General Secretariat of the Organization of American States

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

“Installing the Honduran model for combating corruption”

Third Semi-Annual Report*
October 26, 2017

*The report is awaiting the observations of the Government of Honduras before being presented to the Permanent Council.
# Table of Contents

General Secretariat of the Organization of American States .......................................................... 1
Third Semi-Annual Report .................................................................................................................. 1
October 26, 2017 .................................................................................................................................. 1
   Executive Summary ......................................................................................................................... 5
Glossary ................................................................................................................................................. 8

INTRODUCTION .................................................................................................................................... 9

I. DIVISION FOR PREVENTING AND COMBATING CORRUPTION ............................................. 12
   1. Installation of the Anti-Corruption Jurisdiction. ................................................................. 12
      1.1. Criminal justice system with national jurisdiction on matters of corruption .......... 12
      1.2. Special Prosecution Unit to Fight Corruption-Related Impunity ......................... 13
      1.3. The justice system’s necessary tools against corruption. ..................................... 15
         1.3.1 Law on Effective Collaboration. .............................................................................. 15
         1.3.2. Law on Classifying Public Documents related to National Security and Defense .... 17
   3. Training of anti-corruption justice system workers and other officials. ............. 18
   4. Development of the work of active support in cases of corruption. ..................... 20
      4.1. Honduran Social Security Institute Cases ............................................................ 21
      4.2. Prison for those convicted of crimes of corruption. ............................................... 22
      4.3. The country’s first conviction for the crime of influence peddling: the Teodoro Bonilla case .......................................................................................................................... 22
      4.4. The Agua Zarca case ................................................................................................. 22
      4.5. Other cases .................................................................................................................... 23
   5. MACCIH-OAS work with the National Anti-Corruption Council .................... 23
   6. Institutional strengthening programs in preventing and combating corruption .... 24
      6.1. The Anti-Corruption Unit of the High Court of Auditors .................................... 24
      6.2. Corporate probity program ....................................................................................... 24
      6.3. The MACCIH-OAS Chair ......................................................................................... 25
6.4. The anti-corruption oral litigation competition. ................................................................. 25
6.5. Strengthening the investigative press. ............................................................................. 26
6.6. Most useless procedure. ................................................................................................. 26
6.8. The need not to reduce penalties in the Penal Code. ..................................................... 27

II. DIVISION OF POLITICAL AND ELECTORAL REFORM .................................................. 28
1. Entry into force and enforcement of the Law on Financing, Transparency, and Oversight. ................................................................................................................................. 28
2. Formation of the Financing, Transparency and Oversight Unit (April-May). ................. 28
3. Initial steps of the Financing, Transparency, and Oversight Unit (May-August). .......... 29
4. Legal framework. .............................................................................................................. 29
5. Human resources. ............................................................................................................ 30
6. Technological platform. .................................................................................................... 31
7. Training for political actors and civil society. .................................................................. 31
8. Start of electoral campaign and prospects (August-September). ..................................... 32

III. DIVISION OF CRIMINAL JUSTICE SYSTEM REFORM .................................................. 34
1. Participation of the CEJA for criminal justice reform. ..................................................... 34
2. Public competitions for filling 190 judge and magistrate positions at the national level. ................................................................................................................................. 34
3. Agreement of the Supreme Court of Honduras with the Supreme Court of Chile. .......... 35
4. Training on anti-corruption issues ................................................................................... 35
6. The importance of close links between human rights and the fight against corruption. 36
7. Criminal Justice System Observatory. .......................................................................... 37
7.1. Collection of information from quantitative data ........................................................... 37
7.2. Reports and statistical assessments ........................................................................... 38
7.3. Dissemination of the assessment of quantitative indicators provided by the Inter-Agency Technical Panel on Information, Statistics, and Indicators of the Criminal Justice System ........................................................................................................ 38
7.4. Launch of the Honduras Observatory. ....................................................................... 39
7.5. Organizational Structure of the Honduras Observatory. .................................................. 40

IV. DIVISION OF PUBLIC SECURITY.................................................................................. 40

1. Submission of recommendations for the draft Police Career Law. ............................... 41
2. Visits to emblematic institutions in the area of security and the penitentiary system. 41
3. Strengthening of the criminal justice system................................................................. 43

V. OTHER ISSUES.............................................................................................................. 44

VI. RECOMMENDATIONS.................................................................................................. 46
Executive Summary

This is the third semi-annual report of the MACCIH-OAS, covering the period from April 19 to October 19, 2017. It describes actions and challenges for each of the Mission’s four divisions, including a section on relevant events and a final section on recommendations.

This report highlights the launch of the Anti-Corruption Jurisdiction made up of the Special Prosecution Unit to Fight Corruption-Related Impunity [Unidad Fiscal Especial contra la Impunidad de la Corrupción] (UFECIC) of the Attorney General’s Office and the criminal courts and tribunals with national jurisdiction on matters of corruption in the judicial branch. The document emphasizes the leadership of Attorney General Oscar Fernando Chinchilla in organizing the structure of this new investigative body that will use the working method of integrated investigation and criminal prosecution teams, with the participation of Honduran prosecutors, investigators, and analysts, along with the international prosecutors and experts from the MACCIH-OAS, to unravel corruption networks. The commitment of Chief Justice Rolando Argüeta to put this new anti-corruption jurisdiction in motion is also a highly notable effort. Honduras is thus creating an anti-corruption model that is unparalleled in its history and that will serve to confront impunity.

As to pending challenges, the report notes the pending approval of the Plea Bargaining Law as essential to unlink organizations committing crimes of corruption, as well as the need to repeal the current Law on Official Secrets and consider a new system of classification of public documents. As of December, it will be one year since both draft laws were submitted to the Executive Branch, an unfortunate delay as depicted in this report.

During the last six months, the Office of the General Prosecutor of the Republic put into practice a new damage assessment system with respect to corruption crimes and the commitment not to settle corruption cases through conciliation was maintained. Important initiatives have been put into action, including the Corporate Probity (Compliance) program, the MACCIH-OAS Chair, the Anti-Corruption Oral Litigation Competition for students in the country’s law schools, strengthening of the investigative press, and the “Most Useless Procedure” competition to start an administrative simplification process to reduce corruption risks.

Over the last six months, the MACCIH-OAS reports progress in monitoring investigations in corruption cases at the Attorney General’s Office. The period was marked by convictions of vice ministers Montes and Pastor for the largest case of economic fraud to date at the Honduran Social Security Institute [Instituto Hondureño de Seguridad Social] (IHSS) involving twelve million dollars in the “front companies”, as well as the first-ever
conviction in Honduran history for influence peddling against Teodoro Bonilla. Complex investigations continue in the following cases: “Cachiros”, IHSS, Agua Zarca, the Judiciary Council, and others. Of note is that the UFECIC has begun its investigation on its first corruption case, which should yield results soon.

The document states that those prosecuted and convicted for corruption will serve their convictions in a regular prison facility. Likewise, the document warns of the consequences of reducing penalties for corruption in the new Penal Code, which the National Congress is now debating.

The MACCIH-OAS has recommended that the Office of the Attorney General, with its constitutional powers as the body responsible for criminal proceedings, investigate crimes of illicit enrichment without limitations. This does not bar the High Court of Auditors [Tribunal Superior de Cuentas - TSC] from administrative investigations to define the crime. Similarly, the MACCIH has warned of the risks involved when the TSC denies the Prosecutor’s Office access to information, as has been indicated in the draft law amending the Organic Law of that Court now before the National Congress.

The MACCIH Report 6 has recommended that the draft of the new Social Security Law now before the Congress strengthen the corporate governance powers of the IHSS, improve procurement mechanisms, and strengthen control and audit mechanisms, the objective being to improve performance in terms of institutional integrity. The proposal made by the MACCIH-OAS seeks to ensure that history does not repeat itself.

The Honduran Criminal Justice Observatory was launched during this period. It will provide knowledge on how the justice system operates, follow-up on progress made and challenges faced, produce data to feed the judicial indicators and disseminate the progress of corruption cases, among other things.

The MACCIH-OAS continued to work on implementation of the Law on the Financing, Transparency, and Oversight of Political Parties and Candidates, which seeks to better regulate electoral campaign contributions and spending. The new rules represent significant, albeit difficult-to-implement innovations; the introduction of this new regulatory framework has served as a deterrent to the excessive campaign contributions and spending. The Unit charged with implementing this law is gradually making progress in improving the organization, recording and monitoring of contributions to and spending by political parties and candidates.

In the area of security, the most notable contribution of the MACCIH-OAS has to do with the debate on the Police Career Law, which emphasizes the need for a national police close to the population and tied to the concept of community police, with officers who are respectful of human rights. This is also true in the case of the structure designed for the protection of justice workers in the Office of the Attorney General [Ministerio Público] (MP) and the judicial branch, which we are presenting to the justice system.
During this period, the MACCIH-OAS sought to emphasize the link between corruption and human rights, maintaining working relationships with the Inter-American Court, the Inter-American Institute of Human Rights, and the Office of the United Nations High Commissioner for Human Rights. Along these lines, it has developed lines of work with the judicial branch to provide training on the subject, secure an invitation for the United Nations Special Rapporteur on the Independence of Judges and Lawyers, and promote increased transparency in the justice to be administered with the cooperation of other judicial branches.

To establish better channels of communication with public opinion, during these past six months a communications strategy was structured for using social networks on the many activities of the MACCIH-OAS. Facebook was added to the traditional MACCIH-OAS Twitter account, as well as a new dynamic of public transmissions and messages interacting with nearly 400,000 people through various events and publications, seeking to highlight the Mission's actions.

In the report, the MACCIH-OAS reiterates its appreciation to the donors, particularly the United States, Canada, the European Union, Germany, Switzerland, Sweden, Spain, Italy, the United Kingdom, Peru, and Chile, for the monetary contributions that allow the Mission to operate.
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<th>Abbreviation</th>
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<tr>
<td>ATU</td>
<td>Technical Agency for Criminal Investigation [Agencia Técnica de Investigación Criminal]</td>
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<td>ERIC</td>
<td>Team for Reflection, Research, and Communication [Equipo de Reflexión, Investigación y Comunicación]</td>
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<td>GS</td>
<td>General Secretariat</td>
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<td>IAIP</td>
<td>Institute for Access to Public Information [Instituto de Acceso a la Información Pública]</td>
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<td>IHSS</td>
<td>Honduran Social Security Institute [Instituto Hondureño de Seguridad Social]</td>
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<td>IJF</td>
<td>Federal Judicial Institute of Mexico [Instituto de la Judicatura Federal]</td>
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<tr>
<td>IMPACTOS</td>
<td>Promoting Citizen Participation, Transparency, and Opportunities [Impulsando la Participación Ciudadana, Transparencia y Oportunidades]</td>
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<td>INE</td>
<td>National Electoral Institute [Instituto Nacional Electoral]</td>
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<td>INP</td>
<td>National Penitentiary Institute [Instituto Nacional Penitenciario]</td>
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<td>LTAIP</td>
<td>Law on Transparency and Access to Public Information [Ley de Transparencia y Acceso a la Información Pública]</td>
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<td>MACCIH-OAS</td>
<td>Mission to Support the Fight against Corruption and Impunity in Honduras</td>
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<tr>
<td>MESICIC</td>
<td>Mission for Follow-up on the Implementation of the Inter-American Convention against Corruption</td>
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<td>MP</td>
<td>Office of the Attorney General [Ministerio Público]</td>
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<td>OABI</td>
<td>Office for the Administration of Seized Assets [Oficina de Administración de Bienes Incautados]</td>
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<td>OAS</td>
<td>Organization of American States</td>
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<td>PGR</td>
<td>Office of the Inspector General [Procuraduría General de la República]</td>
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<td>TSC</td>
<td>High Court of Auditors [Tribunal Superior de Cuentas]</td>
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<td>TSE</td>
<td>Supreme Electoral Tribunal [Tribunal Supremo Electoral]</td>
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<td>UFECIC</td>
<td>Special Prosecution Unit to Fight Corruption-Related Impunity [Unidad Fiscal Especial contra la Impunidad de la Corrupción]</td>
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<td>UNAF</td>
<td>Prosecution Support Unit [Unidad de Apoyo Fiscal]</td>
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INTRODUCTION

We present the second semi-annual report of the Mission to Support the Fight against Corruption and Impunity in Honduras - MACCIH-OAS, 18 months after its launch. This report emphasizes the process of introducing the new concept in the country and the region in order to confront the challenges for which the Mission was convened: building the Honduran model for combating corruption.

Since its arrival in the country, the MACCIH-OAS has worked continuously with the country’s various concerned entities on executing a strategy aimed at designing and implementing a new institutional architecture for the investigation, prosecution, and punishment of corruption cases. This task takes shape in the installation of a special unit in the Office of the Attorney General for the investigation of complex cases of corruption, including the process of certifying its members and the joint working methodology among national prosecutors and operators, along with the Mission’s international experts in joint research work, which we have called integrated criminal investigation and prosecution teams. This was made possible thanks to the leadership and direction of the Attorney General, Oscar Chinchilla.

The initial task of the MACCIH-OAS also took shape with the creation and formation of criminal courts and tribunals with national jurisdiction on matters of corruption. With this component of a specialized jurisdiction to prosecute corruption cases, Honduras becomes the second country in Latin America to have jurisdictional units of this kind, following the Peruvian experience. In this case, justice workers were also certified, following a rigorous selection process, which included confidence tests.

More than a year of effort resulted in the start-up in September 2017 of these two key entities in the investigation and adjudication of corruption cases. This should be emphasized in this half-yearly report, in that it involves the basis for future work toward the Mission’s objectives, through improvement in the criminal investigation techniques of the Office of the Attorney General with a specialized area and judges who will hear these proceedings, developing procedural and substantive knowledge of crimes of corruption and related offenses.

