



## on the Implementation of Chapter II (Prevention) & Chapter V (Asset Recovery)

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b Asociación por un Socioedimismo Justo

## Acknowledgements

With the aim of contributing to the national review of the United Nations Convention against Corruption (UNCAC) in Honduras in its second cycle (2015 - June 2024) covering Chapters II and V, this shadow report was prepared by the Asociación para una Sociedad más Justa (ASJ), using the guidance materials and the civil society report template designed by the UNCAC Coalition and Transparency International.

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The findings in this report are those of the authors, but do not necessarily reflect the views of the UNCAC Coalition. Every effort has been made to verify the accuracy of the information contained in this report.

All information collected for the preparation of this report was believed to be correct as of October 10, 2021, so actions and events after this date are not reflected in this document.

This shadow report was prepared by Lester Ramirez and Juan Carlos Aguilar, who are grateful for the participation and contributions of representatives of the public sector and civil society.

The reviewer of this report was Danella Newman of the UNCAC Coalition, who also reviewed the English translation of the original report in Spanish.

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ASJ is a Honduran civil society organization created in 1998 with the mission to work for a society where justice prevails, focusing on making the governmental system work and be fair, especially for the most vulnerable in society.

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## List of persons consulted

Institution	Name of person interviewed	Job title	Date of interview
Institute for Access to Public Information (IAIP)	Ivonne Ardón	Commissioner (Public Institution)	01 July 2021
Honduran Bar Association / Anti-Corruption Coalition	Fatima Mena	President of the Court of Honour (Civil Society)	05 July 2021
Observatory on Anti-Corruption Criminal Policy of the National Anti-Corruption Council (CNA)	César Espinal	Coordinator (Civil Society)	05 July 2021
Clean Policy Unit (UPL)	Emilio Hernández Hercules	Secretary-General (Public Institution)	06 July 2021
Office for the Administration of Seized Assets (OABI)	Francisco Flores	Director (Public institution)	17 August 2021
Anti-Drug Trafficking Office of the Public Prosecutor's Office (MP)	Soraya Calix	Director (Public institution)	15 November 2021

## Abbreviations

While the abbreviations are provided in both Spanish and English in the following table, they are used in their original Spanish version throughout the report for institutions and laws and in their English version for names of international institutions or initiatives.

Abbr.	Spanish	English
APNFD	Actividades y Profesiones no Financieras Designadas	Designated Non-Financial Activities and Professions
ALM/CFT	Anti-Money Laundering and Counter Financing of Terrorism	
ASJ	Asociación para una Sociedad Más Justa	
CESPAD	Centro de Estudios para la Democracia	Center for Democracy Studies
CIPLAFT	Comisión Interinstitucional para la Prevención del Lavado de Activos y Financiamiento del Terrorismo	Inter-Institutional Commission for the Prevention of Money Laundering and Terrorist Financing
CN	Congreso Nacional	National Congress
CNA	Consejo Nacional Anticorrupción	National Anti-Corruption Council
CNBS	Comisión Nacional de Bancos y Seguros	National Banking and Insurance Commission
CNE	Consejo Nacional Electoral	National Electoral Council
CONADEH	Comisionado Nacional de los Derechos Humanos	National Commissioner for Human Rights
CSJ	Corte Suprema de Justicia	Supreme Court of Justice
CSO	Civil Society Organizations	
FOSDEH	Foro Social de la Deuda Externa y Desarrollo de Honduras	Social Forum on Foreign Debt and Development in Honduras
GAFILAT	Grupo de Acción Financiera de Latinoamérica	Latin American Financial Action Task Force
IAIP	Instituto de Acceso a la Información Pública	Institute for Access to Public Information
INVEST-H	Inversiones Estratégicas de Honduras	Honduras Strategic Investments
LCE	Ley de Contratación del Estado	State Contracting Law
LFTFPPC	Ley de Financiamiento, Fiscalización a Partidos Políticos y Candidatos	Law of Financing, Control of Political Parties and Candidates
LOTSC	Ley Orgánica del Tribunal Superior de Cuentas	Organic Law of the Superior Court of Audit
LPDDBOI	Ley de Privación Definitiva de Dominio de los Bienes de Origen Ilícito	Law on the Definitive Deprivation of Ownership of Illicit Origin Assets
LRAPNFD	Ley para la Regulación de Actividades y Profesiones no Financieras Designadas	Law for the Regulation of Designated Non-Financial Businesses and Professions
LTAIP	Ley de Transparencia y Acceso a la Información Pública	Transparency and Access to Public Information Law

<b>MACCIH</b>	Misión de Apoyo Contra la Corrupción e Impunidad en Honduras	Support Mission Against Corruption and Impunity in Honduras
<b>MP</b>	Ministerio Público	Public Prosecutor's Office
<b>OABI</b>	Oficina Administradora de Bienes Incautados	Office for the Administration of Seized Assets
<b>OAS</b>	Organization of American States	
<b>OFAC</b>	The Office of Foreign Assets Control	
<b>ONCAE</b>	Oficina Normativa de Contrataciones y Adquisiciones del Estado	Regulatory Office of State Contracting and Acquisitions
<b>PGR</b>	Procuraduría General de la República	Attorney General's Office of the Republic
<b>PJ</b>	Poder Judicial	Judiciary
<b>SAR</b>	Sistema de Administración de Rentas	Revenue Administration System
<b>SCGG</b>	Secretaría de Coordinación General de Gobierno	Secretariat of General Coordination of Government
<b>SDT</b>	Secretaría en el Despacho de Transparencia	Secretariat in the Office of Transparency
<b>SIELHO</b>	Sistema de Información Electrónico de Honduras	Electronic Information System of Honduras
<b>SIP</b>	Solicitud de Información Pública	Request for Public Information
<b>TJE</b>	Tribunal de Justicia Electoral	Electoral Justice Tribunal
<b>TSC</b>	Tribunal Superior de Cuentas	High Court of Auditors
<b>UFECIC</b>	Unidad Fiscal Especial Contra la Impunidad de la Corrupción	Special Prosecutorial Unit against Impunity for Corruption
<b>UNCAC</b>	United Nations Convention Against Corruption	
<b>UIF</b>	Unidad de Inteligencia Financiera	Financial Intelligence Unit
<b>UPL</b>	Unidad de Política Limpia	Clean Policy Unit

## 1. Introduction

The State of Honduras signed the United Nations Convention against Corruption (UNCAC) on 17 May 2004 and ratified it on 23 May 2005.<sup>1</sup> Honduras was selected by the UNCAC Implementation Review Group for the second cycle review cycle (2016-2024) that examines the implementation of the articles of Chapters II (Preventive Measures) and V (Asset Recovery) of the UNCAC for the first year of the review cycle.

To this end, the Government of Honduras, through the General Coordination Secretariat of Government (SCGG) signed on May 18, 2020 the Transparency Pledge of the United Nations Convention against Corruption Coalition (UNCAC Coalition), thus adhering to its six principles<sup>2</sup> as well as the UNCAC Coalition's Guide for Transparency and Participation of the Convention's Review Mechanism<sup>3</sup>, which describes good practices to ensure transparency and an inclusive review process.

This shadow report is intended as a contribution to the UNCAC implementation review process. Asociación para una Sociedad Más Justa (ASJ), the Honduras Chapter of Transparency International and member of the UNCAC Coalition, is the organization responsible for the preparation of this report.

### 1.1 Scope

The UNCAC articles and themes that receive particular attention in this report are those covering preventive anti-corruption policies and practices (Article 5); preventive anti-corruption bodies (Article 6); public sector employment (Article 7.1); codes of conduct, conflicts of interest and asset declarations (Articles 7, 8 and 12); political financing (Article 7.3); public procurement (Article 9.1); private sector transparency (Article 12); access to information and participation of society (Articles 10 and 13.1); and, measures to prevent money laundering (Article 14) which are found in Chapter II on Preventive Measures.

With regard to Chapter V on Asset Recovery, the UNCAC articles and topics that receive particular attention in this report are those covering anti-money laundering (Articles 52 and 58); measures for direct recovery of property (Articles 53 and 56); confiscation tools (Article 54); international cooperation for purpose of confiscation (Articles 51, 54, 55, 56 and 59) and the return and disposal of confiscated property (Article 57).

### 1.2 Structure

This introductory section is followed by the executive summary, which includes the condensed results, conclusions and recommendations on the review process, availability of information, as well as implementation and compliance with selected UNCAC articles.

The report then covers the results of the review process in Honduras, as well as access to information in more detail. Subsequently, it examines the implementation of the Convention and provides examples of good practices and deficiencies. Then, recent developments are

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<sup>1</sup> See Honduras' ratification of the UNCAC at <https://www.unodc.org/unodc/en/corruption/ratification-status.html>.

<sup>2</sup> UNCAC Coalition (2020), Honduras signs the UNCAC Review Transparency Pledge, <https://uncaccoalition.org/honduras-signs-the-uncac-review-transparency-pledge/>.

<sup>3</sup> See Guide at <https://uncaccoalition.org/wp-content/uploads/UNCAC-Coalition-%E2%80%93-Guide-to-Transparency-and-Participation-in-the-IRM-1.pdf>.

discussed and, finally, recommendations for priority actions to improve UNCAC implementation are given.

### **1.3 Methodology**

This shadow report was based on the methodology provided by the UNCAC Coalition, which provides guidelines and a reporting template developed together with Transparency International (TI). These tools reiterate in a simplified form the United Nations Office on Drugs and Crime (UNODC) checklist and propose relatively brief assessments, compared to the detailed self-assessments required by the official checklist. The report template included questions on the review process and, in the section on implementation and compliance, asked for examples of good practice and areas for improvement.

For the elaboration of the report, Asociación para una Sociedad más Justa (ASJ) resorted mainly to the review of state portals (active transparency) and requests for public information in accordance with the Law on Transparency and Access to Public Information (reactive transparency). In addition, interviews were conducted with experts in the field. The research team made efforts to obtain information from government offices and to engage in dialogue with government officials.



## 2. Executive Summary

This shadow report was prepared by Asociación para una Sociedad Más Justa (ASJ), which examines the implementation and enforcement by the Republic of Honduras of Chapters II (Preventive Measures) and V (Asset Recovery) of the United Nations Convention against Corruption (UNCAC), with the aim of contributing to the ongoing second cycle review process. This report has addressed issues of crucial importance on the topic of preventing and combating public and private corruption in the country.

In this sense, the measures implemented by the public sector to comply with the UNCAC are addressed, but they still fall short in terms of impact results. There are regulations and institutions in place; however, there are problems in their implementation, ranging from the lack of action by the competent bodies due to technical-budgetary limitations, the continued weakening of the rule of law, the lack of independence between the branches of government and the lack of public trust in institutions that limit the reporting and collaboration of the public.

### 2.1 Description of the process

At the time of writing this shadow report, the official review process in Honduras is in self-assessment phase and is creating a National Anti-Corruption Strategy for the country. The Secretariat of Transparency (SDT) has approached different civil society organizations (CSOs) in order to establish cooperation and exchange in this regard. In turn, the last event held by the SDT and CSOs was for the Participatory Development of the National Transparency and Anti-Corruption Strategy of Honduras with the support of the United Nations Office on Drugs and Crime (UNODC). ASJ has approached the SDT through letters<sup>4</sup> and telephone communication to better address the findings of this report, which resulted in a meeting between representatives of the ASJ and the minister of the SDT in November 2021, where the possibility of exchanging information and discussing the final report was discussed.

### 2.2 Availability of information

Access to information at the time of writing this report presented a number of difficulties. While it is true that policies and laws were found without problems on the Internet, it was challenging to access state reports, statistics and results of anti-corruption programs at the governmental level, which suggests that the State of Honduras needs to place greater emphasis on monitoring and publicizing its results as part of transparency and accountability.

In this regard, in order to complete the report, requests for public information were made to the different institutions included in this report, obtaining responses to the 10 requests submitted, but not all of them in compliance with the deadlines established by law. Interviews were also conducted with experts in order to generate another source of information. Finally, it is important to mention that the lack of access to information has been exacerbated by the COVID-19 pandemic.

### 2.3 Implementation in Law and in Practice

The main challenge for Honduras lies in the application of the law, which includes ensuring compliance by institutions and public servants. The problem identified is that Honduras complies with international commitments to promote regulations, but its responsibility to ensure

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<sup>4</sup> See communication issued by the ASJ to the Secretariat of Transparency  
<https://drive.google.com/file/d/1COkOp1dTYqevVS40LSf790-UZ2O6fW74/view?usp=sharing>.

compliance falls short, due to political factors, such as a lack of will from the authorities. At the same time, the institutions in charge of enforcing policies and regulations claim that they have a lack of budget, autonomy and independence when applying the law.

Moreover, employment in the public sector is governed by regulations from the 1960s; many hires are made outside the Civil Service Law, under the regime of temporary contracts. At the same time, there are a series of special personnel hiring regimes that provide differentiated treatment. The selection of high-level positions and decision-makers in the fight against corruption (prosecutors, auditors, judges) is highly politicized, lacking a meritocratic scheme, based on the negotiation of the different political forces in the National Congress. This produces serious limitations of independence and aggravates impunity in bodies such as the Superior Court of Accounts (TSC), the Judiciary (PJ), the Supreme Court of Justice (CSJ), the Institute for Access to Public Information (IAIP), the Public Prosecutor's Office (MP), among others, which had been strengthened in the past when the Support Mission Against Corruption and Impunity in Honduras (MACCIH) was installed between 2016-2020 in conjunction with the Special Prosecutorial Unit Against Impunity for Corruption (UFECIC), which managed to prosecute high-impact corruption cases, but whose work was interrupted in early 2020.

The law that regulates political financing presents shortcomings in terms of deterrence, investigation, access to information and sanctions, which makes it possible for illicit money to enter campaigns. Similarly, there is a lack of uniform application of codes of conduct - there are several codes - and there is no real control of their implementation or sanctions applied. The issue of conflicts of interest presents gaps in Honduran legislation. Furthermore, according to the Code of Ethical Conduct of the Public Servant, public employees must present declarations of conflicts of interest, but according to consultations with authorities in the area of oversight, they mention that these are not obligatory and are at the institutions' discretion. Finally, no effort is made to verify the information provided by public servants in asset declarations or sworn statements as they are known in Honduras, and they are of little use for the investigation of illicit enrichment or other crimes.

Public procurement continues to be one of the main corruption problems in the country. There is a wide variety of contracting regimes and very few institutions that can supervise or control the processes, leaving it in many cases to the efforts of civil society organizations or the media to do so. In recent years, a clear pattern has been observed between corruption in public contracting and concessions, and campaign financing, even with the participation of drug traffickers. The most common practices are directed bidding processes, splitting of purchases and direct purchases where overpricing, influence peddling, bribery and the use of front companies or NGOs to launder transactions.

Access to public information is one of the most advanced prevention actions, mainly due to a law that has been institutionalized after more than 10 years in force. However, the population not only requires access to transparency portals, but also to quality and properly disaggregated information for effective social control. The IAIP, through its links with the population, needs to improve the capacity of municipalities to provide better information and refocus efforts on strengthening the human right, through training and legal advice, given the barriers that exist in access to information as a result of social inequality and limited levels of digital literacy. Moreover, it is always necessary to strengthen existing mechanisms such as portals through the incorporation of the International Open Data Charter and the use of artificial intelligence to identify the needs of users-citizens and thus provide more detailed and user-friendly information that is easy to understand.

As regards prevention of money laundering, anti-money laundering measures and recovery of assets, there is a legal framework in place, but there are challenges of coordination and collaboration among the responsible bodies, mainly because of distrust in the handling of information collected by the lifting of banking secrecy, as in the case of the National Banking and Insurance Commission (CNBS), where information is hardly shared. Furthermore, the Office for the Administration of Seized Assets (OABI) has been called into question due to irregularities and inappropriate management of assets in its custody, which has led to criticism and attempts to reform the legislation.

Finally, the level of international cooperation is very low, since there are very few requests sent by the State of Honduras for the recovery of assets that are held abroad as a result of crimes committed in Honduran jurisdiction.

**Table 1: Implementation and enforcement summary - Chapters II and V**

UNCAC Articles	Status of implementation in law	Status of implementation and enforcement in practice
Art. 5 - Preventive anti-corruption policies and practices	Partially implemented	Poor
Art. 6 – Preventive anti-corruption body or bodies	Largely implemented	Poor
Art. 7.1 - Public sector employment	Largely implemented	Poor
Art. 7.3 - Political financing	Largely implemented	Moderate
Art. 7, 8 and 12 - Codes of conduct, conflicts of interest and asset declarations	Partially implemented	Poor
Art. 9.1 - Public procurement	Largely implemented	Poor
Art. 10 and 13.1 - Access to information and participation of society	Largely implemented	Poor
Art. 12 - Private sector transparency	Partially implemented	Poor
Article 14 - Measures to prevent money laundering	Largely implemented	Poor
Art. 52 and 58 - Anti-money laundering	Largely implemented	Poor
Art. 53 and 56 - Measures for direct recovery of property	Partially implemented	Poor
Art. 54 - Confiscation tools	Largely implemented	Moderate
Art. 51, 54, 55, 56 and 59 - International cooperation for the purpose of confiscation	Partially implemented	Poor
Article 57 - The return and disposal of confiscated property	Largely implemented	Poor

**Table 2: Performance of selected key institutions**

Name of institution	Performance in relation to the responsibilities covered by the report	Brief comment on the performance
National Banking and Insurance Commission	Moderate	It is necessary to make the process of active transparency more efficient,

		even though there is information published in the transparency portals, not all the necessary information for this report was available, so reactive transparency has to be used.
Institute for Access to Public Information	Moderate	It needs to expand coverage in the national territory, strengthen technical capacity and increase its budget to fulfill its institutional mandate.
Public Prosecutor's Office	Poor	Its investigative and judicial capacity has been diminished by reforms to laws from the National Congress that have taken back its functions.
Secretariat in the Office of Transparency	Moderate	It is still in the process of consolidation and integration due to its recent creation, it is currently in charge of coordinating the country review to be completed by Honduras to verify the level of compliance with the UNCAC and is working on the implementation of open data systems, as well as the National Strategy for Transparency and Anti-Corruption in Honduras, which is expected to be approved soon.
Office for the Administration of Seized Assets	Poor	It is necessary to strengthen good practices in asset management, since several cases of corruption have been uncovered within the body as a result of not having good practices in place.
Regulatory Office of State Contracting and Acquisitions	Moderate	It is a purely advisory and registration body, but has no power to act on malpractices in public procurement.
Attorney General's Office of the Republic	Poor	It needs to improve its role in representing the State in civil recovery of damages caused by corruption.
High Court of Auditors	Poor	Better results are required in its function as comptroller of public funds, so that its need for action is minimal at the time of audits.
Financial Intelligence Unit	Moderate	More publicity is needed to allow greater access to the information it produces.
Clean Policy Unit	Poor	It needs to strengthen its sanctioning capacity and not only be dissuasive. It also needs to strengthen its budgetary and technical capacity.

