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FEATURED Q&A

Will Honduras' New Penal Code Lead to More Corruption?



Honduras' Congress passed a new penal code in 2018 that went into effect this year. // File Photo: Honduran Congress.

Q A controversial new penal code, which among other provisions will shorten sentences for corruption-related crimes, took effect last month in Honduras. Crimes that would be associated with shorter sentences include misuse of public money, influence trafficking, abuse of authority, as well as fraud and illicit enrichment. The measure won congressional approval in 2018 and took effect despite a last-minute attempt by opposition lawmakers to block it. What are the main attributes of the new code? Does it amount to a step backwards in Honduras' fight against corruption, as some critics assert? What other policy changes does Honduras need in order to more effectively fight graft?

A Adriana Beltrán, director for citizen security at the Washington Office on Latin America: "Honduran civil society, as well as international organizations such as the United Nations and the Inter-American Commission on Human Rights, have forcefully criticized the new Honduran penal code, as it makes it more difficult to effectively prosecute crimes related to corruption, drug trafficking and sexual violence. The code significantly decreases penalties for corruption-related crimes. Additionally, the law is retroactive, meaning it would benefit those who have already been convicted or who are being prosecuted for corruption-related crimes. The code also contains provisions that could affect the right to protest and freedom of speech. In sum, this law significantly debilitates anti-corruption efforts, facilitates the persecution of human rights defenders and journalists and leaves Honduran citizens without fundamental protections for their

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TODAY'S NEWS

POLITICAL

Bolivia Delays Presidential Vote Until October

Bolivian election authorities delayed the country's presidential vote a second time, until Oct. 18, saying the delay was necessary because of a spike in Covid-19 cases. The vote had been scheduled for Sept. 6.

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BUSINESS

Walmex Reports Rise in Revenue, Profit Declines

Walmart de México, or Walmex, reported a rise in revenue for the second quarter but a decline in profit related to a large tax settlement that the retailer paid in May.

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ECONOMIC

Chile's Congress Approves Pension Withdrawal Bill

Chile's Congress approved a measure to allow citizens to withdraw as much as 10 percent of their pension savings. President Sebastián Piñera's government had opposed the bill, but Piñera is expected to sign it.

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Piñera // File Photo: Chilean Government.

POLITICAL NEWS

Bolivia's Election Authorities Delay Vote Until October

Bolivian election authorities on Thursday delayed the country's presidential vote due to a spike in coronavirus cases, a move that risks sparking political unrest that exploded last year following an allegedly fraudulent election, The Wall Street Journal reported. The Supreme Electoral Tribunal said the election is now scheduled for Oct. 18, after initially postponing it to Sept. 6 from May 3 due to concerns over



Romero // File Photo: Bolivian Government.

the pandemic. The election is a re-do from the presidential vote held last October, which observers have accused of being rigged in favor of former President Evo Morales. The president of the tribunal, Salvador Romero, said the new electoral date will provide better conditions for health protection, convenience for voting from abroad, as well as the arrival of international observation missions, the Voice of America reported. Bolivia in recent weeks has seen a rise in Covid-19 infections, which now total approximately 65,000 and include interim President Jeanine Áñez and members of her cabinet.

Áñez, who is a candidate in the upcoming election, has been at the helm of the country since Morales resigned and fled to Mexico and then Argentina amid protests in Bolivia and after the Andean nation's military requested that he step down. Morales, who was seeking his fourth term in office despite constitutional limits, has accused the election tribunal of orchestrating "a coup against democracy," The Wall Street Journal reported. [Editor's note: See related [Q&A](#) in the March 26 Advisor.]

ECONOMIC NEWS

Chile's Congress Approves Pension Withdrawal Bill

The lower house of Chile's Congress on Thursday approved modifications to a bill that allows citizens to withdraw as much as 10 percent of their pension savings as the country struggles amid the economic fallout of the coronavirus pandemic, Reuters reported. The controversial bill was overwhelmingly approved in a second vote Thursday afternoon in the Chamber of Deputies. The Senate had approved it a day earlier. Center-right President Sebastián Piñera's government, which had staunchly opposed the legislation during debate in Congress, said that the president would sign the bill into law today. In doing so, he wished to indicate his "intention and will to facilitate and expedite" the emergency relief measure, the statement said, Reuters reported. An overwhelming majority of Chileans support the measure, with 82 percent of workers backing it, according to pollster Camden. However, economists have warned that the move could hurt future payouts. "In the short term, this offers some income relief and allows the [government] to survive," said Alex Schober, an analyst at consultancy Ducker-Frontier. "In the medium term, Chile will need a much more robust pension reform to address already-low payouts. This has been a social demand for years," he added.

