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Executive summary

Note by the Secretariat

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II. Executive summary

Honduras

1. Introduction: overview of the legal and institutional framework of Honduras in the context of implementation of the United Nations Convention against Corruption

The implementation by Honduras of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle, and the executive summary of that review was issued on 19 December 2015 (CAC/COSP/IRG/II/4/1/Add.28).

The Honduran legal system is based on the continental legal tradition. Honduras uses a monist system for the application of international treaties (art. 16 of the Constitution). The Convention is therefore considered an integral part of the legal system and, in the event of conflict, it takes precedence over domestic law (art. 18 of the Constitution).

The legislation implementing chapters II and V of the Convention includes the State Procurement Act, the Transparency and Access to Public Information Act, the Civil Service Act, the Electoral Act of Honduras, the Special Act on Money-Laundering and the Act on the Definitive Forfeiture of Assets of Illicit Origin, among other laws.

The rule of law in Honduras is based on a division of State power into three branches (legislative, executive and judicial). The main institutions involved in preventing and combating corruption are the Ministry of Transparency,¹ the High Court of Audit, the Institute for Access to Public Information, the Public Prosecution Service, the Office of the Counsel-General of the Republic, the Financial Intelligence Unit, the Central Bank of Honduras, the National Banking and Insurance Commission and a dedicated prosecutor's office on corruption networks.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

Honduras has a Transparency and Access to Public Information Act, which is of mandatory application in the institutions subject to the Act (art. 3, para. 4). However, at the time of the country visit, it did not have effective, coordinated anti-corruption policies within the meaning of the Convention.

Honduras also has an Act Establishing a Country Vision and Adopting a Nation Plan for Honduras (Country Vision up to 2038 and Nation Plan up to 2022), which contains special provisions on transparency, good governance and citizen participation. At the time of the country visit, Honduras was in the process of finalizing the implementation of the fourth Open State Action Plan Honduras 2018–2020 and had begun developing the fifth plan, covering the period 2020–2022, which was extended owing to the coronavirus disease (COVID-19) pandemic.

Honduras has implemented initiatives and practices for preventing corruption, such as the training on probity, ethics, transparency and accountability provided by the High Court of Audit through the public probity and ethics committees that all public sector entities and bodies have been required to set up (art. 4 of the Regulations on the Constitution and Operation of Public Probity and Ethics Committees).

Although the authorities indicated that legal instruments and administrative measures were periodically evaluated with a view to determining their adequacy in combating corruption, there is no established plan for carrying out such evaluation.

¹ Development after the country visit: the Honduran authorities indicated that, following the enactment of Executive Decree No. PCM-05-2022, the Ministry of Transparency had been abolished and replaced with the Ministry of Transparency and the Fight against Corruption.

Honduras participates in regional and global anti-corruption initiatives, such as those spearheaded by the Organization of American States, the Financial Action Task Force of Latin America and the Open Government Partnership.

The High Court of Audit is tasked with promoting and developing a culture of public probity and ethics, as well as with strengthening mechanisms for the prevention of corruption (art. 37, paras. 5 and 6, of the Organic Act on the High Court of Audit). The three members of the Court are elected by a two-thirds majority of the deputies of the National Congress and the presidency of the Court is held by them in rotation (art. 9 of the Organic Act). The Court has financial, functional and administrative autonomy (art. 6 of the Organic Act) and submits its draft budget to the National Congress for approval (art. 30 of the Organic Act). During the country visit, it was mentioned that the Court's budget needed to be increased to ensure that it could function adequately.

The Ministry of Transparency is mandated to facilitate, promote and institutionalize the proper implementation of national policy in this area and to assist the President in designing, promoting, coordinating, implementing and evaluating relevant strategies (arts. 1, 2 and 10 of Executive Decree No. PCM-111-2020).

During the country visit, Honduras was reminded of its obligation to provide the notification referred to in article 6, paragraph 3, of the Convention.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

Despite the Civil Service Act and its implementing regulations, which regulate the recruitment, hiring, retention, transfer, exchange and promotion of part of the civil service corps on the basis of merit and equality (art. 1 of the Act; arts. 55, 57, 183–203 and 261–286 of the implementing regulations), a considerable number of officials, including diplomatic and consular officials, those protected by the Organic Act on Education and members of the management boards of decentralized agencies, are not covered by these provisions (art. 3 of the Civil Service Act) and there is no specific law regulating freely appointed personnel. At the time of the country visit, Honduras was reviewing the rules on the recruitment of senior government officials. The retirement of civil servants is governed by, inter alia, articles 21 to 25 of the Act on Retirement and Pensions for Employees and Officials of the Executive Branch.

Honduras does not identify positions that are especially vulnerable to corruption for the purposes of article 7, paragraph 1 (b), of the Convention.

The selection of public sector personnel covered by the Civil Service Act is carried out through competitive examination, except in special circumstances, where comparison of credentials is to be used (art. 22 of the Act; art. 7 of the implementing regulations). The requirements that must be met to be eligible for a public position governed by the Act must be published in various media (art. 24 of the Act). The General Directorate for the Civil Service is the body responsible for designing, developing and implementing the vacancy announcement templates and the tests used in selection processes (arts. 22 and 23 of the Act; art. 59 of the implementing regulations).

