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AP Photo: Fernando Antonio

COMBATTING IMPUNITY

Evaluating the Extent of Cooperation with
the Mission to Support the Fight against
Corruption and Impunity in Honduras

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INTRODUCTION

In the last decade, the problem of insecurity and impunity has deeply affected the people of Guatemala, El Salvador, and Honduras, making this region (known as the Northern Triangle of Central America) one of the most violent in the world. High levels of violence, corruption, and impunity have eroded the capacity of the states to develop accessible and efficient institutions, and address the needs of their populations.

The absence of effective responses has weakened citizens' confidence in state institutions, leading to an alarming number of people who have been internally displaced or forced to migrate to other countries to escape the violence and lack of economic opportunities.

In the face of this situation, the Washington Office on Latin America (WOLA), the University Institute on Democracy, Peace and Security (IUDPAS) of Honduras, the University Institute of Public Opinion (IUDOP) of the José Simeón Cañas Central American University (UCA) of El Salvador, and the Myrna Mack Foundation (FMM) of Guatemala have developed a tool for monitoring and evaluating the policies and strategies currently being implemented in Guatemala, Honduras, and El Salvador to reduce insecurity and violence, strengthen the rule of law, improve transparency and accountability, protect human rights, and fight corruption. This initiative has been made possible thanks to the support of the Latin America Division of the Swiss Agency for Development and Cooperation, the Tinker Foundation, the Seattle International Foundation (SIF), and the Moriah Fund.

THE CENTRAL AMERICA MONITOR

The **Central America Monitor** is based on the premise that accurate, objective, and complete data and information are necessary to reduce

the high levels of violence and insecurity, and establish rule of law and governance in a democratic state. This will allow efforts to move beyond abstract discussions of reform to specific measures of change.

The Monitor is based on a series of more than 100 quantitative and qualitative indicators that allow a more profound level of analysis of the successes or setbacks made in eight key areas in each of the three countries.¹ More than a comprehensive list, the indicators seek to identify a way to examine and assess the level of progress of the three countries in strengthening the rule of law and democratic institutions. The indicators seek to identify the main challenges in each of the selected areas and examine how institutions are (or are not) being strengthened over time. The Monitor uses information from different sources, including official documents and statistics, surveys, interviews, information from emblematic cases, and analysis of existing laws and regulations.

The indicators were developed over several months in a process that included an extensive review of international standards and consultation with experts. The eight areas analyzed by the Monitor include:

1. Strengthening the capacity of the justice system;
2. Cooperation with anti-impunity commissions;
3. Combatting corruption;
4. Tackling violence and organized crime;
5. Strengthening civilian police forces;
6. Limiting the role of the armed forces in public security activities;
7. Protecting human rights;
8. Improving transparency.

The Monitor reports are published by area and by country. The first series of reports will serve as the baseline for subsequent analysis, which will be updated annually. Each annual series of reports will be analyzed in comparison with reports from the previous year. This allows researchers, civil society organizations, and other actors to assess the level of progress in strengthening the rule of law and reducing insecurity.

The first round of Monitor reports will primarily focus on data sets from an approximate 4-year time period; 2014 to 2017, in order to provide a snapshot of Central America's institutions before and after the 2015 launching of the multi-billion dollar Alliance for Prosperity.

The Monitor will serve as a tool for searchable, easy-to-comprehend data, delineating trends, progress, patterns, and gaps within and between the three countries of the Northern Triangle. The data, graphics, charts, and reports will be available on the Monitor's website.

This report of the Central America Monitor produced by the IUDPAS of Honduras aims to define a baseline for the indicators related to Honduran authorities' cooperation with the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH), a hybrid commission established with the support of the Organization of American States (OAS) at the Honduran government's request in order to help combat corruption and impunity in the country.

ABOUT THE RESEARCH FOR THIS REPORT

This report is based primarily on analysis of qualitative research collected through expert reports and interviews, domestic and international media coverage, think tanks,

universities, international organizations, and reports produced by the Mission to Support the Fight against Corruption and Impunity in Honduras (*Misión de Apoyo contra la Corrupción y la Impunidad en Honduras*, MACCIH). This research helps to complement official data and to provide context, with the expectation that qualitative data can help provide a more complete picture of the reality on the ground. Similarly, qualitative data helps identify possible disparities by comparing existing legal frameworks with what is actually happening in practice.

In addition, requests for statistical information were made via the Transparency and Public Information Access Law (*Ley de Transparencia y Acceso a la Información Pública*, LTAIP) of Honduras, which establishes a specific process by which government agencies must receive information requests and respond within a set timeframe.

We decided that the report's primary data would be obtained via public information requests, in order to evaluate the effectiveness of Honduras' transparency laws, including the response rate to information requests and the degree of cooperation by the various criminal justice bodies that were petitioned.

KEY FINDINGS

- Some 18 months after its establishment, the Mission to Support the Fight against Corruption and Impunity in Honduras (*Misión de Apoyo contra la Corrupción y la Impunidad en Honduras*, MACCIH or the Mission) promoted the creation of a new judicial system against corruption in the country. The system is comprised of Anti-Corruption Criminal Courts and Tribunals as well as the Special Prosecutor's Unit against Impunity and Corruption (*Unidad Fiscal Especial contra la Impunidad y la Corrupción*, UFECIC). Without a doubt, these entities constitute two of the major reforms spurred by the MACCIH. Their success depends, in part, on having the necessary resources, logistics, and security to operate effectively.
- The procedures for selecting and certifying the officials who comprise the Anti-Corruption Criminal Courts and Tribunals and the UFECIC represent an innovative model that provides a more objective, clear and transparent way of choosing the most suitable candidates and a way to limit external influences and political bias of public officials. This process should be considered as a model for replication in other selection processes involving key positions.
- During nearly two years of operation, the MACCIH promoted various legislative and public policy reforms aimed at strengthening institutional capacity to prevent and combat corruption. Although the government debated and approved some of the initiatives, others did not advance by the end of 2017.
- In general, the Public Prosecutor's Office, the judicial branch and other entities collaborated with the MACCIH. However, the National Congress represented one of the biggest obstacles to the Mission's work. It not only refused to debate some of the bills the MACCIH promoted, but also adopted measures to disrupt anti-corruption efforts and carried out candidate selection processes for key positions based on political agreements rather than impartial technical criteria.
- During the period under study, there was a clear need to adopt oversight and accountability mechanisms to better monitor congressional lawmaking processes and avoid discrepancies between approved bills and laws published in the official newspaper Gazette (*La Gaceta*), thereby improving legal certainty.

