

C H A P T E R

8

The Regional Challenge in the Fight against Corruption

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RESEARCH QUESTIONS

How has the perception and incidence of corruption evolved in Central America?

Specific Questions

1. Have legal and institutional reforms implemented to strengthen the control of corruption in the civil service had tangible results?
2. What organizational and functioning-related factors of institutions promote corruption?
3. Are legal and administrative penalties to punish those responsible for reported acts of corruption effective?
4. Are there successful experiences of citizen involvement in corruption control?
5. Is it possible to identify consequences of corruption on the coverage and quality of public service delivery?

RELEVANT FINDINGS

>> In the international indicators on the perception of corruption, the data of two Central American countries is comparable to the world's worst situations; the rest of the countries are in an intermediate position. Victimization indicators reveal a less serious situation (between 9% and 23%), while opinion polls reflect a widespread perception of corruption throughout the state system.

>> All the countries have ratified the Inter-American Convention Against Corruption and the United Nations Convention Against Corruption. Two verification rounds have already been carried out for the first one.

>> Citizen participation in civil service management control takes place using social audit mechanisms or recently installed institutional channels (customer service departments, comptroller's offices, one-stop complaint centers in supreme audit institutions, citizen offices in congresses, etc.)

>> The media is an exceptional channel to denounce corruption. However, control is limited by the concentration of media ownership, persistent legal obstacles to freedom of expression and even threats of violence to journalists.

>> There have also been corruption scandals within the control bodies, in at least three countries. Most top appointments within these organizations are still influenced by the political parties in power.

>> The accountability institutions have been unable to direct and coordinate the system's activities; their duties overlap and they compete for limited resources and information. This does not contribute to the creation of a virtuous circle of interaction that promotes transparency and accountability.

>> More than 40% of the citizens from all the countries consider that their government does very little or nothing to combat corruption. The perception regarding the possibility of having a fair trial and punishment of the perpetrator is very low.

>> Only two of the region's Supreme Audit Institutions have the power to penalize, without having to resort to the Administration or Judiciary.

>> There are significant gaps in witness protection legislation and in the implementation of a civil service regime based on evaluation and merit.

>> There is an association between greater corruption in services and service quality deterioration.

GENERAL ASSESSMENT 2008

Corruption, understood as “the abuse of power for personal benefit”¹, is a challenge for the Central American democracies. Civil service management, in particular, is vulnerable to corrupt practices, due to weak control and accountability systems. The serious institutional limitations pointed out by the Second Report (2003) of accountability mechanisms -with the exceptions- also remain and in some cases have deteriorated.

Today, more than ever, political corruption is an issue in public debate. Citizen participation has increased through denunciation, which has been specially encouraged by the creation of institutional channels, the boom of investigative journalism and the work of civil organizations devoted to this area.

Greater citizen and media demand for accountability does not measure up to the anti-corruption state institutions, which acts as a funnel until certain choke points slow down progress at the regulatory level and citizen awareness. Certainly ratification of international agreements and commitments has been plentiful. All of the Central American countries are part of the Inter-American Convention Against Corruption (IACAC) and in 2007 Central American presidents signed the Guatemala Declaration for a Region Free of

Corruption. However, the main authorities in this fight, the judicial system and supreme audit institutions, still have many limitations, when it comes to investigating and penalizing corrupt officials. Even in Costa Rica, where the development of these bodies began more than fifty years ago, and in Panama, where one of the area’s strongest Comptroller’s Offices is found, institutional capacity limits control and follow-up on this issue.

Though it is impossible to quantify the extent of corruption or the magnitude of its costs and impacts, the analysis conducted for this Report was able to prove that in three specific areas (public contracting, health services and business paperwork), corrupt practices negatively impacts service quality and restricts citizen access. In public contracting losses are considerable, especially if compared with meagre public budgets. In the case of health services, corruption affects the population that cannot pay for private health services. And with regard to public institutions in charge of paperwork, countries where bribes are most common people invest more time and money to grant permits and authorize registrations, with the resulting implications for business setup and investment.

GENERAL ASSESSMENT 2003

The *Second Report on Human Development in Central America and Panama* defined democracy not only as a system to elect rulers, but also as a way to organize state institutions and their relations with society. This organization goes beyond democratic elections; it involves the construction of a democratic rule of law, where citizens' civil and political rights are enacted and enforced accountability of representatives and public servants exerted.

In the 2003 edition, this Report indicated that legal recognition of accountability practices were pending matter in most of the region. The analysis focused on the weak control of the Administration and, indirectly, mentioned its implications for the promotion of corruption. Most countries had important loopholes in this respect:

"Control institutions (supreme audit institutions, prosecutors' offices,

ombudsmen, etc.) face serious difficulties. In several countries, comptroller or accounting offices face the triple challenge springing from a lack of resources, weak authority and attempts to politically co-opt them.. The exception - not free from difficulties in at least one country - is the ombudsmen's performance (...) The quality of political regimes, and not only the possibility of citizen control over civil service management, can be affected unless rulers govern democratically (...) In several countries, the Executive and Legislative branches and control bodies have come into conflict, and changes in the political autonomy and institutional organization of the latter have ensued. Political corruption scandals have transcended borders and affected international relations. This already complex situation is worsened by the fact that some evidence points to citizen tolerance to certain acts of public corruption.

CHAPTER

8

The Regional Challenge in the Fight against Corruption

Introduction

The focus of the investigation conducted for this chapter was to identify the legal or institutional factors that hinder the fight against corruption. Corruption unfolds in multiple spheres of society, and that is one of the difficulties faced by programs seeking to combat it. Economic, political, institutional, social and cultural determinants all play an important role. However, emphasis here is on institutional characteristics and political elements promoting corruption, since it is in these spheres where considerable anti-corruption efforts have concentrated and where most information on the subject is to be found.

The chapter offers a general overview of the international indicators that measure corruption. Then it refers to several efforts carried out recently throughout the region to combat corruption. Thirdly, it analyzes the performance of anti-corruption agencies and accountability mechanisms as a whole (Judiciary, supreme audit institutions and ombudsman), and then goes more deeply into the patterns of corruption in three specific sectors. Finally, a special note is added on two institutions that can play a fundamental role in combating this problem: the ombudsmen and consumer protection agencies.

Due to the many limitations with regard to the existence, availability and

homogeneity of information for all the countries in the region, this chapter calls for further studies on the matter.

Perception, Victimization and Tolerance of Corruption

The illegal and hidden nature of corruption makes it impossible to quantify its extent in Central America. In addition, countries do not have historic data of formal accusations or cases reported to different authorities, which also makes it impossible to analyze trends in relation to this issue. In view of these difficulties, the evaluation of a country's level of corruption has been approached by international indicators and opinion surveys. In both cases, they rely on citizen perception of the extent of the problem and comparisons over time are very limited, since most of these sources changes methodology, rather frequently.

In the case of Central America, data does not offer a clear overview of the extent of corruption. Countries that obtain relatively good ratings for international indicators are the ones that get worst ratings in opinion surveys and have the highest percentages of victimization as a result of corruption. If we add national studies and reports, significant discrepancies are also found, consistent with what occurs in several regions of the world². Variations may be due in part to the fact that each

source measures different situations and therefore, the most appropriate one must be selected according to investigation objectives. In the case of incidence and victimization, indexes tend to measure administrative or everyday corruption, while global perception indexes refer to “white collar” corruption or state capture (box 8.1) and international indicators derived from surveys of businessmen and economic operators focus on corruption with regard to paperwork and permits to carry out business activities (Knack, 2006). These clarifications are useful in order to contextualize the following general overview.

International indicators demonstrate differences between countries

According to several measurements citizen perception of widespread corruption in public affairs is high in most Central American countries; some of them are among the most affected by this problem in Latin American³. On the one hand, Transparency International's Corruption Perception Index (CPI)⁴ – that measures the level of corruption as perceived by the businesspeople and analysts and uses a scale from 10 (highly clean) to 0 (highly corrupt) – gives Nicaragua, Honduras and Guatemala scores below 3,3, while Panama, El Salvador and Costa Rica score above 3,3. (table 8.1).

