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The MACCIH Monitor

Independent Update and Analysis of the OAS
Mission to Support the Fight against
Corruption and Impunity in Honduras

August 1 to October 31, 2017

This publication is intended to provide a regular, independent analysis of the work of MACCIH. It is intended for the use of people who are already familiar with the two-year mandate and general history and work of MACCIH. The Monitor will be available only online, in Spanish and English. Please cite it as “American University Center for Latin American & Latino Studies, The MACCIH Monitor, Issue 1, November 21, 2017.”



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Background, Sources, and Organization

The Team. *The MACCIH Monitor* is produced by the American University’s Center for Latin American & Latino Studies (CLALS), and is part of a project on [Monitoring MACCIH and Anti-Impunity Efforts in Honduras](#), generously funded by Open Society Foundations. It is the product of a team led by Prof. Charles T Call that includes Dr. Hugo Noé Pino; Profs. Fulton Armstrong, Jayesh Rathod, and Eric Hershberg; and Aída Romero and Alexandra Vranas. The team’s researcher in Honduras, Mario Cerna, has provided regular and invaluable inputs to this product. CLALS is grateful to Open Society Foundations for their support of this project and publication.

Sources. This product is based on public sources, including news coverage, tweets, and press conferences, as well as private interviews with key informants inside and outside Honduras. These sources include independent observers, journalists, and academics; government officials of Honduras, the United States of America, and others; Honduras-based and U.S.-based non-governmental organizations, and officials of the OAS and MACCIH.

This is the first such issue, and feedback is welcome to call@american.edu or vranas@american.edu.

Background and Organization. At the request of the government of President Juan Orlando Hernández, the Organization of American States created MACCIH in January 2016 ([OAS Agreement](#)). The government was under pressure from street protests when it was discovered that over \$300 million had been stolen from the Honduran Institute of Social Security by its officials and that some of the money had been channeled to Hernández’s 2013 presidential campaign. The “outraged” protesters (“*Indignados*”) had insisted on the resignation of the president and the establishment of a mission comparable to the UN-supported International Commission against Impunity in Guatemala (CICIG). However, President Hernández opted instead for a mission supported by OAS with broader and weaker powers. MACCIH was mandated, among other things, to support, oversee, and actively collaborate with Honduran institutions in preventing, investigating, and punishing corrupt acts (see the January 2016 accord between the government and the OAS: [OAS Agreement](#)).



MACCIH is empowered to “provide technical advice, oversee, evaluate, and actively collaborate” with Honduran institutions to investigate and prosecute cases of corruption (Section 3.1.1.2). Like CICIG, it works with national institutions and seeks to strengthen them. Like CICIG, it can choose the cases it will work on and must bring them before national courts. Like CICIG, it can also respond to requests for assistance from the Attorney General. Like CICIG, it can propose laws and institutional changes and publicly comment on the adherence to process and the qualifications of proposed appointments of criminal justice officials. Unlike CICIG, MACCIH cannot file criminal complaints or initiate legal proceedings, nor can it receive complaints or investigate cases independently of the Public Ministry. MACCIH must work with Honduran prosecutors who bring cases before national courts. This makes MACCIH’s success highly dependent on the Attorney General and its relationship with that person.

However, MACCIH and the government have created mechanisms to help ensure it can work with trusted elements of the criminal justice system. One of MACCIH’s first legal victories was gaining passage of a law in June 2016 to create national anti-corruption courts whose judges would be selected with the participation of the state, MACCIH, and the non-governmental organization Association for a More Just Society (ASJ). The judiciary had hastened to pass such a proposal before MACCIH arrived, but the Mission asked for a delay and then worked to revise the proposal to its satisfaction. Related to these screened judges are new specialized and vetted prosecutors. Due to an agreement signed in January 2017, the Public Ministry agreed to set up a Special Prosecution Unit to Fight Corruption-Related Impunity (UFECIC) that would be the sole counterpart for cases selected by MACCIH. Its members would be approved by MACCIH (see below). As a result of this accord, the Public Ministry established a confidential office to receive complaints managed exclusively by the UFECIC and MACCIH, in coordination with the Attorney General.

