



AP Photo: Fernando Antonio

TRANSPARENCY IN HONDURAS

Assessing Access to Public Information

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INTRODUCTION

In the last decade, the problem of insecurity and impunity has deeply affected the people of Guatemala, El Salvador and Honduras, making this region (known as the Northern Triangle of Central America) one of the most violent in the world. High levels of violence, corruption, and impunity have eroded the capacity of the states to develop accessible and efficient institutions, and address the needs of their populations.

The absence of effective responses has weakened citizens' confidence in state institutions, leading to an alarming number of people who have been internally displaced or forced to migrate to other countries to escape the violence and lack of economic opportunities.

Against this backdrop, the Washington Office on Latin America (WOLA), the University Institute on Democracy, Peace and Security (IUDPAS) of Honduras, the Myrna Mack Foundation (FMM) of Guatemala, and the University Institute for Public Opinion (Iudop) of the José Simeón Cañas Central American University (UCA) of El Salvador have developed a tool for monitoring and evaluating the policies and strategies currently being implemented in Guatemala, Honduras, and El Salvador to reduce insecurity and violence, strengthen the rule of law, improve transparency and accountability, protect human rights, and fight corruption. This initiative has been made possible thanks to the support of the Latin America Division of the Swiss Agency for Development and Cooperation, the Tinker Foundation, the Seattle International Foundation (SIF), and the Moriah Fund.

THE CENTRAL AMERICA MONITOR

The Central America Monitor is based on the premise that accurate, objective, and complete data and information are necessary to reduce the high levels of violence and insecurity, and establish rule of law and governance in a democratic state. This will allow efforts to move beyond abstract discussions of reform to specific measures of change.

The Monitor is based on a series of more than 100 quantitative and qualitative indicators that allow a more profound level of analysis of the successes or setbacks made in eight key areas in each of the three countries.¹ More than a comprehensive list, the indicators seek to identify a way to examine and assess the level of progress of the three countries in strengthening the rule of law and democratic institutions. The indicators seek to identify the main challenges in each of the selected areas and examine how institutions are (or are not) being strengthened over time. The Monitor uses information from different sources, including official documents and statistics, surveys, interviews, information from emblematic cases, and analysis of existing laws and regulations.

The indicators were developed over several months in a process that included an extensive review of international standards and consultation with experts. The eight areas analyzed by the Monitor include:

1. Strengthening the capacity of the justice system;
2. Cooperation with anti-impunity commissions;
3. Combatting corruption;
4. Tackling violence and organized crime;

5. Strengthening civilian police forces;
6. Limiting the role of the armed forces in public security activities;
7. Protecting human rights;
- 8. Improving transparency.**

The Monitor reports are published by area and by country. The first series of reports will serve as the baseline for subsequent analysis, which will be updated annually. Each annual series of reports will be analyzed in comparison with reports from the previous year. This allows researchers, civil society organizations, and other actors to assess the level of progress in strengthening the rule of law and reducing insecurity.

The first round of Monitor reports will primarily focus on data sets from an approximate 4-year time period, 2014 to 2017, in order to provide a snapshot of Central America's institutions.

The Monitor will serve as a tool for searchable, easy-to-comprehend data, delineating trends, progress, patterns, and gaps within and between the three countries of the Northern Triangle. The data, graphics, charts, and reports will be available on the Monitor's website.

This report from the Central America Monitor produced by IUDPAS of Honduras will provide a baseline assessment for indicators related to improving transparency and the level of public access to government-held information, with a particular focus on security, defense, and justice sector institutions.

ABOUT THE RESEARCH FOR THIS REPORT

The quantitative data in this report was obtained via the bibliographic review of official reports, institutional annals, and relevant information

available on the official transparency web pages of the government bodies analyzed. In addition, requests for statistical information were made via the Transparency and Public Information Access Law (*Ley de Transparencia y Acceso a la Información Pública, LTAIP*) of Honduras, which establishes a specific process by which government agencies must receive information requests and respond within a set timeframe.

We decided that the report's primary data would be obtained via public information requests, in order to evaluate the effectiveness of Honduras' transparency laws, including the response rate to information requests and the degree of cooperation by the various criminal justice bodies that were petitioned.

The information received from the requests was analyzed to measure the quality of the data obtained. This, in itself, is a useful exercise. Gaps in data will affect policymakers' ability to implement more effective public policies, while the refusal to provide information may reveal a lack of compliance and/or transparency on the part of the state agency involved.

Qualitative data and information were also compiled from other sources, taking into account the possibility that some state agencies might not comply with information requests. Consequently, this report uses information from interviews with experts, surveys, and media coverage to complement official data and to provide context, with the expectation that qualitative data can help provide a more complete picture of the reality on the ground. Similarly, qualitative data helps identify possible disparities by comparing existing legal frameworks with what is actually happening in practice.

KEY FINDINGS

- Access to public information is a right, recognized under international conventions, national legislation and, in the public policies of many countries. However, Honduras is still debating the scope of what categories of information are classified as “limited” or “confidential” under domestic law, especially information related to the defense, security, and justice sectors.
- Honduras is obligated to practice active transparency and uphold the principle of maximum disclosure of information. This means that all institutions that administer public assets assume responsibility, by right of office, for publishing information and facilitating public knowledge about their activities via access to web portals or other mechanisms. The Honduran government has created a transparency website, the Single Transparency Portal (*Portal Único de Transparencia*), which contained information on 206 institutions by the end of 2017.
- To facilitate citizens’ requests for access to information, the Institute for Access to Public Information (*Instituto de Acceso a la Información Pública*, IAIP) created and currently manages the Electronic Information System of Honduras (*Sistema de Información Electrónico de Honduras*, SIELHO). The system is not automated and therefore does not yield direct statistics, or any other cross-references, that would allow for an analysis of the overall demand by citizens for information from state authorities. According to the IAIP annual reports, in 2016 and 2017, citizens submitted 5,751 requests for access to public information to state institutions.² However, there is no disaggregated data for information requests involving defense, security, or justice sector institutions.
- The Transparency and Public Information Access Law (*Ley de Transparencia y Acceso a la Información Pública*, LTAIP) defines restrictions on the right to access information. Via this law, the IAIP has developed policies and standards regarding the classification and declassification of sensitive information. However, without considering IAIP guidelines, the Honduran government has enacted counter-reforms in recent years that increased secrecy and made it harder for the public to access information. This has prevented disclosure of information about 18 civil institutions as well as defense and security institutions, including the National Police (*Policía Nacional*) and Armed Forces (*Fuerzas Armadas*).
- Gaining access to information from the Armed Forces is difficult given legal norms that establish restrictive criteria, allowing the government to prevent disclosure of information. These restrictive laws include the Law on the Classification of Public Documents Related to National Security and Defense (*Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional*), the National Intelligence Law (*Ley de Inteligencia Nacional*), the Population Security Law (*Ley de Seguridad Poblacional*), and the Fiduciary Law for the Administration of the Population Protection and Security Fund (*Ley de Fideicomiso para la Administración del Fondo de Protección y Seguridad Poblacional*).

- Counter-reforms regarding access to information tend to be promoted by the executive branch and the National Defense and Security Council (*Consejo Nacional de Defensa y Seguridad*, CNDS), which control the IAIP's authority to classify and declassify information.
- These setbacks in strengthening and upholding the right to access public information in Honduras have generated a lack of transparency regarding the policies, programs, projects, spending, contracts, and other matters related to Honduran defense, security, and justice institutions. The setbacks have also affected investigative capacity in cases of corruption and human rights violations, and significantly limited civic oversight efforts.
- Various Honduran institutions, including the Ministry of Defense (*Secretaría de Defensa Nacional*), Ministry of Security (*Secretaría de Seguridad*), the Public Prosecutor's Office (*Ministerio Público*, MP), and the Judiciary (*Poder Judicial*), have not publicized information on their institutional web pages as required by law. Instead, the information is available through the IAIP's Single Transparency Portal. This limits users seeking information on the institutions' websites themselves.
- The Single Transparency Portal does not contain information that the National Police and the Armed Forces are required to make public under law. Nor does the website include a legally required index detailing which subjects related to these institutions are considered confidential and classified.
- Excepting the National Police, none of the institutions in the defense, security, and justice sectors have automated information databases, a limitation that prevents prompt access to statistical data. The National Police does maintain a public database on homicides and other violent deaths in the country.
- As part of its official guidelines, the IAIP has developed a methodology to verify the information that government institutions release while responding to freedom of information requests. This methodology allows the IAIP to assess whether institutions are complying with the requisites of the public information law. The IAIP also uses this methodology to evaluate the quality of the information made public and determine to what extent that information is complete, truthful, adequate, and timely.
- The Single Transparency Portal and the website of the State Procurement and Acquisition Office (*Oficina Normativa de Contratación y Adquisición del Estado*, ONCAE) publish information regarding spending and hiring by government institutions, except for the Armed Forces and National Police. The ONCAE website containing this information is called *Honducompras*.