BOX 8.1

High-level and low-level corruption

In general, corrupt acts can be divided into *grand* or high-level corruption, also known as white collar corruption, and *petite* or administrative corruption (Heidenheimer, 1978). The former refers to illegal actions carried out by the political elites and top government levels, which includes presidents, ministers, and members of parliament, mayors and presidents and senior management of public institutions. Also included here are irregularities in political campaign financing. High-level corruption

usually entails complex networks of of the political and economic elite who are linked and support each other through networks (Moody-Stuart, 1997). On the other hand, petite corruption is the everyday corruption occurring at the administrative level. It almost always occurs in a bilateral manner between the official and the citizen. Examples of this are irregular payments or bribes to get business permits or to avoid traffic fines or municipal sanctions.

High-level and low-level corruption affects citizens differently. Therefore, it is perceived in a different manner. *Petite* corruption affects people more directly, while grand corruption tends to be more opaque

Throughout this chapter reference is made to both types of corruption. However, it must be remembered that these are analytically different phenomena and the information for each type comes from different information sources.

TABLE 8.1

Central America: Corruption Perception Index. 2003 y 2007

Country	2003			2007		
	Score	Position among 133 countries evaluated	Position among 19 Latin American countries ^{a/}	Score	Position among 180 countries evaluated	Position among 19 Latin American countries
Costa Rica	4,3	50	4	5,0	46	3
El Salvador	3,7	59	7	4,0	67	5
Panama	3,4	66	10	3,2	94	10
Nicaragua	2,6	88	12	2,6	123	15
Guatemala	2,4	100	14	2,8	111	14
Honduras	2,3	106	17	2,5	131	16

a/ Chile, Uruguay, Cuba, Costa Rica, Brazil, Colombia, El Salvador, Peru, Mexico, Panama, Dominican Republic, Nicaragua, Argentina, Guatemala, Venezuela, Bolivia, Honduras, Ecuador and Paraguay.

Source: Own elaboration, based on Transparency International's annual reports.

Despite some slight improvements in the scores of some countries, Costa Rica was the only country to significantly improve its rating; the country's score rose to 5,0 in 2007. This change recognized the independence exhibited by the Judicial System in relation to the corruption scandals of 2004 involving ex-presidents and other high ranking public officials (Transparency International, 2007). In the last year where there is available information, Costa Rica and El Salvador were among the five Latin American countries that

scored best; however, Guatemala, Honduras, Panama and Nicaragua continued to score low, below 3,6, close to the regional average.

In general, for Central America the CPI outlines a scenario with two groups of countries. The first of these two groups is led by Costa Rica, and also includes El Salvador, exhibiting some progress, as well as Panama. None of them drop below 3,0; the second group is made up of Honduras, Nicaragua and Guatemala, and shows consistently low scores and situated in the CPI's

group of worst rated countries (together with Vietnam, Nigeria and Iran, among others).

The *Global Corruption Barometer*, presented by Transparency International in 2005, disaggregated people's perception of corruption in four Central American countries. On a scale from 1 to 5, where 5 indicates that the institution, organization or service in question is "very corrupt", most citizens tend to give the worse ratings to political institutions (parties, parliaments) and customs authorities, with scores over 4.

But they are also very critical of several public institutions and services, scores in all cases are above the arithmetic mean (3,0). It should be pointed out that this negative perception applies both to private sector, as well as non-governmental, religious and business organizations, which are seen as being very affected by corruption (all with indexes over 3,0). The study points out that Nicaragua is the country most affected by this problem, followed by Guatemala, Costa Rica and, finally, Panama.

The indicators developed by the World Bank Institute on corruption control show a similar situation. The available information also reveals a deterioration from 2003 onwards, followed by several stagnant years in Costa Rica and Panama, a recent significant drop in corruption control by the governments of Nicaragua and Honduras, and a slight recovery in the cases of El Salvador and Guatemala; in the later, however, the improvement came after a significant drop around 2003. All are still situated in a mid-low percentile (graph 8.1)

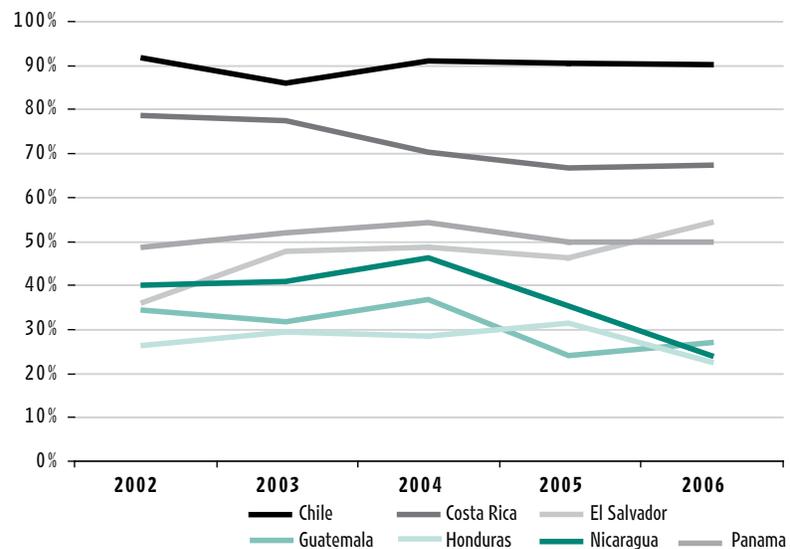
When this data is compared with that of other Latin American countries, Bolivia and Ecuador perceived levels of corruption similar share to those of Guatemala, Nicaragua and Honduras. El Salvador and Panama produced figures similar to those of Peru and Mexico, countries with human development indexes than Central America's. Costa Rica once again stands out in relation to these indicators, both at Central American as well as Latin American level. In the entire region, Chile is the country that is placed in the highest percentile.

Citizens believe that corruption is widespread

According to public opinion surveys, people perceive corruption as being much more widespread than reported by international measurements. According to the *Latinbarometer*, with the exception of Chile, in all Latin American countries more than 80% of those interviewed believe that the problem is present throughout the entire

GRAPH 8.1

Central America and Chile: Corruption Control Index^{a/}. 2002-2006



a/ This index is part of the World Bank's governance indicators, which compile the opinions of businesspeople, citizens and experts from different international organizations, investigation institutes and NGO's worldwide. The percentile indicates where the country is situated in relation to other countries, 0 being the worst and 100 the best.

Source: Kaufmann et al., 2007.

public sector. The 2006 Americas Barometer obtained similar results: percentages ranged from 97% in Costa Rica to 69% in El Salvador. However, these measurements must be taken with caution, due to the fact that there are differences in the way corruption is interpreted and defined by the people. It is difficult to explain why countries that greatly differ in relation to institutional development have similar corruption perception levels, and it is still even more difficult to interpret the gaps between this widespread perception and incidence or victimization data (Vargas and Rosero, 2007).

On the other hand, these instruments are unable to detect more sophisticated forms of corruption, such as state capture by interest groups. The risk that private interest groups manage to control public institutions drastically increases with phenomena such as drug trafficking and organized crime, in what some authors have started calling "the co-opted reconfiguration of the

State" but may not be duly noticed by ordinary citizens(box 8.2), but may not be duly noticed by ordinary citizens.

Corruption victimization is high in relation to the developed world, but lower than perceived

In contrast to citizen perceptions regarding extent of corruption measures of the real incidence of corrupt practices, (victimization) show the extent of the problem to be much lower than what can be gathered perceptions. However, as with the other indicators, certain precautions must be taken when interpreting incidence data. In the case of Central America, the relatively low victimization is mediated by the state's institutional weaknesses: large population groups do not have access to public services due to poverty and the scarce territorial presence of public institutions in large areas throughout the region; therefore, they are not victims of corruption.

