



PROPOSALS

for the Honduran criminal justice system for the treatment and management of cases of corruption and those with high social impact

Executive Summary

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ISBN: 978-956-8491-61-1

Intellectual Property Record: A-300762

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The Mission to Support the Fight against Corruption and Impunity in Honduras seeks to strengthen efforts to combat corruption and impunity from a comprehensive perspective. We investigate cases involving major networks of public and private corruption and undertake actions focused on reforming and strengthening institutions that would prevent this scourge from undermining the credibility of authorities and the political system.

We are the first mission in the history of the OAS to support the fight against corruption in a member state. Our aim is to work with the country's institutions and civil society to dismantle the scaffolding that promotes corruption and impunity and to strengthen judicial investigation, control of public resources, and oversight of power.

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In an effort to analyze the Honduran criminal justice system's ordinary jurisdiction and national territorial jurisdiction, the Justice Studies Center of the Americas (JSCA) conducted empirical research during 2018 in Atlántida, Copán, Cortés, and Francisco Morazán. This study, which was conducted at the request of the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH-OAS), explores the practical operation of the country's criminal justice system, focusing on the treatment of cases of corruption and those with high social impact.

The authors of this study analyze aspects such as the transparency of the justice system, organizational models and work processes within institutions, the use of oral procedures and the hearing system, the rights of defendants and victims, and the independence of institutions.

The goal of this publication is to contribute empirical data on the work of Honduras' criminal justice system and to offer specific recommendations for the system and its operators that we believe are fundamental to improving the country's institutional structure in order to combat corruption while respecting the rights of defendants and victims.



Research Executive Summary

Proposals for the Honduran criminal justice system for the treatment and management of cases of corruption and those with high social impact

Authors: Gonzalo Fibla & María Jesús Valenzuela

Summary

At the request of the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH), the Justice Studies Center of the Americas (JSCA) conducted empirical research during 2018 to assess the performance of the Honduran criminal justice system. The findings of the study, which were applied in four areas of the country (Atlántida, Copán, Cortés, and Francisco de Morazán) are complemented by a series of recommendations or specific proposals that seek to improve the country's institutional structure in order to support the fight against corruption and promote respect for the rights of defendants and victims.

The study opens with an analysis of the systematic problems of the Honduran government, which impact the performance of the criminal justice system in the areas of transparency, statistics, and the recording of information as well as the current regulation of illicit enrichment. The authors then analyze the regulation of the criminal process and participation of the parties in hearings, offering recommendations for litigants and the judiciary. Third, they offer recommendations for the coordination of criminal justice system institutions and their internal management. Specifically, the authors address the situation of the public prosecutor's office, Judicial Branch, and public defender's office. The fourth section provides recommendations for promoting respect for the rights of the defendant, including the right to defense, the right to information, and the use of measures other than pretrial detention. Finally, the authors address the situation of crime victims and argue that they must be positioned as real participants in the process and that their rights must be protected and their engagement must be encouraged.

As a corollary, we compare the management of cases of corruption and those with high social impact between 2011 and 2016, observing that the public prosecutor's office has prioritized the investigation and subsequent formalization of charges in cases involving murders and drug offenses over crimes related to corruption. Finally, the authors conclude that there are no significant differences in the operation of ordinary justice (OJ) and the national territorial jurisdiction (NTJ).

Introduction

At the request of the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH-OAS),¹ the Justice Studies Center of the Americas (JSCA) conducted empirical research during 2018 in four areas of Honduras: Atlántida, Copán, Cortés, and Francisco Morazán. This research explores the current operation of the Honduran criminal justice system in the management of cases of corruption and those with high social impact.

This document summarizes the main results of this research.

Methodological Aspects

The objective was *to analyze the work of the criminal justice system, ordinary justice system, and national territorial jurisdiction in regard to cases of corruption and those with high social impact in Honduras starting in 2010.*

A mixed qualitative approach was used in order to allow for an in-depth, comprehensive exploration of the performance of the Honduran criminal justice system. The essentially practical approach, the gender perspective, and the focus on corruption and crimes with high social impact were aspects that cut across the entire research effort. The primary sources of information were semi-structured interviews with justice system operators and experts,² direct observation of court procedures,³ and observation of hearings in professional criminal and sentencing courts⁴ in both the ordinary jurisdiction and national territorial jurisdiction in the four areas of the country included in the samples (local capitals). The authors also used secondary sources such as official statistics, dogmatic and empirical studies, and institutional documents.

¹ The research is situated in the context of MACCIH's second line of action, *criminal justice system reform*, in which the mission makes a commitment to *review and analyze the work conducted by justice system institutions and to formulate recommendations for improving the Honduran justice system*. JSCA was responsible for conducting this work as an international agency that specializes in issues of justice and that enjoys full technical and operational autonomy.

² A total of 58 semi-structured interviews were conducted with Honduran criminal justice system operators and specialists.

³ Direct observation was conducted of 12 ordinary justice and national territorial jurisdiction courts and tribunals in the capitals of Tegucigalpa, San Pedro Sula, La Ceiba, and Santa Rosa de Copán.

