

Challenges and Best Practices applied by States in integrating human rights into their national strategies and policies to fight against corruption, including those addressing non-state actors, such as the private sector

Challenges

- 1. Legal framework concerning transparency and access to information, included in the security sector contrary to international human rights standards.**

The Law on the Classification of Public Documents related to Security and Defense adopted in 2013, requires significant reform to comply with standards on access to information due to the limitations and restrictions to the right to information. Such legal frameworks contain regressive provisions on the publicity standards established by the current law on access to information. The law provides for the National Council for Defense and Security to classify and protect information deemed “as a risk to national defense and security, and the achievement of national goals, if revealed.”

To this end, the law establishes four categories to classify public information “as to the degree of protection required”.

- Information will be considered restricted if it is “information, documentation or material that refers to the internal strategic environment of State entities” when their dissemination could “produce unwanted institutional effects [...] counter to the effective development of State policy or normal functioning of public sector institutions”. This type of information may be declassified after five years.
- Information will be deemed confidential if publication could “create imminent risk or direct threat to security, national defense and public order” and “damage or harm internal national security”, therefore it may be declassified after 10 years.
- Information classified as secret may retain its secrecy classification up to 15 years if it could “cause imminent risk or directly threaten constitutional order, security, national defense, international relations and the achievement of national objectives” and eventually cause “serious internal and external harm to national security.”
- Information classified as top secret could be confidential for up to 25 years. This category includes information that “if publicly available, could cause serious internal and external damage to national security” (Art. 4 and 7). According to Article 7 of the law, “if the circumstances under which a matter was classified persist, the National Defense and Security Council could expand the original classification time frame, through a duly supported and well-founded edict”.

In July 2014, the National Defense and Security Council issued Resolution 069/2014 based on this law, wherein it classified the information from the following agencies as confidential: (a) Supreme Court of Justice; (b) Ministry of Security and National Police Directorate; (c) Office of the Public Prosecutor and Drug Trafficking Directorate; (d) National Bureau of Investigation and Intelligence; (e) Armed Forces Strategic Investigation Agency; (f) Ministry of the Foreign Affairs and International Cooperation; (g) National Migration Institute; (h) Executive Revenue Agency; (i) National Registry of People; (j) Social Security Institute of Honduras; (k) Property Institute; (l) Financial Intelligence Unit for the Bank and Securities Commission; (m) Merchant Marines Directorate; (n) Civil Aviation Directorate; (o) National Electric Power Firm; and (p) Autonomous National Service of Aqueducts and Sewerage Systems. The Council considered these state

entities “administer information in the interest of national defense and security” and should therefore “provide the corresponding information, and input and update data bases”, with the objective of “contributing to the fight against conventional and unconventional crime.”

OHCHR-Honduras and the MACCIH (OAS Mission Against Impunity and Corruption) have both observed and expressed concern at the many derogations/exceptions to the Law on Access to Public Information, due to the content of the law on the classification of information on security and defense. In 2018, OHCHR-Honduras and the MACCIH cooperated in lobbying Government and Congress for the reform of the Law on classification of public documents related to security and national defense. A draft reform law is currently before Congress.

2. Enforcement of the resolutions issued by the Institute for Access to Public Information and lack of a mechanism for the election of its commissioners that guarantees its independence.

The law on transparency and access to public information established the Institute for Access to Public Information (IAIP) as “an independent body, in operation, decision making and budget, charged with the promotion and facilitation of citizen access to public information, as well as regulation and oversight of the procedures for those institutions responsible for the protection, classification, and safekeeping of public information in accordance with this Law” (Art. 8). This body also has the power to implement rules of transparency and control of classification of information done by state entities in compliance with the law on transparency. However, the Institute’s true capacity to enforce such decisions is weak due to the delays on the emission of such resolutions and the lack of effective mechanisms to foresee its implementation.

Another issue that impacts on the role of the Institute is the mechanism to select the Commissioners. The Commissioners are elected by the National Congress and usually the nominations represent political quotas negotiated among the main political parties. Currently there is no specific legal framework to regulate this type of elections, which enables significant political parties influence in the designation of the Commissioners.

3. Distribution of Competences within OAG: Institutional coordination between the Prosecution Unit of Corruption and the Prosecution Unit of Human Rights Violations in the investigation of corruption cases – OAG.