Corruption incidence is measured,

BOX 8.2

Beyond economic state capture: co-opted reconfiguration of the State

State capture is defined as a type of corruption in which private legal agents intervene during the formulation of laws, regulations and public policy, with the main purpose of obtaining economic benefit for their own personal use. In States in which the rule of law is weak legal and illegal agents interested in interfering in the management of the state through different bodies and public agencies operate at a national, regional or local level.

This intervention takes different ways, beyond mere bribery, there, such as obtaining impunity and territorial power. The study of the procedures and stages of state capture, which begins with economic capture, leads to the analysis of more complex and sophisticated forms of capture. The most complex stage is referred to as the Co-opted Reconfiguration of the State.

Source: Garay, 2008.

TABLE 8.2

Central America: population perception^{a/} of corruption incidence in the last twelve months. 2001-2007
(PERCENTAGES)

	2001	2002	2003	2004	2005	2006	2007
Costa Rica	18	24	17	28	21	16	23
El Salvador	19	16	20	14	9	12	12
Guatemala	16	31	10	23	12	19	10
Honduras	24	23	16	16	8	10	9
Nicaragua	17	41	18	21	16	13	10
Panama	21	23	18	15	8	6	6

a/ Percentage of affirmative responses to the question: "Are you, or any relative of yours, aware of any act of corruption that has occurred in the last twelve months?"

Source: Latinbarometer, 2001-2007.

Central American countries amongst those nations will the lowest corruption incidence in Latin America (Vargas and Rosero, 2007). In any case, this data is approximately six times higher than victimization reported in Western European countries (Seligson, 2004).

Data on corruption incidence in the organization and delivery of public services, suggest that this practice also has a strong social impact at micro-level. In other words, corruption in the public service sector delivery affects individuals, families and small businesses, but may seem of little significance in terms of damage to institutions or the national economy. However, in the long run the sum of these acts and their consequences for people and sectors, when added and multiplied by thousands or millions of users, has enormous repercussions not only at the country level, but also at the micro foundations citizens' trust in politics, institutional credibility and even in societal values.

Studies for Guatemala and Costa Rica delivery allow for a more precise idea of the incidence of corruption in public service. In Guatemala, the paperwork in relation to which the incidence of corruption is greatest has to do with avoiding vehicle confiscation by transit officials, getting merchandise through customs, avoiding detention for an offence, whether this offence was committed or not, obtaining the necessary paperwork to be allowed to work or sell on the streets or in the municipal market, and getting the residential water supply connected or reconnected (table 8.3) (Acción Ciudadana, 2006b).

In Costa Rica, a study using a similar methodology found that "sorting out a transit ticket with an officer" and having to pay bribes was frequently reported, regarding access to medical treatment and, to a lesser extent, the recovery of a stolen car, getting a driver's license and buying counterfeit degrees. (Poltronieri, 2006).

To complete the overview on corruption in the region, and keeping in mind the measurement shortcomings, it is also worth considering the findings of national diagnoses prepared by citizen organizations or in government prog-

based on the percentage of people that answer affirmatively when asked "Are you, or any relative, aware of any act of corruption in the last twelve months?" The 2007 *Latinbarometer* for all the Central American countries indicates that between 6% and 23% of citizens expressed knowledge of some case of corruption in the past months. The numbers presented in table 8.2 are not comparable over time due to differences in sample design over the years (Latinbarometer, 2007).

This lower corruption incidence reported is consistent with the mea-

surements of the 2006 *Americas Barometer* that shows low or intermediate (between 11,3% and 19,3%) corruption victimization percentages. The Barometer is better able to measure incidence since it asks people whether they themselves have been the victims of an act of corruption and goes over a series of public services. In the two years of this indicator, Costa Rica reported an increase, from 14% in 2004 to 19% in 2006; the other countries of the region obtained lower percentages that go from 18% in Nicaragua to 11% in Panama. These percentages situate the

ress reports. Findings generally do not coincide, since some report are much more critical⁸ or more favorable than those reported by the opinion studies (Civic Group Ethics and Transparency, 2006, 2007a and 2007b; Cenidh, 2008; Project AAA, 2004).

The incidence of corrupt acts is important because victimization lowers support for democratic system. People who have not been the victims of corruption consistently show greater support for democracy than those who have (Seligson, 2004; Vargas and Rosero, 2007) (graph 8.2).

In summary, from a comparative perspective, victimization indicators show that Central American countries are in an intermediate or low level, while opinion surveys and national case reports present a more serious situation, a widespread perception of corruption throughout the state system. However, though reported victimization is less than perceived victimiza-

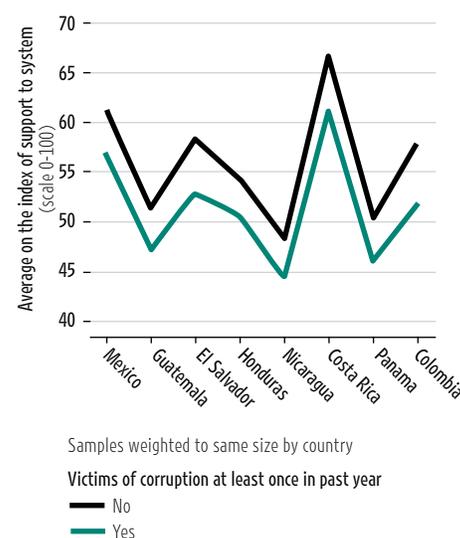
tion, it is several times higher than victimization reported in more advanced European countries or in the United States.

Widespread tolerance for corrupt acts

The gap⁹ between a widespread perception of corruption in public affairs and a lower real incidence of the phenomenon elicit several questions: Is a smaller number of people involved in corruption practices indicative of infrequent occurrence? Are these differences the result of recording discrepancies and for an of differentials in the level of formal complaints? Or, is it possible that Central Americans are disappointed with anti-corruption efforts and no longer see it as a solvable problem, but a necessary and socially accepted practice? Though there is no information to answer these questions, it is known that the greater the tolerance towards acts such as bribery or illegal

GRAPH 8.2

Latin America: support for the democratic system according to experience with corrupt acts. 2004 AND 2006
(SCALE FROM 0 TO 100)



Source: Vargas and Rosero, 2007.

TABLE 8.3

Costa Rica and Guatemala: corruption experiences in public service delivery. 2006^{a/}
(PERCENTAGES)

Administrative process	Percentage of respondents who used the service		Percentage who made illegal payment (bribe)	
	Costa Rica	Guatemala	Costa Rica	Guatemala
Obtain loan in cash for home, business or automobile from public institution	30,1	2,0	0	0
Enroll in public school	32,4	4,9	0,9	6,8
Receive assistance or benefit from government funds or programs ^{b/}	9,6	1,8	0	9,1
Electricity services (installation, repair or re-installation)	21,7	8,9	0,9	9,3
Municipality services (water, maintenance of common areas, drainage, garbage, lights, etc.)		8,1		17,5
Urgent, unscheduled medical attention or treatment	5,9	6,3	18,6	14,5
Connection or re-connection of water supply at home	21,6	14,9	0,9	15,6
Work or sell on public roads or in municipal market ^l		3,8		20,0
Avoiding getting a ticket and sanction for a driving infraction	7,5	4,9	21,3	30,5
Get merchandise through customs		3,7		36,4
Avoiding vehicle confiscation by municipal traffic officers		2,5		40,0
Purchase false degrees (educational)	3,6		5,6	
Obtain driver's license	47,0		6,1	

a/ For the purposes of this study, the table includes red tape with most and with no corruption experiences, as well as red tape relating to basic public services. To access the complete table of red tape measured by this study, refer to Acción Ciudadana, 2006b.

b/ In Guatemala such as Foguavi, FIS, Fonapaz, Programa Nacional de Fertilizantes, etc., and in Costa Rica, mainly IMAS programs.

Source: Acción Ciudadana, 2006b and Poltronieri, 2006.

payments, some people might justify these and consider them unavoidable in their specific context. This may, affect how people gauge corrupt practices (Brea et al., 2006).