⁴ A total of 40 direct observations of hearings in ordinary justice were conducted, 27 in professional courts and 13 in sentencing courts. A total of nine observations of hearings, three sentencing tribunals and six professional courts were conducted in the national territorial jurisdiction. All of them were conducted in the four capitals of the areas included in the samples: Tegucigalpa, San Pedro Sula, La Ceiba, and Santa Rosa de Copán.

Main Results and Global Conclusions

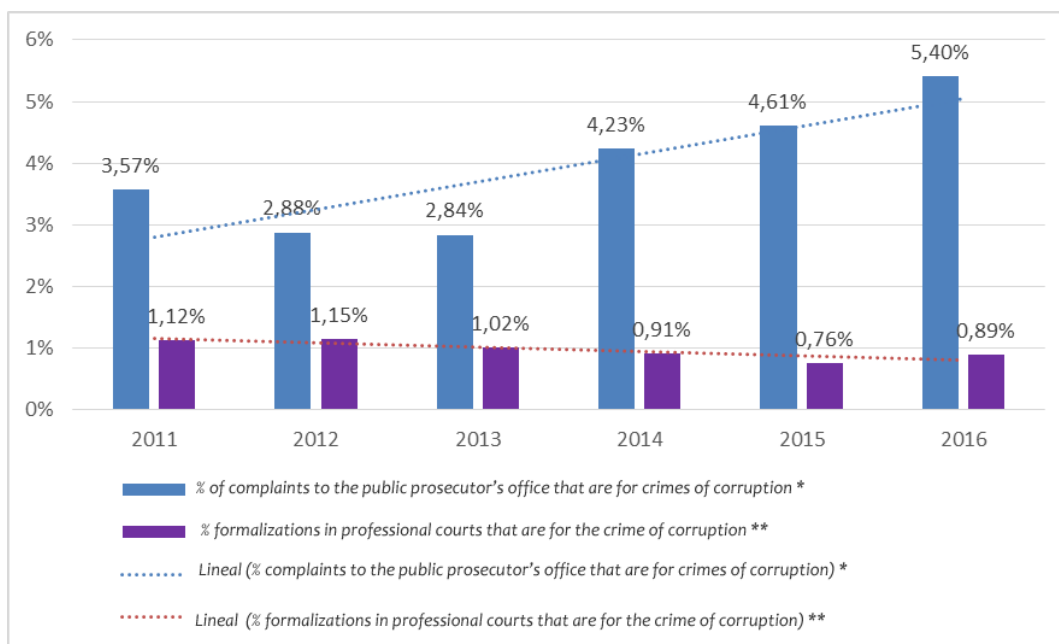
a) The behavior of corruption cases⁵ versus that of cases with high social impact⁶

The statistical analysis suggests that there are significant differences in the treatment of crimes of corruption and crimes with high social impact. While the statistical information is limited, the researchers could observe that the path that complaints – and the subsequent formalizations- follow is different for these two types of crimes. The percentage of cases of corruption is higher for complaints received, but the percentage of cases that move on to judicialization is lower. By contrast, there is a high rate of judicialization of cases of homicide, which stands in contrast to the number of complaints to the police, which are comparatively low. The case of drug offenses is equally illustrative, again presenting higher representation of these crimes in judicialization than in complaints. As Figure 3 shows, these crimes have increased due to focalized prosecution.

Illustration 1: Comparison of complaints received by the public prosecutor's office and judicialization in ordinary and national territorial jurisdiction courts for cases of corruption

⁵ Crimes of corruption include those identified in Article 2 of Decree 89 of 2016, which was issued in the context of the expansion of the fight against corruption, extortion and organized crime. This includes the crime against property described in Article 218-E of the criminal code; the financial crimes outlined in Articles 295, 296 and of the 299 numeral 4) of the Criminal Code; the crimes against public administration described in Articles 349, 361, 362, 363, 364, 365, 366, 366-A, 369, 369-A, 369-B, 369-C, 370, 371, 374, 375, 376, 377, 378, 379, 383 and 384 of the Criminal Code; the financial crimes outlined in Article 394 paragraph p) of the Criminal Code; the crime of extortion from Article 222 of the Criminal Code; and the crime of money laundering from Article 36 of the Special Law Against Laundering of Assets No. 144-2014. While the regulation indicates that the aforementioned crimes must have been committed by a structured group of three or more people, this requirement was not followed for our purposes. We analyzed the treatment of this catalogue of crimes in Ordinary Justice and the National Territorial Jurisdiction. Specifically, the statistics for the comparisons that we were able to draw were abuse of authority, bribery, embezzlement of public monies, fraud, breach of duty, and violation of the duties of officials.

⁶ Crimes with high social impact were defined using the definition used by the Universidad Nacional Autónoma de Honduras Violence Observatory. This includes the following types of crimes: homicide, sex crimes, theft of vehicles including airplanes and ships, kidnapping, vehicle robbery, extortion, drug trafficking, unauthorized sale of war material and human trafficking. Specifically in the comparison between the OJ and NTJ, the crimes of homicide, vehicle theft, vehicle robbery, drug trafficking and kidnapping were analyzed in function of the availability of statistical data provided by justice institutions.