## 2.4 Recommendations for priority actions

1. **Create a real system that contains anti-corruption prevention measures, integrated by the public sector, private sector and civil society actors** in order to have this *tripartite* point of view, as well as the publicity of the actions carried out in terms of access to public information, complaints systems, and capacities acquired in the investigations.
2. **Strengthen the oversight institutions in charge of verifying compliance with anti-corruption policies** through greater technical and budgetary capacity, as well as by providing them with greater autonomy and independence in their operation.
3. **Define a strong legal framework of declarations of conflict of interest**, since although they are regulated, there is no level of obligation or compliance at the time they are presented by public servants, nor is there a requirement for institutions to do so. Similarly, **strengthen the topic of asset declarations**, since compliance and sanctions are not being effectively enforced by the body responsible for oversight, verification, and sanction in cases of noncompliance.
4. **Give the Institute of Access to Public Information constitutional rank**, as well as promote the depoliticization of the body to strengthen the system of access to information and avoid duplication of functions through the creation of parallel institutions or laws that compromise the Institute's authority.
5. **Review and amend the Penal Code in the part referring to crimes against public administration, that is, corruption crimes**, since, with its entry into force, certain corruption crimes have been omitted. Similarly, repeal the so-called impunity pacts and the modification of the Code of Criminal Procedure.
6. **Strengthen the issue of public contracting in the country** through the shortcomings identified in this report and, in turn, generate the necessary advocacy mechanisms so that decision-makers can incorporate them into both regulatory actions and actions aimed at their implementation in practice.
7. **Create a system for the selection of senior public officials based on meritocracy, transparency and inclusion of all sectors in the selection process** in order to professionalize the selection and integration of the positions. Likewise, renew the selection system for intermediate and low officials, because the criteria are outdated and no longer respond to the reality of the country.
8. **Establish measures for the private sector to adopt integrity, corporate probity and transparency programs** through certifications and a culture of compliance.
9. **Improve anti-money laundering practices** by strengthening the technical and financial capacities of the prosecutors' offices responsible for investigating and prosecuting this crime in order to obtain convictions against persons who are prosecuted for the commission of the crime of money laundering.
10. **Promote the use of the mechanism of international cooperation among judicial officials**, so that, through the use of this tool, investigations can be deepened and assets or funds that have been diverted from the public administration abroad can be located more quickly.
11. **Create greater controls from the governmental sector accompanied by the supervision of civil society and the public in general of the operations of the Administrative Office of Seized Goods**, since the bad practices in this office have been dragging on for almost 10 years to date and there has been no improvement whatsoever.

### 3. Assessment of the review process in Honduras

The Government of Honduras signed the UNCAC Coalition's Transparency Pledge on 18 May 2020. Initially, the review process was under the responsibility of the General Coordination Secretariat of Government (SCGG), but with the creation of the Secretariat of Transparency (SDT)<sup>5</sup>, it has been assigned this task, which it is currently executing.

Moreover, since April 2021 ASJ has been contacting the Secretariat of Transparency's authorities to hold a meeting where it could develop a joint work plan, but it has only been able to participate in two open sessions for CSOs in the country review process that were conducted by the SDT. It was not until September 2021 that the SDT was open to arrange a meeting with the ASJ where the possibility of exchanging information<sup>6</sup> and a subsequent validation of the report among peers was discussed.

Finally, it is known that the self-assessment is currently being prepared through the "First National Workshop for the development and implementation of a National Anti-Corruption Strategy for Honduras". Subsequently, workshops were held among the different sectors for the "Participatory development of the National Transparency and Anti-Corruption Strategy of Honduras", which is led by the SDT with the support of the UNODC, in which CSOs and the private sector participated in the same workshop. Other actors such as prosecutors' offices, public institutions, oversight bodies and the financial system were involved in other types of workshops. To date, the authors of this report are unaware of the status of this strategy or its level of progress. Given that 2021 is an election year, it is possible that the effort will be transferred to the new government that takes office in January 2022.

**Table 3: Transparency of the government and CSO participation in the UNCAC review process**

Has the government disclosed information about the country's focal point?	Yes	Secretariat of Transparency
Has the review schedule been posted somewhere or made public?	No	There is no information published in this regard and the Secretariat of Transparency does not have a web portal. Only shortly before publication of this report, a page was enabled for this on the IAIP's transparency portal <sup>7</sup> .
Was civil society consulted in the preparation of the self-assessment?	Yes	Two workshops have been held with CSO actors for the elaboration of the anti-corruption strategy in order to complete the self-assessment checklist, the first called "First National Workshop for the development and implementation of a National Anti-Corruption Strategy for Honduras" and the second "Participatory development of the National Transparency and Anti-Corruption Strategy of Honduras", but it is important to increase the number of participants to ensure greater

<sup>5</sup> See The Gazette. Feb. 17, 2021, <https://www.tsc.gob.hn/web/leyes/PCM-021-2021.pdf> and as amended in The Gazette, Jan. 9, 2021, <https://www.tsc.gob.hn/web/leyes/PCM-128-2020.pdf>.

<sup>6</sup> See communication between the JSA and the SDT at <https://drive.google.com/file/d/1CokOp1dTYqevVS40Lsf790-UZ2O6fW74/view?usp=sharing>.

<sup>7</sup> See <https://portalunico.iaip.gob.hn/portal/index.php?portal=486>.

		participation. It is also appropriate to focus the consultation on CSOs to ensure greater impartiality.
Was the self-assessment checklist published online or made available to civil society?	No	The information was not published because the SDT does not have a website for online access, and despite the two workshops held with CSOs and UNODC, there is no knowledge of the results obtained as a result of this joint work.
Did the government agree to a country visit?	Not yet	According to information provided by the Secretariat of Transparency, due to the reviewers' scheduling issues, a tentative date was set to carry out the visit at the beginning of February 2022.
A visit to the country was made?	Not yet	Idem.
Was civil society invited to provide input to the official reviewers?	Yes	On 30 June 2021, ASJ received an invitation to take part in the "First National Workshop for the development and implementation of a National Anti-Corruption Strategy for Honduras". In this workshop the participating CSOs and government institutions answered a series of questions oriented to how compliance with chapters II and V of the UNCAC was reflected. Subsequently, on 27 August 2021, the second workshop "Participatory construction of the National Transparency and Anti-Corruption Strategy of Honduras" was held, where a mapping of anti-corruption risks and the current state of prevention, investigation and criminalization of corruption in the country was carried out.
Was the private sector invited to provide input to the official reviewers?	Yes	The second workshop, held on 27 August, was attended by representatives of the private sector. For example, the Honduran Council of Private Enterprise (COHEP) was present.
Has the government committed to publishing the full country report?	Yes	The UNCAC Coalition's Transparency Pledge <sup>8</sup> , specifically principle 4 of the Pledge establishes this obligation for the Government of Honduras to publish both the self-assessment checklist and the full country report.

### 3.1 Access to Information

The main points related to access to information addressed in the preparation of this shadow report are set out below.

- i. **Laws and regulations:** Access to legislation was through the library of the High Court of Auditors (TSC)<sup>9</sup> from where regulations such as the Constitution, laws, special laws, regulations, executive and legislative decrees, among others, were accessed. Therefore, there was no obstacle in terms of access to Honduran legislation.

<sup>8</sup> See the UNCAC Coalition's Transparency Pledge signed by Honduras at

<https://drive.google.com/file/d/1w4G33TPiGzUsgXy6X6sj-LGh9ku16On/view?usp=sharing>.

<sup>9</sup> See the web library of the Superior Court of Accounts at <https://www.tsc.gob.hn/biblioteca/>.

- ii. **Requests for information:** 10 requests for public information were made to the various institutions required for the preparation of this report (see annex). All 10 have been answered and there is 1 (Office for the Administration of Seized Assets) that answered, but outside the deadline established by law. It should be mentioned that the requests for information were submitted through the SIELHO electronic platform<sup>10</sup> and one directly to the institution, which in this case was the National Banking and Insurance Commission (CNBS).
- iii. **Institutional websites:** The websites of the institutions involved were reviewed. In some cases information was found, in others it was out of date or not published. For example, the website of the CNBS, where statistical information was sought on the actions taken by its Financial Intelligence Unit to prevent and detect money laundering, but no such information was found. Furthermore, there is a lack of statistical information to understand the results obtained, and to identify patterns and trends.
- iv. **Interviews:** 6 interviews were conducted with members of civil society, authorities of the bar association and also from the public sector. This was done in order to obtain another perspective to the one provided by the laws, information requests and transparency mechanisms.
- v. **Press releases:** Finally, the use of press releases has been very important for the preparation of the chapters of this report, where they have been used mainly to contextualize situations occurring in the country that are of interest for this document.

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<sup>10</sup> See the Electronic Information System of Honduras SIELHO platform at <https://sielho.iaip.gob.hn/inicio/>.



## 4. Assessment of the implementation of Chapter II and V provisions

This section includes an analysis of each of the selected articles that make up chapters II and V of the UNCAC, beginning with its status of implementation and an analysis of the existing regulatory framework and its implementation, followed by the identification of good practices and ending with a section that identifies deficiencies.

### 4.1 Chapter II

#### 4.1.1 Article 5 – Preventive anti-corruption policies and practices

In this article, the status of implementation of the law is partially implemented and the status of implementation and enforcement in practice is low.

In Honduras the legal framework for the prevention of corruption is mainly composed of:

- Law of Transparency and Access to Public Information (LTAIP)<sup>11</sup>

The creation of the LTAIP dates back to 2006 and so far has undergone a reform in 2014. One of the purposes of this law is, as stated in Article 2 regarding the objectives of the law, *"to combat corruption and illegality of the acts of the State"*. Similarly, this law establishes the mechanisms to be able to access public information, either through active or reactive transparency. Finally, it created an Institute for Access to Public Information (IAIP) as established in Article 38, to be the guarantor of compliance with the obligations emanating from the United Nations Convention Against Corruption (UNCAC) and the Inter-American Convention Against Corruption (IACAC) in terms of transparency and accountability.

- Organic Law of the Superior Court of Audit (LOTSC)<sup>12</sup>

This law was created in 2002 with the purpose of making the Superior Court of Accounts (TSC) the auditing body of the funds executed a posteriori and as a mechanism to prevent corruption, since public officials must present their asset declarations before this same court. In this way, it serves as a preventive instrument so that public officials do not use public funds for their own benefit.

- PCM-111-2020 Secretariat of Transparency Office (SDT)<sup>13</sup>

This SDT was created only last November 2020 by the Executive Branch. Its purpose, as stated in Article 1, is *"The Secretariat of State in the Office of Transparency (SDT), which will be the leading institution in coordinating, facilitating, promoting and institutionalizing the proper implementation of the National Policy on Transparency, Probity, Integrity and Prevention of Corruption and the Transparency and Anti-Corruption Strategy"*. However, it has worked on the implementation of an open data portal and on the recent realization of the National Strategy for Transparency and Anti-Corruption in Honduras that will be approved in the coming days, but that generates considerable uncertainty with respect to the fact that in January 2022 there is a change of government and it is not known if it will be taken into account as the anti-corruption

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<sup>11</sup> See the Law on Transparency and Access to Public Information.

[https://www.tsc.gob.hn/web/leyes/Ley\\_de\\_Transparencia.pdf](https://www.tsc.gob.hn/web/leyes/Ley_de_Transparencia.pdf).

<sup>12</sup> See the Organic Law of the Superior Court of Audit.

[https://www.tsc.gob.hn/web/ley\\_tsc/Ley\\_Organica\\_TSC.pdf](https://www.tsc.gob.hn/web/ley_tsc/Ley_Organica_TSC.pdf).

<sup>13</sup> See Executive Order, PCM-111-2020 at <https://www.tsc.gob.hn/web/leyes/PCM-111-2020.pdf>.

policy in the 2022-2026 mandate<sup>14</sup>. In addition, this SDT is responsible for conducting the country review of Honduras' compliance with Chapters II and V of the UNCAC.

- National Anti-Corruption Council Act (CNA)<sup>15</sup>

The CNA law was created in 2005, after the ratification of the UNCAC. Article 8 of this law indicates that among its functions, the CNA may "*propose policies, strategies and action plans to prevent and combat corruption in Honduras*". Similarly, the CNA is a civil society body that was created to provide support in preventing and combating public corruption in the country.

- Penal Code of Honduras<sup>16</sup>

In this Code, in force since 2020, crimes against the public administration are regulated by articles 474 to 512. In addition, the offence of illicit enrichment, which was previously part of the TSC law, was included in this legal instrument. Likewise, money laundering, which was previously regulated in a special law against money laundering, is now part of the Criminal Code.

- Inter-Agency Cooperation Agreement on the Fight against Corruption<sup>17</sup>

This agreement was reached in 2015, where the heads of the Judiciary (PJ), Public Ministry (MP), National Banking and Insurance Commission (CNBS), Revenue Administration System (SAR), Attorney General's Office (PGR), General Secretariat for Government Coordination (SGCG) and the Superior Court of Accounts (TSC) proceeded to commit themselves through this cooperation agreement, so that cooperation would be designated, as well as joint activities, avoiding duplication of functions and providing the necessary information to prevent and combat corruption and economic crimes.

- Interagency Roundtable on Transparency and Anti-Corruption<sup>18</sup>

The table was established in 2018 and is composed of 14 members representing the branches of government, comptroller institutions, and other secretariats, so that functions can be complemented and unified in favor of the fight against corruption in the country. Its aim is to develop a national anti-corruption strategy, to strengthen the exchange information among the participants and to reach agreements with NGOs to combat corruption.

- IV Open State Action Plan Honduras 2018-2020<sup>19</sup>

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<sup>14</sup> See the draft of the National Transparency and Anti-Corruption Strategy in Honduras [https://drive.google.com/file/d/1W5EPfZ8zJQ8J\\_OQsnSlqB8\\_DhwkW-tBm/view?usp=sharing](https://drive.google.com/file/d/1W5EPfZ8zJQ8J_OQsnSlqB8_DhwkW-tBm/view?usp=sharing).

<sup>15</sup> See the National Anti-Corruption Council Act at <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/LEY%20DEL%20CONSEJO%20NACIONAL%20DE%20ANTICORRUPCION.pdf>.

<sup>16</sup> See Penal Code of Honduras, Decree 130-2017 at [https://www.tsc.gob.hn/web/leyes/Decreto\\_130-2017.pdf](https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf).

<sup>17</sup> See Inter-Agency Cooperation Agreement on Combating Corruption (2015) [https://www.tsc.gob.hn/web/Convenios%20Nacionales/2015/Acuuerdo\\_de\\_Cooperacion\\_Interinstitucional\\_para\\_la\\_lucha%20contra\\_la%20corrupcion.pdf](https://www.tsc.gob.hn/web/Convenios%20Nacionales/2015/Acuuerdo_de_Cooperacion_Interinstitucional_para_la_lucha%20contra_la%20corrupcion.pdf).

<sup>18</sup> See document of the Interagency Transparency and Anti-Corruption Roundtable at [https://drive.google.com/file/d/1ShKEWjmrWgd\\_iRhuxRSBTSjErEfKuM8f/view?usp=sharing](https://drive.google.com/file/d/1ShKEWjmrWgd_iRhuxRSBTSjErEfKuM8f/view?usp=sharing).

<sup>19</sup> See document IV Open State Action Plan Honduras 2018-2020 at <https://drive.google.com/file/d/1NzyokaPRI0mTYqw8CuZACZr81eiNxwin/view?usp=sharing>.

This document contains significant actions to address the issue of the fight against corruption, based on the implementation of the Declaration to Consolidate Honduras as an Open State<sup>20</sup> and the Comprehensive Roundtable on Transparency and Anti-Corruption. It is important to mention that this action plan includes as essential pillars access to public information, public procurement supported by CSOs, the private sector and academia in order to achieve optimal levels of democratic governance with low levels of corruption.

- International Open Government Partnership Initiative<sup>21</sup>

In 2011, Honduras adhered to this initiative which aims to promote transparency, citizen participation and building trust in public institutions, through effective accountability, the use of open data in order to achieve substantial improvements in the issue of transparency.

Undoubtedly, the above-mentioned public institutions have their own structure, financial independence based on annual disbursements for their operation and their own development plans for the measures established in the regulations, but there are still aspects that need to be improved. Unfortunately, the practical results are few, due to the processes and technical limitations that many of the institutions have, which means that the achievements are not tangible in a short period of time. Similarly, there are no reports, at least not public ones, on the development of a national anti-corruption policy or strategies in the country and their level of progress, if they are being developed.

### **Good Practices**

- Undoubtedly, the creation and implementation of the LTIAP has been one of the main achievements in the prevention and fight against corruption, since mainly the civil society has made use of it, in its function of verifying and demanding accountability from the state.
- Among the main good practices we find that there is a set of regulations for the criminalization of the offences established by the UNCAC, which have been centralized in the Criminal Code, since previously they were scattered in some special laws (Special Anti-Money Laundering Act) or were part of organic laws (TSC case).
- The creation of the CNA as a support body to prevent and combat public corruption in the country. Thus, as part of civil society it has worked on the issue of corruption, due to the investigation and subsequent prosecution of some of its complaints filed with the Public Prosecutor's Office in cases that have been considered of high impact. For example, the cases prosecuted by the Support Mission against Corruption and Impunity (MACCIH) and the Special Prosecutor's Unit against Impunity for Corruption (UFECIC), known as *Caja Chica de la Dama* (Lady's Small Box)<sup>22</sup>, *Patuca III Colusión y Corrupción* (Patuca III Collusion and

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<sup>20</sup> See the Declaration to Consolidate Honduras as an Open State document at

<https://drive.google.com/file/d/1mHOcx6h-meDeB3vEGEN0S15BBxXV9uAx/view?usp=sharing>.

<sup>21</sup> See International Open Government Partnership Initiative document at

[https://drive.google.com/file/d/1hG-6PYGU2fEZMQXgyV4FsCM\\_zlCGTJ2-/view?usp=sharing](https://drive.google.com/file/d/1hG-6PYGU2fEZMQXgyV4FsCM_zlCGTJ2-/view?usp=sharing).

<sup>22</sup> Support Mission Against Corruption and Impunity in Honduras, (2018), Investigation conducted by MACCIH-OAS and Honduran Public Prosecutor's Office leads to arrest of former First Lady, <https://www.oas.org/es/sap/dsdme/maccih/new/docs/MCH-001.18-MACCIH-COMUNICADO-DE-PRENSA-caso-caja-chica.pdf>, date accessed: November, 2021.

Corruption)<sup>23</sup> and *Narco-política* (Narco-politics)<sup>24</sup> (the latter two of which are described below in the chapter on public procurement) which were complaints filed by the CNA where the prosecutorial entities in charge subsequently thoroughly investigated these crimes. In the *Caja Chica de la Dama* case, a former first lady of the Nation was accused for the alleged embezzlement and misappropriation of public funds that had been intended for social programs, which was the only case of the MACCIH-UFECIC that had a conviction (58 years in prison). However, after the departure of the Mission, the Supreme Court of Justice<sup>25</sup> ordered a retrial for the alleged.

- The creation of the SDT with the purpose of centralizing anti-corruption policy in the country in the sense that it is dictated by this secretariat and that the fight against this scourge is comprehensive and can be addressed from the public sector, citizenship, academia and civil society.
- The Cost Honduras initiative<sup>26</sup> seeks to make the money invested in public infrastructure more efficient through greater transparency in the execution of projects, thus limiting the probability of possible acts of corruption.
- The implementation of open government plans and programs, as they seek to optimize transparency, accountability and citizen participation.
- The development of roundtables and joint work agreements among government institutions, so as to facilitate the exchange of information, thus making it more feasible to prevent, detect and punish acts that constitute corruption.

### Deficiencies

- Despite the results that have been obtained with the LTAIP, which has managed to make some processes transparent, the country has a legislation called the Law for the Classification of Public Documents related to Defense and National Security<sup>27</sup>. In this law what is found is a limitation and duplication of functions with respect to the LTAIP and its Institute of Access to Public Information (IAIP) responsible for ensuring compliance with the law<sup>28</sup>. With this law there has been a setback in the issue of transparency,

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<sup>23</sup> Support Mission Against Corruption and Impunity in Honduras, (2019), Equipo UFECIC-MP / MACCIH-OEA presenta caso "Patuca III Colusión y corrupción", <https://www.oas.org/es/sap/dsdme/maccih/new/docs/MCH-006.Equipo-MACCIHOEA-UFECICMP-presenta-casoPatuca-III-Colusion-y-corrupcion.pdf?sCodigo=MCH-006/19>, date accessed: November, 2021.