In addition, the mandate of MACCIH covers broader activities, some of which are not within the mandate of its neighboring antecedent CICIG. It includes the following lines of work as listed in its founding agreement: (1) **preventing and combating corruption** (including hiring international prosecutors and jurists to oversee Honduran counterparts, and proposing legal and juridical reforms); (2) **review of the criminal justice system** (including offering recommendations to improve the system and cooperating with civil society to set up an observatory to monitor the criminal justice system); (3) **reforms of financing of political parties and campaigns**; and (4) **public security reforms** (including supporting the protection of human rights defenders, journalists, and justice officials). Of these lines of work, the prevention, investigation, and punishment of corrupt acts is the priority for the MACCIH staff, external funders, and Hondurans. The Honduran public’s most salient expectation of MACCIH is that it will help secure convictions in high-impact cases of corruption and impunity. Its success, internally and externally, depends crucially on this line of work. In preparing this monitoring report, we draw on these four lines of effort, and add a fifth that discusses the “institution building” element of MACCIH’s work, since it is mandated to enhance the coordination among Honduran institutions



and strengthen them. Thus, we organize this monitor along the following five categories (here we identify them by the pertinent article of the founding agreement between the Honduran government and the OAS):

1. **High-Impact Prosecutions and Convictions.** Support the Honduran state in preventing, investigating, and punishing corruption. [from Art. 1.2 of the agreement establishing MACCIH]
2. **Institutional Strengthening.** Strengthen the Honduran state’s ability to prevent, investigate, and punish corruption. [from Art. 1.2 & 1.3]
3. **Justice Reforms.** Propose reforms to the justice system. Cooperate with civil society to set up an observatory of the criminal justice system. [from Arts. 1.4, 2.2]
4. **Campaign Financing Reform.** Support creation of a fair and transparent framework for politico-electoral financing. [from Art. 5.1]
5. **Public Security Reform.** Support implementation of reforms to strengthen the public security system. [from Art. 2.4]

Each of these sections concludes with a brief summary of that section, with some general considerations offered at the end of the document.

Monitoring an international mission such as MACCIH faces important challenges. MACCIH works exclusively with and through Honduran institutions. Thus, its impact is mediated – by design – through Honduran institutions such as the Public Ministry, the courts, and the Congress. It is obviously difficult to monitor this institution in isolation from Honduran partner institutions. In addition, its core work is in criminal investigations. These are often not public processes until they are filed with courts and a public record is created. Monitoring their progress before their conclusion is dependent on the release of interim or partial information. Finally, the relationship between MACCIH and Honduran institutions is both vital and sensitive, rendering it problematic for one of the partners to even implicitly criticize the other.

1. High-Impact Prosecutions and Convictions

In this three-month period, MACCIH helped assure that the prosecution of the Vice President of the Judiciary/Judicial Career Council, Teodoro Bonilla Euceda, was pursued successfully. The Public Ministry had built this case of influence peddling over several months, alleging that Bonilla had used his power to favor his friends and stimulate legal cases against enemies, including a journalist. Two relatives of Bonilla who had been implicated in this “Shalom” network had been released. When in August 2017 the sentencing hearing was suspended and rumors circulated of the possibility of no jail time, the Special Representative of the OAS Secretary General for MACCIH and its spokesman, Juan Jiménez Mayor, tweeted that it was “alert” to the status of the sentencing. The sentence was handed



down, albeit only the minimum for influence peddling of 6 years in prison, plus a fine of L200,000 (the prosecutors had asked for the maximum nine years and L300,000). This is reportedly the first successful prosecution of a Honduran official for influence peddling (*tráfico de influencias*) ([Proceso Digital](#)).

