmentalist who was assassinated three years ago, regarding irregularities that were allegedly committed in various water resources concessions, affecting the Lenca community. The MACCIH-OAS selected the complaint on the Agua Zarca project as a case for integrated criminal investigation.

On March 4, 2019, the Attorney General’s Office’s Special Prosecution Unit to Fight Corruption-Related Impunity (UFECIC-MP) filed charges against 16 persons with the Anticorruption Circuit Court of First Instance, for the alleged crimes against the state of fraud, abuse of authority, public servants’ breach of duty, and document forgery. The Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage and the Office of the Special Prosecutor for the Environment provided support for this investigation.

With this first phase of the investigation, the UFECIC-MP presents evidence that the accused individuals committed various crimes of corruption to ensure that the company Desarrollos Energéticos S.A. (DESA) would receive the Gualcarque River Water and Operating Contracts, with the Ministry of Natural Resources and the Environment (SERNA), a Power and Energy Supply Contract with the National Electric Power Company (ENEE), the Electricity Generation, Transmission, and Retailing Operating Contract between SERNA and DESA S.A. (Agua Zarca Hydropower Station), and the Power and Electric Energy Supply Contract No. 043-2010, signed June 3, 2010, between ENEE and DESA.
The fraud is evident by a number of irregular administrative procedures that were followed to facilitate the DESA project, with the participation of several civil servants from various public institutions (SERNA, ENEE, INA, ICF, and the Municipality of San Francisco de Ojuera), who unlawfully expedited the Agua Zarca Hydropower Project process, with clearly concerted action by the accused parties.

The entire investigation shows how the public administration acted to promote DESA, engaging in illegal procedures and omitting the water resources concession reports, and thereby affecting endangered species, the flora and fauna, and human consumption.

The court has set a date for the arraignment and initial hearing.

### 1.2.5. The “Patuca III - Collusion and Corruption” case

On March 18, the MACCIH-OAS and the UFECIC presented an indictment against 10 persons for collusion on crimes of fraud, abuse of authority, forgery of public documents, public servants' breach of duty, and domestic bribery. These acts gave rise to the “Contract for equipping the offices and housing units in the ENEE encampment for the Patuca III Hydropower Project.”

The investigation has determined that: (1) there were categorical irregularities in the procurement process, including the fact that the Evaluating Committee exercised no control whatsoever over the arbitrary choice of companies invited to tender for the supply contract, nor did it perform a comparative study of the goods offered with the existing market prices and opportunities; (2) the goods included in the supply contract were overpriced, in some cases by up to 149% of their market value; (3) goods were falsely received, meaning that they were paid for without ever having been delivered. The investigations indicate that the goods under the contract were purchased after the date on which it is indicated that they were received. All told, 14,520,194 lempiras were paid for these goods even though they had not yet been received; (4) the individuals involved formed companies and colluded to defraud the Honduran State.

The investigation demonstrates the relationships between the bidding companies, which leads to the conclusion that they reached an agreement for the manipulation and overpricing in the contracting process. Evidence exists of a lack of bidding requirements and of the public servants' direct relationships with the companies' private representatives.

### 1.2.6. Asset seizure in the “First Lady’s Petty Cash” case

On March 20, the UFECIC-MP and the MACCIH-OAS requested, from the Forfeiture Court, precautionary forfeiture measures for assets worth over 3.6 million lempiras (around US$385,000) held by the accused in the “First Lady’s Petty Cash” case. Pursuant to Articles 11 and 12 of the Forfeiture Law, the request for these assets or for the equivalent value and mixture thereof, is made with the purpose of recovering, for the State of Honduras, the funds that were stolen in the past, as real estate and personal property.

The purpose of these asset forfeiture measures is to prevent disposal, which would hamper the State of Honduras's confiscation of the assets. Eleven immovable and five movable assets are listed as properties, for all of the parties involved in the case. The value of the property seized from one of the accused individuals on February 28, 2018, totaled 3,678,380.00 lempiras, or US$385,227.
1.3. The first oral trial in the integrated criminal investigation

On February 27, 2018, in the First Lady’s Petty Cash case, the UFECIC-MP filed, with MACCIH-OAS technical support, the information against Rosa Elena Bonilla Ávila, former first lady of the Republic of Honduras, charging her with committing the crimes of embezzlement of public funds, conspiracy, and asset laundering against the public administration and economy of the State of Honduras. It also brought charges against Manuel Mauricio Mora Padilla and Saúl Fernando Escobar Puerto for the crimes of conspiracy and asset laundering against the economy of the State of Honduras.

After the respective procedural stages, the trial court with national jurisdiction over corruption matters gave notice of the first oral trial to be undertaken by the UFECIC-MP/MACCIH-OAS integrated team. This trial began in March 2019.

It should be emphasized that the MACCIH-OAS support for and active collaboration with the UFECIC-MP has expanded, since one of the Mission’s international financial experts has been recognized by the court as a technical consultant for the Attorney General’s Office, pursuant to Honduran laws of criminal procedure.

1.4. The tools necessary to improve the justice system’s anticorruption operations

In this report, the MACCIH-OAS reiterates the need to approve the proposed draft laws, in fulfillment of its obligation to help strengthen the legal and institutional framework to prevent and combat corruption, pursuant to Article 3.1.3 of the Agreement for the establishment of the MACCIH-OAS signed in January 2016.

From October 2018 to April 2019, the MACCIH-OAS continued to prepare, present and revise, as the case may be, several draft laws that, if passed, would strengthen institutions and effectively combat corruption. These laws include:

1.4.1. Law on Effective Collaboration

Although criminal law is one instrument for combating corruption and organized crime groups, its strategies for doing so, and its influence, are not the same as they are for other criminal acts, given the potential scale and effects of a corrupt individual’s or organized crime groups’ actions from a position of power, and the levels of impunity that exist in the country.

Accordingly, substantial procedural reforms must be made to criminal law. These reforms should be designed with a view to dismantling criminal organizations and investigating criminal acts of corruption. The United States model stands out among procedural structures for combating organized crime, with its use of vehicles like the plea bargain, which grants more lenient sentences to defendants who recognize their own guilt and that of other higher-level members of criminal organizations. This type of mechanism has been shown to be useful in bringing down criminal organizations, and in identifying the methods according to which they engage in punishable conduct.

Honduran criminal law includes certain mechanisms designed to obtain the cooperation of individuals accused of committing criminal offenses, such as the so-called criterio de oportunidad, or immunity program for cooperating witnesses, applicable in cases of organized crime, violent crime perpetrated by criminal groups or gangs, and serious crimes, the complex nature of which makes them difficult to investigate and prosecute.
Likewise, Honduran criminal procedural and criminal law partially regulate the concept of effective collaboration, which is only applied for individuals convicted of conspiracy who cooperate in the investigation and prosecution of the co-conspirators. Presently, under Honduran law the use of the effective collaboration mechanism is restricted; it can only be applied in certain cases of convicted individuals and only for certain types of crimes.