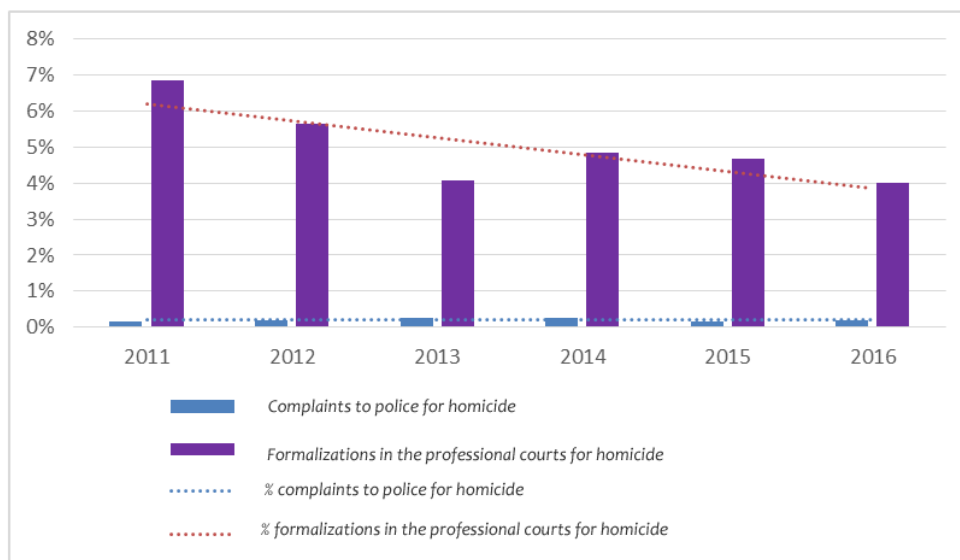


Source: Developed by the authors based on the prosecutor's office and Judicial Branch databases.

*The public prosecutor's does not disaggregate data on crimes of corruption.

**Crimes of corruption reported by the Judicial Branch; abuse of authority, bribery, illicit enrichment, embezzlement of public funds, fraud, prevarication, violation of official duties.

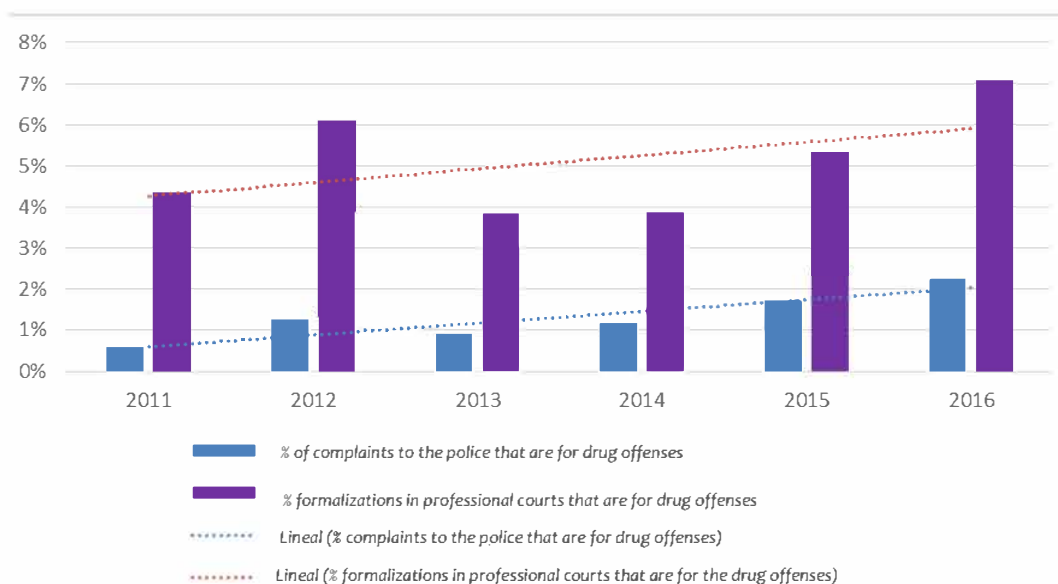
Illustration 2: Comparison of complaints received by the police and judicialization in professional OJ and NTJ courts for cases of homicide



Source: Developed by the authors based on the databases provided by the MACCIH Violence Observatory.

*Does not include in flagrante delicto cases.

Illustration 3: Comparison of complaints received by the police and judicialization in professional OJ and NTJ courts for drug offenses



Source: Developed by the authors based on the databases provided by the MACCIH Violence Observatory.
*Does not include in flagrante delicto cases.

The statistics are consistent with the Public Prosecutor’s Office Annual Operations Plans, which reflect the intention to prosecute homicides and drug trafficking more intensely than corruption, as well as experts’ opinions. The data presented above lead us to question the extent to which this phenomenon is a reflection of a criminal prosecution approach that tends toward secondary criminalization (Zaffaroni, Alagia & Slokar, 2002) and a prosecution process focused on a specific segment of the population (generally the poorest population, which is the focus of the work of state agencies). In the case of Honduras, it would be interesting to obtain detailed information on the socioeconomic status of defendants. That information is not currently gathered by the system in a sustained manner.