BUSINESS NEWS

Walmex Reports Rise in Revenue for Q2, Net Profit Dips

The Mexican and Central American unit of retailer Walmart on Thursday reported a 9.5 percent rise in total revenues for the second quarter, but its net profit for the quarter fell 81 percent as it paid a large tax settlement,

NEWS BRIEFS

Former Brazilian Presidential Candidate Alckmin Charged

Brazilian prosecutors on Thursday charged Geraldo Alckmin, a former São Paulo governor and two-time presidential candidate, with corruption, money laundering and electoral crimes, Reuters reported. The federal police have accused Alckmin of illegally receiving unregistered funding for his campaign. Reuters was unable to reach representatives for Alckmin on Thursday for comment, but the former governor told CNN Brasil last week that there were no irregularities in his campaigns and that he had "an absolutely calm conscience."

Colombia Seizes Mansion Owned by Businessman Linked to Maduro

Authorities in Colombia have seized a mansion belonging to a businessman detained in Cape Verde last month on U.S. corruption charges and who is connected to Venezuelan President Nicolás Maduro, the Associated Press reported Thursday. The house reportedly is worth \$7.6 million, and it is registered under the name of a shell company. Colombia's chief prosecutor said it actually belongs to Alex Saab, who was arrested in June and has been indicted in the United States in a case that involves the Venezuelan government.

Mexico's Transportation Minister Steps Down

Mexican President Andrés Manuel López Obrador said Thursday that he had accepted the resignation of Transportation Secretary Javier Jiménez Espriú, saying the two had a "dispute" over the president's decision to hand over the administration of the country's customs operations to the military, the Associated Press reported. In his resignation letter, Jiménez expressed concern about "the serious consequences" the measure will have.

The Wall Street Journal reported. Walmart de México, or Walmex as the company is known, reported 169 billion Mexican pesos (\$7.5 billion) in revenue for the second quarter, as compared to 154.4 billion pesos for the same quarter a year earlier. However, net income fell to 1.8 billion pesos in this year's April-to-June period, as compared to 8.8 billion pesos for the second quarter of last year. The decline in profit resulted from a tax settlement of 8.1 billion pesos that the company paid in May, in part due to the sale in 2014 of its restaurant business, The Wall Street Journal reported. The retailer's same-store sales in Mexico increased 6.3 percent as compared to the same period a year earlier. In Central America, tighter restrictions related to efforts to curb the novel coronavirus led to a 6.1 percent drop in same-store sales, led by stores in Honduras. "Social-distancing measures are driving higher in-home consumption, and customers' purchases continue to lean toward essentials," Walmex's chief executive officer, Guilherme Loureiro, said Thursday in a webcast. At the end of the first quarter, as the pandemic started hitting Mexico, consumers increased their purchases of cleaning supplies and staples. As stay-at-home orders continued, they began buying more kitchen supplies, puzzles and board games, said Loureiro. Walmex's chief financial officer, Milton Brandt, said that aside from the tax settlement, the company had contained costs in Mexico. "Excluding the payment to the SAT, we were able to keep expense growth below total revenue growth, despite incurring higher operating costs given the measures taken to handle the pandemic," Brandt said in a webcast, Reuters reported. Retailers in Mexico have seen varying results in connection with the pandemic. Grupo Sanborns' revenue fell 66 percent amid closures of its department stores and other shops, and its restaurants offered only limited service, The Wall Street Journal reported. However, Sanborns' online sales grew fivefold as compared to a year earlier, the company said. "After the reopening of the stores in June, a recovery in sales is observed," Sanborns said. Mexico's retail sales declined 24 percent overall in April and May as compared to the same period a year earlier, according to Mexican statistics institute Inegi.

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rights. Hondurans need rights-respecting laws that better address the grave crises of corruption, impunity and violence in the country. The Covid-19 pandemic has made the need for effective anti-corruption legislation even more urgent: there is already evidence that corrupt networks are taking advantage of increased investments in the Honduran health system to embezzle funds and commit fraud. The passage of this new penal code is one of several measures that Honduran authorities have made in order to disrupt anti-corruption efforts. The Honduran Congress consistently blocked now-dismantled anti-corruption commission MACCIH's attempt at reforms and sought to pass a series of laws that shield public officials from being investigated for corruption. The fight against corruption is a key part of establishing a functioning democracy in Honduras. In order to more effectively fight graft, the country needs resources and tools necessary to ensure greater accountability and transparency, and also strengthen the independence of the justice system."