In December 2016, the MACCIH-OAS submitted a draft bill on effective collaboration, which was subsequently presented to the National Congress on April 7, 2017. It was not debated.

In 2018, after further outreach to the Attorney General’s Office, members of the National Congress, and other government officials, the Mission formed a technical team to comprehensively review the draft Law on Effective Collaboration, since the Parliamentary Front in Support of the MACCIH-OAS and the Government had presented two different bills. Because of this, the decision was made to review both texts and incorporate elements from both into one single text, while also taking into account the recommendations made by the Supreme Court of Justice in Act No. 42-2017 of August 22, 2017.

Lastly, on February 6, 2019, the MACCIH-OAS officially submitted a revised draft bill on effective collaboration to the executive branch, containing 42 articles designed to help dismantle the corruption networks operating in the country.

It is worth mentioning that on April 23 the National Congress appointed a Special Multi-party Committee to issue an opinion on this draft bill as well as to facilitate its dissemination to different stakeholders.

1.4.2. Constitutional reform to strengthen the guarantees for and independence of judges

In order to provide the judicial branch with a better structure for fighting corruption, through reforms meant to strengthen and ensure judicial independence in the face of institutional or de facto external interference, the MACCIH-OAS sent on February 12, 2019 the draft amendment of Article 319 of the Constitution of the Republic, which establishes guarantees for judges and magistrates, to the executive branch and the Supreme Court of Justice.

The Mission’s draft amendment proposes the following guarantees: (1) the independence of judges in decision-making and in the exercise of their judicial roles; (2) stability in and irremovability from their positions and roles; (3) ad hoc tenure; (4) appropriate compensation; (5) promotion or advancements; (6) freedom of opinion and judicial decision; (7) freedom of association; and (8) personal and family security.

This draft amendment seeks to improve conditions for judges and magistrates, and is based on the classic guarantees for judges and magistrates in place in Spain, Portugal, and Latin American countries. The proposed reform would also bring the country in line with the stipulations of the Inter-American Court of Human Rights in the judgment on merits in the case of López Lone vs. Honduras, which establish the obligation of the State of Honduras to adopt the necessary measures to guarantee the stability and tenure of judges, among other guarantees, as a mechanism for ensuring their independence.
1.5. Legal opinions and analyses issued

1.5.1. Legal analysis of the amendments to the Law on the High Court of Auditors

Among its principal objectives, the MACCIH-OAS aims to support the Honduran State in fulfilling the commitments it acquired under the Inter-American Convention against Corruption. Although the High Court of Auditors is no longer the body appointed by the State of Honduras to implement and serve as the central authority for this international instrument, its importance is undeniable, as it is the comptroller and technical institution responsible for ensuring the proper management of State funds.

The legislative branch has tried to push through a number of reforms on the activities of the High Court of Auditors. These include the reform of the Organic Law on the High Court of Auditors, which attempts to strengthen internal audit processes, includes a mechanism for appointing internal auditors, and stipulates their required training and the creation of an auditor certification school.

The MACCIH-OAS considers these reforms to include elements designed to strengthen administrative independence, promote preventive audits in the institutions that handle public funds, and guarantee the budgetary autonomy of the High Court of Auditors. However, some parts of these reforms undermine the High Court of Auditors’ oversight powers as well as the Attorney General’s Office’s independence. Accordingly, the Mission found it necessary to perform an analysis of these reforms and will likewise provide support for reviewing the Manual on Unlawful Enrichment currently being prepared.

The analysis highlighted the following: the elimination of subsections 7, 8, 9, 10, 11, and 12 of Article 5 of the Organic Law would mean that the High Court of Auditors would be unable to audit or oversee funds from private concessionaires, public-private partnerships, privatizations of State companies, or trusts. This would represent a setback in terms of transparency and accountability and would restrict the oversight activities that the High Court of Auditors is currently carrying out in some State institutions and with private stakeholders on the use and administration of the public treasury.

The amendment of Article 50 is also regressive, in that it would undermine the powers of the Attorney General’s Office by establishing that it must exhaust all administrative remedies before instituting the applicable legal proceedings.

Judgment AP 512-12 of the Constitutional Law Division of the Supreme Court of Justice (handed down on January 21, 2014) challenges the intended reform, in a petition for constitutional relief against a decision made by an appeals court. The judgement is based, the Court states, on it being against the law for the High Court of Auditors to send circumstantial reports of crimes (abuse of authority and fraud) to the Attorney General’s Office unless the administrative remedies before the High Court of Auditors have been exhausted, which did not occur. The Court of Appeals, in substantiating its decision, indicates that cases of unlawful enrichment are excluded from the stated rule and that once there are indications that this crime has been committed, exhausting the motion for reconsideration is sufficient in order to close the administrative remedy and initiate the applicable criminal proceedings.

In the judgment in question, the Constitutional Law Division indicates that ultimately, the Attorney General’s Office’s power to initiate public criminal proceedings does not depend on the start, execution, or completion of other actions, since its jurisdiction and actions are not
determined by the existence of other types of proceedings or jurisdictions, but rather arise from the law. However, it is understood that the provisional and definitive reports made by the High Court of Auditors could at some point, in light of the circumstances of each case, constitute more evidence.

1.5.2. Analysis of the draft Special Law for the Management, Execution, and Accountability of Public Funds

The draft Special Law for the Management, Execution, and Accountability of Public Funds for Social and Community Outreach Projects and Social Assistance was reviewed and legally analyzed. This draft law, developed and presented by members of the National Congress, centers on documenting, starting with the Special Law, a process for the management, execution, and accountability of public funds that may be turned over to public servants and deputies. The law also aims to implement, through a temporary mechanism, an administrative procedure for settling funds through High Court of Auditors field audits and the issuing of receipts that would eliminate the administrative, civil, and criminal liability that could devolve from misuse of public funds awarded in the past.

One of the aspects of the legislative branch’s actions that Honduran society has most questioned is the management of Departmental Development Fund (FDD) resources. This Fund was established in 2006 as part of the Poverty Reduction Strategy. Through the FDD, the members of the National Congress executed social projects without extensive documentation or rigorous settlement processes, on their own and through nongovernmental organizations.

On December 11, 2017, the MACCIH-OAS/UFECIC-MP integrated teams brought the first case, called “Network of Deputies,” against five members of the National Congress, for the crime of embezzlement of public funds. After this case was brought, once again various sectors of society criticized the FDD. Accordingly, the Ministry of Finance issued a memorandum (which does not have the force of law) to give notice that no FDD-related actions would be taken until the management and settlement procedures had been duly regulated.