<sup>24</sup> Misión de Apoyo Contra la Corrupción e Impunidad en Honduras, (2019), Equipo UFECIC-MP/MACCIH-OEA presenta duodécimo caso de investigación penal integrada, denominado: "Narcopolítica", [https://www.oas.org/es/centro\\_noticias/comunicado\\_prensa.asp?sCodigo=C-036/19](https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-036/19), date accessed: November, 2021.

<sup>25</sup> La Prensa (2020), Supreme Court of Justice orders retrial of former first lady, <https://www.laprensa.hn/honduras/corte-suprema-justicia-anulado-juicio-rosa-elena-lobo-honduras-HALP1363721>, date accessed: November, 2021.

<sup>26</sup> See Cost Honduras website at <https://costhonduras.hn/>.

<sup>27</sup> See the Law for the Classification of Public Documents related to National Security and Defense at <https://www.tsc.gob.hn/web/leyes/Ley%20para%20la%20Clasificaci%C3%B3n%20de%20Documentos%20P%C3%ABlicos%20relacionados%20con%20la%20Seguridad%20y%20Defensa%20Nacional.pdf>.

<sup>28</sup> HN Process, (2019) Secrecy Act a slip for transparency, <https://proceso.hn/ley-de-secretos-un-desliz-para-la-transparencia/>, date accessed: November, 2021.

because Honduran citizens cannot see accountability on billions of lempiras that are spent<sup>29</sup>.

- Mechanisms have been created in the legislative branch called "impunity pacts"<sup>30</sup> that have been detrimental to the fight against corruption and have prevented the prosecution of corruption cases in which high-level public officials (deputies) were under investigation, as well as undermining the investigative function of the Public Prosecutor's Office<sup>31</sup>.
- Finally, in spite of having a Penal Code that typifies and covers the crimes established by the UNCAC, this has been debated by the different sectors of the country and has been called the "Penal Code of Impunity", since, according to the analysis carried out, it has been determined that it represents a step backwards in the fight against corruption.<sup>32</sup> This is because there is a reduction of penalties for crimes against the public administration and those related to organized crime, which comes to mean a shield for people who commit acts of corruption, according to experts<sup>33</sup>.

#### 4.1.2 Article 6 – Preventive anti-corruption body or bodies

The status of implementation of the law in Honduras for this article is considered to be largely enforced, but implementation in practice is poor.

- Institute for Access to Public Information (IAIP)<sup>34</sup>

Chapter II comprising Article 8 of the LTAIP states that "*it is a decentralized body of the public administration, with operational, decisional and budgetary independence, responsible for promoting and facilitating citizens' access to public information, as well as for regulating and supervising the procedures of the obligated institutions regarding the protection, classification and custody of public information, according to this Law*". In that sense, this institute was created along with the LTAIP in 2006, with the purpose of exercising control regarding the promotion and obligation of public information delivery, since this institute is in charge of verifying the publication of information through active or reactive transparency. In addition, it has the capacity to force and punish institutions that do not deliver the information, through financial penalties for not complying with the resolutions that indicate the delivery of information. The IAIP's limitation lies in practice, since there are parallel laws that work to the detriment of its functions, which does not allow its independence to develop as empowered by

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<sup>29</sup> Countercurrent (2021), Vehicles purchased with Security Tax, held by elite officials.

<https://contracorriente.red/2021/06/15/vehiculos-comprados-con-tasa-de-seguridad-en-poder-de-funcionarios-de-elite/>, date accessed: November, 2021.

<sup>30</sup> CESPAD (2021), Así funciona la corrupción y los pactos de impunidad en Honduras

<https://cespad.org.hn/2021/05/14/asi-funciona-la-corrupcion-y-los-pactos-de-impunidad-en-honduras/> date accessed: November 2021.

<sup>31</sup> El Pulso (2020), Reformas de artículos del Código Procesal Penal obstaculizan al Ministerio Público,

<https://elpulso.hn/2020/05/26/reformas-de-articulos-del-codigo-procesal-penal-obstaculizan-al-ministerio-publico/>, date accessed: June, 2021.

<sup>32</sup> Criterio HN (2020), CNA demands declaration of unconstitutionality of the Penal Code,

<https://criterio.hn/cna-exige-declaratoria-de-inconstitucionalidad-del-codigo-penal/>, date accessed: June, 2021.

<sup>33</sup> MACCIH (2019), Legal Analysis of the New Criminal Code (Decree 130-2017),

<https://www.oas.org/es/sap/dsdme/maccih/new/docs/Analisis-Juridico-Del-Nuevo-Codigo-Penal-MACCIH2019.pdf>, date accessed: November, 2021.

<sup>34</sup> See the Law on Transparency and Access to Public Information at

[https://www.tsc.gob.hn/web/leyes/Ley\\_de\\_Transparencia.pdf](https://www.tsc.gob.hn/web/leyes/Ley_de_Transparencia.pdf).

law and translate into practice, because it lacks greater budgetary and technical capacity, and above all, the power to enforce its mandate. Furthermore, its coercive capacity has been made invisible by the heads of the entities obliged to provide information<sup>35</sup> and that refuse to deliver or publish information despite the IAIP obliging them to do so according to the LTAIP.

The IAIP has signed cooperation agreements with various entities to promote transparency, such as:

1. Cooperation Agreement between the Institute for Access to Public Information (IAIP) and the Transparency in Infrastructure Initiative (Cost Honduras)<sup>36</sup>
  2. Inter-institutional Agreement between the IAIP and the Office for the Administration of Seized Assets (OABI)<sup>37</sup>
  3. Framework Cooperation Agreement between the Institute for Access to Public Information and the Unit for Financing, Transparency and Oversight of Political Parties and Candidates<sup>38</sup>
  4. Cooperation Agreement between the IAIP and National Ports Company (ENP)<sup>39</sup>
  5. Framework Agreement on Inter-institutional Cooperation between the IAIP and the Secretariat of State in the Office of Education<sup>40</sup>
  6. Agreement between the IAIP and the Secretariat of State in the Offices of Governance, Justice and Decentralization (SGJD)<sup>41</sup>.
- High Court of Audit (TSC)<sup>42</sup>

In 2002, the TSC was created along with its Organic Law (LOTSC). It was created for the purpose of conducting "*a posteriori oversight of funds, assets and resources administered by the branches of government, decentralized institutions, including mixed institutions and banks. The National Banking and Insurance Commission, municipalities and any other special body or public or private entity that manages or receives public funds from internal or external sources*" (Article

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<sup>35</sup> Proceso Digital (2021) Some 198 municipalities in Honduras are postponed in transparency, <https://proceso.hn/aplazadas-en-transparencia-unas-198-municipalidades-de-honduras/>, date of access: November, 2021.

<sup>36</sup> See IAIP's single portal for the agreement with Cost Honduras at [https://portalunico.iaip.gob.hn/portal/ver\\_documento.php?uid=Mjg5NjkwODkzNDc2MzQ4NzEyNDYxOTg3MjM0Mg==](https://portalunico.iaip.gob.hn/portal/ver_documento.php?uid=Mjg5NjkwODkzNDc2MzQ4NzEyNDYxOTg3MjM0Mg==).

<sup>37</sup> See IAIP's single portal for the agreement with OABI at [https://portalunico.iaip.gob.hn/portal/ver\\_documento.php?uid=NjAzNjA4ODkzNDc2MzQ4NzEyNDYxOTg3MjM0Mg==](https://portalunico.iaip.gob.hn/portal/ver_documento.php?uid=NjAzNjA4ODkzNDc2MzQ4NzEyNDYxOTg3MjM0Mg==).

<sup>38</sup> See IAIP's single portal for the agreement with the Clean Policy Unit at [https://portalunico.iaip.gob.hn/portal/ver\\_documento.php?uid=Mjg5NjU0ODkzNDc2MzQ4NzEyNDYxOTg3MjM0Mg==](https://portalunico.iaip.gob.hn/portal/ver_documento.php?uid=Mjg5NjU0ODkzNDc2MzQ4NzEyNDYxOTg3MjM0Mg==).

<sup>39</sup> See IAIP's single portal for the agreement with Empresa Nacional Portuaria at [https://portalunico.iaip.gob.hn/portal/ver\\_documento.php?uid=NDEyNDY0ODkzNDc2MzQ4NzEyNDYxOTg3MjM0Mg==](https://portalunico.iaip.gob.hn/portal/ver_documento.php?uid=NDEyNDY0ODkzNDc2MzQ4NzEyNDYxOTg3MjM0Mg==).

<sup>40</sup> See IAIP's single portal agreement with the Ministry of Education at [https://portalunico.iaip.gob.hn/portal/ver\\_documento.php?uid=NjAzNjM4ODkzNDc2MzQ4NzEyNDYxOTg3MjM0Mg==](https://portalunico.iaip.gob.hn/portal/ver_documento.php?uid=NjAzNjM4ODkzNDc2MzQ4NzEyNDYxOTg3MjM0Mg==).

<sup>41</sup> See the single portal of the IAIP in agreement with the Secretary of State in the Offices of Governance, Justice and Decentralization at [https://portalunico.iaip.gob.hn/portal/ver\\_documento.php?uid=NjA3ODY1ODkzNDc2MzQ4NzEyNDYxOTg3MjM0Mg==](https://portalunico.iaip.gob.hn/portal/ver_documento.php?uid=NjA3ODY1ODkzNDc2MzQ4NzEyNDYxOTg3MjM0Mg==).

<sup>42</sup> See the Organic Law of the Superior Court of Accounts at [https://www.tsc.gob.hn/web/ley\\_tsc/Ley\\_Organica\\_TSC.pdf](https://www.tsc.gob.hn/web/ley_tsc/Ley_Organica_TSC.pdf).



3-LOTSC). Therefore, any person who administers public funds must render accounts before the Court, in the form of a liquidation of the same with the respective results. In addition, Article 56 of the Organic Law states that officials must submit a sworn declaration of income, assets and liabilities. Thus, the TSC was created to prevent the mismanagement of public funds that could be used for acts of corruption, as well as to prevent the illicit enrichment of public officials. Finally, Article 222 of the Constitution of the Republic grants the TSC constitutional status<sup>43</sup>.

In this regard, the TSC is responsible for overseeing the public funds that have been used by conducting audits in which inconsistencies or malpractices in the management of funds can be identified. In this way, it deduces the responsibilities of the case and refers the file to the Public Prosecutor's Office when it has the necessary indications of the commission of an illicit act. It also handles the sworn declarations that public officials must submit when they enter the government sector, in order to avoid the commission of the crime of illicit enrichment, since with the submission of the declarations it is possible to contrast the before and after of the official and verify whether his or her assets increased in a lawful manner or not.

- Office of the Attorney General of the Republic (PGR)<sup>44</sup>

The PGR is the body responsible for safeguarding the interests and representing the State of Honduras, as established in article 19 of the Organic Law of the Office of the Attorney General of the Republic. In this regard, they are the guarantors of the recovery of assets resulting from corruption offences, since it is the Public Prosecutor's Office that brings public criminal proceedings, but in the case of the civil recovery of public funds, it is the PGR that must take action and accompany the proceedings.

- Public Prosecutor's Office (MP)<sup>45</sup>

It is the body in charge of exercising public criminal action in the country. Article 1.4 of the Public Prosecutor's Office Act states that it must "*combat drug trafficking and corruption in any form*". In this regard, it is made up of prosecutors' offices that combat the crimes contained in the Criminal Code and other laws.

Similarly, the MP has specialized prosecutors' offices in the fight against corruption such as the Special Prosecutor's Office for Transparency and Combating Public Corruption (FETCCOP), the Special Prosecutor's Unit Against Corruption Networks (UFERCO), which was formerly the Special Prosecutor's Unit Against Impunity for Corruption (UFECIC), and which together with the accompaniment of the Support Mission Against Corruption and Impunity in Honduras (MACCIH), which was operational between 2016 and 2020, obtained the best results in recent years in terms of corruption by prosecuting 12 high-impact cases plus 2 that arose from them. Of the 12 high-impact cases that were presented by the MACCIH - UFECIC, only one of them came to an end and due to procedural shortcomings, it will have to be repeated<sup>46</sup>. The other cases are still in process, but there does not seem to be any speed in the courts to take them up again.

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<sup>43</sup> See the Constitution of the Republic of Honduras at [https://www.tsc.gob.hn/web/leyes/Constitucion\\_de\\_la\\_republica.pdf](https://www.tsc.gob.hn/web/leyes/Constitucion_de_la_republica.pdf).

<sup>44</sup> See the Law of the Attorney General's Office at <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/LeyPGR.pdf>.

<sup>45</sup> See the Law of the Public Prosecutor's Office at [http://www.poderjudicial.gob.hn/CEDIJ/Documents/Ley\\_del\\_Ministerio\\_Publico.pdf](http://www.poderjudicial.gob.hn/CEDIJ/Documents/Ley_del_Ministerio_Publico.pdf).

<sup>46</sup> CESPAD (2019), La UFECIC-MACCIH en el combate a de la corrupción e impunidad en Honduras, <https://cespad.org.hn/2019/11/17/la-ufecic-maccih-en-el-combate-de-la-corrupcion-e-impunidad-en-honduras/>, date accessed: July, 2021.

However, the mandate of the MACCIH was not renewed<sup>47</sup> in 2020 and since then there have been no new advances in the matter, due to the fact that the prosecutors' offices that investigate and prosecute corruption in the country have not been given full support and independence. In addition, the MP has constitutional rank, as Article 316 of the Constitution of the Republic indicates<sup>48</sup>.

As mentioned above, the SDT was created in 2020 to strengthen the fight against corruption in the country. It also dictates the anti-corruption policy to be adopted at the government level. It is worth noting that within its capabilities lie the reception of complaints, their investigation, and the referral of complaints to the bodies responsible for punishing them when there is sufficient evidence of the commission of a crime, as well as the creation of citizen observatories of corruption in which sectors such as civil society and academia should be taken into account for the prevention and fight against corruption.

Finally, the authors of this reports interviewed the President of the Court of Honour of the Honduran Bar Association and active member of the Anti-Corruption Coalition, who stated that, *"there is no defined national anti-corruption system, therefore, they seek to create parallels to existing bodies. For example, what happened with the IAIP, with the creation of the SDT and the Secrecy Law. This has been a practice and policy of the current government in the pursuit of exercising control, as this policy is aimed at diminishing and weakening the institutionality in the country."* She also said that *"I have seen this practice since the time I was a deputy in the National Congress and from the municipality where what is sought is to weaken rather than form a true national anti-corruption system that comes to fulfill the true purpose under which it was created and not respond to particular interests"*<sup>49</sup>.

- National Commission of Banks and Insurance (CNBS)<sup>50</sup>

The CNBS is the institution in charge of regulating the financial system in the country by establishing the controls and regulations that are necessary for the optimal functioning of the system. In addition, it establishes protocols against money laundering and terrorist financing or any atypical transaction that could cause damage. It also has a Financial Intelligence Unit that is in charge of detecting any illicit activity that may be committed through the financial system and is obliged to inform the judicial authorities when it is detected.

- Regulatory Office for State Contracting and Acquisitions (ONCAE)<sup>51</sup>

Based on the Law on State Contracting, the ONCAE is designated *"as a technical and consultative body of the State that will be responsible for issuing rules and instructions of a general nature to develop or improve administrative contracting systems in their operational, technical and economic aspects, as well as providing advice and coordinating activities that guide and*

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<sup>47</sup> La Prensa (2020), Honduras does not renew MACCIH agreement with OAS, <https://www.laprensa.hn/honduras/1349669-410/honduras-oea-acuerdo-maccih>, date accessed: July, 2021.

<sup>48</sup> See the Constitution of the Republic of Honduras; and see <https://www.tsc.gob.hn/web/leyes/PCM-111-2020.pdf>.

<sup>49</sup> See document requesting an interview with Attorney Fatima Mena at [https://drive.google.com/file/d/1L\\_vEWeExEoCJKvBPWByHj6g\\_7cIO3wup/view?usp=sharing](https://drive.google.com/file/d/1L_vEWeExEoCJKvBPWByHj6g_7cIO3wup/view?usp=sharing).

<sup>50</sup> See the National Banking and Insurance Commission Act at [https://www.tsc.gob.hn/web/leyes/LEY\\_CNBS.pdf](https://www.tsc.gob.hn/web/leyes/LEY_CNBS.pdf).

<sup>51</sup> See Article 30 of the State Contracting Law at [https://www.tsc.gob.hn/web/leyes/Ley%20de%20Contrataci%C3%B3n%20del%20Estado%20\(09\).pdf](https://www.tsc.gob.hn/web/leyes/Ley%20de%20Contrataci%C3%B3n%20del%20Estado%20(09).pdf).



*systematize public sector contracting processes*. The work carried out by ONCAE is essential for exercising controls on public procurement issues. In addition, it has the role of registering all suppliers who want to contract with the State, that is, in order to be part of a bidding process you have to be registered with ONCAE. In this way, there is a control of the bidders and irregular actions can be detected.

- Revenue Administration Service (SAR)<sup>52</sup>

This is the entity in charge of collecting taxes and establishing fiscal policy in the country. In addition, it is part of the anti-corruption cooperation agreements that promote the exchange of information between government institutions for the detection of illicit acts that are considered corruption. Thus, the information and capabilities of the SAR can be useful when conducting joint investigations.

- Judiciary (PJ)<sup>53</sup>

This is the State power in charge of exercising jurisdictional control of justice in the country, that is to say, it is the one that must settle legal disputes that arise in different areas. Thus, the situation of the fight against corruption is not on one side, since the Judicial Branch is part of the improvement plans that aim to achieve greater transparency, accountability, citizen participation and the use of open data. The lack of independence on the part of these preventive bodies in practice is mainly due to the weakening of the rule of law in Honduras, as well as the institutions that comprise it<sup>54</sup>. Moreover, while it is true that the selection of senior officials is done through procedures, this is a practice that must change, since the National Congress is in charge of selecting high-ranking public officials, and when all these decisions go through this State power, the selections tend to be politicized and the political forces in the country seek to obtain representation in each of the bodies that are chosen from the first State power.

Finally, there are no public information campaigns aimed at informing the public about laws, agreements, plans, regulations and bodies that fight corruption in the country. In addition, not all of the bodies report publicly, at least once a year, on what they are doing to combat corruption in each of its forms.

### **Good Practices**

- The creation of special prosecutors' offices to combat public corruption in the country, such as the Special Prosecutor's Office for Transparency and Combating Public Corruption and the National Prosecution Support Unit, which have been used to prosecute public corruption offences in Honduras. As a result, there are specialized prosecutorial bodies for this type of offence.
- Creation of the Special Prosecution Unit on Corruption Networks, which is responsible for the investigation and prosecution of high-impact corruption cases involving high-ranking public officials.

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<sup>52</sup> See Executive Decree PCM-084-2015, which orders the creation of the Revenue Administration System at

[https://www.tsc.gob.hn/web/leyes/Creacion\\_Servicio%20de\\_Administracion\\_de\\_Rentas\\_SAR.pdf](https://www.tsc.gob.hn/web/leyes/Creacion_Servicio%20de_Administracion_de_Rentas_SAR.pdf).

<sup>53</sup> See the Organic Law of the Judiciary at

[https://web.oas.org/mla/en/G\\_Countries\\_MLA/Ven\\_multla\\_leg\\_esp\\_6.pdf](https://web.oas.org/mla/en/G_Countries_MLA/Ven_multla_leg_esp_6.pdf).

<sup>54</sup> Sarah Chayes (2017), When corruption is the system that operates: the case of Honduras, <https://carnegieendowment.org/2017/05/30/es-pub-71516#tableContents>, date accessed: November, 2021.

- Creation of the Anti-Corruption Circuit, which are specialized courts to hear corruption cases involving two or more defendants.
- Creation of bodies such as the TSC and IAIP, which despite existing since the early 2000s fulfill the normative function and other results resulting from its function. In addition, with the creation of the SDT, it is expected to comply with the provisions of the document (PCM 111-2020) that gives it life and dictates the guidelines that it will follow for its operation.

