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## PARTICIPANTS' PAPERS

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### CRIMINAL JUSTICE RESPONSE TO CORRUPTION IN HONDURAS

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#### I. UNITED NATIONS CONVENTION AGAINST CORRUPTION AND HONDURAS

Honduras signed the United Nations Convention Against Corruption on May 17, 2004. The Convention was ratified on May 23, 2005. The country of Honduras has significant legislation related with the battle against corruption, most of it included in the United Nations Convention Against Corruption. For example, Honduras has an institute with its respective law<sup>1</sup>, used to control and investigate the administrative component of any public institution or public official. The name of the institution is Supreme Accounts Tribunal<sup>2</sup>, and its basic function, as before said, is the yearly control and investigation of public institutions and officials. The public officials have the obligation, when entering public office, to report all personal assets, debts, accounts and anything relevant for further investigations. They also have the obligation to immediately report any asset increase, including significant purchases and salary increases. Another important obligation of public officials is to yearly report the status of their assets and duly explain any abnormal increase. The Honduran Supreme Accounts Tribunal, also has the obligation to investigate any abnormal situation occurring within a public institution or related with a public official, if administrative responsibility is verified, the respective fines shall be imposed. If criminal responsibility is verified, the information and evidence must be remitted immediately to the criminal public prosecutor's office or the civil public prosecutor's office.

Honduras also has the National Council Against Corruption<sup>3</sup>, with its respective law<sup>4</sup>. This institution is an independent council that investigates corruption cases presented before them by individuals or by any type of institution. Once the investigation is concluded, the council decides if the information and evidence is presented before the public criminal prosecutor's office.

Honduras has the Public Civil Prosecutors Office<sup>5</sup>; with its respective law<sup>6</sup>, this institution prosecutes in the administrative area, the responsibility derived of irregular actions executed by public officials. Their main mission is to recuperate assets and execute the proper actions in order to seize these assets.

Honduras has the Public Corruption Prosecutors Office, which is part of the Public Prosecutors Office and part of the Public Ministry Office<sup>7</sup>, with its respective law<sup>8</sup>. The responsibility of the office is to receive possible corruption commission information from the National Anti-Corruption Council, from the Supreme Accounts Tribunal and from any common citizen, and to begin the proper investigation and proceed to prosecute the public official responsible of the corruption case. The Public Criminal Corruption Prosecutors Office can execute any action without receiving outside information, meaning it can begin its own investigations and proceed in the criminal prosecution process.

Many of the problems faced by the country of Honduras implementing UNCAC exist because of the lack of funds required to investigate and prosecute the great number of corruption cases that exist in this country. The extremely low level of education of the general population of the country of Honduras, is also

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<sup>1</sup>Ley Orgánica del Tribunal Superior del Cuentas de Honduras, Decreto No. 10-2002-E.

<sup>2</sup>Tribunal Superior de Cuentas de Honduras.

<sup>3</sup>Consejo Nacional Anticorrupción.

<sup>4</sup>Ley del Consejo Nacional Anticorrupción, decreto número 7-2005.

<sup>5</sup>Procuraduría General de la República de Honduras.

<sup>6</sup>Ley de la Procuraduría General de la República de Honduras, decreto número 74-2000

<sup>7</sup>Ministerio Público de Honduras.

<sup>8</sup>Ley Orgánica del Ministerio Público de Honduras, decreto número 228-96

considered as a significant factor. This is because the population of this country does not have a proper complaint culture, which is definitely necessary in the battle against corruption. Other important factor includes the high level of corrupt public officials that are inside of the system and are able effectively to diminish the success of the fight against corruption.

## II. INTELLIGENCE

Honduras and its criminal justice officials have various measures to generate leads in the process of detecting corruption cases. The most common measure is the complaint issued by a common citizen or by a company representative. After the complaint is received, the criminal public prosecutor orders the police to begin the corresponding investigation process; this may include interviews with people with knowledge of the situation or possible participants of the corruption case itself. The investigation process may also include wiretapping; this has to be requested by a public criminal prosecutor before a judge. Honduras has call centers that receive corruption complaints, these are located in the Presidential Ministry, in the National Anti-Corruption Council, in the Public Criminal Prosecutors Office and inside Police Headquarters.

The most useful measure is the call centers, through which the criminal justice operators receive useful information to request or order further investigation tools, that will be mentioned further along in this paper.

Honduras has enacted article<sup>9</sup> number 237 of the Criminal Process Law, most commonly known as the witness protection procedure. A witness that possesses valuable information in any criminal case, including corruption cases, is ordered to be protected, taking any measure necessary to protect his or her identity, as well as his or her physical integrity, so that he or she can make a statement before a judge in their condition as witnesses, without the existence of any risk to his or her well-being.

If the possible witness has had any type of involvement in the corruption case, and the criminal justice official considers that the information offered in the statement by the witness is much more valuable for prosecuting higher ranking corruption criminals or greater criminal corruption organizations, in comparison to the prosecution of the initial witness, Honduras has a tool located in article 28 section 5<sup>10</sup> of the Criminal Process Law, which allows for the criminal justice official to negotiate with the possible corrupt individual, so that he can provide a useful statement, in order for higher ranking public officials to be appropriately and effectively prosecuted. This tool can also be considered as the Honduran plea bargain.