The public probity and ethics committees deliver mandatory training courses for public officials with a view to promoting a culture of probity and ethics. However, Honduras has not established special procedures for the selection and training of officials who are especially vulnerable to corruption.

The remuneration of public officials is based on a remuneration plan (arts. 16–19 of the Civil Service Act) that is periodically reviewed.

In Honduras, criteria relating to eligibility for elected public office are laid down in the Constitution and the Electoral Act of Honduras, including certain incompatibilities based on family relations (art. 198, art. 199, paras. 10 and 11, and art. 238 of the

Constitution; arts. 183 and 214 of the Act). Those who owe money to the State cannot be elected deputies (art. 199, para. 13, of the Constitution).

The Act on Financing, Transparency and Oversight of Political Parties and Candidates has established transparency as a guiding principle for the funding of political parties and candidates (art. 2). Every person has the right to access election-related information concerning regulated entities, which must be published on the Single Transparency Portal (arts. 35 and 37 of the Act on Financing, Transparency and Oversight of Political Parties and Candidates; arts. 13 and 14 of the Transparency and Access to Public Information Act).

Political parties and candidates are financed through public and private contributions, which must be deposited in separate bank accounts and handled using separate accounting systems (arts. 11, 17–27 and 40 of the Act on Financing, Transparency and Oversight of Political Parties and Candidates). There is an upper limit on donations and those that are more than 120 times the minimum wage must be made by cheque or credit transfer (arts. 17, 22 and 23 of the Act). All private donations must be backed up by printed documentation containing, inter alia, details identifying the donor (art. 25 of the Act). Private donations are subject to certain restrictions, including the prohibition of donations by public officials or employees unless they have obtained prior authorization and of donations by State-owned enterprises or companies with State shareholdings (art. 24 of the Act).

The Supreme Electoral Court is responsible for reviewing the origin, amount, purpose and use of public and private funds, auditing these and imposing relevant sanctions (art. 3 and art. 5, para. 20, of the Act on Financing, Transparency and Oversight of Political Parties and Candidates). The penalties for failure to submit reports on the funding of political campaigns are set at between 5 and 15 times the minimum wage (art. 56 of the Act).

Honduras publishes a list of public servants who have not declared their income, assets and liabilities to the High Court of Audit. Contracts entered into by State institutions must include an integrity clause (Agreement No. SE-037-2013).

The High Court of Audit, through the public probity and ethics committees, is responsible for ensuring that public servants perform their duties properly and for promoting policies and standards of conduct to guide them in how they act (arts. 53 and 55 of the Organic Act on the High Court of Audit). The Organic Act sets forth the ethical values to which public officials should adhere, including honesty, integrity, good behaviour and discipline (art. 56 of the Organic Act's regulations).

Honduras has adopted a Code of Ethical Conduct for Public Servants (Decree No. 36-2007) and associated regulations (at Administrative Plenary Session No. 06/2015 of the High Court of Audit), which are applicable to all public employees and require mandatory compliance (arts. 1 and 4 of the Code). The Code and its regulations lay down standards for ethical conduct, obligations, prohibitions and incompatibilities, conflicts of interest and the procedure regarding gifts and other benefits. Some institutions have adopted their own codes of conduct, which must not be contrary to the Code of Ethical Conduct.

The High Court of Audit delivers courses and training on the Code of Ethical Conduct for Public Servants.

Violation of the Code of Ethical Conduct for Public Servants constitutes a disciplinary offence that is punishable in accordance with the disciplinary procedure established in section IV, chapter II, of the Code's regulations (art. 27 of the Code; art. 59 of the regulations). The applicable sanctions are admonition, suspension without pay for up to 15 days and dismissal or contract termination (arts. 55–58 of the Code's regulations), without prejudice to any other civil or criminal liability that may be incurred.

Public servants are required to report breaches or violations of the standards of public service or the Code of Ethical Conduct for Public Servants to their supervisor or the High Court of Audit, and they are granted protection for that purpose (art. 72 of the

Organic Act on the High Court of Audit; art. 6, para. 19, of the Code; art. 27 of the Code's regulations). Anonymous reporting is permitted (art. 68 of the Code's regulations). Reporting boxes, complaint and suggestion boxes, dedicated email addresses for the public probity and ethics committees, and web portals have been set up.

Most public servants are required to submit a declaration of income, assets and liabilities within 30 days of assuming or leaving office. This declaration must be updated annually (arts. 56, 57 and 59 of the Organic Act on the High Court of Audit; art. 62 of the implementing regulations). The content of these declarations is governed by articles 60 and 61 of the Organic Act's implementing regulations (which were amended in 2020) and in article 22 of the Code of Ethical Conduct for Public Servants, and includes assets of and claims for or against the declaring official, the official's spouse or domestic partner and their minor children. There are sanctions and fines for failure to submit a declaration and for omitting information therein (arts. 98 and 99 of the Organic Act; art. 62 of the implementing regulations). Declarations are submitted in paper format and verified at random. The Public Prosecution Service can only access declarations following a court order in cases where there are signs of illicit enrichment.