During this period, MACCIH also made an important contribution to investigating and punishing corruption through the commencement of work by the Anti-Corruption Special Jurisdiction (courts) and the September swearing in of the 43 members of the prosecutorial counterpart ([Radio HRN](#)), the Special Prosecution Unit to Fight Corruption-Related Impunity (UFECIC) within the Public Ministry (described in more detail under the “Institutional Strengthening” section below). By October, the unit was working with MACCIH on three cases. One of these cases involved allegations of “narcopolitics” stemming from investigations of a high-profile drug cartel, “*Los Cachiros*,” whose top leaders have sought plea deals with U.S. authorities and implicated ex-President Porfirio Lobo Sosa and the 2012-13 campaign of President Juan Orlando Hernández, among others ([EFE](#); [El Herald](#); [El Tiempo](#)). Jiménez Mayor stated that the case is a “trial by fire” for MACCIH and the OAS, although some NGOs criticized MACCIH for not acting on evidence of the ruling party and the president’s ties to drug trafficking ([La Prensa](#)). MACCIH also announced it was investigating the former President of the Supreme Court, Jorge Rivera Avilés, which marks a second case taken up by the UFECIC ([Primicia Honduras](#); [Proceso Digital](#)). The Public Ministry has not announced the specifics of the third case.

MACCIH continued to pursue its case that has shown the most progress, the Instituto Hondureño de Seguridad Social (IHSS) corruption scandal. In mid-2016, when MACCIH began looking into the case, it found that the case was weak and that the courts were set to release the highest-profile figure implicated, Mario Zelaya, the former director, by mid-September 2016. MACCIH then worked quickly with the Attorney General’s office to assemble lesser charges and seek a six-month extension of his detention in order to prepare more serious charges ([La Prensa](#)). He was charged with illegal possession of arms of war, for which he was held over and then found guilty in December 2016. Subsequent convictions – for laundering of assets, fraud, creation of false companies, and abuse of authority – left him sentenced to 25 years, the longest sentence of any former official in the history of Honduras ([El Herald](#); [La Prensa](#); [Proceso Digital](#)). As of August 2017, 47 persons had been charged in this case and nine persons had been sentenced, including two Vice Ministers who served on the board of IHSS. The charges generally included asset laundering, improper use of office, misuse of public funds, influence peddling, and fraud ([La Prensa](#)). However, many non-governmental organizations and opposition party members are disappointed that the Mission has not implicated even higher-level officials ([Hondudiar](#)). MACCIH used its public platforms to express concern for “*Los Tetos*,” protected witnesses whose security is important for multiple lines of the IHSS investigation.

Although MACCIH announced in its first semi-annual report ([Primer Reporte Semi-anual MACCIH, Octubre 2016](#)) investigations into illicit enrichment among police officers, it has released little news of those cases in recent months. The Special Commission for the Purge and Transformation of the



National Police showed significant progress in the separation from service of 4,445 officers (some 30% of the national police force), several dozen based on convictions or serious evidence of involvement in criminal activity ([Hondudiario](#); [La Prensa](#); [La Tribuna](#)). However, the scale and pace of the purge has raised anxiety about the possibility of unemployed ex-police engaging in criminal activity, underscoring the need for progress in prosecuting cases against former police officers.

Finally, recently announced investigations by other Honduran entities suggest that MACCIH's existence may have helped foster a more propitious environment for anti-corruption efforts against high-level targets. In October 2017, the National Anti-Corruption Council announced investigations of ex-President Lobo Sosa and of the former Attorney General Luis Rubí for corruption ([Canal 11](#)). It also filed a case with the Public Ministry against an unnamed senior ex-official of the Lobo administration for having transferred L12 million from a government account into her personal account in the waning days of that administration ([HCH](#)). The Superior Finance Tribunal confirmed that it is investigating former President Manuel Zelaya Rosales ([Confidencial.hn](#)) and the former rector of the National Autonomous University, Julieta Castellanos ([Proceso Digital](#)). These announcements bring to six the number of senior ex-officials of the government now under investigation for corruption, including two ex-presidents.

Overall Analysis. In its year and half of deployment, MACCIH has been helpful in securing prosecutions, convictions, and sentences in a handful of important cases. Juan Jiménez Mayor sought to select corruption cases that reach into government and that satisfy the public desire for high impact. That strategy involved pursuing fewer cases with multiple targets and the possibility of punishing high-reaching corruption, rather than lower-level cases with fewer perpetrators. Even as the Mission has contributed to more numerous and visible corruption-related investigations and convictions, many Hondurans are disappointed that the Mission has not made quicker progress or implicated higher-level government officials and businessmen. Although MACCIH recently stated its interest in investigating “*narcopolíticos*,” the mission was strongly criticized, by CIPRODEH among others ([Confidencial.hn](#)), for failing to identify different members of the National Party and accuse them of campaign financing with drug money.

