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Reforms to Criminal Justice and the Anti- Corruption System in Honduras

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The Centro de Estudio para la Democracia (CESPAD), founded in 2011, is a citizen initiative organized to produce, disseminate, and mobilize critical and independent knowledge that contributes to the democratic transformation of Honduras. It works around three themes: Democratic State of Rights, Transparency and Anti-corruption, and Environmental Justice and Natural Resources.

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Key Words: Honduras, criminal justice, anti-corruption, reform.

KEY CONTRIBUTIONS OF THIS STUDY

- A public opinion poll conducted by Centro de Estudio para la Democracia (CESPAD) in May 2021 identified unemployment (69%), health care (59.9%), and corruption (48.6%) as the primary problems facing Hondurans (page 10).
- In Honduras, corruption and impunity within state institutions have grown progressively and cumulatively, consolidating into a “system” of corruption that involves the public sector, private sector, and external criminal structures. This system not only affects the independence of Honduran institutions entrusted with fighting corruption but also *changes how the State itself functions* (page 8).
- The Honduran State is now operated and administered by corruption networks through a series of “impunity pacts”—mechanisms employed by corruption networks and organized crime to co-opt State institutions and to guarantee that criminal activities go unpunished. These pacts include the naming of high-level State officials and the passing of regulations and laws that hinder accountability and promote impunity (page 16).
- The corruption “system” has methodically dismantled the anti-corruption agenda of institutions like the Organization of American States (OAS)-supported Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH) and its Honduran counterpart, the Special Anti-Impunity and Anti-Corruption Prosecutorial Unit (UFECIC). Instead, the system has advanced the interests of illicit structures and corruption networks (page 29).
- Following the Honduran government’s non-renewal and expulsion of MACCIH and dismantling of UFECIC, the government established a new entity within the Prosecutor General’s Office, called the Specialized Prosecutorial Unit against Corruption Networks (UFERCO). Compared to its predecessor, UFERCO has fewer capacities, a smaller budget, worse working conditions and infrastructure, and prosecutors have fewer protections and lower salaries. The end of the agreement with the Organization of American States meant the additional loss of support of at least 25 technical specialists (page 15).
- The fight against corruption in Honduras has been characterized by the passage of new laws that, in theory, aim to strengthen the fight against this crime and strengthen transparency and accountability. In practice, however, these changes have not impacted citizens’ perception of government corruption. Reforms aimed at battling corruption depend exclusively on the Presidency of the Republic, creating the possibility of conflicts of interest when identifying sources of corruption within public administration and related to legal instability, as reforms only can be repealed or modified by the administration in office (page 13).

- Criminal structures in Honduras have used the State as a primary source of capital accumulation in a context of impunity and, in turn, have made use of a growing field of power and influence over State institutions, particularly over the bodies responsible for imparting justice. Given that the public-private corruption networks and organized crime have positioned themselves at the center of the management of the Honduran State, the judicial system has become increasingly fragile and weak when attempting to hold accountable public officials and related sectors. The National Congress has become the principal tool for implementing legislative actions that have guaranteed impunity, using the creation of regulatory obstacles to impede judicial action. Further, the New Criminal Code related to corruption crimes includes a significant reduction in sentences for crimes such as embezzlement of public funds, fraud against the public administration, illicit enrichment, and abuse of authority (page 21).
- The *Law for the Classification of Public Documents related to National Defense and Security*, or “the Secrets Law” as it is known colloquially, has been created and utilized by corruption networks that operate through the National Congress to block investigations and judicial processes by invoking issues of national security. “The Secrets Law” was constituted as a way to control confidential information related to State institutions. Yet, corruption networks within the National Congress have instrumentalized the law to block investigations and criminal proceedings by invoking national security matters (page 20).
- The current context in Honduras is characterized by the shielding of corruption networks through a traditional and clientelist political system that produces and reproduces corruption and impunity through a legal framework that is favorable to corruption and impunity and adverse to transparency, accountability, and the fight against corruption (page 25).

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1. INTRODUCTION

The Centro de Estudio para la Democracia (CESPAD), with support from Open Society Foundations (OSF), carried out archival and empirical research from February 2021 to September 2021, focusing on the development of proposals to reform public policies in the area of criminal justice and the design of the national anti-corruption system in Honduras.

This research investigates three elements: first, the main legislative obstacles to legal anti-corruption action; second, the alternatives or possibilities for the legal and institutional dismantling of those obstacles through reforms or laws; third, proposals for the legal or institutional design of an effective national anti-corruption system, taking the recent report of the Inter-American Court of Human Rights (IACHR) on Corruption and Human Rights (2019) as a reference.

2. METHODOLOGY

It is well-known that with the expulsion or non-renewal of the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH) by the Honduran government, the political elite from the National Congress has created a legal framework that shields them by blocking anti-corruption legal action. Therefore, the objectives guiding this research sought to put forth an agenda for criminal justice reform that would guarantee the effective application of justice in cases of macro corruption.

This research employed a qualitative methodological approach. This approach included the use of different techniques, such as: collecting and analyzing information from documents and carrying out individual interviews with key informants, topic experts, institutional actors, and representatives of civil society organizations.

3. ELEMENTS FOR A CONCEPTUAL APPROACH TO REFORMING THE CRIMINAL JUSTICE SYSTEM AND THE ANTI-CORRUPTION SYSTEM IN HONDURAS

The conceptualization of corruption for analyzing this problem in Honduras should be situated in the framework of grand corruption, which consists of “acts committed at a high level of government that distort policies or the central functioning of the State, enabling leaders to benefit at the expense of the public good.”¹

Therefore, the actors who commit those crimes are defined as corruption networks or illicit networks. These are structures made up of people and groups that belong to the political and economic elite that, in a planned way, protected by the privileges granted to them by the system, use state resources as a mechanism to accumulate capital. Thus, this approach cannot explain these activities by a pure individualist logic; rather, a systemic logic is necessary.

The corruption discussed here involves an operating system of corruption networks, including public and private sectors and external criminal structures.² Therefore, this criminal act supposes a change in the State’s functioning, which is operated and administered by authorities organized in corruption networks.

In the Honduran context, the recent emblematic cases of corruption revealed by the joint action between the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH) and the Special Anti-Impunity and Anti-Corruption Prosecutorial Unit (UFECIC) have demonstrated that corruption is not a criminal act committed in an individual way and for personal gain, rather by corruption networks that seek a collective benefit and that, in turn, are inserted in the country’s political and economic power structures.

Therefore, for the purposes of this investigation, it will be understood that an anti-corruption system must largely return to the proposal inherited from MACCIH and its Honduran counterpart, the UFECIC. In this regard, MACCIH, through an Agreement between the Government of Honduras and the General Secretariat of the Organization of American States (OAS), for the establishment of the Mission, signed on January 19, 2016, proposed a plan composed of four thematic areas: 1) Prevention and Fight against Corruption, 2) Criminal Justice Reform, 3) Political-Electoral Reform, and 4) Public Safety.

In that regard, proposals to regulate political and electoral campaign financing are considered relevant to criminal justice reforms since, according to MACCIH, the irregular funding for candidates and parties explains much of the origin of political corruption in Honduras.

Regarding the prevention of and fight against corruption, it is worth highlighting that the system, subordinated to the interests of illicit structures and corruption networks, has systemically dismantled the anti-corruption agenda inherited by MACCIH and UFECIC. Following MACCIH’s withdrawal, the anti-corruption system has been weakened, although the efforts of the OSC and the Specialized Anti-Corruption Unit

(UFERCO), which replaced the UFECIC, continue. However, citizens and civil society organizations committed to social audit actions and the fight against corruption are facing an adverse climate.

Finally, among the main elements to take into account in MACCIH's anti-corruption system, it is worth highlighting the need to resume the following efforts: to constitute platforms made up of civil society organizations committed to transparency and the fight against corruption; for civil society to follow-up and monitor the corruption cases prosecuted by MACCIH-UFECIC; to develop processes of political intervention to change the structures that represent major juridical or institutional obstacles for the struggle against corruption; to support the consolidation of anti-corruption courts that were created as a result of MACCIH's work; to better position UFERCO; to develop organizational processes to encourage active participation of citizens in the fight against corruption; and, to propose reforms and bills for a legal framework that would be favorable for the struggle against corruption.³

4. PRECEDENTS

There has always been corruption in the region. While processes of democratic consolidation inspired hope that many persistent problems could be overcome in the context of a strong institutional framework with characteristics of a democratic regime, those problems have continued, intensified, and, in turn, weakened the development of democratic processes in these countries. In this context, the region is now faced with weakened and autocratic states, whose administrations favor or fuel corruption.⁴

The Inter-American Commission on Human Rights (IACHR) takes into account the “multidimensional impact of corruption on democracy, the rule of law, and, in particular, on the enjoyment and exercise of human rights.” From the perspective of human rights, corruption is a “phenomenon characterized by the abuse or misuse of the power entrusted, which may be public or private, that displaces the public interest for a private benefit (personal or for a third party) and that damages democratic institutions and the rule of law and affects access to human rights.”⁵

For the Honduran case, the most recent public opinion poll from the Centro de Estudio para la Democracia (CESPAD), in May 2021, suggests that corruption ranks third in terms of the country's main problems, at 48.6%, only behind health care at 59.9% and unemployment with 69%. According to this study, one of the explanations for the high perception of corruption lies in citizens' assessment of how well the State performs its social function. Factors that stand out in terms of limiting the State's performance include: the corruption of state officials, inefficiency, lack of transparency and dialogue, links with organized crime, and the scarcity of resources.⁶

Recently Honduras has been impacted by numerous cases of large-scale corruption that have caused enormous amounts of economic and social harm. The emblematic case of the embezzlement of the Honduran Social Security Institute (IHSS) and the magnitude

of the damages disclosed by the media and investigations of state and non-state institutions was the first instance that highlighted the need for profound reforms to the criminal justice system and the demand from Honduran society for more effective actions against corruption and impunity. In this context, the “Convention for the Establishment of the Mission to Support the Fight Against Corruption and Impunity in Honduras” (MACCIH) was established by the OAS General Secretariat and the Government of Honduras.