It is forbidden to request or accept gifts and other offerings, benefits or favours that influence the discharge of public functions (art. 24 of the Code of Ethical Conduct for Public Servants; art. 16 of the Code's regulations). It is also forbidden to provide services, whether paid or unpaid, to certain persons (art. 258 of the Constitution; art. 14 of the Code; art. 10 of the Code's regulations).

Judicial independence is provided for (arts. 4 and 303 of the Constitution; art. 11 of the Act on the Organization and Powers of the Courts). Honduras has legislation regulating entry into the judicial profession by means of competition to evaluate the merits of candidates and verify their suitability, and covering the general eligibility requirements (arts. 23 and 26–33 of the Judicial Profession Act; arts. 51–74 of its implementing regulations); promotion (arts. 40–43 of the Act; arts. 122–129 of the implementing regulations); the irremovability of judges (art. 51 of the Act; art. 161 of the implementing regulations); deprivation or suspension of the status of a judicial officer (arts. 64–72 of the Act; arts. 186–195 of the implementing regulations); incompatibilities (art. 49 of the Act; arts. 156–160 of the implementing regulations); and the disciplinary regime (arts. 53–61 of the Act; arts. 171–185 of the implementing regulations). The justices of the Supreme Court of Justice are elected by the National Congress, and the selection criteria and process are governed by the Constitution (arts. 309–312). There is a Code of Ethics for Judicial Officers and Employees (adopted through Agreement No. 558 of the Supreme Court).

The Council of the Judiciary is tasked with, inter alia, organizing and managing the judiciary financially and administratively, appointing and removing specific judges, enforcing the disciplinary regime and training members of the judicial profession (art. 3 of the Act on the Council of the Judiciary and Judicial Service). However, at the time of the country visit, the Council of the Judiciary had not been established and its functions were being performed by the Presiding Justice of the Supreme Court of Justice (transitional art. 3 of Decree No. 5-2011), who is elected by a two-thirds majority of the National Congress, the candidate being put forward by the justices of the Supreme Court (art. 315 of the Constitution).

The Public Prosecution Service has autonomy and independence (art. 232 of the Constitution; arts. 1 and 3 of the Public Prosecution Service Act). The requirements and impediments for the position of prosecutor, the rights and duties of prosecutors, prohibited conduct applicable to their activities and the disciplinary regime are governed by articles 23, 39–50, 51 and 53 of the Act. The selection of prosecutors is conducted on the basis of competitive examination (arts. 24 and 25 of the Statute of the Public Prosecution Service) and is governed by a Code of Ethics (Agreement No. FG-010-95 of the Attorney General of the Republic).

Public procurement and management of public finances (art. 9)

The State Procurement Act and the Act on Efficient and Transparent Procurement Using Electronic Means establish the modalities for public procurement, including open tender, limited tender, competitive open tender, competitive limited tender, direct contracting (arts. 41, 59, 61 and 63 of the State Procurement Act), use of framework agreements, joint procurement and reverse auction (arts. 33, 36 and 37 of the Act on Efficient and Transparent Procurement Using Electronic Means). The threshold values determining which of the procedures provided for by the State Procurement Act should be used are established in the General Budget of Revenues and Expenditures of the Republic (art. 38 of the State Procurement Act). The principles governing public procurement include efficiency, publicity and transparency, and equality and free competition (arts. 5–7 of the State Procurement Act).

Each public entity is responsible for its procurement processes (art. 32 of the State Procurement Act). The Regulatory Office for State Contracting and Procurement is mandated to issue rules and directives of a general nature on government procurement systems and to coordinate activities aimed at guiding and systematizing public sector procurement processes (arts. 30 and 31 of the Act). Honduras has indicated that the personnel responsible for public procurement regularly receive training on conflicts of interest.

Relevant procurement-related information is published in the Honduras State Contracting and Procurement Information System (HonduCompras), an electronic platform used to manage and publicize procurement processes (art. 3 of Executive Decree No. 010-2005). Invitations to tender are published at least 15 days before the deadline for the submission of bids, except in the cases of limited tender, competitive limited tender and direct contracting, where specific tenderers are invited (art. 46 of the State Procurement Act).

Procurement contracts must be awarded on the basis of objective evaluation criteria. In addition to price, other criteria can be taken into account as well, such as funding requirements, environmental benefits and the compatibility of equipment (art. 52 of the State Procurement Act). These criteria must be reflected in the bidding specifications and tenderers notified of any changes in good time (art. 39 of the Act; arts. 98, 100, 101 and 105 of the implementing regulations).

The validity of award decisions can be contested through judicial proceedings once administrative remedies have been exhausted (arts. 129–149 of the Administrative Procedure Act), in which case the time periods applicable to the review of administrative appeals are reduced by half (art. 142 of the State Procurement Act). The procurement process is not automatically suspended when an appeal is filed.

The procedure for preparing and adopting the annual budget is governed by the Organic Act on the Budget (Decree No. 83-2004) (art. 368 of the Constitution). The draft budget is prepared by the Ministry of Finance and submitted by the executive branch to the National Congress in September of the year before its entry into force (art. 367 of the Constitution).