Although MACCIH gained some capacity during this period, its capacity continues to be relatively limited and the process has been slow. At least three international prosecutors that had been slated to join MACCIH ultimately did not join, and another investigator left MACCIH in mid-2017 ([El Tiempo](#)). As of October 2017, the office had only 14 prosecutors, including three new hires announced in this period. Its professional staff remained much smaller than the 80 employed by the International Commission against Impunity in Guatemala (CICIG). Changes in the way that hiring of MACCIH officials is carried out, including the creation in mid-2017 of a group of senior officials at OAS headquarters to help ensure that job candidates match position descriptions, have contributed to a process that seems both quicker and more effective.

2. Institutional Strengthening

A second purpose of MACCIH is to strengthen state institutions and their capacity to prevent and address corruption. The main institutions here are the Public Ministry (led by the Attorney General Oscar Chinchilla), the Honduran courts, and the Honduran police. Through its observatory, MACCIH can also strengthen civil society. Our understanding of institutional capacity building includes contributing to the appointment of qualified, capable, professional, and effective officials in key posts in the administration of justice in Honduras. It also extends to ensuring enforcement of decisions and directives emanating from those officials and institutions, and to preserving the integrity of those institutions and their personnel in the face of longstanding patterns of bribery and criminality. Although such appointments are the purview of the state, MACCIH has been delegated a role in specifying the criteria for and process of selection of certain such officials. Its mandate also provides it an informal role in offering views on the extent to which the nominees and process conform to legal standards.

During this period, the Special Prosecution Unit to Fight Corruption-Related Impunity (UFECIC), created in January 2017 ([La Prensa](#)), began to fully function with 43 members, bringing the Public Ministry's total prosecutors to 957 ([El Heraldo](#)). This unit's 43 members began work after months of background checks and a selection process shaped by MACCIH that included screening by the Mission, Association for a More Just Society (ASJ), and the state. UFECIC is comprised of integrated teams of prosecutors, investigators, criminalists, financial experts, and data specialists that will exclusively handle the cases selected by the Mission.

On September 11, 2017, the National Anti-Corruption Courts created by law a year earlier with MACCIH leadership, became operational ([La Prensa](#)). Eight judges (serving on an appeals court and a sentencing tribunal), were sworn in and began to function. However, one of these judges, Rosa Amalia Rajo López, was appointed without having been on the approved list of 13 magistrates for the anti-corruption court presented in January 2017, which had cleared a vetting process that included MACCIH and the government. (She appeared on the vetted list for anti-extortion magistrate; [La Tribuna](#)).

MACCIH also contributed to institutions to prevent corruption. In the case of the IHSS, MACCIH authored a report ([Sexto Reporte MACCIH, Septiembre 2017](#)) analyzing the proposed new law to regulate the IHSS, recommending several reforms to prevent crimes involving the institution. Among these was a new social oversight council that would include retiree beneficiaries of the institution.



On September 7, Juan Jiménez Mayor mentioned that the OAS is exploring the creation of a regional tribunal to address international organized crime, which would build on the work of CICIG and MACCIH ([Radio HRN](#)).

Overall Analysis. It is hard to assess institution-building impact within the three-month window covered here. MACCIH had early setbacks when its guidance on the characteristics of the members of the new Superior Audit Court were not fully heeded in a plural yet politicized selection process in late 2016. The operationalization of the National Anti-Corruption Jurisdiction and the UFECIC mark an important institutional milestone for MACCIH. However, to the extent that these specialized vetted units do not carry into the permanent capacity and public standing of the Public Ministry, their long-term impact will be limited. MACCIH's success depends highly on the UFECIC, whose success will depend on the Attorney General, whose term expires in 2018.