### Deficiencies

- There are many limitations regarding the work of the oversight bodies in terms of time, which may be due to a lack of technical know-how and financial resources. Thus, on many occasions the investigations carried out by the TSC take many years and may contribute to the prescription of crimes with low penalties. Regarding the IAIP, with the pandemic situation caused by COVID-19, they are delaying the resolving the appeals filed by the citizens against the denial of information or its partial delivery even more at the moment.
- There is a lack of independence and support to promote the prosecution of high-impact corruption cases. The MACCIH - UFECIC managed to prosecute high-impact cases, but only one of them came to an end and due to procedural shortcomings it will have to be repeated in early 2022<sup>55</sup>.
- There are shortcomings in the actions of the PGR when intervening in corruption proceedings, in order to exercise civil action, so that the public funds that were stolen in these illicit acts classified as corruption may be recovered.
- In short, one of the biggest problems lies in the fact that the legal framework is in place, the compliance bodies and entities exist, but there is no effective control over the implementation of the law, improvement plans, public policies and all the actions that are developed. Therefore, they do not have a real impact due to the lack of application in practice.

#### 4.1.3 Article 7.1 – Public Sector Employment

The status of implementation of the law in Honduras for this article is considered to be largely enforced, but implementation in practice is poor.

The highest law in Honduras regulates the civil service in its articles 256 to 259, where the Civil Service Regime is responsible for regulating employment in the public sector based on the principles of suitability, efficiency and honesty. Similarly, it establishes the creation of the Civil Service Law that serves to regulate the actions at the time of dictating the guidelines for hiring in the public sector<sup>56</sup>. The Civil Service Law<sup>57</sup> dates back to 1968 and is responsible for regulating employment in the public sector. In this regulation we find the Council and the Directorate of Civil Service<sup>58</sup> that are responsible for the applicability of the law, from aspects such as selection processes, classification of positions, development of the remuneration plan, evaluation of

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<sup>55</sup> El Heraldo (2021), Rosa Elena Bonilla's trial rescheduled for February 2022, <https://www.elheraldo.hn/pais/1498018-466/programan-febrero-2022-juicio-rosa-elena-bonilla-caja-chica-dama>, date accessed: November, 2021.

<sup>56</sup> See the Constitution of the Republic of Honduras.

<sup>57</sup> See the Civil Service Law at [http://www.oas.org/juridico/spanish/mesicic2\\_hnd\\_anexo17.pdf](http://www.oas.org/juridico/spanish/mesicic2_hnd_anexo17.pdf).

<sup>58</sup> See the Civil Service Board and Directorate website at <http://www.sep.gob.hn/sitio/?view=category&id=86>.

services, as well as staff training, prohibitions, rights, working hours to be performed by the staff and the dismissal regime.

The law provides that there must be a classification of public positions that are to be filled, also explains the issue of remuneration where minimum, intermediate and maximum amounts are to be established according to the positions designed by the Directorate of Civil Service. On the other hand, prior to the selection of personnel, according to the law, they must pass the necessary exams, as well as have very specialized and defined knowledge according to the Post Classification Manual<sup>59</sup> that has existed since 1968.

Similarly, to enter the public administration under the Civil Service Law, Article 11 establishes the requirements for entry, such as being over 18 years of age, meeting the requirements for the position, having passed the competency exams, being appointed, passing the probationary period, having good conduct, health, and being up to date with the payment of taxes. In addition, there is no mechanism for appeal against decisions taken at the time of selection of personnel or what information specifically should be included in the announcement calling for the opening of a position.

It should be noted that for the election of senior officials such as Magistrates to the Supreme Court of Justice<sup>60</sup> (CSJ)<sup>61</sup>, Commissioners of the IAIP<sup>62</sup>, election of the Attorney General<sup>63</sup> and Magistrates of the TSC<sup>64</sup>, these are elected by the deputies who make up the legislature, and that is done through the creation of special regulations, after having passed filters such as the involvement of the nominating boards, civil society, academia and the respective public hearings. In this sense, elections such as those mentioned above are carried out through political lobbies where they seek to obtain representation by the strongest political parties, for example, election of the CSJ<sup>65</sup> or the TSC<sup>66</sup>.

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<sup>59</sup> See the Civil Service Act.

<sup>60</sup> See La Prensa (2015), Así se eligen los magistrados de la Corte Suprema de Justicia, <https://www.laprensa.hn/honduras/866099-410/as%C3%AD-se-eligen-los-magistrados-de-la-corte-suprema-de-justicia>, date accessed: November, 2021.

<sup>61</sup> See Ley orgánica de la junta nominadora para la elección de candidatos magistrados de la Corte Suprema de Justicia, <https://www.tsc.gob.hn/web/leyes/Ley%20Org%C3%A1nica%20de%20la%20Junta%20Nominadora%20para%20Eleccion%20de%20Magistrados.pdf>.

<sup>62</sup> See agreement 086-2019 for the selection of Commissioners of the Institute of Access to Public Information <https://www.tsc.gob.hn/web/leyes/Decreto-92-2019.pdf>.

<sup>63</sup> El Pulso (2018), How the Attorney General and Deputy Attorney General of Honduras are elected, <https://elpulso.hn/2018/06/16/como-se-elige-al-fiscal-general-y-adjunto-de-honduras/#:~:text=Being%20Abogado%2C%20debidamente%20debidamente%20colegiado%2C%2C%20con,y%20solvency%20moral%20debidamente%20debidamente%20comprobada>. Access date: July, 2021.

<sup>64</sup> The Press (2016), The legislature elects three new TSC judges, <https://www.laprensa.hn/honduras/1016047-410/el-legislativo-elige-a-los-tres-nuevos-magistrados-del-tsc>, date accessed: July, 2021.

<sup>65</sup> El Heraldo (2016), Five liberals and three nationalists elected as magistrates, <https://www.elheraldo.hn/pais/924204-466/cinco-liberales-y-tres-nacionalistas-electos-magistrados>, date accessed: November, 2021.

<sup>66</sup> HN Confidential (2016), Tripartidistas Componendas Hicieron Fracasar Adcentamiento Del Nuevo Tribunal Superior De Cuentas, <https://confidencialhn.com/nombran-nuevo-tribunal-superior-de-cuentas-nuevo-magistrado-nacionalista-envuelto-en-escandalo/>, date accessed: November, 2021.

Civil Society, specifically the ASJ, has carried out an Evaluation of Human Talent Management in the Public Administration<sup>67</sup>, and among the main recommendations issued in this regard are:

- Design a master plan containing organizational strategy and planning for all government entities.
- Design and implement a competition processes for public positions, containing clear and specific procedures for the entry and hiring of these personnel.
- Create a compensation and benefits plan for all public servants based on meritocracy, evaluated through periodic performance evaluation procedures.
- Implement internal control mechanisms.
- Improve transparency and information disclosure mechanisms.

In this regard, there is a need to redesign the country's public procurement model, since it does not currently correspond to the country's conditions, which require greater organization, planning, and strategy. Likewise, the publication of and access to information should be enhanced so that the citizenry and the candidates themselves are aware of the mechanisms used when selecting the persons to hold public office.

In addition, through a request for public information addressed to the Civil Service Directorate, an inquiry was made about the number of processes that have been carried out in the last three years by that Directorate, as well as the percentage of correct answers that a person who wants to join the public sector must have in the entry exams. In this regard, the response was that at least 70% is required to be considered an eligible candidate for employment in the public administration.

**Table 4: Number of recruitment processes carried out for public servants in the last 3 years<sup>68</sup>**

Year	Number of processes
2018	2,110
2019	1,019
2020	1,155
<b>Total</b>	<b>4,284</b>

It is worth mentioning that there are several hiring regimes in the government sector, where teachers<sup>69</sup> and doctors<sup>70</sup> have their own statutes for their hiring. Moreover, there are people linked to the public sector, but not on a permanent basis, but for a defined period of time, as well as other people who work under the modality known as hourly employment<sup>71</sup>.

### Good Practices

- Existence of a regulatory framework that regulates employment in the public sector in general, as well as for senior positions that are integrated from the public administration.

<sup>67</sup> Partnership for a More Just Society (2019), Diagnosis of Human Talent Management in the Public Administration. Pp. 46,47,48 at: [https://drive.google.com/file/d/1U\\_vWVM7Sq6WIF-aTW-rRRulwT2mvsrA/view?usp=sharing](https://drive.google.com/file/d/1U_vWVM7Sq6WIF-aTW-rRRulwT2mvsrA/view?usp=sharing), date accessed: October, 2021.

<sup>68</sup> See Public Information Request at [https://drive.google.com/file/d/1CiXpkSPzpuFMU\\_XfKgym2gvaRohPdAoh/view?usp=sharing](https://drive.google.com/file/d/1CiXpkSPzpuFMU_XfKgym2gvaRohPdAoh/view?usp=sharing).

<sup>69</sup> See teachers' statute at [http://www.oas.org/juridico/spanish/mesicic2\\_hnd\\_anexo18.pdf](http://www.oas.org/juridico/spanish/mesicic2_hnd_anexo18.pdf).

<sup>70</sup> See physicians' statute at [http://www.oas.org/juridico/spanish/mesicic2\\_hnd\\_anexo20.pdf](http://www.oas.org/juridico/spanish/mesicic2_hnd_anexo20.pdf).

<sup>71</sup> See the Hourly Employment Act at <https://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/Ley%20de%20Empleo%20por%20Hora.pdf>.

## Deficiencies

- Although there are regulations governing public sector employment, they are too old and do not respond to the economic, political and social context of the country, since they have been in existence for a little over 50 years. Therefore, new regulations should be created or updated in accordance with current needs; the same applies to the Job Classification Manual.
- The politicization of the country's oversight bodies. This is a very common practice in Honduran politics, in the sense that political parties seek and achieve representation in the aforementioned bodies<sup>72</sup>. In this sense, the technical, autonomous and financial capacity of these bodies is lost, since they are predisposed to party lines that do not allow their objective and autonomous development.
- The selection through the National Congress of high public positions, since it is not done through the lens of technicality and the capabilities of the applicants, but rather, it is done through political lobbying within the National Congress and to thus achieve the representation of the three political powers in the country.

### 4.1.4 Article 7.3 – Political financing

The status of implementation of the law in Honduras for this article is considered to be largely enforced, but implementation in practice is moderate.

In Honduras, since 2017 the Law on Financing, Transparency and Oversight of Political Parties and Candidates (LTFPPC)<sup>73</sup> has been in place. This law was created in order to dictate the guidelines with respect to political financing in Honduras, since before it, there were many gaps to be resolved although currently there are still things to improve. Similarly, this legislation includes aspects to be dealt with such as public and private financing, limits to campaign expenses, political debt, limits to contributions of legal and natural persons, access to information of political parties and candidates, accountability, periodicity of reports, sanctions regime and the electoral administrative procedure in matters of financing.

Likewise, Article 24 of the LTFPPC establishes as prohibited contributions those emanating from public entities or companies or with participation of the State. It also prohibits donations or contributions from companies, governments or natural/legal persons coming from abroad except if the donation comes from a relative by affinity or consanguinity. Similarly, the law does not prohibit donations made by legal entities to political parties and candidates; they may use loans as a means of financing as long as they are duly documented in the banking institution, including natural persons and respecting the ceilings as established in Article 13 which regulates the aforementioned, but nothing is indicated about the publicity of the same.

Furthermore, the law establishes the opening of bank accounts, so that the candidates have an effective control of all the contributions they receive and the people who make them. This is established in view of the accountability report of the expenditure made in each of the elections in which the political parties participate with their respective candidates. However, this contrasts with what is expressed by the Center for the Study for Democracy (CESPAD) in its

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<sup>72</sup> Radio Progreso (2019), Fuerzas políticas se reparten cargos electorales <https://wp.radioprogreso.hn.net/fuerzas-politicas-se-reparten-cargos-electorales/>, date accessed: November, 2021.

<sup>73</sup> See the Law on Financing, Transparency and Oversight of Political Parties and Candidates at [https://www.tsc.gob.hn/web/leyes/Ley\\_transparencia\\_fisc\\_Partidos\\_politicos.pdf](https://www.tsc.gob.hn/web/leyes/Ley_transparencia_fisc_Partidos_politicos.pdf).

analysis<sup>74</sup> that indicates that only 33% of the candidates who ran in primary elections in March 2021 complied with the requirement of the bankarization of the accounts.

It is important to mention that Article 6 of the law gives life to the Financing and Control Unit (UFTF)<sup>75</sup>, also known as the "Clean Politics Unit" (UPL), which has within its pillars technical, operational, functional and management autonomy of its budget. In addition, it is the unit designated to ensure compliance with the law by the regulated entities, as well as the applicability of sanctions from the National Electoral Council (CNE) through the Clean Politics Unit as indicated in Article 56 of the LFTFPPC.

Similarly, the authors of this report made a request for public information to the UPL on the percentage of complaints received in the last 3 years and the percentage of sanctions imposed by the Unit in the same period of time. The response was that no complaints had been received in that period and therefore no sanctions had been applied<sup>76</sup>.

Moreover, an interview was conducted with the Secretary General of the UPL who stated that *"the law that gives life to the UPL was created in 2017, six months before the general elections of that year, therefore, a vacatio legis had to be given to be able to train people on the content of the law and that did not happen. That is why we have applied the law for the first time in the last primary elections of March 2021."* Similarly, the Secretary General referred to the needs that the UPL has and stated that *"there are three needs that must be implemented. The first is something that you are going to find in most government institutions, which is the issue of the budget, since, in 2017 and 2018 we did not even have a budget approved from the Ministry of Finance, so, the defunct High Electoral Court financed us during those two years; it was until 2019 that we were allocated a budget. The second is the electoral reforms, since, as a Unit we have presented to the National Congress reforms on the issue of sanctions, which are not proportional according to the law, as well as, the fine that is not entirely clear for some scenarios, such as when it should be applied to candidates. And the third is more training on the issue of electoral financing that, although it is received from some sectors, it does not reach the technical-legal teams. With this, unity would be stronger because we would have more legal power"*. Finally, and in view of the upcoming general elections in November 2021, the Secretary mentioned that *"we hope that the budget arrives on time to be able to perform better because we know that as a Unit we are in debt especially with the civil society, and in that way we can identify the findings and socialize them with you to settle the debt"*<sup>77</sup>.

Article 35 of the LFTFPPC law states that political parties must publish information through transparency portals, and this is how civil society and the media can exercise some oversight. With regard to the costs of administering an election, it is known how much is the total that was used for the organization of the election, but not in detail how the funds were executed.

When the rendering of accounts on the 2017 general elections was conducted, the UPL was empowered to summon the regulated entities in order to determine whether the information

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<sup>74</sup> CESPAD (2021), Analysis. In 2021 Primary Elections: Only 33 percent of Candidates Met Banking Requirement, <http://cespad.org.hn/2021/04/29/analisis-en-elecciones-primarias-2021-solo-el-33-por-ciento-de-los-candidatos-cumplio-requisito-de-bancarizacion/>, date accessed: October 2021.

<sup>75</sup> See Clean Policy Unit website <https://utpoliticalimpia.hn/>.

<sup>76</sup> See public information request at <https://drive.google.com/file/d/1dJSUQ5qgm06mH0ab8lyN5xuX2bxGkWB0/view?usp=sharing>.

<sup>77</sup> Interview conducted in person with Emilio Hernández Hércules, July 6, 2021. See [https://drive.google.com/file/d/1r2H1DiN5VH3\\_QSWA6k1ITp7y7Y6WAJaS/view?usp=sharing](https://drive.google.com/file/d/1r2H1DiN5VH3_QSWA6k1ITp7y7Y6WAJaS/view?usp=sharing).



submitted was truthful. The UPL proceeded to summon 365 obliged subjects of which 232 did not attend the summons, which, according to the LFTFPPC determines that sanctions can be applied by the UPL to those obliged subjects that do not attend the summons, upon verification that the information they provided is not truthful. To date, it is not known whether any actions were taken against the 232 regulated entities that ignored the summons issued by the UPL<sup>78</sup>.

In addition, the UPL submitted to the MP four financial reports corresponding to the regulated entities that were elected in the general elections of 2017 and that are suspected of having links with drug trafficking<sup>79</sup>, but it has not yet received a response from them.

Finally, the work of the UPL is hindered by actions emanating from the National Congress (CN), since recently in October 2021 it proceeded to grant an extension period for all candidates who had not submitted their financial reports of liquidation of the expenditure they had in the past primary elections held in March 2021<sup>80</sup>. This means that the UPL will not be able to impose sanctions or fines on such non-compliant persons, which further weakens the functions of the UPL and encourages non-compliance with the law by candidates, many of whom are members of the CN and seek to be re-elected, i.e. they participate as a judge and a party.

### **Good Practices**

- The implementation of a law that regulates the financing of political party and candidate campaigns. In this way, greater control can be generated over the origin of the funds received by those subject to the legislation.
- Implementation of a Special Protocol for the Protection of Whistleblowers and Sanctions for Reckless Complaints, based on Article 64 of the LFTFPPC. The UFTF, the National Human Rights Commissioner (CONADEH), the Electoral Offences Prosecutor's Office, the Caritas Foundation and the ASJ worked together to deal with 12 complaints in accordance with the legal mechanisms<sup>81</sup>.

### **Deficiencies**

- The politicization of governmental bodies such as the UPL, where they seek to obtain representation to watch over the political parties. The same happens in the CNE<sup>82</sup> and the

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<sup>78</sup> Unit for Financing, Transparency and Oversight of Political Parties and Candidates (September 2020). Fiscalización a las Elecciones Generales 2017, Informe de Cierre. Accessed June 16, 2021 at <http://utpoliticalimpia.hn/wp-content/uploads/2020/10/INFORME-DE-CIERRE-FISCALIZACION-ELECCIONES-2017.pdf>, date of access: October, 2021.

<sup>79</sup> Unit for Financing, Transparency and Oversight of Political Parties and Candidates (September 2018). Progress and Challenges, Management Report 2017-2018. P. 26. Accessed June 14, 2021. Available at <http://utpoliticalimpia.hn/wp-content/uploads/2018/09/Informe-anual-2017-2018-web-UFTF.pdf>, date of access: October, 2021.

<sup>80</sup> Tu Nota (2021), This stratospheric figure would stop ex-candidates and movements in Honduras from paying after controversial exoneration, <https://www.tunota.com/honduras-hoy/politica/exoneracion-multa-precandidatos-movimientos-internos-elecciones-internas-2021>, date accessed: October, 2021.

<sup>81</sup> Progress and Challenges, Management Report 2017-2018. P. 16. Accessed June 14, 2021. Available at <http://utpoliticalimpia.hn/wp-content/uploads/2018/09/Informe-anual-2017-2018-web-UFTF.pdf>, Accessed October, 2021.

<sup>82</sup> El Heraldo (2020), Sigue la distribución de cargos en el seno del Consejo Electoral, <https://www.elheraldo.hn/pais/1426186-466/sigue-la-distribuci%C3%B3n-de-cargos-en-el-seno-del-consejo-electoral>, date accessed: August, 2021.

Electoral Justice Tribunal (TJE)<sup>83</sup>, where the highest positions are held by the three majority political forces in Honduras.

- There are shortcomings on the part of the UPL with respect to the applicability of sanctions, since this is a unit seen from a dissuasive perspective and not as a sanctioning one. In this sense, its main shortcoming is the inability to force the legally obliged subjects to comply with the law. Similarly, there are no results on the complaints filed with the bodies prosecuting electoral crimes for the events of November 2017.

#### **4.1.5 Articles 7, 8 and 12 – Codes of conduct, conflicts of interest and asset declarations**

The status of implementation of the law in Honduras for this article is considered to be partially implemented, but implementation in practice is poor.