This issue was explored in the *Second Report on Human Development in Central America and Panama* (2003). This report concludes that people distinguished levels of corruption and expressed different levels of tolerance according to the seriousness of the situation. The criteria used to classify the acts were: a) its collective implication; b) the motives behind it (it is less serious when done out of need) and c) the person who commits the act (the greater the power and authority a person has, the more serious it is). Therefore, a minor act of corruption is one that, even though it breaks the law, is committed in order to solve an immediate need and does not affect third persons, while a serious act of corruption affects the population at large or a significant group and is motivated by greed. The exploratory study found that people were very tolerant minor corruption, which is also very widespread and part of everyday life, but they are intolerant of intermediate and serious corruption (undue

payment for health services, payments made to judges, political donations, etc.) (State of the Region Project, 2003). The last round of surveys of the *Americas Barometer* analyzed this issue more deeply and showed that people tend to reject acts of corruption in general but are more permissive with those related to their everyday life (table 8.4).

Advances in the Fight against Corruption

Over the last years,¹⁰ anti-corruption have been by different reports. These studies, conducted by governments, civil society, the media and international cooperation, among others, indicate high levels of awareness and anticorruption efforts in relation to the problem than those prevailing a decade before.

The most positive advances are reflected in the ratification and implementation of international conventions, some regulatory improvements, especially regarding access to information, an active role of the media, greater participation of civil society, the establishment of government agencies to combat this problem, the use of new technologies.

However, these advances are not

homogenous in all countries throughout the region. There are still deficiencies that must be corrected and changes that require appropriate resources and political will in order to be implemented. Some of these weaknesses will be addressed further on in this chapter, others were pointed out in other chapters of the Report, such as gaps in relation to transparency and control of political party financing, serious flaws and politicization in the Judiciary and the influence of illegal stakeholders in different spheres of public institutions (refer to chapters 7 and 12).

From this perspective, anti-corruption efforts have been insufficient. However, the following analysis suggests that, in view of the huge challenge to roll back the extent of corrupt practices in the public sector. Actions carried out over the last years must be seen as positive signs of that, and must also be assessed, reoriented and modified or implemented to extend their reach.

Extensive ratification of international agreements and treaties

Legal advances include progress made regarding the implementation of

TABLE 8.4

Central America: perception of corrupt acts. 2006

Country	Sometimes a bribe must be paid	Do you consider it corruption if...		
		A congressperson takes a bribe from a company	An unemployed person uses a relative who is a politician to pull strings to get a job	A mother pays to speed up the process of obtain one of her children's birth certificates
Costa Rica	26,7	95,4	60,7	47,7
El Salvador	16,2	94,4	40,5	45,9
Guatemala	9,0	90,9	73,7	56,3
Honduras	14,1	96,3	59,2	53,7
Nicaragua	21,1	89,0	58,8	48,4
Panama	21,7	92,7	65,4	47,6
All surveyed countries	23,6	92,6	55,3	45,1

Questions: As things stand, do you think paying a bribe is sometimes justified? For example, a member of the legislative branch accepts a \$10,000 bribe from a company, an unemployed person is an important politician's sister in law and he pulls strings to get her a job, a mother with several children pays to get a birth certificate for one of her children.

Source: Lapop, 2006.

the Inter-American Convention Against Corruption (IACAC) and the ratification of the United Nations Convention Against Corruption (UNCAC) (table 8.5). It is important to remember that ratification of these instruments is only the starting point of the enormous challenge of adapting each country's rules to these agreements and achieving compliance.

In the case of the IACAC, advances in Central America are mainly due to the mechanism established to assess compliance with this agreement. Since 2003, the countries of the isthmus have participated in two evaluation rounds and have adapted regulations based on the findings. The issues reviewed during the first round (2004-2005) were: conflict of interest prevention, the duty to denounce acts of corruption, mechanisms for public resource management, superior control bodies, statements of personal net worth and mechanisms for civil society to contribute to corruption prevention. The issues reviewed during the second round were: public procurement, hiring public officials, informer protection and certain acts of corruption that must be typified as crimes. Implementation of first round recommendations by Member States was also examined.

Though the IACAC follow-up mechanism shows some weaknesses, its importance must be highlighted for

different reasons. First of all, the IACAC and its follow-up mechanism are state-level commitments by means of which the governments of the region are held accountable. Secondly, work carried out in this field has generated plenty of detailed technical information¹¹ identifying each country's weaknesses and progress and providing a complete account of pending efforts. Thirdly, the follow-up mechanism enables civil society to contribute inputs to assess Convention compliance. Finally, the IACAC contains a series of internationally accepted measures that offer citizens parameters to demand that their governments carry out reforms.

In the case of the UNCAC, there is no institutional follow-up mechanism. However, it is extremely important for the region if one considers that it includes both supplementary as well as new measures in comparison with the IACAC. Amongst other things, the UNCAC establishes citizens' rights such as participation in public policy-related decisions and access to government information; it also bestows upon the private sector the responsibility to set standards of conduct for their executives relative to conducting business with the state and in their relations with competitors (Red Probidad, 2007) and it establishes measures for capital repatriation and extradition of people accused of corruption.

Enactment of national legislation and progress with regard to access to information

Over the last years, most Central American countries have passed legislation in the fields of civil service, surveillance and control institutions, money laundering and fiscal fraud, while public procurement and political party and campaign financing, highly vulnerable areas in terms of corruption, have experienced less activity (table 8.6).

Regarding access to information, which is particularly important from the point of view of transparency and accountability, the laws approved in Honduras in 2006 and in Nicaragua in 2007 stand out, as well as jurisprudence developed in Costa Rica (Transparency International-Costa Rica, 2006) and regulations adopted for the Executive branch in Guatemala in 2005¹².

The new laws have not been free from debate. For example, in Honduras problems with the enforceability of the law has been noted and doubts have been raised over independence in the selection of the commissioners of the recently created *Instituto de Acceso a la Información Pública* (ACI-Participa, 2007). In Costa Rica, the Law Against Corruption and Illegal Enrichment in the Civil Service, enacted immediately after the scandals of 2004, was described as disproportionate and full of errors that Congress is now trying

TABLE 8.5

Central America: international anti-corruption conventions sanctioned and ratified

Country	Inter-American Convention Against Corruption (IACAC)		United Nations Convention Against Corruption (UNCAC)	
	Signed	Ratified	Signed	Ratified
Guatemala	04/06/1996	12/06/2001	09/12/2003	03/11/2006
El Salvador	29/03/1996	26/10/1998	10/12/2003	01/07/2004
Honduras	29/03/1996	25/05/1998	17/05/2004	23/05/2005
Nicaragua	29/03/1996	17/03/1999	10/12/2003	15/02/2006
Costa Rica	29/03/1996	09/05/1997	10/12/2003	21/03/2007
Panama	29/03/1996	20/07/1998	10/12/2003	23/09/2005

Source: Red Probidad, 2007 and the United Nations Office on Drugs and Crime.