However, the Office of the Attorney General and the judicial branch are not the only government institutions that are building this Honduran model. The effort includes the participation of the Office of the Inspector General (PGR). This is the entity responsible for defending the State’s interests, with which the MACCIH-OAS has been working on agreements so that corruption cases cannot be settled, as used to happen prior to August 2016. It has also been working to develop techniques to ensure civil damages or indemnities for the State in corruption cases, considering total damages from a human rights perspective, determining the extent of the impact or harm done by the crime committed with respect to the population and its services and the validity of rights. This has already been done in cases now before Honduran justice.
The model involves an important civil society institution, the National Anti-Corruption Council [Consejo Nacional Anticorrupción], which has recently undertaken preliminary investigation tasks in corruption cases it submits to the Office of the Attorney General.

This network includes the High Court of Auditors [Tribunal Superior de Cuentas], with which agreement has been reached on creation of an Anticorruption Unit as an island of excellence in that entity responsible for executing special audit actions. With them we are fully embarked on the process of building this innovative special unit.

The model for combating corruption of course includes the Financing, Transparency, and Oversight Unit that operates in the Supreme Electoral Tribunal [Tribunal Supremo Electoral] responsible for the supervision of electoral and party financing, the starting point for many of the corrupt actions affecting our political systems in the Hemisphere.

There are other participating entities such as the Office for the Administration of Seized Assets [Oficina Administradora de Bienes Incautados] (OABI), the Financial Intelligence Unit [Unidad de Inteligencia Financiera], the Revenue Administration Service [Servicio de Administración de Rentas], and the National Penitentiary Institute [Instituto Nacional Penitenciario]. However, the institutional architecture is not enough; legal instruments are also needed to ensure sustained progress in preventing and repressing corruption. Thus, a Penal Code is needed that incorporates penalties that preserve protected legal rights in crimes against public administration, where MACCIH-OAS has suggested that there be no reduced sentences of the sort included in the draft currently being debated in the National Congress.

Similarly, as shown in this report, new modern criminal law definitions are needed, such as effective collaboration so that criminal organizations, including those that are committing crimes of corruption, can be dismantled, as presented by the MACCIH-OAS and the executive branch in December 2016. Also needed are mechanisms to protect justice workers like those the MACCIH-OAS delivered to the judicial branch and the Office of the Attorney General, pursuant to the Law on the Protection of Human Rights Defenders, Journalists, Social Communicators, and Justice Workers.

Protection is also needed for those who report corruption cases, a standard that does not currently exist in Honduras (only witnesses are protected). The country’s archives must be opened up in accordance with the principles of transparency and access to public information, now impaired by what is called the Secrets Law, in response to which the MACCIH-OAS has suggested thorough reform to adapt Honduran law to inter-American standards.

The model emphatically requires the development of strong investigative journalism, an area in which Honduras faces significant challenges due to the situation of violence suffered by journalists as well as the need to make more room for an independent and
alternative press. A consistent investigative press represents a key element in the ability to uncover corruption cases that can be prosecuted. The impunity existing in the country must also be combated with an independent press, which is why the MACCIH-OAS has initiated actions to promote this key activity during this period.

During the period covered by this report, as will be appreciated, the MACCIH-OAS made progress on tasks related to the investigation and conviction of persons involved in crimes of corruption, working with the Office of the Attorney General to obtain the most significant conviction for crimes of corruption in the history of Honduras, against the former Director of Social Security. The Social Security case represents an important conviction and has had the greatest economic impact to date, involving $12 million. It is the first conviction in the annals of Honduran justice for the crime of influence peddling.

The MACCIH worked on the debate regarding the Police Career Law through the Division of Public Security and with the support of the Department of Public Security of the Secretariat for Multidimensional Security. The new law helps to strengthen the concept of a community police intent on being close to the people for their protection and respectful of human rights.

During this period, the Mission began work to support criminal justice reform with the participation of the Justice Study Center for the Americas, which will conclude with specific and effective actions to improve case management handling, regulatory reforms of criminal process, improvement in legal argument, and other aspects.

This past August saw the inauguration of the website of the Criminal Justice Observatory, which brings together information, data, indicators, and the proposed criminal justice system assessment matrix developed with civil society organizations and the universities that were consulted. The aim here is to ensure that civil society is able to assume an important role with respect to the operation of criminal justice in the country.

This third report relates achievements made in the last six months as well as the challenges during the period for the MACCIH-OAS and for combating corruption and impunity.

Tegucigalpa, October 19, 2017
I. DIVISION FOR PREVENTING AND COMBATING CORRUPTION

1. Installation of the Anti-Corruption Jurisdiction

The period covered by this report saw the launch of the new Anti-Corruption Jurisdiction, made up of the Special Prosecution Unit to Fight Corruption-Related Impunity [Unidad Fiscal Especial contra la Impunidad de la Corrupción] (UFECIC) and criminal courts and tribunals with national jurisdiction in matters of corruption. This initiative has been promoted by the MACCIH-OAS, which has been working closely with Honduran institutions included in the “Honduran model for combating corruption.”

1.1. Criminal justice system with national jurisdiction on matters of corruption

On September 11, 2017, Supreme Court Chief Justice Rolando Argueta appointed the judges and magistrates of the new Anti-Corruption Jurisdiction. Those courts and tribunals were also inaugurated on that day at the Supreme Court in Tegucigalpa.¹

The purpose of these new courts and tribunals is to administer specialized justice for prosecuting complex corruption cases, making Honduras the second country in Latin America with a specialized jurisdiction in this area.² This is the first major reform of the anti-corruption system in Honduras since the Mission arrived in the country. It was made possible thanks to the direction and leadership of the Chief Justice of the Supreme Court of the Republic of Honduras, Dr. Rolando Argueta.

Creation of the special jurisdiction was approved by the Supreme Court of Justice in May 2016 and subsequently submitted by the judicial branch to the National Congress for its approval under Legislative Decree 89-2016, published in the official journal La Gaceta on August 11, 2016.

The new jurisdiction consists of 11 professional judges competent to individually oversee the inquiry and investigation states; trial court judges who hear as a panel the oral public trial; and judges who primarily hear appeals en banc. These judges, as well as their respective assistants, were certified and selected by mutual consensus of the judicial branch and the MACCIH-OAS through a Selection Committee with representatives from both institutions following implementation of a rigorous procedure based on a protocol approved by the Chief Justice of the Supreme Court, with the active participation of the MACCIH-OAS.³

¹ A total of 33 judicial employees were appointed, including one professional judge, four trial judges, and three sitting judges of the Court of Appeals, leaving pending the appointment of two professional judges and one constituent judge. In addition, a total of 25 judicial assistants were appointed (secretaries, receivers, clerks, typists, and file clerks).
² The first country in Latin America to have anti-corruption courts is Peru, since 2000.
The selection and certification mechanism involved analysis of the professional career of each candidate, his or her prior work experience and ethical fitness, with various confidence tests that considered the socioeconomic assessment of the applicants and a polygraph test. As a result of this entire process, individuals who passed all the tests were nominated and are now available for appointment by the Chief Justice.

It should be noted that the selection and certification process has been the subject of positive comments by civil society organizations, members of the international community, and experts on justice in that it is considered to have met high selection standards that preserve the suitability and independence of those justice workers.

The MACCIH-OAS has recommended to the Chief Justice that although the Judicial Council system for appointing judges has been deactivated and these powers have been transferred to the Chief Justice himself, it is advisable to ensure that the good practices followed in this certification process can be replicated in other processes for the appointment of judicial employees.  

1.2. Special Prosecution Unit to Fight Corruption-Related Impunity

The Special Prosecution Unit to Fight Corruption-Related Impunity (UFECIC) is the new unit of the Office of the Attorney General for investigating complex corruption cases involving the participation of a network of public and private persons who commit crimes against public administration and other related crimes. The UFECIC was promoted by the MACCIH-OAS and created by the Office of the Attorney General in January 2017, as a result of an agreement signed between Attorney General Óscar Fernando Chinchilla and the OAS Secretary General, Luis Almagro.

The UFECIC consists of 41 professionals including prosecutors, investigative agents, specialists in collection and analysis of financial information, specialists in collection and analysis of criminal information, and forensic computer experts. Like the members of the criminal courts with national jurisdiction in the area of corruption, the members of the UFECIC were certified by consensus of the Office of the Attorney General and the MACCIH-OAS, through a Candidates Certification Commission consisting of Office of the Attorney General staff members and Mission representatives. As in the preceding case, a rigorous procedure was implemented for the selection and certification of its members, who were finally appointed by the Attorney General, in consensus with the MACCIH-OAS.

4. The MACCIH-OAS is participating through its International Judge as an observer of the process for selecting more than 190 judicial positions. Some of the elements of the process followed have been incorporated in the selection process, which means one of the largest competitions carried out by the current administration; nonetheless, the MACCIH-OAS has made some comments indicating some challenges for improving these processes. The MACCIH-OAS team considers it advisable that the mechanisms for admission to the judicial branch be incorporated in a future Judicial Career Law that guarantees the suitability, professionalism, integrity, and the independence of justice in Honduras, for which purpose a Study Commission was already installed under the direction of Judge Jorge Alberto Zelaya.
spokesperson in accordance with a protocol approved through an agreement of the General Prosecutor's Office of Honduras in February 2017.\(^5\)

It should be noted that as a result of the selection and certification process, the individual who scored highest, Dr. Luis Javier Santos, was appointed to serve as head of the UFECIC. He is a highly experienced prosecutor recognized for important investigations carried out by the Office of the Attorney General and whose career has demonstrated courage and dedication to public service.

The UFECIC works with the MACCIH-OAS to investigate cases of corruption networks. A methodology is being developed that has been called Integrated Investigation and Criminal Prosecution Teams in which prosecutors and staff from the Office of the Attorney General work together with international prosecutors and other experts from the MACCIH-OAS. The purpose is to increase the capacities of the Office of the Attorney General in complex investigations so as to strengthen the institution and more effectively prosecute crimes of corruption. This mechanism of a special unit that will work with the support of the MACCIH-OAS is seen as satisfying one of the purposes of the agreement creating the Mission and of technical cooperation in general, which is to strengthen the institutions combating corruption.

This new unit will have headquarters in the cities of Tegucigalpa and San Pedro Sula, following the same scheme as the criminal courts with national jurisdiction in matters of corruption. They operate under the principle of irremovability of their members, which means that UFECIC personnel cannot be separated from their positions or rotated to another position without the consent of the MACCIH-OAS. Similarly, the UFECIC operates at all criminal process levels, from investigation, to indictment, the various hearings under criminal procedure law, and challenges, including cassation appeals. This unit thus controls the entire process from the Office of the Attorney General.

The UFECIC will be responsible for cases as determined by the MACCIH-OAS, for which the Mission has designed an objective mechanism for selecting cases of corruption and related crimes that will avoid deviation from the Mission’s mandate. This means that the MACCIH-OAS can suggest that the Attorney General transfer any case in any prosecutor’s office that relates to the Mission’s areas of jurisdiction.\(^6\)

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6. Also close to being implemented is the Certified Reporting System, whereby all reports of corruption at the national level will be entered into this new system within the purview of the UFECIC. There will be a Distribution Center for corruption cases reaching the Office of the Attorney General, to randomly assign the competent prosecutor’s office for the investigation, including the possibility that a specific case would fall under the jurisdiction of the UFECIC. This Certified Reporting System will maintain control of information on all cases of corruption reaching the Office of the Attorney General so as to ensure it is not lost or delayed in processing.
The UFECIC began its tasks by developing the internal work rules with MACCIH-OAS experts, defining how they will operate in joint investigations, anti-corruption operations, indictments, and other procedures intrinsic to prosecutorial action. As of the date of this report, the first three cases that UFECIC will investigate together with the MACCIH-OAS have already been selected.

It should be emphasized that the creation, implementation, and start-up process, with all the logistics this entails, occurred under the leadership of Attorney General Óscar Chinchilla, who has provided valuable cooperation to the MACCIH-OAS, with the conviction that combating corruption is a priority task for the institution as part of the criminal policy of the Office of the Attorney General.

1.3. The justice system’s necessary tools against corruption

Paragraph 3.1.3 of the agreement between the General Secretariat of the OAS and the Government of Honduras establishing this Mission assigns to the MACCIH-OAS, *inter alia*, the functions of “strengthening the legal and institutional framework for preventing and combating public and private corruption in Honduras” and “supporting the establishment of prevention policies in those cases where legal lacunae and institutional problems have been identified.”

In fulfilling this mandate, the MACCIH-OAS has developed a series of regulatory and public policy initiatives and delivered them to the institutions of the Honduran State, for combating corruption and impunity. During the period covered by this report, the MACCIH-OAS has been urging approval of the draft Law on Effective Collaboration and has proposed a new bill for the classification of public documents in the area of security and national defense. The MACCIH-OAS has also submitted a bill to encourage reporting of acts of corruption, by protecting the whistleblowers, following the OAS Model Law to facilitate and encourage the reporting of acts of corruption and to protect whistleblowers and witnesses.

The MACCIH-OAS also presented recommendations to improve aspects of administrative management, procurement systems, and control mechanisms of the draft Social Security Law in its MACCIH-OAS Report 6. Similarly, the MACCIH-OAS recalled during this period the reach of its MACCIH Report No. 2 with regard to the inadvisability of reducing penalties in corruption crimes. Finally, the MACCIH-OAS recommended that the National Congress stipulate to the jurisdiction of the Office of the Attorney General for the investigation of crimes of unlawful enrichment, so that the actions of the High Court of Auditors do not interfere with its constitutional powers and the prosecution’s indictments for the commission of these crimes may be filed directly.

1.3.1 Law on Effective Collaboration

Fighting crime requires not only an institutional design consistent with the requirements of the phenomenon of crime in the country, like that constructed with the National Anti-Corruption System proposed by the MACCIH-OAS. It also requires legal tools to allow prosecutors to prosecute criminal organizations that are affecting the country’s security. This includes the structures involved in acts of corruption.
Comparative experience in the region indicates that repentance, betrayal, or effective collaboration laws, as they are called, constitute powerful mechanisms for confronting organized crime. In effect, not only are these tools considered a good idea, the States are required to incorporate them in their domestic legislation, as stipulated in the Palermo Convention.  