COMBATTING IMPUNITY

Evaluating the Extent of Cooperation with the Mission to Support the Fight against Corruption and Impunity in Honduras

In April 2016, the Organization of American States (OAS), at the request of the government of Honduras, launched the Mission to Support the Fight against Corruption and Impunity in Honduras (*Misión de Apoyo contra la Corrupción y la Impunidad en Honduras*, MACCIH or the Mission). This Mission is the second hybrid mechanism for strengthening the rule of law in the Central American region,² the first OAS mission to fight corruption and impunity in a member state, and the only international mission with the power to help investigate corruption cases in Honduras.

The MACCIH was created following the embezzlement of more than 8.5 billion lempiras (\$355 million) from the Honduran Social Security Institute (*Instituto Hondureño de Seguridad Social*, IHSS) between 2010 and 2014, and subsequent demonstrations by the Indignant (Los Indignados) citizen movement. President Juan Orlando Hernández (2014–present) admitted that he accepted 3.6 million lempiras (\$147,000) of the stolen money to finance his electoral campaign in 2014, prompting thousands of citizens to demonstrate every week through September 2015. Protesters demanded the president's resignation and the establishment of an "International Commission against Impunity in Honduras" similar to the United Nations-backed International Commission against Impunity in Guatemala (CICIG).³

To placate civic demonstrators, the Hernández administration proposed the establishment of a Comprehensive System to Combat Impunity and Corruption (*Sistema Integral de Combate contra la Impunidad y la Corrupción*, SICCIC) and began negotiations with the OAS over its mandate and

funding, a process that resulted in the creation of the MACCIH six months later.⁴ The Mission was designed to operate for four years, with the possibility of extension, and to have the overall objective of improving the quality of services provided by the Honduran criminal justice system to better prevent and combat corruption and impunity.

Although the government presented MACCIH as an innovative experiment, it did not initially garner public trust. Many doubted the Mission because it stemmed from the OAS instead of the United Nations (as is the case of Guatemala's CICIG), the Mission could not "co-prosecute" cases like the CICIG in Guatemala, and due to popular distrust of President Hernández. By 2017, initial sentiment of mistrust toward the Mission lessened. According to a poll by a Catholic Church-backed research center, the Team for Reflection, Research, and Communication (*Equipo de Reflexión, Investigación y Comunicación*, ERIC-SJ), 42.6 percent of Hondurans polled in 2017 assessed the MACCIH's performance as "good" or "very good."⁵

The MACCIH was not created to supplant Honduran institutions, but to support the work of judicial officials and strengthen the judicial system. In this sense, the Mission is an innovative entity, acting as an international and independent criminal investigation body that operates in accordance with Honduran law and reports to Honduran criminal justice officials.

In this hybrid role, the MACCIH must work hand in hand with local entities. Therefore, its success hinges to a great extent on the collaboration and cooperation of Honduran government agencies and the officials who lead them.

This report focuses on the second core area of the Central America Monitor, which examines the extent of government cooperation with international commissions to combat corruption and impunity. The report uses qualitative and quantitative indicators to evaluate the extent of the Honduran government's political will to collaborate with and ensure the effective operation of the MACCIH in the country, in accordance with the agreement signed by the OAS and Honduran government. It covers information between 2015 and 2017. More specifically, this report focuses on three main areas:

THE AGREEMENT

Signed by President Juan Orlando Hernández and OAS Secretary General Luis Almagro, the agreement stipulated the establishment of the MACCIH to strengthen Honduras' model to combat corruption, specifying five objectives, eight strategic lines of action, and 46 functions, grouped together under four thematic areas.⁶

Among its main responsibilities, the MACCIH aims to “provide technical assistance to and advise,

1. Cooperation of local authorities on the approval and implementation of the regulatory and institutional reforms proposed by the Mission in accordance with international standards.

2. Cooperation of government agencies on the creation and effective functioning of teams intended to work with the MACCIH, and the extent of their collaboration with the Mission.

3. Progress made on investigation and criminal prosecution of emblematic cases of corruption.

evaluate, and actively collaborate” with Honduran institutions to investigate and prosecute cases involving corruption networks. The Mission cannot directly receive legal complaints or participate as a plaintiff in criminal justice proceedings, which means that it largely depends on coordinating with the Public Prosecutor's Office (*Ministerio Público*, MP). However, it can play a role in selecting cases to prosecute given that the Mission should be involved in investigating corruption networks or high-impact cases.

BOX 1

THE MACCIH'S OBJECTIVES

1. Support the Honduran government to comply with its international commitments, including the Inter-American Convention against Corruption (IACAC), Follow-Up Mechanism for the Implementation of the IACAC (MESICIC), the American Declaration of the Rights and Duties of Man, and the United Nations Convention against Corruption (UNCAC).

2. Support, strengthen, and actively collaborate with the Honduran government institutions responsible for preventing, investigating, and punishing acts of corruption.

3. Help improve coordination between different government institutions working on corruption and impunity issues.

4. Propose reforms to strengthen the Honduran justice system, including legislation to reinforce the fight against corruption in the private sector.