In February 2019, some National Congress members presented the draft Special Law for the Management, Execution, and Accountability of Public Funds for Social and Community Outreach Projects and Social Assistance. This Special Law regulates the awarding and execution of funds allocated to members of Congress and/or public servants for social projects.

The MACCIH-OAS considers it important to know about all projects being developed in this regard, since no legal body should commit past errors but rather should be principally geared towards fighting corruption through transparency, accountability, and control mechanisms.

1.6. Integration of technical teams

1.6.1. Technical committee for certifying UFECIC investigators and prosecutors

Pursuant to the agreement between the Republic of Honduras and the GS/OAS for the establishment of the MACCIH-OAS; the Interinstitutional Mechanism for Bilateral Cooperation between the Attorney General’s Office of the Republic of Honduras and the GS/OAS through the MACCIH-OAS; and agreements FGR. 001-2017 and FGR. 002-2017 of the Protocol for the Certification, Selection, and Appointment of Candidates for the Special Prosecution Unit to Fight Corruption-Related Impunity, and FGR. 004-2017, the MACCIH-OAS and the Attorney General’s Office have formed a working group to start evaluating and certifying prosecutors as well as
investigators and analysts to be incorporated into and expand the work carried out by the UFECIC-MP.

1.6.2. Complaint Certification System (SICRED)

Pursuant to Article 3.1.1.1 of the Agreement signed for the creation of the MACCIH-OAS, the Mission has formed an interdisciplinary technical team, which prepared the first exploratory report with recommendations, subsequently sent to the Attorney General’s Office for evaluation.

SICRED is a quality management system that helps the institution organize all of the information on corruption cases filed with the Attorney General’s Office. It enables the registration, recognition, and flow of information for adequate control, oversight, and follow up. In the next few months the institutions’ technical team will continue meeting in order to establish the best way to support the Attorney General’s Office in strengthening and improving the SIGEFI case management system, so as to provide automated, documentary support for securely and reliably receiving and handling complaints, especially in corruption cases.

1.7. Regulations on the Prosecutorial Career

In its fifth semiannual report, the MACCIH-OAS recommended that a Law on the Prosecutorial Career be established, to regulate the system for entry into the Attorney General’s Office, tenure, promotion, and disciplinary control.

Accordingly, a technical team with representatives of the Attorney General’s Office was formed to establish the initial parameters for developing this law. The joint Attorney General’s Office/MACCIH-OAS technical committee agreed to draw up terms of reference for hiring a consultant to be responsible for analyzing, in the light of comparative law and the needs of the Attorney General’s Office, the national legal framework that currently governs the prosecutorial career. As a final output, the consultant will submit draft Regulations on the Prosecutorial Career for the consideration and approval of the Attorney General and the institution’s other authorities. The MACCIH Reform Unit has already prepared the terms of reference and sent them to the Attorney General’s Office for the Attorney General’s analysis.

In addition, in order to provide some inputs for the consultant, the Mission is preparing a brief analysis of the current status of the prosecutorial career at the Attorney General’s Office, based on documentation provided by the prosecutor’s office.

1.8. Training of Attorney General’s Office and judicial branch anticorruption unit personnel

1.8.1. Manuals for justice officials

Faced with the need to improve the knowledge and capacities as well as the day-to-day job performance of the Honduran justice officials at the service of the overall community, the Mission identified the need for manuals on matters of social, human, political, and civil rights, as developed by the Ibero-American Network of Judges. The Mission proposes that a consultancy adapt the manuals. The plan to update the manuals for judges and adapt them to the Honduran context is a joint project of the MACCIH-OAS and the Konrad Adenauer Foundation.
The preparation and revision stage for the Manual on the Justiciability of the Right to Access Information was completed in December 2018. This manual is currently being edited and will be presented and distributed in April 2019.

1.8.2. Training processes coordinated with the Judicial and Prosecutorial Training Schools

In the last quarter of 2018, the MACCIH-OAS, with the support of the Judicial Training School and the Attorney General’s Office’s Training School, conducted a number of training activities for UFECIC-MP prosecutors, investigators, and analysts, as well as for the National Council to Combat Corruption. The topics addressed during the training sessions include: (1) special crimes against the public administration; (2) special investigation methods; criminal investigation methods and techniques; (3) managing high-impact investigations; the use of forensic tools; techniques for detecting forged documents; video analysis and clipping; the use and handling of evidence; forensic audits/planning, execution, and reports; (4) case theory; and (5) litigation techniques; oral argument; examination techniques; and techniques for making appeals in criminal matters.

Subsequently, training sessions that included personnel from other special prosecutors’ offices and institutions involved in anticorruption matters were held on topics outside of criminal law, such as: (1) administrative law and banking law; (2) administrative procedures and the institutional work of the Property Institute, the Chamber of Commerce and Industry, and the Revenue Administration Service; and (3) office management and leadership.

For the 2019 training cycle, the Mission, together with the Judicial and Prosecutorial Training Schools, has been designing a criminal law certificate program, with a special focus on corruption crimes, for judges, prosecutors, court support staff and technicians, with a specific academic workload to be recognized by the judicial and prosecutorial career systems.

To increase coverage, the MACCIH-OAS decided to expand the training programs to the city of San Pedro Sula, as a way to zone or regionalize the training programs and offer the opportunity for justice workers in the northern, western, and Atlantic zones to also benefit from the specialized training and thereby more effectively fight the different forms of corruption found in the country.

1.9. Presentation of the Justice Studies Center of the Americas report

The Agreement between the Republic of Honduras and the General Secretariat of the Organization of American States for the Establishment of the Mission to Support the Fight against Corruption and Impunity in Honduras sets forth reform of the criminal justice system as one of its lines of actions. This line of action leads to the commitment to the: “2.2.1 Review and analysis of work being done by the system of justice institutions and formulation of recommendations to improve the justice system in Honduras.”

The Agreement also establishes that the Division of Criminal Justice System Reform will include the Unit for Criminal Justice System Reform, made up of experts from the Justice Studies Center of the Americas whose mission is to support the States of the region in their justice reform processes.

The JSCA, as the Mission’s technical body, has completed a rigorous analysis of the Honduran criminal justice system over a period that began in 2010. It has drawn up recommendations that vary in depth and scope while seeking to improve the quality, effectiveness, and legitimacy of the system. These recommendations are detailed in the report that was presented. It should be noted
that this report was prepared with the agreement of the country’s security and justice institutions.

Bilateral workshops with MACCIH employees and the Ministry of Security were held for sharing the JSCA report, titled “Proposals for the Honduran Criminal Justice System in the Treatment and Management of Cases of Corruption with High Social Impact.” The MACCIH Criminal Justice System Observatory also organized a citizen forum for the same purpose. Although a bilateral workshop was also organized with the judicial branch, it was canceled thereby.