3. Propose Reforms to the Justice System

MACCIH is mandated to seek improvement of the laws and institutions of the justice system. This includes the proposal of legislation to curb impunity and corruption, and proposals to improve the functioning, efficacy, and accountability of the justice system.

During this period, MACCIH continued to argue publicly and privately to members of Congress the importance of passing the *Ley de Colaboración Eficaz* (Plea-bargaining Law). It also offered technical assistance to speed along the process ([Radio HRN](#)). However, Congress continued to delay approval of the law, pledging action after the elections. Although the months-long pre-review process of the Supreme Court found the law constitutionally acceptable in August ([La Tribuna](#)), Congress has continued to drag its feet. This inaction shows the limits of MACCIH's influence.

Those limits were also on display in August when Congress lowered the penalty for corruption convictions down to 6-9 years per conviction ([La Prensa](#)). The following month, Congress increased the penalty for public protests to 15-20 years under the charge of "terrorism" ([El Espectador](#)). In April, Congress also passed a new penalty for "apology for terrorism" by individuals or the media of 4-8 years.

MACCIH has been credited with strengthening the Supreme Court and contributing to the decrease in backlogged cases. The Mission has also asked Congress to break the Superior Financial Court's (TSC) monopoly on initiating criminal investigations of illicit enrichment by empowering the Public Ministry to conduct such investigations ([Post JJM](#)). The TSC itself is seeking legal reforms to guarantee the transparency of appointments ([La Tribuna](#)).



In September 2017, MACCIH also issued a [report](#) analyzing and making recommendations for a proposed reform to the law governing the IHSS, whose corruption scandal prompted the public protests that gave rise to MACCIH.

During this period, MACCIH officially introduced its long-awaited [Observatory of the Criminal Justice System](#). The MACCIH Observatory is designed to bolster criminal prosecutions by offering a confidential platform for citizens to denounce corrupt officials and acts. The Observatory is also intended to strengthen Honduran state institutions by creating an informational platform for transparency about performance and outcomes of the country’s criminal justice system, even as it strengthens civil society’s voice, visibility, and impact in this area (APP Dílo Aquí Honduras; [ASLy MP](#)). It is also aimed at enhancing the process of legal reform. The first General Assembly of the Observatory was slated for November 16, in which the internal regulations would be approved and officers elected.

Overall analysis. MACCIH has shown agility in proposing legal reforms, but had mixed success in persuading Congress to pass these laws. The creation of the new anti-corruption jurisdiction and the clean politics law were swift victories. Another important gain was MACCIH’s securing an agreement with the Public Ministry to no longer “reconcile” cases by permitting corrupt officials to evade prosecution by simply returning the stolen items. However, the passage of laws lightening penalties for corruption convictions were a slap in the face to the impulse to clean up Honduran state institutions. The Observatory has been too slow to deploy, and its operations and purpose remain insufficiently clear to civil society. However, CLALS interviews with OAS and NGO representatives indicate that Honduran civil society has become more engaged and keen to interact with the Mission, and is more clearly supportive of the Mission if not the degree of its efforts or accomplishments.

4. Campaign Financing Reform

Campaign and political financing are areas considered key to the operation of corrupt networks and their penetration into the political system and government. MACCIH is mandated to support the creation of a fair and transparent regime for financing political parties and campaigns.

The “Clean Politics Law,” passed in 2016 at the initiative of MACCIH as the key legal reform in this area, began functioning during this period ([La Tribuna](#)). It regulates campaign spending and campaign donations of all the 30,000 candidates participating in the general elections on November 26, 2017. Individuals can provide up to L2 million (~\$85,000) to all political parties, and corporations can provide up to five times that amount. Candidates had to have registered their bank accounts with the three-person Clean Politics and Oversight Unit of the Supreme Electoral Tribunal within ten days, but compliance rates have been low. Fines are supposed to range from \$432 to \$212,000. Some internal



bureaucratic bank procedures seem to hinder the process, or at least provide a believable excuse for failing to register the accounts. The impact of the law on the current electoral campaign has been unclear, although some observers think that fewer political campaign ads were running than in this stage of the last election cycle ([Confidencial.hn](#); [La Tribuna](#)).