- This report found no information regarding spending and contracts under the Population Security Law—legislation that collects taxes to be used in security spending. Additionally, no information was found regarding the Fiduciary Law for the Administration of the Population Protection and Security Fund—legislation that establishes a pool of funds to be used for crime prevention programs. More specifically, any purchases made using these funds are not publicly available online: neither in Honducompras, nor in the Single Transparency Portal.
- By law, public officials are required to present an annual declaration of income, assets, and liabilities; however, there is a ban on their public release. This is incompatible with legal requirements requiring accountability for public officials and employees, in order to detect and prevent conflicts of interest and to detect possible cases of illicit enrichment. In addition, the Superior Court of Accounts (*Tribunal Superior de Cuentas*, TSC) does not have a reliable and effective means of verifying or monitoring asset declarations, which limits the veracity of this information.

TRANSPARENCY IN HONDURAS

Assessing Access to Public Information

Access to public information is a right recognized by conventions, doctrine, and international jurisprudence due to its importance in the consolidation, operation, and preservation of democratic systems. Following the trend seen in human rights law, many governments have enacted and advanced in the implementation of laws and policies regarding access to public information, with notable results in political and social spheres.

In its September 19, 2006 verdict of the Claude Reyes case against Chile, the Inter-American Court of Human Rights indicated that the right to access information is governed by the principle of maximum disclosure.³ This principle is rooted in the precept that all information should be public and subject to a well-defined system of limitations or exceptions.⁴

Today, however, there is debate around what governments should qualify as “limited information” or “confidential access,” especially

information related to defense and security (the latter includes public and citizen security). Some countries have already adopted regulations for managing defense and security information by seeking to comply with international standards, while also clearly defining situations for exceptions and establishing a strict regime regarding information confidentiality in these sectors.

Some governments also impose onerous restrictions on access to information for defense and security institutions. These restrictions directly affect serious acts of corruption, especially those related to budget management, spending, contracting, and abuses in military and police operations.

This Central American Monitor report focuses on the Honduran government’s application of its freedom of information laws, especially in relation to security, defense, and justice sector institutions.

ACCESS TO PUBLIC INFORMATION

Honduras’ regulations on the right to information are rooted in Article 80 of the 1982 Constitution, which states that “every person or association of persons has the right to submit requests to the authorities either for reasons of particular or general interest and to obtain a prompt response within the legal time period.”⁵

Honduras has signed and ratified several international conventions and enacted domestic legislation to combat corruption.⁶ In 2006, the government passed the Transparency and Public Information Access Law (LTAIP), approved

through Legislative Decree 170-2006 and later amended by Legislative Decree number 64-2007;⁷ the law was officially published in the government gazette on July 17, 2007.⁸

The LTAIP regulates the right to access information and defines the institutions required to provide information, including the obligation to provide it by right of office. The LTAIP established an independent public information institute, the IAIP, as well as a national information system, a national archival system, and a monitoring body.⁹ The LTAIP also

regulates everything concerning the procedures to exercise the right to information, including the protection of personal data and the right of habeas data, determination of restrictions, classifications, and confidentiality of information, as well as any relevant infractions and penalties.

REQUIREMENT TO PUBLISH INFORMATION (ACTIVE TRANSPARENCY)

Honduras generally embraces the principle of maximum disclosure of information, as evidenced by Articles 3, 4, and 13 of the LTAIP. Article 3, Section 4, of the LTAIP lays out the institutions required to publicize and facilitate access to information by right of office:

- Government branches: legislative, judicial, and executive.
- Autonomous institutions and municipalities.
- Other government institutions.
- Non-governmental organizations (NGOs) and private sector development organizations.
- In general, all those natural or legal persons who receive or administer public funds under any title, whatever their origin, whether national or foreign, or by themselves or on behalf of the state or where it has been the guarantor.
- Private sector organizations that receive revenue through issuance of stamps and/or the retention of goods, or that are exempt from paying taxes.

Articles 4 and 13 state that “it is the obligation of public institutions to disclose all information

related to their own operations or to provide all information concerning the application of public funds that they administer or have been guaranteed by the state, and to maintain and update transparency portals through electronic means and, in the absence of these, by means of available writings.”¹⁰ Article 4 also requires that all contractor selection procedures and contracts involving public officials or institutions must be disclosed on the website administered by the ONCAE.

Article 3, Section 5, of the LTAIP outlines what categories of information must be made available to the public. It states: “Items that are subject to disclosure include any file, record, data, or communication contained in any medium, document, printed, optical, or electronic or other record that is not available or one that has been previously classified as confidential that is held by the Required Institutions, and that can be reproduced. This information will include: the information contained in files, reports, studies, minutes, verdicts, offices, decrees, agreements, guidelines, statistics, licenses of all kinds, legal figures, budgets, budgetary settlements, financing, donations, acquisitions of goods, supplies and services, and any record documenting the exercise of powers, rights and obligations of the Required Institutions regardless of their source or date of preparation.”¹¹

INSTITUTIONS THAT GUARANTEE ACCESS TO INFORMATION

Article 8 of the LTAIP stipulated the establishment of the Institute for Access to Public Information (IAIP). The IAIP is defined as a decentralized public administration body with operational, decision-making, and budgetary independence, responsible for promoting and

facilitating citizens' access to public information, as well as for regulating and supervising institutional procedures required for the protection, classification, and maintenance of public information, in accordance with the LTAIP.

Among other obligations, the IAIP “will be the body responsible for complying with the obligations that the Inter-American Convention against Corruption and the United Nations Convention against Corruption impose on the government of Honduras, specifically in terms of transparency and accountability.”¹²

The law also establishes several supporting bodies for the IAIP, including the National Anti-Corruption Council (*Consejo Nacional Anticorrupción*, CNA), the oversight body responsible for ensuring that the LTAIP proper application of the LTAIP. To that end, the CNA has access to institutions and information not classified as reserved, confidential, personal, or secret.¹³

The LTAIP empowers the Honduran Congress to set up a special commission on freedom of information, which is supposed to receive quarterly reports from public institutions and issue recommendations. Representatives from public institutions may also be required to appear before the Commission.¹⁴

CITIZEN REQUESTS FOR ACCESS TO INFORMATION (PASSIVE TRANSPARENCY)

In Honduras, any natural or legal person has the right to request and receive information from the required institutions free of charge. Citizens do not require proof of direct interest or personal involvement in order to access public information. The only required regulation is personal identification of the requestor. If the

requestor is a legal entity, it must provide proof of its legal registration or identity, as well as proof that it has approved the designation of whoever acts on the entity's behalf.¹⁵

In the case of journalists, the LTAIP states the following: “Authorities are obligated to provide protection and support to journalists in the exercise of their profession, providing them requested information without more restrictions than those already included in existing legislation.”¹⁶

METHODS OF ACCESS

To enable the right of access to information, in 2014, the IAIP released the Electronic Information System of Honduras website (*Sistema de Información Electrónico de Honduras*, SIELHO).¹⁷ This website handles information requests and the filing of appeals for review. More specifically, the SIELHO is responsible for redirecting information requests to the relevant public institutions, organizing and keeping updated information on the process and progress of each submitted request. In addition, the SIELHO must send updates to the requestor about the current status of their petition.¹⁸

PROCESSING AND DEADLINES

Requests for access to information can be submitted in writing or electronically to the relevant institution. Institutions must resolve requests for information within 10 days. In some cases, institutions may extend this period for an additional 10 days, but only once.

Institutions must either accept or deny requests for information. If the request for information is denied, applicants must be informed in writing and given an explanation for the cause of denial. If the requested information is non-existent,

institutions must explain this to applicants in a written response.

Under Article 4 of the LTAIP, the information made available in response to public information requests must meet the characteristics of being “complete, truthful, adequate and timely,” within the limits and conditions established by the law. Applicants may not demand the public institutions in question to carry out evaluations or analysis of the information.

MOTIONS FOR REVIEW AND APPEALS

Upon receiving a denial or an incomplete response, applicants can file motions for review (*recurso de revisión*) and motions for an appeal (*recurso de amparo*).

The motion for review is the first method to file an objection with the IAIP, according to Articles 51 and 52 of the LTAIP.

Applicants must submit a motion for review in writing or electronically to the IAIP within 10 business days of receiving notification that the information request was denied (or if it suffered from any of the other problems described above). The petitioner may request in writing that public servants or individuals acting in violation of Honduran public information laws be sanctioned.

If the IAIP approves the motion for review, its decisions are binding and definitive, meaning the public institution in question is legally obligated to immediately provide the required information.

Should the IAIP deny a motion for review, Honduran law allows petitioners to file a motion for an appeal with relevant judicial authorities.¹⁹

LIMITATIONS ON ACCESS TO INFORMATION

The right to life, bodily integrity, and mental integrity are all absolute human rights. However, other rights, like access to information, may be subjected to restrictions as determined by strict regulations in a nation’s constitution, treaties, and jurisprudence, in adherence to international standards regarding their limitations.