Like other countries in Central America over the last decade, the fight against corruption in Honduras has been characterized by the approval of new laws that, in theory, have aimed to strengthen the fight against this crime and strengthen transparency and accountability. However, these changes have not had an impact on citizens’ perceptions. Similarly, there have been changes in the institutional frameworks related to the control and oversight of public resources that include the creation and modification of institutions and strengthening of institutional capacities with the support of new instruments alongside the existing legislation.⁷

In terms of legislation, there have been advances that promote the prevention of corruption, as well as its punishment and detection. The new legislation that emphasizes prevention includes the approval of the Laws of Access to Public Information. In terms of detecting corruption, what stands out is the creation of structures that specialize in investigating corruption, such as the Mission to Support the Fight Against Corruption and Impunity in Honduras (MACCIH) and the reform of the Special Law of Jurisdictional Bodies with Territorial Competencies, especially to create special judges with national jurisdiction to hear corruption cases.

Similarly, three of MACCIH’s thematic areas were oriented toward intervening in the prevention and fight against corruption, political-electoral reform, and criminal justice reform. Regarding the prevention and fight against corruption, we can highlight the creation of UFECIC, specialized criminal jurisdiction in matters of corruption at the national level, and the proposed Law of Effective Collaboration. In terms of the political-electoral arena, what stands out is the bill that was passed on the Law of Funding, Transparency, and Oversight of Political Parties and Candidates.

On the other hand, the report published by OAS-MACCIH and the Centro de Estudios de Justicia de las Américas (CEJA) is noteworthy in the area of criminal justice reform. In this study, entitled “Proposals for the Honduran Criminal Justice System in the Treatment and Management of Causes of High Social Impact and Corruption,” we can highlight a few transversal aspects, such as the gender perspective and an emphasis on high-impact cases. Furthermore, it makes a comparison between the operation of ordinary jurisdiction (JO) and jurisdiction with national territorial competency (JCTN).⁸

Similarly, it makes recommendations for the Honduran criminal justice system, framed around five axes: 1) Recommendations for the institutions that make up the Honduran State as a whole; 2) Recommendations for the regulation of the criminal justice process and participation of interveners in hearings; 3) Recommendations for the management systems of criminal justice institutions; 4) Recommendations for the

respect of the rights of the accused person in the criminal justice system, and; 5) Recommendations for respecting the rights of the victim in the criminal justice system.⁹

Finally, we should highlight the creation of the Criminal Justice Observatory. However, it was established only a few months before the end of the agreement between the OAS and the Honduran State. Therefore, that structure did not manage to completely fulfill its mandate, that is, *to cooperate with civil society in the joint construction of instruments for the establishment of a decentralized system of observation and follow-up of criminal justice, based on the jurisdictional organization of the country.*¹⁰

Regarding the prevention and fight against corruption, MACCIH's mandate included proposing legal and institutional reforms. It did so with the draft of the Effective Collaboration Law and several technical reports on the New Criminal Code, the Law of Classification of Public Security and Defense Documents, and the Superior Court of Accounts. In terms of reforms to the criminal justice system, the Observatory published a report with the Centro de Estudios de la Justicia de las Américas (CEJA), with research into the state of criminal justice in Honduras.¹¹

Ultimately, MACCIH's legacy persists and can be observed in the creation of new institutions, laws, and bills in the aforementioned areas. However, the counter-attack by corruption networks has discarded or weakened them. Therefore, following MACCIH's withdrawal from the country, it is worth working on a new proposal that takes up the legacy of that entity, as well as the experiences in terms of legislation and institutionality for fighting against corruption in other Latin American and Central American countries.

5. LEGISLATION ENACTED TO FIGHT CORRUPTION AND STRENGTHEN TRANSPARENCY AND ACCOUNTABILITY

This section seeks to identify and characterize new legislation enacted to fight corruption and strengthen transparency and accountability, and to describe the institutional frameworks related to the control and oversight of the use of public resources and the fight against corruption.

According to the literature on the issue, the advances in terms of the struggle against corruption in Honduras can be classified as: 1) Legislative advances for the prevention of corruption; 2) Advances in the penalization of corruption; and 3) Changes in control and oversight bodies.

Advances in Prevention

In the struggle against corruption, legislation for prevention is fundamental: it reduces the risk of discretion in public decision-making, it enables greater efficiency in the use and distribution of public resources, and it opens it up to public scrutiny. Thus, prevention can be reinforced with the creation or reform of ordinary laws and through

regulatory, governmental acts, or general strategies enacted in institutions.¹² Some of these changes are identified in the areas of civil service, codes of conduct, and regulations for public procurement.

In terms of public procurement, a study conducted by the OAS's Criminal Justice Observatory suggests that this process is vulnerable to influence peddling, collusion, fraud, and manipulation in public administration. Therefore, reforms must not only take into account the procedures included in procurement but also their transparency in order to reduce the risk of corruption at all stages. In this area, one relevant legislative reform includes enacting the Law of Efficient and Transparent Purchases through Electronic Means. One of the novelties of the law¹³, in effect since August 6, 2014, is the inclusion of Purchase by Electronic Catalog that, in turn, includes three modes: Framework Agreement, Joint Purchase, and Reverse Auction.

On the other hand, there is the Infrastructure Transparency Initiative, CoST. This is a global initiative that was launched in 2012 with support from the World Bank, designed to promote transparency and accountability in public infrastructure projects through the disclosure, verification, and analysis of 31 indicators defined by the CoST initiative at the international level. In terms of procedure, each country forms a multi-sector group (Government, Private Sector, Civil Society) that, through a team of independent consultants specialized in different engineering areas, performs the verification of the CoST Data Standards. Honduras joined on August 14, 2014.

Further, the United Nations Convention against Corruption, under the title of codes of conduct, refers not only to their existence but also to the possibility of establishing measures and systems to facilitate public officials in denouncing any act of corruption to the relevant authorities when they become aware of them in the exercise of their functions. It also refers to establishing means and systems to require public officials to make declarations to the relevant authorities in relation to, among other things, their external activities and employment, investments, assets, and important benefits or gifts that could lead to a conflict of interest concerning their duties as public officials.

In Honduras, the Presidential Directorate for Transparency, Modernization, and Digital Government was established through Executive Decree PCM 002-2014, Art. 3, on February 3, 2014, attached to the General Government Coordination Secretariat (SCGG). Its general objective is to strengthen the transparency of Honduran State institutions through a process of formulating and proposing policies and programs for transparency and the fight against corruption in coordination with external monitoring bodies and other state entities.¹⁴

Ultimately, the main limitation of these reforms is that they, for the most part, exclusively depend on the Presidency of the Republic. Therefore, this situation creates the possibility of conflicts of interest when identifying sources of corruption within public administration and legal instability since they can be repealed or modified by the government in office.

Advances in the Investigation and Penalization of Corruption

This section describes advances in the investigation and prosecution of acts of corruption that constitute crimes or infractions, such as that of the Public Ministry and Judicial Organism and in the institutions responsible for evaluating, examining, or auditing the use of public funds and determining the pecuniary or patrimonial responsibility in cases of corruption, which in the case Honduran case, is the Superior Court of Accounts.

Among the national legislation that directly or indirectly includes the fight against corruption and the promotion of transparency, we can highlight the following:

- the Law against the Illicit Enrichment of Public Servants
- the Criminal Code, the Special Law against Money Laundering
- the Law on the Definitive Deprivation of Ownership of Assets of Illicit Origin
- the Law of Financing, Transparency, and Oversight of Political Parties and Candidates
- the Law of Transparency and Access to Public Information
- the Law of Efficient and Transparent Purchases
- the Civil Service Law, and
- The Public Servant Ethical Code.¹⁵

Regarding the Public Ministry, the most relevant reform corresponds to Agreement No. FGR 000-2017, which allows for the creation of the Special Anti-Impunity and Anti-Corruption Prosecutorial Unit (UFECIC). This unit's functions include autonomously receiving and registering complaints within its jurisdiction, as established by the agreement between the Republic of Honduras and the Organization of American States (OAS). The UFECIC, which in turn was made up of members selected by MACCIH and the Office of the Attorney General, exclusively took up the cases selected by the Mission through the Case Selection Committee.¹⁶

However, since the MACCIH's withdrawal¹⁷ and the subsequent dissolution of the binomial with UFECIC,¹⁸ the context for the fight against corruption in Honduras has become extremely adverse. After MACCIH's departure, a new entity was founded within the Prosecutor General's Office. The Specialized Prosecutorial Unit against Corruption Networks (UFERCO),¹⁹ however, has fewer capacities than the UFECIC had, even though Luis Javier Santos continues as the Coordinating Prosecutor.

Recently, prosecutor Luis Javier Santos denounced that, although the UFERCO has the same structure as the UFECIC, it is facing numerous limitations that impede it from developing an effective operation in the fight against corruption. In this regard, this agency has a lower budget than the UFECIC, and worse working conditions and infrastructure, as the prosecutors have less protection and lower salaries. Additionally, the end of the agreement with the OAS meant the loss of the support of at least 25 technical specialists that the UFECIC had access to through MACCIH.²⁰

Regarding the Judiciary, in 2016, the Special Law of Jurisdictional Bodies with National Territorial Competence was reformed to create special judges with national jurisdiction to hear cases of corruption and extortion. However, the greatest advance in Judicial Power was the creation of the National Anti-Corruption Jurisdiction in 2016, which was founded as a MACCIH initiative to prosecute complex corruption cases.

However, following the Mission's withdrawal and the enactment of the New Criminal Code, the circuit is now faced with a lack of support from the international mechanism, as well as obstacles such as the reduction of sentences in several of the crimes classified as corruption. Furthermore, the situation will retroactively benefit people who have already been convicted or are currently being tried for crimes of corruption.

Changes in the Control and Oversight Bodies

Regarding access to public information, enacting the Law of Transparency and Access to Public Information (LTAIP) in Honduras (2007) was a milestone for promoting transparency. It also allowed the country to join the ranks of the many countries that had already approved specific legal regulations to protect that human right. However, in practice, it has not been sufficient to eliminate the obstacles, blockages, and resistance of state institutions and actors responsible for providing public information to citizens, especially to vulnerable sectors.

In that regard, obstacles demonstrate the public administration's resistance to facilitating access to interested citizens. These limitations include weaknesses in the management of training and disclosure about the law; excessive and deficient bureaucratic processes; impunity and legal sanctions without coercive power; and organizational and budget limitations that hinder the performance of the responsible institution.