Countries like Brazil, Chile, Colombia, the United States, Guatemala, Panama, and Peru, as well as others, have provisions that allow members of criminal organizations to collaborate with justice to deliver evidence to incriminate those who give the orders in their criminal organization or to prosecute other criminal organizations, receiving a benefit in exchange for important information they provide for this purpose, which information must be corroborated by the prosecutor and admitted by the judge.

Considering its strategic importance in combating corruption and impunity, the MACCIH-OAS established the urgent need to incorporate this type of standard in Honduran legislation. For this reason, it submitted the Effective Collaboration Law to the executive branch on December 27, 2016. The law was studied by government officials and then sent without change to the National Congress on April 7 of this year.

During the last six months, the scope of the concept of effective collaboration in combating crime and corruption was widely disseminated. The MACCIH-OAS wishes to emphasize the role played by civil society organizations in positioning that proposal before public opinion, indicating the broad possibilities that MACCIH-OAS connections to civil society provide for promoting reforms the country needs. We hope that this experience can be replicated for other initiatives.

As provided under Article 219 of the Political Constitution of Honduras, in that various articles of the Criminal Procedure Code would be amended, the full Supreme Court of Justice had to be consulted regarding the Effective Collaboration Law’s technical viability within the criminal justice system. In this regard, the Supreme Court of Justice sent the National Congress its favorable opinion regarding the draft this past September 5. As for the Congress, it appointed a Special Opinion Committee and MACCIH-OAS experts appeared before that Committee on September 22 to present the scope and benefits of the draft Effective Collaboration Law, as well as to indicate the urgent need to approve it.

As of the close of this report and with more than ten months having elapsed since the bill was presented to the government, the National Congress has not approved that bill, despite its importance and the urgency of its passage for combating crime and corruption. This does not contribute to the purpose of confronting corruption.

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8. Another Effective Collaboration Law bill was submitted to the National Congress by delegate Osmán Aguilar; this bill was developed by the Parliamentary Caucus to Support the MACCIH-OAS.
9. Also to be noted is the role played by delegates from the Parliamentary Caucus to Support the MACCIH-OAS, as well as the decisive work done by Honduran journalism.
10. Presided over by delegate Tomás Zambrano and formed on a multipartisan basis.
and impunity in the country, depriving the Prosecutor’s Office and the judicial branch of what they need for this fight.

1.3.2. Law on Classifying Public Documents related to National Security and Defense.

Since it arrived in the country, the MACCIH-OAS has heard the concerns of various civil society representatives regarding the content and effects of what is called the Law on Classifying Public Documents related to National Security and Defense, also known as the “Law on Official Secrets.”

Over and above the understandable sensitivity with which issues of state security should be addressed in a democratic society, the Mission understood that the discontent expressed was basically due to the damage this law was doing to the principles of transparency, accountability, and access to information that are incorporated in a series of inter-American standards.

For this reason, in mid-December 2016, the MACCIH-OAS sent the government a report indicating the different legal approaches that the Law on Official Secrets contained, suggesting the need for a comprehensive reform, focusing on the violation of the Inter-American Convention against Corruption and repeated recommendations from the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC).

Follow-up was done on the results of this legal report, insisting with very high level officials on the need for reform, and holding a series of meetings in hopes of having an impact. It is important to recall that the Mission conducted a series of discussion forums with various civil society organizations to hear their perspectives on the Law on Official Secrets. Nonetheless, in the absence of any positive response, the MACCIH-OAS felt it necessary to publish its report, which happened on July 6, 2017 through the MACCIH-OAS 5 report. The purpose of publication was to disseminate the Mission’s technical position in order to raise awareness of the need for comprehensive reform with respect to the identified problem.

The MACCIH-OAS 5 Report was accompanied by a complete legislative proposal for the new Law on Classifying Public Documents related to National Security and Defense. In addition to the text, the proposal contains an explanatory statement and section of whereas statements. This draft provides for the total repeal of the current Law on Official Secrets, creating a normative framework directing attention to three fundamental points: the precision and delimitation of classified materials; harmonization of the system of categories and reserve deadlines with the Law on Transparency and Access to Public Information [Ley de Transparencia y Acceso a la Información Pública] (LTAIP); and the reestablishment of the Institute for Access to Public Information [Instituto de Acceso a la Información Pública] (IAIP) as the decision-making body on the subject of classification and declassification of documents.

11. The MACCIH-OAS has held meetings with various government officials, as the Presidential Directorate for Transparency, Modernization and Reform of the State of the Secretariat for General Government Coordination has finally been tasked with handling this initiative.
With respect to classified materials, the draft establishes an explicit list of documents and information that may be subject to classification for reasons of national defense, internal security, intelligence, and international relations in connection with the first three subjects. The exhaustive mention of exceptions to the principle of disclosure fosters legal certainty and predictability, thus reducing the discretion of the authorizing official.

As of the close of this report and despite the time elapsed since December 2016, acceptance of the legislative proposal suggested to the executive branch by the MACCIH-OAS has not been received. Thus, the bill has not yet been submitted to the National Congress. In this regard, the MACCIH-OAS wishes to express its concern regarding the ongoing delay with respect to a reform that is considered essential in the anti-corruption model strategy.


On March 29, 2017, the National Congress began to debate the bill for the new Social Security Law. This is a bill worked up by the Audit Commission of the Honduran Social Security Institute based on the Social Protection Law, which has much to do with what happened with the corruption of that institution. The MACCIH-OAS felt it should be included in the debate on the law because it was precisely the Social Security fraud that unleashed the Honduran population’s calls for establishing an international mission against corruption and impunity. Along these lines, on September 27 of this year the MACCIH-OAS presented MACCIH-OAS Report 6, “So that the events are not repeated,” which resulted from a series of consultation sessions with various stakeholders.12

The Mission’s recommendations on this subject focus on improving corporate governance, seeking to shield institutional structures, as well as to improve administrative and financial control systems, introducing social audit mechanisms in the new institutional structure to be established. It also recommends establishing certain guarantees and greater responsibilities in government purchasing processes, in order to avoid the occurrence of corrupt acts.

The MACCIH-OAS hopes that in this process of discussion and approval of a new Social Security Law, the delegates of the National Congress will take into account the recommendations made, primarily because the lack of controls and absence of oversight were the backdrop allowing the upheaval of the institution.

3. Training of anti-corruption justice system workers and other officials

The MACCIH-OAS has been conducting a series of training activities at the Office of the Attorney General, with various specialized units of the Prosecutor’s Office of Honduras. It has also conducted courses for various government officials. MACCIH-OAS’s training has focused on various subjects such as special investigation techniques, money laundering typologies, analyzing and connecting

12. The institutions consulted included: the Department of Health, delegates to the National Congress, the Medical College of Honduras, the Chemical-Pharmaceutical College, the Honduran Private Enterprise Council, the Social Forum on Foreign Debt, the IHSS Employees’ Union, the IHSS Audit Commission, and others. Subject experts were also consulted.
criminal information, cryptographies and staging techniques, criminal evidence and operation of FTK IMAGER tools, IT and cell phone media data extraction procedures, and other subjects. Nearly one hundred officials have been trained as detailed in the following table:

**DISTRIBUTION OF THOSE TRAINED BY UNIT**

<table>
<thead>
<tr>
<th>ENTITY</th>
<th>OFFICIALS TRAINED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical Criminal Investigation Agency [Agencia Técnica de Investigación Criminal] - ATIC</td>
<td>26</td>
</tr>
<tr>
<td>Office of the Special Prosecutor for Transparency and the Fight against Public Corruption [Fiscalía Especial para la Transparencia y Combate a la Corrupción Pública] - FETCCOP</td>
<td>20</td>
</tr>
<tr>
<td>Office of the Special Prosecutor against Organized Crime [Fiscalía Especial Contra el Crimen Organizado] - FESCO</td>
<td>16</td>
</tr>
<tr>
<td>Fiscal Unit Supporting the Police Cleanup Process [Unidad Fiscal de Apoyo al Proceso de Depuración Policial] - UF-Adpol</td>
<td>8</td>
</tr>
<tr>
<td>Special Prosecutor’s Office for Prosecution of Officials and Employees of the Justice Sector [Fiscalía Especial de Enjuiciamiento a Funcionarios y Servidores del Sector Justicia] - FEEF-SJ</td>
<td>8</td>
</tr>
<tr>
<td>Financial Intelligence Unit - FIU</td>
<td>6</td>
</tr>
<tr>
<td>Police Financial Investigation Office [Oficina Policial de Investigación Financiera] - OPIF</td>
<td>4</td>
</tr>
<tr>
<td>Prosecution Support Unit [Unidad Nacional de Apoyo Fiscal] - UNAF</td>
<td>4</td>
</tr>
<tr>
<td>Revenue Administration Service [Servicio de Administración de Rentas] - SAR</td>
<td>2</td>
</tr>
<tr>
<td>TOTAL</td>
<td>94</td>
</tr>
</tbody>
</table>

In addition, in an effort to strengthen the capacities of the new anti-corruption justice system in Honduras and with the support of the Judicial School, the Training School of the Office of the Attorney General, the Technological University of Honduras [Universidad Tecnológica de Honduras] (UTH) and the USAID United for Justice Project [Proyecto Unidos por la Justicia] (UPJ), during the period of this semi-annual report the MACCIH-OAS began the process of training justice workers of the National Criminal Jurisdiction in the Area of Corruption and the Special Prosecution Unit to Fight Corruption-Related Impunity (UFECIC) of the Office of the Attorney General.13

The objective of the training sessions is to strengthen and update the knowledge of justice workers in the national anti-corruption system on the use of investigative techniques and methods in complex criminal processes in the area of corruption, as well as substantive knowledge on the interpretation and application of national regulations and international and inter-American instruments on corruption. The

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13. Training began on August 31, 2017 and will continue until December 2017. It includes all prosecutors, financial analysts, criminal analysts, investigators, and forensic computer scientists that make up the team including the UFECIC and the judges and magistrates of the new anti-corruption jurisdiction. It will continue during 2018.
goal is for the workers in the new system to have the capabilities they need to investigate crimes and handle the cases that will come to this new jurisdiction.

The training program began in the month of August and will continue on an ongoing basis through specialized modules, relying on various international experts that will be responsible for this program. The curriculum structure takes the form of thematic modules that will address aspects such as crimes against public administration and crimes related to corruption, comparative experiences in combating corruption, techniques for investigating crimes of corruption and related crimes, management of criminal hearings and cases, role of the judge in the oral proceeding, expert testimony, procedural aspects, legal argument, and other subjects.14

The Mission is also working with the experts from the Office of the Attorney General to ensure they are prepared as forensic auditors and that their opinions include the forensic audit, which should be developed through criminal investigation techniques, integrated with accounting, legal-procedural knowledge, and skills in financial areas, to provide information and opinions in court, including the modus operandi of each subject and each enterprise.

The MACCIH-OAS has been doing important technical work in support of operational actions of the Office of the Attorney General and the Technical Agency for Criminal Investigation [Agencia Técnica de Investigación Criminal] (ATIC), such as the “Information Request and Management Protocol for the Information Management Unit [Unidad de Gestión de Información] - UGESI,”15 in addition to other work it has developed.

At the request of the Office of the Chief Justice and the Office of the Attorney General, the MACCIH-OAS will expend cooperation in the area of training to include other justice system bodies.

4. Development of the work of active support in cases of corruption

During the period covered by this report, the MACCIH-OAS continued to provide support to the Office of the Attorney General in investigative tasks for cases of corruption. This work has been done in cases related to fraud at the Honduran Social Security Institute, the Los Cachiros and Agua Zarca project cases, and in other cases, as we will see below.

The MACCIH-OAS wants to clearly state that we are in the process of building the work of combating corruption and impunity in Honduras. The first thing that had to be done was to set up the Mission, which has been done quickly although more experts still need to be included in the area of investigation. Parallel efforts advanced the work of building the anti-corruption jurisdiction as it began to operate

14 The MACCIH-OAS will also provide training to other units of the Office of the Attorney General, as well as judges and magistrates outside the new criminal justice system with national jurisdiction in matters of corruption, based on its commitment to produce changes in the justice system.

15 This protocol was developed by the MACCIH-OAS and ATIC staff. Other investigative work protocols have been provided in the past, such as the Protocols on Digital Evidence.
and the authorities were asked for tools essential to the work such as the Effective Collaboration Law. Even while in the midst of these processes, the MACCIH-OAS started the active support work early, working with prosecutors to strengthen investigations and procedures in the country’s courts, achieving significant results with our colleagues in the Prosecutor’s Office through effective convictions in cases of corruption.

4.1. **Honduran Social Security Institute Cases**

The MACCIH-OAS felt it necessary to assist in the initial cases against the former director of the Honduran Social Security Institute, Mario Zelaya, who headed up a criminal organization within that institution to illegally extract for himself and others funds that belonged to the insured.\(^{16}\) Zelaya’s pretrial detention was extended as much as it could be until March 2017, so that it was important to demonstrate his criminal responsibility to the courts as soon as possible to prevent his leaving prison and the possibility of a second attempt to flee.

The criminal responsibility of Mario Zelaya has already been demonstrated in the four cases, achieving actual convictions that cumulatively result in a prison term of 25 years so far.\(^{17}\) In December 2016, he was convicted and given a ten-year term for the crime of weapons stockpiling. In January 2017, he received the harshest conviction ever given to a public official in the history of Honduras, receiving 15 years for crimes of corruption in the “Honduran Migrant” case, and has notably also been linked for the first time with the crime of money laundering as a predicate offense. This shows that Honduran courts are developing new approaches and relevant jurisprudence in combating corruption.

Last March, Mario Zelaya, as well as Deputy Ministers Carlos Montes and Javier Pastor, were convicted for bribery and money-laundering as former directors of the IHSS. In June, Mario Zelaya was himself convicted along with others implicated in the case of “Front Companies” that are structures facilitating the extraction of funds amounting to about $12 million to date. Other individuals have also been convicted in the IHSS cases.\(^{18}\)

Investigative tasks related to the IHSS cases continue in order to present new indictments and provide better support for accusations made in court. Through the MACCIH-OAS-Office of the Attorney General Integrated Investigation and Criminal Prosecution Teams, the UFECIC will be responsible for the most important IHSS cases. There has already been coordination with the Attorney General on transferring important corruption cases to the jurisdiction of the UFECIC.