According to the LTAIP, Honduras shall only restrict the right to access public information in the following cases:

1. When established by the Constitution, laws, treaties, or declared as confidential following respective procedures.
2. When information is recognized as private or confidential because it deals with personal

data or information defined as private.

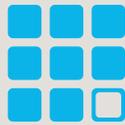
3. When information corresponds to private sector institutions and companies that are not included in obligations indicated by law.
4. When information would reveal the identification of journalists’ sources within public institutions, the sources of information for journalists’ research, or sources for journalists’ stories that have been published and maintained by media outlets.

Under law, information delivered to the government is also confidential, “including sealed offers regarding public bids or government tenders prior to the date that the bid become public, as well as government resources

BOX 1

INTERNATIONAL STANDARDS ON LIMITING ACCESS TO INFORMATION

In 2010, the Special Rapporteurs for Freedom of Expression of the United Nations and the Inter-American Commission on Human Rights (IACHR) jointly highlighted certain criteria as international standards to restrict or limit the right to access public information.²⁰ They declared that:



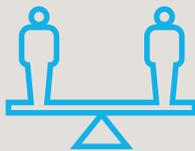
The right to access information must be subject to a limited system of exceptions, aimed at protecting pre-eminent public or private interests.



The laws that regulate the secret nature of information must clearly define the concept of national security and plainly specify the criteria that must be applied to determine whether certain information may or may not be declared secret.



Exceptions to the right to access information based, among other reasons, on national security, should only be applied when there is a certain risk of substantial damage to protected interests and when that damage is greater than the general public interest of obtaining such information.



It is against international standards to consider information concerning human rights violations classified or reserved.

and funds: financial and non-financial assets belonging to the government.²¹

Likewise, Articles 23, 24, and 25 of the LTAIP establish state protection over personal files, indicating that “the state recognizes the guarantee of habeas data.” Consequently, “access to personal data will only proceed by judicial decree or upon request of the person whose data is contained in said information or of their representatives or successors.”²²

It is important to note that there are also restrictions on access to information in other national laws. Some of these restrictions are

in line with standards for democratic societies. These include: the Law on the Public Prosecutor’s Office (*Ley del Ministerio Público*), which keeps ongoing criminal investigations private; the Law on Court Organization and Attributions (*Ley de Organización y Atribuciones de los Tribunales*), which governs certain types of trials; the Code on Children and Adolescents (*Código de la Niñez y Adolescencia*) to protect youth; family matters in the Family Code (*Código de Familia*); and the Law against Domestic Violence (*Ley contra la Violencia Doméstica*) to protect victims. These and other regulations containing restrictions are consistent with upholding access to justice and protecting the rights of vulnerable groups.

REASONS OR CAUSES FOR CLASSIFYING INFORMATION AS CONFIDENTIAL

Article 17 of the LTAIP establishes that classifying information as “confidential” is appropriate “when the damage that may occur outweighs the public interest in disclosing the information, or when disclosure of the information may inflict harm or risk”:

1. State security.
2. The life, safety, and health of any person, humanitarian aid, interests in support of children and other people or by the guarantee of habeas data.
3. The development of confidential investigations in matters of prevention, investigation, or prosecution of crimes or the administration of justice.
4. The interests protected by the Constitution and laws.
5. The conduct of negotiations and international relations.
6. The economic, financial, or monetary stability of the country or government.

To regulate interpretations of Article 17, the IAIP set guidelines to determine the Article’s scope. These were published in 2010, in Agreement 2-2010, outlining the general guidelines for classifying and declassifying information that is maintained or generated by public institutions subject to Honduras’ freedom of information laws. The guidelines include further detail on the six states of exception described above.

Article 28 of the LTAIP takes into account the possibility that public institutions will elaborate specific criteria for classifying information “as required by the nature or specialty of the information or of the relevant administrative

unit, so long as the criteria is justified and does not go against the guidelines issued by the [IAIP].”²³

PROCEDURES FOR CLASSIFYING INFORMATION AS CONFIDENTIAL

To classify information as confidential, based on any of the six causes listed above, it is required that the relevant institution, through its top office holder, issue a resolution that classifies the information. The resolution must be properly justified and sustained.

Prior to signing the classification resolution, the top office holder must send a copy to the IAIP. The IAIP may approve the resolution. However, if the IAIP considers that the information involved does not qualify as “confidential” under the pre-determined categories for restriction, then the IAIP may reject the resolution.

If the institution emits the resolution in spite of the IAIP’s decision, it will be null and void. The following penalties, as determined under Honduras law, can then be applied: civil liability, written reprimands, suspensions, fines, severance or dismissal. Cases that may constitute crimes can also be reported to the Public Prosecutor’s Office.

The rules of procedure, as established by the LTAIP, reaffirm that any classification of information as “confidential” must be approved under penalty of the law by the IAIP. Under law, institutions subject to the LTAIP are also required to create an index of classified documents, which they must organize in numbered files.

These institutions must disseminate the following by right of office: a list of classified information topics, the confidentiality period, and the date of

approval of confidentiality status by the IAIP.

Regarding the terms of validity of any restrictions to access to information, the LTAIP indicates that information classified as confidential will continue to be defined as such in the following cases:

1. While the reasons that justify the confidentiality status persist.
2. Otherwise, information classified as confidential will be reviewed after a period of 10 years, starting from when the information was officially declared classified.
3. If a court order exists, then reclassification will be limited to the specific case and for the exclusive use of the interested party.

Article 32 of the LTAIP stipulates that declassification of confidential information is appropriate when:

1. The reason that caused the classification no longer exists.
2. The confidentiality period has passed.
3. The maximum period of ten years has passed.

Following international standards, Honduran law states that “the courts will have access to confidential or reserved information when it proves essential to resolve an issue and would have otherwise been offered in court; in which case, it will be confined to the specific case and will not be available to the public in the respective case file.”²⁴

ACCESS TO INFORMATION IN THE DEFENSE, SECURITY, AND JUSTICE SECTORS

COUNTER-REFORMS LIMITING THE RIGHT OF ACCESS TO INFORMATION

In recent years in Honduras, there has been a tendency to centralize power in the executive branch, which has contributed to undue prominence for institutions like the CNDS. The Special Law of the National Defense and Security Council (Decree 239-2011) called for the creation of the CNDS. The CNDS is chaired by the Honduran president and comprised of the heads of the three government branches, the attorney general, the minister of security, and the minister of defense.

The CNDS also has an operational arm: the National Intelligence and Research Directorate (*Dirección Nacional de Investigación e Inteligencia*), which falls under the command of the Armed Forces.²⁵ Both the CNDS and the National Intelligence and Research Directorate have led government efforts to advance counter-reforms that seek to limit access to information related to defense and security matters.

The box below summarizes the main setbacks to guaranteeing the right to freedom of information, with a focus on defense and security issues. The box also includes a column providing examples of the negative effects of concealing public information.

BOX 2

LAWS RESTRICTING THE RIGHT OF ACCESS TO INFORMATION

Approved law	How the law infringes on the right to public information	Examples of bad practices
<p>Law on the Classification of Public Documents Related to National Security and Defense, also known as the "Law on Secrets."</p> <p>Approved by the National Congress by Decree 418-2013, on January 20, 2014.</p>	<p>Some of the law's provisions infringe the provisions of the LTAIP:</p> <ul style="list-style-type: none"> • The law grants exclusive power to the CNDS to classify documents related to security and national defense, thereby limiting the powers of the IAIP. • The CNDS is not subject to inspection or oversight. • The law introduces new categories of confidential classification, including: 1) reserved; 2) confidential; 3) secret; and 4) ultra-secret. • It modifies the LTAIP's previous definition of "confidential" to "strategic government information whose disclosure could cause imminent risk or direct threat against security, national defense, and public order." • Extends maximum periods for secrecy: 1) in the case of secret documents, declassification shall occur after 15 years; 2) for ultra-secret information, declassification shall occur after an extendable 25-year period. • Information can only be declassified if the attorney submits a request to the CNDS, "and only in the case of national interest, or for the investigation of possible crimes..." • The law requires two government entities—the Congress (Article 11) and the judiciary (Article 14)—to request CNDS authorization, violating judicial oversight and civilian control over government branches. 	<p>After the law's passage, in one of its first applications through Resolution 069-2014, the CNDS ordered that information generated by 18 civilian government agencies be kept secret.</p> <p>However, the Resolution is not limited to these 18 institutions. It may also apply to "...other institutions that administer information of interest to national security and defense."²⁶</p> <p>The Resolution applied to several entities under investigation for serious acts of corruption by the Public Prosecutor's Office, the Mission to Support the Fight against Corruption and Impunity in Honduras (<i>Misión de Apoyo contra la Corrupción y la Impunidad en Honduras, MACCIH</i>), and the Special Prosecutor's Unit against Impunity and Corruption (<i>Unidad Fiscal Especial contra la Impunidad y la Corrupción, UFECIC</i>). These agencies include the Honduran Social Security Institute (<i>Instituto Hondureño de Seguridad Social</i>), the Ministry of Health, and the National Electric Power Company (ENEE), among others.²⁷</p>