However, the restriction that was most questioned by Honduran citizens and civil society was the contradictions between the Law for the Classification of Public Documents Related to National Defense and Security, colloquially referred to as the *official secrets law*, and the regulations of the Law of Transparency and Access to Public Information. In short, the official secrets law establishes a system of classification and claiming confidentiality for documents that differs from that already regulated by existing law.

6. MAIN LEGISLATIVE OBSTACLES TO LEGAL ACTION AGAINST CORRUPTION: IMPUNITY PACTS

State institutions in Honduras are overrun by corruption and impunity. This problem has progressively and cumulatively grown worse to the point of consolidating into a

system of corruption and impunity, promoted by different public and private actors and integrated into corruption networks that act under the protection of impunity.

The problem is extremely complex if one takes into account that the independence of Honduran institutions entrusted with fighting corruption is also affected by the same systemic and generalized character of that phenomenon. Therefore, this factor has been a constant issue in the cases presented by UFECIC-MACCIH since, as the IACHR establishes, the impacts on the administration of justice are the object of acts of corruption. This not only affects their independence but also means that they become agents of corruption themselves, causing harm to the proper administration of justice and leading to the emergence of many spaces of discretion that favor impunity and the continuation of corruption networks.

Therefore, this corruption and impunity have been entrenched in Honduras following a series of “impunity pacts”: mechanisms employed by the corruption networks and organized crime to co-opt state institutions and guarantee that their criminal activities go unpunished. These measures include, among others, naming high-level state officials and passing regulations and laws that hinder accountability and promote impunity.²¹

In the Honduran case, corruption is systemic and changes how the state functions, operates, and is administered by authorities organized in corruption networks. Consequently, criminal organizations of this type operate under the assumption that corruption is part of the functioning of the country’s institutions.²² In this way, corruption has become an operating system of sophisticated networks that involves the intersection of three sectors: the public sector, the private sector, and external criminal structures. The main objective of this alliance between these three sectors is to maximize benefits for all its members.²³

Given that the public-private corruption networks and organized crime have positioned themselves at the center of the management of the Honduran State, the judicial system has responded with fragility and weak actions against public officials and all the sectors that make up these structures. The IACHR estimates that the main factors that facilitate corruption and a context such as that of Honduras are institutional and cultural characteristics.²⁴ In this case, the institutional factors encouraging this sociopolitical problem stand out:

- a) the institutional weakness of the State, characterized by the lack of territorial coverage and by institutions that are unable to fulfill fully their functions;
- b) the monopoly or concentration of power in areas with a high economic or social impact, in which resources are managed or decisions are made that have a major political and social impact;
- c) significant space of discretion in decision-making by state agents;
- d) the lack of control over authorities’ actions, which is based on the lack of transparency and accountability regarding the decisions made by authorities, as well as the secret nature of corruption; and

- e) the high level of impunity that allows acts or systems of corruption to operate with the guarantee that the benefits obtained will greatly outweigh the costs of corruption.

Similarly, other conditions and causes have been identified that encourage corruption in the country. These include a) outdated legislation, b) weak institutions, c) an administrative system of justice with limited capacities and resources, d) electoral and political party systems without democratic rigor, e) poor access to public information, f) conflicts of interests, and g) little citizen participation.²⁵

In this context, the bureaucratic elites maintain a system that guarantees impunity and, in turn, hinders any action that emerges from citizens. The strategies deployed by those elites include the reform and creation of laws, protecting elites accused of crimes of corruption from legal action, the weakening or disappearance of institutions, for example, the MACCIH-UFECIC binomial, and the creation of new institutions that promote an environment of corruption or that generate uncertainty in that fight.

Corruption has enormous impacts on the human rights of the citizens who inhabit a territory, the political system, the consolidation of democracy, and the rule of law. In that regard, the situation in Honduras is very complex if one takes into account that public policies and budgets are not aimed at solving the country's main problems, which, in this case, would be the scourge of corruption and its consequences in other areas such as economic, social, cultural, and environmental rights, as established by the Inter-American Commission on Human Rights (IACHR).

However, in different public opinion polls in recent years,²⁶ Honduran citizens have identified corruption as one of the country's main problems. They have done so by taking into account the information disclosed by both national and international bodies that have revealed that criminal structures in Honduras have used the State as a primary source of capital accumulation in a context of impunity and, in turn, have made use of a growing field of power and influence over state institutions, and particularly over the bodies responsible for imparting justice.²⁷

It is worth pointing out that acts of corruption have a historical presence in Honduran society but that they have been progressively and cumulatively consolidated to the point of constituting a system of corruption and impunity, promoted by different public and private actors. In that regard, the consolidation of the power of criminal networks in Honduras has involved the creation of institutions and laws that favor the maximization of resources and, on the other hand, the weakening of other institutions that would imply risks for the activity of corruption networks. Blockages in state structures are expressed through diverse forms and mechanisms to shield corruption.

Currently, these blockages are mainly expressed in the approval and reform of laws in the National Congress that limit the capacities for investigation and prosecution of corruption and in resolutions favorable to state officials in the judiciary when the Supreme Court of Justice members are selected to impart justice.

Similarly, other already-existing institutions and state bodies play an important role in the structure of corruption networks in Honduras. These institutions include the

National Congress, the Supreme Court, and the state security forces.²⁸ In short, under this system of corruption, corruption networks have carried out political actions to control and hinder accountability and transparency through the co-optation of institutions or capture of the State. In this context, the National Congress has become the principal tool for implementing legislative actions that have guaranteed impunity, while regulatory obstacles have been part of judicial action.

According to the systematization carried out by the Bufete Jurídico Justicia para los Pueblos and CESPAD, the main impunity pacts that are currently affecting the struggle against corruption in Honduras are the following:

- a) *Special process before the Supreme Court,*
- b) *Decree 418-2013: Secrets' Law*
- c) *Decree 110-2014: Reform of the Public Ministry Law*
- d) *Decree 130-2017: New Criminal Code*
- e) *Decree 141-2017: Reform of the Constitutional Budget Law*
- f) *Decree 116-2019: Special Law for the Management, Assignment, Execution, Settlement, and Accountability of Public Funds for Social, Community, and Infrastructure Projects and Social Programs*
- g) *Decree 117-2019, Reform of the Constitutional Law of Legislative Power (immunity),*
- h) *Elimination of MACCIH-UFECIC and the Anti-Corruption Circuit.*

Special Process before the Supreme Court of Justice

The judicial system stands out when looking at this first obstacle. This institution, made up of politicians from traditional political parties, has become one of the main tools for corruption networks in the country, as shown by resolutions favorable to those implicated in corruption crimes. Thus, its role essentially consists of maintaining impunity in the Honduran political system.

The Code of Criminal Procedure (Decree 9-99-E), which went into effect in 2002, included, without any justification, a special procedure for trials of high-ranking state officials, which establishes that they will be judged by magistrates from the Supreme Court of Justice (CSJ). The powers of the magistrates to judge high-ranking officials and politicians in the country are circumscribed in Article 313 of the Constitution of the Republic of Honduras from 1982.

Specifically, this regulation refers to the powers of the Supreme Court of Justice, but, particularly, the second function of the provision establishes that, through the magistrates, it has the power to “Hear proceedings initiated against the highest-ranking state officials and deputies.” In short, the CSJ has the power to determine the outcome when politicians in office are accused of some sort of crime.²⁹

Ultimately, these processes take place before judges or ad-hoc courts appointed discretionally and illegally by the CSJ plenary, in such a way that the impunity pact becomes clear every time high-ranking State officials, if they are brought to trial, are

judged by magistrates that form part of the court, that have been elected by the National Congress (CN) and, as civil society organizations have denounced, by negotiations between political parties.³⁰

Decree 418-2013: Law for the Classification of Public Documents related to National Defense and Security, “Secrets Law”

Discretion in the application of laws serves as a shield against the prosecution of irregular behaviors by officials. The *Law for the Classification of Public Documents related to National Defense and Security*, or the *Secrets Law* as it is known colloquially, serves as an element to control information since the confidentiality of information is applied to numerous state institutions and not only to the security and defense sector as established by the law’s name.

Therefore, this law is one of the most important tools used by corruption networks operating in Honduras since its provisions establish the following:

Public information will be classified as confidential when the disclosure of that information puts state security at risk or harms state security, the development of reserved investigation regarding activities of prevention, investigation, or prosecution of crimes or the administration of justice and the interest protected by the Constitution and Laws, among others.³¹

On the other hand, in Article 14, the law determines that “jurisdictional and administrative bodies, in the conduct of the processes of their knowledge, must request the respective authorizations from the National Defense and Security Council (CNDS) so that public officials can make a statement and reveal information concerning any process in the event that it is classified, including corruption cases.”³² This demonstrates the clear violation of the separation of powers, particularly in the area of judicial independence. In short, this law has been created and utilized by corruption networks that operate through the National Congress to block investigations and judicial processes by invoking issues of national security.

Decree 110-2014: Reform of the Public Ministry Law

In 2014, the National Congress reformed Decree 228-93, which empowered Public Ministry officials to extrajudicially disclose information and opinions of a general or doctrinal nature about matters they dealt with in the institution. Article 7 of the reform establishes the following:

Civil servants and officials from the Public Ministry cannot, under any circumstances, disclose information about the matters that they deal with, except when it is requested by a superior or they have the due

authorization to do so from the Attorney General of the Republic. Failure to comply with this provision constitutes a serious offense.

In short, this reform strips public officials of their voice, limits citizens' access to information, and, instead, strengthens the voice of the accused through their lawyers.

Decree 130-2017: Criminal Code

The implications of the New Criminal Code for crimes of corruption include a significant reduction in sentences for crimes such as embezzlement of public funds, fraud against the public administration, illicit enrichment, and abuse of authority. In summary, these provisions display a logic that prioritizes increasing sentences for common crimes in opposition to a compassionate position, as shown by the reduction of sentences for those who commit organized crime.