B) The behavior of the ordinary jurisdiction (OJ) versus the national territorial jurisdiction (NTJ)⁷

In general, there are few differences between the two jurisdictions at the operations level. One of them lies in the processing times. The NTJ processes crimes of corruption more quickly. This is due to the existence of a smaller workload than the OJ. There are certain differences in the management of crimes with high social impact, but it is not possible to state that one of these is more efficient than the other. In this regard, it is

⁷ The national territorial jurisdiction is responsible for handling crimes committed by organized groups nationwide and was created through Decree No. 247-2010.

worth noting that OJ has a bulkier historical stock including cases that predate the criminal procedure reform. Finally, the average number of cases varied depending on the jurisdiction. The total for pretrial stages in the OJ was 86.1 compared to 24 for the NTJ. The total for OJ was 76.5 for the trial stage, compared to just 19 for the NTJ. The interview respondents repeatedly stated that the mechanisms for selecting judges differed between the two jurisdictions, and that there is more discretion in the NTJ because judges are considered to hold positions of confidence granted by officials. More intense personal security measures were reported for NTJ judges, though family members are not covered. There are similarities between the OJ and NTJ in the remaining areas with some exceptions as indicated in the table below:

Criterion	OJ	NTJ	Difference or Similarity
<i>Professional building infrastructure</i>	Generally in good condition but with a set-up that is not meant to house an audience.	Generally in good condition but with a set-up that is not meant to house an audience.	S
<i>Sentencing court infrastructure</i>	Generally in good condition with space for the audience.	Generally in good condition with space for the audience.	S
<i>Use of audio and video system to record hearings and sentencing.</i>	Varies depending on the city. The country has both rudimentary systems and more sophisticated ones.	Audio and/or video systems are used.	D
<i>Use of oral procedures</i>	Limited, system is dominated by the case file.	Limited, system is dominated by the case file.	S
<i>Use of oral procedures during sentencing</i>	Oral procedures are used but with tendency to refer to the case file.	Oral procedures are used but with tendency to refer to the case file.	S
<i>Access to hearing agenda</i>	Limited, not available to the public.	Limited, not available to the public.	S
<i>Public preliminary hearings</i>	Limited.	Limited.	S
<i>Public nature of oral, public trials</i>	Access to public but minor limitations on the press.	Access to public but minor limitations on the press.	S
<i>Quality of management of the hearing by professional judge</i>	Presents problems.	Presents problems.	S
<i>Quality of litigation by the prosecutor during preliminary hearings</i>	Presents problems.	Presents problems.	S
<i>Quality of litigation by defense counsel</i>	Presents problems.	Presents problems.	S
<i>Ongoing training of judges</i>	None.	None.	S
<i>Admission and preparation systems for judicial officials (other than judges)</i>	None.	None.	S
<i>Suspension of hearings</i>	Frequent	Frequent	S
<i>Issues with notifications</i>	Frequent	Frequent	S
<i>Appeal of definitive sentences</i>	Minor	Major	D
<i>Defendant participation in preliminary hearings</i>	Formal, without substantial interventions	Formal, without substantial interventions	S
<i>Management and administration systems</i>	Vertical with strong dependence on Supreme Court Chief Justice.	Vertical with strong dependence on Supreme Court Chief Justice.	S
<i>Internal management of courts and tribunals</i>	Depends on the coordinating judge without training in	Depends on the coordinating judge without training in management and	S

	management and with high levels of discretion.	with high levels of discretion.	
<i>Relative workload</i>	High.	Limited.	D
<i>Filings/closures ratio</i>	Varies depending on the crime.	Varies depending on the crime.	S
<i>Judge admissions system</i>	Competition and discretionary appointment.	Discretionary appointment.	D
<i>Protection of judges</i>	None.	Exists but does not include family members.	D
<i>Duration of processes</i>	Longer	Shorter	D
<i>Duration of processes in sentencing court</i>	No information available.	No information available.	N/A
<i>Defendant participation in professional processes</i>	Limited.	Limited.	S
<i>Percentage of cases in which pretrial detention is used</i>	On average, pretrial detention was used in 12.02% of cases in which preventative measures were issued between 2011 and 2016 (inclusive).	On average, pretrial detention was used in 44.08% of cases in which preventative measures were issued between 2011 and 2016 (inclusive).	D
<i>Participation of the defendant in the trial</i>	Participates, but with varying levels of intensity.	Participates, but with varying levels of intensity.	S
<i>Participation of the victim in the process.</i>	Limited.	Limited.	S
<i>Participation of victims in hearings</i>	Exceptional, and if it is done it is as a witness.	Exceptional, and if it is done it is as a witness.	S
<i>Participation of victims at oral trial</i>	Exceptional, and if it is done it is as a witness.	Exceptional, and if it is done it is as a witness.	S
<i>Victim protection system</i>	Deficient.	Deficient.	S

Source: Developed by the authors, 2018.

This leads us to reflect on whether or not the process of specialization of the jurisdiction is advisable given that there are currently not enough data to suggest that the specialized jurisdiction (NTJ) is more efficient or presents substantial differences when compared to the OJ.