TABLE 8.6

Central America: main anti-corruption laws and regulations. 2002-2007

Country	Access to Information	Public sector rules and procedures	Control mechanisms	Money laundering and tax fraud	Government procurement	Political parties and campaign financing
Costa Rica	Law 8003/2002, reforms the Constitution to include the principle of accountability Law 8220/2002, protects citizens against excessive administrative requirements and processes	Law 8131/2001, on Financial Administration and Public Budget Law 8292/2002, on internal audit Law 8422/2004, against corruption, and illicit enrichment in public service Decree 33146/ 2006, on principles public servants should follow in the exercise of their duties.	Law 8242/2002, to create the office of the attorney general for public ethics Law 1038/2006, on government ethics, creates the Government Ethics Court Law 776/2005, on consumer production, creates Office of the Ombudsman of Consumers.	Decree 31684/2004, General regulations for the Law on drugs, psychotropic substances, unauthorized drugs, money laundering and connected activities Suger Regulations-2004, Financial information on financial agencies, groups and conglomerates.	Law 8511/2005, reforms the Law on administrative procurements and their regulation (2007). Regulations on government procurement Compared (24 October 2005). Decree 31483/2003, Regulations on institutional procurement.	
El Salvador		Decree 33146/ 2006, on principles public servants should follow in the exercise of their duties.	Law 1038/2006, on government ethics, creates the Government Ethics Court Law 776/2005, on consumer production, creates Office of the Ombudsman of Consumers.	Law 487/2004, on tax fraud crimes	Decree 909/2006, reforms the Law on public administration procurements and contracts	
Guatemala	Agreement 645/2005, on regulations on access to public information in the judiciary branch and its departments	Law 89/2002, on probity and responsibility of public servants Government agreement 197/2004 on the agency's ethics standards	Basic Law 31/2002, de la Contraloría General de Cuentas.. Ruling 007/2002, creates the Commission to Combat Corruption in the Justice Sector. Agreements 469/2002 and 27/2003, create the National Commission on Transparency and against Corruption.	Law 19/2002, de Bancos y Grupos Financieros. Law 18/2002, de Supervisión Financiera. Agreement 40/2006, creates the specialized unit against criminal organizations dedicated to drug trafficking and/or laundering of money or other assets and crimes against the tax order. (Unilat).	Agreements 80/2004 y 644/2005; reforman el Reglamento de la Law de Contrataciones del Estado y crea el sistema "Guatecompras". Law on General Budget of State Revenues and Outlays 92/2005, regulates the use of the "Guatecompras" system.	Law 10/2004, on elections and political parties (regulates private financing). Agreement 19/2007 of the Electoral Tribunal, regulations for the control and monitoring of political party financing
Honduras	Law 170/2006, on Transparency and access to public information		Law 7/2005, of the National Anti-corruption Council	Law 45/2002, against the crime of asset laundering .	Decree 10/2005, creates the system "HondúCompras".	Law 44/2004, on elections and political organizations
Nicaragua	Law 621/2007, on access to public information	Law 438/2002, on probity of public servants	Decree 67/2002, creates the Office of Public Ethics	Law 419/2002, on the crimes of fraud, illicit enrichment, cover-ups, and influence peddling		
Panama	Law 6/2002, on transparency in public management	Decree 246/2004, Uniform Code of Ethics for public servants of the central government	Decreases 179/2004 and 110/2007, create the National Council for Transparency against Corruption Decree 15/2002, Code of Ethics of the Electoral Tribunal	Law 45/2003 and 14/2007, on financial crimes, fraud, illegal transfers, and money laundering, among other things	Law 22/2006, on government procurement (includes the electronic government procurement system "PanamaCompra").	Electoral law, 60/2002 (regulates campaign financing).

Source: Own elaboration based on Maytín, 2007

to correct (bill n° 15788, currently in the Commission on Legal Issues)¹³. Nevertheless, these laws provide tools for interaction between citizens and the public administration.

Guatemala, El Salvador and Costa Rica do not have specific access to information laws, although in Costa Rica there is extensive jurisprudence on the subject (State of the Nation Project, 2001). Panama, on the other hand, continues to face the enormous challenge of implementing and improving regulations established since 2001.

The media in the fight against corruption

The media has contributed to increase public awareness on corruption. In Nicaragua and Costa Rica, investigative journalism has been of key importance in discovering serious acts of corruption that even led to the prosecution of former presidents. Charges have also been presented against mayors, members of Congress, presidential candidates and political parties. In other countries, cases involving large sums have been exposed, as well as others implicating complex networks behind irregularities, which has required in depth investigation even outside the region (box 8.7).

Investigative journalism is a phenomenon present, in some cases incipiently, throughout Latin America. It has been important for exposing cases of political power abuse (for example, the “Vladivideos” in Peru). Conversely, the media’s incursion into accountability functions should not be exempt of criticism, especially due to violations that can be committed against citizens’ freedom or because of the political ties and interests of the media owners (Peruzzotti and Smulovitz, 2002; Thompson, 2000; Waisbord, 2000). However, the truth of the matter is that the media has become privileged means of discovering bureaucratic indiscretions because of the information it is privy to.

Unlike other people and groups, journalists have “informal” access to a vast amount of information; in general, they have citizens’ trust¹⁴, are not obliged to

reveal their sources (they can maintain the anonymity of the informer), they can use more flexible “interrogation” techniques than those a prosecutor must use, they have resources such as time availability, access to technologies and training in following up stories. In addition, there are new incentives to conduct exceptional investigations (international awards, recognition, etc.)

Some legal changes have been particularly important to promote investigative journalism in the isthmus. In 2005, the Supreme Court of Justice of Honduras eliminated press crimes (articles 411 and 412 of the Penal Code), considering them to be in violation of the right to freedom of expression enshrined in the Constitution. That same year, the Inter-American Court of Human Rights forced the Costa Rican state to revert two sentences against journalists accused of libel.

Journalism in Central America continues to face the limitations pointed out in the Second Report 2003, such as concentration of media ownership in groups that in some cases have political and business connections, legal obstacles to freedom of press and expression (Chamorro, 2002; ACI-Participa, 2007b; Transparency International-Costa Rica, 2006; State of the Nation Project, 2001), and even attempts on journalists’ personal and patrimonial integrity. Between 2003 and 2008, one journalist was murdered in each Central American country; in Guatemala and Costa Rica two cases were reported during this period¹⁵, according to data from the Impunity Project of the Inter-American Press Association (IAPA).

In this respect, in 2007, Central American countries did not improve their score on the Freedom House indicator for freedom of press, in relation to what was reported in 2003 for the Second Report. In 2003, only two countries (Costa Rica and Belize) were classified as “free”. Panama lowered its score and went from “free” in 2003 to “partially free” in 2007, due to the hostile legal environment for journalists. The rest of the countries have also been classified as “partially free” (Freedom House, 2007; also refer to the Statistical Compendium).

New technologies and Internet use

All the countries of the region have recently begun implementing new technologies allowing greater transparency in particularly sensitive processes, such as public contracting and paperwork (box 8.8). The availability of information, and even the possibility of carrying out administrative procedures and shopping on the Internet, contributes to transparency, in addition to improving public management.

Some of new technologies have been in operation for several years now, such as the “Guatecompras” portal (the Guatemalan Government’s contracting and procurement system) and “Comprared” in Costa Rica. Others are more recent, such as the fiscal transparency portal or the different pages of Guatemala’s government, “PanamaCompra” (public sector procurement), “PanamaTramita” (to reduce and simplify red tape at government offices). Others are just beginning, such as “Comprasal” and “NicaraguaCompra” (pertaining to public procurement and contracting). In general terms, Panama has been a regional leader in relation to informatization of institutional red tape and public services.

Though it is important to extend the use of new technologies to all the countries and to different areas of public management, it is equally necessary to analyze and learn from already existing experiences. A study carried out by Crucianelli (2008) between July and September 2007, on 160 government portals from Panama, El Salvador, Honduras and Nicaragua, shows that with regard to four variables relating to state fund management (budget, procurement, suppliers and salaries), these countries still exhibit deficiencies in the quantity and quality of online information.

The same study points out that Panama’s web sites are superior in relation to variables such as online enquiries and paperwork, statistics, state procurement, supplier lists, officials’ salaries, legal framework and information update. On the other hand,

TABLE 8.7

Central America: finalists for the Annual Award for Best Journalist Materials Publicizing Cases of Corruption in Latin America and the Caribbean. 2002-2006