According to the Bufete Jurídico Justicia para los Pueblos and CESPAD, the main criticisms of the New Criminal Code include the following aspects:

- a) The process of legislative approval did not take into account proposals from civil society.
- b) Civil society was not given access to the decree's proposals that were being put to vote. What was approved only became public on May 10, 2019, when the decree was published in the Official Gazette. In that sense, the process was not transparent.
- c) Many of the deputies that voted to approve the New Criminal Code had conflicts of interest, as they were being investigated for crimes of corruption, human rights violations, or organized crime.
- d) The New Criminal Code substantially reduces sentences for crimes of corruption and organized crime, which would greatly increase impunity due to its retroactive effect.
- e) The modification of the time limits for the prescription of legal action will benefit those persons who have committed crimes of corruption or organized crime, and that to date, have not been investigated due to the co-optation of the Public Ministry.
- f) The New Criminal Code includes several regulations that could impact the criminalization of social protest.
- g) The articles related to corruption were modified even after being approved, and consequently, the sentences for crimes were reduced.

Decree 141-2017: Reform to the Constitutional Budget Law

This law arose in the context of the investigations carried out by MACCIH, in collaboration with UFECIC, a dependency of the Public Ministry. These dependencies established a connection between a network of deputies and the use of funds for social assistance programs. As a consequence, the Supreme Court of Justice archived the case and transferred it to the High Court of Auditors (TSC). This meant that those trials could not proceed until that body finished its audits and investigations of the deputies.³³

As has been noted, this reform established an administrative procedure prior to the Public Ministry's investigation against those who had handled public funds. This decree introduced the obligation of the Superior Accounts Court to carry out a special audit of funds allocated to social programs, giving that body three years to complete it.

The reform of the Constitutional Budget Law was a significant setback for the investigation and criminal prosecution of the corruption cases selected by the UFECIC/MACCIH team. This reform conferred on the Superior Accounts Court the power to carry out audits and special investigations on the use of public funds, as well as the monopoly over the determination of civil, legal, and administrative responsibility of the subjects involved in the irregular use of public funds, retroactively going back to 2006.³⁴ Ultimately, the Public Ministry filed an appeal of unconstitutionality against this law on January 31, 2018. The Supreme Court resolved the appeal favorably on January 30, 2019, declaring the decree unconstitutional for formal reasons.

Decree 116-2019: Special Law for the Management, Assignment, Execution, Settlement, and Accountability of Public Funds for Social, Community, and Infrastructure Projects and Social Programs

This law legalizes the administration of state funds by deputies of the National Congress. The argument used by legislators for the approval of this law consisted of the following: in their role as representatives of the population, they must “travel to different regions of their departments and the country, in order to learn about the problems faced by each municipality. When approaching the people, deputies receive requests for aid in social and infrastructure issues, whose objective is to improve the population's quality of life.”³⁵

Therefore, the law would guarantee the administration of resources to provide that social assistance. However, in practice, the funds assigned and exercised by the congress members have been used for political propaganda and to carry out activities linked to political patronage and acts of corruption. The law not only provides significant room for the discretionary use of resources by deputies, but it also contradicts the Political Constitution, which provides that the administrator of state assets by the president of the Republic, as expressed in Article 245, numeral 19.

On the other hand, in Article 1, the law declares that its purpose is to establish regulations regarding the management, assignment, execution, settlement, and rendering of accounts of public funds allocated for social, community, and infrastructure projects and social programs:

Through the different public institutions of the Central and/or Decentralized Government, Municipal Corporations, the National Congress, Non-Governmental Organizations, Trusts, entities or bodies of private law auxiliary to the Public Administration and any Natural or Legal Person, that, within their functions or purposes, from the execution of social, community, infrastructure, infrastructure equipment, basic public goods and services, and any type of social assistance programs and projects that are intended to improve the living conditions of citizens in communities, as well as attention to their urgent needs.

However, as indicated in the study by the Bufete Jurídico Justicia para los Pueblos and CESPAD, the regulations for accountability, as established by this law, limit the investigative powers of the Public Ministry to deduce criminal responsibility since it orders the TSC to carry out an audit and special investigation over a three-year time period. In this regard, Article 16 establishes:

While the special investigation and audit are in effect and until the Superior Court of Accounts emits a definitive resolution, any other type of administrative, civil, or legal action is suspended, regardless of its stage, in relation to the deduction of any type of responsibility over the funds that are being audited. The Certificate of Solvency or Settlement issued by the High Court of Auditors (TSC) provides an exemption from any type of civil, legal, or administrative liability in relation to the allocations budgeted or audited by that court.³⁶

In conclusion, Decree 116-2019 is part of the impunity pact for the corruption networks, as its provisions establish that the Public Ministry cannot exercise public legal action until the TSC releases its report on administrative responsibility. Thus, even if the authority commits a crime such as embezzlement of public funds, the TSC will be the institution that penalizes or acquits the person involved in actions or omissions related to the management of the funds that have caused damages to the public administration and violations of human rights.³⁷

Decree 117-2019

This reform arose in the context of the accusation presented on May 24, 2018, by the Public Ministry for crimes of the falsification of public documents, abuse of authority, and crime against the form of government against the deputies José Tomás Zambrano Molina and Román Villeda Aguilar for incorporating content that had not been read, nor discussed or approved in the plenary session of the National Congress in relation to Decree 141-2017.³⁸

This decree modifies the Constitutional Law of Legislative Power, at the same time as it incorporates parliamentary immunity for any action carried out in the exercise of legislative office. Thus, it is another important component of the impunity pact of the illicit networks integrated into the National Congress. Specifically, the addition dictates that *“any action carried out in the exercise thereof does not carry any type of criminal, civil, or administrative liability to the deputies who participate in said parliamentary process...”*³⁹

Elimination of MACCIH-UFECIC and the Anti-Corruption Circuit

The experience, based on the Agreement between the Government of the Republic of Honduras and the General Secretariat of the Organization of American States (OAS) for the Establishment of the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH), signed on January 19, 2016, demonstrated that the fight against corruption networks was much more effective with the support provided by this external entity to a fragile institutional framework such as that of Honduras. And, even more so, in a context where there has persistently been weak enforcement of laws aimed at stopping corruption networks and impunity for other types of criminal activity.

MACCIH’s actions and achievements include thirteen cases of investigation and criminal prosecution that demonstrate the modus operandi of corruption networks in Honduras.⁴⁰ There are also proposals for reforms to contribute to strengthening the country’s institutions, which include the Law of Effective Collaboration (which was not passed), and the Law of Financing, Transparency, and Oversight of Political Parties and Candidates that was passed on October 20, 2016.⁴¹ Furthermore, it established the Criminal Justice Observatory, a mechanism of citizen oversight of criminal justice and accountability.⁴² The following cases, with names referencing the sectors denounced in each proceeding, were presented publicly:

- 1) *“First Lady’s Petty Cash” case*
- 2) *“Deputies’ Network” case*
- 3) *“Impunity Pact” case and extension of “Impunity Pact” case*
- 4) *Pandora” case*
- 5) *“Asset Recovery of the Pandora Case” case*
- 6) *“Brother’s Petty Cash” case*
- 7) *“Fraudulent Social Security Bid” case*
- 8) *“Open Ark” case*
- 9) *“Fraud on the Gualcarque” case*
- 10) *“Patuca III- Collusion and Corruption” case*
- 11) *Asset Insurance in the “First Lady’s Petty Cash” case*
- 12) *“Narcopolitics” case*
- 13) *“Corruption on Wheels” case*

MACCIH and its Honduran counterpart, UFECIC, encountered numerous obstacles in state structures, expressed through different forms and mechanisms of protecting corruption. Those obstacles were primarily seen in the approval and reform of laws in the National Congress that limited their capacity to investigate and prosecute corruption and resolutions favorable to state officials by the judiciary when the Supreme Court of Justice judges were chosen to impart justice in the aforementioned cases. Finally, on January 19, 2020, MACCIH's mandate in Honduras ended. Its withdrawal was the result of several internal and external factors and the non-renewal of the agreement between the Government of Honduras and the OAS to continue its mandate in the country.

Following MACCIH's withdrawal⁴³ and the consequent dissolution of the binomial, that was made up with UFECIC,⁴⁴ the context for the struggle against corruption in Honduras is extremely adverse. Its departure presents major challenges since that binomial managed to carry out, for the first time in history, investigation and criminal prosecution against corruption networks in the country. Furthermore, it demonstrated how those networks operate and are structured.

As expressed by CESPAD in other documents, the current context is characterized by the shielding of corruption networks through a traditional and clientelist political system that, because of how power is exercised, produces and reproduces corruption and impunity; a legal framework that is favorable to corruption and impunity and adverse to transparency, accountability, and the fight against corruption; participants in Honduran society who are not committed to and active in the struggle against corruption.⁴⁵

In conclusion, these actions have facilitated or enabled the activities of corruption networks in Honduras. In this way, each one of the entities and laws mentioned above makes up an important part of the structure, as they allow for business and state sectors tied to organized crime to continue with impunity, that is, without adverse effects such as investigation and criminal prosecution for the criminal acts that they commit. In this way, they constitute regulatory and institutional obstacles, also known as the impunity pacts created by the elites of political and economic power integrated into illicit networks.

7. THE LEGAL AND INSTITUTIONAL DESIGN OF AN EFFECTIVE NATIONAL ANTI-CORRUPTION SYSTEM

To confront structural corruption, it is necessary to have coordinated activity among the entire state apparatus, with precise diagnoses, adequate goals, formal systems of control, periodic evaluation, and adequate mechanisms of transparency and publicity.⁴⁶ According to the IACHR, this process should be based on international instruments and the principles of nondiscrimination, transparency, accountability, and citizen participation.

In accordance with the parameters of the Inter-American Convention against Corruption and the United Nations Convention against Corruption, advances in terms of corruption can be identified through the monitoring and analysis of the discussion and

approval of legislation and the identification of best practices that may or may not have regulatory backing.