5. Strengthen accountability mechanisms within the justice system, as well as civil society monitoring mechanisms to improve civic oversight of the justice system.

Source: Agreement for the Establishment of the MACCIH

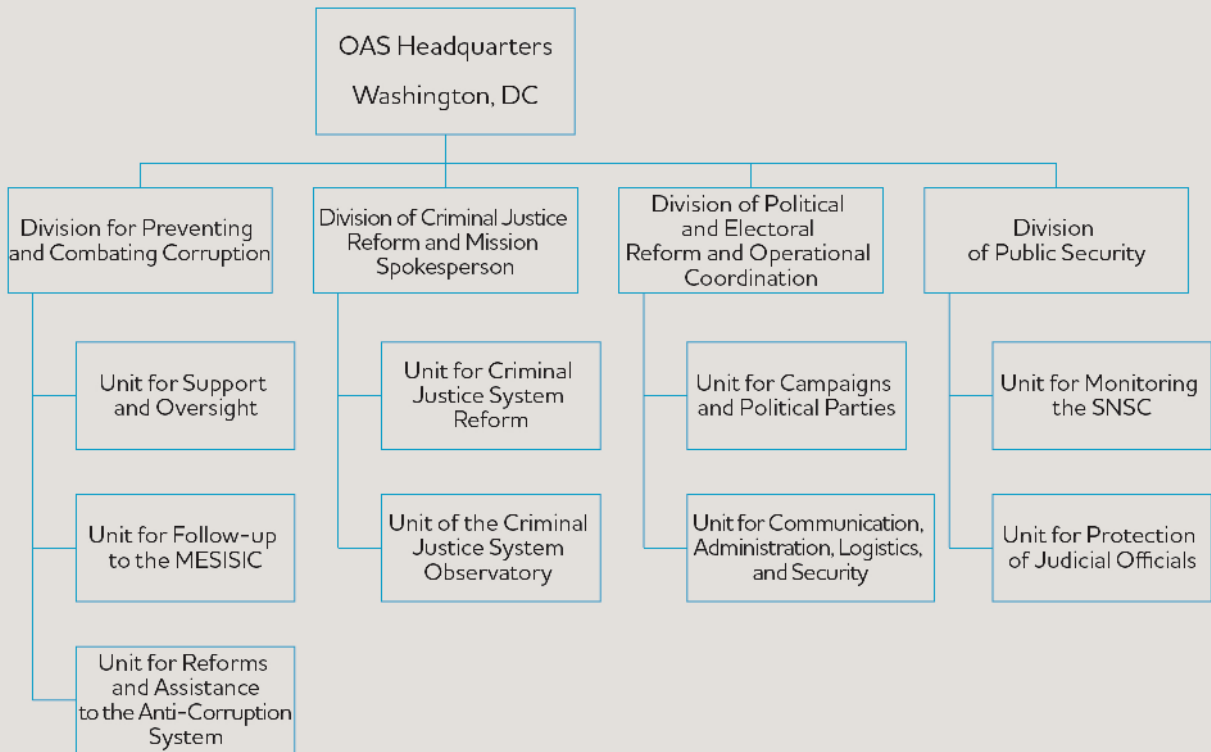
The MACCIH is not limited to carrying out joint investigations of corruption cases with the Public Prosecutor's Office. It must also develop proposals for legal reform, help strengthen criminal justice, public security, and campaign and electoral finance systems, and contribute to protecting human rights defenders, journalists, and judicial officials. Furthermore, it should contribute to strengthening accountability mechanisms for civil society to

monitor and conduct oversight of the judicial system.

To fulfill these objectives, it pursues four distinct but complementary lines of work: 1) support to prevent and combat corruption and impunity; 2) reform of the criminal justice system; 3) electoral finance reform; and 4) public security.

DIAGRAM 1

ORGANIZATIONAL CHART OF THE MACCIH



Source: Organization of American States

The MACCIH is autonomous and independent, both politically and financially, since it is not a government institution and operates with funding from the international community.⁷ The OAS secretary general leads the Mission from Washington, DC. A designated spokesperson in Honduras oversees its activities in country and represents the Mission.

As part of the agreement, the government committed to: 1) guarantee freedom of movement for MACCIH officials throughout Honduran territory; 2) ensure collaboration by Honduran institutions; 3) designate a group of judges, prosecutors, police officers, investigators, forensic scientists, and specialists from the Judiciary, the Public Prosecutor's Office, and the Ministry of Security (*Secretaría de Seguridad*), selected jointly with the MACCIH; 4) coordinate all necessary steps and advise on formulating criminal charges in cases; and 5) through the executive branch, introduce legislative reforms that seek to ensure the proper functioning of the Honduran justice system.

The agreement indicates that the OAS reserves the right to recall the MACCIH from the country under certain circumstances, including if the Honduran government ceases to cooperate or if the OAS is unable to provide sufficient financial resources. In addition, either party may unilaterally terminate the agreement or jointly decide to do so. The Mission's first mandate expires on April 19, 2020.

The MACCIH began operating on April 19, 2016 with just three people: a special representative and spokesperson, a coordinator of the political and electoral division, and an advisor on prevention and combatting corruption and impunity. They oversaw all operations until the first international experts arrived in August 2016. By the end of 2017, the MACCIH had 51 employees (of the 70 that had been proposed), including international prosecutors, judges, forensic financial experts, criminal analysts, and other experts and investigators from different countries.

APPROVAL AND IMPLEMENTATION OF LEGISLATIVE AND INSTITUTIONAL REFORMS

Among the MACCIH's primary tasks is to help improve and strengthen the legal and institutional framework to prevent and combat corruption and impunity in Honduras. To fulfill this mandate, the Mission promoted multiple legislative reforms and public policy initiatives during the period under study.