On March 14, 2019, the report was presented to the public, with various representatives of government institutions, aid workers, the diplomatic corps, representatives of private companies, etc., in attendance.

1.10. Training workshops with the Attorney General’s Office Communications Department

In February, the MACCIH-OAS held a social network impact workshop with staff from the Attorney General’s Office’s Communications Department. The workshop was designed to improve the impact of the Office’s social networks, enabling the Office to compete with the misinformation disseminated by many mass media outlets, as well as these outlets’ blocking of information, especially information on the fight against corruption.

All told, 16 Communications Department officials participated in the workshop, which focused on providing tools for the Department to work on 12 variables to create a practical mechanism for generating content for digital media, with the aim of effectively achieving objectives for both the media outlet and the target audience.

2. DIVISION OF CRIMINAL JUSTICE SYSTEM REFORM

2.1. Criminal Justice System Observatory

Subsection 4.2 of the Agreement between the Government of Honduras and the GS/OAS establishes that a Criminal Justice System Observatory will be set up. It will be comprised of Honduran academics and members of civil society. During the period of this report, the following work was performed to that end:

2.1.1. Institutionalization

During this period, the institutionalization of the Observatory continued, with the redefinition and reorganization of its internal structure. The following actions were performed:

2.1.1.1. Resumption of the Provisional Committee and division of labor

With the arrival of the new head in September 2018, the Observatory resumed relations with the Provisional Committee organizations and they were able to begin working again. The 14 NGOs were organized into the following four working committees:

- Monitoring and follow-up
- Decentralization
- Regulatory
2.1.1.2. Approval of the proposed reframing and internal reorganization of the
Criminal Justice System Observatory

The MACCIH-OAS proposed a new structure for the Criminal Justice System Observatory based on the analysis of the overall situation thereof. This new proposal was presented to the Criminal Justice System Observatory Provisional Committee on November 9 and was approved that same month. The proposal defines the general structure of the Observatory’s operations as follows:

There are two strategic objectives behind the reorganization of the Observatory’s team of professionals. The first objective is to form a team of local professionals so that the knowledge and experience they gain remains in Honduras; this team should be interdisciplinary, so that it can respond to the demands of the country’s social and political realities. The second objective is to consolidate a technically qualified team to produce the report on the state of the Honduran criminal justice system.

The Monitoring and Follow-up, Decentralization, Regulatory, and Dissemination committees remained very active under this new structure, holding various meetings in the period to prepare their respective work plans for the first quarter of 2019.

2.1.1.3. Process for creating the Decentralized Observation System

Pursuant to subsection 4.2.4 of the Agreement between the Government of Honduras and the GS/OAS for the establishment of the MACCIH-OAS, the Committee worked during the months of November and December 2018 to define the process for establishing the Decentralized Observation System, with coverage based on the way the country’s jurisdictions and Attorney
General’s Office are organized. As a result, the Protocol for Convening and Holding the National General Assembly was developed and approved in December. The objective of this Protocol is to organize the open call for the National Assembly, as well as its operation, and to propose how members will be elected to positions on the Observatory’s various permanent bodies.

Essentially, the Protocol establishes the “principle of representation by sector” to achieve the best possible representation of Honduran civil society in the Observatory, pursuant to the MACCIH Agreement. The organizations that will make up the Observatory will come from 19 different sectors. The Protocol also establishes the bodies that will constitute the Observatory, which include: the National General Assembly; the National Executive Committee: chair, secretary, members; the National Oversight Committee; the National Advisory Council; six regional assemblies; six regional executive committees; and six regional oversight committees. Each regional executive committee will be supported by a regional oversight committee.

The Protocol then defines the order in which the call for the National General Assembly will be conducted, as follows:

1. Regional assemblies;
2. Regional executive committees;
3. Regional oversight committees;
4. National General Assembly;
5. National Executive Committee: president, secretary, members;
6. National Oversight Committee; and

Most importantly, the Protocol defined the mechanism for regional decentralization based on the Attorney General’s Office’s jurisdiction as set forth in the MACCIH-OAS Agreement. The organization of the National General Assembly is based on two fundamental principles, also pursuant to the Agreement: decentralization and representation. To achieve this objective, the national territory was divided into six regions with their respective departments: Choluteca, Tegucigalpa, Intibuca, Santa Rosa de Copan, La Ceiba, and San Pedro Sula. These regions were selected after a national call for a meeting in Tegucigalpa in November 2018, in which these provisional committees, which are slightly more consolidated as civil society representatives, participated. Their distribution allows them to serve the entire country of Honduras.

Lastly, the Protocol establishes the way the Observatory bodies are elected; the call for and certification of the organizations; the leadership of the National General Assembly, and the functions of each of the Observatory bodies.

When the regional assemblies and National General Assembly meetings have been finalized, it will be possible for the Observatory to have a presence throughout the national territory. The Observatory will expand its base of civil society organizations, which will help strengthen its legitimacy and credibility, and will be in condition to start executing its work plan with coverage throughout Honduras. This is a process of building “from the ground up,” to make Honduran citizens’ collective action a reality in monitoring and following up on the criminal justice system in order to improve it.

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2 Higher Education Council, organizations that promote specialized studies like think tanks, women’s organizations, organizations for childhood and adolescence, youth organizations, trade, work, and professional associations, indigenous peoples’ organizations, environmental defense organizations, LGTBI organizations, Afro-descendant organizations, campesino organizations, religious organizations, human rights organizations, organizations for persons with disabilities, organizations in defense of the elderly, organizations for migrants, displaced persons, and returnees, organizations for the defense of persons with HIV, community associations, and the Indignados movement.
With the first National General Assembly, the Criminal Justice System Observatory will complete its organizational structure with a broad representation of Honduran civil society and will be set to better plan its future stability and sustainability to continue fulfilling its mandate to follow up on and monitor the Honduran criminal justice system. This is fundamental, considering that at some point the MACCIH will conclude its work in the country and will leave Honduras. At that time the Criminal Justice System Observatory must be ready to survive on its own or through the institutional arrangements made for it to do so.

In conclusion, this period has been an extremely productive one for the Observatory in terms of the tangible progress made towards consolidating its institutionalization and decentralization in Honduras.

2.1.2. Development of the Observatory’s Strategic Communications Plan

On December 12, a workshop was held to develop the Observatory’s first Strategic Communications Plan (PCE, by its Spanish acronym). This workshop took place at the National Technical University, UNITEC, which offered its facilities as part of the Observatory’s goal to work more closely with academia to comply with the Agreement establishing the MACCIH-OAS. The Observatory Communications Strategy was developed as a result of the workshop, and will be completed with the preparation of the respective Plan. The PCE is indispensable as an instrument through which the Criminal Justice System Observatory will be able to communicate with its target audiences or the public to inform them of the results of its work following up and monitoring the criminal justice system so as to strengthen it. The PCE is expected to be completed and approved on March 15, 2019, including the revision and updating of the Observatory’s web portal depending on its current stage of development. The PCE is being prioritized since several analyses of the work of the MACCIH-OAS and Criminal Justice System Observatory have pointed out the failure to implement a communications strategy as a weakness of both entities.