The General Accounting Office of the Republic prepares the accountability report relating to the management of public finances that is to be submitted through the Ministry of Finance (art. 100 of the Organic Act on the Budget). Honduras provides for the internal control of public financial management and has tasked the Ministry of Finance with approving the mechanisms required for that purpose (arts. 115–119 of the Organic Act).

Honduras has established a platform to educate citizens on the budget and publishes information on budget implementation on the single portal of the Ministry of Finance.

The management, reception, verification and safekeeping of public sector institutions' financial documents are governed by the Technical Regulations for the Handling of Archives of Financial Documents Generated by the Public Sector (Agreement No. 0885 of the Ministry of Finance). Documents that have administrative and legal value must

be digitized and preserved for a period of five years (art. 9 of Agreement No. 0885 of the Ministry of Finance). The High Court of Audit is tasked with verifying that the accounts of regulated entities under the Organic Act on the High Court of Audit are prepared in accordance with the law (art. 58 of the regulations implementing the Organic Act).

Fines can be imposed on officials who fail to maintain their accounting system in accordance with the relevant legal provisions (art. 3 of the Regulations on Sanctions of the High Court of Audit). The falsification of public documents is a criminal offence (art. 456 of the Criminal Code).

Public reporting; participation of society (arts. 10 and 13)

Access to public information is governed by the Transparency and Access to Public Information Act and its implementing regulations. The public information officers at each institution are responsible for providing such information (art. 4, para. 11, of the implementing regulations). Refusal to provide information *ex officio* or to provide requested public information within the established time frame is considered a serious violation, as is the hindering of access to such information (art. 13 of the Regulations on Sanctions for Violating the Transparency and Access to Public Information Act).

The Institute for Access to Public Information as the entity responsible for fostering a culture of transparency and openness of information (art. 6 of the Transparency and Access to Public Information Act) operates the National Public Information System, which hosts the Single Transparency Portal, aimed at promoting active transparency, and the Electronic Information System of Honduras, aimed at promoting reactive transparency. Information on, *inter alia*, the organizational structure of regulated institutions, their functions, the legal instruments that govern their functioning and the mechanisms used to enable citizen participation in decision-making must be disseminated *ex officio* (art. 13 of the Act).

There are restrictions on access to information (art. 16 of the Transparency and Access to Public Information Act; art. 24 of the implementing regulations) and personal data are protected (art. 3, para. 7, and arts. 24 and 25 of the Act). The type of information deemed restricted by Decree No. 418-2013 appears to be too broad, which could hinder the realization of the right to access to information.² If a request for information is denied, an appeal can be filed with the Institute for Access to Public Information, whose decision can in turn be appealed through a writ of *amparo* (art. 26 of the Act; arts. 51–53 of the implementing regulations). Similarly, the requester can initiate the procedure of *habeas data* (art. 23 of the Act). The information published by Honduras does not include periodic reports on corruption.

Honduras has an Administrative Simplification Act, the main objective of which is to remove unnecessary or repetitive regulations, clarify and reduce hierarchies as far as possible, reduce the proliferation of implementing entities and eliminate arbitrariness in decision-making (art. 2 of the Act).

The Constitution protects freedom of expression (art. 72), while the Transparency and Access to Public Information Act is aimed at establishing the mechanisms required to ensure that citizens can exercise their right to participate in the management of public affairs (art. 2 of the Act).

To enable citizen participation in decision-making in various institutions, Honduras has set up forums such as the Inter-Agency Council of the Open Government Partnership Honduras, the National Council for the Extractive Industries Transparency Initiative and the Inter-Agency Panel for Transparency, Accountability and Social Auditing.

The National Anti-Corruption Council, a civil society actor, conducts campaigns to raise public awareness. The High Court of Audit seeks to foster a culture based on

² Development after the country visit: the Honduran authorities indicated that Decree No. 418-2013 had been repealed in March 2022 through Decree No. 12-2022.

ethical principles through the “Recapturing values through education” programme, which targets children and young people.

Various Honduran institutions maintain reporting channels, including channels for anonymous reporting, such as telephone hotlines, reporting boxes and digital platforms.

Private sector (art. 12)

Corporate and individual owners of trading companies, establishments or ships are required to register with the public commercial registry (art. 389 of the Commercial Code).

Traders and legal persons must preserve, inter alia, books of account, special books and records, documents and invoices for five years (art. 16 of the Accounting and Auditing Standards Act).

Every trader and legal person is required to maintain accounting systems and internal controls to ensure proper and timely accounting regarding all transactions and acts of commerce in accordance with the International Financial Reporting Standards (art. 10 of the Accounting and Auditing Standards Act).

No provision has been made for restrictions on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement.

The Accounting and Auditing Standards Act is aimed at establishing the regulatory framework required for the adoption and implementation of the International Financial Reporting Standards by private sector legal persons, except for retail traders (arts. 1 and 17). Violation of the rules contained in the Act is punishable (arts. 198 and 160 of the Tax Code).

Those required by tax law to keep business accounts who conceal the true situation of their company’s affairs, or who fail to record economic operations or do so falsely or reflecting fictitious operations, can be sanctioned under article 433 of the Criminal Code. Similarly, the destruction of bookkeeping documents earlier than foreseen by the Accounting and Auditing Standards Act can be considered as tax fraud (art. 431 of the Criminal Code). Preparing financial statements based on false data is punishable (art. 19 of the Act).