Country, year, media and name of journalist	Reported case	Topic
Nicaragua, 2002, <i>La Prensa</i> , newspaper. Jorge Loáiciga Mayorga	President Aleman's "fat checks"	An elaborate mechanism, from the General Directorate of Revenues, through its Director General, was used to misappropriate funds, making it possible to launder US\$10 million. The money, in the form of credit memoranda, was deposited in accounts in Panama belonging to the Director General, and later used to pay off debts of the President of Nicaragua, through the State Nicaraguan Bank of Industry and Trade.
Guatemala, 2002, <i>Siglo XXI, La Prensa de Panamá</i> , Rodolfo Florez y Rolando Rodríguez.	The Panama connection	The president of Guatemala and other senior government officials opened 13 accounts in Panama and the British Virgin Islands in the name of "cardboard companies". The aim was to make monthly transfers of between US\$300,000 and \$500,000 to those accounts.
Guatemala, 2003, daily <i>Prensa Libre</i> , Vernick Gudiel.	Plundering of the Guatemalan Social Security Institute	Millions of dollars in fraud in the Guatemalan Social Security Institute.
Costa Rica, 2004, daily <i>La Nación</i> , Giannina Segnini, Ernesto Rivera y Mauricio Herrera.	Irregular payments to former presidents	The firms <i>Instrumentarium Medko, Medical</i> , of Finland, and Alcatel-CIT, of France made illicit payments to three former presidents of Costa Rica.
Costa Rica, 2004, <i>Telenoticias</i> , Channel 7, Liliana Carranza, Pilar Cisneros and Ignacio Santos.	Corruption catches up to three former presidents	Illicit payments by the firms Atcatel and <i>Instrumentarium</i> to former Costa Rican presidents.
El Salvador, 2004, <i>La Prensa Gráfica</i> , Rafael García.	Irregular procurement procedures for Cossal	Irregular contracts of the organizers of the XIX Central American and Caribbean Games.
Guatemala, 2004, <i>Prensa Libre</i> , Jennyfer Paredes.	Millions of <i>quetzales</i> from taxes funneled off to electoral campaigns	Two political parties received State monies for campaign financing.
Guatemala, 2004, daily <i>Siglo XXI</i> , Coralia Orantes, Carlos Menocal.	This is how Portillo's band laundered millions	Money laundering by senior officials linked to a former president, through the Banco Crédito Hipotecario Nacional.
Costa Rica, 2005, daily <i>La Nación</i> , Giannina Segnini, Ernesto Rivera y Mauricio Herrera	Payment of commissions to mayor of San Jose	Payment of commission to the mayor of San Jose by the Canadian firm EBI, to obtain the contract for operating the city's sanitary landfill.
El Salvador, 2005, <i>La Prensa Gráfica</i> , Rafael García.	Company owned by the Minister of Tourism wins bidding procedure	Illegal participation of a company owned by the Minister of Tourism in government business.
Guatemala, 2006, <i>Prensa Libre</i> , Martín Rodríguez y Jennyffer Paredes.	Pacur, works deals for congressional representatives	Votes bought in exchanges for works, involving the Government and most of the 158 congressional representatives. Investigations uncovered millions in works contracts of the congressional representatives that were awarded directly and without bidding procedures.
Costa Rica, 2006, daily <i>La Nación</i> , Gianinna Segnini, Vanessa Loaiza y Mauricio Herrera.	"Ghost" fund of reinsurance companies and payments to a firm belonging to a former president of the Republic.	Intermediary reinsurance companies of the National Insurance Institute raised their premiums without justification in order to insure infrastructure of the Costa Rican Electricity Institute; a "ghost" training fund was created outside the scope of State supervision, and checks were paid to an investment firm controlled by the then-president of the Republic.

Source: Institute for Press and Society and Transparency International.

Nicaragua's sites have gotten worse, "public documents that were available online until December 2006, disappeared in 2007" and these sites present "bias similar to that of virtual political propaganda and do not resemble modern means to bring valuable information to the responsible citizen, who exercises social control."

More citizen participation channels

In recent years, there has been increasing pressure on the part of citizens for governments not to show themselves indifferent to corruption. Throughout the region there are multiple experiences of social auditing at all levels of government, requests for the authorities and representatives to render accounts, public information requirements in matters affecting people's every day lives, participation in the development and follow up of

public plans and budgets, among other initiatives.

Social audits have been legally recognized throughout Central America, though they function with greater dynamism and permanency in Honduras, Nicaragua and Guatemala. They are generally applied at local government level (refer to chapter 9). Their main goal is to control the public management so that it complies with the general interests of the population. Those conducted to date have been of varied nature and almost always financed by international donors. Their main contribution has been that they have taken the concept of accountability to many corners of the isthmus and have gotten socially excluded people and groups involved in the process. Nonetheless, after analyzing several social auditing experiences, a study conducted by the IDB reached the following conclusions:

- Interaction between social audit bodies and other control institutions is inadequate, and functions are generally duplicated. Necessary synergies between the hundreds of social auditing experiments conducted in a country are lacking, because there is no general plan leading them in a common direction.
- Most experiences are carried out within a legal framework, but others are vulnerable to possible legal interpretations that threaten their continuity. A stronger legal basis is necessary.
- The impact of social audits has not been measured. In general, projects are not evaluated.
- Local accountability initiatives lack sufficient influence and political power. Also, they do not possess

TABLE 8.8

Central America: electronic portals for contracting, bureaucratic paperwork and public services

Country	Tool
Guatemala	Online government procurements, www.guatecompras.gob.gt Online tax payment, www.sat.gob.gt One-stop window Ministry of Economy, www.mineco.gob.gt
El Salvador	Tax payment, online checking of criminal records, obituaries, automobile licenses, and other administrative procedures http://www.servicios.gob.sv/ www.mh.gob.sv www.gobernacion.gob.sv http://www.minec.gob.sv/
Honduras	Information system for procurement procedures, www.honducmpras.gob.hn/ Honduras Compite, http://www.hondurascompite.com/
Nicaragua	NicaraguaCompra, http://www.nicaraguacompra.gob.ni/siscaefportal
Costa Rica	Government procurement system, Comprared https://www.hacienda.go.cr/Msib21/Espanol/DGABCA/OV_ST_CompraRed.htm Simplified procedures, www.tramites.go.cr Government procurement system (SIAC), Office of the Comptroller General of the Republic
Panama	Panamá administrative procedures, www.panamatramita.gob.pa Panamá procurement, www.panamacompra.gob.pa Panamá enterprises, www.panamaemprende.gob.pa

Source: Acción Ciudadana.

the procedures to take action against those officials who are breaking the law.

- The international community must facilitate the processes, not only with funding, but with other types of support.
- Experiences, learning and results of the accountability experiences are being exchanged; however, enhancing their level and intensity, especially among those in charge of carrying out the processes, would create added value (Sollis and Winder, 2006).

In relation to citizen mobilization, in Honduras and Nicaragua is contributed to a great extent to the approval of access to information laws¹⁶. In Panama there has been an improvement in the quality of citizenship participation forums, an example of which is the Pro Integridad project and the Public Institution Integrity Index Project¹⁷ (Foundation for Citizen Freedom Development, 2007a).

Control institutions have opened participation channels with good results. In addition to ombudsman, bodies such as comptrollers' offices, congresses, prosecutors' offices and some governmental institutions have one-stop complaint centers. Costa Rica's Office of the Comptroller General processes nearly 700 complaints a year (State of the Nation Program, 2007), while Panama's Office of the Comptroller General has an office of citizen complaints that dealt with and closed 834 cases in 2007 and proceedings before the Public Ministry can be followed via Internet. These participation channels are useful as "early alert" mechanisms that offer citizens a certain degree of anonymity enabling the detection of important corruption cases that were not discovered by internal or formal control bodies.

It is also worth mentioning that a considerable number of civil society organizations are giving follow up to IACAC implementation throughout the region, assessing to what extent countries have incorporated the rules of this

international instrument into their legal systems and what mechanisms are used to ensure enforcement, and in some cases becoming directly involved with governments and parliaments.

Greater citizen involvement has contributed, together with other factors already mentioned, such as media participation, to position the issue as a priority in national and regional political debate. Under these circumstances, public authorities have had to react to requests to eradicate or, at least, reduce corruption in the civil service. An example of this response is the 12th International Anti-Corruption Conference, held in Guatemala in 2006. For the first time, the issue of corruption and transparency brought the presidents of the Central American region together to sign the "Guatemala Declaration for a Corruption-Free Region" (box 8.3)

This document is an advance since it establishes an agreement at the highest political level to give priority to an issue and recognize it as a regional and transnational problem. However, it has the same limitations that many other Central American agreements have: unrealistic goals, a lack of a work plan, a lack of responsibilities and of allocated resources, and no anticipated consequences or effects in case of non-compliance.