The Office of the Attorney General (OAG) has established a number of specialized units. Given the numbers and sometimes the overlap in their competencies, the OAG established in 2016 rules to regulate the competences of the different prosecution units with the aim of avoiding conflict. However, OHCHR has observed that these rules of proceedings have not resulted in a more coordinated work between prosecution units, which continue to work in silos. Such approach interferes with the possibility to generate and establish the specific links between human rights violations and corruption cases. Separate prosecution units are in charge of these themes and there are no joint discussions on connectivity and other related issues. For example, the Prosecution Unit in charge of the investigation and prosecution of the Killing of HRD Berta Cáceres is not working jointly with the prosecution unit in charge of the investigation of the corruption case linked to the killing – MACCIH supported UFECIC unit in relation with the illegal concession of the Agua Zarca dam, which was opposed by Mrs. Cáceres and was the origin of the conflict with the DESA Company.

OHCHR and MACCIH have exchanged information and analysis on this emblematic case, on the perspective of analyzing human rights violations that arise from weak governance and corruption, in the context of lack

of transparency, civic participation and accountability of institutions and their officials. The two Offices engaged in the exchanging of information, including of sensitive nature with the consent of the concerned persons, and facilitated access to victims and witnesses.

Best Practices

1. The creation of Prosecution Unit for Crimes of Corruption, through competitive selection processes, merit-based, including HR standards for the selection of prosecutors.

In 2017, the Judiciary established the specialized jurisdiction to combat corruption and extortion and the OAG created the Special Prosecution Unit for the Prosecution of Corruption and Impunity –UFECIC-supported by the MACCIH.

The creation of this specialized jurisdictions and prosecutions included the development by the MACCIH of a special mechanism established for the selection and appointment of prosecutors and judges to the anti-corruption circuit. OHCHR considers that this constitutes a good practice for the selection of justice operators, that should be adopted for other jurisdictions. This is particularly relevant considering the failure to adopt a judicial career law and judicial council.

As recently stated by the Special Rapporteur on the Independence of Judges and Lawyers, “it is noteworthy that, unlike other areas of the judicial system in which the criteria for the selection and designation of its members are blurred, in this case a public contest and merits for the selection and appointment of those who conduct these courts were launched. The same happened in the appointment of the UFECIC prosecutors whose designation followed a contest and examination among prosecutors of the institution.”

The Special Rapporteur also stated that these institutional strengthening steps have resulted in the strengthening of the investigative capacity of the OAG in the field of anti-corruption and then presenting several cases before the organs of the judicial system.

2. The installment of the OAS- Mission against Impunity and Corruption and its technical assistance faculties that includes institutional reform regarding the justice and security sector

Since its establishment the MACCIH has been promoting significant reform on the justice and security sector to strengthen the institutional capacities to combat corruption and address impunity. Such efforts have included the creation of the specialized jurisdiction and units mentioned above, the promotion of legal reform of the Law on the Classification of Documents in Defense and Security. Additionally the MACCIH has strongly advocated for the adoption of the law on effective cooperation, which provides for immunity from prosecution or reduction of sentences in exchange for information that assists in the prosecution of serious crimes. The legal framework draft has faced strong opposition on Congress and its discussion has been stalled for more than two years.

In this context, OHCHR-Honduras has been working with the MACCIH to promote the adoption of a Law on the Judicial Council to separate disciplinary and administrative functions within the Judiciary; and the adoption of a Law on the judicial career. In 2018, OHCHR-Honduras and MACCIH observed the election process of the Attorney General and his deputy in the context of a coalition with the public sector and civil society organizations. The low quality of the process observed prompted both entities to promote discussion on a reform of the framework regulating appointment of senior rule of law officials.

On September 2018, OHCHR-Honduras and the MACCIH conducted a training for 20 prosecutors of the Office of the Attorney General (OAG) on the investigation of high impact crimes (corruption and human rights violations) involving organized criminal structures.

OHCHR-Honduras and the MACCIH are coordinating training modules to be delivered to the OAG as part of their technical assistance. The OHCHR Training Program will target 30 prosecutors selected from prioritized units working on crimes against life, against human rights defenders, femicide, human rights violations, indigenous people and crimes committed by military police.

Finally, OHCHR-Honduras supported MACCIH's technical assistance to the Office of the Attorney General and the Judiciary on the adoption of protection mechanisms for personnel at risk. OHCHR provided inputs and recommendations based on the experience acquired while extending technical assistance in the set-up of the National Protection Mechanism for human rights defenders. In May 2019, the Judiciary established a mechanism to protect judges, magistrates and public defenders. The Office of the Attorney General is in the process of establishing a similar mechanism.