Among the first initiatives the MACCIH proposed was the **Law on Financing, Transparency and Oversight of Political Parties and Candidates** (*Ley de Financiamiento, Transparencia y Fiscalización de Partidos y Candidatos*), better known as the Clean Politics Law. Designed to address illicit campaign financing, some of the law's most important stipulations included stricter regulations to hold political parties and candidates accountable for campaign finance violations. The law also called for an Oversight

Unit with the power to investigate suspicious financing sources. This unit also has the power to sanction and even suspend, or cancel legal registration, of a political party that does not meet the law's requirements.⁸

Congress approved the law in October 2016. The law was published in the official government Gazette (*La Gaceta*) in January 2017 and became effective in March 2017. However, Congress eliminated some of the provisions that would have strengthened transparency and accountability, including a ban on the use or citation of state projects after launching a political campaign. Congressional changes also allow people who receive government contracts to contribute donations to political campaigns and candidates. Additionally, the

version approved by Congress and the version that appeared in the official Gazette contained several differences, including: the date on which the law would go into effect; the date on which the Oversight Unit would start operating; and a ban on receiving funds from representatives of trusts of “companies with ties to illegal activities.”⁹ In response to questions posed by the Mission, Congress published an official correction and the law went into effect.

Another important institutional reform the MACCIH promoted involved **settlements in corruption cases**. Under Honduran law, the Public Prosecutor’s Office is allowed to withdraw a legal complaint filed against a public official accused of corruption if that individual fulfilled their debt to society in an alternative way. Before brokering a settlement for acts of corruption, the Public Prosecutor’s Office must first seek authorization from the Solicitor General’s Office (*Procuraduría General de la República*, PGR), the entity responsible for representing the executive branch in legal cases. Government oversight groups pointed to a long-running issue of these settlements resulting in the failure of many government corruption cases to advance or result in more in-depth investigations. In 2016, the Mission worked with the PGR to prevent settlements in corruption cases. By mid-2016, the government already rejected approximately 70 settlements involving corruption crimes.¹⁰

The MACCIH promoted a new legal measure, the **Law on Effective Collaboration** (*Ley de Colaboración Eficaz*).¹¹ If passed by Congress, the law would empower the Public Prosecutor’s Office to negotiate plea deals with those accused of crimes, offering more lenient sentencing in exchange for substantive information that could be used to combat criminal groups and operations.¹² Witnesses who cooperate under this law would also benefit from protective and security-related measures.¹³ The use of

cooperating witnesses, one of the crime-fighting tools recommended in the Palermo Convention,¹⁴ is a fundamental tool in addressing corruption and organized crime, one that has yielded positive results in Colombia, Brazil, Guatemala, and Peru. The MACCIH presented a draft bill to the executive branch in December 2016, which the administration submitted without any modifications to the National Congress in April 2017. In September 2017, the Supreme Court of Justice (*Corte Suprema de Justicia*, CSJ) provided a favorable ruling on the bill, clearing the final legal hurdle for a congressional vote on its passage. However, that same month, Congress named a Special Opinion Committee (*Comisión Especial de Dictamen*) to review the law, and no major progress has been made to pass the law since that time. By the end of 2017, Congress still has not approved the law.

In late 2016, the Mission submitted a bill to the government aimed at comprehensively reforming the **Law on the Classification of Public Documents Related to National Security and Defense** (*Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional*), otherwise known as the Law on Official Secrets. As described in the Monitor’s report on transparency, the Law on Official Secrets, adopted in 2014, includes various stipulations that contradict the principles outlined in the Inter-American Convention against Corruption (IACAC) and Honduras’ Law on Transparency and Access to Public Information (*Ley de Transparencia y Acceso a la Información Pública*, LTAIP). For example, the Law on Official Secrets categorizes information sourced from more than 16 government institutions as classified, even though many of these institutions have little to no role in national security matters. According to the Mission, the Law on Official Secrets harms the principles of transparency and access to public information and fails to meet international

standards. After submitting the initiative to the executive branch, the Mission publicly released a report on transparency in mid-2017, alongside a legislative proposal that would supersede the Law on Official Secrets, replacing it with the so-called Law on Classifications (*Ley de Clasificación*). If passed, the proposed law would affect the ways and timeframes by which government institutions could justify withholding information, and would re-designate the Institute for Access to Public Information (*Instituto de Acceso a la Información Pública*, IAIP) as the body responsible for making decisions on classification and declassification of documents.¹⁵ However, by the end of 2017, Honduras' executive branch had not yet accepted the proposed Law on Classifications, preventing its advancement in Congress.

In 2016, the National Congress began debating reforms to the country's **Criminal Code** (*Código Penal*), which was first passed in 1985. Among the reforms debated in 2016, the National Congress proposed reducing penalties for corruption-related crimes. The MACCIH expressed concerns over this provision and asked Congress to provide more information on the law's main proponents and details on their voting record; however, Congress never provided this information and maintained its position. In August 2017, the National Congress approved the law, reducing penalties for the crime of misappropriating public funds. These reforms will enter into effect in November 2019 and benefit those convicted and those facing corruption-related criminal proceedings.

The Mission promoted reforms to the **Organic Law on the Superior Court of Accounts** (*Ley Orgánica del Tribunal Superior de Cuentas*), the entity responsible for monitoring government funds and assets. The MACCIH recommended that Congress include a provision allowing the Public Prosecutor's Office to investigate crimes of illicit enrichment. The MACCIH also warned against empowering the Superior

Court of Accounts (*Tribunal Superior de Cuentas*, TSC) to withhold information from the Public Prosecutor's Office, as was stipulated in initial reforms.