Penalization of Corruption

For the Honduran case, the New Criminal Code deserves special attention. As MACCIH established at the time, in its analysis of the matter, this legislation would have a general impact on the cases brought forth with UFECIC, now UFERCO. Among their concerns, they highlighted the elimination of the figure of the necessary cooperator and the decrease in sentencing for several crimes against the Public Administration; changes in the classification of money laundering in relation to the special law that would define it; and the exemption of criminal liability for fraud if the amount defrauded is reimbursed.⁴⁷

Regarding the reduction of sentences, Pérez Munguía highlights the following:

Regarding the reduction of sentences... concern in relation to figures such as influence peddling, bribery, negotiations that are incompatible with the exercise of public functions, illegal exactions, illicit enrichment, fraud, and embezzlement of public funds. This decrease could facilitate the adoption of means such as the conditional suspension of the execution of the sentence, the declaration of the prescription of the action, or the application of figures such as conciliation, the criteria of opportunity or the conditional suspension of prosecution.⁴⁸

At the same time, it is worth pointing out that these actions are added to a long process of shielding corruption which has been promoted by the sectors that make up corruption networks in Honduras. Thus, they are part of a broader scheme that includes control of monitoring bodies, the concentration of financial and budget decisions in the Presidency of the Republic, and, furthermore, a coordinated and defensive strategy in the face of accusations of crimes of corruption that include:

Cohesive action and joint response to threats, independently of party differences; the use of a nationalist discourse to reject foreign “interference” in issues of justice; the instrumentalization of fundamental rights to denounce alleged abuses by the Public Ministry or the national anti-corruption jurisdiction; a sustained campaign in defense of their points of view and interests in the media; and the concentration of a nucleus of criminal lawyers with significant experience in the Honduran criminal justice system.⁴⁹

In short, in the current context, reforms and urgent measures are needed to establish an agenda aimed at strengthening an anti-corruption institutional framework and the criminal justice system. These include a legislative policy that incorporates modifications to the legislation regarding the classification of public documents; an increase in

sentences for crimes of corruption in the criminal code or its repeal; reinforcement of witness and whistleblower protection programs; approval of the Law of Effective Collaboration; reform of the prosecution system for high-ranking officials; the modification of regulations about interception of communications and changes in the legal framework for detecting and investigating illicit enrichment.⁵⁰

Society's Participation

The role of citizens is one of the elements that enable corruption to be a generalized and accepted practice in everyday life, recognizing that lack of citizen participation is one of the conditions and causes that favors corruption in the country.⁵¹ Similarly, the lack of citizen participation has had impacts on the formulation of public policies, particularly those related to issues of corruption and impunity have largely depended on delegitimized mechanisms of political representation.

Therefore, society's participation in matters of transparency and fighting corruption also goes hand-in-hand with legislation that makes participation in public matters possible. For that participation to take place, access to public information is essential so that social audit processes can be fostered and, in turn, strengthen the right to participation in public matters. In the Honduran case, the Law of Access to Public Information should be the most important legislation in this regard.

Another element of citizen participation is the possibility of denouncing acts of corruption without fear of reprisal. No country in Central America has legislation to protect those denouncing corruption as a preventive measure. Existing legislation in Honduras focuses, in a general way, on the protection of people who are already involved in criminal proceedings. However, it has been highlighted that, despite the legal vacuum in relation to protecting those denouncing corruption, there are cases in which citizen complaints have been key for describing schemes of national and regional corruption and, in other cases, actions beyond complaints, in which, through social audit processes, information has been obtained that can be used as proof in a trial.⁵²

In the international sphere, the Organization of American States has proposed a Model Law to Facilitate and Promote Denunciations of Acts of Corruption and Protect Whistleblowers and Witnesses. In the national arena, MACCIH-OAS similarly proposed the Law of Effective Collaboration, a legal structure that would be an instrument that would have provided greater powers to operators of justice to investigate and prosecute the members of criminal structures in Honduras. In synthesis, the proposal's objective was *to regulate the procedures, requirements, circumstances, and benefits that all people in freedom, investigated, processed, or sentenced for committing a criminal act may enjoy, that provide information or evidence that leads to improving the efficacy of criminal prosecution.*⁵³

Preventive Bodies

The bodies created with the purpose of the application of preventive policies in the sphere of corruption must adjust to or integrate the guidelines established by the United Nations Convention against Corruption, such as: a) administrative and operational independence and the independence of criteria; and b) the capacity to operate with complete operational autonomy, administratively and legally, and with an independent budget in the exercise of its functions without receiving instructions from any authority, state body or person.

In short, there is not a universal model. However, literature on the topic establishes that the standard presented by the United Nations Convention against Corruption sets forth that a body of this type must be empowered to act with equal authority in all sectors and with the mission of planning, maintaining, examining, and controlling the implementation of policies to fight against corruption. But, to do so, it must have operational independence so that it can establish its own work program and way of performing its functions according to the regulation; that is, it must have autonomy.

Investigating and Sanctioning Bodies

The legislative advances that must be made in this area involve institutions such as the Public Ministry and the Supreme Court of Justice, charged with determining criminal responsibility in cases of corruption; investigation and prosecution of acts of corruption; and, similarly, institutions charged with evaluating, examining, or auditing the use of public funds and determining the pecuniary or patrimonial responsibility in cases of corruption.

In this case, one of the most significant legal reforms in regard to the operation of the Public Ministry, which had an impact on the implementation of anti-corruption legislation, was Agreement No. FGR 000-2017, which allowed for the creation of the Special Fiscal Unit against Impunity of Corruption (UFECIC). As previously mentioned, after MACCIH's withdrawal, the MP dismantled UFECIC and created UFERCO. Consequently, the MP issued an official statement announcing its creation to fulfill the strategic objectives of leading policy against criminality and adapt the constitutional structure of the Ministry to the challenges of a new strategy to guarantee an effective fight against corruption and impunity.⁵⁴

According to the MP's statement, UFERCO's primary objective is an impartial investigation, law enforcement, and prosecution of those responsible for committing crimes related to high-impact public corruption and corruption networks assigned to it by the Attorney General's Office. Likewise, it concludes the lines of investigation and supports the cases that were prosecuted by UFECIC, using the best practices acquired from MACCIH-OEA.⁵⁵

However, UFERCO has faced challenges related to the loss of institutional support and other obstacles in state structures, seen in the different forms and mechanisms of shielding corruption in the very institutions of the State. Therefore, in this context,

UFERCO's work has also been hindered by those same corruption networks that are administering the State.⁵⁶

In summary, UFERCO has faced the following problems:

- The structure of the Honduran State has presented numerous obstacles to UFERCO's operation and its effectiveness in terms of investigation and criminal prosecution due to the reforms that represent real blockages for the MP. Such as those to the High Court of Auditors (TSC), and due to the inability to pass legislative initiatives that would include reforms to the legislation regarding the Classification of Public National Defense and Security Documents, a new system for trying high-ranking state officials, and a new regime of investigation and prosecution of the crime of illicit enrichment, among others.
- The reforms to the constitutional law of the TSC hinder the investigation and criminal prosecution of corruption networks. The reforms approved by the National Congress place limits on investigative bodies' access to audit documents and the use of public funds in the hands of the TSC's domain. Ultimately, these amendments grant the High Court of Auditors the power to investigate the operations and activities of taxpayers within a term of five years when it is a question of strictly administrative matters in accordance with Article 105. However, the prescription will be from 10 to 20 years in the case of criminal matters.⁵⁷
- Challenges concerning the infrastructure, financial resources, and specialized human resources of UFERCO and labor instability. According to an UFERCO representative, they would need 20 years to investigate the "Deputies' Network" case with UFERCO's current staff; they would need ten years for the "Pandora Case." Similarly, the institution's financial resources have decreased considerably following MACCIH's withdrawal and the disappearance of the UFECIC. The prosecutors of the UFERCO will no longer receive the 20,000 lempira bonus contributed by donor countries.⁵⁸ Additionally, they are subject to being removed from their duties in that agency by the decision of the attorney general.⁵⁹

On the other hand, it is necessary to strengthen the prosecution system. In this case, reference is made to what has been called the new anti-corruption institutional framework, that is, the national anti-corruption jurisdiction that is based on a reform of the Special Law of Jurisdictional Bodies with National Territorial Competence in Criminal Matters, through legislative decree 89-2016 29.⁶⁰ It is worth pointing out that, for the selection of judges and magistrates, as well as auxiliary personnel for the new courts and tribunals, a protocol based on merit and suitability was used in which representatives from the Judiciary, MACCIH, and a civil society organization participated.

8. VICTIMS OF CORRUPTION: LEGAL AND INSTITUTIONAL FRAMEWORKS AND INTER-AMERICAN STANDARDS

Large-scale corruption has daily impacts on society, and according to the IACHR, this phenomenon generates a twofold effect. On the one hand, it creates distrust in society since it is seen how public authorities use the State for private benefit, diverting it from fulfilling its own functions. In turn, there is evidence of widespread impunity in cases of corruption. On the other hand, acts of large-scale corruption affect the State's financial ability to fulfill its obligations in terms of human rights, delegitimizing its social function.

In that sense, the weakening of institutions and erosion of the population's trust limit governments' capacities to fulfill all their obligations in terms of human rights and to achieve, to the extent with the given resources, the Sustainable Development Goals. Similarly, corruption has a profound impact on the rule of law, particularly in the principles of the primacy of the law, the idea of the common good as the foundation of the legitimacy of authorities, and the independence of authorities from State institutions.

Likewise, States fail to fulfill their human rights obligations when widespread corruption occurs. The deprivation of human rights, such as food, health care, housing, and education, are some consequences of corruption in Latin America. Similarly, corruption promotes discrimination and aggravates the socioeconomic situation of people who live in poverty, exclusion, and historical discrimination, impeding the exercise of their rights, including both civil and political rights, as well as economic, social, cultural, and environmental rights.

Therefore, in a broad sense and under the perspective of human rights, corruption affects not only social rights but also economic, cultural, and environmental rights. Although in practical terms, the social harm caused by corruption is defined as *impairment, affectation, detriment, decrease, or loss of social well-being due to an act of corruption, which unjustifiably suffers a plurality of individuals by producing material or immaterial effect in their diffuse or collective interests and, before which, the duty for repair emerges.*⁶¹ Thus, any act of corruption threatens the diffuse interests of the collective, and, therefore, the rights of each and every citizen. Furthermore, every act of corruption has profound and differentiated impacts.

But how could we be more precise in identifying corruption victims? Studies on the matter have presented this difficulty in the past. However, advances on the topic and the evolution of anti-corruption laws around the world have facilitated the identification of the specific individuals harmed by corruption crimes, as well as demonstrating or providing evidence of the direct effects that could be used in legal suits. In this way, the legal frameworks show advances in identifying individual harm as well as collective and diffuse harm.

At the same time, the notion that any act of corruption creates the need for repair has gained importance in legal frameworks and in practice, in processes such as trials and reconciliation procedures, taking into account that, in accordance with the IACHR, an act of corruption directly affects a right when it is used as a means to impede its effective

realization and enjoyment. In that regard, some organizations have directed their work to promoting the recognition of victims to initiate and participate in judicial processes of high-level corruption cases and to the importance of evaluating and representing these types of damages to the court, as well as to support the work of civil society organizations in advising victims in claiming damages.