Recommendations for the Honduran Criminal Justice System

One: Recommendations for the institutions that comprise the Honduran State as a whole

The first recommendation in this area is related to the need to **strengthen an integrated system for the registration, storage, and management of the statistics of public institutions**. This need emerges from the statistics obtained for this study as well as the quality of the data that the system uses and upon which decisions are based. It is vital that public policy decisions be made using solid evidence because it allows the technical and the political to be balanced in the area of criminal justice. We believe that the National Statistics Institute could be strengthened in order to take on this work. This would not necessarily mean that institutions would stop gathering data, but it would require that a standard be established for the quality, validity, and reliability of that data. Furthermore, this would be an instrument at the service of public management and free access for both government actors and civil society, thus increasing levels of trust and accountability.

On the other hand, there is a need to promote the gathering of information in smaller cities and thus avoid underreporting. The gender perspective and that of sexual diversity also must be considered when recording information about the individuals who use the system.

The CEDII, which is part of the Judicial Branch, has made the most progress in this regard, though it still presents limitations in regard to the quantity and quality of information that it gathers and the technological means used to do so. On the other hand, the information that the public prosecutor's office fails to make available to the public is alarming. For example, the institutional website provides no data on cases, preventative measures requested, outcomes applied, etc.

The second recommendation points to **strengthening transparency and accountability in public institutions**. During the field work, three problems were identified in the area of transparency, and this issue impacts many other areas. The first is partial or complete failure to enforce the law as it exists today. The second is the weakness of the law itself because it has a very restrictive orientation towards passive transparency, that is, the publication of certain information leaving aside the issue of active transparency, which means that the public can request information. Third, there is a lack of mechanisms for monitoring and oversight of the enforcement of the Law on Transparency and Access to Public Information (Decree 170-2006). Empirical data show that this law is not enforced by several of the entities that form part of the Honduran criminal justice system. The main reason is protection of private or personal information. However, the majority of the operators interviewed recognized that there is capricious use of its requirements and of instruments of sensitive or strategic information.

The third recommendation in this area is the **strengthening of the system for registering people and the criminal records system**. The Inter-American Development Bank has determined that identity documentation is the gateway to political rights, formal markets, and public services that directly impact the population's wellbeing (Castro, Rud, & Benítez, 2010). It is also an essential tool for the development of national public policies for recording and organizing the vital statistics of the population, including those who turn to the justice system.

In this regard, various problems emerged during the research. The first element is the lack of updated, complete records. This directly impacts the investigations of police officers and prosecutors who use this tool to seek out information about individuals as well as their family connections and residence. The data are incomplete and there is significant underreporting in areas located away from major cities. Furthermore, some operators estimate that the information has not been updated for a year. This undoubtedly impacts impunity because it is very difficult to find or prosecute a person who commits a crime. For example, the research documented cases in which it was not known whether the defendant was alive because there was no death certificate. A second concern involves inmates and protection of their rights because it is not possible to confirm their identity and verify their location. The third concern in this

area is the use of preventative measures because the system does not provide the conditions necessary to ensure that they are enforced.

Based on the above, we suggest creating a system (with an online platform) that allows all criminal justice institutions to access the National Registry of Individuals with the ability to corroborate using biometric data. It is also necessary to raise the technological standard of the registry system and to invest in new computing systems, recording technology, and human capital.

A fourth recommendation is the **strengthening of prosecution of illicit enrichment**. There must be a serious political intention to prosecute this crime. The Supreme Auditing Division (SAD) presents serious problems in regard to the efficiency of criminal prosecution. The regulations must be revised –which involves changing the Constitution- and the public prosecutor’s office must undertake investigations that run parallel to the work of the SAD. Finally, the investigative functions must be clearly defined, differentiating between the administrative functions of the SAD, the criminal functions of the public prosecutor’s office, and the civil functions of the Attorney General’s Office.

Our research identified problems in at least three areas. The first is related to the laws regarding illicit enrichment. The second involved detecting it and the signs of it. The third involves prosecuting and punishing such crimes once they are identified. In this regard, the SAD plays a critical role because criminal action cannot be undertaken against the officials responsible for executing the public budget until the SAD audit results are available. This has generated problems that have been noted in previous studies (Ramírez Irías, 2017) and was also mentioned during conversations with officials who perceive an excessive delay in the criminal prosecution, which only promotes impunity in the long run. The SAD also presents issues in the area of efficiency. No more than five cases are sent to the public prosecutor’s office to be investigated each year. There are also issues with the duration of the cases, which last an average of seven years according to some estimates. Finally, the SAD has monetary incentives that are contradictory in the fight against corruption.

Two: Recommendations for the regulation of the criminal process and participation of the parties during hearings.

The first recommendation in this second area involves **reformulating hearings prior to oral trial and the actions taken during them**. There is a need to restrict the presentation of evidence during the initial hearing. This should be replaced with an intense discussion of the defendant’s alleged participation in the crime and the need for protection based on the concrete facts when the judge is asked to use a protective measure. If this does not occur, following Lorenzo (2002), the discussion focuses on the defendant’s guilt, the duration of the preliminary hearing is excessive and the trial consists of presenting everything that has been offered already.

It is important to ensure that the defendant attends and participates in the initial hearing and that the victim is encouraged to participate, particularly when alternative

sentences are used. The field work revealed that there are difficulties transporting defendants and ensuring that the victim participates in hearings.