Overall analysis. Although the law has increased awareness and reduced tolerance of illicit campaign financing, implementation of the new mechanism ensued too late to generate the systematic and far-reaching scrutiny envisioned under the new law. As a result, the impact of the new law may not stem broader questions about the legitimacy of the November elections.

5. Public Security Reforms

MACCIH is mandated to support reforms to strengthen the public security system, especially the police. This role includes proposals for a revised police law and institutional enhancements of operations, intelligence, and oversight and accountability. The Mission was slow to initiate this line of work, partly due to prioritization of securing criminal prosecutions. In addition, the Police Purge Commission has worked actively not just in reviewing police officers' files, but also in proposing and shaping legal and institutional reforms. Since its formation in early 2016, this Commission has reviewed over 9,000 police officers and agents, leading to the departure of 4,445 as of November 4. It is also reviewing the files of 171 officers who applied for promotion to senior posts.

In September 2017, the head and deputy head of the Public Ministry's Unit to Support the Police Purge Process passed over to work as prosecutors within the UFECIC, which will help ensure continuity and coordination between investigations of police and the other criminal investigations pursued by MACCIH.

With inputs from the Purge Commission and civil society, the executive proposed two important laws for police professionalization and oversight: a revised Organic Law of the National Police and a Police Career Law ([ASJ Honduras](#)). Congress has approved these laws, which are expected to go into effect in January 2018 to support the continuation of reforms commenced by the Purge Commission, a process that MACCIH has an opportunity to support. MACCIH in this period also worked with Honduran experts to review the Arms Law, intended to ensure registration of personal firearms and regulate their use ([Twitter](#)). As part of its mandate to implement recommendations of a report of the SNSC, MACCIH has begun to seek to enhance protections of public security officials. It has done less to improve security for human rights defenders and journalists.

Overall Analysis. Perhaps because of its limited capacity and its rightly prioritizing criminal prosecutions, MACCIH has not been as active in public security as in other areas. Nor has it fully plumbed the opportunities to work with the Police Purge Commission to ensure that the gains of that



body can become consolidated. The Commission's term ends in January 2018, and a follow-on Commission is slated to continue to advance the work.

General Considerations

During this period, the neutrality and scope of work of MACCIH came under fire. On July 13, Jiménez Mayor publicly detailed the lines of investigation against the company Desarrollos Energéticos (DESA), linked to the investigation of the 2016 murder of activist Berta Cáceres. He specified names of company officials under scrutiny, prompting criticism from the private sector and some politicians ([La Prensa](#)). COHEP (Consejo Hondureño de la Empresa Privada), the leading business association that represents the most influential figures in the private sector, expressed its displeasure with MACCIH for publicizing claims and names without legal foundation, calling on the Mission to adhere to the scope of its mandate ([La Tribuna](#)). Jiménez Mayor was also criticized after he declared that Honduras is the country which has the highest rate of money stolen due to corruption.

Stepped-up criticism of MACCIH took place in a regional context in which President Jimmy Morales of Guatemala declared the head of the UN-supported International Commission against Impunity in Guatemala (CICIG) to be *persona non grata* ([Prensa Libre](#)). Although that declaration was blocked by the country's Constitutional Court, the government declared its intent to revise (and presumably curtail) the mandate of CICIG. MACCIH's Jiménez Mayor noted that Honduran civil society had not come out onto the streets recently against corruption in the way they had in 2015 nor in the way that Guatemalan citizens did in September 2017 in support of CICIG's anti-corruption efforts. In doing so, he signaled the importance of the role of civil society in the success of MACCIH and the importance of the relationship of MACCIH with Honduras' very diverse civil society.

Elections. During this pre-electoral period, MACCIH also was criticized as inadequate compared to CICIG by the LIBRE/PINU candidate Salvador Nasralla, who indicated he would replace MACCIH with a CICIG-like entity if elected ([La Tribuna](#)). MACCIH received public support from the Liberal and National party candidates ([El Periodico](#); [Proceso.hn](#)). At the same time, some observers have expressed the concern that the political space for MACCIH will be reduced once a new government is put into place, as that government may not feel the same pressure to respond to the outrage that ensued over the IHSS scandal.