Although the tax deductibility of expenses that constitute bribes has not been explicitly disallowed, the Honduran authorities indicated that the deduction of such expenses was not possible since they were not included in the deductible expenses specified in the Income Tax Act (art. 13).

Measures to prevent money-laundering (art. 14)

Regulated entities include natural and legal persons responsible for preventing and detecting illicit activities through the fulfilment of obligations aimed at identifying, controlling, handling and mitigating money-laundering and financing of terrorism risks. Oversight over these natural and legal persons is exercised by the National Banking and Insurance Commission in accordance with the Special Act on Money-Laundering (art. 2, para. 27) or the Act for the Regulation of Designated Non-Financial Activities and Professions (art. 2, para. 11).

The institutions over which the National Banking and Insurance Commission exercises oversight are public and private banks, savings and loan associations, financial companies and any other institution that routinely and systematically engages, subject to authorization from the Commission, in the activities specified in the Financial System Act (arts. 3 and 81) or in designated non-financial activities and professions (arts. 1 and 3 of the Act for the Regulation of Designated Non-Financial Activities and Professions).

As the oversight body for cooperatives, the National Council for the Supervision of Cooperatives is tasked with carrying out checks on, monitoring and auditing cooperatives. Similarly, the Council is responsible for ordering relevant sanctions, including with regard to compliance with the Special Act on Money-Laundering (art. 97 of Decree No. 146-2019).

Among other obligations, regulated entities are required to (a) identify customers and beneficial owners (art. 7 of the Special Act on Money-Laundering; arts. 29 and 38 of the Regulations for the Framework of Obligations, Control Measures and Duties of Institutions Subject to Oversight under the Special Act on Money-Laundering (implementing regulations of the Special Act); art. 10, para. 3, of the Act for the Regulation of Designated Non-Financial Activities and Professions; arts. 23–30 of its implementing regulations); (b) report suspicious transactions (art. 27 of the Special Act; art. 59 of Decree No. SB 348/27-04-2016; art. 16 of the Act for the Regulation of Designated Non-Financial Activities and Professions; art. 34 of its implementing regulations); and (c) keep records for five years (art. 8 of the Special Act; art. 83 of its implementing regulations; art. 17 of the Act for the Regulation of Designated Non-Financial Activities and Professions; art. 72 of its implementing regulations).

Honduras requires regulated entities to develop risk-based due diligence policies and procedures (art. 6 of the Special Act on Money-Laundering).

The Financial Intelligence Unit (see the information below relating to article 58 of the Convention) is the entity tasked with requesting and receiving reports on and analysing transactions that are objectively considered to be likely cases of money-laundering or financing of terrorism, as well as other financial information related to offences under the Special Act on Money-Laundering and the Act on the Financing of Terrorism (art. 29 of the Special Act).

Honduras has adopted measures for detecting and monitoring the cross-border movement of cash. Any person who enters or leaves the country is required to submit a declaration indicating whether he or she is carrying money, electronic wallets, bearer negotiable securities or instruments, such as traveller's cheques, or any other immediately convertible security having a value equal or to exceeding US\$10,000 or the equivalent in the national currency or a foreign currency (art. 34 of the Special Act on Money-Laundering; art. 16 of the Act on the Financing of Terrorism).

Regulated entities must take measures to include specific information on the originator and beneficiary of a transfer equal to or exceeding an amount set by the Central Bank of Honduras (art. 12 of the Special Act on Money-Laundering; art. 36 of its implementing regulations with regard to occasional operations or transactions, irrespective of amount in all cases). The Honduran authorities confirmed that such information was included in the customer transactions file. In accordance with National Banking and Insurance Commission circular No. 019-216, regulated entities must request information on the originator of all transfers, irrespective of amount, and if they receive a transfer that does not state the names of the originator and beneficiary, they must request that information from the originating institution. If there is no response to the request, the funds must be returned to the originator and a record kept of the action taken and of the reasons for returning the money (art. 36 of Commission circular No. 019-216). Although the regulations do not stipulate that information on the originator and beneficiary of a transfer must be recorded specifically on a form, or that information included on forms for the electronic transfer of funds and related messages must be maintained throughout the payment chain, the Honduran authorities confirmed that, in practice, financial institutions recorded such information on forms they had designed themselves.

Honduras is a member of the Financial Action Task Force of Latin America and participates in the Group of Experts for the Control of Money-Laundering.

2.2. Successes and good practices

- Contracts entered into by the State must include an integrity clause whereby the parties commit themselves, inter alia, to not engaging in corrupt or collusive practices (art. 9, para. 1).
- A “citizen’s budget” has been established to inform the public of the Government’s budgetary plans (art. 9, para. 2).