But returning to the question of how to identify direct victims, national and international jurisprudence provides sufficient contributions to identify and define victims. In this regard, the United Nations adopted the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, and in its first principle, defines victims as follows:

“Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.⁶²

It also adds that:

A person may be considered a victim under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term “victim” also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.⁶³

Finally, an act of corruption has victims taking into account that it directly affects rights when it is used as a means to impede their effective realization and enjoyment. For example, rights are affected when someone is forced to make irregular payments to study or to receive medical attention; when a company exercises political pressure and undue influence on state authorities to benefit from Indigenous land and resources; when funds for particular social programs or policies are diverted; or when governments’ regulatory or supervisory functions in environmental, labor, and other matters are weakened or annulled for the benefit of private interests. Thus, these types of effects can be identified in different areas, such as health care, education, food, water, housing, and others.

States' Obligations in Cases of Human Rights Violations due to Acts of Corruption

The State is obligated to make every effort possible to identify direct victims so that they can be fully compensated, as well as the social sectors affected by the social harm caused by corruption. In this sense, the IACHR indicates the importance of using the available legislation applicable in the fight against corruption, the developed standards, and the content of States' obligations, both at the inter-American level and the universal level.⁶⁴

In that regard, OAS member states undertake the commitment to respect and guarantee the fundamental rights of all people subjected to their jurisdiction, in light of the regulations of the OAS Charter, the American Declaration on Human Rights, the American Convention on Human Rights (ACHR), and all the instruments of the Inter-American system. These general standards encompass aspects related to the prevention, investigation, and punishment of acts of corruption. Ultimately, all of this results in the obligation to provide guarantees and legal protection.

The Obligation to Respect Human Rights

Article 1.1 of the American Convention consecrates the duty to respect rights and freedoms, to guarantee their free and full exercise by all people subject to their jurisdiction, without any type of discrimination. Thus, it recognizes:

The State's duty not to interfere with, hinder or prevent access to the enjoyment of the object of the right." {...} Therefore, in the words of the Inter-American Court, "the notion of limitations to the exercise of the power of the State is necessarily included in the protection of human rights."⁶⁵

Therefore, this article considers it essential to determine if a human rights violation can be attributed to the State, in such a way that "any impairment of that set of rights recognized by the Convention may be attributed, according to the rules of International Law, to the action or omission of any public authority and constitute an act attributable to the State that commits its international responsibility."⁶⁶ Ultimately, under the principles of International Law, the State must answer for the acts and omissions carried out by its agents, under cover of their official position, even if they act outside of their area of competence.

Similarly, the Convention adds that the international responsibility of the State concerns acts or omissions of any state power or body, regardless of their hierarchy, that violates the American Convention, and that is immediately generated with the international criminal activity attributed to the State. Taking these suppositions into account, the Convention stipulates that to establish that a violation of rights has occurred, "it is not necessary to determine, as it is in domestic criminal law, the guilt of the

perpetrators or their intention; nor is it necessary to identify individually the agents to whom the acts that violate the human rights embodied in the Convention are attributed. It is sufficient that a state obligation exists and that the State failed to comply with it.”⁶⁷

Finally, in accordance with the IACHR, in matters of corruption, the State’s responsibility can be established when state authorities act contrary to their obligation or omit an act to which they are obligated. In this case, the nature of the State’s obligation may be one of the means or the results, and therefore, the determination of its noncompliance as a consequence of an act of corruption will depend on the causal relation with the specific case.

The Obligation to Adopt Measures to Prevent Rights Violations Related to Acts of Corruption

Member States have the obligation to guarantee the free and full exercise of the rights recognized by the American Convention for all people subject to their jurisdiction. In that regard, states “have a legal duty to take reasonable steps to prevent human rights violations and to use the means at their disposal to carry out a serious investigation of violations committed within their jurisdiction, to identify those responsible, to impose the appropriate punishment, and to ensure adequate reparation for victims.”⁶⁸ Ultimately, failure to comply with this guarantee can constitute an international illegal act that, if it is attributable to the State, generates international responsibility and the obligation to provide compensation for the harm caused by corruption.

At the same time, according to the IACHR, the obligation of guarantee has different expressions that are directly linked to corruption.

- a) The guaranteed obligation presupposes that states adopt all the necessary and adequate measures to prevent (duty to prevent) acts of corruption that can constitute human rights violations.
- b) States have a fundamental duty to safeguard rights by establishing effective domestic legal provisions to dissuade the commission of acts that may impair the enjoyment and exercise of those rights. This must be backed by the enforcement of laws for the prevention, repression, and punishment for failure to comply with the provisions.
- c) The duty of prevention also includes a positive obligation on the part of authorities to take proactive measures to protect individuals or groups who, as whistleblowers or witnesses to acts of corruption, are at risk of criminal attacks on their lives or bodily integrity.
- d) States must adopt institutional measures, such as legislation, effective resources, rapid and accessible procedures, and organizational measures, such as rapid alert systems and risk evaluation, to guarantee proper protection for those who are affected by structural corruption.

On the other hand, there are mechanisms, in both the national and international spheres, to claim compensation for the harm caused by corruption that public and private

actors can use. In that regard, a classification of the judicial mechanisms currently available for the defense of diffuse, particular, or collective interests is suggested.⁶⁹

- a. Explicit mechanisms of compensation for collective harm provided in laws that enable victims, associations, organizations, prosecutors, and other authorities to seek compensation in cases in which the public interest has been affected and the concept of collective or diffuse harm can be invoked. In some cases, these mechanisms can be used even if the laws do not explicitly include the term social harm.
- b. Class action lawsuits or similar litigation methods related to the public interest that could potentially be used to channel requests for reparations for social harm.
- c. Civil mechanisms can offer opportunities for obtaining compensation regardless of whether or not they are linked to a criminal case or not. The basis for this action is the existence of harm and tends to be more accessible for groups that are identifiable as victims.

In short, the legal procedures of the countries that are part of international initiatives against corruption contemplate the possibility of imposing sanctions and compensation for victims of the social harm caused by corruption through an administrative path in instances in which the harm is the result of the behavior of public officials. On the constitutional side, legal bases are also found for obtaining compensation for the harm of corruption. And finally, although the legal basis does exist for collective harm, it requires the involvement of prosecutors in cases of collective harm and the use of diverse indicators and calculation methods to estimate the harm caused to victims.

The Obligation to Investigate Acts of Corruption

Impunity is defined as the “the impossibility, de jure or de facto, of bringing the perpetrators of violations to account—whether in criminal, civil, administrative or disciplinary proceedings—since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.”⁷⁰

For its part, the Inter-American Court defines impunity as the “failure to investigate, prosecute, take into custody, try and convict those responsible for violations of rights protected by the American Convention.”⁷¹ In short, impunity implies that, in the absence of punishment, the actors involved in acts of corruption continue operating without consequences, either because of the inexistence of or lack of functioning of a criminal justice system to prosecute those responsible.

Therefore, impunity is also one of the main factors that contribute to corruption becoming a structural problem. Furthermore, as the IACHR points out in its 2019 report on corruption and human rights, it encourages the chronic repetition of human rights violations and the complete defenselessness of victims. In that regard, the court establishes certain duties of states on this matter:

- a. Whenever State authorities are cognizant of a conduct that has impaired rights protected under the American Convention and can be prosecuted ex officio, they must promptly begin a serious, impartial, and effective investigation, using all available legal means and geared to ascertaining the true facts and trial and eventual punishment of the perpetrators.⁷²
- b. States' obligation to investigate conduct that affects rights protected under the American Convention is maintained regardless of the agents to whom the violation can be attributed.
- c. States must adopt the necessary measures to facilitate access by victims and whistleblowers reporting acts of corruption to appropriate and effective resources for both reporting the commission of those acts and achieving reparation for the harm suffered, thereby contributing to the prevention of their recurrence.
- d. States have the obligation to adopt effective measures for investigating and punishing acts of corruption of state agents and private persons, entities, or organizations.

Finally, in a system of impunity, given the absence of a criminal justice system or the system's lack of functioning, the role for international mechanisms that provide support to national systems by investigating serious human rights violations related to corruption, such as MACCIH in Honduras and the binomial composed with UFECIC of the Honduran Public Ministry, is crucial.

9. EXPERIENCES FOR ANALYZING THE ROLE OF VICTIMS IN LEGAL PROCEEDINGS REGARDING CRIMES OF CORRUPTION

International and Comparative Law establishes numerous arguments that help identify the role of victims in legal proceedings for corruption crimes. According to the Due Process of Law Foundation (DPLF), in reference to the United Nations Convention against Corruption, besides the State, there are also individual, collective, and even juridical victims. In that sense, Article 35 of the convention, in relation to damages and losses, stands out:

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*⁷³

Therefore, the legal action referred to in article 35 can be civil or it can be a procedural incident that forms part of criminal proceedings. Furthermore, the principles establish certain presuppositions for defining victims, as it is simply required that a) that the person or entity suffer damages or losses and b) that there is a causal relationship between the act of corruption and the damages. In short, there must be a certain link of causality to establish who can be considered a direct victim in corruption cases.

For its part, the IACHR establishes that the fight against corruption, from a human rights perspective, cannot understand that phenomenon as a “victimless crime,” therefore, that fight must articulate itself based on the principle of the centrality of the victims. Regardless of whether they are direct or indirect victims, they must be comprehensively compensated. Thus, the primary orienting force of any anti-corruption policy must be the victims, in the sense that corruption negatively affects people, communities, and society as a whole, and particularly affects people and groups that have historically faced discrimination.⁷⁴

In short, the centrality of victims in the fight against corruption implies that they must be in the center of the struggle based on active participation and “become an integral part of the analysis, diagnosis, design, and implementation of mechanisms, practices, policies, and strategies to prevent, punish, and eradicate corruption, taking into consideration the principles of nondiscrimination and equality, accountability, access to justice, transparency, and participation.”⁷⁵

10. THE PARTICIPATION OF VICTIMS IN CRIMINAL PROCEEDINGS

Advances in International and Comparative Law, such as the jurisprudence in the courts of certain Latin American countries, sustain a broad vision of the condition of the victim. That is, and returning to the DPLF, victims include the groups, communities, or social organizations whose rights, interests, or collective legal assets are affected as a result of a crime or violation of rights.