A Enrique Rodríguez Burchard, former member of Honduras' Congress and former general secretary of the Liberal Party:

"Positive aspects of the law are the decriminalization of defamation and the outlawing of more than 50 new criminal acts, giving it an air of modernity. However, criticism has come from academia, churches, civil and business organizations, and the opposition. The new code reduces prison terms and the statute of limitations for crimes against the state and embezzlement of public funds. Today, someone who steals a wallet is punished more severely than someone who steals millions from the national budget. Additionally, there are incongruities relating to crimes against women, the environment, freedom of expression and public protest, which could translate into diminished fundamental rights. In the opinion of former General Attorney Edmundo Orellana, the

essential problem of the new code is drastically reduced penalties, especially for drug trafficking, corruption and money laundering. The bishops' conference of Honduras has expressed its concern at the 'deep and extensive level of corruption, which is a shame of public life, a danger to social peace and the root of social iniquity, of the poverty of the country.' It calls the new penal code 'an instrument of protection for the corrupt and narco-politicians.' What Honduras needs is to eliminate impunity, administering justice with equanimity, rectitude and rigor."

A Jenny Almdares, special counsel at BLP in Tegucigalpa:

"Honduras' new penal code does not have many supporters among civil society and the international community. According to media reports, more than 30 organizations and private companies have spoken out against it. In an analysis report in July 2019, the Office of the United Nations High Commissioner for Human Rights noted some inconsistencies. Last October, Honduran civil interest groups including the National Anti-corruption Council (CNA) filed a lawsuit challenging the constitutionality of the new penal code, arguing that the code favors current and former officials by reducing penalties for crimes of public malfeasance. Despite this, there is no doubt that Honduras needs a regulatory change, because, among the nearly 22,000 people who are jailed in the country, fewer than 10,000 have been convicted. In addition, the national prison system has historically been full of tragic incidents, including fires such as those that occurred in the Ceiba, San Pedro Sula and Santa Bárbara prisons, not to mention the overcrowding in which people who are deprived of liberty live. Faced with this social-legal problem, Honduras needs a change in its laws to include other types of punishment, such as those established by the new regulation. These include proportional fines and house arrest, among others, which establish a

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balance between the rights of the accused and citizen protections in order to achieve adequate social reintegration.”

A **Lisa Haugaard, co-director of the Latin America Working Group:** “Honduras’ new penal code will make it easier for officials to get away with corruption and human rights violations while making it harder for journalists and activists to expose and denounce such corruption and abuse. The code reduces penalties for certain corrupt acts and increases penalties for vague and easily abused categories such as ‘disturbing the public order’ and ‘terrorist association,’ which can be used to repress peaceful demonstrations, civil society organizing and freedom of association. Penalties for libel and ‘sharing state secrets’ can make it harder and more risky for investigative journalists to do their job. Women’s organizations have also objected that the code reduces penalties for sexual harassment and certain types of gender-based violence. Civil society organizations have raised challenges to the law, including its suspiciously flawed process of approval by the Honduran Congress. One such challenge is now pending before Honduras’ Supreme Court. The passage of the code is part of a series of actions taken by the Honduran executive and legislative branches to tie the hands of those who would monitor and expose corruption. Another advance in protecting corruption was President Juan Orlando Hernández’s decision not to renew OAS anti-corruption agency MACCIH. Social protest and journalistic coverage are some of Hondurans’ few recourses to stand up to and expose massive government corruption, now including the need to monitor and prevent the possible pillaging of health resources for addressing the Covid-19 pandemic—so this penal code leaves Honduran society even more defenseless. Honduran social activists and journalists already face death threats, assassinations, exile and imprisonment for their organizing or investigative efforts. If

legal challenges to the code do not prevail, this code stacks the deck even more completely against them.”

A **Enrique Betancourt, director of the Violence Prevention Initiative at Chemonics International:** “Many pages have been written to address the challenges of the new Honduran penal code. Most of these writings focus their concerns on the reduction of sentences to punish corruption-related crimes. These concerns, legitimate by definition, find strength in three current political matters: the national government’s decision in January to dismantle the OAS’ Mission to Support the Fight Against Corruption and Impunity in Honduras (MACCIH), the beginning of a new electoral cycle and, last but not least, the fact that many members of Congress who voted for the law are under investigation for such crimes. All these concerns, along with critiques referring to technical and procedural mishaps, are substantial and justified, but, for a country that sits at the bottom of the Rule of Law, the Corruption Perception and Global Impunity indexes, the main concern should focus on the effectiveness of investigation and prosecution of crimes. Strong evidence suggests that the severity of punishment seems to carry less weight in changing undesired behaviors and that, in turn, deterrence is effective when the certainty and the swiftness of being punished for committing a crime are high. Writing and enacting new laws is cheap, as compared to implementing them in a way that shapes behaviors and strengthens state legitimacy. Honduras’ main rule of law challenges are not in their capacity to push forward legislation, but rather in the political will behind its operationalization. Legislating is cheap, enforcing the law is hard.”

Editor’s note: The Advisor invited Honduras’ president, its ambassador to the United States and the president of its Congress to submit commentary for this issue but received no reply from any of them.

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