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16. Mario Zelaya headed up the criminal structure within the IHSS, with the participation of officials and individuals outside the IHSS, relatives and even entrepreneurs. Nonetheless, he is not the only official implicated in these crimes as there are lines of investigation that will lead to more findings.

17. In the Bribes to Deputy Ministers case, although there has been a conviction, the hearing for individualization of the punishment has not been held as yet. As for the Front Companies case, a hearing was held on August 9 for individualization of the punishment, with the Office of the Attorney General proposing a 20-year prison term.

18. We refer to Mario Zelaya and the Deputy Ministers because they are the most noteworthy so far. Another person convicted for various crimes is Ramón Bertetti.
4.2. Prison for those convicted of crimes of corruption

Finally, this section notes that the MACCIH-OAS has been in working meetings with the National Penitentiary Institute to consider the situation of those convicted for committing serious crimes of corruption, to ensure that there is no impunity in how they serve their sentences, so as to guarantee the principle of inmate equality and to guarantee their physical safety and lives. Information has been received that a wing will soon be opened in a new detention center to house those convicted for crimes of corruption.

4.3. The country’s first conviction for the crime of influence peddling: the Teodoro Bonilla case

The case of Teodoro Bonilla, former Vice President of the Judiciary Council, is emblematic for various reasons. It represented a clear message to judges and justice workers to ensure that we will all defend judicial independence and that anyone who impairs that independence pays for it. The MACCIH-OAS felt that the defense of independence is the key for making progress in combating corruption; for this reason, defending an indictment in a serious case damaging the judicial branch was more than necessary in this context. We sought to ensure that Honduran judges would appreciate that the Mission will stoutly defend this principle and defend all workers against undue influences.

Bonilla was accused by the Honduran Prosecutor’s Office of committing the crimes of abuse of authority and influence peddling by interfering in a serious money laundering case and seeking impunity for some relatives. His role as a member of the agency responsible for managing the judicial branch and the careers of judges and magistrates made his conduct extremely serious. The crime was proven and he was convicted this past June 30. He was given a six-year prison term and a fine of approximately $8,000. The Office of the Attorney General announced that it will appeal the conviction in that it had sought a term of nine years.

This is the first conviction of a senior government official for the crime of influence peddling imposed in Honduras.

4.4. The Agua Zarca case

The MACCIH-OAS decided on July 13 to jointly take up the investigation with the Office of the Attorney General in the case of the Agua Zarca Project, involving complaints for alleged corruption that were reported by the murdered environmental leader, Berta Cáceres. The case is currently with the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage.

This announcement responds to the need to help determine the possible causes of the crime and unravel the existing assumptions. The MACCIH-OAS has worked jointly with this Prosecutor’s Office to warn of possible inconsistencies in the Honduran State’s delivery of a very quickly awarded concession for a hydroelectric project to a company that did not meet the conditions and technical capacities to
handle the project. The DESA company won the bid, obtained a contract for operations, a water use contract, an energy purchase contract from the National Electrical Energy Company [Empresa Nacional de Energía Eléctrica] (ENEE) and a decree from the National Congress approving all of this, in a short period of time and with negligible capital. It is notable that in this case there was no prior informed consultation with the indigenous peoples. The aim is also to inquire why the project construction site and its administrative actions were changed, as well as whether there is support for increasing capacity and energy purchases by the ENEE. The investigation is conducive to defining causes and the public-private web connecting all these aspects and whether the project is compliant with regulatory and substantive standards for a high investment initiative of this kind.

4.5. Other cases

On March 8, following a working meeting with Attorney General Óscar Fernando Chinchilla, agreement was reached on forming a Technical Investigation and Criminal Prosecution team to work on investigating the serious allegations made by the drug trafficker Devis Leonel Rivera Maradiaga (alias Cachiro) before a court in New York.

This investigation includes the participation of various special prosecutor’s offices of the Office of the Attorney General, carrying out a comprehensive investigative work plan, with a request for international judicial cooperation submitted to the United States Department of Justice.

5. MACCIH-OAS work with the National Anti-Corruption Council

The MACCIH-OAS considers the work done by the National Anti-Corruption Council [Consejo Nacional Anticorrupción] (CNA) in actions to prevent and combat corruption to be exceedingly important. Its inquiries have been used to initiate lines of investigations into the IHSS and other acts of corruption that merit follow-up and action by the justice system.

Pursuant to the agreement signed between the SG/OAS and the CNA in March 2017 on the framework for the Mission’s support of this institution, since August the

19. The company is called Desarrollos Energéticos S.A. (DESA). It was founded with equity of about $1,200, with which it obtained all administrative and contractual documents.

20. The MACCIH-OAS calls attention to the participation of financial institutions that support expensive projects with high social and environmental impact, without considering basic information to safeguard compliance with international standards and the human rights of the affected populations. The Mission is not opposed to investment and encourages quality investment intended to contribute to the country’s development and opportunities for all, but cannot fail to point out that in the case of the Central American Bank for Economic Integration (CABEI), the Netherlands Development Fund (FMO), and the Finnish Fund for Industrial Cooperation (FINNFUND), there should have been more information on technical support for the project and on compliance with the referenced standards. International responsibilities must be assumed and lessons learned from best practices existing in the world.

21. In this regard, the MACCIH-OAS feels that the focus that attorney Gabriela Castellanos has given to the CNA’s efforts on investigative tasks it formalizes before the Office of the Attorney General is consistent with the moment through which a country is passing when seeking to put an end to impunity.
MACCIH-OAS has been providing advice, support, and recommendations regarding joint investigative tasks in cases of corruption, through the CNA/MACCIH-OAS investigation teams.

6. **Institutional strengthening programs in preventing and combating corruption**

As already seen in the previous sections, in order to achieve the objectives of the agreement that created it, the MACCIH-OAS not only works to support and supervise penal system institutions that combat corruption, it also recommends institutional and legal reforms to prevent corruption.

To be noted in this institutional strengthening work are the various cooperation agreements signed with institutions such as the Institute for Access to Public Information [Instituto de Acceso a la Información Pública] (IAIP); Office of the Inspector General [Procuraduría General de la República] (PGR); and the High Court of Auditors [Tribunal Superior de Cuentas] (TSC), among others.

6.1. **The Anti-Corruption Unit of the High Court of Auditors**

The Cooperation Agreement between the High Court of Auditors and the Secretary General of the Organization of American States on the Framework for Action, Support, and Backing of the Mission to Support the Fight against Corruption and Impunity in Honduras was signed on June 26, 2017.

The agreement contains a notable clause permitting the joint investigation of cases, which will be done by establishing integrated investigation teams, as is already done with the Office of the Attorney General. In the case of the TSC, this institution consists of a Unit to Combat Corruption and Unlawful Enrichment, which is expected to do a large part of the collaborative work between the Mission and the lead agency of the Honduran audit system.

It is also essential to the MACCIH-OAS that civil society be included in these tasks and for this reason it has cultivated collaborative relationships with non-governmental organizations, academic institutions, business associations, professional associations, workers’ unions, as well as with international cooperation agencies working in Honduras.

6.2. **Corporate probity program**

Pursuant to the provisions of the agreement creating the MACCIH-OAS, with respect to promotion of corporate integrity systems, Honduran inclusion in international conventions against bribery, and analysis of the legal system governing the criminal and administrative liability of legal entities, the Mission is working, as of September 2017, to develop a diagnosis and a road map for the implementation of compliance incentives in Honduras. In this regard, meetings have been held with the leaders of the major corporate associations in the country and workshops have been conducted with members of private, public, and academic sectors related to the issue.
This first stage toward the establishment of corporate probity programs is being carried out with the support of Latin American experts taking into account experiences with this issue in other countries of the region. There is also decisive support from the Honduran Private Enterprise Council [Consejo Hondureño de la Empresa Privada] (COHEP), the chambers of commerce and industry of Tegucigalpa and San Pedro Sula, and other business organizations.

The diagnosis will facilitate learning about good and poor corporate practices associated with integrity and corruption, as well as identifying the key stakeholders with which the program will be implemented in the corporate, academic, and government sectors. The road map will contain recommendations for establishing regulation, self-regulation, and compliance certification mechanisms in Honduras, indicating the international standards that could be applied and the institutions or organizations that could grant the seal of compliance.

The Mission’s work in this program is fundamental, in that it completes the efforts that have already been made since it was installed for preventing and combating corruption in the public sector, thus assuming a comprehensive view of the phenomenon covered by its mandate.

6.3. The MACCIH-OAS Chair

The MACCIH-OAS Chair emerges as an initiative of the MACCIH-OAS in the context of training sessions for justice workers of the national anti-corruption system. This project aims to contribute to the legal training of law school students at the various universities as future justice workers. The aim is also to introduce a university audience to the international experts who provide training to the new cutting-edge units of the Prosecutor’s Office and the judicial branch.

Taking advantage of the teachers providing training to the National Anti-Corruption System, [courses] are being given from August to December, based on nine modules. Anyone interested has access to this instruction in person or on-line. The modules include topics covering anti-corruption systems; crimes of corruption; comparative experiences in combating corruption; investigating crimes of corruption; role of the judge in the oral trial; types of analysis; and oral trial stage.

Once the MACCIH-OAS Chair training sessions are completed, students who demonstrate their attendance at more than 80% of the modules and who have completed the required assignments will receive a certificate of participation from the Technological University of Honduras [Universidad Tecnológica de Honduras] (UTH) and the MACCIH-OAS. This initiative is expected to continue in 2018 with new participants.

6.4. The anti-corruption oral litigation competition

Recent years have shown the importance of focusing training at the law schools of the country’s various universities on the acquisition of a set of cross-cutting professional skills or aptitudes that goes beyond solid knowledge of national and international standards to include specific skills for litigation and oral argument.
The CNA and MACCIH-OAS have been promoting the “First Inter-University Competition on Oral Criminal Litigation in Corruption Cases,” which is conceived as an ideal tool for raising awareness among young people regarding criminal issues related to corruption, opening up room for reflection on the effects of corruption. The aim is also to acquire knowledge through practical exercises allowing students to learn about criminal offenses constituting acts of corruption, as well as the special nature of these cases in terms of evidence and argument in accordance with the criminal procedure reform of 2002.

Thanks to the United for Justice Project, activities began in October with a training session for teachers who will monitor and advise students during the competition. A management committee has been established to carry out the project and conduct the competition. It is made up of the CNA, the MACCIH-OAS, the Konrad Adenauer Foundation, and the United for Justice Project. The committee has executive support from a Technical Secretariat under the CNA. In addition, as a technical council, a network of law schools will be strengthened and will consist of deans from the schools at various universities in the country that will be participating in the competition.

6.5. Strengthening the investigative press

The MACCIH-OAS, with technical and financial support from Freedom House, Internews, and the United for Justice Project, is promoting a national prize for investigative journalism. This initiative began on September 25 with a training workshop on investigative journalism to strengthen the knowledge, skills, and aptitudes of journalists interested in issues related to investigative journalism in Honduras. The project expects to have the support of various entities and individuals interested in investigative journalism, including:

- Journalism schools of public and private universities;
- Journalists’ associations;
- Civil society organizations dedicated to promoting freedom of expression or alternative press experiences;
- Communications media;
- Investigative journalists.

At the end of the workshop, the participants will present a final work that will be evaluated by international experts. Those rated best will participate in a competition for the national investigative journalism prize. The works of those who win the first three prizes will be disseminated in the national and international communications media.

6.6. Most useless procedure

The MACCIH-OAS has identified as factors in corruption administrative procedures that are inefficient, ineffective, and lacking in transparency. The damage caused by this type of governmental procedure includes their impact on national and foreign investment and even tax evasion. It is for this reason that the MACCIH-OAS is presenting the proposed citizen competition called the “Most Useless Procedure” as a mechanism for establishing a channel between citizens and the State, the purpose being to identify and learn about problems and deficiencies in public
administration and, on that basis, to suggest innovative, sensible, and viable solutions, preventing the emergence of new opportunities for expanding the phenomenon of corruption. The rewards of this competition include an immediate commitment to efficient improvement and simplification of the procedure that citizens consider “the most useless.”

To carry out and organize the project, the MACCIH-OAS has the support of the Social Forum on External Debt and Development of Honduras [Foro Social de la Deuda Externa y Desarrollo de Honduras] (FOSDEH) and the Honduran Private Enterprise Council [Consejo Hondureño de la Empresa Privada] (COHEP). It is also seeking additional partners able to provide financial cooperation.


After the MACCIH-OAS trained the officials of the PGR National Directorate for Judicial Matters, the methodology for which was described in the previous report, those officials began to apply this tool in corruption cases in which they had to file the State’s claims for damages based on the impact that crimes against public administration have on the legal interest protected by these criminal definitions (the proper operation of public administration) and by extension the rights of all Honduran citizens.

The country’s courts have been approached and we are waiting for them to settle the claim made by the State’s defense. Should that claim be found admissible, the decision will represent a milestone in Honduran (and Latin American) justice as we currently know of no cases in which there is an objective guide that would lead judges to impose civil damages commensurate with the damage done by crimes of corruption.

Thus, the MACCIH-OAS should express its appreciation for the openness and willingness of PGR officials to discuss and apply these instruments in practice, with the Joint PGR-MACCIH-OAS Statement22 of August 18, 2016, denying as from that date until now 79 requests for measures to dismiss judicial system cases involving those being prosecuted for crimes of corruption.

6.8. The need not to reduce penalties in the Penal Code

A process began in 2014 to perform a situational diagnosis of the need to reform the Penal Code in effect since 1985, which has been subject to numerous changes through various direct reforms of its provisions or through the creation of special laws in this area. On this basis, a new Penal Code was drafted, a process

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22. One of the principal agreements in that statement expressly stipulates as follows: “The PGR and the MACCIH-OAS today initiate a collaboration program intended to improve the capabilities of the attorneys responsible for defense of the interests of the State, seeking to implement a solid anti-corruption policy. On this subject, the PGR states that as of the beginning of this work plan it will not grant, within the scope of its power, in crimes of corruption, measures to remove cases from the judicial system such as: conciliation, plea bargaining, summary procedure, or suspended criminal prosecution, injuring the interests of the State. This does not bar the possibility, when considering the new legislation, of opting for effective collaboration.
supported by Spanish Cooperation in particular. In May 2016, the National Congress began to discuss that draft.