2.1.3. Report on the State of Criminal Justice in Honduras

As part of its work, the MACCIH-OAS Observatory has been preparing, since September 2018, a Report on the State of Criminal Justice in Honduras. This report is based on the State of the Nation Program (PEN, by its Spanish acronym) research model used in Costa Rica. The PEN has more than 20 years of experience producing reports in Central America with a rigorous research methodology. The MACCIH-OAS has been working with the PEN on developing a conceptual model for the report and the methodological consultation strategy for preparing the report topics. The MACCIH-OAS Observatory is currently working on developing the report topics.

2.1.4. Citizen forums on relevant issues on the anticorruption and anti-impunity agenda in Honduras

In January 2019, the MACCIH-OAS initiated a series of events called citizen forums, with the objective of facilitating a venue for civil society to exchange and generate new knowledge on the most important issues on Honduras’s anticorruption agenda, to thereby strengthen civil society’s capacities for monitoring and following up on the criminal justice system. These events have been extraordinarily successful, and are increasing the Observatory’s drawing power as well as its visibility with the public and Honduran citizens overall. The citizen forums addressed the following topics: (1) the scope and implications of the Law on Effective Collaboration; (2) impunity in the justice system, with an emphasis on vulnerable groups: indigenous peoples and the environment, the LGTBI community, and women; (3) judicial independence as a guarantee of the rule of law;
(4) presentation of the JSCA report “Proposals for the Honduran Criminal Justice System in the Treatment and Management of Cases of Corruption and High Social Impact;” and (5) the right to access public information and the exceptional character of limitations thereon. The provision of training to different groups within Honduran society on the issues of corruption and impunity from a cross-cutting human rights perspective is essential to strengthen civic and ethical values. The forums were held from January to March 2019.

Journalism plays a fundamental role in the fight to build the democratic rule of law. Among their many other jobs, it is very important for journalists to know how to conduct investigations on corruption issues. To that end, an international forum on journalism’s role in democracy-building was held on March 7. It was organized jointly by the United States Agency for International Development (USAID), the Konrad Adenauer Foundation, FHI 360, and the MACCIH-OAS Criminal Justice System Observatory. This forum was geared towards enabling journalists from Central America and around the world to reflect and share experiences with regard to the new challenges facing the press due to the scourge of corruption; mechanisms for collaborative, multinational work among media outlets; tools for protection and guarantees for the press; and access to information in the communication age. Experts from Colombia and Costa Rica, as well as Central American journalists working on corruption issues in their countries, like Guatemala and El Salvador, were invited to the event. The forum provided a venue for work, reflection, and awareness-raising among Honduran and Central American journalists, civil society organizations, and public servants of the importance and implications of these issues.

The MACCIH-OAS Observatory has also been working to spread the word to Honduran civil society about relevant topics in the fight against corruption and impunity. On March 28, 2019, it held an international seminar on the social damage from and costs of corruption in Central America, and the case of Honduras. The objective was to hear about experiences of measuring the costs of corruption so as to apply them in Honduras.

### 2.2. JSCA report

In compliance with Article IV, subsection 4.1.2 of the GS/OAS Agreement with the Government of Honduras, the Mission to Support the Fight against Corruption and Impunity in Honduras asked the Justice Studies Center of the Americas, an inter-American system body, to perform an in-depth investigation and diagnostic assessment of the Honduran criminal justice system’s performance. The cooperation agreement was signed in August 2017.

This work falls within the action prescribed in the agreement establishing the Mission regarding reform of the criminal justice system, which provides for the review and analysis of work being done by the system of justice institutions and the formulation of recommendations to improve the justice system in Honduras.

After over a year and a half of intense work and many trips to the departments of Atlántida, Copa, Cortez, and Francisco Morazán, the JSCA has produced an extremely well-founded report of over 160 pages that provides a number of recommendations or specific proposals designed to improve the country’s institutions’ capacity for the fight against corruption, while at the same time promoting respect for the rights of defendants and victims. The report will be very useful to the country in its efforts to improve and build a true democratic rule of law.
2.2.1. Recommendations for the Honduran criminal justice system

2.2.1.1. First section: Recommendations for the institutions that make up the Honduran government as a whole

The first recommendation in this section addresses the need to strengthen the integrated system for registration, storage, and management of statistics in public institutions. This need emerges from the statistics obtained for this study as well as the quality of the data that the system uses and upon which decisions are based.

The second recommendation points to strengthening transparency and accountability in public institutions. During the field work, in the area of transparency, an issue that impacts many other areas, three problems were identified. The first is the partial or complete failure to enforce the law as it exists today. The second is the weakness of the law itself, which has a very restrictive orientation towards passive transparency, that is, the publication ex officio of certain information while neglecting the principle of active transparency, according to which the public can request information. Third, there is a lack of mechanisms for monitoring and overseeing compliance with the Law on Transparency and Access to Public Information (Decree 170-2006).

The third recommendation in this area is the strengthening of the system for registering people and the criminal records system. The Inter-American Development Bank has determined that identity documentation is the gateway to political rights, formal markets, and public services that directly impact the population’s wellbeing (Castro, Rud, and Benítez, 2010). It is also an essential tool for the development of national public policies, in that it records and organizes the population’s vital statistics, including data on the people who turn to the justice system.

A fourth recommendation is to strengthen the prosecution of illicit enrichment. Along these lines, under the current system there must be a serious political intention to prosecute this crime. The High Court of Auditors has grave problems in regard to the efficiency of criminal prosecution. The regulations must be revised, which involves changing the Constitution. The Attorney General’s Office must undertake investigations that run parallel to the High Court of Auditors’ work. Lastly, the investigative functions must be clearly defined, with the administrative functions of the High Court of Auditors, the criminal functions of the Attorney General’s Office, and the civil functions of the Office of the Inspector General all clearly differentiated. The diagnostic assessment identified problems in at least three areas. The first is in regard to laws on unjust enrichment. The second involves detecting the crime of unjust enrichment and the signs thereof. The third involves prosecuting and punishing this crime once it has been identified. In this regard, the High Court of Auditors plays a critical role, because the Attorney General’s Office cannot undertake criminal action against the officials responsible for executing the public budget until the results of the High Court of Auditors’ audits are available. This has led to issues that have already been noted in previous assessments (Ramírez Irías, 2017) and were also mentioned during talks with several officials who noted the excessive delays in the criminal prosecution, which only foster impunity in the long run. The High Court of Auditors also has problems with efficiency, since no more than five cases are sent to the Attorney General’s Office per year.