Approved law	How the law infringes on the right to public information	Examples of bad practices
Law on Secrets (continued)	<p>In 2015, Congress introduced a repeal bill under the leadership of the Committee on Legislation and Constitutional Affairs. However, Congress has not ruled on the bill to date.</p> <p>The IAIP has issued two resolutions regarding the law. First, Resolution SO-077-2015, which requested the annulment of a CNDS resolution (CNDS-069-2014) declaring information from various government institutions confidential. Second, Resolution SE-001-2015, issued at the National Anti-Corruption Council's request, which ordered the Honduran Congress to carry out a thorough reform of the law. Neither have come to fruition.</p> <p>In turn, in 2016, civil society organizations filed a motion to declare the "Law on Secrets" unconstitutional, asserting that 13 of the law's 17 articles violate the Honduran Constitution as well as international agreements Honduras has ratified. The motion has neither been resolved nor denied.</p>	
<p>National Intelligence Law, approved by Decree 211-2012 on January 18, 2013, sanctioned by the executive branch on April 9, 2013 and published in the government gazette on April 16, 2013.</p>	<p>Article 18 states that all activities, information, and intelligence documents will be kept confidential since their content is reserved or secret.</p> <p>The law states that the National Intelligence and Research Directorate "will operate as a decentralized entity of the National Defense and Security Council and will possess functional, administrative, and budgetary independence; for which the Secretary of Finance will make the corresponding budgetary forecasts in accordance with Article 10 of the Special Law of the National Defense and Security Council.</p> <p>In other words, this entity that can capture personal data, but all its information is kept ultra-secret, and the entity is not subject to oversight from any other government institution.</p>	<p>Based on Law and Resolution 069-2014, the National Intelligence and Research Directorate is the CNDS' agency responsible for receiving and analyzing information of the 18 public institutions whose information was ordered to be classified as confidential.</p>

Approved law	How the law infringes on the right to public information	Examples of bad practices
<p>Population Security Law, approved by Legislative Decree 105-2011; reformed by Legislative Decree 166-2011 and Decree 58-2012, which interpret Articles 7 and 9.</p> <p>New reforms were introduced through Decree 275-2013 of December 17, 2013, in relation to the Fiduciary Law for the Administration of the Population Protection and Security Fund, approved by Decree 199-2011 of November 4, 2011; reformed by Decree 222-2012 of January 18, 2013.</p>	<p>The law levies a tax to generate funds to prevent and combat crime, but does not establish an adequate accountability mechanism:</p> <ul style="list-style-type: none"> • It generates millions in revenue, as Article 6 states that “the [Fund] will never be less than 1.5 billion lempiras (\$61,235,785)... When it is not possible to raise the amount indicated... the executive branch must provide the remaining balance.” • Originally, Article 3 provided for an accountability system that allowed the population to know, through quarterly evaluations, how funds were being administered. However, by means of Decree 166-2011, this article was amended, limiting it to accountability only to the Ministry of Finance through the General Treasury of the Republic. • This reform also creates a Technical Fiduciary Committee (<i>Comité Técnico del Fideicomiso</i>) composed of three people. One of them is directly appointed by the Honduran president. The other two represent the Honduran Council of Private Enterprise (<i>Consejo Hondureño de la Empresa Privada</i>) and a civil society organization, the National Convergence Forum, (<i>Foro Nacional de Convergencia</i>). The president’s representative has the right to veto decisions concerning the allocation of security funds. • The original law mandated the delivery of quarterly reports to the technical committee and to the general public. However, Decree 275-2013 eliminated the requirement to report to the public, and instead stipulated that the Technical Fiduciary Committee render semiannual reports exclusively to the Special Security Commission of the National Congress, and not to any other body. 	<p>Case 1: Use of 200 million lempiras to pay the debts of the ENEE’s debts.²⁸</p> <p>On December 29, 2014, the CNDS approved use of funds to invest in ENEE bonds. The action was declared “state secret” and will be classified for 15 years.</p> <p>Case 2: Lack of transparency in use of funds collected under this law to buy a presidential plane.</p> <p>The Honduran government purchased luxury jet Embaer Legacy 600 directly from Irish company ECC using funds collected by the Technical Fiduciary Committee. The government intended to keep the purchase secret to avoid being held accountable for its use of these resources. However, the CNDS ignored the norms already established by the National Contracting Law (which requires all public authorities to follow a pre-defined, open process when selecting a company that will provide services).²⁹</p>

Approved law	How the law infringes on the right to public information	Examples of bad practices
Population Security Law (continued)	<ul style="list-style-type: none"> Another reform in 2012, Decree 222-2012, empowered the CNDS to instruct the Technical Fiduciary Committee on the implementation of investments "necessary in matters of defense and security policies." The reform requires the Technical Fiduciary Committee to immediately execute the investment instructed by the CNDS (as stated in Article 2 of the reform). 	

Source: Analysis of legal frameworks and cases of national importance

Box 2 does not report on all laws that restrict the right of access to information. The laws listed are the most noteworthy, but there are other legal frameworks regarding transparency, access to justice, militarization, procurements, and hiring that affect LTAIP regulations. These include, but are not limited to: the Law of the Military Police of Public Order (*Ley de la Policía Militar de Orden Público*); the Financial System Law (*Ley del Sistema Financiero*); the Law of the National Commission of Banks and Insurance (*Ley de la Comisión Nacional de Bancos y Seguros*); the Regulation on Public-Private Partnerships (*Reglamento de las Alianzas Público-Privadas*); and the Organic Law of Special Development and Employment Areas (*Ley Orgánica de Zonas Especiales de Desarrollo y Empleo*).

PRACTICE OF ACCESS TO INFORMATION IN THE DEFENSE, SECURITY, AND JUSTICE SECTORS

REQUESTS FOR INFORMATION IN THE DEFENSE, SECURITY, AND JUSTICE SECTORS

This section refers to passive transparency in Honduras, or the number of requests from citizens and other stakeholders to access information related to defense, security and justice. This section will also address information available on responsiveness to requests for information, including those approved or denied, and the timeliness of responses.

The main source of information on these topics is the IAIP and its SIELHO information system, which contains data on all information requests submitted to public institutions. Despite the SIELHO's potential, it does not have an online statistical database. Nor does it publicize or maintain disaggregated data or any comprehensive analysis regarding the quality of the information requests submitted to, or responses provided by, public institutions.

To access information regarding the number of requests for information, one must turn to the IAIP's annual accountability reports, as well as its quarterly and semi-annual transparency verification reports issued by the Institute, or proceed to request information on the desired topic.

No information was available regarding the number of information requests made each year between 2014 and 2017. Nor we were able to access the information that would have allowed for a comparative analysis regarding the number of information requests submitted to the Ministry of Defense, the Armed Forces, the Ministry of Security, the National Police, or the judiciary.

IAIP data show that in all of 2016 and 2017,³⁰ public institutions received a total of 5,751 requests for access to public information.

- In 2016, the government registered approximately 2,700 access to information requests and resolved about 75 percent of them by December of that year.³¹
- In 2017, the government received 3,051 requests for public information and resolved about 45 percent of them that same year. This shows that over a one-year period, Honduran institutions experienced a major decline in the timely resolution of access to information requests. More than half of access to information requests received in 2017 remained pending by year's end.

No detailed information was available regarding specific data on information requests to defense, security, and justice institutions, so it is impossible to know how many requests for information these institutions received or the status of those requests.

As mentioned earlier, accessing data from the Armed Forces is a particularly difficult task due to current laws that severely restrict transparency around the military.

MANDATORY ONLINE DISCLOSURE OF INFORMATION

Article 16 of the LTAIP stipulates that public institutions must publicly disclose certain information as described in Article 13 of the LTAIP. This information must be made available on the main page of the institution's web site or another appropriate place. There must also be a link to the SIELHO website.

Public institutions subject to the LTAIP must update information on a monthly basis. To facilitate access to information for users and for better compliance monitoring, in 2013 the IAIP created a Single Transparency Portal,³² which is an online, standard template designed to keep all the information that public institutions are legally required to make public in a single place. With 526,919 documents accessible online through the Single Transparency Portal, we can use this tool to evaluate transparency and effective access to the information that institutions are required to make public.