Another initiative furthered by the Mission involved reforms to the **Law on the Prosecution of Senior Officials** (*Ley de Procesamiento de Altos Funcionarios*). These reforms would have transferred cases involving senior officials under investigation for corruption to the new national anti-corruption jurisdiction. The MACCIH's intent was to allow these corruption cases to proceed with minimal political resistance or outside influence given the high profile of the accused. Under current regulations, sitting officials are judged by an ad hoc panel of judges and CSJ magistrates. The current regulations also do not require that the involved judges be specialists in criminal law.¹⁶ By the end of the 2017, Congress had not debated the proposed reforms to this law.

During the time period covered by this report, the MACCIH also drafted a proposal for a regulatory framework that would apply to the **Law on the Protection of Human Rights Defenders, Journalists, Social Communicators, and Justice Officials** (*Ley de Protección a Defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia*).¹⁷ The framework proposed the creation of a system under which justice sector officials, including magistrates, judges, public defenders, prosecutors and MP employees, could apply for special protection measures. This proposal culminated in the establishment of a new entity affiliated with the Public Prosecutor's Office in 2018, the Special Prosecutor's Office for the Protection of Human Rights Defenders, Journalists, Social Communicators, and Justice Officials (*Fiscalía Especial para la Protección de Defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia*).

In early 2017, the National Congress began deliberations on a new **Social Security Law** (*Ley del Seguro Social*). The MACCIH participated in policy debates by submitting a series of recommendations that sought to improve administrative and financial oversight systems while also introducing civic oversight mechanisms that the new, proposed social security institute could implement. The new law was still pending congressional approval by the end of 2017.

The MACCIH also issued recommendations related to a draft **Police Career Law** (*Ley de la Carrera Policial*).¹⁸ These recommendations included that the government formally recognize that the National Police as a community-centered institution that is inherently civilian in nature. A majority of legislators appeared to accept the MACCIH's suggestions while debating the bill in Congress.

TABLE 1
STATUS OF LEGAL REFORMS PROMOTED BY THE MACCIH
2016-2017

Regulation	Objective	Year Provided by the MACCIH	Status
Law on Financing, Transparency and Oversight of Political Parties and Candidates	Create a new model for accountability and political campaign financing	2016	Approved, with some modifications
Settlements in corruption cases	Prevent settlements or extrajudicial resolutions in corruption cases via the PGR	2016	Adopted
Law on Effective Collaboration	Allow the possibility more lenient sentences for the accused in exchange for provision of substantive and verifiable information that would help combat crime and corruption	2016	Pending approval
Law on the Classification of Public Documents Related to National Security and Defense	Repeal of the current law and harmonization with the Law on Access to Public Information	2016	Pending approval
Criminal Code	Create a comprehensive and orderly criminal justice framework that helps fight crime	2016	Bill pending approval; in 2017 Congress approved reduced sanctions for the crime of misappropriation of public funds
Organic Law on the Superior Court of Accounts	Specify the jurisdiction of the Public Prosecutor's Office to investigate crimes of illicit enrichment and put an end to the Superior Court of Accounts' monopoly on launching these probes	2017	Pending approval
Law on the Prosecution of Senior Officials	Transfer corruption cases involving senior officials to the new national anti-corruption jurisdiction	2017	Pending approval

Law on the Protection of Human Rights Defenders, Journalists, Social Communicators, and Justice Officials	Establish a special system to protect judicial officials, in the framework of this law	2017	Approved
Social Security Law	Improve systems for civic oversight of government institutions	2017	Pending approval
Police Career Law	Incorporate the concept of community policing, a gender perspective and the civilian nature of police duties	2017	Approved

ESTABLISHMENT, PERFORMANCE, AND COOPERATION OF NATIONAL COUNTERPARTS

One of the most important advances initiated by the MACCIH through 2017 included the establishment of the **National Anti-Corruption Jurisdiction** (*Jurisdicción Nacional Anticorrupción*). The Jurisdiction is comprised of a system of special courts, known as anti-corruption criminal courts and tribunals, and a special prosecutor's office, known as the Special Prosecutor's Unit against Impunity and Corruption (*Unidad Fiscal Especial contra la Impunidad y la Corrupción*, UFECIC).

The CSJ approved the creation of the National Anti-Corruption Jurisdiction in May 2016 via Decision 01-2016. Congress then approved the law (via Decree 89-2016), which was published in the official government newspaper (*La Gaceta*) in August 2016. With the jurisdiction's creation, Honduras became the second country in Latin America to establish special courts charged with handling complex corruption cases. The new jurisdiction includes civil judges, trial judges, and appeals court magistrates.

The **UFECIC**, established in January 2017 via a cooperative agreement with the OAS, serves as the prosecutorial counterpart to the National Anti-Corruption Jurisdiction. It is formally

affiliated with the Public Prosecutor's Office, and is in charge of handling cases selected by the MACCIH (notably, under the MACCIH's mandate, the MACCIH can propose to the MP that investigations be transferred to UFECIC). The UFECIC's Honduran prosecutors work on investigations in partnership with international experts from the MACCIH. This partnership is subject to the MP's approval and volition. The UFECIC is headquartered Tegucigalpa and San Pedro Sula but carries out its work across the country.

The MACCIH has helped ensure that a rigorous selection and certification process for candidates take place within the UFECIC and the anti-corruption courts and tribunals. Honduras had not previously implemented this kind of rigorous selection procedure for justice officials successfully, but it is a model worth replicating.

In September 2017, the CSJ appointed public servants to the National Anti-Corruption Jurisdiction, including 33 judicial officials (civil judges, trial judges, and appeals court magistrates) and 25 assistants (secretaries, clerks, typists, and file clerks). Following these

appointments, the MACCIH monitored public hiring processes to fill approximately 190 positions.

Some 43 officials were selected to serve on the UFECIC, including prosecutors, investigative agents, specialists in collecting and analyzing financial information, specialists in collecting and analyzing criminal information, and forensic

computer experts. These individuals may not be removed from their positions or assigned to other duties without the MACCIH's consent. This unit began operating in October 2017. By the end of that year, the UFECIC and the MACCIH had chosen their first 10 cases to investigate.