Weaknesses of the control institutions

The *Second Report on Human Development in Central America and Panama* (2003) concluded that, at the beginning of the XX century, the judicial administration and accountability systems had serious deficiencies (follow up is given to judicial body performance in chapter 7). Anti-corruption prosecutors' offices created in the nineties reflected these weaknesses. It was found that they did not have specialized personnel, their work volumes were low compared to the magnitude of the corruption problem and lacked funding (State of the Region, 2003).

Beyond the technical or budget problems they may face, and even if these could be solved, the prosecutors' offices

have serious structural problems that prevent them from carrying out their work effectively. In this section, some of the deficiencies of horizontal control systems¹⁹ that hinder the fight against corruption are assessed, such as the atomization and lack of coordination with which these institutions work, their lack of sanctioning capacity and lack of autonomy with regard to the individuals they must supervise. Lastly, the absence of witness protection legislation is pointed out as one of the most important legal gaps. However, it is worth noting that these problems do not occur in the same manner in all the countries.

Analysis is focused on control institutions most directly involved in the fight against corruption: the Judicial system, anti-corruption prosecutors' offices, general comptroller bureaus and ombudsmen. Though it is recognized that all public bodies play a role in the control and transparency of the administration, the abovementioned institutional sectors are destined to lead this effort. However, because of their serious weaknesses, their impact in the fight against corruption is limited.

Uncoordinated proliferation of "toothless" institutions

The design of the control and accountability system can undermine the efforts of governments and organized citizens to combat corruption. The concept of accountability refers to a network of institutions that interact (Mainwaring and Welna, 2003), as a type of virtuous circle (Schedler et al., 1999) or a system that entails an interdependent functioning of its parts in relation to the political authorities. If an institution is strong and efficient in its fight against corruption but another is not, the interaction between the two can be negative and affect society's overall capacity to face this phenomenon (Taylor and Buranelli, 2006). Though management effectiveness of these institutions differs depending on the country and institution in question, there are some common situations in the region.

In Central America, accountability systems lack effective stewardship

and systematic coordination of activities. Recent legal reforms have established that comptrollers' offices have the overall coordination of the control systems. However, this has not been implemented. Meetings to share information between institutions have been held when necessary, but are not

common practice. In some countries, there are initiatives to achieve greater inter-institutional coordination to combat corruption, such as Panama's National Transparency and Anticorruption Council, Corruption, the National Anti-Corruption Council in Honduras, El Salvador's

Intergovernmental Ethics Committee, and the Inter-institutional Transparency Network in Costa Rica. Unfortunately, these efforts have not been successful in improving coordination, so far.

The proliferation of control mechanisms during the Central America's democratization period, and more

BOX 8.3

Political Leadership and the "Guatemala Declaration for a Region Free of Corruption"

To a great extent in political leadership lies the concrete possibility to develop new initiatives, pass pending political reforms, implement existing international conventions and transparency tools, and bring society as a whole together in order to tackle corruption problems. Institutions such as the World Bank and Transparency International give a lot of importance to the role of political leaders and institutional authorities in the success or failure of anti-corruption programs. This after confirming, as a result of repeated experiments worldwide, that showed that the enactment of laws and the creation of anti-corruption institutions did not on their own have the expected results (World Bank, 2006).

As to political will at the highest levels of the public administration and politics, the "Guatemala Declaration for a Corruption-Free Region", signed by the Central American presidents on November 15, 1006 stands out as a milestone. This agreement summarizes the governments' common agenda regarding combating corruption over the next years. It identifies thirteen priority areas and specific actions the heads of state commit to address, and places the fight against corruption in the field of regional integration. Follow up a year after signing this agreement indicates that most governments must try even harder to fulfill the objectives set forth, while civil society and other stakeholders such as the media, companies and international cooperation agencies can contribute more towards this task.

The agreements of the "Guatemala Declaration" are:

- Design and implement, in those cases

where this has not been done yet, national plans to promote transparency in the public administration, with the help of the different political, social and economic sectors.

- Propose and promote the approval, in those countries where this has not been done yet, of a regulatory framework to guarantee citizens' free access to public information, which is in the hands of the state, in a truthful and timely manner, with no restrictions other than those provided for by the Political Constitutions.
- Ensure state institutions periodically adopt mandatory accountability, in order to secure correct resource management by public servants.
- Strengthen and institutionalize the bodies in charge of formulating anti-corruption policies and transparency and anticorruption plans, according to international treaties and conventions on these matters.
- Implement legal regulations regarding public contracting in those countries where this has not been done yet, in order to obtain effective and efficient systems that optimize and make transparent the procedures for government acquisition of goods and services.
- Prioritize actions directed at preventing corruption in the handling of social programs and funds, so that investment in this area has a greater impact on poverty reduction.
- Promote the preparation, approval and implementation of rules of conduct to regulate ethical behavior in both the public and private sectors, including measures to prevent and control potential conflicts of interests, and effectively sanction those who fail to observe these rules.
- Promote, in those countries where this has not been done, rules, procedures and mechanisms to effectively denounce acts of corruption and measures for the protection of witnesses and other people taking part in the process, in order to facilitate the investigation and sanctioning of illegal conduct.
- Allocate resources for the implementation of citizen education and sensitization programs that promote a culture of ethical values in society.
- Promote the application of regulations and adopt procedures to avoid transnational corruption.
- Promote the strengthening of the superior bodies of control so they are truly independent, with functional and financial autonomy.
- Promote the adoption of regulations that establish control systems for electoral and political financing.
- Continue with the reform process of the civil service in the public administration, so that Member States have public servants who enjoy work stability based on their performance and efficiency and are guarantors of state compliance of its obligations and public policy sustainability.

Source: Foundation for Citizen Freedom Development, 2007a.

recently as part of the effort to modernize the state, has occurred without any planning. Nor has public policy followed the objective of improving the civil service by means of accountability. This lack of planning and of a general framework causes three main problems. First, the difficulty to allocate sufficient financial and human resources to the new institutions, in a context in which the prevailing tendency is the “shrinking” of the bureaucratic system²⁰. Many bodies have been created without the respective law allocating them a fresh source of financing. This is what happened to the Attorney General’s Office for Ethics in Costa Rica, where the Constitutional Court had to intervene to force members of congress to allocate a budget to the new institution.

Some control institutions depend substantially on international cooperation funds. In Honduras, 41% of the budget of the Office of the Human Rights Ombudsman comes from that source.

Furthermore, there are organizations that even sell their services (Panama’s General Comptroller’s Office, for example, offers consulting services), despite the loss of independence this may cause. Several of these agencies have been created by the President, which not only limits their range of action, but also puts a limit to their permanence, such is the case of the Public Ethics Office in Nicaragua and Guatemala’s Presidential Commission for Transparency and Anti-Corruption. Fortunately the latter was renewed by the government-elect in 2007.

A second problem deriving from the lack of planning is that new institutions are born with functions that are often duplicated, overlap or increased demand for already existing institutions (Saborío, 2004). In recent years, a series of specialized bodies that contribute to public administration control and citizens’ rights protection were added to democracies’ classic controls

(check and balance system, external auditing or controls). Their main functions can be summarized as prevention, supervision, investigation and sanction. Some are responsible for follow-up monitoring of international conventions, in addition to creating awareness and conducting preventive dissemination. As shown in table 8.9, there is a concentration of classic and specialized bodies in the abovementioned first three functions.