WEBSITES, AVAILABILITY, AND ACCESS TO STATISTICS IN THE DEFENSE, SECURITY, AND JUSTICE SECTORS

THE MINISTRY OF SECURITY

The Ministry of Security maintains information on its activities on its institutional website.³³ The Ministry of Security oversees the National Police, all police directorates, and 911 emergency responders. The Ministry is also responsible for awarding preventative security measures (*medidas cautelares*) mandated by the IACHR, managing violence prevention initiatives, and

BOX 3

INFORMATION GOVERNMENT AGENCIES MUST PUBLISH ONLINE UNDER THE LTAIP



Organic structure, functions, powers, services, procedures, requirements, and how to access services.



Laws, regulations, communications, and other material regulating operations.



Monthly salaries of public servants.



Budgets, quarterly and annual reports on budget expenditures, including the details of transfers, expenses, physical and financial investment, debt and delinquency.



Hiring, concessions, sales, auctions for public works, tender notices, and bids.



Opportunities for citizen participation in government decisions.



Names, addresses, telephone numbers, and email addresses of public servants responsible for handling access to information requests.



The Judiciary must publish rulings, omitting the personal data of each party.

authorizing and conducting oversight of private security companies.

However, the Ministry of Security's website lacks information on most of the topics that Article 13 of the LTAIP mandates be made public. Nor does the website contain links to the Single Transparency Portal, even when displaying internal links or links to related sites.

As part of the research for this report, we requested access to statistical information from the Ministry of Security, which denied most of these requests. When searching within the Single Transparency Portal, most of the information about the Ministry of Security required by Article 13 of the LTAIP is available, with the exception of information about the National Police.

THE NATIONAL POLICE

The National Police has its own website, which is accessible from a link on the Ministry of Security's web page.³⁴ Within the National Police is the Planning, Operational Procedures and Continuous Improvement Department (*Dirección de Planeamiento, Procedimientos Operativos y Mejora Continua*), which oversees a Statistics Department (*Departamento de Estadísticas*). This department collects and consolidates data via the Online Police Statistics System (*Sistema Estadístico Policial en Línea, SEPOL*).³⁵

In 2010, Honduras established an inter-agency working group comprised of the National Police, General Directorate of Forensic Medicine (*Dirección General de Medicina Forense*), National Registry of Persons (*Registro Nacional de Personas*), and National Violence Observatory (*Observatorio Nacional de la Violencia*), which developed a methodology to collect and validate data through case studies and analysis. As part of their work through the Regional System of Standardized Indicators on Coexistence and Citizen Security (*Sistema Regional de Indicadores Estandarizados de Convivencia y Seguridad Ciudadana*), members of these four institutions developed a protocol in 2014 to review and reconcile data that could be used to strengthen the capacity of public officials across the region to formulate, implement, and evaluate citizen security policies. This mechanism led the National Police to create the SEPOL in 2014.

SEPOL is an information network available online, with national data on homicides and other violent deaths. Since 2013, users have been able to search data by municipality and by categories of homicide; however, at the time of publication of this report, it was not possible to search by sex, age, or other types of crime. The SEPOL also releases daily, monthly, and annual

reports on homicides. Interactive maps and an online consultation system are also available to explore annual, monthly, and weekly statistics on homicides and general crime rates.³⁶

In addition to SEPOL, since 2005, the National Violence Observatory, operated by the National Autonomous University of Honduras (UNAH), has classified, analyzed, and raised awareness about violent deaths in Honduras through its website, bulletins, and freedom of information requests. Data from the National Violence Observatory and UNAH have served as the source for an official indicator on homicides that the government included in its 2010-2038 national strategic plan (*Visión de País 2010-2038*) and its 2010-2022 National Plan (*Plan de Nación 2010-2022*).³⁷

THE MINISTRY OF DEFENSE AND ARMED FORCES

Like the majority of institutions required by the LTAIP to make basic information publicly available, the Honduran Ministry of Defense maintains its own website³⁸ that contains information about the institution's mission, vision, and objectives.

The Armed Forces, an institution under the purview of the Ministry of Defense, also has its own independent website. However, this site does not keep any statistical information about the Armed Forces' operations, despite the fact that the institution handles national security, anti-drug trafficking operations, and maintaining public order.

The Ministry of Defense's homepage includes a direct link to the Single Transparency Portal, where the information required to be made public under Article 13 of the LTAIP can be accessed. However, there is only data available about the Ministry, because there is no data or information about the Armed Forces.

THE JUDICIARY

The Judiciary's website contains information about its duties. It also features links to other internal units of the Judiciary, including but not limited to the National Directorate of Public Defense, the Judicial School (*Escuela Judicial*), the Electronic Documentation and Judicial Information Center (*Centro Electrónico de Documentación e Información Judicial*, CEDIJ), and the Judicial Indexing System (*Sistema de Indexación Judicial*), a tool for searching Supreme Court rulings and any resulting jurisprudence.

The Judiciary's homepage contains a prominent, easily accessible link to the IAIP's Single Transparency Portal.³⁹ Additionally, in 2003 the Judiciary created its own statistical database, known as the CEDIJ. The CEDIJ is the specialized unit responsible for collecting, processing, ordering, analyzing, classifying, archiving, digitizing, publishing, and disseminating the statistical information generated by national courts.

The CEDIJ is a non-automated information system that has facilitated the monitoring of judicial actions by subject and geographic areas. The CEDIJ has an organized system for reviewing documents and institutional information, permitting review of both paper and electronic materials. Additionally, although not available online, the CEDIJ has a Statistics Unit (*Unidad de Estadísticas*) responsible for the collection, processing, analysis, and dissemination of data generated by national courts. Since 2013, the CEDJ has published annual reports on judicial activities. The CEDIJ is supposed to make its reports available online, but, as of the publication of this report, the URL for the CEDIJ's homepage did not work, and could only be accessed via the Judiciary's homepage.⁴⁰

The lack of automation of judicial statistics poses a challenge, as it limits easy access to statistical data.

PUBLIC PROSECUTOR'S OFFICE

The Public Prosecutor's Office (MP) has its own institutional website.⁴¹ One of its most visible and easily accessible links is labeled "Transparency." Upon entering, the site redirects users to the Single Transparency Portal that contains the documents required by the LTAIP.

The MP also has an information analysis unit that collects and consolidates national and regional statistical data. However, the MP does not make qualitative statistics available online, such as information about the MP's institutional performance or that of its sub-offices.

The MP oversees many public agencies that are a source of information for decision-making in public policies or international cooperation. Some of these important directorates include:

1. The General Directorate of Forensic Medicine.
2. The Technical Agency of Criminal Investigation (*La Agencia Técnica de Investigación Criminal*, ATIC).
3. The UFECIC (the primary MP unit that works with the MACCIH).
4. The Directorate for the Fight against Drug Trafficking.

There is no information on these institutions on the MP page, nor any statistical references to their work. The MP Statistics Unit also does not have a link on the MP website.

In general terms, it should be noted that none of the defense, security, and justice sector institutions described above comply with the provisions of Article 29 of the LTAIP, which requires institutions to create an index

of documents classified as confidential.⁴² In addition, none of the defense, security, or justice institution websites include links or instructions for citizens to submit public information requests.

EVALUATING THE QUALITY OF INFORMATION

According to Article 4 of the LTAIP, the information Honduran institutions provide in response to information requests must be complete, truthful, adequate, and timely. To determine if the information published by Honduran state institutions on their websites comply with the law, the IAIP, via its Verification and Transparency Management Unit (*Gerencia de Verificación y Transparencia*, GVT), has developed an evaluation methodology included in its official manual. This methodology, first published in June 2015, is titled “Guidelines for verifying public information on transparency portals of the centralized and decentralized public administration.”⁴³

The GVT carries out verification and evaluation of information provided by public institutions in two ways:⁴⁴

1. First, it strictly evaluates the regulatory compliance of the publication. This is verified by inspecting the institutions required to make information available to the public, as mandated by Article 13 of the LTAIP.

2. Second, it strictly evaluates the quality of the information published, thus strengthening active transparency in Honduras.

The GVT performs monthly oversight of compliance with the LTAIP, particularly Article 13, which, according to the aforementioned guidelines, are organized into five major components or indicators, which in turn have their own areas of analysis (see Table 1).

As Table 1 shows, the GVT assigns a value to all criteria. The GVT assigns the highest values to two criteria, planning and accountability (40 percent) and finance (40 percent), as these areas are the most vulnerable to corruption and the ones that require highest levels of transparency.

Each component has sub-indicators used in the evaluation process. The GVT’s methodology classifies public institutions into four categories: excellent, good, bad, or poor (see Table 2).

TABLE 1**VERIFYING INSTITUTIONAL COMPLIANCE WITH THE LTAIP**

Criteria to assess institutional compliance with the LTAIP	Percentage value assigned to criteria (through 2014)	Percentage value assigned to criteria (currently in effect) ⁴⁵
1. Organic Structure	15%	10%
2. Planning and Accountability	40%	40%
3. Finance	35%	40%
4. Regulations and Ordinances	5%	5%
5. Citizen Participation	5%	5%
TOTAL SCORE	100%	100%

*Source: GVT***TABLE 2****EXTENT OF INSTITUTIONAL COMPLIANCE WITH THE LTAIP**

Level of compliance	Rating
Excellent	100%
Good	90-99%
Bad	70-89%
Poor	0-69%

Source: GVT

In 2015, the IAIP changed its evaluation methodology in order to include an evaluation of information quality. The IAIP made these changes with the support of civil society organization the Committee for Free Expression (*Comité por la Libre Expresión, C-Libre*).