2.2.1.2. Section two: Recommendations for the regulation of criminal proceedings and the parties’ participation in hearings

The first recommendation in this second area involves reformulating hearings prior to the oral criminal trial and the actions taken therein. The presentation of evidence during the initial hearing must be restricted and replaced with vigorous debate of the defendant’s alleged participation in
the crime and the need for protection based on specific facts when a precautionary measure is requested. Otherwise, as Lorenzo points out (2002), the discussion will focus on the defendant’s guilt, the preliminary hearing will last too long, and the criminal trial will turn into a mere dramatization of everything that has already taken place.

It is important to ensure that the defendant attends and participates in the initial hearing, and that the victim is encouraged to participate, particularly when alternative solutions may be used. The field work revealed that there are difficulties transporting defendants and ensuring that the victims participate in the hearings.

The second recommendation in this area is to improve standards of litigation for the prosecution and defense and to outline the role of the judge in managing criminal trial hearings. In this regard, the court should take on less of a leading role in the exchange during the criminal trial, only directing the discussion rather than examining and cross-examining witnesses. In other words, the judge should have the role of impartially “protecting the fair trial,” in which the parties present their opposing versions of the facts (Baytelman and Duce, 2004).

The third recommendation in this area entails strengthening oral procedures and the public nature of the criminal justice system.

The fourth recommendation is the creation of new standards in the notifications system. Currently, a large number of hearings are rescheduled because the parties are not notified (witnesses or defendants are not located, or the defense is not considered to have been notified), leading to judicial delays.

2.2.1.3. Section three: Recommendations for the management of criminal justice system institutions

The first recommendation in this area entails strengthening coordination among criminal justice system institutions. A crosscutting consensus must be reached regarding the roles to be played by the Interinstitutional Criminal Justice Commission (created by Decree No. 248-2010), the local working groups, and the Honduras Interinstitutional Anticorruption Directorate. The report concludes that these entities seem to work in an unpredictable, reactive way, without strategic planning or the capacity to prevent or identify problems ahead of time. They also do not clearly specify the roles of their members, their mission, goals, or the mechanisms to be used for monitoring the decisions they make and the measures they adopt.

The second recommendation is directed at the judicial branch: to clarify the distinction between jurisdictional, administrative, and judicial government work. The report pushes for clearly distinguishing the three roles played by the judicial branch: jurisdictional, governmental, and administrative. The latter two are instrumental. The report thus recommends creating a solid government agency subject to auditing and that will make it possible to decentralize the responsibilities exercised by the Supreme Court of Justice and its Chief Justice following the recent elimination of the Judiciary Council. The members of this agency should be selected based on merit and under intense oversight by civil society and international agencies.

The third recommendation in this area is to promote the creation of an autonomous public defender’s office.

The fourth recommendation is to organically restructure the Attorney General’s Office and strengthen the management and criminal prosecution systems, as well as the functional
autonomy of prosecutors, thus eliminating room for impunity and the concentration of responsibilities that can hamper efficiency.

2.2.1.4. Section four: Recommendations on respect for the rights of defendants in the criminal justice system

The first recommendation in this section is to improve standards regarding defendants’ rights to information. There is a need to improve law enforcement’s information and registration processes as well as treatment in arrests and investigations that are not prosecuted. This recommendation is based on the idea that defendants’ rights are in force starting when they are detained, whether or not they have been charged. This concern emerges due to the irregular arrests that have occurred, for example, LGBTIQ+ persons, and the arrests conducted by the National Anti-Extortion Forces, according to field work reports. There are two resultant concerns: the institutionalization of violence by state agents against vulnerable individuals, and the limited proactiveness of public defenders in reporting such irregularities.

The authors also suggest strengthening alternatives to pretrial detention and ensuring adequate oversight thereof. As part of a counter-reform process observed in several countries of the region (Riego and Duce, 2008), Honduras has increased the use of pretrial detention as an expression of punitive populism. This measure is no longer used only in exceptional cases. All told, 53.1% of inmates have not been sentenced (World Prison Brief, 2018). The Honduran Electronic Documentation and Judicial Information Center (CEDIJ) data (2018) for 2011-2016 suggest that there are differences between pretrial detention in the ordinary justice system and the national territorial jurisdiction. In the former system, around 11% of all preventive measures issued are pretrial detention, but in the latter this rate is an average of 44%. During the hearings observed, it was found that there was no true debate before the measure was handed down, meaning that both the prosecutor and public defender acted reprehensibly.

2.2.1.5. Section five: Recommendations on respect for the victims’ rights in the criminal justice system

The recommendations in this section are aimed at positioning victims as participants in the Honduran criminal justice system. First, a network of institutions that work on victims’ rights should be established. This network must ensure that the public and civil society institutions that provide services to crime victims coordinate their efforts.

The second recommendation is to consolidate a single unit at the Attorney General’s Office for guiding, responding to, and providing services to victims. This unit must take into consideration aspects like the victims’ gender and/or whether they belong to a vulnerable population like children and adolescents or the LGBTIQ+ community.

At the same time, the report also argues that there is a need to promote the application of judicial and non-judicial protective measures for victims who need them once the risk evaluation has been completed. As noted above with regard to pretrial detention, protective measures and restraining orders decreed by the judiciary must be monitored.

Third, the report recommends promoting victims’ active participation as parties throughout the process.

Fourth, the report recommends consolidating processes with respect for the dignity of victims of gender violence and violence against LGBTIQ+ individuals. Along these lines, it suggests that there
should be an intensive awareness and training campaign for the judiciary, as well as for other employees of the criminal justice system institutions, with a view to eradicating prejudice and discriminatory treatment which, according to some interviewees, are frequent. Furthermore, judges must adhere to Honduran law, the Constitution, and international agreements. They must not allow religious prejudices to impact the treatment of these victims in the courts or in the rulings themselves.

3. DIVISION OF PUBLIC SECURITY

3.1. Follow-up on compliance with the recommendations of the National Public Security System

3.1.1. Support for the process to reform the National Police

In section 6.1 of the Agreement establishing the MACCIH-OAS, the Division of Public Security is charged with monitoring implementation of the recommendations made by the General Secretariat of the OAS to the National Public Security System in the 2012/2014 reports and the roadmap prepared by the Division and the GS/OAS Department of Public Security.