- Codes of Conduct

Honduras has a Code of Ethical Conduct for Public Servants<sup>84</sup>. This legal text establishes that its applicability is mandatory for all public servants without exception. It also expressly states that this Code shall be applicable to the Executive, Legislative and Judicial Branches, as well as their agencies. It also includes all other public administration bodies such as the IAIP, prosecutors' offices, CONADEH, PGR, CNE, TSC, among others. It also establishes what conduct is considered unethical, the procedure for sanctions (but these are not applied due to situations that will be discussed later in the report), the regimes for gifts and other benefits and a small section on conflict of interest.

However, the Judicial Branch has a Judicial Career Law<sup>85</sup> that sets out the penalties to be applied to members of the judiciary who fail to comply with any of its provisions. Finally, the Francisco Salomón Jiménez Judicial Academy is responsible for monitoring and training judicial officials on ethics issues.

- Conflicts of Interest

Article 19 defines it as "*A conflict of interest arises for a public servant when he or she has a private interest of any kind, or assumes that of a third natural or legal person, and that interest has the possibility of becoming or is potentially adverse to the interests of the State.*" It also states the incompatibilities that public servants have to avoid a possible conflict of interest.

It is important to mention that Article 22 of the aforementioned code provides that "*In situations of possible or manifest conflict of private interests of the public servant, the latter shall obligatorily abide by the provisions established by the Superior Court of Accounts to reduce or eliminate the conflict of interest*". However, a few months ago the ASJ made a request for public information asking about the declaration of conflicts of interest and the TSC's Public Information

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<sup>83</sup> Criterio HN (2020), No law and no money for the Electoral Justice Tribunal, Honduras at the mercy of a new fraud, <https://criterio.hn/sin-ley-y-sin-dinero-para-el-tribunal-de-justicia-electoral-honduras-a-merced-de-un-nuevo-fraude/>, date accessed: August, 2021.

<sup>84</sup> See the Code of Ethics of the Public Servant at [https://www.tsc.gob.hn/web/leyes/CODIGO\\_DE\\_CONDUCTA\\_ETICA\\_DEL\\_SERVIDOR\\_PUBLICO.pdf](https://www.tsc.gob.hn/web/leyes/CODIGO_DE_CONDUCTA_ETICA_DEL_SERVIDOR_PUBLICO.pdf).

<sup>85</sup> See the Judicial Career Law at <https://www.tsc.gob.hn/web/leyes/Ley%20de%20la%20Carrera%20Judicial.pdf>.



Officer responded by stating that declarations of interest are not obligatory and that it is up to the discretion of the institutions whether or not to request them<sup>86</sup>.

One example of existing conflicts of interest is what happened in 2020 when a TSC magistrate stated that there was no conflict of interest in the court's investigation of a person under investigation for acts of corruption (now prosecuted), despite the fact that the sister of the person under investigation is married to the magistrate's son<sup>87</sup>.

- Assets declarations

Articles 56 to 61 of the Organic Law of the TSC<sup>88</sup> establishes the obligation of those who must submit an asset declaration, among which we find all those persons vested with a public function, who hold or have held a position of popular election in any of the powers of the State or where financial resources are received, as well as those who do so ad-honorem, but in a decision-making position. Similarly, the deadlines are around 45 days from when they enter, re-enter, change, are promoted and leave their position and it is presented once a year. The law also establishes exemptions, death, communications and authorizations at the time of submitting the declaration of assets or sworn statement of income, assets and liabilities as it is called in Honduras according to its law.

It should be noted that this is a sole power of the TSC and that, unless the TSC delegates this power, sworn statements may be filed only with the TSC.

In addition, this law of the TSC has a section on anti-corruption measures in Articles 68 to 72, but specifically in Article 71 it establishes citizen collaboration, which will be between the CNA and the TSC with the aim that there will be collaboration aimed at oversight, speed and support between the civil society body and the court.

Finally, the ASJ made a request for public information to the TSC on the number of sworn statements submitted in the last three years, as well as the number of sanctions imposed by the court in the same period of time. In this regard, the response was that they would provide the information they had, since it was not entirely up to date due to the failure of the institutions to submit the lists to the TSC<sup>89</sup>.

**Table 5: Number of sworn statements filed and sanctions imposed by the court in the last three years**

Year	Declarations submitted	Sanctions imposed <sup>90</sup>
2018	73,241	1,340
2019	73,079	1,271
2020	44,829	361
<b>Total</b>	<b>191,149</b>	<b>2,972</b>

<sup>86</sup> See Public Information Request at: [https://drive.google.com/file/d/16cocie-1S6DE7vyZnKsShXFFsHRZb\\_Wl/view?usp=sharing](https://drive.google.com/file/d/16cocie-1S6DE7vyZnKsShXFFsHRZb_Wl/view?usp=sharing).

<sup>87</sup> Diario Tiempo (2020), TSC President: No conflict of interest in Marco Bogran investigation, <https://tiempo.hn/presidente-tsc-no-existe-conflicto-intereses-investigacion-bogran/>, date accessed: August, 2021.

<sup>88</sup> Idem.

<sup>89</sup> See Public Information Request at: <https://drive.google.com/file/d/1GZu18tslucPKbgHoYO6L5M-FjVmCRCQ6/view?usp=sharing>.

<sup>90</sup> Sanctions imposed in the cities of Tegucigalpa, San Pedro Sula, La Ceiba and Santa Rosa de Copán.

It is evident that there are shortcomings in the practical applicability of conflict of interest declarations, since they do not comply with the requirements of the UNCAC, in the sense that in Honduras it is not even mandatory to submit them, and therefore no penalties are applied for failure to do so.

In the case of asset declarations or sworn statements, these are not publicly accessible to the citizens, so it is impossible to exercise control over them. In addition, the law establishes in a generic way what public officials must report and is not at all specific as requested in the practical guide of the UNCAC. Finally, the information handled by the TSC is not updated and therefore does not provide current information about such statements when the right to know statistical information emanating from that activity is made use of.

### **Good Practices**

- The normativization through Codes and laws for the creation of codes of conduct, conflict of interest and asset declarations for effective control of public servants and in line with the parameters established by the UNCAC.

### **Deficiencies**

- Despite the regulation in the Code of Ethical Conduct of Public Servants regarding conflict of interest, in practice this is not in line with what is established in the code, since the TSC, as the entity in charge of regulation, states that there is no obligation and that it is at the discretion of the institutions. This is very worrying because there is no real control in this regard and in the absence of it, many cases could be arising where the conflict of interest is latent, but in the absence of control it is happening without any problem for those involved.
- There is a lack of transparency with respect to the applicability of the Code of Conduct, since it is not known for certain how many sanctions have been imposed, as well as the causes of these sanctions against public servants. Thus, there is no effective social control in this type of situation, and the same is true with respect to the asset declarations and the applicability of sanctions for non-compliance, for which there is no exact figure, since the data is not up to date.

#### **4.1.6 Article 9.1 – Public procurement**

In the present article the state of implementation of the law is largely enforced and the state of implementation and enforcement in practice is low.

In 2001, the State Contracting Law (LCE)<sup>91</sup> was created with the purpose of regulating all contractual activity at the public sector level, making its actions more efficient and directing clear and competitive rules for anyone who wants to contract with the State of Honduras, either through local or international calls for bids.

In this regard, Article 6 of the aforementioned law establishes publicity and transparency in which "*bidders are guaranteed access to information related to the administrative contracting activity, as well as transparency in all procedures and the possibility for interested parties to receive timely notice of the initiation of a procedure or the need to register in the appropriate registry,*" making the prohibitions of the case as established by the LTAIP in the part referring to confidential or reserved information.

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<sup>91</sup> See the State Contracting Law.

Likewise, Article 23 establishes, among the requirements prior to the start of the procedure, the creation of specifications that will form part of the administrative file, so that all participants in the process have them and are aware of the requirements and specifications needed to be able to bid and subsequently, if selected, to contract with the State. Similarly, Article 38 begins the section on the contracting procedure according to the modality to be used, whether public bidding, private bidding, public tender, private tender and direct contracting. Based on the aforementioned, each of the stages that must be followed in the procedure at the time of contracting are explained, from the call for tenders to the awarding of the contract.

In the same vein, the law has a chapter on appeal mechanisms, specifically in Article 142 on the clarifications and appeals that may be used when they disagree with any of the decisions or to expand on the information. In addition, in each process there will be an evaluation commission, which according to Article 33 of the law, "*No one may participate in this Commission who has a conflict of interest that leads to the presumption that their evaluation will not be objective and impartial; whoever finds themselves in this situation may be challenged by any interested party*". The purpose of this is to ensure that the award is as transparent as possible and that there is no interference in the possible awarding of a contract.

In this regard, there is the Regulatory Office for State Property and Procurement (ONCAE)<sup>92</sup> which, according to Article 30 of the law, establishes "*The Regulatory Office for Contracting and Procurement is created as a technical and consultative body of the State that will be responsible for issuing general rules and instructions to develop or improve administrative contracting systems in their operational, technical and economic aspects, as well as providing advice and coordinating activities to guide and systematize the procurement processes of the public sector*". An example of what ONCAE does is the creation of a Public Procurement Manual<sup>93</sup>. In addition, it issues legal opinions and circulars on the subject of contracting and registration of suppliers. Also, the *honducmpras 2.0*<sup>94</sup> portal is a mechanism where ONCAE registers suppliers so that they can place its bid to the State through the bidding or contracting modality for each case, according to the item that is requested. Unfortunately, on June 9, 2021, the *honducmpras 2.0* portal was disabled because the Secretariat for General Coordination of Government ordered its use to be suspended, arguing that there were bugs in the system that would be corrected, but as of the date of writing this report it has not been enabled, which represents a setback in the area of public procurement, since this mechanism was an important tool for probity, integrity, and transparency in public procurement.<sup>95</sup>

Similarly, there is an Information and Monitoring System of Works and Supervision Contracts (SISOCS), which is a web portal<sup>96</sup> where you can find information in open data on 2061 published projects of 9 public entities involved, in the value of 27,211 million lempiras<sup>97</sup>. In addition, there is a SISOCS application where you can verify the projects of the Public-Private Partnerships.

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<sup>92</sup> See ONCAE website at <https://www.oncae.gob.hn/>.

<sup>93</sup> ONCAE (2015), Manual on Public Procurement, [http://h1.honducmpras.gob.hn/Procesos/MANUAL\\_CONTRATACION\\_ONCAE\\_GPR\\_Julio2015.pdf](http://h1.honducmpras.gob.hn/Procesos/MANUAL_CONTRATACION_ONCAE_GPR_Julio2015.pdf), date accessed: August, 2021.

<sup>94</sup> See Honducmpras website which is currently not operational <https://www.honducmpras.gob.hn/>.

<sup>95</sup> Information obtained during a meeting with the Minister of Transparency, November 2021.

<sup>96</sup> See the web portal of the Information and Monitoring System for Works and Supervision Contracts <https://sisocs.org/>.

<sup>97</sup> Equivalent to USD 1,126,636.79 million.

However, contracting processes are sometimes disrespected, as ASJ denounced in one of its reports<sup>98</sup> regarding one of the biggest corruption scandals in recent years in Honduras, called the purchase of Mobile Hospitals. In this report, one can corroborate the total non-compliance by Inversiones Estratégicas de Honduras (INVEST-H) at the time of awarding, granting public funds and not conducting feasibility studies, much less requesting a guarantee of default to the bidder, which caused a series of acts of corruption that ended the lives of many people and caused the expenditure of hundreds of millions of lempiras in the time of the pandemic.

With respect to access to information, the information is not published ex officio in all cases, since not all contracting areas have a web portal where projects can be verified as in the case of SISOCS, so it has to make use of access to reactive public information. Moreover, the existence of a list of banned companies is not public, but the institutions manage their own list of companies that have breached contracts in accompaniment of ONCAE without publishing it, but used for their own consumption.<sup>99</sup>

Finally, the President of the Court of Honor of the Honduran Bar Association and member of the Anti-Corruption Coalition expressed that, "*the weakness in the issue of public procurement is not only in the regulations, that is, they do need adjustments, but what is more important is to ensure that the necessary compliance is generated so as not to continue with bad practices*". In addition, she considers that "*the main problem with ONCAE lies in the lack of budget that does not allow it to operate in an adequate manner, and this is where I return to the part of political will, if you really wanted to combat these bad practices you would have to provide ONCAE with financial and technical capacity, not diminish it little by little*". Finally, she mentioned that "*I am very concerned about the issue of public trusts, so that a regulation should be created to regulate them in detail, since this is one of the corrupt practices that have been used to generate an evasion of the Law of State Contracting*"<sup>100</sup>.

Two exemplary cases of corruption in public procurement are cases prosecuted by the Support Mission Against Corruption and Impunity (MACCIH) and the Special Prosecutor Unit Against Impunity for Corruption (UFECIC), which were called the case of Patuca III Collusion and Corruption<sup>101</sup> and Narco-politics. In the first one, overvaluations were discovered in the purchase and sale of supplies that had been granted through fraudulent bids between officials that integrated the National Electric Energy Company through the Special Unit of Renewable Energy Projects and natural persons that had obtained the contracts through the creation of companies belonging to the same group. In the Narco-politics case<sup>102</sup>, the country's political class was involved with confirmed figures of drug trafficking, through the granting of at least 21

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<sup>98</sup> Partnership for a Fairer Society, (June 2020), Social Audit Report - Stage 1, Mobile Hospital and Medical Waste Treatment Plant Procurement Process. P. 11. Available at: <http://biblioteca.asjhonduras.com/wp-content/uploads/2020/10/Informe-completo-Hospitales-Moviles.pdf>, date accessed: 22 June 2021.

<sup>99</sup> Interview with Fátima Mena, July 2021.

<sup>100</sup> Interview with Fátima Mena, July 2021.

<sup>101</sup> Support Mission Against Corruption and Impunity in Honduras, (2019), Team UFECIC-MP / MACCIH-OAS presents case "Patuca III Collusion and corruption", <https://www.oas.org/es/sap/dsdme/maccih/new/docs/MCH-006.Equipo-MACCIHOEA-UFECICMP-presenta-casoPatuca-III-Colusion-y-corrupcion.pdf?sCodigo=MCH-006/19>, date accessed: November, 2021.

<sup>102</sup> See MACCIH (2019), Equipo UFECIC-MP/MACCIH-OEA presenta duodécimo caso de investigación penal integrada, denominado: "Narcopolítica", [https://www.oas.org/es/centro\\_noticias/comunicado\\_prensa.asp?sCodigo=C-036/19](https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-036/19), date accessed: November, 2021.

contracts to favor a company that belonged to the criminal group and that was benefited by the political decisions of the 2010-2014 period. These allegations were presented by the CNA to the MP and the MACCIH-UFECIC subsequently investigated the case more thoroughly, in order to prosecute the cases. It is worth mentioning that none of the cases promoted by the Mission came to an end and that since its departure in January 2020, the judicial processes have stagnated.

### Good Practices

- Use of web portals and applications such as SISOCS that provide access to hundreds of projects and therefore their procurement processes in open data. Existence of manuals, circulars, legal opinions, laws and regulations that serve as a guide when optimizing the public procurement process in the country.

### Deficiencies

- One of the main problems faced in Honduras in the public procurement sector is the payment of bribes or kickbacks, the splitting of contracts to avoid reaching a bidding process and that purchases are made directly, the overvaluation of the inputs that are sold and the bad appointments in the different secretariats. A clear example that is already public knowledge is what happens in the Ministry of Health<sup>103</sup> in this type of corruption and that has worsened much more in the time of the Covid-19 pandemic.<sup>104</sup>
- There is a lack of implementation of the processes established for public procurement.
- The deactivation of the *honducopras 2.0* platform is worrying, as it is a tool that encourages verification through open data and open procurement in the various processes carried out in the country.
- Procurement processes are not strong and transparent, which is why reforms to the State Contracting Law by the National Congress are crucially needed.

#### 4.1.7 Article 10 and 13.1 – Access to information and participation of society

In the present article the state of implementation of the law is largely enforced and the state of implementation and enforcement in practice is low.

One of the main achievements that civil society has had in Honduras, was through the pressure exerted in 2006, when the creation of the Law on Transparency and Access to Public Information (LTAIP)<sup>105</sup> was achieved. This law, as established in Article 1 regarding its nature and purpose, states that "*This law is of public order and social interest. Its purpose is the development and implementation of the national transparency policy, as well as the exercise of the right of every person to access public information for the strengthening of the rule of law and consolidation of democracy through citizen participation*". In this sense, the use of the LTAIP for civil society organizations such as the ASJ, the CNA, the Social Forum on Foreign Debt and Development of Honduras (FOSDEH), among others, represents a very important tool when preparing

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<sup>103</sup> Expediente Público (2020), Overpriced purchases, split contracts and bribes are part of the corruption coma in Honduran hospitals, <https://expedientepublico.org/compras-sobrevaloradas-contratos-fraccionados-y-coimas-son-parte-del-coma-por-la-corrupcion-en-los-hospitales-hondurenos/>, date accessed: August, 2021.

<sup>104</sup> CESPAD (2020), Analysis: the corruption pandemic, who pays the costs, <https://cespad.org.hn/2020/05/29/analisis-la-pandemia-de-la-corrupcion-quienes-pagan-los-costos/>, last accessed August, 2021.

<sup>105</sup> See the Law on Transparency and Access to Public Information.

investigations, studies or reports that have served to denounce acts of corruption in different sectors of the public administration. The law also facilitates access to information for journalists under article 22.

Article 3, paragraph 4 establishes the institutions bound by the law. In addition, Article 8 indicates that there is an institute (IAIP) that is responsible for monitoring compliance and implementation of the LTAIP through the resolution of appeals for review filed when information is denied, not answered, or incompletely delivered by the obligated institutions to citizens who wish to access and make use of their right to information. Similarly, as a general rule, the information provided must be free of charge according to Article 15 of the LTAIP, but the institutions may charge a fee for the reproduction of the information to be provided.

It is important to mention that the IAIP has created a web platform called the Electronic Information System of Honduras (SIELHO)<sup>106</sup> where most of the obligated institutions have been included. The purpose of this is to streamline the process of information requests through pre-established formats. In addition, it serves the purpose of being able to account for the deadlines more effectively and to have the possibility of submitting the review appeals under the same web tool when appropriate, as established by the same LTAIP and as indicated in its regulations in force since 2008<sup>107</sup>. In that sense, the transparency portals<sup>108</sup> have also been enabled where the obligated institutions must publish the minimum information established in Article 13 of the LTAIP and most of them comply with that provision, but there are still institutions reluctant to commit to transparency.

The creation of the law is largely due to the organizations of the civil society and they have been the ones that have made the best use of it through public access to information from which reports have emerged from the organizations, investigations such as those mentioned earlier in this report and which are carried out by ASJ, CNA and the FOSDEH. However, much remains to be improved so that institutions that do not comply with the law are effectively forced to do so, in addition to improving publicity policies around these regulations. To give an example, in January 2021, the ASJ made requests for information to the National Congress of the Republic of Honduras and proceeded to exhaust all channels established by the LTAIP, but to date November 2021, no response has been received to any of these requests for information. Therefore, there is a serious lack of an effective sanction that would make the obligated institutions commit to deliver the information.

There are parallel regulations to the LTAIP and its regulations, such as the legislation known as the Secrecy Law<sup>109</sup>, which has hindered the work of the IAIP, since it classifies information that before its entry into force was the exclusive competence of the institution. In contrast, improvement plans and instruments have been signed that promote transparency, but their practical applicability is not the best and, therefore, the results do not improve the conditions

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<sup>106</sup> See the Electronic Information System of Honduras (SIELHO) platform <https://sielho.iaip.gob.hn/inicio/>.

<sup>107</sup> See the regulations of the Law on Transparency and Access to Public Information at <https://www.tsc.gob.hn/web/leyes/Reglamento%20de%20la%20Ley%20de%20Transparencia%20y%20Acceso%20a%20la%20Informacion%20Publica.pdf>.