2.3. Challenges in implementation

It is recommended that Honduras:

- Develop and implement effective, coordinated anti-corruption policies (art. 5, para. 1).³
- Endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption (art. 5, para. 3).
- Provide the necessary material resources to enable the preventive anti-corruption bodies to carry out their functions properly (art. 6, para. 2).
- Endeavour to adopt legislation on the recruitment, hiring, retention, promotion and retirement of all public officials (art. 7, para. 1).
- Endeavour to identify public positions considered especially vulnerable to corruption and introduce adequate procedures for the selection, training and rotation of persons to such positions (art. 7, para. 1 (b)).
- Consider increasing the sanctions for failure to submit reports on the financing of political campaigns to ensure that those sanctions are effective (art. 7, para. 3).
- Endeavour to establish an effective system for the verification of asset declarations and to facilitate access for the Public Prosecution Service to such information (art. 8, para. 5).
- Ensure that the General Budget of Revenues and Expenditures of the Republic always sets out objective criteria for selecting the procurement modality, with priority given to open tendering (art. 9, para. 1).
- Ensure that the time frame for filing administrative appeals is adequate to allow for an effective system of appeals concerning public procurement matters (art. 9, para. 1 (d)).
- Honduras could include periodic reports on the risks of corruption as part of the minimum information that each entity must publish on its website (art. 10 (c)).

It is also recommended that Honduras:

- Adopt the legislation necessary for establishing the Council of the Judiciary and securing the independence of the judiciary (art. 11, para. 1).
- Impose restrictions, as appropriate, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement (art. 12, para. 2 (e)).

³ Development after the country visit: during the negotiations on this executive summary, the Honduran authorities indicated that the Ministry of Transparency and the Fight against Corruption was promoting the first National Transparency and Anti-Corruption Strategy, which had been developed with the support of the United Nations Office on Drugs and Crime and was intended to become the principal policy document for anti-corruption efforts.

- Ensure that the public has effective access to information by narrowing the definition of confidential information laid down in Decree No. 418-2013 (art. 13, para. 1).⁴
- Explicitly disallow the tax deductibility of expenses that constitute bribes (art. 12, para. 4).
- Ensure that financial institutions, including money remitters, include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator, that they maintain such information throughout the payment chain and that they apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator. In the event of non-compliance, it is recommended to consider a legislative amendment (art. 14, para. 3).

2.4. Technical assistance needs identified to improve implementation of the Convention

Honduras indicated the need to continue receiving technical assistance for the development of national policies on transparency, probity, integrity and prevention of corruption, and to receive technical assistance in combating money-laundering.

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

All cooperation is based on the general rules on mutual legal assistance (contained in the Special Act on Money-Laundering), on the bilateral treaties and international conventions to which Honduras is a party, and on reciprocity.

The Honduran authorities confirmed that information had already been shared with other States without prior request – an arrangement based on the United Nations Convention against Transnational Organized Crime and on reciprocity. There is no prohibition on forwarding information spontaneously, and the Financial Intelligence Unit can exchange information without prior request via the secure network of the Egmont Group. Honduras participates in the Asset Recovery Network of the Financial Action Task Force of Latin America and in the Ibero-American Network for International Legal Cooperation.

Although Honduras has not concluded bilateral or multilateral agreements specifically aimed at enhancing the effectiveness of international cooperation undertaken pursuant to chapter V of the Convention, some of its bilateral treaties on mutual legal assistance contain provisions on asset recovery and return (see arts. 11 ff., and in particular arts. 15 and 16, of the treaty with Brazil).

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Regulated entities must identify customers (art. 2, para. 8, of the Special Act on Money-Laundering) and verify their identity (art. 7 of the Special Act; arts. 29, 30, 33 and 40 of the Regulations for the Framework of Obligations, Control Measures and Duties of Institutions Subject to Oversight under the Special Act on Money-Laundering (implementing regulations of the Special Act); art. 7 of the Act for the Regulation of Designated Non-Financial Activities and Professions).

There is no definition of high-value accounts. Regulated entities must have procedures in place for identifying beneficial owners (art. 2, para. 5, of the Special Act on Money-Laundering; art. 2 of the implementing regulations) before a financial

⁴ Development after the country visit: the Honduran authorities indicated that Decree No. 418-2013 had been repealed in March 2022 through Decree No. 12-2022.

or business relationship is established and for the duration of that relationship, and they must apply reasonable due diligence measures to customers to verify their identity and ensure that the beneficial owner is known (art. 7 of the Special Act; arts. 2, 26 and 38 of the implementing regulations). At the time of the country visit, a single national register of beneficial owners was being prepared.

Given the level of risk involved, regulated entities must pay particular attention to transactions carried out by politically exposed persons (art. 2 of the regulations implementing the Special Act on Money-Laundering), their family members, close associates and related businesses, associations and non-profit organizations (art. 39 of the Special Act's implementing regulations).

The implementing regulations for the Special Act on Money-Laundering lay down rules for the application of enhanced due diligence to accounts through which resources or assets for political parties and campaigns are received or managed (art. 34).

Through the designation of high-risk countries and politically exposed persons, financial institutions have been made aware of the types of natural or legal persons to whose accounts they are expected to apply enhanced scrutiny. There is no dedicated mechanism for the authorities to notify financial institutions of the identity of particular persons whose accounts should be subjected to enhanced scrutiny.

Regulated entities must keep due diligence documents pertaining to customers and the operations they have carried out, together with relevant records, for a period of at least five years (art. 8 of the Special Act on Money-Laundering; art. 83 of the implementing regulations).