Accordingly, starting last year, the Mission has been working with the Modernization, International Affairs, and Foreign Aid Division of the Ministry of Security on creating a matrix for reviewing the information needed by the various units attached to the aforementioned bodies. The information is being collated to corroborate their progress regarding the National Public Security System. This compliance matrix has been very useful for developing an understanding of the challenges facing the country’s National System for Security, and for providing support, depending on the Division’s capacities, in some of its areas of responsibility, such as activities on human rights and citizen security, gender equality, training programs for police officers, etc. Currently, in addition to organizing specific activities in the area of gender equality in public safety, the Division of Public Security is preparing a report on the compliance, by the Ministry of Security and the National Police, with the recommendations made on the System. This report will be presented to the Ministry of Security as part of the Division’s recommendations for the institution as executor of the Honduran State’s security policy.

3.1.1.1. Activities with the community police

The Division of Public Security has been coordinating activities to support the work of the Ministry of Security, as well as the National Police, with a view to strengthening officers’ capacities as a tool to fight corruption and impunity, and especially in the areas of preventing and prosecuting crime.

The Organic Law of the Ministry of Security and of the National Police and the Law on the Police Career, in force since January 2018, recognized the importance of community policing as a central element of the work of the National Police, in the understanding that it is only through the community/police relationship that the police can efficiently do their job, not only working to prosecute crime but also to prevent it. The community nature of the National Police requires society to participate in supporting the police force, allowing it to coordinate activities with the community to provide instruction on public safety mechanisms. Further, the community helps the police learn about essential aspects of criminal behavior in the various precincts, like gang, mara, or organized criminal group activity; the criminals’ modus operandi; and all of the details that allow the police to effectively move forward at a lower cost.
While the community’s role is vital to the National Police, the behavior of the community police is also essential for consolidating the respect and trust of the community. Accordingly, respect for human rights, established as a crosscutting principle in the state’s citizen security policy, is fundamental. In the first week of November 2018, the Mission thus coordinated, with the support of the Konrad Adenauer Foundation and the Autonomous University of Honduras, a forum titled “Community Policing and Human Rights: An Approach to Protecting Vulnerable Groups.” This forum addressed the scope of, challenges to, and ways to improve the community police forces’ relationships with the community. The purpose was to bring their conduct in line with the highest standards of respect for human rights and service to vulnerable groups like women, the elderly, children, Afro-descendants, the indigenous population, and members of the LGTBI community, among others. This forum was held in the city of San Pedro Sula, with the participation of an international expert as well as figures from academic world; members of the Ministry of Security, including the Vice Minister of Security; Community Police chiefs; and representatives of civil society organizations.

In conjunction with this forum, the MACCIH-OAS organized a training course in San Pedro Sula for full members (male and female) of the community police. During this course, led by an international expert, the participants were instructed on human rights issues and the need to adapt their behavior to improve their relationship with the community. They participated in working groups and learned a number of tools to improve police actions towards the community through practical exercises.

3.1.2. Support for the gender equality policy implemented by the State of Honduras in the area of public security

The MACCIH-OAS has been participating in gender equality events organized by the Ministry of Security. In January 2019, the Division of Public Security was invited by the Gender Equality Division of the National Police to make a presentation at the event “Empowerment of Women Police Officers in Honduras,” sponsored by the Honduran National Police and the Ministry of Security. This event provided an opportunity to speak to the police officers and authorities in attendance about the Mission’s interest in and commitment to supporting the fight to promote gender equality as a crosscutting State policy, not just in the area of public security.

The Division of Public Security’s presence at the activity represented a vote of confidence for the Mission, given that it had been included in an event in which the other participating organizations and figures all had ties to the National Police and the Ministry of Security. This inclusion facilitated subsequent security and gender equality activities organized by the Division of Public Security.

3.1.2.1. First gender equality and citizen security meeting

In the second week of March, the Division of Public Security organized the first meeting on gender equality and public security, held at MACCIH headquarters. The participants were organizations and public and private institutions involved in the defense of gender equality and the protection of victims of domestic violence and violence against women, including the National Police Gender Equality Division. The event evaluated the strategies developed by state institutions to defend vulnerable populations and presented their shortcomings and challenges, as well as concrete suggestions for working in a more coordinated and effective way to benefit these populations.
3.1.2. Protection of human rights defenders, journalists, social communicators, and justice workers

3.1.2.1. Support for the judicial branch in enforcing protection mechanisms

Section 6.2 of the Agreement signed January 19, 2016, between the Government of Honduras and the GS/OAS established that the Mission’s Division of Public Security would support the generation of institutional capacities for protecting human rights defenders, journalists, social communicators, and justice officials. Among other responsibilities, this entails facilitating the effective application of the Law for the Protection of Human Rights Defenders, Journalists, Social Communicators, and Justice Officials, hereinafter the “Protection Law,” in particular for the individuals contributing to the criminal and administrative prosecution of corruption cases. Pursuant to this mandate, the MACCIH-OAS has worked on designing the institutional and regulatory framework for specific judicial branch mechanisms, as set forth in Article 64 of the Protection Law.

Furthermore, the Division of Public Security has been supporting the judicial branch in strengthening and fostering the protection mechanisms for its civil servants. It has presented a plan for creating the Protection Unit for judicial branch officials as well as a plan for regulating the Unit’s operations and the respective action protocols for the various sections and procedures for which the Special Protection Unit is responsible.

The plan presented by the Division of Public Security was approved in Agreement No. PCSJ 12-2018, issued by the Office of the Chief Justice of the Honduran Supreme Court of Justice. This marked a milestone in the history of human rights in the country, in that it established a specific Protection Unit for the very first time, with broad responsibilities not only for risk analysis but also for prevention, for the officials and other individuals under the judicial branch included in the regulation.

Likewise, on November 27, 2018, the “Regulations of the Special Protection Unit for Judicial Branch Officials” were published in Official Gazette of the Republic of Honduras No. 34,805. The draft version, along with the aforementioned protocols, was presented by the Division of Public Security and approved by the Supreme Court of Justice sitting en banc. These regulations include, for the first time, the functions of the Protection Unit for judicial branch officials in matters of prevention under the National Prevention System for Promoting and Protecting Human Rights. The aim is to reduce risk factors that encourage attacks on judicial branch officials by combating the structural causes thereof.

Since January 2019, the MACCIH-OAS Division of Public Security has been working with the judicial branch, providing technical assistance for the implementation of the Special Protection Unit of the judicial branch of the State of Honduras. The Division has been specifically supporting the establishment of a baseline and analyses of the current protection measures available to judicial branch officials; the search for tools for implementing the processes for selecting Special Protection Unit staff, issuing a technical overview to provide decision-makers with an appropriate evaluation of the candidates; integrating the needs of the various areas into the evaluation of the internal security policies of the Supreme Court of Justice; designing a technical training program for the Special Protection Unit team to ensure the applicability of the Special Protection Unit regulations, methodologies, processes, and procedures; and creating mechanisms for implementing a regionalized training program for judicial branch employees that will make it possible for the Special Protection Unit to operate, and for training the technical committee to ensure that the protection measures are granted in accordance with criteria that adhere to a
technical analysis of the risk, maximizing the resources available for prevention and the protection of the public servants.