Today there is consensus that criminal proceedings should also take victims’ interests into consideration, independently of the State’s punitive interests, in dealing with direct victims of this crime. In this sense, the countries affected by this phenomenon have followed this line and, at the same time, have modified their criminal justice systems to create processes in which the victims play a larger role.

In that sense, victims can participate in the legal process in numerous ways. These include instances of civil action for the harm suffered by corruption to participation in investigations due to being affected by a crime, providing evidence, promoting legal action, presenting arguments, and appealing judges’ decisions as plaintiffs.⁷⁶

11. VICTIMS AS PLAINTIFFS

A lawsuit is a mechanism that enables victims of a crime to exercise their right to petition authorities in cases in which they were affected by damages caused by an illegal act. Thus, it implies a voluntary act on the part of the victim to participate in a legal process, or processes of the investigation of acts of corruption, so that the participation of citizens or civil society is taken up independently of the action of authorities in the criminal justice system.⁷⁷

Additionally, the legal recognition of the right of organizations to monitor these victims' causes or even those very organizations as victims of the phenomenon of corruption is equally important. Thus, this mechanism represents the possibility of introducing an external actor to the system whose interest lies in advancing the investigation, can demand that state bodies be held accountable for their action in the context of the investigation of crimes, and can push for more efficient and successful prosecutions.

Some of the advantages of this tool include:

- The collective lawsuit implies adding an external actor to the legal system whose interest lies in the prosecution and punishment of a crime as well as compensation for the harm done. The plaintiff functions as a dynamic agent in the legal process, promoting the advancement of the investigation.
- The plaintiff functions as a dynamic agent that counterbalances the bureaucracy and focuses the procedures on the most relevant issues. Their participation is directly related to the rational and rapid application of the law to the punishable act and the search for what really happened.
- The plaintiff acts as an observer of the process, which increases the transparency of the investigation.
- As the process is carried out, the victim tends to be the best provider of information. Victims are often essential witnesses and they play a greater role the more complex the data is in a case.
- Third, the participation of associations often implies a contribution to the quality of the investigation by making relevant information, specialized knowledge, and evidentiary material available to the process, which contributes to arriving to the truth of the events.

In short, in cases involving collective or diffuse rights, the criminal justice system benefits from plaintiffs and associations, representing the interests of the plaintiffs or citizens as a whole. In that sense, anti-corruption organizations are legitimated to be plaintiffs in cases in which these types of crimes are investigated so that victims are better represented.

12. LAWSUITS IN THE HONDURAN LEGAL CODE: PROPOSAL FOR REFORM

The tendency to encourage the participation of victims in criminal proceedings should be an advance in the Honduran procedural system, with the goal of considering their interests separate from the State's legal interests. As has been argued, acts of corruption also constitute human rights violations, harm development, affect public policies, and undermine the democratic system as they degrade the relationship between representatives and the represented.

The criminal justice system is inefficient in the criminal prosecution of acts of corruption, taking into account that the experience suggests that those responsible enjoy impunity while citizens, as victims of the crime, lack an effective spokesperson in the processing of those voluminous court files.

Therefore, there is an urgent need in civil society to have a discussion about reforms to the criminal justice system, the definition and condition of the victim, the rights of victims in national legislation, and the role of civil society and social movement organizations as defenders and as direct victims of corruption.⁷⁸

13. CONCLUSIONS AND RECOMMENDATIONS

- 1) In the current scenario, it has been shown that social programs implemented with state resources are directly linked to corruption. One of the mechanisms that enable this situation is the *Special Law for the Management, Assignment, Execution, Settlement, and Accountability of Public Funds for Social, Community, and Infrastructure Projects and Social Programs*. This law legalizes the administration of state funds by deputies of the National Congress. However, a revision or repeal of the regulation is necessary, even more so when it is recognized that it contradicts the Political Constitution, which provides that the administrator of State assets be the President of the Republic, as expressed in Article 245, numeral 19.
- 2) The reform of the Constitutional Budget Law must be repealed in that it limits the authority of the Public Ministry to investigate and criminally prosecute corruption cases. In that sense, the reforms to the constitutional TSC law hinder the investigation and criminal prosecution of corruption networks, at the same time as they establish limits to investigation entities' access to audit documents and the use of public funds in the hands of the power of the TSC.
- 3) It is necessary to strengthen the prosecution system. In this case, reference is made to what has been termed the new anti-corruption institutionality, that is, the national anti-corruption jurisdiction based on a reform of the Special Law of Jurisdictional Bodies with National Territorial Competence in Criminal Matters. Therefore, the

discussion about criminal justice reform is urgent on the civil society agenda. In this context, the demand for the repeal or reforming to the New Criminal Code would be an important initial contribution toward strengthening this institutional framework.

- 4) There is an urgent need to establish reforms in the Supreme Court to guarantee that this institution act with autonomy from political power. The appointment of people independent from political parties is especially important for promoting an independent justice system, as well as reforms to eliminate the powers of Supreme Court magistrates to try high-ranking officials of the Honduran State.
- 5) In the area of the right to access public information and judicial independence, one of the main limiting factors is the *Law for the Classification of Public Documents related to National Defense and Security, the "Secrets' Law."* The Secrets' Law, as it has come to be known colloquially, has been constituted as a component for controlling information as it applies confidentiality to numerous State institutions. In short, this law has been created and instrumentalized by corruption networks that operate through the National Congress to block investigations and criminal proceedings by invoking national security issues. Therefore, its repeal is essential for strengthening transparency, accountability, and judicial independence.
- 6) It is necessary to strengthen investigation and criminal prosecution in the State's institutional framework. This can be brought about by strengthening the UFERCO and anti-corruption courts. In that regard, with the implementation of the New Criminal Code, the circuit is faced with the lack of support from the international mechanism that contributed to its establishment and obstacles. Such as the decrease in sentences for several crimes classified as related to corruption and, consequently, the situation that will benefit and has retroactively benefited people already convicted or being prosecuted for crimes of corruption.
- 7) At the same time, it is necessary to pass reforms that would strengthen investigation and criminal prosecution, such as the Law of Effective Collaboration. This proposal could strengthen the investigation and preparation of cases against corruption networks and criminal organizations. In short, this figure allows people from the criminal environment to safely provide information about the network's operation and the responsibility of the members higher up in the hierarchy, allowing them to receive reduced sentences and other types of benefits.
- 8) The State is obligated to adopt measures to prevent the violation of rights linked to acts of corruption and to make every effort to identify the direct victims so that they can be fully compensated, as well as the social sectors affected by the social harm caused by corruption. In this context, the establishment of legal mechanisms that would enable victims' participation in criminal proceedings is especially important, understanding that actors who are external to the system have an interest in

advancing the investigation and can demand that state bodies be held accountable in regard to their action in the context of the investigation of crimes and, in this way, push for more efficient and successful proceedings.

- 9) The fight against corruption in all its aspects can only be guaranteed by a government that is determined to support anti-corruption policies, with the presence of another international mission. In this case, the new authorities elected on November 28, 2021, have proposed the initiative to create a new international mission that would help generate capacities to fight corruption and impunity in State institutions. However, to dismantle corruption, that Mission must be empowered to investigate autonomously by state powers.

NOTES

1. Transparency International, "The Anti-Corruption Plain Language Guide," July 2009, pp. 23. https://images.transparencycdn.org/images/2009_TIPlainLanguageGuide_EN.pdf.

2. Sarah Chayes, "When corruption is the operating system. The case of Honduras," Carnegie Endowment for International Peace, 2017. https://carnegieendowment.org/files/Chayes_Corruption_Final_updated.pdf.

3. CESPAD, ¿Qué lecciones dejó la MACCIH? Perspectivas actuales y probables escenarios en la lucha anticorrupción en Honduras, February, 2020. <http://cespad.org.hn/wpcontent/uploads/2020/03/InformeFinal-MACCIHCESPAD.pdf>.

4. Rose-Ackerman, Susan and Palifka, Bonnie, "Corruption and Government: Causes, Consequences, and Reform," 2016.

5. Inter-American Commission on Human Rights, "Corruption and Human Rights in the Americas: Inter-American Standards," 2019. <http://www.oas.org/en/iachr/reports/pdfs/CorruptionHR.pdf>.

6. CESPAD, "Estudio de Sondeo de Opinión: A un año de la pandemia: valoración de la ciudadanía sobre la gestión de la crisis sanitaria, la corrupción y la demanda de una Misión Internacional Anticorrupción," May, 2021 <http://cespad.org.hn/wp-content/uploads/2021/05/Encuesta-Mayo-WEB.pdf>.

7. Ana Castro, "Legislación e institucionalidad para el combate de la corrupción en Centroamérica," Criminal Justice System Observatory (OAS-MACCIH), March 28, 2019. <http://www.oas.org/es/sap/dsdme/maccih/new/docs/Legislacion-e-institucionalidad-para-el-combate-de-la-corrupcion-en-Centroamerica.pdf>.

8. OAS-MACCIH/CEJA, "Propuestas para el sistema de justicia penal hondureño en el tratamiento y gestión de causas de alto impacto social y corrupción," 2019. <http://www.oas.org/es/sap/dsdme/maccih/new/docs/Informe-maccih-ceja-propuestas->

sistema-justicia-penal-honduras-tratamiento-y-gestion-de-causas-de-alto-impacto-social-y-corrupcion.pdf.

9. Ibid.

10. OAS-MACCIH, "Second Semi-Annual Report," April 19, 2017.

<http://www.oas.org/documents/eng/press/second-semi-annual-report-maccih-.pdf>.

11. Ibid.

12. Criminal Justice System Observatory (OAS-MACCIH), "Legislación e institucionalidad para el combate a la corrupción en Centroamérica," May 2019.

<http://www.oas.org/es/sap/dsdme/maccih/new/docs/Legislacion-e-institucionalidad-para-el-combate-de-la-corrupcion-en-Centroamerica.pdf>.

13. https://www.tsc.gob.hn/web/leyes/Ley_compras_eficientes_transparentes_medios_electronicos.pdf

14. Andrés Pérez Munguía, "El rol de una Misión Internacional en la estructuración y funcionamiento del Subsistema Penal Anticorrupción: análisis y perspectivas a partir de la experiencia de la MACCIH," September, 2020.