To establish themselves in Honduras, financial institutions must obtain an authorization from the National Banking and Insurance Commission, which is conditional on the issuing of a favourable opinion by the Central Bank (arts. 6–15 and art. 20 of the Financial System Act). Foreign financial institutions may operate in Honduras through legally established branches authorized by the Commission, which are subject to the same laws, regulations and decisions as the institutions of the domestic financial system, provided that the Commission has concluded an information exchange agreement or equivalent arrangement to enable cross-border monitoring of their operations (art. 18 of the Financial System Act).

As far as correspondent banks are concerned, institutions subject to oversight must implement certain due diligence measures, such as evaluating anti-money-laundering controls (art. 15 of the Special Act on Money-Laundering). Honduras prohibits institutions subject to oversight by the National Banking and Insurance Commission from having direct financial relations with institutions that meet the description of a shell bank (defined as an institution that has no physical presence or physical address, that normally has an electronic address only and that, in addition, operates without being duly authorized to engage in banking activities and is not subject to oversight; art. 2, para. 26, and art. 14 of the Special Act; art. 21 of Commission resolution No. 869/29-10-2002).

Financial institutions are not required to refrain from establishing foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

Sworn declarations of assets (see the information above relating to article 8 of the Convention) are confidential. The authorities indicated that the information contained in such declarations could be shared with foreign States only following a request for mutual legal assistance in line with the international agreements to which Honduras is a party.

Officials must declare their income, assets and liabilities and expressly authorize the High Court of Audit to investigate their accounts, bank deposits, property, participation in companies and business affairs within the country or abroad (art. 61 of the Organic Act on the High Court of Audit). However, there is no obligation to declare interest in or signature or other authority over financial accounts abroad.

Honduras has a Financial Intelligence Unit that is a member of the Egmont Group.

The Financial Intelligence Unit is attached to the Presidency of the National Banking and Insurance Commission and its functions include receiving, analysing and disseminating reports of suspicious transactions and information provided by regulated entities, exchanging information with counterparts and cooperating on requests made by these (arts. 29 and 30 of the Special Act on Money-Laundering).

The Financial Intelligence Unit is of the administrative type and cannot block transactions or freeze accounts as an administrative measure for a set period of time. Accordingly, the Unit coordinates with the Public Prosecution Service so that the competent prosecutor's office can issue a freezing order or an order imposing another provisional measure, which must be submitted within 72 hours to a competent court for confirmation or annulment (art. 65 of the Special Act on Money-Laundering).

At the time of the country visit, the National Banking and Insurance Commission had signed five inter-agency cooperation agreements with national bodies, while the Financial Intelligence Unit had signed 19 memorandums for the exchange of international cooperation with its international counterparts.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Other States may not initiate civil action in Honduras to establish title to or ownership of property acquired through the commission of an offence.

The authorities confirmed that the courts in Honduras could order those who had committed offences to pay compensation or damages to another State party that had been harmed (art. 432 of the Code of Criminal Procedure), and that, when deciding on confiscation, the courts could recognize another State's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the Convention (art. 432 of the Code of Criminal Procedure; art. 72 of the Special Act on Money-Laundering; art. 41 of the Act on the Definitive Forfeiture of Assets of Illicit Origin).

The authorities cannot give effect to a foreign confiscation order.

The authorities can order the confiscation of property of foreign origin by adjudication of an offence of money-laundering or any other offence, in accordance with the general rules applicable to confiscation and the deprivation of property (art. 11 of the Act on the Definitive Forfeiture of Assets of Illicit Origin; art. 101 of the Criminal Code).

Honduras provides for non-conviction-based confiscation through the Act on the Definitive Forfeiture of Assets of Illicit Origin and can provide mutual legal assistance in that regard (art. 79 of the Act).

The authorities can apply provisional measures on their own initiative or upon request from another State, with or without a foreign freezing or seizure order (arts. 79–82 of the Special Act on Money-Laundering; arts. 33 and 79 of the Act on the Definitive Forfeiture of Assets of Illicit Origin). Decree No. 116-2019 tasks the High Court of Audit with conducting a special audit and investigation in connection with the disbursement of, and accounting for, funds allocated to certain groups, including all types of public servants, deputies, non-governmental organizations working in the field of development and, in general, all natural or legal persons that have received or managed public funds in any form. Until the Court has issued a definitive ruling, any other administrative, civil or criminal proceedings in relation to the funds being audited are suspended (art. 16). If the audits find that funds have not been disbursed properly, the Court must issue a substantiated decision and a fine will be imposed. Reimbursement of the unspent amount, along with payment of the fine, results in the issuing of a certificate of final settlement, which exempts the person concerned from any civil, criminal or administrative liability in relation to the budgetary appropriations or audited persons. Decree No. 57-2020 stipulates that article 217 of

the Code of Criminal Procedure is to be interpreted in the sense that, before the seizure and confiscation of documents or objects, a formal, written and substantiated request must be made by the Public Prosecution Service, the police authorities or a court for the surrender of those items (art. 1 of Decree No. 57-2020). Among other offences, Decree No. 93-2021 amends the offence of money-laundering by specifically listing predicate offences of which the assets must be direct or indirect proceeds for the conduct in question to constitute a money-laundering offence (art. 4). Moreover, it designates, inter alia, civil society organizations managing external cooperation funds that are involved in implementing projects and programmes of various kinds, or in exercising citizen oversight over, investigating, evaluating or analysing public administration, as politically exposed persons and stipulates that bank, professional and tax secrecy can be lifted only when investigating offences established in sections XXV and XXXII of the Criminal Code (art. 8 of Decree No. 93-2021).