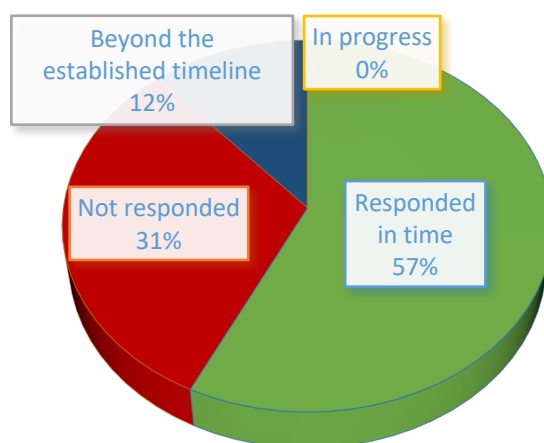
<sup>108</sup> See the Single Transparency Portal platform at <https://portalunico.iaip.gob.hn/>.

<sup>109</sup> See the Law for the Classification of Public Documents Related to National Security and Defense, <https://www.tsc.gob.hn/web/leyes/Ley%20para%20la%20Clasificaci%C3%B3n%20de%20Documentos%20P%C3%ABlicos%20relacionados%20con%20la%20Seguridad%20y%20Defensa%20Nacional.pdf>.

of access to information in the country from the institutional side and for the advocacy approach of civil society.

In that sense, the ASJ proceeded to make a request for public information to IAIP, in order to establish the percentage of information requests that have been answered, not answered and partially delivered in the last 3 years addressed to the obligated institutions. We obtained the following response: 57.2% (9464) of institutions answered on time, 31.4% (5186) did not answer the requests, and 11.4% (1891) responded later than the timeframe indicated by law<sup>110</sup>. The appellant has the right to file an appeal for review and the IAIP subsequently resolves it forcing the institution if the appeal is appropriate:

### INFORMATION REQUESTS IN THE LAST 3 YEARS



Source: Own elaboration

Another important aspect, also dating from 2006, was the creation of the Law on Citizen Participation<sup>111</sup>, Article 1 of which states that *"The provisions of this law are intended to promote, regulate and establish the bodies and mechanisms that allow the organization and functioning of citizen participation and its relationship with the organs of the State, in accordance with the Constitution of the Republic and its laws"*. Article 3 establishes the mechanisms for citizen participation, such as plebiscites, referendums, open municipal councils, citizen initiatives and others established by law in order to provide more openness to citizens at the time of citizen participation and especially, for the use of organizations of civil society who are the ones who have some degree of influence to formulate and promote public policy or accomplish achievements such as the approval of the LTAIP.

Finally, the IAIP Commissioner was approached through an interview, where the main points mentioned by her were the following<sup>112</sup>:

- The IAIP has managed to introduce 298 of the municipalities in the SIELHO platform, but there are still obligated institutions that have not been introduced, for example,

<sup>110</sup> See Public Information Request at [https://drive.google.com/file/d/1AQ5mL6fRe8PhU9bgZXC0fJQx9gT\\_wk99/view?usp=sharing](https://drive.google.com/file/d/1AQ5mL6fRe8PhU9bgZXC0fJQx9gT_wk99/view?usp=sharing).

<sup>111</sup> See the Law on Citizen Participation at <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/LEY%20DE%20PARTICIPACION%20CIUDADA NA.pdf>.

<sup>112</sup> Interview with IAIP Commissioner Ivonne Ardón, July 2021. [https://drive.google.com/file/d/1jOlqgBc2xol4sUyxR4hJhJL\\_ouztJRj5/view?usp=sharing](https://drive.google.com/file/d/1jOlqgBc2xol4sUyxR4hJhJL_ouztJRj5/view?usp=sharing).



professional associations and NGOs. For these, the IAIP is working on the creation of new guidelines, since they are not the same guidelines used for public institutions in the government sector.

- A constitutional reform of the IAIP regulations is needed to avoid the duplication of functions, which has occurred with the SDT or the reduction of powers with the Secrecy Act. The constitutional reform would be aimed at shielding the actions of the IAIP just like with the TSC or MP whose functions are constitutional.
- She also mentioned that the creation of 7 IAIP branches is needed to distribute them around the country, but they need about 20 million lempiras<sup>113</sup> additional to the budget already allocated and that this budget is very low. Similarly, it must be noted that with the limited budget, the IAIP has achieved compliance with 500 institutions required with respect to the publication of information.
- Finally, she expressed the need to strengthen the technical capacity of the IAIP, by choosing staff without any political affiliation and the same for decision makers, in view of the fact that those who integrate the high positions should be people who are knowledgeable in the field and not people who come to learn the position, since much of the mandate they have is used to learn and not to take action.

### **Good Practices**

- Undoubtedly, the normativization through the LTAIP and its regulations, as well as the Law of Citizen Participation are good practices. Similarly, the creation of an institute that can exercise control and compliance with the LTAIP, as well as the transparency portals and the SIELHO platform that have come to make access to information more efficient, the first through active transparency and the second through reactive transparency.
- The periodic verification reports produced by the IAIP every 6 months to the obligated institutions where the degree of compliance of the institutions is measured and a recognition of transparency is granted to those that have published 100% of the information<sup>114</sup>.
- The government of Honduras has signed commitments that contribute to transparency such as the Declaration to Consolidate Honduras as an Open State<sup>115</sup> and the Co-Creation of the National Policy on Open Data in Honduras<sup>116</sup>.
- Similarly, the Government of Honduras signed the UNCAC Coalition's Transparency Pledge, which includes the obligation to include civil society organizations in the UNCAC implementation review process in the country.

### **Deficiencies**

- Despite the possibility of making information requests and filing review appeals, the IAIP has a particular challenge in forcing institutions to deliver information, which, although from the normative part it can do it, in practice is not the case at all.

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<sup>113</sup> Equivalent to USD 824,025.28.

<sup>114</sup> See website of the Institute for Access to Public Information containing the verification reports it carries out at <https://web.iaip.gob.hn/informes-de-verificacion/>.

<sup>115</sup> Idem.

<sup>116</sup> OAS-Honduras (2018), Co-creation of the Honduras Open Data Policy, <http://portal.oas.org/LinkClick.aspx?fileticket=iVFiaJV7C7A%3D&tabid=1814>, date accessed: September, 2021.



- There are technical and budgetary restrictions in various State control institutions and the IAIP is no exception. Therefore, it is necessary that it exercises real control over the dynamics of public information and the imposition of sanctions, so that the purpose of the LTAIP is fulfilled and the right to information can be accessed.
- Existence of institutions and laws oriented to duplicate IAIP functions as mentioned further above in this report.

#### 4.1.8 Article 12 – Private sector transparency

In the present article the status of implementation of the law is partially implemented and the status of implementation and enforcement in practice is low.

Transparency in the private sector in Honduras has recently been regulated as a crime despite the fact that Honduras signed and ratified the UNCAC in 2004 and 2005, respectively. It was regulated with the entry into force of the new Penal Code<sup>117</sup> in 2020, where it was possible to introduce a legal concept that will punish corruption in the private sector.

It should be noted that this legal concept lacks many legal aspects, but is fine as a start for its regulation, since Article 418 which deals with corruption in business between individuals states that *"Whoever by themselves or through an intermediary person, gets an undue benefit or advantage for a commercial enterprise, society, association, foundation or organization or its owners, partners, managers or employees, in exchange for favoring themselves or a third party over others and thereby seriously affects competition, shall be punished with imprisonment of two (2) to six (6) years, special disqualification from the exercise of industry or commerce for twice the term of imprisonment and a fine equal to or up to three times the value of the benefit or advantage"*. In this sense, protection is exercised from the penal perspective when the provisions of the legal concept are violated. It is important to mention that as new as the legal concept is, no charges have yet been brought in this area, let alone any kind of sentence. Finally, it is valid to mention the inclusion of the liability of the legal person in order to exercise greater control of commercial companies and their actions with respect to transparency.

Furthermore, and as a mechanism of control and transparency, there are 25 Chambers of Commerce and Industry<sup>118</sup> distributed throughout the country. These operate by registering the companies that belong to their district; in this case, the Chamber of Commerce and Industry of Tegucigalpa<sup>119</sup> has control of the entire commercial register of companies belonging to Francisco Morazán. In addition, each Chamber must have a Code of Business Ethics<sup>120</sup> that is applicable to the companies that are part of it.

Similarly, and in order to strengthen the work carried out by the Chambers of Commerce, civil society organizations such as the ASJ have created mechanisms such as the so-called Open Companies<sup>121</sup> portal through alliances with the different Chambers, with the objective of using the digital tool that allows to search for relationships between partners and companies

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<sup>117</sup> See Penal Code of Honduras.

<sup>118</sup> See Chambers of Commerce website <https://hondurasenalemania.com/new/camaras-de-comercio-de-honduras/>, last accessed September, 2021.

<sup>119</sup> See website of the Chamber of Commerce and Industry of Tegucigalpa, <https://www.ccit.hn/>, last accessed September, 2021.

<sup>120</sup> See the Code of Business Ethics at [https://413f8118-8647-4489-a6dd-9271a0274d46.filesusr.com/ugd/454fda\\_f2f4b3788d094e43a504433a6b4b67d2.pdf](https://413f8118-8647-4489-a6dd-9271a0274d46.filesusr.com/ugd/454fda_f2f4b3788d094e43a504433a6b4b67d2.pdf).

<sup>121</sup> See the Open Company portal at <https://www.empresasabiertas.com/>, last accessed September, 2021.

incorporated in Honduras, free of charge and easy to understand. This aims to provide greater transparency to companies and to identify links between partners, who may have been accused or convicted of some act of corruption. This aims to help prevent these people from continuing to operate through other companies. There is no registry of beneficial owners in Honduras.

Another initiative aimed at the private sector, but oriented towards accountability in the infrastructure sector, is the COST Honduras initiative, Transparency in Infrastructure,<sup>122</sup> where the government, civil society and private sector have equal participation and representation with voice and vote within the strategy.

Finally, in relation to the accounting part of the mercantile companies, the Code of Commerce in Articles 436 and 437 establishes what the accounting part of the mercantile companies must contain, oriented in the first place to the accounting books and their respective balance sheets that must express the veracity of the information at the moment of creating them, as well as, to have them available when they are requested by the competent authority.

### **Good Practices**

- Undoubtedly the recent creation of the legal concept of corruption in business between individuals in the Penal Code is a good practice, as it paves the way for future sanctions to subjects who fail to comply, and criminal liability of the legal person is used with respect to commercial companies so that they can be more transparent and their actions are oriented in the same direction.
- The creation of the Portal of Open Companies between the ASJ and the different Chambers of Commerce, so that the companies that are registered can be made transparent.

### **Deficiencies**

- In spite of the efforts made by the Chambers of Commerce and civil society, it is necessary for the public sector to promote transparency portals where the transparency of the mercantile companies can be verified, especially those that seek to contract with the State.
- There is no publicly accessible register of beneficial owners.
- Additionally, there are no aspects such as *compliance* that are mandatory and oriented to improve the transparent operation of private companies through incentives. This stems from the fact that some of the companies in Honduras use the compliance model, but as a mechanism to protect themselves, not as a requirement that all companies must comply with.
- There is also no control mechanism with respect to conflict of interest, so that the partners of private companies often contract with the State and are also part of the government structure. For example, a case that occurred during the pandemic involving a deputy and the sale of supplies to the State from a company of which she was a member<sup>123</sup>.

#### **4.1.9 Article 14 – Measures to prevent money laundering**

In the present article, the state of implementation of the law is largely enforced and the state of implementation and enforcement in practice is low.

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<sup>122</sup> See COST Honduras website at <https://costhonduras.hn/>, last accessed September, 2021.

<sup>123</sup> El Heraldo (2020), Diputada interrogada por venta de mascarillas, <https://www.elheraldo.hn/pais/1399058-466/diputada-waleska-zelaya-interrogada-por-venta-de-mascarillas>, date accessed: September, 2021.

The National Banking and Insurance Commission (CNBS) through the Financial Intelligence Unit (FIU), which has existed since 2002, has created the necessary guidelines for the prevention, detection and combating of money laundering. One of these elements is the creation of the Regulation of the Obligations Regime, Control Measures and Duties of Supervised Institutions in Relation to the Special Anti-Money Laundering Law (LECLA)<sup>124</sup>. This is a result of Article 19 of the Special Anti-Money Laundering Act, which stipulates that "*the National Banking and Insurance Commission (CNBS) must review, verify, control, monitor and supervise the regulated institutions with regard to the provisions of the present Act and the applicable regulatory framework*". The body responsible for prevention is therefore the CNBS in conjunction with its FIU and the Risk Management Unit of the same Commission. The CNBS is also empowered to issue regulations<sup>125</sup> for the prevention of money laundering.

The FIU, as part of the CNBS, is empowered to exchange information with the various public institutions for the purpose of preventing, deterring and punishing money laundering and financing of terrorism. The Public Prosecutor's Office is one of the bodies that most relies on the FIU when investigating money laundering cases.

There is also an Act for the Regulation of Designated Non-Financial Businesses and Professions (LRAPNFD)<sup>126</sup>, which was created to prevent them from being used directly or indirectly in money laundering. Likewise, compliance with and supervision of the Act is the responsibility of the CNBS, which not only supervises these institutions, but also state and private banks, finance companies, savings and loan associations, bonded warehouses, stock exchanges, money exchange houses, stockbrokers, other savings and loan institutions, public or private pension administrators, insurance and reinsurance companies, credit associations or any other institution engaged in activities subject to supervision.

In addition, Article 3 of this Act stipulates the activities and regulated entities required to report the origin of bank transactions of ten thousand dollars (\$10,000.00) or more, in order to prevent money laundering. It should be noted that the Article sets out 22 activities that are subject to reporting.

Furthermore, there is a Mutual Evaluation Report of the Republic of Honduras through the Financial Action Task Force of Latin America (GAFILAT) from 2016. This served the purpose of identifying the main findings with regard to money laundering<sup>127</sup>. Among the most important are:

- Honduras has a licensing regime for all segments of the financial sector, which includes suitability tests. However, there are deficiencies in the non-financial sector. There are

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<sup>124</sup> See the Regulation of the regime of obligations, control measures and duties of supervised institutions in relation to the Special Anti-Money Laundering Law at <https://pplaft.cnbs.gob.hn/wp-content/uploads/2015/05/REGLAMENTO-DEL-R%C3%89GIMEN-DEOBLIGACIONES-MEDIDAD-dE-CONTROL-Y-DEBERES-DE-LAS-INSTITUCIONES-SUPERVISADAS-EN-RELACION-A-LA-LEY-ESPECIAL-CONTRA-LA-.pdf>.

<sup>125</sup> See CNBS circulars and resolutions at <https://pplaft.cnbs.gob.hn/nacionales/normas-nacionales-circulares-yo-resoluciones/>.

<sup>126</sup> See the Law for the regulation of non-designated activities and professions at <https://pplaft.cnbs.gob.hn/wp-content/uploads/2015/05/LEY-PARA-LA-REGULACION-DE-ACTIVIDADES-Y-PROFESIONES-NO-FINANCIERAS-DESIGNADAS-APNFD-Decreto-No.-131-2014.pdf>.

<sup>127</sup> Latin American Financial Action Task Force (GAFILAT) (2016), Mutual Evaluation Report of the Republic of Honduras. P. 6, 7 and 8. Accessed June 24, 2021. Available at <https://pplaft.cnbs.gob.hn/wp-content/uploads/2019/04/GAFILAT-MER-Honduras-2016-Spanish.pdf>.

sanctions imposed on regulated entities in the financial sector, which are effective, proportionate and dissuasive. On the contrary, at the date of the on-site visit, the DNFBPs had not been supervised, nor were any sanctions applied to this sector.

- Honduras has major deficiencies in terms of knowledge of the beneficial ownership of legal persons. Information on the creation and operation of the different types of legal persons that may be constituted in Honduras is not easily accessible. The information is not unified, complete or up to date. In addition, the creation of irregular companies is allowed, as well as the transfer of nominative and bearer shares, without greater controls over the beneficial owners.
- The difference between the application and knowledge of preventive measures is notable between financial institutions and DNFBPs. Until the recent legislative amendments, the DNFBPs had no clear anti-money laundering and combating the financing of terrorism (AML/CFT) obligations, and consequently no preventive measures were applied, a situation that affects effectiveness. In the meantime, it became evident that, in general, the financial institutions understand their risks and their obligations, and the mitigation measures applied are proportional to their risks.

Similarly, the ASJ conducted an interview with the Coordinator of the CNA's Anti-Corruption Criminal Policy Observatory, who referred to the prevention of money laundering in Honduras as *"a practice that despite having different international and national instruments on the normative-legal side, is far from having an effective prevention system in place, since a more specific treatment is needed for this scourge and a rethinking of the institutional strategy. And not only prevention because, if this fails, there must be legal mechanisms to prosecute and seek redress in these bad practices that lead to activities outside the law"*.<sup>128</sup>

There is an Interagency Commission for the Prevention of Money Laundering and Financing of Terrorism (CIPLAFT)<sup>129</sup> which is the coordinating body responsible for ensuring the systems for prevention, control and combating of money laundering and financing of terrorism. This commission is composed of:

- Commissioner President of the National Banking and Insurance Commission (CNBS);
- Executive Director of the Office for the Administration of Seized Assets (OABI);
- Secretary of State in the Office of National Defence;
- Secretary of State in the Office of Finance;
- Secretary of State in the Offices of Justice, Human Rights, Governance and Decentralization;
- Secretary of State in the Office of Security;
- Executive Secretary of the National Defence and Security Council; and,
- Coordinator or Director for the Regulation of Designated Non-Financial Activities and Professions of the National Banking and Insurance Commission (CNBS).

As a commission made up of different public sector institutions, more effective cooperation between them, and the facilitation of the necessary mechanisms for the prevention of money laundering would be desirable.

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<sup>128</sup> Interview with Attorney Cesar Espinal, July 2021.

<https://drive.google.com/file/d/1PHzUO6iBRg7Ay997t8hGBK5QgM59Pa7f/view?usp=sharing>.

<sup>129</sup> See website of the Interagency Commission for the Prevention of Money Laundering and Terrorist Financing of the CNBS <https://pplaft.cnbs.gob.hn/ciplaft-comision-interinstitucional-para-la-prevencion-de-lavado-de-activos-y-financiamiento-del-terrorismo/>, date accessed: September, 2021.

For example, in 2020 the CNBS prepared a map of criminal incidence for predicate offences for money laundering<sup>130</sup> for each municipality in Honduras.

Similarly, the regulated institutions are regulated in the LECLA in Article 2, paragraphs 16 and 27, and can also be found in Legislative Decree No. 131-2014, which contains the Law for the Regulation of Non-Financial Activities and Professions, Articles 1 and 3 of which list all the institutions that will be regulated by the CNBS.

In accordance with the LECLA, the CNBS has designed and defined the principles of due diligence (which has four stages: identification, evaluation, control and monitoring) to be applied to customers and users. They have also defined suspicious transaction reports within the Honduran financial system through a report form submitted to the FIU. Additionally, according to Article 27 of the LECLA, there is a customer and user profile.

Similarly, the LECLA contains within its regulation the legal concept of Politically Exposed Persons (PEP) which are defined as follows: *“The regulated entity must establish policies of Customer Due Diligence (CDD) that allow to identify as a type of customer the Politically Exposed Persons (PEP), national and foreign, who have access to public resources or power of decision and influence; also, it must be determined if the transactional behavior reasonably corresponds with their functions, level and responsibility and if they are related to the declared activity and income and their customer profile”*. In that sense, on October 7, 2021 the National Congress met and reformed the LECLA where it included civil society organizations (CSOs) as PEPs<sup>131</sup>; an unprecedented move, which goes against the rules of the Financial Action Task Force (FATF) that in its recommendation number 12 establishes how PEPs should be addressed, as well as, countries in the region such as Argentina, Mexico or Colombia, which do not mention CSOs as subjects to be considered as such. This reform has already been approved and published.