In the context of the debates in the National Congress, in September 2016, the MACCIH-OAS submitted to the National Congress and to society in general MACCIH Report 2: “Comments on the Criminal Code Reforms – General Part and Crimes against Public Administration." In that text, the MACCIH-OAS expressed its concerns regarding the penalties imposing imprisonment in the draft Penal Code for crimes against public administration, due to the clear tendency to diminish the penalties for these crimes without taking into account criminal policy needs specific to the Honduran situation.

Despite what was stated in the above-mentioned report, on August 8, 2017, the National Congress reconsidered the record from an earlier session and approved a reduction of the penalties imposed for the crime of misuse of public funds. One of the consequences of that decision is that individuals currently being prosecuted for the offense for which the penalty has been reduced, and even those already convicted, will be able to invoke the exception to the principle of non-retroactivity of the law that Honduran Constitution provides for criminal matters only, when the new regulation favors the criminal.

Based on this situation, the MACCIH-OAS has asked the National Congress for the history and record of that vote, which have not been sent to the Mission as yet. This is public information and the National Congress is an institution bound by the Law on Transparency and Access to Public Information (LTAIP).

II. DIVISION OF POLITICAL AND ELECTORAL REFORM

1. Entry into force and enforcement of the Law on Financing, Transparency, and Oversight

Pursuant to Article V of the agreement establishing the MACCIH-OAS, it should be emphasized that the period covered by this report was marked, on the one hand, by the appointment of the Commissioners of the Financing, Transparency and Oversight Unit [Unidad de Financiamiento, Transparencia y Fiscalización] (UFTF, Unit), attached to the Supreme Electoral Tribunal [Tribunal Supremo Electoral] (TSE) and the start-up of activities. This phase also marked the start of the campaigns of parties and candidates for the general election held on November 26, 2017.

2. Formation of the Financing, Transparency and Oversight Unit (April-May)

In October 2016, the Honduran Congress adopted the Law on Financing, Transparency, and Oversight of Political Parties and Candidates, known as the “Clean Politics Law." The main provisions of the law include the creation of the Financing, Transparency, and Oversight Unit (UFTF, Unit); it is attached to the Supreme Electoral Tribunal, although it is given autonomy.
Approval of the law and its publication in the Official Gazette occurred in January 2017. “Although the Congress passed the law in October 2016, it came into force in March 2017, so it was not until now,” that the MACCIH-OAS was able to start working to support creation of the unit.

Thus it is that the National Congress finished selecting the members of the unit on May 31, with the oversight of civil society organizations. This was done on the basis of a Special Commission that pre-selected nine candidates who were submitted to the full Congress for selection of the three positions established in the law, with the participation of the MACCIH-OAS and civil society organizations. After two months, on May 31, the Congress appointed the three members: Kelvin Aguirre, German Espinal, and Javier Franco. The appointments proceeded according to merit-based criteria in the initial stage, but failed to apply those criteria in the final selection, with preference given to a political agreement that favored and addressed partisan balances.

The formation of a unit responsible for carrying out a task as ambitious and complex as that set out in the Clean Politics Law so soon after the elections presented a scenario of considerable challenges and at the same time high expectations in society.

3. Initial steps of the Financing, Transparency, and Oversight Unit (May-August)

The unit had to be built from the ground up, which represents both a potential long-term advantage and a serious disadvantage in the short term. On one hand, the unit’s members have the opportunity to organize an entity with quality technical and professional parameters and with the seal of political impartiality. On the other hand, the lack of a pre-existing foundation diverted attention from substantive issues given the need to address multiple administrative and logistical aspects.

The issues that required the unit’s priority attention include the legal framework for its work, its infrastructure, personnel, budgetary resources, and technological platform. The unit had to develop the law’s regulations; hire and train professional staff; develop a technological platform that would facilitate processing of political parties’ and candidates’ accountability reports; and work to establish links with parties and society at large. Finally, the unit did not have its own headquarters. It received support from the TSE to set up in a building rented by the parent institution.

4. Legal framework

The unit’s members began their work before the law’s regulations came into force so they had to develop those regulations jointly with the TSE, which is ultimately responsible for their approval and the need to develop internal operating rules.

The MACCIH-OAS assumed as a priority pillar the need to provide basic documents (see Annex 1). Particularly important was the draft of the law’s regulations, for which approval by the full TSE was established in the law (Art. 74). The unit used the input as a reference. Finally, days before the start of the electoral campaign, the TSE approved the regulations with their respective forms, the
preliminary version of which were also worked up by the MACCIH-OAS (August 24).

The regulations helped to fill in gaps, resolve contradictions and inaccuracies in the law and, given the pressures of time, emphasized aspects of the 2017 general election. In this regard, after the election, a reform will be needed to address the series of issues raised by the Clean Politics Law. The regulations also left out crucial aspects that will require legal adjustments, particularly on establishing spending limits for political parties and not just candidates, clear treatment of the laundering of electoral campaign assets, higher thresholds to ensure compliance with the law, and a more solid system of penalties.

For the unit’s internal organization, the MACCIH-OAS assisted in the development of draft regulations on its organization and functions, as well as a proposed organic structure. These documents provided the basis for preparing the final documents, an effort also supported by other international cooperation institutions, particularly the Netherlands Institute for Multiparty Democracy (NIMD). 23

5. Human resources

The MACCIH-OAS also supported the hiring of officials with the delivery of protocols and a schedule for selecting personnel, a crucial task for ensuring the quality, suitability, and impartiality of staff, on which depends the likelihood of the unit’s technical success. The call for auditors’ positions was published on August 23, a timeframe that was late for the needs of the election as it did not ensure the presence of staff prior to the start of the electoral campaign. The process was delayed when the deadline for submitting the required documentation was extended (from September 1 to September 13). There were more than 60 applicants for 18 positions.

The selection committee consists of the MACCIH-OAS along with the Asociación para una Sociedad más Justa (ASJ) acting as the technical secretariat (the initial session was held on September 19).

23. The MACCIH-OAS developed and delivered the following documents to the unit’s members:
1. Pamphlet for political parties.
2. Pamphlet for civil society.
3. Pamphlet for candidates.
5. Regulations on complaints and protection for whistleblowers.
7. Schedule of activities under the law.
8. Operational framework of the unit.
11. Legal opinion on money laundering in the regulations.
13. Three records of working minutes.
16. Ten achievements of the unit in the first month of operation.
17. Pamphlet for the financial sector.
18. Pamphlet for financial managers.
For staff training, the MACCIH-OAS has designed a program that consists of an introduction to the Clean Politics Law and the auditing procedures.

In practical terms, under the most favorable scenario, permanent staff will take up their positions on November 1, when two-thirds of the electoral campaign will have already occurred. That weakness clearly affects the unit’s capacity to exercise timely oversight.

6. **Technological platform**

The MACCIH-OAS made initial contacts so as to have support from the National Electoral Institute of Mexico [*Instituto Nacional Electoral de México*] (INE) and receive a technological platform transfer for processing information submitted by the parties and candidates.

The INE trained the unit’s members, accompanied by a staff member from the TSE information technology area, who traveled to Mexico City in early September of this year. Within the framework of an agreement between the TSE and the INE, progress could be made in starting a collaborative effort to design two IT systems, one for information flow (General Secretariat) and another basic system for receiving information.

Given the extremely short timeframes, we cannot rely on this transfer for the 2017 election, which required the development of a local platform. Even if we consider only a simple model, the most favorable scenario indicates that only at the end of the electoral campaign will there be an IT system for processing the information submitted by the parties.

7. **Training for political actors and civil society**

For programmatic linkage of the unit with the political parties, the MACCIH-OAS delivered basic material to facilitate dissemination of the scope of the Clean Politics Law, although it felt that the work of training organizations is a task for public institutions rather than international cooperation. The pamphlets for parties, candidates, and contributors and the ABC on the Clean Politics Law were provided for this purpose.

The unit developed numerous informative sessions on the law, covering all parties, independent candidates, and in various cities as well as Tegucigalpa. This was useful work for positioning both the unit and the law in social, political, and media terms, with a significant deterrent effect on campaign spending, particularly at the beginning, extending beyond the unit’s real control and oversight abilities.

This weakness was exposed when two weeks after the start of the campaign only 30 candidates – of about 3,000 required to meet the requirement – had opened bank accounts. Of the ten presidential candidates, half have met the requirement.

The MACCIH-OAS gave the oversight unit the protocol on the oversight of incoming and outgoing political party funds in preventing money laundering and the document identifying at-risk areas for money laundering.
To maintain the unit’s relationship with civil society and to have its participation in the oversight alert, the MACCIH-OAS delivered a socialization document (pamphlet for civil society) as well as draft regulations on complaints and whistleblower protection, with the respective complaint forms.

In another area, it organized the first meeting between the unit and the principal electoral observation platform, held at N-26 (August 14). The meeting was held in partnership with the National Democratic Institute [Instituto Nacional Demócrata] (NDI). N-26 does not focus solely on election day; rather, some of its partners are interested in fields directly relevant to the unit (observing financing in at-risk areas, etc.).

8. Start of electoral campaign and prospects (August-September)

August 28 marked the official start of the electoral campaign in Honduras. It was also the debut of many articles of the Clean Politics Law applicable to control of campaign funds. There was an air of expectation in society regarding the unit’s performance, shared by the media, which provided broad coverage that, as indicated, had the positive effect of acting as a deterrent mechanism. The international community also followed the process with interest.

The developments indicated in the preceding section illustrate the progress made by the unit in order to come prepared for its first date with the electoral process. Despite those efforts, the start of the campaign made clear the difficulty of the exercise and the limitations on the ability to achieve the most ambitious purposes of the Clean Politics Law.

The weaknesses first of all involve the delayed selection of staff. In the best of cases, staff will assume their duties during the second half of October, under precarious operating conditions: limited training and equipment.

Second, the lack of a technological infrastructure for processing the parties’ economic, financial, and accounting data means having to work under rudimentary conditions. Technological support needs to be developed, which requires the support of the TSE, which is in turn focused on addressing the technical, logistical, and administrative aspects of the election. The system will start up without undergoing any relevant testing.

Third, the unit did not manage to organize monitoring of media coverage of partisan and government (central and municipal) campaigns before the campaign began on August 28, 2017. It was thus deprived of a basic component for independently verifying and auditing the parties’ statements regarding their investments in mass media. It is important to emphasize that the media is usually the first spending item of candidates in a campaign. Provision has been made to ensure contracting during the first half of October of companies specializing in this area that would help to cover the second stage of the campaign.

Fourth, the unit began its operations with budgetary shortages. The launch budget was a “loan” of five million lempiras from the TSE. It was useful and showed the TSE’s commitment to the unit. However, even in September, there was no transfer from the government to ensure that the unit would operate autonomously.

Fifth, it was not possible to provide technical training for the parties’ finance managers. A first and essential task was done, i.e., training on the general scope of the Clean Politics Law, but equally critical was training on how specifically to work with the regulations’ forms and clarifications. In other words and given that the regulations were available simultaneously with the start of the campaign, the parties and candidates lack homogenous standards for properly meeting their obligations.

These disadvantages stood out with regard to the problem of bank accounts to be opened by the candidates. At the end of the first two weeks of the campaign, fewer than 1% of the candidates had opened an account, which forced the unit to threaten them with penalties and forced the Congress to issue a statement requiring that banking system make its conditions for this process more flexible. After one third of the campaign had passed, fewer than 5% of the candidates had complied with this basic step for determining the flow of funds.

This first exercise demonstrates the lack of partisan staff at the central and regional levels prepared to meet the requirements and the candidates’ ignorance of specific legal requirements, particularly outside the principal cities, and notably in the municipal jurisdiction. There is thus a significantly greater likelihood that the unit will receive information that is fragmented, incomplete, and broken down incorrectly.

The MACCIH-OAS felt at this stage that it should not work with public institutions only but should also highlight its task with civil society, seeking to strengthen it. For this reason, in addition to the work being done with the Criminal Justice Observatory, the Division for Preventing and Combating Corruption initiated actions with civil society organizations interested in corruption issues, to develop concrete projects that could be used to do a “technology transfer” in this area and to carry out joint work.

Finally, like many countries in the region, accountability concerns should not make us lose sight of the challenge posed by funds spent and undeclared. Comparative experience shows that a candidate or party is not likely to submit accounts that exceed the ceiling. It might be possible to show under-reporting of funds invested in the formal system, such as media advertising. However, many funds do not pass through this channel, but are funneled to patronage-style propaganda and leave few traces.

Investigating undeclared funds requires a different approach than that used to analyze accounts, which focuses on relatively simple audit tasks. The lack of the factors described above makes it unlikely that the unit will have effective action in this specific area in the 2017 election.
III. DIVISION OF CRIMINAL JUSTICE SYSTEM REFORM

1. Participation of the CEJA for criminal justice reform

The Center for Justice Studies of the Americas [Centro de Justicia de las Américas] (CEJA) arrived in the country on September 21. Provision was made for its presence in paragraph 4.1 of the agreement creating the MACCIH-OAS, establishing that, within the Division of Criminal Justice System Reform, CEJA experts will perform a review and analysis of studies and investigations done on criminal justice system institutions in Honduras, with particular emphasis on the evaluations and results of these reforms.

The CEJA will also assist in developing a diagnosis of the status of the criminal justice system, analyzing its behavior and its results, as well as specific aspects of each institution in the system, such as: governance systems, institutional location, levels of autonomy, ability to perform institutional mandates, internal work procedures, and internal organization models.

The CEJA will also collaborate on developing a series of recommendations of varying depth and scope to strengthen the quality, effectiveness, and legitimacy of the Honduran criminal justice system; will perform an analysis and evaluation of the Honduran criminal justice system; and will develop innovative approaches in judicial reforms.