15. WOLA, UNAH/IUDPAS, "Combating Corruption in Honduras: Assessing the State's Capacity to Reduce Corruption and Improve Accountability," December, 2020.

<https://www.wola.org/wp-content/uploads/2020/04/Corrupci%C3%B3n-HN-ENG-3.6-1.pdf>

16. MACCIH-OSA, "Primeros pasos del nuevo modelo hondureño de combate a la corrupción: "La Investigación y Persecución Penal Integrada." Fourth Semi-Annual Report, 2018.

<https://www.oas.org/documents/spa/press/Cuarto-Informe-Semestral-MACCIH-Abr-2018-ESP.pdf>

17. The Agreement between the Government of the Republic of Honduras and the General Secretariat of the Organization of American States (OAS) for the continuity of the MACCIH ended on January 19, 2020. In its four years of operation, MACCIH's accused 133 people in court in 14 cases.

18. The Special Anti-Impunity and Anti-Corruption Prosecutorial Unit was the body in the Prosecutor General's Office created to investigate complex cases of corruption, in which networks of people from the public and private sphere participated that committed crimes against the Public Administration and other related crimes. The UFECIC's team was made up of prosecutors, investigators, financial experts, computer scientists, and criminologists, responsible for investigating emblematic cases of corruption, as well as international experts from MACCIH.

19. The Specialized Prosecutorial Unit against Corruption Networks, created January 23, 2020. *Ministerio Público crea Unidad Fiscal Especializada contra Redes de Corrupción*. Statement released January 1, 24, 2020.

20. Frente a Frente, interview with prosecutor Luis Javier Santos.

<https://www.youtube.com/watch?v=PUEMM4BYA8I>.

21. BJP/CESPAD, "Los pactos de impunidad para proteger la corrupción en Honduras," April, 2021. <http://cespad.org.hn/wp-content/uploads/2021/05/Pacto-de-impunidad-WEB.pdf>.
22. Diego Javier Gómez Calderón, "Redes de corrupción política: una revisión para el caso colombiano," *Análisis político* n° 92, Bogotá, January-April, 2018: pp. 180-201. <https://revistas.unal.edu.co/index.php/anpol/article/view/71106/65248>.
23. Sarah Chayes, *When Corruption is the Operating System: The Case of Honduras*. Carnegie Endowment for International Peace, 2017. https://carnegieendowment.org/files/Chayes_Corruption_Final_updated.pdf
24. IACHR, "Corruption and Human Rights," Par. 116.
25. ICEFI, "La corrupción: sus caminos e impacto en la sociedad y una agenda para enfrentarla en el Triángulo Norte Centroamericano," September, 2017.
26. See the latest surveys by CID-Gallup, ERIC, and CESPAD.
27. Ibid.
28. Ibid.
29. CESPAD, "¿Por qué los altos funcionarios corruptos en Honduras no están en prisión? El rol de la Corte Suprema de Justicia (CSJ), en la judicialización de casos de corrupción," January 31, 2019. <https://cespad.org.hn/2019/01/31/por-que-los-altos-funcionarios-corruptos-en-honduras-no-estan-en-prision-el-rol-de-la-corte-suprema-de-justicia-csj-en-la-judicializacion-de-casos-de-corrupcion/>
30. BJP/CESPAD, April, 2021.
31. The Official Gazette of the Republic of Honduras, March 3, 2014. <https://www.tsc.gob.hn/leyes/Ley%20para%20la%20Clasificaci%C3%B3n%20de%20Documentos%20P%C3%ABlicos%20relacionados%20con%20la%20Seguridad%20y%20Defensa%20Nacional.pdf>
32. BJP/CESPAD, April, 2021.
33. La Prensa, "Corte Suprema de Justicia archiva caso de Red de diputados, y lo traslada al TSC," January 25, 2018. <https://www.laprensa.hn/honduras/diputados-maccih-corrupcion-juan-jimenez-oea-honduras-HALP1146100>.
34. OAS-MACCIH, "Primeros pasos del nuevo modelo hondureño de combate a la corrupción: "La Investigación y Persecución Penal Integrada," Fourth Semi-Annual Report, April 2018. <http://www.oas.org/documents/spa/press/Cuarto-Informe-Semestral-MACCIH-Abr-2018-ESP.pdf>
35. Diario Oficial La Gaceta, "Ley Especial para la Gestión, Asignación, Ejecución, Liquidación y Rendición de Cuentas de Fondos Públicos para Proyectos de Orden Social, Comunitarios, Infraestructura y Programas Sociales," Decree 116-2019. <https://www.tsc.gob.hn/web/leyes/Decreto-116-2019.pdf>.
36. Ibid. Article 16.

37. Ibid.

38. Ibid., pp. 19.

39. Diario Oficial La Gaceta, “Decreto No. 363-2013 de fecha 20 de enero del año 2014, contenido de la Ley Orgánica del Poder Legislativo”
<https://www.tsc.gob.hn/web/leyes/Decreto-117-2019.pdf>.

40. CESPAD, 2020. ¿Qué lecciones dejó la MACCIH? Perspectivas actuales y probables escenarios en la lucha anti-corrupción en Honduras <https://cespad.org.hn/2020/03/20/que-lecciones-dejo-la-maccih-perspectivas-actuales-y-probables-escenarios-en-la-lucha-anti-corrupcion-en-honduras/>.

41. Criterio, “Coalición ciudadana pide a Almagro ampliar vigencia de la MACCIH,” September 17, 2019 <https://criterio.hn/coalicion-ciudadana-pide-a-almagro-ampliar-vigencia-de-la-maccih/>.

42. Ibid.

43. The Agreement between the Government of the Republic of Honduras and the General Secretariat of the Organization of American States (OAS) for the continuity of the MACCIH ended on January 19, 2020. In its four years of operation, MACCIH’s accused 133 people in court in 14 cases.

44. The Special Fiscal Unit against the Impunity of Corruption was the body in the Prosecutor General’s Office created to investigate complex cases of corruption, in which networks of people from the public and private sphere participated that committed crimes against the Public Administration and other related crimes. The UFECIC’s team was made up of prosecutors, investigators, financial experts, computer scientists, and criminologists, responsible for investigating emblematic cases of corruption, as well as international experts from MACCIH.

45. Ibid.

46. IACHR. “Corruption and Human Rights.”

47. Andrés Pérez Munguía, “El rol de una Misión Internacional en la estructuración y funcionamiento del Subsistema Penal Anticorrupción: análisis y perspectivas a partir de la experiencia de la MACCIH,” September, 2020.

48. Ibid.

49. Ibid.

50. Ibid.

51. ICEFI, “La corrupción: sus caminos e impacto en la sociedad y una agenda para enfrentarla en el Triángulo Norte Centroamericano,” 2017.
https://mail.icefi.org/sites/default/files/la_corrupcion_sus_caminos_e_impacto_en_la_sociedad_.pdf.

52. Ibid.

53. For more detail on the General Provisions of the Law of Effective Collaboration, see <http://www.oas.org/es/sap/dsdme/maccih/new/docs/oficializacion-ley-de-colaboracion-eficaz.pdf>.

54. Fiscalía General de la República, “Ministerio Público crea Unidad Fiscal Especializada contra redes de corrupción,” *Ministerio Público*, <https://www.mp.hn/index.php/author-login/150-enero2020/5345-comunicado-ministerio-publico-crea-unidad-fiscal-especializada-contra-redes-de-corrupcion> (Consulted September 22, 2020).

55. Fiscalía General de la República, “Ministerio Público crea Unidad Fiscal Especializada contra Redes de Corrupción,” *Ministerio Público*, <https://www.mp.hn/index.php/author-login/150-enero2020/5345-comunicado-ministerio-publico-crea-unidad-fiscal-especializada-contra-redes-de-corrupcion> (Consulted October 19, 2020).

56. Ibid.

57. Álvaro Mejía, “Reformas a la Ley del TSC limitan labor de la Fiscalía y la UFECIC,” November 21, 2019 <https://www.elheraldo.hn/pais/1336302-466/reformas-a-la-ley-del-tsc-limitan-labor-de-la-fiscal%C3%ADa-y>

58. Fernando Maldonado, “El presupuesto es el desafío de la UFERCO,” *El Herald*, January 31, 2020 <https://www.elheraldo.hn/pais/1353121-466/el-presupuesto-es-el-desaf%C3%ADo-de-la-uferco>

59. Andrés Pérez Munguía, “El rol de una Comisión internacional en la estructuración y funcionamiento del subsistema penal anticorrupción: análisis y perspectivas a partir de la experiencia de la MACCIH,” September, 2020.

60. Ibid.

61. Hazel Feingebblatt, “Los costos sociales de la corrupción,” Criminal Justice System Observatory OAS-MACCIH, 2019. <http://www.oas.org/es/sap/dsdme/maccih/new/docs/Los-costos-sociales-de-la-corrupcion.pdf>

62. United Nations, “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,” Adopted by the General Assembly in Resolution 40/34 on November 29, 1985. <https://www.ohchr.org/sp/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx>

63. Ibid.

64. IACHR, par. 174.

65. IACHR, par. 250

66. IACHR, par. 251

67. IACHR, par. 252.

68. IACHR, par. 253.

69. Ibid.

70. Updated Set of Principles for the Protection and Promotion of Human Rights through action to combat impunity, 8 February 2005, E/CN.4/2005/102/Add.1, p. 6.

71. IACHR, par. 261.

72. IACHR, par. 263.

73. United Nations, “United Nations Convention against Corruption,” 2004.
https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

74. IACHR, par. 487.

75. Ibid.

76. Asociación por la Igualdad y la Justicia (ACIJ), “Hacia el reconocimiento de la querrela colectiva en causas de corrupción: La situación de impunidad de la corrupción,” 2018.
<https://acij.org.ar/wp-content/uploads/2018/12/Hacia-el-reconocimiento-de-la-querrela-colectiva-en-causas-de-corrupcion.pdf>.

77. Ibid.

78. “La participación de la sociedad civil en la lucha contra la corrupción. Una mirada a partir del informe de la CIDH sobre Corrupción y Derechos Humanos.” Second session: la sociedad civil como víctima de los delitos de corrupción. August 13, 2020.
https://www.dplf.org/sites/default/files/la_sociedad_civil_como_victima_de_los_delitos_de_corrupcion.pdf.

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