With regard to shell banks, Article 2 (26) of the LCLA prohibits shell banks, which are *“institutions that have no physical presence and no physical address, and normally have only an electronic address, and which operate without proper authorization to carry out banking activities and are not subject to supervision”*. In this regard, Honduran banks are prohibited from having any type of relationship with these shell banks as defined in Honduran legislation.

Article 8 of the LCLA stipulates that records must be kept for at least five years from the end of the period or when they exceed the threshold established by the Central Bank of Honduras.

The ASJ also interviewed the Director of the Anti-Drug Trafficking Office because of her great experience in combating money laundering, who stated that she is the technical liaison with the CIPLAFT and that for the FIU to be able to work in a good way the financial system must function by detecting atypical transactions and reporting them to the FIU. Moreover, she noted that there can not be a fight against money laundering if it does not follow a line of registration, control, reporting and adherence to international standards such as the FATF.

Another important aspect mentioned by the Director was that there are tax databases, vehicle records, but often they are not updated due to a lack of staff. However, the FIU in 2020 enabled

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<sup>130</sup> See crime incidence mapping carried out by the CNBS <https://pplaft.cnbs.gob.hn/wp-content/uploads/2020/09/Incidencia-Delictiva.pdf>, date accessed: September, 2021.

<sup>131</sup> La Gaceta, see page 15 of Decree 93-2021, of 1 November 2021. [https://www.tsc.gob.hn/web/leyes/Decreto\\_93-2021.pdf](https://www.tsc.gob.hn/web/leyes/Decreto_93-2021.pdf).

a platform where requests for information are made when investigating a possible crime of money laundering<sup>132</sup>.

Finally, with regard to FATF recommendations numbers 1, 10, 13,20-23, 26-29 and 35 in June 2015, the Latin American Financial Action Task Force (GAFILAT) conducted the latest Mutual Evaluation process on the FATF 40 Recommendations and determined<sup>133</sup>:

**Table 6: Results of the 2015 GAFILAT evaluation**

Number	Recommendation	Compliance
1	Risk assessment and application of a risk-based approach	Partially complied with
10	Customer Due Diligence	Complied with
13	Correspondent banking	Complied with
20	Suspicious Transaction Reporting	Complied with
21	Disclosure (tipping-off) and confidentiality	Complied with
22	DNFBPs: Customer Due Diligence	Mostly complied with
23	DNFBPs: Other measures	Complied with
26	Regulation and supervision of financial institutions	Mostly complied with
27	Powers of supervisors	Complied with
28	Regulation and supervision of DNFBPs	Partially complied with
29	Financial intelligence units	Complied with
35	Sanctions	Partially complied with

#### Good Practices

- The creation of legal mechanisms to prevent money laundering. In the event that prevention is not sufficient, other types of sanction-oriented actions must be implemented.
- Creation of commissions to supervise institutions as a money laundering prevention measure, such as the Inter-institutional Commission for the Prevention of Money Laundering and Financing of Terrorism.
- Honduras is largely compliant with FATF recommendations.
- Creation of the FIU platform through which institutions may request information, which has strengthened coordinated work among peers.

#### Deficiencies

- Despite the efforts made in prevention, there is still much room for improvement, since the number of money laundering cases prosecuted is high, as can be seen in the statistics at the end of the report. However, the control carried out by the CNBS and the Interagency Commission should be more effective in identifying possible cases.
- There is a lack of communication between the institutions responsible for preventing and combating money laundering.
- Inclusion of CSOs as PEPs, so that the government sector through the CNBS can through due diligence intervene on the actions of CSOs that have been involved in the investigation of corruption cases in recent years and thus leave them inoperative while they are being investigated, since a blockade is applied to the funds with which they operate.

<sup>132</sup> Interview with Attorney Soraya Calix, November 2021.

<sup>133</sup> See Public Information Request, [https://drive.google.com/file/d/1-OcMXJb\\_cFmF1AULBzcpCuS45tWBnUMw/view?usp=sharing](https://drive.google.com/file/d/1-OcMXJb_cFmF1AULBzcpCuS45tWBnUMw/view?usp=sharing).



## 4.2 Chapter V

### 4.2.1 Article 52 and 58 – Anti-money laundering

In the present article the state of implementation of the law is largely enforced and the state of implementation and enforcement in practice is low.

The Criminal Code in force in Honduras penalises money laundering in Article 439<sup>134</sup>, which stipulates that "*Money laundering is committed by anyone who by themselves or through an intermediary acquires, invests, possesses, uses, transforms, safeguards, administers, has custody of, transports, transfers, conserves, conceals, hides, transfers, keeps, gives the appearance of legality or prevents the determination of the origin or true nature, as well as the location, destination, movement or ownership of assets that are the direct or indirect proceeds of any serious crime and in any case of the crimes of illicit drug trafficking, trafficking in persons, illegal trafficking in persons or firearms, counterfeiting currency, trafficking in human organs, theft or robbery of motor vehicles, theft from financial institutions, swindling or financial fraud, kidnapping, threats or blackmail, extortion, financing of terrorism, terrorism, embezzlement of public funds, bribery, influence peddling, crimes against intellectual and industrial property, cultural heritage, sexual exploitation and child pornography, urban planning, exploitation of natural and environmental resources, smuggling or illicit enrichment, committed by them or by a third party, or which have no economic or lawful cause or justification for their origin*".

In addition, there are three forms of punishment for conduct constituting money laundering, which are as follows:

- When the value of the laundered assets does not exceed two million Lempiras (2,000,000)<sup>135</sup>, prison sentences of five to eight years and a fine equal to fifty percent (50%) of said value must be imposed;
- When the value of the assets laundered is greater than two million Lempiras (2,000,000) and does not exceed five million Lempiras (5,000,000)<sup>136</sup>, imprisonment of eight (8) to ten (10) years and a fine equal to one hundred percent (100%) of said value shall be imposed; and
- When the value of the assets laundered exceeds five million Lempiras (5,000,000), imprisonment of ten (10) to thirteen (13) years and a fine equal to one hundred and fifty percent (150%) of said value must be imposed.

As can be seen, in Honduras money laundering is punished according to the amount of assets that have been laundered. Similarly, the penalty of imprisonment is predisposed to the same case and finally accessory penalties are established which are constitutive of fines, always oriented to the amount of money laundering carried out.

Furthermore, there is a Special Anti-Money Laundering Act,<sup>137</sup> Article 1 of which states that "*The purpose of this Act is to establish measures and actions relating to the system for prevention, control and combating of money laundering and financing of terrorism...*". It should be pointed out that in this special law Articles 35 to 43, which set out the mechanism for penalising money

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<sup>134</sup> See article 439 of the Honduran Criminal Code.

<sup>135</sup> Equivalent to USD 82,392.34.

<sup>136</sup> Equivalent to USD 205,980.86.

<sup>137</sup> See the Special Anti-Money Laundering Law at <https://pplaft.cnbs.gob.hn/wp-content/uploads/2015/05/LEY-ESPECIAL-CONTRA-EL-LAVADO-DE-ACTIVOS-Decreto-No.-144-2014-1.pdf>.

laundering, were repealed, since they became part of the Criminal Code in force in Honduras in 2020.

This law also contains elements such as the creation of the Inter-Institutional Commission for the Prevention of Money Laundering and Financing of Terrorism (CIPLAFT), a chapter on prevention based on risk-based due diligence that can be found in Articles 6 to 18. Finally, it establishes sections on the investigation, securing and management of the proceeds of money laundering.

For example, a case of a group of people who laundered money in amounts exceeding 2,000 million Lempiras<sup>138</sup> and who were prosecuted by the Public Prosecutor's Office in a notorious case of money laundering because of the amount of money involved and the links that these people had<sup>139</sup>.

### **Good Practices**

- Creation of anti-money laundering legislation, as well as the creation of the Interagency Commission for the Prevention of Money Laundering and Financing of Terrorism.
- Inclusion in the Criminal Code of the penalty for legal persons responsible for money laundering, as laid down in Article 444 of the Code.

### **Deficiencies**

- There is no public register in which the public can verify the number of reports, investigations, cases prosecuted and convictions obtained for money laundering. This would be useful in order to obtain a statistical record in which the degree of progress or regression that has taken place with respect to this crime can be observed.

## **4.2.2 Articles 53, 54 and 56 – Measures for direct recovery of property and confiscation tools**

In the present article the status of implementation of the law is partially implemented and the status of implementation and enforcement in practice is low.

The Honduran Criminal Code contains a chapter on accessory consequences, but specifically Article 101<sup>140</sup>, which deals with confiscation, stipulates that any penalty for an intentional crime committed entails the loss of what was used to commit the illegal act, as well as all the profits derived from it. In addition, the offences that are subject to confiscation are mentioned, and among them are money laundering, corruption, trafficking in persons, drug trafficking, terrorism, and in general activities considered to be organized crime.

Similarly, Article 63 of the Special Anti-Money Laundering Act<sup>141</sup> stipulates confiscation, and Article 66 deals with the enforcement of provisional or insurance measures, in which the institutions where the actions are to be taken must be notified. Likewise, these measures may not last more than 24 months as a general rule, and exceptionally and with the authorisation of a court may be extended for up to 12 months more. Subsequently, Article 72 establishes the

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<sup>138</sup> Equivalent to USD 82,392,344.10.

<sup>139</sup> El Heraldo (2021), Detención judicial por millonario lavado de activos, <https://www.elheraldo.hn/pais/1458874-466/hijo-jorge-barralaga-carcel-lavado-activos-honduras>, date accessed: November, 2021.

<sup>140</sup> See Penal Code of Honduras.

<sup>141</sup> See Special Anti-Money Laundering Law.



action against equivalent assets, when the original assets are impossible to identify, locate or that these cause damage to third parties in good faith; in that case other assets may be pursued in order to make the action of confiscation or forfeiture effective.

In the same vein, there is an Act on Definitive Deprivation of Ownership of Property of Illicit Origin (LPDDBOI)<sup>142</sup> which, from Articles 14 to 24, begins to explain the stages of the process to be followed in the definitive deprivation of ownership in the administrative part. Similarly, it mentions the obligations to inform, as well as the use of special techniques to carry out the investigation. Article 32 establishes the precautionary measures, precautionary or securing of property. For the judicial part, this law establishes in Article 55 what refers to the procedure and requirements that the deprivation request must have.

For example, in Honduras in 2019 the prosecution proceeded to request the deprivation of assets in the emblematic case of corruption called Pandora<sup>143</sup>. Also, the case of a well-known Honduran family that was charged in the United States (USA) for money laundering and drug trafficking and included in the list of The Office of Foreign Assets Control (OFAC)<sup>144</sup>. Therefore, in Honduras they proceeded to rule<sup>145</sup> against the deprivation of assets.

With regard to international legal cooperation between States Parties, there is no expressly identified regulation for them to appear before the courts, nor a procedure for victims and compensation for damages. However, there is a document called the Ibero-American Protocol on International Legal Cooperation<sup>146</sup> in which Honduras participates and which establishes good civil and criminal practices, models for requests for international legal assistance, as well as requests for judicial assistance and extradition, but it does not include all States Parties.

Moreover, there is the Office for the Administration of Seized Property (OABI)<sup>147</sup> which has the powers of reception, administration, custody, safekeeping, investment, auction, donation, return or destruction of goods, objects, products and instruments that have been secured. Likewise, the functions of the OABI include the capacity of administration and the use of the goods, as well as the return of assets when this process is established.

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<sup>142</sup> See the Law on Permanent Deprivation of Ownership at <https://www.tsc.gob.hn/web/leyes/Ley%20sobre%20privaci%C3%B3n%20definitiva%20del%20dominio%20de%20bienes%20de%20origen%20il%C3%ADcito.pdf>.

<sup>143</sup> Center for Latin American & Latino Studies, American University (June 2020). A Fleeting Success: The Legacy of the International Anti-Corruption Mission in Honduras. P. 40. Accessed June 25, 2021.

Available at:

<https://poseidon01.ssrn.com/delivery.php?ID=911094067103021122099093125100001070118073090032074069006099020095002083030020088078011033103127040058058102125018087116021090056044039040015106089120024016071122098053037011093086087030106084008103092078080083082093029085028086024099087126094114114086&EXT=pdf&INDEX=TRUE>.

<sup>144</sup> BBC Mundo (2015), The fall of the Rosenthals, the powerful Honduran clan accused of money laundering and drug trafficking,

[https://www.bbc.com/mundo/noticias/2015/10/151014\\_honduras\\_rosenthal\\_clan\\_historia\\_narcotrafico\\_aw](https://www.bbc.com/mundo/noticias/2015/10/151014_honduras_rosenthal_clan_historia_narcotrafico_aw), date accessed: October, 2021.

<sup>145</sup> Cholusatsur (2021), Yani Rosenthal Judgment, <http://cholusatsur.com/noticias/wp-content/uploads/2021/06/Sentencia-Yani-Rosenthal.pdf>, date accessed: October, 2021.

<sup>146</sup> XVII Ibero-American Judicial Summit (2013), Ibero-American Protocol on International Legal Cooperation,

[http://anterior.cumbrejudicial.org/c/document\\_library/get\\_file?p\\_l\\_id=587624&folderId=769791&name=DLFE-6204.pdf](http://anterior.cumbrejudicial.org/c/document_library/get_file?p_l_id=587624&folderId=769791&name=DLFE-6204.pdf), date accessed: November 2021.

<sup>147</sup> See the regulations of the Office of the Administrator of Seized Property at [https://www.tsc.gob.hn/web/leyes/reglamento\\_oabi.pdf](https://www.tsc.gob.hn/web/leyes/reglamento_oabi.pdf).

In this regard, the ASJ interviewed the Director of the OABI for this report, who stated that he has been in office since October 2019 and during his tenure they have participated in 5 operations in conjunction with the MP to secure assets<sup>148</sup>.

Finally, since 2010, there has been a Court of First Instance for the Deprivation of the Domain of Assets of Illicit Origin<sup>149</sup> in place which has national jurisdiction, that is, it can hear cases originating anywhere in the country, but its headquarters are in Tegucigalpa and it depends directly on the Court of Appeals.

### Good Practices

- The existence of regulations that allow for the regulation of asset recovery in Honduras, from the securing of assets to the deprivation of ownership.
- The application of the legal instruments, so that the deprivation of ownership can be carried out in cases of corruption, money laundering and drug trafficking mainly and according to the criminal patterns in the country.
- The existence of a special court to determine the deprivation of ownership in money laundering offences.

### Deficiencies

- There are several cases in which the OABI itself has been allegedly involved in cases of corruption<sup>150</sup> due to mismanagement of assets that were subject to its administration, as well as the dismissal of directors of the OABI for mismanagement<sup>151</sup>.

### 4.2.3 Articles 51, 54, 55, 56 and 59 – International cooperation for purposes of confiscation

In the present article the status of implementation of the law is partially implemented and the status of implementation and enforcement in practice is low.

The Mutual Evaluation Report of the Republic of Honduras<sup>152</sup> by GAFILAT indicated in finding 15 that *"As regards international cooperation, Honduras has ratified various international conventions relating to combating AML/CFT for which it has designated various central authorities depending on the conventions. Despite the lack of a single central authority, Honduras has good statistics on cooperation received and sent, especially with the countries of the Central American region. In addition to the above, the legislation allows for international cooperation related to AML/CFT offences, among other offences. These laws contain provisions allowing freezing and confiscation of property in Honduras of persons investigated for these*

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<sup>148</sup> Interview with OABI Director Francisco Flores, August, 2021; <https://drive.google.com/file/d/15Q-2BQvUjbxlll5ztJkQKIFlhQxhtddd/view?usp=sharing>.

<sup>149</sup> See the 2010 Gazette on the Creation of the Court of First Instance for the Deprivation of Ownership of Property of Illicit Origin at <https://www.tsc.gob.hn/web/leyes/Creaci%C3%B3n%20del%20Juzgado%20de%20Letras%20de%20Privaci%C3%B3n%20del%20Dominio%20de%20Bienes%20de%20Origen%20Illicito.pdf>.

<sup>150</sup> El Heraldo (2020), Fiscalía investiga corrupción en bienes incautados, <https://www.elheraldo.hn/pais/1349004-466/oabi-fiscalia-investiga-corrupcion-bienes-incautados>, date accessed: October, 2021.

<sup>151</sup> Tiempo Newspaper (2019), Despiden a director y subdirector de la OABI, <https://tiempo.hn/despiden-a-director-y-subdirector-de-la-oabi/>, date accessed: October, 2021.

<sup>152</sup> Mutual Evaluation Report of the Republic of Honduras. Page 7. Accessed June 25, 2021. Available at <https://pplaft.cnbs.gob.hn/wp-content/uploads/2019/04/GAFILAT-MER-Honduras-2016-Spanish.pdf>.

*offences. However, there are no relevant provisions for sharing such property with foreign countries".*

It should be noted that these agreements are not public, i.e. they are not available to the public, but are normally executed by the Public Prosecutor's Offices and the CNBS as shown in the examples below.

In the case of the embezzlement of the Honduran Social Security Institute (IHSS), the Public Prosecutor's Office, through the National Fiscal Support Unit, requested cooperation from the United States in order to secure the assets that had been purchased with public funds stolen from the IHSS and which were subsequently liquidated in the United States<sup>153</sup>.

Additionally, one of the most recent cases is the seizure of 100 million lempiras<sup>154</sup> of a Honduran man in the U.S. in collaboration with the Department of Justice after a the Public Prosecutor's Office made a request to them. These assets were secured due to their link to the fraudulent sale of the Mobile Hospitals to INVEST-H<sup>155</sup>.

Furthermore, the Director of the OABI noted that they had received support from the U.S. Treasury Department and that they had started conversations to collaborate with Guatemala through the chancellery and the judiciary, but he did not establish for which specific cases this was done.

Finally, and through a request for access to public information made to the MP on the number of actions requested or carried out in terms of international legal cooperation in the last 3 years (2018, 2019 and 2020), the response received was that in 2018 two actions were carried out and that for 2019 and 2020 no actions aimed at international legal cooperation had been carried out. In addition, it is important to mention that the response makes it clear that the actions were requests made by Honduras<sup>156</sup>.

### **Good Practices**

- The OABI making use of the mechanism of international cooperation which, as has been shown through examples and the request for information, has been useful for the seizure of assets of illicit origin.

### **Deficiencies**

- There is no access to international cooperation agreements. Thus, only the statistical data of the requests received or made is known through reactive transparency, but without specifying more information.

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<sup>153</sup> HN Process (2016), Will liquidate 11 insured assets in US over IHSS case, <https://proceso.hn/liquidaran-11-bienes-asegurados-en-eeuu-por-caso-del-ihss/>, date accessed: October, 2021.

<sup>154</sup> Equivalent to USD 4,119,617.20.

<sup>155</sup> Diario Tiempo (2021), Securing more than L.100 million in Axel Lopez's US accounts, <https://tiempo.hn/aseguran-dinero-cuentas-de-axel-lopez/>, date accessed: October, 2021.

<sup>156</sup> See Public Information Request, <https://drive.google.com/file/d/1hB75SkipKsbV8H2QzQN3-Ke7LRxEG116/view?usp=sharing>.

#### 4.2.4 Article 57 – Return and disposal of confiscated property

In the present article the state of implementation of the law is largely enforced and the state of implementation and enforcement in practice is low.

Chapter VII of the OABI regulations<sup>157</sup> concerning the return of seized property, specifically Articles 21 to 26, stipulates that once the return order has been received from the competent authority in accordance with the guidelines contained in Article 17 of the Special Anti-Money Laundering Act, all returns must be handled only by the OABI.

Similarly, a record must be drawn up specifying the state of the property to be returned, as well as attaching the resolution of the competent body or of the Public Prosecutor's Office, if applicable. Additionally, if the property that had been secured generated some kind of action in favor of the persons who have the right; it must be delivered to them in the same way along with the property that were originally secured.