2. Public competitions for filling 190 judge and magistrate positions at the national level

There is currently a problem related to positions in the judicial branch in that a large number of them are filled by judges and magistrates on an interim basis, a situation that has gone on for several years. This clearly impacts the stability of the positions held by these judicial system officers and consequently their independence.

This past July the Office of the Chief Justice appointed the international judge of the MACCIH-OAS as a member of the oversight commission on public competitions to fill approximately 190 tenured positions. The process is expected to take eight months. The procedure is based on the public competition conducted and monitored by the Mission to fill the lead positions of the criminal justice system with national jurisdiction on matters of corruption. The selections committee is expected to adhere to the high international standards for public competitions, notwithstanding the Oversight Commission’s observation regarding certain situations probably due to use of the aforementioned competition model. There was discussion with the commission and the Chief Justice and there is a commitment to improving the rules for this competition, in the sense of observing the basic principles of competitive appointments, such as there being as many competitions as there are positions to fill, and understanding that this is not just one competition for 190 positions. It must also be clearly established that the selected judge or magistrate must be at least among the first candidates with the highest rankings in the competition, or specifically the person who wins first place. In this regard, it is important to clearly regulate this situation in order to limit discretionary appointment of the most trained and meritorious candidates.
3. Agreement of the Supreme Court of Honduras with the Supreme Court of Chile

The purpose of the joint working agreement is to establish the principle lines and mechanisms for inter-institutional cooperation between the Supreme Court of the Republic of Chile and the Supreme Court of the Republic of Honduras, in order to strengthen and improve the quality of judicial governance and management of the respective systems for administering justice, contributing to the achievement of institutional goals, establishing a scope of action for the design of cooperative initiatives and actions within a context of equality and promotion of information-sharing in judicial matters.

Both courts have appointed the MACCIH-OAS to the USAID’s United for Justice Project, as facilitators of the transfer and collaboration activities to which they have committed, which in theory will ensure the resources needed for effective cooperation in the indicated areas.

4. Training on anti-corruption issues

As mentioned in earlier sections, the Mission has designed a training course for judges and magistrates selected to form the criminal justice system with national jurisdiction in matters of corruption. The same training is also being given to the 43 specialized officers of the Special Prosecution Unit to Fight Corruption-Related Impunity [Unidad Fiscal Especial contra la Impunidad de la Corrupción], ensuring guidance for each institution.

The training covers five thematic lines: foundations, criminal law, criminal process, procedural and office management, and case clinic. The training course incorporates doctrines, procedures, protocols, and techniques of the highest standards and is already being implemented. An initial one-week seminar was conducted during July with the valuable collaboration of the Federal Judicial Institute of Mexico [Instituto de la Judicatura Federal de México] (IJF). Currently under way are the three-day seminars that began in August and will extend until December. The excellent work that the Judicial School has done in conducting the courses, which is responsible for their success, should be recognized.


Underscoring the need to strengthen judicial independence, the Chief Justice, together with the MACCIH-OAS, considered asking the United Nations Special Rapporteur on the Independence of Judges and Attorneys, Dr. Diego García Sayán, to visit the country. Thus, on June 19, 2017 the full Supreme Court, in accordance with Record No. 32-2017, dated April 21, 2017, arranged to welcome Dr. García-Sayán during the second half of this year, a decision contained in Official Communication PCSJ No.340-2017, dated August 7, 2017.
6. The importance of close links between human rights and the fight against corruption

One concern since the start of the MACCIH-OAS is compliance on the part of the State of Honduras with the highest human rights standards. This is directly related to the increasingly closer link between corruption and the deterioration in human rights.

In effect, behind every act of corruption, the rights of citizens are violated and this is not always expressed in public funds. Health, education, justice, and security are legal benefits protected by criminal law and all these rights are deferred or diminished when an official or individual diverges from the proper operation of public administration.

It is for this reason that the official address delivered by the Chief of Mission always includes this approach, both in academic and training settings and in public presentations and institutional meetings. On this latter point, it is worth recalling that the Chief of Mission has held meetings (where he has spoken on these issues) with the Chair of the Inter-American Commission on Human Rights, judges of the Inter-American Court of Human Rights, the Inter-American Institute of Human Rights, and the United Nations High Commissioner for Human Rights.

In view of the above, for the MACCIH-OAS, the good faith compliance of the State of Honduras with the decisions handed down by international tribunals in the area of human rights is very relevant. Honduras is known to have recently been condemned by the IACHR, an OAS body, in various cases, one of which refers to the decision declaring the Honduran State’s culpable for violating the due process and other rights of five judges who opposed the coup d’état in 2009.

The Mission expresses its satisfaction with the statement contained in official communication 387-2017 of August 15 of this year from President Rolando Argueta indicating full compliance with the IACHR decision ordering that the deposed judges be reinstated to their judicial functions, no later than within the first 15 days of October 2017.

With regard to the above, the MACCIH-OAS believes that a human rights approach is a fundamental tool for the exercise of a modern judiciary that is close to the citizenry. For this reason, as part of the project on institutional strengthening of the Office of the Chief Justice, agreement was reached on preparing a collection of human rights manuals for Honduran judges. The MACCIH-OAS arranged for the Red Iberoamericana de Jueces to make available to the Office of the Chief Justice, free of charge, manuals on civil and political rights, economic and social rights, access to public information, and peasants’ rights. Review and update of the manuals is financed by the Konrad Adenauer Foundation. The project is fully underway.

In addition, and aware of the importance of training on human rights, the MACCIH-OAS arranged for scholarships amounting to US$25,000 so that 45 judicial branch staff could complete a master’s degree in human rights at the University of La Paz in Costa Rica; the funds were donated by the United for Justice Project.
7. **Criminal Justice System Observatory**

Since the last half-yearly report, the Criminal Justice System Observatory Unit has conducted discussions in its Dialogue Forums on the Clean Politics Law, the process for selecting the members of the Oversight Unit, as well as the “workshop and discussions to agree on participation and transparency criteria in the process of selecting members for the Oversight Unit” and the conversation with academia on the CEUTEC campus regarding the topic of “Crimes against Public Administration: Current and Future Situation.”

It has also participated in different events carried out by civil society organizations and Honduran academia related to corruption and transparency, as well as the protection of those reporting crimes of corruption. It has actively assisted civil society and academia. The Honduras Observatory gained an institutional image, providing greater visibility for the impact of its actions.

Opportunities for interaction were created with those involved in constructing the Honduras Observatory. Channels of communication were created and the perceived levels of trust in the Honduras Observatory were improved, as reflected in the level of participation in the launch of the Honduras Observatory in both the capital of Honduras and in the country’s interior, as well as visits to the website, achieving a record number of repeat transmissions of events via the Facebook page that compiles the Mission’s events.

7.1. **Collection of information from quantitative data**

A process began to collect qualitative information to be incorporated in the criminal justice system assessment matrix. For this purpose, the process began in April to collect and process qualitative statistical information to be incorporated in the Criminal Justice System Assessment Matrix that the Honduras Observatory is building along with civil society and academia.

In this regard, on-site observations were conducted in Honduran districts with jurisdiction in criminal matters in the following departments and cities: Department of Cortés, city of San Pedro Sula; Departments of Copán and Santa Bárbara, city of Santa Rosa de Copán and Choloma; Department of Colón, cities of Trujillo and Tocoa; Department of Atlántida, cities of Tela and La Ceiba; Departments of Valle and Choluteca, cities of Nacaome and San Lorenzo; Department of Olancho, cities of Juticalpa and Danlí; Departments of Gracias a Dios, Ocotepeque and Intibucá, cities of Lempira and La Esperanza; Department of Comayagua, city of Comayagua; and Department of Tegucigalpa, and Central District.

The methodology used to conduct these on-site observations was surveys of criminal justice system workers and users in order to evaluate various aspects of the system.

The surveys ask questions intended, in the case of justice workers, to evaluate the type of employment relationship with the judicial branch, training, selection process for filling positions, independence in the performance of their duties, transparency in the judicial branch, security of justice workers in the exercise of their functions, and knowledge of acts of corruption linked to court cases. In addition, various
options are suggested for improving the operation of criminal justice, as well as whether they have adequate conditions for performing their tasks.

As for officials holding judgeships, they are asked whether there are experts who help with the technical tasks needed for reaching decisions, the number of personnel available, and cases for which they are responsible.

Questions were specifically designed with the objective of learning about the treatment of corruption cases, asking judges for information on whether the cases are separated from other cases, as well as whether assets have been seized.

Statistical data was sought on what is sent to the Judicial Information Statistics Center, to ascertain how monies received match up with the budget assigned.

As for judicial system users, the Honduras Observatory tailored the surveys so as to assess their confidence in the criminal justice system as well as the treatment received from court staff. Aspects related to the public's perception of the judicial branch’s level of transparency as well as operation of the public defender system were also considered.

With regard to access to justice, the cost involved for the user to gain access was measured. To cross-check information against the data provided by the Inter-Agency Technical Panel on Statistical Information and Indicators of the Criminal Justice System, subjects were asked specifically whether “any official has asked you for a sum of money for a court case.”

Finally, to complete the collection of qualitative information, the surveys incorporated a question on whether or not there is an adequate infrastructure for serving vulnerable populations in the case of the disabled, pregnant women, and seniors.

7.2. Reports and statistical assessments

The following reports were prepared: “Vulnerable Groups’ Access to Justice,” “Crime of Unlawful Enrichment,” “Effective Collaboration Law in the Northern Triangle. Regional Comparison,” “Effective Collaboration Law in Colombia,” “Types of Vulnerable Populations” and “Analysis of the Indicators of the Criminal Justice System of Honduras in the Category of Domestic and Family Violence.”

These reports are for internal use and serve as the basis for addressing the issues covered in various settings (workshops, conferences, seminars) with civil society and academia, incorporating the perceptions of the participants involved, and eventually compiling qualitative indicators.

7.3. Dissemination of the assessment of quantitative indicators provided by the Inter-Agency Technical Panel on Information, Statistics, and Indicators of the Criminal Justice System

Workshops were conducted to share the initial results of the assessment of the quantitative indicators compiled by the Honduras Observatory with the members of the Inter-Agency Panel on Statistical Information of the Criminal Justice System, as
well as with civil society organizations and academia. That information is included on the website.

These workshops shared with civil society, academia, and the members of the Inter-Agency Technical Panel on Information, Statistics, and Indicators of the Criminal Justice System the results from compilation of the information gathered and confirmed the availability of information requested and supplied.

Tools were created for understanding the data, using statistical graphs, and contemporaneous regional comparisons were made.

7.4. Launch of the Honduras Observatory

The MACCIH-OAS launched the website of the Honduras Observatory in Tegucigalpa, San Pedro Sula, and La Ceiba as of August 22, which also marked completion of the first stage of supporting civil society and academia in the construction of this instrument and its presentation, i.e., its virtual platform, the website: www.observatoriohonduras.org.

With this instrument and through the Observatory’s website civil society organizations, academia, and the general population will have updated information on the operation of the criminal justice system of the Republic of Honduras and will be able to monitor through a follow-up matrix progress made and setbacks encountered in the exercise of citizen oversight.

In order to empower civil society and academia, more than 130 testimonial videos of these stakeholders have been shown, in addition to tutorial videos presenting the Honduras Observatory and explanations on corruption, its meaning, how to proceed in such cases, as well as where to report it.

The Honduras Observatory, through its website and considering its design and working methodology, has sought the greatest amount of participation from civil society organizations and academia in the diagnosis and identification of relevant issues in the area of criminal justice, as well as the creation and formulation of indicators to be used in putting together an assessment matrix that can be used to monitor the criminal justice system of Honduras.

Since its creation, a working methodology has been defined based on active support, which consists of cooperating with civil society organizations and academia in the creation of a proposed matrix for assessment of the Honduran criminal justice system.

The methodology used involves the selection, suggestion, and validation with civil society and academia of quantitative and qualitative indicators on the basis of which the referenced assessment matrix can be built.

The indicators have been validated and disseminated through various discussion venues (forums, workshops, conversations). The launch of the content of the Honduras Observatory website completed the first stage in constructing the series of instruments that will be used to operate a decentralized observation and
monitoring system, with coverage based on the country’s jurisdictional organization and the Office of the Attorney General.

7.5. **Organizational Structure of the Honduras Observatory**

Civil society and academia reacted positively at the social networks level. This was demonstrated by the record achieved by the Mission in social networks with respect to the launches in Tegucigalpa, San Pedro Sula, and La Ceiba.

Given the interest shown and expressions on the part of civil society and academia of a desire to join the Honduras Observatory, a meeting was held to set a date for holding the General Assembly for elections to form the components of the organizational structure of the Honduras Observatory. The date was set for November 16, 2017. The structure will also include the participation of staff from the MACCIH-OAS Criminal Justice System Observatory Unit.

There was active participation by civil society and academia throughout the Republic of Honduras through discussion workshops transmitted via “Google hangout” to learn about perceptions and interest in joining the organic structure and its components, as well as obtain feedback on the proposed organic structure of the various committees that will form the structure, the selection of the participating sectors, and the criteria for inclusion and for preventing cooptation.

IV. **DIVISION OF PUBLIC SECURITY**

The responsibilities of the Division of Public Security are established within the framework of the agreement creating the OAS-MACCIH. These responsibilities include the organization of the unit to follow up recommendations made by the General Secretariat of the Organization of American States with respect to the National Citizen Safety System [**Sistema Nacional de Seguridad Ciudadana**] (SNSC), which includes four lines of action intended to foster a culture of planning and strategic management; digitize, incorporate, and ensure the interoperability of information; support the ongoing process of reform of the National Police of Honduras; and strengthen the criminal justice system. The other aspect to be developed by the Division of Public Security refers to the organization of the Unit for the Protection of Human Rights Defenders, Journalists, Social Commentators, and Justice Workers, included in what is called the “Protection Law,” in order to protect those who contribute to the criminal and administrative prosecution of corruption cases and corruption networks, as well as on behalf of strengthening the criminal justice system.