TABLE 2
ANTI-CORRUPTION SYSTEM IN HONDURAS



As part of the MP's efforts to strengthen Honduran institutions, the MACCIH worked jointly with the National Prosecution Support Unit (*Unidad Nacional de Apoyo Fiscal*), the Office of the Special Prosecutor for Transparency and Combating Public Corruption, (*Fiscalía Especial de Transparencia y Combate a la Corrupción Pública*), and the Technical Agency of Criminal Investigation (*Agencia Técnica de Investigación Criminal*, ATIC). The MACCIH provided advice to these entities on investigating complex cases, as well as training on methodologies for financial investigations, criminal analyses, and oral litigation techniques.

The Mission also worked with the Public Prosecutor's Office on a procedure for preparing technical reports with the goal of standardizing preparation of forensic reports. In addition, it drafted the Digital Information Extraction Protocol (*Protocolo de Extracción de Información Digital*), so that prosecutors' offices could establish mechanisms for the proper collection, preservation, and analysis of digital evidence, adhering to international norms.

In November 2016, Congress selected three magistrates to serve on the **Superior Court of Accounts** for a seven-year period. Given the importance of the selection process, the MACCIH issued a series of recommendations

aligned with international standards and aimed at ensuring the independence of candidates for TSC magistrates. The Mission's recommendations sought to promote the selection of suitable magistrates with the proper professional, technical and ethical qualifications. However, rather than ensuring a transparent and technical process, Congress did not take into account the Mission's recommendations and instead based the selection on negotiations between three political parties. As civil society organizations saw no real possibility of influencing the process, many of them withdrew from participating.¹⁹

Despite questions around the legitimacy of the selection process for TSC magistrates, the MACCIH signed a cooperation agreement with the TSC. This will allow joint teams to investigate cases together similar to how the MACCIH works with the Public Prosecutor's Office. A similar situation arose with the 2017 selection process for three leadership positions in the **Unit on Financing, Transparency, and Oversight** (*Unidad de Financiamiento, Transparencia y Fiscalización*, UFTF), which works under the country's election administration body, the Supreme Electoral Tribunal (Tribunal Superior Electoral, TSE). As part of this selection process and as mandated by the 2016 Clean Politics Law, a special committee pre-selected a list of nine candidates and submitted it to the National Congress. During the initial stages, the special committee made nominations with merit-based criteria. However, during the final stage of the selection process, the candidates were selected as part of a political agreement between political parties in Congress. The delays in selecting the UFTF candidates limited the unit's capacity to fulfill its duties with regard to overseeing the 2017 general elections.²⁰

More problems arose when, despite the MACCIH's protests, the TSE approved regulations for the UFTF that left out crucial

aspects. This included the establishment of spending caps for political parties and not just candidates, a clear stance on money laundering in electoral campaigns, higher thresholds for guaranteeing compliance with the law, and a system of tougher sanctions.

In addition to the entities previously mentioned, the MACCIH signed collaboration agreements with other bodies, including an agreement with the **Solicitor General's Office** to strengthen its capacity to assess the damage corruption inflicts on the state, and the international mutual assistance policies for the repatriation of assets resulting from corruption, among other issues. In 2017, the MACCIH signed an agreement with the **National Anti-Corruption Council** (*Consejo Nacional Anticorrupción*, CNA), a non-governmental organization created in 2005 by the government of Honduras in compliance with the UN Convention against Corruption, for the creation of integrated teams to investigate corruption cases.²¹

According to some experts, the MACCIH and the CNA had a sometimes tense relationship until the agreement was signed. In addition, although the Council has worked with the Public Prosecutor's Office, there have also been complaints about the lack of decisive action by the Office in the handling of some cases.²²

From its inception through the end of 2017, the MACCIH also signed agreements with the TSE, IAIP, the Office for the Administration of Seized Assets (*Oficina Administradora de Bienes Incautados*, OABI), the Financial Intelligence Unit (*Unidad de Inteligencia Financiera*, UIF), and the Revenue Administration Service (*Servicio de Administración de Rentas*, SAR).

Finally, one of the MACCIH's innovative aspects has been the creation of a **Criminal Justice Observatory** (*Observatorio de Justicia Penal*) in cooperation with civil society. The Observatory

did not manage to make much progress by the end of 2017, but did launch its website with some indicators during 2017. The delays were due to the setup process lacking clear

involvement from civil society organizations and academia. Additionally, there was a lack of clarity regarding what both the MACCIH and civil society expected from the Observatory.²³

PROGRESS TOWARD INVESTIGATING EMBLEMATIC CASES

In the Honduran public's view, the MACCIH's main function lies in advancing key criminal proceedings. Success in investigating emblematic cases and holding perpetrators to account depends on the cooperation and collaboration of national justice institutions and on the local courts handling cases.

In 2016 and 2017, the MACCIH actively collaborated as an advisor to the Public Prosecutor's Office on designing procedural strategies. The MACCIH also worked with the Public Prosecutor's Office to help build numerous criminal cases. Notable cases include one related to embezzlement of public funds at the IHSS (see Chart 2: The Case of the Honduran Social Security Institute), and another involving the murder of environmental leader Berta Cáceres, which was selected due to its high profile and impact on society and for its ties to acts of corruption linked to the hydroelectric project that Cáceres had opposed.²⁴

The MACCIH also collaborated on the Shalom case involving Teodoro Bonilla, the former vice president of the Judiciary and Judicial Career Council (*Consejo de la Judicatura y la Carrera Judicial*), an independent body responsible for handling finances of the national court system, the selection and removal of appellate court judges, and other administrative duties. This case involved a network of judicial system officials who accepted bribes in exchange for improperly influencing various cases and appointments. In June 2017, thanks to the MACCIH's actions, Bonilla was convicted and sentenced to six years in prison, the first

time in Honduran history that someone was convicted for influence peddling. This case was exemplary and sent a message in defense of judicial independence and in favor of fighting corruption within the judicial system.