We propose channeling the preliminary hearing as a space for evidentiary clearance and the correction of errors prior to the oral trial that is held before the sentencing tribunal. This should also be a space for using an alternative sentence.

We also believe that more information should be obtained on “strict conformity” and that its application should be pursued during the early stages of the process. There are questions regarding its prevalence given that there is no statistical information or data on the degree to which it is used as a means to relieve the congestion of the system. However, we observed its recurrence in the hearings observed, and this was confirmed during interviews with justice system operators. Its regulation can also be questioned because the judge exercises merely formal control over the agreement between the defense and the prosecutor’s office but does not verify that the defendant actually gave consent.

The second recommendation in this area is **to improve standards of litigation for the prosecution and the defense and outline the role of the judge in managing oral trial hearings**. In this regard, we believe that the tribunal should assume a less important role in the exchange during oral trial and should only direct the discussion rather than examining and cross-examining witnesses. In other words, the judge should have the role of “protecting the fair trial,” taking on an impartial role in which the parties will measure their versions of the facts under the confrontation of their positions (Baytelman and Duce, 2004). This recommendation is based on the fact that we observed that the judge directs the statements of witnesses and experts, guiding their presentation towards the aspects that he or she believes to be important. Hall (2018) argues that this active role can be explained when there are lacks of information due to inadequate litigation by the parties. We also add the inquisitorial logic that persists in the Honduran judiciary, which means that judges take on roles that belong to the parties from the outset rather than necessarily filling in for deficiencies.

The prosecution should begin with an opening argument that guides its intervention in the trial based on their theory of the case. They also should present witnesses and experts and examine them, ensuring that their statement supports their version of the facts. The prosecution and the defense should present a closing argument that strengthens their theory. It should be persuasive and systematic (and should go beyond a formal closing, which is currently the case).

Finally, we suggest that the sentencing court schedule be used for hearings in which the parties enter into discussions and not for those that are purely formal in nature, such as those in which experts are sworn in, as these tend to interrupt discussions that have begun or limit the amount of time available to schedule new hearings.

The third recommendation is related to the **strengthening of oral procedures and the public nature of the criminal justice system**. There is a need to promote the use of oral procedures as a mechanism for generating information over the use of the case

file. The field work revealed the persistence of the use of the latter as part of a ritualistic, inner-facing logic. Audio and video recordings should be used because this is the most practical way of recording (and backing up) the work conducted during the hearing. Furthermore, uniform criteria should be applied nationwide. This is based on the fact that researchers found that there are different levels of sophistication in the way in which data is recorded and stored based on the various cities and technology used in the courts and tribunals.

We believe that the principle of orality should permeate the entire process and not only the oral trial. As such, the hearing rooms in professional courts should be outfitted to accommodate the public and the press. Access to the hearing schedule in the various rooms is also important either in the courts or through a website with timely, expedited information. We also observed a need to provide access to the case law of the country's superior courts through simple, updated and expedited channels. This could be done by reinforcing the information that the CEDII has on its website.

Finally, we recommend increasing the levels of effectiveness of the system in regard to holding scheduled hearings. This means following the hearing calendar and reducing rescheduling due to notification issues or delays on the part of the parties or the judge. The Judicial Branch must also generate statistics on this phenomenon in all tribunals and courts.

A fourth recommendation is the **creation of new standards in the notifications system**. A large number of hearings are rescheduled because the parties are not notified (witnesses or defendants are not located or notified). This contributes to judicial delays. The current system rests on the figure of the court receiver, and such professionals tend to be limited in number and do not have enough security to carry out their work. We thus suggest changing the regulations on how and when a party, witness or expert is notified; the use of technological means for facilitating communication and notification; and an internal notification system for prosecutors and public defenders, who are responsible for being informed about hearings. This would address failures to appear or hearings scheduled at the same time in advance.

Three: Recommendations for the management of criminal justice system institutions

The first recommendation in this area is related to **strengthening coordination among criminal justice system institutions**. There is a need to reach a crosscutting consensus in regard to the roles that the Inter-Institutional Commission for Criminal Justice is to play (created through Decree No. 248-2010) as well as the work of local working groups and the Honduras Inter-Institutional Anti-Corruption Directorate (CIAH). These entities seem to work in a contingent, reactive manner, and do not have strategic planning or the capacity to prevent or identify problems in advance. These entities do not clearly identify the roles of their members, their mission or goals, or the monitoring mechanisms used to oversee the decisions that are made.

In regard to the level of knowledge of the Inter-Institutional Commission, the individuals interviewed tend to give vague and generic ideas about them. In this

context, it seems that there is no effective transfer to operators at lower levels in regard to what happens in these spaces. This fosters the idea that the entity does not work well or that it is limited to very specific results such as use of the Gesell chamber, but that its work is not oriented towards creating true synergies between the institutions that comprise it. It is therefore urgent to create short-, medium-, and long-term measures and monitoring mechanisms and to strengthen coordination at the more operational and local level.