The responsibilities of the Division of Public Security include collaborating to promote the effective enforcement of the Protection Law to help protect all those legal subjects covered by the referenced law. It is also responsible for helping to promote human rights and fundamental liberties recognized in the instruments of international law on behalf of those who defend and promote human rights, freedom of expression, and jurisdictional tasks. In this regard, it is worth noting that this division is the only one within the MACCIH organization with responsibility in the area of human rights. To meet its ends, the Division of Public Security has facilitated good practices meetings on the Protection Law in order to develop a strategy for creating the protection mechanisms guaranteed therein. In doing so, it has maintained close relations and has worked closely with all public and private institutions associated with the issue of protection mechanisms, such as the National Protection Directorate, the Office of the Under-Secretary of State in the Office of Human
Rights, Justice, Decentralization, and Governance; the Office of the United Nations High Commissioner for Human Rights, the Office of the Attorney General and the judicial branch, and various NGOs working day to day on behalf of the defense and promotion of human rights and those acting within the area of justice in the country, such as COSUDE, CIPRODEH, CEDOH, and the UNAH-IUDPAS, and others. These functions included within the two units mentioned above are supplemented with the request made by the President of the Republic, Juan Orlando Hernández, to the OAS General Secretariat last October regarding the need for support in the process of restructuring the police and in the mechanism for certification of the penitentiary system.

1. Submission of recommendations for the draft Police Career Law

In the context of the debate on the draft Police Career Law in the National Congress, the Division of Public Security, with the support of the Department of Public Security of the Secretariat for Multidimensional Security, and various units of the MACCIH, basically from the Anticorruption System’s Legislative Reform and Advisory Unit, submitted its recommendations to the Security Committee of the National Congress of the Republic regarding the draft Police Career Law. These recommendations were accepted by the majority of the Congress during the deliberations on that bill. Among the principle issues covered in the recommendations, we should mention the community nature of the National Police. The police force, as an active part of society, has a highly social component, and as such, its function is directly linked to improvements in the quality of life in society through the promotion of security and collaboration with other institutions associated with the administration of justice.

Another recommendation presented in the aforementioned draft law referred to the need to recognize the civil nature of the police function as part of the public policies of the State, as established by international doctrine and jurisprudence. The need to expressly recognize the category of public official and the civil nature represented by the police officer is not a formality. The status of public official, as a contributor in the workings of the State, represents the performance of a series of duties and obligations that when violated leads to criminal, civil, and administrative liability actions as established in the country’s domestic legislation.

Public officials are subject to measures controlling their management and conduct, under the terms established in the Constitution of the Republic of Honduras, the Organic Law of the High Court of Auditors, its regulations, and in all other legal instruments governing public authority. This recognition makes it possible to focus the activities incumbent upon the National Police on its public security function. This recognizes the innumerable decisions issued by the Court, and opinions of the Inter-American Commission on Human Rights in this regard, which have noted the need to inculcate in police officers, who have the use of weapons to guarantee public security, their duty to submit to the same rules as are applicable to public officials to control their actions.

2. Visits to emblematic institutions in the area of security and the penitentiary system

To monitor implementation of the recommendations included in the report to the National Security System submitted by the General Secretariat of the Organization
of American States, the Division of Public Security has maintained a close relationship with the Secretariat of State in the Office of Security, as well as with the National Police. Not only has this afforded it broad knowledge of the activities and programs carried out by both institutions, it has also given it detailed information regarding their course of action on the recommendations made by the OAS General Secretariat. The Division of Public Security has had the opportunity to exchange ideas with the leaders of the various dependencies within the National Police and to conscientiously visit their facilities such as the headquarters of the Police Technological Institute in the Departments of Paz and Comayagua and the headquarters of the Police Investigations Directorate [Dirección Policial de Investigaciones] (DPI). It has also maintained close contact with the National Penitentiary Institute, which has given it knowledge of the country’s prison problems and has visited some of the most well-known prison facilities, a task that continues to this day. We refer to the visits to the Penitentiary Center of Moroceli, known as “La Tolva,” the Granja Penitentiary in Comayagua, and the Women’s Social Adaptation Penitentiary Center.

In the case of the police, the Division of Public Security has been able to confirm implementation of some of the recommendations regarding the problems existing within the National Police of Honduras, which led to a series of situations that cast doubt on the police agency. The development of a policy for restructuring and cleaning up the police by the Special Commission on clean-up and transformation of the National Police, appointed by the President of the Republic, is one of the best examples of the implementation of recommendations submitted by the OAS General Secretariat, in which that Secretariat expressed its concern regarding the need to seek out the root of the problems with the National Police. Not only has the Division of Public Security supported the Special Commission in its actions to clean up and restructure the police, it has also supported its actions publicly as an example of the meaning of joint efforts of members of civil society in the search for better and more transparent policing.

Another aspect verified by the Division of Public Security, where concern was made clear in the recommendations made by the General Secretariat, refers to the police training system and the need to establish mechanisms for selecting candidates for a career with the police, and the need to develop training programs for officers and agents and an adequate infrastructure in the training centers.

The visits and interviews conducted by the Division of Public Security with the directors of the National Police, as well as the police academic institutions, and even with applicants seeking to enter the National Police, have shown improvement both with respect to the control mechanism for admission to a career with the police and the academic system and infrastructure of some teaching and training institutes.

With respect to the selection process for candidates to the police career, it has been able to verify the existence of a rigorous control mechanism, in which an in-depth prior assessment of the candidate is performed by police technicians and experts and in which, in addition to requiring prior completion of their bachelor degree, applicants are subjected to socioeconomic, psychological, toxicological, and polygraph tests.

The new facilities of the Police Technological Institute, intended for the training of entry level police agents and located in the Department of La Paz, represent another
important response to the aforementioned recommendations. Their transformation and modernization can be considered among the most emblematic projects being implemented within the framework of police reform.

The construction of new criminalistics laboratories, as part of the infrastructure of the Police Investigations Directorate [Dirección Policial de Investigaciones] (DPI), is another aspect that the Division of Public Security has been able to confirm. Construction is being completed at the laboratories in Tegucigalpa and San Pedro Sula and these facilities will include the best technology in the area of scientific investigation in the Americas, with photographic, fingerprinting, document analysis, ballistics, identikit, computer forensics, planimetry, mobile laboratory, explosives analysis, chemical analysis, temporary warehouses, and other equipment.

With regard to verifying the implementation of recommendations submitted by the OAS General Secretariat in the area of penitentiaries, during its visits the Division of Public Security has been able to verify some of them, basically in the newly constructed penitentiaries, such as the maximum and medium security Penitentiary Center of La Tolva, located in the municipality of Morocelí in the Department of El Paraíso, in eastern Honduras.

The “La Tolva” prison has been designed to house some 1,300 inmates, with adherence so far to the stipulated number of prisoners admitted, with cells built to house two prisoners each. Although it does require the necessary classification of the prison population, fingerprint testing has already begun in order to ensure the actual and precise identification of the detainees as the first step in classifying them according to the danger they pose, whether they are being prosecuted or have been convicted, their age, etc. There are some specifically created dependencies, such as classrooms for the re-education of the prison population, thus preparing them for social reintegration. Finally, we consider it important to note the excellent health and hygiene conditions throughout the prison, which meets one of the requirements indicated in the recommendations made regarding the need to house the prison population in a dignified environment that ensures respect for the human rights of both prisoners and administrative and security personnel. Other aspects, such as the need for this penitentiary center to be directed by staff graduating from the National Penitentiary Academy and not by military personnel as currently happens, are challenges yet to be met by the authorities of the National Penitentiary Institute, which we hope can be achieved as soon as possible.

3. Strengthening of the criminal justice system

Another activity developed by the MACCIH Division of Public Security, in coordination with the Anti-Corruption System’s Reform and Advisory Unit, the accredited international judge in the MACCIH, and the Justice Studies Center of the Americas (JSCA) is its active participation to strengthen the criminal justice system, specifically with respect to the need to help increase the number and effectiveness of criminal enforcement judges so as to streamline criminal procedures in the country and thus support the National Penitentiary Institute [Instituto Nacional Penitenciario] (INP) in its role of implementing re-education measures for the prison population, as well as promoting the human rights of that population. It is important to emphasize that so far, although the judicial branch has recognized the need to strive to avoid judicial delay, the limited number of criminal enforcement judges has prevented this, to the detriment of programs designed by the National Penitentiary
Institute for the benefit of the prison population, particularly those with a final sentence.

4. **Contribution to the effective implementation of the Law on the Protection of Human Rights Defenders, Journalists, Social Communicators, and Justice Workers**

One of the loudest outcries from Honduran society and active participants working on behalf of the administration of justice, such as human rights defenders, journalists, social commentators, and justice workers, is the need to definitively establish real mechanisms to protect all of them. There can be no justice without the guaranteed protection of the lives of those engaged in this arduous task.

Similarly, there can be no guarantee of independence and transparency in the administration of justice if the agencies responsible for judicial procedures are unable to protect the lives of those who work there. Thus it is that the Division of Public Security, supported by the economic assistance provided by the government of the United Kingdom, has developed a program for the protection of justice workers, understood as referring to the magistrates, judges, public defenders, and prosecutors and staff of the Office of the Attorney General.

This is not just any program. In the case of the work done by the Division of Public Security, not only has it been possible to present an in-depth diagnosis regarding the situation in which justice workers find themselves, regulations have been created to apply the so-called “Protection Law,” both for the judicial branch and for the Office of the Attorney General, and an entire strategy has been designed for implementing those regulations. This strategy includes organizational charts that will shape the physical structure of the office that will be responsible for supporting case handling, risk analysis, implementation of measures, granting of urgent measures and preventive measures, and even monitoring the implementation of those measures. This work has been so detailed that it includes the positions to be opened up to competition for performing these functions and even the profiles for candidates seeking to occupy those positions. The Division of Public Security is currently in the stage of shaping and executing the program to be implemented in the Office of the Attorney General and in the judicial branch.

It is also important to point out that the “Memorandum of Understanding between the General Secretariat of the OAS and the Government of the Republic of Honduras with regard to the Security of the Mission” was submitted to the Government of Honduras, through Ambassador Leonidas Rosa Bautista, on July 26 of this year.

V. **OTHER ISSUES**

On the subject of physical security, i.e., safeguarding the personal safety of MACCIH staff, the Memorandum of Understanding on additional security measures to be signed between the OAS General Secretariat and the State of Honduras and governing this sensitive matter was drafted and delivered to the government on July 24. The Mission considers it necessary to reinforce security measures due to incidents that have been reported to the Mission. Similarly, the warnings have been further highlighted due to the
lamentable death of a member of the Chief of Mission’s escort, who according to forensic
reports committed suicide in the vicinity of the MACCIH on May 19.\(^\text{25}\)

In addition, on May 18 the U.S. House of Representatives unanimously approved
House Resolution 145 reiterating Congressional support for anti-corruption efforts in the
Northern Triangle of Central America. The resolution specifically reaffirms that combating
corruption is a priority for U.S. policy toward Central America and recognizes the work done
by the International Commission against Impunity in Guatemala (CICIG), the MACCIH, and
the Attorneys General of the Northern Triangle.

To be highlighted in this cycle is the role of the donors that continue to support the
Mission financially. The United States as well as Canada, the European Union, Germany,
the United Kingdom, Chile, Peru, Spain, and Italy expressed their support for MACCIH
operations. Switzerland and Sweden are added to all of these for the second year.

CCIG Commissioner Iván Velásquez was welcomed at MACCIH facilities on June 7.
He was shown MACCIH operating methods; good practices were shared and a meeting
was held with the investigations team.

A special seminar was conducted with the Attorney General in attendance and
agreement was reached on conducting transnational investigations on migration and
human trafficking matters, in connection with acts of corruption.

On October 11, the Mission invited Italian Anti-mafia Prosecutor before the Court of
Palmi, Dr. Ottavio Sferlazza, to hold a working meeting with the MACCIH investigation
team, and organized a meeting with the UFECIC team and the anti-corruption judges and
magistrates, in order to share the Italian experience combating the mafia, in addition to
discussing the Honduran anti-corruption system, asset forfeiture, and the Effective
Collaboration Law.

The initial situation of mistrust toward the Mission was gradually mitigated when
more information was provided and, above all, with the perception of the MACCIH’s
independence. The most recent survey of the Team for Reflection, Investigation, and
Communication \([Equipo de Reflexión, Investigación y Comunicación]\) (ERIC) indicated that
42.6% of those surveyed assessed the MACCIH’s performance as good and very good.

The MACCIH understands the criticisms and the position of certain sectors that
constantly call for more action and we hope that they understand that this is a gradual
process, after having built the infrastructure of the investigations model in conjunction with
the Attorney General and the anti-corruption jurisdiction, all of which will make it possible to
move more rapidly against impunity.

To undertake the challenge of more and better communication, during this period
the MACCIH built a new strategy for publicizing its activities, using new graphic and
multimedia communications formats, as well as social networks.

The various MACCIH activities and outputs were disseminated. The three MACCIH
reports prepared during the period (MACCIH Report 4: “Towards a New National Police,”
MACCIH Report 5: “Right of Access to Information and Legitimate Interests of Defense and

\(^{25}\) The name of the National Police officer who died was Yader Andony Mencía Armijo; he was
21 years old and was the guard for Juan Jiménez Mayor.
Security in Honduras;” and MACCIH Report 6: “Analysis and Recommendations on the Social Security Bill: “So that the events are not repeated”) were broadly disseminated and have had repercussions in the institutions concerned as in the case of Report 4.

The visibility of the MACCIH’s actions has already developed in multiple appearances in the communications media and activities of the spokesperson (chats, workshops, press conferences, working meetings) to point out the MACCIH’s opinion and message regarding issues related to its mandate. Some of these actions, for example, reflect the Mission’s expressed concern regarding the reduction of Penal Code penalties, the need to approve the Effective Collaboration Law, repeal of the Law on Official Secrets, the presentation of the corruption cases (Agua Zarca, Teodoro Bonilla, bribes of Vice Ministers, front companies), among other issues subject to technical substantiation by the Mission.