In late 2017, the UFECIC presented the results of its first two investigations in collaboration with the MACCIH. The first case is known as the "Network of Deputies" ("*Red de Diputados*") and the second is known as the "First Lady's Petty Cash" ("*Caja Chica de la Dama*") probe. Both these cases are of great importance and will be analyzed in greater detail in the Central America Monitor's future reports.

In the "Network of Deputies" case, filed in December 2017, the UFECIC accuses five legislators from different political parties of illegally pocketing 8.3 million lempiras (about \$336,000) of public funds intended for social development and civil society organizations. The case may be the first in the history of Honduras to involve so many high-profile government officials.

The "First Lady's Petty Cash" case saw the debut of the anti-corruption procedural model designed by the MACCIH. Under this model, the investigation was carried out together with the UFECIC, as well as a special anti-corruption tribunal. After four months of investigations, authorities filed the case in late 2017, charging three people, including former first lady Rosa Elena Bonilla (2010-2014), for misappropriating some 16 million lempiras (\$650,000 dollars) in funds allocated to her office for social development initiatives.

BOX 2

THE CASE OF THE HONDURAN SOCIAL SECURITY INSTITUTE (IHSS)

The embezzlement scheme at the IHSS, carried out from 2010 to 2014, amounts to the largest episode of corruption in Honduran history. A criminal structure led by the Institute's then-director Mario Zelaya diverted an estimated \$300 million in public funds by government officials and their relatives creating front companies, improperly granting contracts, and deliberately overvaluing equipment.²⁵ An estimated 2,800 patients died due to poor medical treatment and lack of medication, equipment, and other materials as a result of embezzling these social security resources.²⁶

The case exposed various state deficiencies, all of which made this massive embezzlement scheme possible. These deficiencies include a lack of adequate internal government oversight, the lack of effective civic audit mechanisms, and the inability to bring the case to justice in the face of various executive branch agencies that participated in or made the scheme possible.²⁷

The Public Prosecutor's Office started investigating the case in 2013 with the CNA's support. One of the MACCIH's first actions upon beginning operations in April 2016 was to work with the Public Prosecutor's Office and decide to participate jointly in the investigations, working on 45 investigations and 15 court cases.

Although the MACCIH was not involved in the initial investigations, it played a crucial role in preventing Zelaya's release. By mid-2016, when the MACCIH realized that Zelaya was close to serving the maximum term under pre-trial detention, the MACCIH worked with the Public Prosecutor's Office to charge Zelaya with minor offenses, thereby preventing his release and obtaining a conviction in December 2016.

In January 2017, authorities convicted Zelaya for another social security-related case, and he received the longest sentence handed down to any public official in the country's history. By the end of that year, Zelaya had accumulated prison terms totaling 40 years, with other cases still pending. Other people convicted in this case as of late 2017 included two deputy ministers and businesspeople.

Due to the magnitude of the case, progress has been slow. According to estimates by the director of the MP's special corruption unit, authorities have only made progress on 30 percent of current investigations in the last six years. Since the start of the proceedings, witnesses have been murdered and experts from the Public Prosecutor's Office have been threatened in attempts to delay the investigations.²⁸

ABBREVIATIONS AND ACRONYMS

ATIC	Technical Agency of Criminal Investigation
CICIG	International Commission against Impunity in Guatemala
CNA	National Anti-Corruption Council
CSJ	Supreme Court of Justice
ERIC-SJ	Team for Reflection, Research, and Communication
IACAC	Inter-American Convention against Corruption
IAIP	Institute for Access to Public Information
IHSS	Honduran Social Security Institute
IUDPAS	University Institute for Democracy, Peace and Security
LTAIP	Transparency and Public Information Access Law
MP	Public Prosecutor's Office
MACCIH	Mission to Support the Fight against Corruption and Impunity in Honduras
MESICIC	Follow-Up Mechanism for the Implementation of the IACAC
OABI	Office for the Administration of Seized Assets
OAS	Organization of American States
PGR	Solicitor General's Office
SAR	Revenue Administration Service
SICCIC	Comprehensive System to Combat Impunity and Corruption
TSC	Superior Court of Accounts
TSE	Supreme Electoral Tribunal
UIF	Financial Intelligence Unit
UFTF	Unit on Financing, Transparency, and Oversight
UFECIC	Special Prosecutor's Unit against Impunity and Corruption
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNAH	National Autonomous University of Honduras
WOLA	Washington Office on Latin America