Moreover, in case it is in possession of a company, the OABI must deliver the respective rendering of accounts on the administration of the same, attaching also all the supporting documents and deducting the expenses in which the OABI could have incurred during the administration of the company or establishment.

In the same vein, except for fortuitous reasons or force majeure, the OABI shall be liable for damages resulting from the loss, misplacement or deterioration of the property it administers. In this regard, the person who feels affected may request compensation for damages after prior assessment of the same.

The main challenges faced by the OABI, according to its Director, are freeing up the large amounts of assets they have (about 2,400), since it is difficult to manage and maintain them due to the deterioration they are suffering. In addition, 30% of these assets are under lease, close to auction or on loan. Moreover, they must identify the assets through their registry, geo referential and mapping<sup>158</sup>.

Finally, and complying with what the Coordinator of the CNA's Anti-Corruption Criminal Policy Observatory said about the OABI, he said that "*the OABI back in 2013-2014 was well regarded for the management of resources, then it became one of the institutions with the greatest conflict of interest and removal of senior managers because there were many cases of corruption internally. If we remember what happened in the northern zone, there was the renting of houses to relatives of one of the directors for prices so much lower to what they truly were worth, the same thing happened with the assets of the [Honduran family name] family and the extinct cartel of the Cachiros, when they took the administration of Joya Grande and the results were catastrophic*".<sup>159</sup>

Another example involving the OABI is what happened in 2018, when 15 assets and 500 thousand dollars were returned to another Honduran family. Despite this, there was controversy because, according to this family, they were not returned everything they were entitled to<sup>160</sup>.

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<sup>157</sup> See OABI Regulations.

<sup>158</sup> Interview with OABI Director Francisco Flores, August 2021.

<sup>159</sup> Interview with Attorney César Espinal, July 2021.

<sup>160</sup> HN Process (2018), OABI returns assets and thousands of dollars to Matta family, <https://proceso.hn/oabi-devuelve-15-bienes-y-750-mil-dolares-a-la-familia-matta/>, date accessed: October, 2021.

A similar situation occurred in 2015, when the OABI returned 4 assets to the first family mentioned above<sup>161</sup>. The same happened with an asset that was owned by the wife of a deceased drug trafficker and that according to what was stated, its acquisition was accredited to before there was any kind of link between them, therefore, OABI was ordered to proceed to return it<sup>162</sup>.

### Good Practices

- There is legislation regulating the return of assets, which have been confiscated, following a court order or an order issued by the MP to the OABI.

### Deficiencies

- The mismanagement of the assets, since on many occasions there have been reports of losses, misuse or even destruction of the assets due to negligence or improper use by the authorities for personal gain or for the benefit of known third parties. This generates serious conflicts at the time of processing a return because the people who hold the right to get back their assets are even more aggrieved by the actions taken.

**Table 7: Money Laundering Statistics<sup>163</sup>**

Description of the action	Year: 2018	Year: 2019	Year: 2020
Cases investigated	17	27	31
Prosecutorial requests (indictments)	22	28	25
Opening order to trial (pre-final instance)	5	9	6
Convictions	5	16	7
<b>Total</b>	<b>49</b>	<b>80</b>	<b>69</b>

**Table 8: Collaboration of the Financial Intelligence Unit (FIU) of the National Banking and Insurance Commission (CNBS) with the Public Prosecutor's Office and the Judiciary to prevent the crime of money laundering<sup>164</sup>**

Institution requesting information	Year: 2018	Year: 2019	Year: 2020
Public Prosecutor's Office	548	549	233
Judiciary	52	15	15
<b>Total</b>	<b>600</b>	<b>564</b>	<b>248</b>

**Table 9: Number of assets under the administration of the Office for the Administration of Seized Assets (OABI) from 2014-2020 proceeds of corruption offenses<sup>165</sup>**

<sup>161</sup> La Prensa (2015), OABI returns four properties to Rosenthal family, <https://www.laprensa.hn/honduras/905425-410/oabi-devuelve-cuatro-propiedades-a-la-familia-rosenthal>, date accessed: October, 2021.

<sup>162</sup> HN Process (2020), Return property to Magdaleno Meza's wife, <https://proceso.hn/devuelven-un-bien-a-la-esposa-de-magdaleno-meza/>, date accessed: October, 2021.

<sup>163</sup> See Request for Public Information, <https://drive.google.com/file/d/12hNlraUsYR8u2Yt6dvsIJ7P3wqCA0zFb/view?usp=sharing>.

<sup>164</sup> See Request for Public Information, <https://drive.google.com/file/d/1InVBoBPPdi2JSdeZr8U5U3OMa8bJgq0k/view?usp=sharing>.

<sup>165</sup> See Request for Public Information, [https://drive.google.com/file/d/1Gn\\_hwwZw9KNoRFt1clXQ32dq2md4lPPw/view?usp=sharing](https://drive.google.com/file/d/1Gn_hwwZw9KNoRFt1clXQ32dq2md4lPPw/view?usp=sharing).

Type of assets	Quantity during 8 operations carried out
Movable property	46
Real estate (vehicles)	122
Livestock	69
By the year 2021	No income reported

## 5. Recent developments

In recent years there have been events in the country directly related to the fight against corruption, which has been largely hit and undermined by them, as it has sought to reduce the actions of the institutions, in order to seek protection in the legal mechanisms in their power. These events have developed as follows.

On 7 February 2019, the National Congress decided to reform Article 115 of the General Law of Public Administration<sup>166</sup>. This reform limited the actions of the Public Prosecutor's Office (MP) to the function of investigating and left it in the hands of the High Court of Auditors (TSC) first, meaning that the TSC needed to take action first so that the MP could investigate, which represents a flagrant delay in the investigations that contribute to generating impunity. In addition, this reform goes against the Constitution, since it grants this function to the MP and according to the hierarchy no norm is above what the Constitution dictates.

On 15 October 2019, the National Congress decided to reform Article 10 of the Organic Law of the Legislative Branch<sup>167</sup>, thus reactivating parliamentary immunity. This reform establishes that "*parliamentarians shall not be criminally, civilly or administratively liable for their parliamentary work*". In that sense, they will not be punished for committing crimes as long as they are exercising their parliamentary work<sup>168</sup>.

On 20 November 2019, the National Congress reformed a total of 32 articles of the Organic Law of the TSC<sup>169</sup>, but among the most important are article 77 and 105 where it sought to limit the actions and independence of the MP, making it possible to only access the documents of the TSC through a court order. In addition, the investigative power of the TSC was established and the statute of limitations was set at 5 years for administrative matters and 10 years for criminal or civil matters.

On 17 January 2020, the State of Honduras, through the legislative branch, recommended to the executive branch to not renew the Support Mission Against Corruption and Impunity in Honduras - Special Prosecutorial Unit Against Impunity for Corruption (MACCIH-UFECIC). This Mission, which was made up of experts from different Latin American countries and which supported the elite Unit of the Public Prosecutor's Office in the fight against corruption, was initially promoted by the Honduran State through the Organization of American States (OAS) as a result of social pressure in Honduras by the so-called "Marches of the Torches", a social collective that sought the implementation of a mission that came from the United Nations as

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<sup>166</sup> El Heraldo (2019), Crece el rechazo a reforma que quita atribuciones al Ministerio Público, <https://www.elheraldo.hn/pais/1257163-466/crece-el-rechazo-a-reforma-que-quita-atribuciones-al-ministerio-p%C3%BAblico>, date accessed: October, 2021.

<sup>167</sup> See reform to the Organic Law of the Legislative Branch at <https://www.tsc.gob.hn/web/leyes/Decreto-117-2019.pdf>.

<sup>168</sup> Criterio HN (2019), Diputados de Honduras reactivan la inmunidad parlamentaria y se blindan penal y administrativamente, <https://criterio.hn/diputados-de-honduras-reactivan-la-inmunidad-parlamentaria-y-se-blindan-penal-y-administrativamente/>, date accessed: October, 2021.

<sup>169</sup> See reform to the Organic Law of the Superior Court of Accounts at [https://www.tsc.gob.hn/web/leyes/Reformas\\_LOTSC\\_2020.pdf](https://www.tsc.gob.hn/web/leyes/Reformas_LOTSC_2020.pdf).



happened in the neighbouring country of Guatemala, but which was finally installed with the OAS<sup>170</sup>.

In the four years (2016-2020) that it was in the country, the MACCIH-UFECIC represented a real problem for the corrupt, since it managed to help and support in the prosecution of 14 high-impact cases where public officials, deputies, the former first lady and others who were in a process of investigation, were involved. Therefore, it was decided not to renew the Mission's mandate, leaving a setback in the fight against corruption in Honduras of at least 10 years, because the legacy of the MACCIH has been set back through dismissals, appeals filed, judicial parsimony, repetition of the case that already had a sentence and, in short, the lack of support for the UFECIC, which ceased to exist and became the Specialised Prosecutorial Unit Against Corruption Networks (UFERCO), but which, almost two years after the disappearance of MACCIH, has not made any progress in terms of the prosecution of corruption cases.

On 21 May 2020, the National Congress decided to reform articles 217, 219 and 220 of the Code of Criminal Procedure in Honduras<sup>171</sup>. This reform was oriented to making sure that it would only be possible to seize documents with the authorization of a judge, when before, the MP had the express power to do so. Similarly, the chief prosecutor of UFERCO stated that "*it is a fact that generates unprecedented impunity*" because the element of surprise that has been so important in the investigation of corruption crimes is lost<sup>172</sup>.

On 25 June 2020, the new Penal Code (decree 130-2017) came into force, which was and is highly questioned by different sectors in the country for responding to the interests of certain groups that seek to obtain a shield for acts of corruption committed<sup>173</sup>. This Code represents a setback in the fight against corruption, since, according to the analyses made, unconstitutionality appeals filed and all the debate that this has generated, it has been identified that this legal body has been structured to reduce penalties, modify the criminal types and provide facilities to those accused of corruption, as we have seen in cases such as "Patuca III Collusion and Corruption" where those charged by the extinct MACCIH-UFECIC have been released for their defense and subsequent acquittal resolution<sup>174</sup>. In this sense, it is urgent to repeal or modify these shortcomings that represent a brake on the fight against corruption.

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<sup>170</sup> El Economista (2020), Icefi: No renovar MACCIH es un golpe a lucha contra la corrupción en Honduras, <https://www.eleconomista.net/actualidad/Icefi-No-renovar-MACCIH-es-un-golpe-a-lucha-contra-la-corrupcion-en-Honduras-20200122-0030.html>, date accessed: October, 2021.

<sup>171</sup> El Pulso HN (2020), Reformas de artículos del Código Procesal Penal obstaculizan al Ministerio Público, <https://elpulso.hn/2020/05/26/reformas-de-articulos-del-codigo-procesal-penal-obstaculizan-al-ministerio-publico/>, access date: October, 2021.

<sup>172</sup> CESPAD (2020), Analysis: Another impunity pact: corruption cases during the pandemic will be shielded "up to the teeth", <https://cespad.org.hn/2020/05/24/analisis-otro-pacto-de-impunidad-casos-de-corrupcion-durante-la-pandemia-estaran-blindados-hasta-los-dientes/>, last accessed November 2021.

<sup>173</sup> Agencia EFE (2020), Honduras' new Penal Code enters into force amid popular rejection, <https://www.efe.com/efe/america/politica/el-nuevo-codigo-penal-de-honduras-entra-en-vigor-entre-rechazo-popular/20000035-4281357>, date accessed: November 2021.

<sup>174</sup> El Herald (2020), Corruption Court acquits defendants in Patuca III case, <https://www.elheraldo.hn/pais/1425446-466/tribunal-absuelve-a-los-acusados-del-caso-patuca-iii>, last accessed November 2021.



## 6. Recommendations

1. **Compliance with anti-corruption regulations:** There is a need for effective compliance with the laws in Honduras, since the legal framework exist on paper, but when it comes to applying it or putting it into practice is where the main shortcomings arise.
2. **Institutional shortcomings:** The technical-financial capacities of the institutions should be strengthened, and their independence and autonomy should be ensured when making decisions and that these are not conditioned by third parties.
3. **Repeal laws that weaken the fight against corruption:** Legislation that suppresses the fight against corruption needs to be repealed, such as the Law on the Classification of Public Documents, which represents a real blockage to access to public information and effective accountability. Other examples are the Penal Code that grants facilities to people who commit acts of corruption, and all the reforms that are made so that the Public Prosecutor's Office loses the functions already emanated from the Constitution of the Republic of Honduras.
4. **Codes of ethics, conflict of interest and asset declarations:** There is a need for a review of the codes and laws on these matters, as they present some legal loopholes that are exploited for non-compliance and continue to generate corruption and impunity. Declarations of conflict of interest should be defined and made mandatory and greater compliance by public officials with respect to asset declarations should be ensured.
5. **Access to information:** It is necessary to strengthen the system of access to information, so that all obligated institutions comply with the delivery of information. Likewise, the IAIP should be provided with greater sanctioning capacity so that it can punish institutions that do not deliver information and others that seek to establish mechanisms to delay delivery. In short, the institutions that do not comply are not respecting the sanctions applied by the IAIP.
6. **Oversight institutions:** It is recommended to create a coalition of oversight institutions such as the IAIP, TSC, CSJ, CNBS, SAR, MP, PJ among others, so that a true system of fight against corruption can be developed, commanded by these institutions, but with the vigilance of civil society, private sector and citizens in general.
7. **Public procurement:** Better controls are recommended at the time of carrying out public procurement processes through greater publicity in the proceedings, as well as in the complaints received. The reactivation of the *honducompras 2.0* platform is required, as it is a tool that promotes verification through open data and open procurement in the different processes carried out in the country. In addition, spaces need to be created for civil society to actively participate as overseers of the transparency of the processes. Also, the sanctioning mechanism must be strengthened, so that all those who want to fraudulently contract with the State can be vetoed.
8. **Political financing:** It is recommended that the bodies in general be depoliticized, as it is difficult to investigate or impose sanctions on candidates due to the lack of independence of the technical bodies, which should not respond to partisan political interests.
9. **Obligations for the private sector:** The implementation of mandatory measures for private companies is recommended, especially for those involved in areas that are more susceptible to corruption. In this sense, compliance can be an effective mechanism to promote transparency.
10. **Increased compliance with the agreements** signed by Honduras aimed at the Transparency Pledge that Honduras has signed.

- 11. Public register of beneficial owners:** There is a need for a public register of beneficial owners in open data on incorporated businesses in order to provide greater transparency in this area.
- 12. Prosecutor's offices that combat money laundering:** It is necessary for the Public Prosecutor's Office to provide greater support to the prosecutor's offices that combat money laundering and corruption, since in recent years the support has not been adequate and this is reflected in the lack of investigation and subsequent prosecution of cases, which generates greater impunity gaps in the country.
- 13. Strengthen OABI:** This office needs to be upgraded so that bad practices do not continue to occur in the administration of the assets and resources that come into its custody, but first the areas that require improvement must be identified in order to achieve the application of good and efficient practices.
- 14. Improve channels of communication between the institutions** responsible for preventing and combating money laundering, so that streamlining them may serve as an effective preventive mechanism.
- 15. Institutions for prevention and combating money laundering:** Greater publicity is needed in the information handled and produced by institutions such as the CNBS and its FIU, at least from the statistical point of view, to achieve greater access to information on money laundering, to enable greater social control by CSOs and the public.

## 7. Annex

Institution	Type of information	Date of shipment	Date of response	Full/partial answer or no response	Link to the request and response
National Banking and Insurance Commission (2 applications)	Functioning of the FIU and the treatment of money laundering. In addition, statistical information was requested.	1) 14 September 2021. 2) 18 June 2021.	1) 30 September 2021. 2) 2 July 2021.	The information was provided by the entity.	<a href="https://drive.google.com/file/d/1-OcMXJb_cFmF1AULBzcpCuS45tWBnUMw/view?usp=sharing">https://drive.google.com/file/d/1-OcMXJb_cFmF1AULBzcpCuS45tWBnUMw/view?usp=sharing</a> <a href="https://drive.google.com/file/d/1InVBoBPdi2JSdeZr8U5U3OMa8bJgq0k/view?usp=sharing">https://drive.google.com/file/d/1InVBoBPdi2JSdeZr8U5U3OMa8bJgq0k/view?usp=sharing</a>
High Court of Audit (2 applications)	Information on returns filed and penalties. Also how the declaration of conflict of interest is regulated.	1) 17 of June 2021. 2) 7 April 2021	1) July 2, 2021. 2) 29 April 2021.	Incomplete as the database is out of date.  In addition, the use of conflict of interest and asset declarations was indicated.	<a href="https://drive.google.com/file/d/1GZu18tslucPKbgHoYO6L5M-FjVmCRCQ6/view?usp=sharing">https://drive.google.com/file/d/1GZu18tslucPKbgHoYO6L5M-FjVmCRCQ6/view?usp=sharing</a>  <a href="https://drive.google.com/file/d/16cocie-1S6DE7vyZnKsShXFFsHRZb_WI/view?usp=sharing">https://drive.google.com/file/d/16cocie-1S6DE7vyZnKsShXFFsHRZb_WI/view?usp=sharing</a>
Institute for Access to Public Information	Percentage of requests for information answered, not answered and partially answered in the last 3 years.	17 June 2021	25 June 2021	The information was provided by the entity.	<a href="https://drive.google.com/file/d/1AQ5mL6fRe8PhU9bgZXC0fJQx9gT_wk99/view?usp=sharing">https://drive.google.com/file/d/1AQ5mL6fRe8PhU9bgZXC0fJQx9gT_wk99/view?usp=sharing</a>
Clean Policy Unit	Percentage of penalties and complaints referred to oversight bodies.	17 June 2021	23 June 2021	They state that they have neither received complaints nor imposed sanctions in the requested period.	<a href="https://drive.google.com/file/d/1dJSUQ5qgm06mH0ab8lyN5xuX2bxGkWB0/view?usp=sharing">https://drive.google.com/file/d/1dJSUQ5qgm06mH0ab8lyN5xuX2bxGkWB0/view?usp=sharing</a>
Public Prosecutor's Office (2 requests)	1) Requests for international cooperation	1) 18 June 2021.	1) 24 June 2021.	The information was provided by the entity.	<a href="https://drive.google.com/file/d/1hB75SkjpKsbV8H2QzQN3-">https://drive.google.com/file/d/1hB75SkjpKsbV8H2QzQN3-</a>

	<p>in the last 3 years.</p> <p>2) In addition, information was requested on the investigation , prosecution and conviction for money laundering cases.</p>	2) 18 June 2021.	2) 25 June 2021.		<p><a href="https://drive.google.com/file/d/12hNlraUsYR8u2Yt6dvsIJ7P3wqCA0zFb/view?usp=sharing">Ke7LRxEG116/view?usp=sharing</a></p> <p><a href="https://drive.google.com/file/d/12hNlraUsYR8u2Yt6dvsIJ7P3wqCA0zFb/view?usp=sharing">https://drive.google.com/file/d/12hNlraUsYR8u2Yt6dvsIJ7P3wqCA0zFb/view?usp=sharing</a></p>
State Secretariat of the Presidency	Number of public servants hired in the last 3 years.	18 June 2021	28 June 2021	The information was provided by the entity	<a href="https://drive.google.com/file/d/1CiXpkSPzpuFMU_XfKgym2gvaRohPdAoh/view?usp=sharing">https://drive.google.com/file/d/1CiXpkSPzpuFMU_XfKgym2gvaRohPdAoh/view?usp=sharing</a>
Office for the Administration of Seized Assets	Number of assets held by OABI for corruption offences.	August 17, 2021.	31 August 2021.	The information was provided by the entity.	<a href="https://drive.google.com/file/d/1Gn_hwwZw9KNoRFt1cIXQ32dq2md4IPPw/view?usp=sharing">https://drive.google.com/file/d/1Gn_hwwZw9KNoRFt1cIXQ32dq2md4IPPw/view?usp=sharing</a>

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