3.1.2.2. Support for the mechanisms for protecting human rights defenders, journalists, and social communicators

Starting in November 2018, the Mission also began working with other groups benefiting from the Protection Law to search for tools to support the protection mechanism and the National System of Protection in improving the mechanisms for protecting human rights defenders, journalists, and social communicators.

It is well known that the risks, attacks, and deaths facing these sectors of the population, who also collaborate in the fight against corruption and impunity, are undeniable around the world. Honduras is no exception. Because of this, the Mission performed a diagnostic assessment of the situation suffered by human rights defenders, journalists, and social communicators. To that end, it organized a meeting with the director of the Honduran protection mechanism, the representative of the United Nations Office of the High Commissioner for Human Rights for Honduras (OHCHR-Honduras), representatives of the Honduran Bar Association and Association of Journalists, social communicators, human rights defenders, and civil society organizations. They debated the specific needs of each of the at-risk groups, the weaknesses of the mechanism, and the possibilities for defining measures and establishing tools to support the National System of Protection for these vulnerable groups.

Likewise, in late March 2019, with the support of the Friedrich Ebert Foundation and the Latin American School of Social Sciences for Honduras, the Mission organized an international forum in the city of Tegucigalpa, called “The National System for the Protection of Human Rights Defenders, Journalists, and Social Communicators: Challenges and Strengths.” At this event, international experts discussed the risks faced by human rights defenders, journalists, and social communicators, and the tools that the competent authorities, trade associations, and civil society organizations have developed to combat them.

The participants included the Honduran Ministry for Human Rights and academic, trade, and civil society organizations involved in the issue. In addition to discussing their experiences and situations, they joined forces to present concrete solutions for protecting these sectors. The proposals and conclusions drawn from this forum are being analyzed for inclusion in a document that will be presented to the Ministry for Human Rights as a proposal in support of the protection of the beneficiaries of the law.

In March of this year, the MACCIH-OAS Division of Public Security organized a training workshop with international experts on preventing and analyzing risks, with the aim of facilitating practical tools to the members of the Honduran protection mechanism and the National Council on Protection for preventing risks and coordinating efforts with other national institutions and civil society organizations to grant and follow up on protection measures for human rights defenders, journalists, and social communicators.

3.1.3. Participation before the National Council on Protection

As part of its contribution in support of the enforcement of protection mechanisms for beneficiaries of the Protection Law, the MACCIH-OAS Division of Public Security has been collaborating with the institutions that belong to the Honduran National System of Protection, especially the National Council on Protection. This council serves as a deliberative, advisory body
for the National System of Protection, with the functions of supervising, controlling, monitoring, and evaluating the National System of Protection for Defenders. It is chaired by the Honduran Minister for Human Rights and made up of representatives of various State institutions, trade associations, and Honduran civil society organizations.

At the February 2019 meeting of the National Council on Protection, the Division of Public Security made a presentation about the progress it has been making in support of the Protection Law, guaranteeing unrestricted support in defending these important sectors of society whose work greatly contributes to the fight against corruption and impunity.

4. **RECOMMENDATIONS**

In its third, fourth, and fifth semiannual reports the MACCIH-OAS made various recommendations, all of which still stand. It reiterates them below, placing special emphasis on the following:

1. Its main priority is to strengthen the Special Prosecution Unit to Fight Corruption-Related Impunity (UFECIC) and the courts with national jurisdiction in anticorruption matters, by ensuring their independence and autonomy and the safety of justice officials so that they can operate in an environment that protects their work.

2. The Attorney General’s Office is the Mission’s most important counterpart in the fight against corruption and impunity, which means that maintaining this institution’s constitutionally guaranteed independence is imperative.

3. Legal tools that can be used to improve investigations and uncover corruption networks linking senior government officials to individuals in the private sector must be strengthened. MACCIH has therefore proposed a new draft of the Law on Effective Collaboration.

4. A witness-protection protocol that effectively protects witnesses’ lives and ensures their appearance before competent judges needs to be implemented, so that high-profile investigations involving individuals identified as having real political and/or economic power can go forward with some guarantee of success.

5. In order to strengthen democracy, a law on prosecutorial and judicial careers that will regulate the system for access, tenure, promotion, and disciplinary control should be implemented in an effort to strengthen those professions and ensure the necessary guarantees for the performance thereof.

6. It is necessary to ensure that the justice system is not politicized or associated with any political party, so as to improve trust in and recognition of the Attorney General’s Office and the judicial branch as instruments of the rule of law that applies to all.

7. The justice system should be digitizing in order to guarantee data transparency for the general public.

8. A law on corporate responsibility is needed. Such a law would constitute a regulatory framework to strengthen the fight against corruption, in the context of the implementation of a compliance mechanism in Honduras. This mechanism would help
tackle corruption in the business sector, and would ensure the legal certainty needed for economic development and job creation.

9. Telephone and communications wiretapping is an effective tool in the fight against corruption, therefore prosecutorial bodies should be able to avail themselves of this instrument and use it autonomously in their investigations. It must be underscored that since this measure restricts the fundamental right to privacy of communications, it should be authorized and overseen by the competent judicial body.

10. Constitutional guarantees for judges should be adopted as a way to ensure their necessary independence for the rule of law.

11. Significant improvement is needed in the system for approving public expenditures and projects, monitoring the execution of these expenditures, and accounting for them, especially for funds transferred to nongovernmental organizations, which have been used as an instrument for appropriating and diverting treasury funds.

12. A system of civil penalties against acts of corruption committed by companies, such as a prohibition on entering into contracts with the State of Honduras, without excluding the criminal penalty applicable to the perpetrators of crimes, should be adopted.

13. The conclusions of the Justice Studies Center of the Americas’ work on reforming the justice system should be studied in an organized way, through technical committees. The objective is implementation of the report to improve the justice and public security systems and to guarantee the independence of the judicial branch and the Attorney General’s Office.

14. No amnesty shall be approved for the perpetrators of crimes of corruption. No legal impediment to the Attorney General’s Office’s independent work shall be approved through prior demands for case to be examined by the High Court of Auditors.

15. The new Law on the Judiciary Council and the Judicial Career should be approved, giving effect to Article 317 of the Constitution of the Republic, with the members to be representatives of the judiciary from the courts of first instance, courts of appeals, and the Supreme Court, as well as representatives of the universities and civil society.

16. Necessary measures should be taken to install the technical committee for the Plan of Action to Implement the Recommendations of the MESICIC.

17. The Criminal Justice System Observatory should receive support from the judicial branch, in order to have access to the data and analyses to put together the first report on the state of the criminal justice system.

18. Work should continue to be done on crosscutting human rights issues, with special attention to the protection of vulnerable groups.