A second recommendation is directed especially at the Judicial Branch in order to **promote the distinction between the jurisdictional work, administrative work, and judicial government**. In that sense, we propose clearly distinguishing between the three roles that the Judicial Branch plays: jurisdictional function, government function, and administrative function, with the latter two as instrumental functions. We also recommend creating a solid government agency that is subjected to auditing and that the functions of the Supreme Court and its Chief Justice be deconcentrated following the recent disappearance of the Judiciary Council. We believe that its members should be selected based on merit and under intense oversight by civil society and international agencies. Examples of this concentration of decision-making power based on our field work include the entrance of new members of the judiciary, the admission of officials who do not exercise jurisdictional functions, and the system of granting promotions and the career within the Judicial Branch.

The authors also present the need to reorient the administrative system of the Judicial Branch, promoting the incorporation of professionals from other areas, particularly court and tribunal management and administration. We note the importance of adopting the figure of a professional administrator or coordinator with management training who can carry out such work within each tribunal.

The third recommendation in this section is **to promote the creation of an autonomous public defender's office**. This is based on the idea of equality of resources in the process, particularly in cases of corruption. There must be confidence that the interests of the defendant will be represented with absolute independence and autonomy from the current political officials and that decisions or strategies can be adopted that will not be shared with the rest of the community. The institution must also have the option to participate in public policy discussions as a stakeholder that has valuable information about the system (Moreno, Fandiño and González, nd).

In the current situation, the public defender's office is considered to come under the umbrella of the Judicial Branch and is subject to the Supreme Court Chief Justice. It thus lacks institutional independence and the opportunity to establish its own strategic objectives without the interference of another institution. It also lacks its own budget and cannot identify priority areas in which it wishes to invest.

A fourth recommendation is the **organic restructuring of the public prosecutor's office and strengthening of management and criminal prosecution systems**.⁸ –

⁸ Although several attempts were made to reach an understanding between the entities, the public prosecutor's office did not sign an agreement with JSCA to facilitate the provision of statistical data and

The researchers found that there is a need to restructure the work of the public prosecutor's office around the critical points of the process. The public prosecutor's office is characterized by maintaining a strongly vertical structure with a four-level, pyramid-shaped hierarchy with the Prosecutor General at the top of the pyramid. This affects both the general guidelines for work and the review and validation of the work that is done. In that sense, prosecutors do not make many decisions about their cases because they have to continually consult with someone who is situated higher on the organizational chart. In cases that are complex or are covered by the media, the Prosecutor General may even be asked to weigh in. The researchers thus recommend strengthening the functional autonomy of the agents, thus avoiding spaces for impunity and concentration of responsibilities that can limit efficiency.

The system in the public prosecutor's office is oriented towards specialization in certain types of cases or areas. By 2018, the country had a total of 15 specialized prosecutor's offices. However, this model differs from the one proposed by Ríos (2012), who highlights the importance of emphasizing increased institutional effectiveness and efficiency in work processes or stages of the criminal prosecution process. For example, it was observed that there are significant deficiencies in the area of litigation. There is also a need to consolidate training systems for new members of the institution and those who have been working for the criminal justice system for some time.

Finally, there is a need to redevelop the Strategic Plan and Annual Operating Plans so that there is coherence between the strategic objectives of the institution and their materialization. The goal is to make visible the absence of a criminal prosecution strategy as such. Instead, there exists a strategy that is limited to the formalization of certain criminal cases with an emphasis on drug trafficking.

Four: Recommendations for respect for the rights of the defendant in the criminal justice system

The first recommendation in this section is **improved standards in the area of the defendant's right to information**. There is a need to improve information, registration and treatment processes on the part of law enforcement in arrest and non-judicialized investigation processes. This is based on the idea that the rights of the defendant begin when the person is detained, whether or not the prosecution is initiated. This concern is based on irregular detentions such as those of members of LGBTIQ+ communities or detentions conducted by the National Anti-Extortion Forces (Fuerza Nacional Anti-Extorsión, FNA) based on reports received during field work. The researchers identified two concerns in regard to this phenomenon: the institutionalization of violence by state agents against individuals who are in a situation of vulnerability and the limited proactiveness of public defenders when it comes to denouncing such irregularities.

access to interviews with officials from the prosecutor's office through formal channels. However, due to the importance of the institution in the criminal justice system, the researchers continued to pursue this aspect of the project, turning to other channels and sources.

Access to the prosecutorial investigation folder and case file is another issue that must be strengthened. Interview respondents stated that it is still difficult to gain access to information, particularly during the early stages of the process. It is also necessary to avoid having the right to information depend exclusively on professional defense services and to ensure that the defendant can exercise that right independently.

Finally, we recommend improving communication between the professional defense and the defendant during the hearings and outside of them. It is especially important to strengthen communication after hearings so that the defendant knows what happens and the consequences of the rulings.

A second recommendation involves **improving standards for the defendant's right to a defense**. We believe that there is a need to ensure that effective, specialized professional counsel is provided, especially for women, members of LGBTIQ+ communities, and indigenous people. Public defenders must receive ongoing training to address cases involving this type of defendant. Judicial training is traditional in Honduras, which means that it focuses on knowledge of rules or doctrine. It is also *ad hoc* because it depends on the availability of funds or a specific situation that requires that training be provided (González & Cooper, 2017).