The new methodology uses Article 4 as the basis for establishing criteria in order to assess whether information provided by Honduran institutions in response to information requests is complete, truthful, adequate, and timely. The GVT assigned a value to each of these four criteria based on its level of importance.

TABLE 3
ASSESSMENT OF THE QUALITY OF INFORMATION PROVIDED BY INSTITUTIONS

Quality assessment	Percentage value
Complete	40%
Truthful	30%
Timely	20%
Adequate	10%

Source: GVT

The IAIP publishes biannual “Transparency Verification Reports,” which cover all government institutions the LTAIP regulates. The IAIP published 206 of these reports in 2017.

As described in the previous section, Honduran defense, security, and justice institutions are limited in terms of facilitating searches for information, access to statistics, and submission of freedom of information requests. There are also deficiencies in terms of navigating these websites and finding the link, as required under law, to the Single Transparency Portal. Nonetheless, according to the IAIP’s monthly verification reports and based only on the data contained within the Single Transparency Portal, the IAIP

assigned the Ministry of Security, the Ministry of Defense, and the Judiciary compliance rates of 100 percent in 2017. That same year, the IAIP assigned the MP a compliance rate of 85 percent.

The IAIP does not rate the National Police or the Armed Forces in terms of complying with transparency laws and providing information that is complete, truthful, timely and adequate. Nor is basic information about these institutions available in the IAIP’s Single Transparency Portal, even though both fall under the executive branch and have two of the largest budgets across the Honduran government.

TABLE 4

ASSESSMENT OF HONDURAN SECURITY AND JUSTICE INSTITUTIONS’ COMPLIANCE, BASED ON ARTICLE 13 OF THE LTAIP

Institution	2nd semester 2013	1st semester 2014	2nd semester 2014	1st semester 2015	2nd semester 2015	1st semester 2016	2nd semester 2016	1st semester 2017	2nd semester 2017
Judiciary	100%	100%	100%	100%	96%	100%	100%	100%	100%
Public Prosecutor’s Office	93%	96%	94%	90%	50%	48%	85%	87%	85%
Ministry of Security	100%	100%	100%	93%	95%	100%	100%	100%	100%
Ministry of Defense	95%	90%	90%	89%	97%	100%	100%	100%	100%

Source: GVT and IAIP monthly reports

BUDGET TRANSPARENCY AND EXPENDITURES IN THE SECURITY, DEFENSE, AND JUSTICE SECTORS

ACCESS TO INFORMATION ON THE USE OF PUBLIC FUNDS

Article 13 of the LTAIP includes requirements on active transparency of public institutions. Section 8 of the Article establishes that, by mandate and right of office, the following information must be disclosed: aspects related to budgets, a quarterly and an annual report of budget expenditures, including details on transfers, expenses, physical and financial investment, debt, and delinquency.

The information below comes from a review of the websites of the Ministry of Defense, the Armed Forces, the Ministry of Security, the National Police, the Judiciary, and the Public Prosecutor’s Office.

On the institutional web pages, the analyzed entities do not provide the direct information as required by Article 13. However, upon accessing the Single Transparency Portal, and searching institution by institution,⁴⁶ users may find the following information about each institution as required by the GVT methodology guidelines:

1. Organic Structure.
2. Planning and Accountability.
3. Finances.
4. Regulations and Ordinances.
5. Citizen Participation.

The **finance section** of the IAIP's Single Transparency Portal includes links for each institution related to: financial statements, budgetary settlements, monthly budgets, annual reports, monthly transfers, expenditures, physical investment, financial investment, debt, and delinquency.

Upon review, the links appear to be up to date for each institution.

The information uploaded to the Single Transparency Portal is kept there permanently; it includes data between 2013 and 2016, with 526,919 online documents from 181 required institutions,⁴⁷ including centralized and decentralized institutions, political parties selection committees for high-level government positions. There is no way to count how many documents have been made available per institution.

The National Police and the Armed Forces of Honduras do not appear on the Single Transparency Portal. This is likely mandated by the aforementioned "Law on Secrets." However, the Portal does not explain why these institutions do not appear. Nor does it make clear that some documents have not been made public because they are classified, and it is not explained which categories of documents are considered classified.

In terms of information about the military, the finance section of the Single Transparency Portal only covers the Military Pension Institute (*Instituto de Previsión Militar*), the social security entity for military personnel.

None of the security, defense, or justice institutions have published disaggregated data about their approved annual budgets or any budget modifications. Within the Single Transparency Portal, the only information related to institutional budgets is that of the

Honduran national budget, which appears on a Ministry of Finance website.

Despite this, within the finance section of the Single Transparency Portal, information is available about budget spending, disaggregated by institution and month (users may only access this information by looking at individual government institutions). Information regarding monthly budget spending also appears, in the form of general balances. Upon opening the link, one can find the budget document with expenditures by group and expense item, in which two columns appear: one shows the approved budget by institution, and the other the existing budget of the current year (users must conduct an extended search to find monthly spending for each government institution).

ACCESS TO PUBLIC INFORMATION ON BIDS, PURCHASES, PROVIDERS, CONTRACTS, AND WAGES IN THE DEFENSE, SECURITY, AND JUSTICE SECTORS

Article 13, Section 9 of the LTAIP states that public institutions must disclose information regarding: contracts, concessions, sales, public works, calls for tenders, bids for public works and supplies, consulting contracts, the opening of bids and grants, expansions, extensions, and reports of direct purchases, as well as their results.

From the planning and accountability section of the IAIP's Single Transparency Portal, users may access the following information about Honduras's defense, security, and justice institutions: plans, programs and projects, activities, employee compensation, bids and

purchases, trusts, concessions, permits and licenses, sales, and public works.

However, financial information about the National Police and the Armed Forces do not appear on any of the following websites: the Ministry of Defense, the Armed Forces, the Ministry of Security, the National Police, the Judiciary, or the Public Prosecutor's Office. Financial information is available for the Ministry of Defense, the Ministry of Security, the Judiciary, and the Public Prosecutor's Office.

The Single Transparency Portal's planning and accountability section contains a link to information about state-related bids and purchases. However, it does not list institutional suppliers, only the monthly list of bids and contracts made by institution (the Ministry of Security, the Ministry of Defense, the Judiciary, and the Public Prosecutor's Office. However, the Portal contains no data on the National Police or the Armed Forces, and does not clearly explain why or if this information has been classified).

On the page about bids, there are links to the State Procurement and Acquisition Office's (ONCAE) website, **Honducompras**.

BOX 4

LAWS AND MECHANISMS REGULATING GOVERNMENT PROCUREMENTS

State Contracting Law, Decree 74-2001 and the Ordinance on the State Contracting Law, Executive Order 055-2002

Fiscal Responsibility Law, Legislative Decree 25-2016

Organic Law of the Superior Court of Accounts, Decree 10-2002

Law on Efficient and Transparent Electronic Purchases, Decree 36-2013, and supporting regulations

Organic Law of the Budget, Decree 83-2004, and respective annual laws for approval of the government's budget

ONCAE was created as part of the implementation of the Government Contracting Law (*Ley de Contratación del Estado*). It has designed and implemented different mandatory electronic methods that public institutions must use in hiring and contracting. These include: public

tenders, private tenders, public competition, private competition, and direct contracting. Each method depends on the number of hires as established by the annual general provisions of the Honduran national budget.

ONCAE is responsible for hiring practices across the Honduran state. To develop its mission, it has implemented different contracting mechanisms, including:⁴⁸

1. Honducompras. Created by Executive Decree 010-2005. Administered by ONCAE and mandatory for all bodies participating in government procurement processes, as mandated by the Government Contracting Law.
2. Law on Efficient and Transparent Electronic Purchases. Decree 36-2013, which regulates the purchase of goods or services via an electronic catalog.
3. Information and Monitoring System for Public Works and Supervision Contracts (*Sistema de Información y Seguimiento de Obras y Contratos de Supervisión*). A subsystem for national hiring and acquisition processes, which facilitates the open dissemination of public information on works and supervision contracts.

According to www.honducompras.gob.hn, Honducompras was created via executive decree in 2005 (Executive Decree 010-2005).⁴⁹ Honducompras is the only means by which contracting procedures within the scope of the Government Contracting Law are disseminated and managed online.