In the approach for transmitting more and better, a series of graphic and video productions have been developed, with the MACCIH sponsoring a media campaign on approval of the Effective Collaboration Law carried out by the NGO IMPACTOS. On the social networks, there are reportedly more than 30 videos produced by the MACCIH on various topics.

Momentum in terms of communications led to a substantive change with respect to the target audience. The mission went from an official account (@OEA_MACCIH) that had 11,000 followers and an account managed by the spokesperson (@JuaJimenezMayor) with 7,500 followers, to the use of Facebook where we have reached a total target audience of 398,090 people.

We have being doing live transmissions of the MACCIH Chair program, with excellent results in virtual education on anti-corruption issues for students and those interested in learning about this subject matter. The live transmissions and videos reach an average of 18,000 users.

VI. RECOMMENDATIONS

1. Now that the UFECIC and courts and tribunals with national jurisdiction in anti-corruption matters have begun to operate, the MACCIH-OAS suggests that the State of Honduras through the Office of the Attorney General and the judicial branch should increase actions to investigate and prosecute crimes of corruption under this new system, relying for this purpose on the support of the Mission.

2. The Mission recommends increased emphasis on the anti-corruption model with the participation of other State agencies such as the Security Secretariat and the National Police to arrest wanted persons, as well as the National Penitentiary Institute to classify and hold those arrested and prosecuted for corruption crimes under the same conditions as other prisoners. Consideration should also be given to the participation of the Office of the Inspector General (PGR) to prevent settlement in corruption cases as was the case prior to August 2016 when it was agreed not to reach settlement based on agreement with the MACCIH-OAS, and to recover unlawfully appropriated funds and civil damages. The Office for the Administration of Seized Assets [Oficina de Administración de Bienes Incautados] (OABI) should also be included so as to ensure better management of those funds,
as should the High Court of Auditors [Tribunal Superior de Cuentas] to strengthen its Anti-Corruption Unit in the relevant audits and investigations.

3. The mission recognizes that the role of civil society in combating corruption and impunity is fundamentally important and for this reason various cooperation agencies have opened up to civil society, helping to strengthen it in processes related to citizen oversight, control of public spending, supervision of the execution of public works and public services, and the requirement that government officials at all levels be held accountable. Corruption can be prevented and combated only with the active participation of civil society.

4. The MACCIH-OAS Criminal Justice System Observatory recently launched its website www.observatoriohonduras.org, creating a technological support with a logical structure corresponding to the three basic pillars identified by the observatory’s technical team, which are to educate, disseminate, and support. We hope that this instrument will become a platform on which civil society and the academic sector of Honduras are able to consult information regarding the criminal justice system of Honduras, recommending its dissemination in various communication and socialization agencies in which the Observatory team has participated."

5. In addition to the institutional redesign of the aforementioned anti-corruption system, the Honduran model for combating corruption includes the need to have legal tools allowing for in-depth investigations and for detection of corruption networks involving senior government officials and private sector individuals. With that objective, the MACCIH-OAS considers essential the prompt approval of the Effective Collaboration Law, submitted by the mission in December 2016 and before the National Congress since April 8 of this year. This new law will make it possible to make decisive progress in combating corruption and crime in general, as happens in countries that have such legislation, consistent with the Palermo Convention to which Honduras is a party and that requires the States to adopt initiatives of this kind against crime. The Mission reiterates to the Nation’s representatives that they should consider this bill vital for combating crime in Honduras for the benefit of the population.

6. The model for combating corruption considers the National Anti-Corruption Council important as a civil society organization that cooperates strongly in the tasks of preventing and banning corruption, through inquiries that are delivered to the Prosecutor’s Office for it to proceed in accordance with its powers, highlighting the notable role played by its director Gabriela Castellanos and her team of collaborators in this task. The MACCIH-OAS feels it necessary to emphasize the autonomy of this body and the leadership of its Director.

7. The MACCIH-OAS recommends to the National Congress that, in the context of the proposed reforms to the Organic Law of the High Court of Auditors [Tribunal Superior de Cuentas] (TSC), the Office of the Attorney General not be impeded in its ability to access sensitive information for the performance of its functions. Shutting down this ability would entail a rollback of current legislation, which does permit such access. Similarly, the MACCIH-OAS considers this an excellent opportunity to clarify Articles 77, 87, and other articles of the aforementioned law on the High Court of Auditors, with respect to the constitutional power of the Office.
of the Attorney General to take public criminal action on the crime of unlawful enrichment, in that there is an erroneous interpretation with respect to the administrative inquiry tasks of the TSC, as prior to the investigative task of the Prosecutor’s Office. The recommendation emphasizes the need to recognize that the Office of the Attorney General can constitutionally conduct an investigation and indictment, independently of the administrative functions of that Court, whose opinions can serve to define the criminal penalty, but not the enforcement thereof by the prosecutor.

8. The MACCIH-OAS insists on the need to structure a new legal model for access to public information, aligned with international standards consistent with what was suggested in MACCIH-OAS Report 5 and contained in the draft law submitted to the Executive Branch this past July 4. In this regard, the Mission notes the continued validity of its recommendation to the effect that the Law on Classifying Public Documents, also called the “Law on Official Secrets,” needs to be repealed and a new law needs to be adopted that does not affect the human right of access to information and prevents the lack of transparency from promoting acts of corruption.

9. The penalties for crimes of corruption must not be lowered as happened recently in the case of the crime of misappropriation and as suggested in the bill now before the Congress, for other crimes of corruption in the draft Penal Code being debated in the National Congress. The MACCIH-OAS noted these facts in its MACCIH-OAS Report 2 of October 2016, which indicated, for example, that the [punishment for the] crime of unlawful enrichment in its most serious form is reduced from 15 to 6 years. Being steadfast in combating corruption requires clear messages on the part of the State of Honduras in terms of the legal framework necessary to address the problem.

10. The MACCIH-OAS is preparing a bill for submission to the Executive Branch on the protection of whistleblowers. Honduras has provisions related to the protection of witnesses, but not for whistleblowers, who are always subject to reprisals and negative consequences for cooperating with the citizen’s duty of reporting the commission of crimes and, more specifically, crimes of corruption. We hope the bill will be approved, adapting it to the inter-American standard (OAS model law).

11. In MACCIH Report 6, the MACCIH-OAS made recommendations regarding the draft of the new Social Security Law now before the National Congress. The purpose is to suggest some provisions that allow for improved management and direction of that institution, as well as to implement more effective purchasing mechanisms and controls, seeking to prevent the thievery that occurred at the Honduran Social Security Institute from recurring. The MACCIH-OAS feels that its recommendations seek to ensure that recent history DOES NOT REPEAT ITSELF.

12. Solid progress must be made in the judicial branch to emphasize that the institutional guarantee of the independence of judges and magistrates [must be free of] any undue influence and subject only to the Constitution and the law. In this respect, the MACCIH-OAS advocates the need for a new Organic Law of the Judicial Branch and a Judicial Career Law and promotes the Judiciary Council. The Office of the Chief Justice has taken positive steps through the creation of drafting commissions for legislative initiatives, recommending that this process be taken up
by the judiciary as a way to reinforce the need for independence and the broadest possible participation of justice workers in drafting legislation. Along these same lines, the MACCIH-OAS recommends that the process for selecting more than 190 judges and magistrates called for in the judicial branch be developed on the basis of principles of merit, competitiveness, and transparency.

13. The MACCIH-OAS has been insisting in the national and international debate that corruption does not only affect the economy of countries, as in the traditional approach, but that it primarily affects the enjoyment of human rights. The unlawful diversion of public funds impairs the quality of public services, produces public works or services that the State doesn’t need or that are of poor quality, making it impossible to bring public resources to the neediest sectors, thus increasing inequality for all. It generally increases or at least maintains economic and social gaps, making it impossible to provide public services like education and health, generating irreversible damages to the future of thousands of people and even causing their death. The most pernicious aspect of corruption affecting human rights is expressed in public officials’ relationships with organized crime. By failing to perform their duties, they allow or encourage the commission of criminal acts to the detriment of the population. The MACCIH-OAS will emphasize, for all of these reasons, that the problem of corruption requires maximum attention from the authorities of the State and that it is possible to generate within regional and universal human rights protection and promotion systems increased sensitivity to the issues of corruption as impacting the effective enjoyment of rights.

14. The MACCIH-OAS feels that in the cases in which it has worked in conjunction with the Prosecutor’s Office where convictions have been handed down against officials of the Honduran Social Security Institute, front men and entrepreneurs, it has been possible to impose the highest effective prison terms for crimes of corruption in the country’s history, which are important steps. Also considered exemplary is the conviction of the former Vice President of the Judiciary Council, Teodoro Bonilla, who became the first official convicted for influence peddling in the judicial history of Honduras. Although the MACCIH-OAS feels these events should be highlighted, they are the first steps taken in the country since the Mission arrived and the process of investigations and penalties will gradually increase, as has happened in similar situations, and it is advisable to remain vigilant in these processes.

15. During this period, the MACCIH-OAS has initiated a mechanism for working directly with civil society organizations in an effort to increase their capacities and transfer anti-corruption technology that can later be used by Hondurans committed to this task. This approach includes the program to strengthen the investigative press, the oral litigation competition for students from the country’s various law schools, the MACCIH-OAS CHAIR providing training to students and anyone interested in learning about issues of combating corruption, and the project we have called "THE MOST USELESS PROCEDURE," directed to reducing the possibilities for corruption in the procedures carried out by citizens in their daily lives and by entrepreneurs wanting to start a venture.

16. The MACCIH-OAS recognizes the efforts made by the State to reform and restructure the Security Secretariat and the National Police, as fundamental agencies ensuring public security. In the case of the National Police, recognition of
the community policing model recommended by the MACCIH-OAS during the discussions on the draft Police Career Law, as well as inclusion of the topic of human rights on a cross-cutting basis within the entire police organization, without doubt represent progress in the tortuous path represented by the fight against crime and the guarantee of security for the citizens.

17. Nonetheless, this recognition of the National Police as a police force close to the people, which returns society’s trust in its civil security forces, wherein the actions of its members are governed by respect for human rights, cannot remain a dead letter in the new Organic Law on the National Police or the Police Career Law. The MACCIH-OAS wishes to emphasize the need for such principles to be implemented in practice, in all areas of police action, including those related to specialized matters that should receive additional preparation and instruction to meet their objectives. Otherwise, the citizens, who have in recent times demonstrated a high degree of maturity and sense of social responsibility, would most probably claim to have lost confidence in their police, a serious circumstance when combating crime.

18. One of the lesser known but no less significant activities that the MACCIH-OAS has been carrying out refers to support for the defense of human rights in areas linked to public security in general and other areas related to the penitentiary system. In following up the recommendations made in the reports presented by the OAS General Secretariat to the government of Honduras regarding the National Citizen Security System, the MACCIH-OAS has been participating in visits to various penitentiary centers located throughout the country. In doing so, it has relied on the invaluable support of the Under-Secretariat of State for the Office of the President of the Republic and the National Penitentiary Institute Directorate. Thus, during those visits the MACCIH-OAS has been able to recognize the effort that the prison authorities have been making to dignify the life of the prison population and the development of re-education policies that by giving inmates the opportunity to perform a productive activity once they regain their freedom thereby guarantees citizen security.

Nonetheless, the MACCIH-OAS calls attention to the urgent need to achieve greater coordination with the other institutions involved in criminal justice, particularly the judicial branch and the Office of the Attorney General, so as to guarantee the streamlining of criminal processes tracking the prison population, as well as better preparation in aspects such as oral argument in proceedings, inmate service, and generally all aspects that allow the National Penitentiary Institute to fulfill its responsibilities with regard to classification of the prison population, the granting of early release measures, and the establishment of social reintegration plans and programs. Without the streamlining of these court procedures, now delayed, and without the diligent action of the Public Defender’s Office, the judicial branch, and the Office of the Attorney General, the problem of overcrowding in prisons with the resulting intramural violence and criminal recidivism resulting from the lack of prison re-education policies will thwart any prison policy one might wish to implement.

19. An important challenge is the necessary revision and improvement of protective mechanisms for justice workers, particularly magistrates, judges, public defenders, prosecutors, and public servants. With the support of international cooperation, the
MACCIH-OAS has developed programs directed to creating protection mechanisms for the judicial branch and the Office of the Attorney General, performing a diagnosis of the current state of those mechanisms, and has developed a comprehensive proposal that has been delivered to the indicated institutions, making them available for joint work on these issues.

As of the date of this report, the MACCIH-OAS stands ready for joint work on the development of these important and necessary protection mechanisms to ensure an adequate fight against corruption and impunity. The MACCIH-OAS wishes to emphasize its understanding of the hard task facing the judicial branch and the Office of the Attorney General in fulfilling their objectives, particularly now when both institutions are engaged in other areas of action involving their officials in anti-corruption matters.

20. The MACCIH-OAS recommends that the Financing, Transparency, and Oversight Unit act as quickly as possible to have internal operating rules and the various protocols for application of the law, technical staff, technological infrastructure, in order to take up the final stage in the campaign under the best possible conditions of control and oversight of money in politics.

21. The MACCIH-OAS urges political stakeholders to promptly meet the obligations imposed on them under the Clean Politics Law during the campaign to honor the letter and spirit of the law, guarantee transparency in the financing of politics, prevent the formation of niches of corruption, and contribute to the success of the initial application of the law as a mechanism generating legitimacy for the authorities who will be elected in November 2017.

22. The MACCIH-OAS emphasizes the need for and the importance of authorities who respect the restrictions on the dissemination of propaganda and, as of the deadline, the prohibitions on the inauguration of public works. In addition to being a legal requirement, those limitations guarantee a basic pillar of equity in the political arena.

23. Finally, the MACCIH-OAS encourages the Unit, in coordination with the Supreme Electoral Tribunal, to lead a broad and concerted effort in the initial months of 2018 to gather the lessons learned from the electoral process in the area of financing politics and propose the legal, technical, and budgetary adjustments needed to achieve the most ambitious aims of the Clean Politics Law.