NOTES

- ¹ A detailed list of indicators is available at www.wola.org/cam.
- ² The International Commission against Impunity in Guatemala (CICIG), created in 2006 with the backing of the United Nations, was the first hybrid commission established on the Central American isthmus.
- ³ Charles Call. *From Steady Progress to Severely Wounded: A Two-Year Report on the Performance of the OAS Mission in Support of the Fight Against Corruption and Impunity in Honduras (MACCIH)*. Center for Latin American & Latino Studies. June 2018. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3210663.
- ⁴ Call. *From Steady Progress to Severely Wounded; Eric Olson and Katherine Hyde. Nine Questions and Observations about Honduras' New Anti-Corruption Mechanism*. Woodrow Wilson Center. October 2015. <https://www.wilsoncenter.org/article/nine-questions-and-observations-about-hondurass-new-anti-corruption-mechanism>; and Eric Olson and Katherine Hyde. *Strengthening the MACCIH: Next Steps in Honduras' Fight Against Corruption and Impunity*, Woodrow Wilson Center, November 2015, <https://www.wilsoncenter.org/article/strengthening-the-maccih-next-steps-honduras-fight-against-corruption-and-impunity>.
- ⁵ Public Opinion Poll. ERIC. 2018. <https://wp.radioprogresohn.net/sondeo-de-opinion-publica-2018/>
- ⁶ Agreement between the Government of the Republic of Honduras and the General Secretariat of the Organization of American States for the Establishment of the Mission to Support the Fight against Corruption and Impunity in Honduras. January 19, 2016.
- ⁷ To ensure its budget, the MACCIH requested economic support from the G-16 (a space made up of donor countries and cooperation entities accredited in the country), 33 Member States and 36 permanent observers to the OAS, with the objective of creating a Multilateral Basket Fund. With them it managed to obtain financial support from the United States, Germany, Italy, Peru, Canada and the European Union. In addition, it received technical and operational contributions from other countries.
- ⁸ The Monitor's report on the fight against corruption in Honduras includes a more detailed analysis of the Law on the Financing, Transparency and Oversight of Political Parties and Candidates and on the Oversight Unit.
- ⁹ This omission presumably occurred with the acquiescence of the person in charge of the MACCIH's Electoral Division, but not the Spokesperson.
- ¹⁰ Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH). *Second Semi-Annual Report*. April 19, 2017. <http://www.oas.org/documents/eng/press/Second-Semi-Annual-Report-MACCIH-.pdf>
- ¹¹ The bill for the Law on Effective Collaboration is addressed in depth in the Monitor's report on the fight against corruption.
- ¹² MACCIH. *Second Semi-Annual Report*.
- ¹³ The Law on Effective Collaboration entails the application of the protection measures contemplated in the Law on Witness Protection in Criminal Proceedings (Ley de Protección a Testigos en el Proceso Penal, Decree 63-2007), along with others included in the bill itself.
- ¹⁴ United Nations Convention against Transnational Organized Crime. United Nations Office on Drugs and Crime. 2004. https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf.
- ¹⁵ Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH), Division on Prevention and the Fight against Corruption. *Right of Access to Information and Legitimate Interests of Defense and Security in Honduras: The Search for Balance in a Democratic and Constitutional State of Law*. July, 2017. https://www.oas.org/en/spa/dsdsm/maccih/new/docs/20170705_MACCIH_5.pdf.
- ¹⁶ General Secretariat of the Organization of American States, Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH-OEA). *Launch of the New Honduran Model for Fighting against Corruption: Integrated Investigation and Criminal Prosecution*. Fourth Biannual Report. April 19, 2018. <http://www.oas.org/documents/eng/press/Fourth-Biannual-Report-MACCIH-Apr2018.pdf>
- ¹⁷ The issue of security and protection for judicial officials is addressed in a detailed fashion in the Monitor's report on the strengthening of the judicial system's capacity and independence.
- ¹⁸ The matter of the police career is addressed in depth in the Monitor's report on the strengthening of civilian police corps.
- ¹⁹ ASJ (Asociación por Una Sociedad Más Justa), "Sociedad civil da un paso al costado en la elección del TSC y mira hacia el futuro", November 2016, <http://asjhonduras.com/webhn/sociedad-civil-da-un-paso-al-costado-en-eleccion-del-tsc-y-mira-hacia-el-futuro/>.

²⁰ These aspects are addressed in greater detail in the Monitor's report on the fight against corruption.

²¹ Before 2014, the CNA's work was centered on education, training and work with political parties. In 2014, under new leadership, the investigation unit was created, and it has undertaken numerous investigations regarding public denunciations and public documents, including the embezzlement of social security funds.

²² Call. From Steady Progress to Severely Wounded.

²³ Call. From Steady Progress to Severely Wounded. Pages 30-33.

²⁴ The Monitor's report on human rights protection includes an analysis of how the case of Berta Cáceres' murder was handled.

²⁵ Mario Cerna and Claudia Gómez. Fiscalía Investiga Nueva Línea De Us\$125 Millones. Revistazo. November 8, 2017. http://saqueoihss.com/ministerio_publico.html.

²⁶ Alex Flores. El Saldo Que Dejó la Corrupción. Revistazo. November 8, 2017. http://saqueoihss.com/enfermedad_muerte.html.

²⁷ Prevention and Anti-corruption Division (División de Prevención y Combate a la Corrupción), MACCIH. Análisis y Recomendaciones al Proyecto de Ley del Seguro Social: "Para que los hechos no se repitan". September, 2017. <https://www.oas.org/es/sap/dsdme/maccih/new/docs/Reporte-MACCIH6-26-09-FINAL.pdf>

²⁸ Abram Huyser Honig, Alex Florez, German Reyes, Jorge Coello, Claudia Gomez, Mario Cerna, Ximena Villagrán and Gabriela Barrios. Timeline. Revistazo. November 7, 2017. http://saqueoihss.com/linea_tiempo.html

ABOUT THE ORGANIZATIONS

THE UNIVERSITY INSTITUTE FOR DEMOCRACY, PEACE AND SECURITY (*INSTITUTO UNIVERSITARIO EN DEMOCRACIA, PAZ Y SEGURIDAD, IUDPAS*) is affiliated with the Faculty of Social Sciences of the National Autonomous University of Honduras (UNAH). It was created to strengthen the research capacity of the UNAH, promote multidisciplinary in methodological theoretical approaches in the areas of security, public policies, city studies, democracy and development, issues related to youth, as well as to strengthen the competences of different university professionals

THE WASHINGTON OFFICE ON LATIN AMERICAN (WOLA) is a leading research and advocacy organization advancing human rights in the Americas. We envision a future where public policies protect human rights and recognize human dignity, and where justice overcomes violence.

ABOUT THE PROJECT

The Central America Monitor is a subregional project that seeks to assess the level of progress being made by the countries of Guatemala, Honduras and El Salvador in the areas of strengthening the rule of law, reducing violence, combating corruption and organized crime, and protecting human rights through the use of a series of indicators. The project also monitors and analyzes international cooperation programs in the aforementioned areas.

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