The Honducompras website lists procurement opportunities and includes information on past and current bids and contracts, detailing the main aspects of each process and facilitating access to information about scope statements, evaluations, awards, contracts, and bidder participation. The site contains institutional, regulatory, and consultation information for both contracting officers and vendors, including:

- ONCAE institutional information (the body's internal regulations and organizational chart).
- Legal and regulatory aspects of public procurement (decisions, memorandums, specific legislation, comparative tables by purchase type, etc.).
- Procedures for the implementation of acquisitions (procedural framework according to types of purchases, flowcharts of procedures, administrative acts, etc.).
- Document models (specifications, contracts, guarantees, notices, etc.).
- National Training System (*Sistema Nacional de Capacitación*) (courses, content, students).
- Providers' and contractors' records.
- Documentation necessary for registration.
- Catalogue of goods and services for consultation and use.
- Procurement follow-up reports.

Some weaknesses detected within the Honducompras system include:

- Public institutions that carry out procurement processes do not publish all the information that is taken into account when issuing contracts. Under current law, the ONCAE cannot apply any sanctions or punishments as a result of these omissions. It is up to the contracting officer of the respective government institution to decide whether or not to make detailed information about the contracting process public.⁵⁰

- To siphon government funds, public officials have created companies, NGOs, or partnerships whose members have ties to the public official, thereby ensuring they are awarded the contracts. Officials and their friends then divvy up the state money without exceeding the assigned amount in the state budget and without violating other relevant laws. This process has frequently led to the allocation of projects with significantly overvalued prices.⁵¹

In its most recent report on Honduras in 2016, the MESICIC recommended the following:

- Expanding contracting pools, as well as establishing methods to detect ways in which procurement processes for state goods and services are vulnerable to abuse.⁵²
- Adopting measures to identify those cases in which public servants participate illegally in the contracting out state services and goods, either in their own name or through an intermediary, and possibly applying disciplinary, administrative or criminal penalties.

In response to these points, the ONCAE has started to require that businesses that may receive state contracts provide sworn statements, with the goal of identifying the actual owners of these companies. However, the ONCAE has pointed out that this is not always reliable, since there are companies that have the same partners that participate in the same processes.⁵³

The MESICIC mentions other challenges and recommendations, including:

- Review the practice of using emergency decrees, which avoids the normal contracting process outlined in the Government

Contracting Law.

- Article 63, Section 4 of the Government Contracting Law allows direct hiring "when circumstances require that government operations be kept secret." However, such a definition is too broad in that it does not define the type of situations that could lead to keeping operations secret.

The MESICIC considers that "special" laws (for example, the Population Security Law) and laws that increase government secrecy are weakening and undermining the role of the ONCAE and Honducompras in promoting greater accountability and transparency. These problematic laws have essentially created a parallel structure for procuring state goods and services in which there are unclear procedures and subjective criteria for contractors. Overall, this weakens efficiency, transparency, freedom of competition, and equal participation in government contracting processes.⁵⁴

While developing this report, no information was available regarding contracts issued under the Population Security Law, commonly known as the "security tax," or the Fiduciary Law for the Administration of the Population Protection and Security Fund. That is to say, information about purchases made using these funds were not made public in Honducompras or the Single Transparency Portal.

DECLARATION AND PUBLICATION OF PUBLIC OFFICIALS' ASSETS

The Organic Law of the Superior Court of Accounts (*Ley Orgánica del Tribunal Superior de Cuentas*), Decree 10-2002, and its ordinances regulate how public servants must declare assets.⁵⁵

According to the law, any paid public official in a permanent or temporary position who was elected in a popular election or by second-order election, by appointment or contract, operating under any government branch, must present under oath a declaration of income, assets, and liabilities. All individuals who administer or manage state funds, or those who work pro bono but who are involved in making decisions affecting government assets, are also required to submit an asset declaration.

Under Honduran law, these individuals must update their declarations annually and must submit them within 45 calendar days of the following events:

- Entering a public service position for the first time.
- Re-entering a public service position.
- Transferring to a different public service institution.
- Receiving a promotion, demotion, or other change in status of the public service position.
- Terminating or vacating the position.

Public officials need not present asset declarations if they earn a salary of less than 30,000 lempiras (about \$1,200), hold a position for less than three months, or work pro bono and do not manage government assets.

Those who do not declare their assets may be sanctioned under a system that could result in a 5,000 lempira (about \$200) fine. They may also be suspended from the position without pay until the problem is resolved.

Regarding the publication of asset declarations and verification of compliance, in accordance

with regulations, the TSC must maintain absolute confidentiality of the content of the declarations, documents, and investigations that are used for other purposes than those provided for under law. At the end of the first half of each year, the TSC publishes the names of public servants who have not complied on its website.⁵⁶

In this regard, MESICIC has recommended that Honduras strengthen the system for the declaration of income, assets, and liabilities, including regulating conditions and procedures and publishing these declarations.⁵⁷

In its 2013 report, the MESICIC stated that Honduras needed to “optimize the procedures for analyzing asset declarations, and to adopt measures so that these declarations serve as a useful tool for detecting possible conflicts of interest, in addition to using these asset declarations as an instrument for detecting possible cases of unlawful enrichment.” In addition, the Committee suggested “the use of computer technology for submitting the asset declarations.”

The Honduran government has indicated that it works in a “manner that enables public servants to make their declarations online for those who have a secure connection, and remotely and off-line for those who do not have internet access.”⁵⁸ Despite this official statement, the TSC’s website does not show any way to file asset declarations electronically.

According to an oversight report on the TSC covering 2009–2016,⁵⁹ written by the advocacy and research organization the Association for a More Just Society (*Asociación para una Sociedad más Justa*, ASJ), the TSC lacks guidelines for conducting financial or equity investigations. The TSC also lacks a formal training program for its auditors on law, forensic audits, and criminal investigation techniques. The report also noted

that the TSC does not verify declarations filed by public servants—this only happens if a formal complaint about the affidavit is filed.

The ASJ report emphasizes the weaknesses in the current procedures for collecting asset declarations by public officials, stating: “In theory, the declarations should allow the TSC to log information about public servants in order to verify the individual’s assets and cross-reference this information with other sources, such as that sourced from [the national banking and insurance regulator]. However, in practice, sometimes the public servant does not declare all of his/her assets and liabilities... In short, the TSC does not have a tested and effective method for verifying and monitoring declarations. Although there is a computer system, the TSC does not use it; declarations are made and stored on paper and vulnerable to theft or destruction. Under current conditions, declarations are documents that are essentially

stored in case they can be used in any future investigations. However, as previously stated, the reliability of the information is weak.”⁶⁰

Article 13, Section 7 of the LTAIP lays out requirements for public officials to disclose their salaries, including other payments they may receive associated with their job performance. Upon review of the IAIP’s Single Transparency Portal, there is a link to information about state employee compensation under the planning and accountability section.

When looking at Honduras’s security, defense, and justice institutions, the available information only shows changes in the payroll, position, and salaries of personnel actively employed by the government, from top-tier positions like cabinet minister to lower-level positions. However, information about the payroll of Armed Forces or National Police personnel does not appear.

ACRONYMS AND ABBREVIATIONS

ASJ	Association for a More Just Society
ATIC	Technical Agency of Criminal Investigation
CEDIJ	Electronic Documentation and Judicial Information Center
CNA	National Anti-Corruption Council
CNDS	National Defense and Security Council
ENEE	National Electric Power Company
GVT	Verification and Transparency Management Unit
IACHR	Inter-American Commission on Human Rights
IAIP	Institute for Access to Public Information
IUDPAS	University Institute for Democracy, Peace and Security
LTAIP	Transparency and Public Information Access Law
MACCIH	Mission to Support the Fight against Corruption and Impunity in Honduras
MESICIC	Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption
MP	Public Prosecutor's Office
ONCAE	State Procurement and Acquisition Office
SEPOL	Online Police Statistics System
SIELHO	Electronic Information System of Honduras
TSC	Superior Court of Accounts
UFECIC	Special Prosecutor's Unit against Impunity and Corruption
UNAH	National Autonomous University of Honduras
WOLA	Washington Office on Latin America