Common citizens or any other person can present their corruption complaint before the National Council Against Corruption, the National Prosecutors Office or before the police headquarters, without providing any personal information, although no reward is currently being offered.

## III. INVESTIGATION

Honduras has been using wiretapping for a few years; the results have been positive and the tendency is to improve each time it is implemented. The wiretapping procedure is authorized by a judge and requested by a criminal public prosecutor utilizing a specific law<sup>11</sup>, called the Special Law of the Intervention, of Private Communications. When there is a verification of suspicious activities, the police authorities request the criminal public prosecutor to submit a special request, in order for the criminal law judge to decide if the request fulfills all specifications established in the law. After this, the wiretapping begins; it is admissible at trial only if all specifications and procedures are met.

Bugging is already established and regulated in the previously mentioned law; however it is not as clear as it should be, and until today it has not been used in a trial. However, in my opinion it is a very effective and useful tool in the battle against public corruption.

<sup>9</sup> Artículo 237 del Código Procesal Penal, decreto número 9-99 E.

<sup>10</sup> Artículo 28 numeral 5 del Código Procesal Penal, decreto 9-99 E

<sup>11</sup> Ley Especial de Intervención de las Comunicaciones Privadas, decreto número 234-2011.

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In Honduras, undercover operations are allowed in the investigation process, as well as in trial. This is because article 198 and 199 of our Criminal Process Law is open in the sense that it allows the implementation and introduction at trial of any type of trustworthy evidence. Undercover investigation police officers or others designated for that purpose, act as common citizens offering bribes to public officials. However, analysing national statistics, this is not a common practice in Honduras, reducing the effectiveness of this covert investigation measure. It is my personal opinion that the lack of the use of this investigation measure is, in fact, part of the corruption practices in the country of Honduras.

In Honduras, computer software investigation is allowed in all stages of the prosecution process; hard drives, portable massive storing data devices have been retrieved and analysed, as well as e-mails. Important information has been retrieved and used in trials in the process of obtaining positive results. However, this tool is not used very often, perhaps because of the lack of experts in the area or because of the same corruption cycle already explained.

In this country of Honduras all this information obtained by covert investigation measures is admissible at trial, if it is obtained using the correct procedures established in our laws; if not, it is dismissed and it will not be analysed or valued by the courts.

In Honduras, sting operations and controlled delivery have been used; they are extremely effective and are in fact admissible at trial. However, its use is not very common, so we believe these tools are being under-utilized in Honduras, and that situation should be addressed thoroughly.

Wiretapping, controlled delivery and under-cover operations are the most useful covert investigation measures. I am hopeful that with the support of first world countries, such as Japan, and the useful information received by the criminal justice operators in these type of cooperation processes, we will increase the correct use of these effective and useful covert investigation measures in order to decrease the corruption levels in developing countries.

On average, in Honduras it usually takes about six months to a year to investigate a corruption case. Yes, we have problems expediting the investigation processes. This is due to the poor cooperation from other institutions to provide useful, and effective information in the process of the investigation, the small amount of funding directed towards the investigation processes and corruption from inside public institutions and officials in charge of fighting corruption.

Some institutions investigate and control other institutions in corruption cases, but the results are still not satisfactory.

#### **IV. PROSECUTION**

The Public Criminal Prosecution Office decides whether to prosecute or not. The decision depends on whether there is enough evidence that can indicate the probability of the commission of a corruption case and the probability that can indicate one or several individuals as possible authors of the commission of the corruption case. Public interest has been shown in the past as a factor; however, enough evidence is the final and decision-making factor in prosecuting a corruption case. Reasonable prospect would have to be the standard in Honduras; beyond a reasonable doubt is the standard to convict.

The prosecution rate is about 50%, which translates to 60 prosecutions a month countrywide. Both immunity and plea-bargaining, exist in Honduras through a tool located in article 28 section 5<sup>12</sup> of the Criminal Process Law, which allows for the criminal justice official to negotiate with the prosecuted individual, so that he can make an efficient and effective statement before a judge, in order for higher ranking public officials to be appropriately and effectively prosecuted.

#### **V. TRIAL PROCEDURES**

Honduras has a mixed adversarial system since 2002. In Honduras, it takes about one-and-a-half years

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<sup>12</sup> Artículo 28 numeral 5 del Código Procesal Penal, decreto 9-99 E

to adjudicate a corruption case on average. Yes, we have problems expediting trials on corruption cases; this is because of the amount of delaying measures the defence attorneys present in these types of trials, e.g., appeals. Through a series of meetings and law reforms, we have managed to reduce the amount of time a corruption trial may take by speeding the resolution of appeals and other procedural tools utilized by the defence attorneys to delay trials. The proof of conviction standard is beyond a reasonable doubt. The conviction rate is approximately 50%. Any type of evidence can be presented at trial, as long as it is objectively trustworthy. The witness protection programme in Honduras consists of not including any witness information at trial and using any type of procedure so that the witness is not visually or audibly identified at trial. In some rare cases, the witness is transported to another state or country.

Honduras is the second most corrupt country in the Americas, according to Transparency International. This says a lot. Not much positive information can be addressed; however, I consider some correct steps are being taken to improve our situation. Without a doubt, effective and precise measures have to be implemented here, such as increased wiretapping, under-cover investigations, bugging, controlled deliveries, stings and increasing the investigation of higher ranking officials, such as presidential secretaries, congressmen, magistrates, judges, public prosecutors and much more.