There is also a need to improve management systems to ensure that defendants appear at hearings, particularly prior to trial. The defense and judiciary can promote participation in them as well. During the research, the authors observed problems related to coordination with the National Penitentiary Institute in regard to transporting inmates; limited participation by defendants during hearings; the absence of evidence presented by the defense due to limited resources; and the weak guarantee role exercised by the professional judiciary, which does not tend to use plain language during hearings.

The authors also suggest **strengthening measures other than pretrial detention and ensuring that there is adequate oversight of the same**. As part of a counter-reform process observed in several countries in the region (Riego and Duce, 2008), Honduras has increased the use of pretrial detention as an expression of punitive populism, and it has thus ceased to be an exceptional measure. The percentage of inmates who have not been sentenced is 53.1% in Honduras (World Prison Brief, 2018). CEDIJ data (2018) for 2011-2016 suggest that there are differences between pretrial detention in ordinary justice and national territorial jurisdiction. The rate in the former system is around 11% of the total preventative measures issued. In the latter, pretrial detention represents about 44% of the measures issued during that period. During the hearings observed, it was found that there was no real argument prior to the application of pretrial detention, which highlights the critical roles played by the public prosecutor's office and public defender's office.

During the interviews that were conducted with justice system operators, respondents mentioned that there is distrust in regard to the application of other measures, which leads judges to order defendants to be held in pretrial detention. To this we add the low quality of the information that is provided during the preventative

measures hearings, which prevents the judges from making well-founded decisions. There is a need to clarify the regulations that determine who exercises control over preventative measures and how it is exercised and a need for the equipment and technology that will allow this work to be done properly. In regard to this point, the authors suggest developing a unified, coordinated system at the national level to manage the population that is subject to preventative measures.

Five: Recommendations for respect for the rights of the victim in the criminal justice system

The goal of these recommendations is to position the victim as a participant in the Honduran criminal justice system. First, the authors recommend ***the creation of a network of institutions that address victims' rights***. This network must ensure that public and civil society institutions that provide services to crime victims coordinate their efforts. The research found that there are entities that do similar work but in an atomized fashion. It is thus necessary to define a node that is responsible for coordinating the institutions, facilitating more efficient work and defining uniform processes and nimble referral systems.

A second recommendation is to ***create a single unit for guiding, responding to, and providing services to the victim in the public prosecutor's office***. There is a need to create a mechanism for assessing damage early and determining what crime victims need, and for this unit to offer multidisciplinary interventions in a sustained manner. Timely gradation of risk based on objective criteria that are defined in advance is key for ensuring that victims' rights are respected and to allow for their active participation in the process. It is important that this service consider aspects such as individuals' gender and/or whether they belong to a vulnerable population such as children and adolescents and members of LGBTIQ+ communities.

The authors also argue that there is a need to apply protective measures (judicial and otherwise) for victims who need them once the risk evaluation is completed. As we mentioned in regard to pretrial detention, protective measures and orders of protection must be overseen by the judiciary.

Third, the authors recommend ***promoting active participation of victims throughout the process***. In Honduras, victims rarely participate in cases, and when they do they are treated as witnesses. If they appear in court, scant information is collected from them. The victims receives no special protection in professional courts, and may be forced to testify just a few feet away from the defendant. The situation is similar in sentencing courts, where there are a series of issues related to security. For example, there are no differentiated entrances, and witnesses and victims must wait in the audience to make their statements alongside the family members or associates of the defendant(s). Sentencing courts also have very rudimentary protection measures such as a booth or screen for witnesses or "el chacal" (hood). These protections are considered to be insufficient by specialists and operators alike, and are seen as being susceptible to dangers and as discouraging victims from engaging in the process. The authors therefore suggest that victim perception studies be

conducted to identify the barriers to participation in criminal processes. Questions that go against the dignity of victims and others that contribute to secondary victimization were observed in discussions held before the sentencing courts. In the end, the researchers found that victim participation is understood through the lens of instrumental ends, that is, in terms of the goal of the process. They also determined that justice system operators perceive of matters related to the victim as coming exclusively under the purview of the public prosecutor's office (and not under that of other justice system institutions).

The right to information must be respected throughout the process, including the opportunity to contribute to the investigation and proof of the facts. One option for providing this access is through an online channel or hotlines.

Furthermore, we believe that reparations for victims must be pursued as part of the criminal process. In order to reduce secondary victimization, the use of a professional attorney must not be a requirement. These reparations must be comprehensive and may take on various forms based on criteria such as the opportunity to fully restore the original state of the victim or doing so through equivalency (generally through the payment of a sum of money, provision of certain services or a symbolic gesture) and also based on the gravity of the crime and legal asset impacted (Fibla, 2013). It is also important to consider new conflict management approaches beyond traditional mediation and conciliation (Fandiño, 2018).

Finally, the justice system must collect statistical data on crime victims as a rooted and mandatory practice, identifying those who are at risk.

Fourth, the authors recommend *consolidating labor processes with respect for the dignity of victims of gender and LGBTIQ+ violence*. We suggest that there be an intense process of raising awareness and training within the judiciary and for other justice system institutions in order to eradicate prejudices or discriminatory treatment that some interview respondents indicated are frequent. Furthermore, judges must follow Honduran law, the Constitution, and international agreements and must not allow religious prejudices to impact the treatment of these victims in courts and tribunals or in the rulings themselves.