NOTES

- ¹A detailed list of indicators is available at www.wola.org/cam.
- ²No data was found for the years 2014 and 2015.
- ³IACHR. Case Claude Reyes and Others vs. Chile. Verdict on September 19, 2006. Series C Num. 151.
- ⁴IACHR. Case Claude Reyes and Others vs. Chile.
- ⁵Constitution of the Republic of Honduras, decree N. 131-1982
- ⁶Inter-American Convention against Corruption (OAS 1997), Convention to Combat Bribery of Public Officials in International Commercial Transactions (OECD 1999) and the United Nations Convention against Corruption (UN 2004).
- ⁷Decree 170-2006. December 30, 2006. Last accessed August 6, 2019. http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Honduras_Decree%20170%20on%20Transparency%20Law_2006_es.pdf.
- ⁸The LTAIP was regulated, in turn, by the IAPI-0001-2008 Agreement published in the Official Newspaper of March 6, 2008 and later the IAPI-0008-2008.
- ⁹LTAIP. IAIP. Last accessed August 20, 2019: <https://portalunico.iaip.gob.hn/assets/docs/leyes/ley-de-transparencia-y-reglamento.pdf>
- ¹⁰Articles 4 and 13 of the LTAIP.
- ¹¹Articles 3 and 5 of the LTAIP.
- ¹²Article 38 of the LTAIP.
- ¹³Article 30 of the LTAIP.
- ¹⁴Article 31 of the LTAIP.
- ¹⁵Article 20 of the LTAIP.
- ¹⁶Article 22 of the LTAIP.
- ¹⁷Portal Sielho. Last accessed August 7, 2019. <http://sielho.iaip.gob.hn/inicio/>.
- ¹⁸Portal Sielho. Last accessed August 7, 2019.
- ¹⁹Article 53 of the LTAIP.
- ²⁰United Nations Special Rapporteur for the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. Joint Declaration on the Wikileaks case. December 21, 2010. <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=829&IID=2>.
- ²¹Article 3 of the LTAIP. IAIP. Last accessed on August 20, 2019. <https://portalunico.iaip.gob.hn/assets/docs/leyes/ley-de-transparencia-y-reglamento.pdf>.
- ²²Articles 23, 24, and 25 of the LTAIP
- ²³Article 28 of the LTAIP.
- ²⁴Article 32 of the LTAIP.
- ²⁵Article 6 of the law stipulates that, for the proper functioning of the Council, the creation of the National Directorate for Research and Intelligence is mandated. The Directorate is responsible for executing the public policies established by the Council. It has functional, budgetary and administrative independence. All under the mandate of the President of Honduras.
- ²⁶Based on Resolution CNDS 069-2014, information from various institutions that do not have a direct and obvious relationship with national security is classified as confidential. These include: the Executive Directorate of Revenue (now the Revenue Administration Service), the National Registry of Persons, the Honduran Social Security Institute, the Property Institute, the Merchant Marine Directorate, the Aeronautics Directorate Civil, the National Electric Energy Company and the National Autonomous Service of Aqueducts and Sewers. The resolution that classifies the information generated by these institutions as secret does not make it clear whether it refers to all information generated by said entities or only information that could cause damage to security and defense.
- ²⁷"Secret Resolution" of CONADESE is void: IAIP. ConexiHon July 29, 2015. <http://old.conexihon.hn/site/noticia/transparencia-y-corrupci%C3%B3n/%E2%80%9Cresoluci%C3%B3n-secreta%E2%80%9D-del-conadese-es-nula-iaip>
- ²⁸With 200 million lempiras of the 'tason' debts of the ENEE were paid. The Herald. November 5, 2018. Last visit 9/8/2019 on <https://www.elheraldo.hn/pais/1230751-466/con-200-millones-de-lempiras-del-tas%C3%B3n-se-pagaron-deudas-de-la>
- ²⁹Security Rate wanted to hide documents for the purchase of a luxury JOH plane. Confidencialhn.com. May 9, 2019. <https://confidencialhn.com/tasa-de-seguridad-quiso-ocultar-documentos-por-compra-de-lujoso-avion-de-joh/>.
- ³⁰No data was found for the years 2014 and 2015.
- ³¹Electronic Information System of Honduras. Institute of Access to Public Information. Last accessed August 7, 2019. <http://sielho.iaip.gob.hn/inicio/>
- ³²Single Transparency Portal. Institute of Access to Public Information. Last accessed August 20, 2019. <https://portalunico.iaip.gob.hn/#>.
- ³³Secretary of State in the Security Office, General of Division (r) Mr. Julián Pacheco Tinoco. Security Secretary. Last accessed August 12, 2019. <https://www.policianacional.gob.hn/secretaria-de-seguridad>.
- ³⁴National Police website. <https://www.policianacional.gob.hn/inicio>.
- ³⁵Strategic Vision. National Police Security Secretary. Last accessed August 11, 2019. <https://www.sepol.hn/sepol-nosotros.php?pagina=125>.
- ³⁶National Police Security Website. <https://www.sepol.hn/>
- ³⁷Republic of Honduras (2010). Vision of the Country 2010-2038 and Plan of the Nation 2010-2022. Page 145.
- ³⁸Honduran Secretary of Defense Website. Last accessed August 12, 2019. <https://sedena.gob.hn/>; Honduran Armed Forces website <http://www.ffaa.mil.hn/>.
- ³⁹Judiciary Website. Last accessed August 14, 2019. <http://www.poderjudicial.gob.hn/Paginas/PJ.aspx>.

- ⁴⁰The Center for Electronic Documentation and Judicial Information. Last accessed August 14, 2019. <http://www.poderjudicial.gob.hn/cedij/paginas/default.aspx>.
- ⁴¹Public Prosecutor's Website. Last accessed August 14, 2019. <https://www.mp.hn/>.
- ⁴²According to Article 29 of the LTAIP Regulation, "The required institutions must disseminate by right of office: a list of classified information topics, the confidentiality period and the date of approval of the confidentiality status by the IAIP."
- ⁴³There are guidelines for municipalities, sector offices and for political parties.
- ⁴⁴Guidelines for Verification of Public Information on transparency portals of the centralized and decentralized public administration. Institute of Access to Public Information, IAIP. June 2015. http://iaip.gob.hn/lineamientos_de_verificacion/pdf/LVIP%20Administracion%20Centralizada%20y%20Descentralizada.pdf
- ⁴⁵Before 2015 the Planning and Accountability (40%) and Finance (35%) sections received the highest value. As of the second half of 2015, there was a variation in the evaluation score, lowering the percentage of valuation of the Organic Structure area by 5 points and increasing the Finance area to 40%.
- ⁴⁶National Defense Secretary Transparency Portal. Institute of Access to Public Information. Last accessed August 20, 2019. <https://portalunico.iaip.gob.hn/portal/index.php?portal=386>.
- ⁴⁷2017 statistics were not available on the Single Transparency Portal.
- ⁴⁸Center for Strategic and International Studies (CSIS). Analysis of the Standards Applied to Corruption Issues in Honduras. https://csis-prod.s3.amazonaws.com/s3fs-public/Honduras_Diagnostic_Report.pdf
- ⁴⁹ONCAE HonduCompras: About Us. Government of the Republic of Honduras. Last accessed August 14, 2019. <http://h1.honducompras.gob.hn/Info/QuienesSomos.aspx>.
- ⁵⁰CSIS. Corruption Analysis.
- ⁵¹CSIS. Corruption Analysis.
- ⁵²Fractional purchases are cases in which a single company makes a series of purchases to disguise a single one that exceeds the amounts established by law.
- ⁵³Mecanismo de Seguimiento de la Implementación de la Convención Interamericana Contra la Corrupción (MESICIC). Honduras: Final Report, September 15, 2016. http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_hnd_final_sp.pdf.
- ⁵⁴MESICIC. Honduras: Final Report.
- ⁵⁵Organic Law of the Supreme Court of Auditors. Last accessed August 14, 2019. https://www.tsc.gob.hn/web/Declaracion_Jurada/Articulos_Declaracion_Jurada_2012.pdf.
- ⁵⁶Superior Court of Auditors website. www.tsc.gob.hn.
- ⁵⁷MESISIC. Honduras: Final Report. March 22, 2013. http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic4_hnd_sp.pdf
- ⁵⁸MESISIC. Honduras: Final Report of 2013.
- ⁵⁹Association for a More Just Society (ASJ). Citizen Oversight Report to the Superior Court of Accounts (TSC), 2009-2015 period. July 3, 2017. <http://asjhonduras.com/webhn/veeduria-social-al-tribunal-superior-cuentas-honduras/>
- ⁶⁰ASJ. Citizen Oversight Report to the Superior Court of Accounts.



ABOUT THE ORGANIZATIONS

THE UNIVERSITY INSTITUTE FOR DEMOCRACY, PEACE AND SECURITY (INSTITUTO UNIVERSITARIO EN DEMOCRACIA, PAZ Y SEGURIDAD, IUDPAS)

is affiliated with the Faculty of Social Sciences of the National Autonomous University of Honduras (UNAH). It was created to strengthen the research capacity of the UNAH, promote multidisciplinary in methodological theoretical approaches in the areas of security, public policies, city studies, democracy and development, issues related to youth, as well as to strengthen the competences of different university professionals

THE WASHINGTON OFFICE ON LATIN AMERICAN (WOLA) is a leading research and advocacy organization advancing human rights in the Americas. We envision a future where public policies protect human rights and recognize human dignity, and where justice overcomes violence.

ABOUT THE PROJECT

The Central America Monitor is a subregional project that seeks to assess the level of progress being made by the countries of Guatemala, Honduras and El Salvador in the areas of strengthening the rule of law, reducing violence, combating corruption and organized crime, and protecting human rights through the use of a series of indicators. The project also monitors and analyzes international cooperation programs in the aforementioned areas.

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