The reviewing experts expressed their concern about the obstacles to criminal investigation and prosecution and to civil and administrative proceedings posed by these provisions at both the domestic and international levels.

Honduras has received a request from another State regarding the confiscation of property through forfeiture. At the time of the country visit, the processing of that request was at the stage where the original sentence was being confirmed. Honduras can assist in tracing and securing property following a foreign request (art. 82 of the Special Act on Money-Laundering; art. 79 of the Act on the Definitive Forfeiture of Assets of Illicit Origin).

Beyond the requirements established with regard to the content of general requests for assistance, there are no additional requirements for requests relating to confiscation.

In the course of the review, Honduras provided copies of its laws and regulations that implement article 55 of the Convention.

Honduras does not make adoption of the measures set out in article 55, paragraphs 1 and 2, of the Convention conditional on the existence of a relevant treaty.

The grounds for refusing a request for assistance (art. 83 of the Special Act on Money-Laundering) do not include the property referred to in the request being of a de minimis value or Honduras not having received sufficient information.

Before the lifting of a provisional measure, there is no specific obligation to give the requesting State party an opportunity to present its reasons in favour of continuing the measure. In practice, the requesting State is consulted before provisional measures are lifted.

There are provisions on protection of the rights of bona fide third parties in relation to international cooperation for purposes of confiscation (art. 64 of the Special Act on Money-Laundering; arts. 40, 41 and 77 of the Act on the Definitive Forfeiture of Assets of Illicit Origin; art. 101 of the Criminal Code).

Return and disposal of assets (art. 57)

Under the Act on the Definitive Forfeiture of Assets of Illicit Origin, provision is made for the disposal of assets by distributing them among national institutions according to percentages set by the Act (art. 78). Exceptionally, where the final judgment orders forfeiture or confiscation of assets arising from illicit activities such as kidnapping, extortion and corruption, the assets are to be returned to the duly identified victim or to the public institution affected (art. 78-A of the Act). There is no similar provision for the return of property confiscated in a criminal case, nor specific provisions establishing the obligation to return property in the cases covered by the Convention.

In direct application of the Convention, Honduras may deduct reasonable expenses incurred in the course of investigations or judicial proceedings leading to the return or disposal of property.

Although it would be possible, Honduras has not concluded specific agreements for the final disposal of confiscated property.

3.2. Successes and good practices

- The efforts by the Financial Intelligence Unit to strengthen cooperation with regulated entities through training and by setting up the e-ROS electronic platform for reporting suspicious transactions (arts. 14 and 58).

3.3. Challenges in implementation

It is recommended that Honduras:

- Review, as a matter of priority, its normative framework, in particular Decree No. 116-2019, Decree No. 57-2020 and Decree No. 93-2021, and abrogate the provisions that pose obstacles, at both the domestic and international levels, to criminal investigation and prosecution and civil and administrative proceedings in relation to offences established in accordance with the Convention.
- Continue its efforts to establish a register of beneficial owners (art. 52, para. 1).
- Notify financial institutions of the identity of particular natural or legal persons to whose accounts enhanced scrutiny should be applied (art. 52, para. 2 (b)).
- Consider requiring all its financial institutions to refrain from establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group (art. 52, para. 4).
- Consider adopting measures to require relevant public officials who have an interest in or signature or other authority over a financial account abroad to report that relationship and to maintain appropriate records thereof, consider establishing an effective system for the verification of declarations and facilitating access for the Public Prosecution Service to such information, and introduce appropriate sanctions for non-compliance (art. 52, paras. 5 and 6).
- Take measures to permit other States parties to initiate civil action in their courts to establish title to or ownership of property (art. 53 (a)).
- Take measures to permit its competent authorities to give effect to a foreign confiscation order (art. 54, para. 1 (a)).
- Ensure that, before a provisional measure is lifted, the requesting State party is given an opportunity to present its reasons in favour of continuing the measure. If this does not happen in practice, legislative reform will be necessary (art. 55, para. 8).
- Adopt measures for the return and disposal of all confiscated property in accordance with article 57, paragraphs 1 to 3, of the Convention, taking into account the rights of bona fide third parties (art. 57, paras. 1–3), and ensure that confiscated property is returned to the requesting State party in accordance with article 57, paragraph 3, of the Convention, including in cases where bilateral or multilateral treaties provide alternative options (art. 57, paras. 3 and 5).
- Assess whether authorizing the Financial Intelligence Unit to freeze or suspend transactions through administrative channels could be beneficial (art. 58).
- Consider concluding specific agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to chapter V of the Convention (art. 59).

3.4. Technical assistance needs identified to improve implementation of the Convention

Honduras requires technical assistance with the development of policies on asset recovery and practical advice to improve implementation of the Convention (arts. 51, 54 and 56).