The legal framework supplies all these bodies with similar competences regarding control and investigation. The idea was probably to create greater capacity by developing crossed controls and multiple stakeholders that supervise each other. However, within a context of scarce resources, this uncoordinated duplicity without a general strategy does not help to establish a virtuous circle. On the contrary, it promotes competition between institutions for sources of information, especially

TABLE 8.9

Central America: main institutions of horizontal corruption control, according to function

	Prevention and Oversight	Investigation	Sanction ^{a/}
Traditional control institutions	Congress	Parlamento (comisiones de investigación) Procuradurías Ministerio Público	Congress ^{b/} (Investigative Committees) Criminal justice
Specialized control institutions	General Comptroller or Accounts Court, <i>Ombudsman</i> National anticorruption bodies Public services regulators Presidential offices or commissions for transparency and corruption control Ethics Offices or Tribunals Internal controls Ombudsman, Consumer Rights Offices	General Comptroller or Accounts Court <i>Ombudsman</i> National Anticorruption Bodies Public Services Regulators Ethics Offices or Tribunals Internal controls Consumer Rights Offices	General Comptroller or Accounts Court ^{c/} (administrative sanctions) and Consumer Rights Offices

a/ This refers to an institution’s authority to impose sanctions, without need for third-party intervention.

b/ In Costa Rica and Honduras, Congress is not authorized to sanction, although they are authorized to issue “moral” reprimands.

c/ Only in Panama (national wealth responsibility) and El Salvador (accountability court) can comptrollers’ offices impose sanctions at their own initiative.

when there is documentation or evidence that is difficult to access.

The third problem is that, despite the proliferation of control bodies, punitive capacity is concentrated in the Judiciary, through penal justice and, to a lesser extent, the supreme audit institutions. El Salvador's Accounting Court has the power to impose administrative or patrimonial responsibility and enforce corresponding payment. In Panama, the Office of the Comptroller General can also begin patrimonial responsibility proceedings and issue rulings on compensation, reparation or removal. In the rest of the countries, the comptrollers' offices or bodies specializing in corruption control need to activate administrative channels within the institutions or judicial processes in order to enforce their verdicts. Such is the case of the Honduran Supreme Audit Court, which orders the stay of proceedings or "lists of charges" that are judicable through the PGR, or the Office of the Comptroller General of Costa Rica that recommends sanctions that are enforced by the Administration within a set period. In most cases, these agencies can receive and process complaints, initiate investigations and settle them, and can share information with the media as part of an exposure and moral censorship strategy. However, they require the intervention of other authorities to enforce compliance with their recommendations (the ombudsmen and consumer protection agencies are a special case that will be addressed at the end of this chapter).

The three aforementioned problems are obvious when a corruption scandal arises. At that moment multiple control institutions, governmental and civic, are activated and most of these can initiate investigations and compile evidence. In some cases, this makes the Judiciary's subsequent work difficult, since several institutions move on ahead to collect information and in doing so alert those involved. The case of Costa Rica illustrates this phenomenon; in 2004, the corruption scandals in which several high officials and three of the country's former presidents were involved, activated at least

nine control institutions²², including an international audit contracted by the government of Finland, which was also involved in the case. The final results of the investigations conducted in each of these institutions were collected in at least five different reports. Their added value in strengthening the accountability system as a whole is doubtful.

The bottleneck in penal justice

The Judiciary and its different bodies²³ are the strongest institutions in the fight against corruption. It is in the courts where citizens' accusations or the investigations of other control bodies conclude; additionally, the judicial systems themselves have become directly involved in the persecution of acts of corruption, through the creation of prosecutors' offices and special units.

Despite the limited amount of information generated by these offices, it can be said that they continue working with serious limitations (lack of sufficient and trained human resources, difficulties to prepare evidence, etc.). Additionally, of the few cases they attend, only a very small portion result in condemnatory sentences²⁴ (State of the Region Project, 2003; State of the Nation Program, 2007). The revision of electronic press journals²⁵ and expert consultations was used to prepare table 8.10, which shows the meager amount of trials over the last five years that have resulted in a condemnatory sentence involving an important political figure.

Criminal justice is the main channel to sanction people who have committed acts of corruption. The specification of types of crime varies throughout Central America. In fact, the names of the crimes included in the first column of table 8.11 correspond to general types and these names may vary and in some cases they have multiple disaggregations (active bribery, passive bribery, felonious embezzlement, non-felonious embezzlement, etc.). The fact that the crime of international bribery is not typified in three countries is worthy of attention.

Even if a long judicial process results

in a condemnatory sentence, in some countries the established fines or alternative measures are very small in comparison with the money stolen or the damage caused. It is worth noting that in table 8.11 fixed fines are in no case in excess of 7,000 dollars. Jail sentences vary and depend on multiple factors involved in the crime, but in general the harshest ones impose ten, twelve and up to fifteen years in prison, while minimum sentences begin at six months. The most severely punished crimes are variations of bribery, embezzlement and prevarication. There are significant differences between countries: while in Panama the maximum sentence for prevarication is four years, in Costa Rica and El Salvador the maximum sentence is fifteen and ten years, respectively. Disqualification from holding public office is stipulated as a sanction for different crimes in three countries.

By way of illustration, in Guatemala, in a proceeding against a former minister a seven year jail sentence was imposed together with a sanction of three million quetzals (approximately 400,000 dollars), when the amount stolen and illegally received was calculated at eighty million quetzals (more than ten million dollars). Though it is necessary to further investigate this issue, there seems to be an imbalance regarding sanctions and responsibilities applied to civil servants according to rank (Acción Ciudadana, 2008).

Lack of independence

The independence of the institutions in charge of exerting horizontal accountability is crucial for the rule of law. Independence involves legal, financial and political components. Legally, institutions' autonomous status must be explicitly recognized to ensure freedom to act; financially, they must be able to prepare their own budgets and these must be approved without interference from stakeholders, and politically, the appointment of their leaders must be based on a merit system and the result of a parliamentary majority.

In Central America, Costa Rica's control system is the one with the greatest guarantee of independence, but

TABLE 8.10

Costa Rica, Nicaragua and Panama: relevant sentences imposed on political figures in concluded corruption cases. 1999-2003

Country	Year	Case	Sentenced
El Salvador	2007	???? ????	President of the institution.
Nicaragua	2002	Fraud, illegal extortion and misappropriation of public funds (case of Channel 6)	Several individuals and former public servants
Nicaragua	2003	Money laundering, fraud, misappropriation of funds and electoral crimes (La Huaca and the "trucker" cases)	A former president
Costa Rica	1999	Ministry of Labor, selling work permits to Nicaraguans	A minister and his senior advisor
Guatemala	2002 y 2003	Fraud for sale of overvalued land to the Guatemalan Social Security Institute (IGSS)	President and vice-president of the institution. The sentence was later revoked and only the person who bought the land was sentenced.

Source: Prepared by authors

this was not always the case. The first generation of control mechanisms²⁶, provided in the Constitution of 1949, was generally subject to the decisions of the Executive branch. Appointments were made by political party in office, it had budget and resource problems and legal competences were very limited (Villarreal, 2003). These same weaknesses can be seen during, in the Central American countries that have recently overcome military conflicts and begun democratization. This section addresses the lack of autonomy of the control agencies and the efforts by different actors to capture public institutions.

Partisan appointments of authorities

An important area for attention is the appointment of the control institutions' authorities. The main flaws detected are the inexistence of technical and previous experience requirements and the lack of information available to the citizenship during the selection processes. The competitions to

fill these posts are open to all citizens who wish to participate and comply with the requirements of minimum age, nationality, moral conduct, etc., only in two countries. Though most countries have rating mechanisms (commissions, questionnaires, etc.), the information on these evaluation processes is scarce and there is no procedure to enable extensive public scrutiny of the candidates (table 8.12). Recent elections of these authorities have been criticized, and in some cases stalemates have caused power vacuums and increased citizen distrust towards institutions of horizontal accountability.

In the case of Guatemala, the organization Acción Ciudadana points out that one of the main problems of the appointment procedures for the General Comptroller post is "the lack of a suitable and transparent process to choose the six candidates the Nomination Committee presents to Congress". In El Salvador "there is reservation as to the level of actual independence of the Accounting Supreme Court, as well as its level of politicization", even if "the

Constitution does not stipulate specific technical requirements for the appointment of the Accounting Court magistrates, such as accredited professional experience over a certain number of years (...) or their depoliticization", the way these magistrates are appointed "allows two of the main Salvadorian parties to occupy the Accounting Court, their interventions being identified with the interests of these parties" (Fusades, 2005). It is worth noting that the current president of this Court has occupied this post for fourteen years²⁷. In Costa Rica, the Attorney General's Office functioned for three years with an acting Attorney General, waiting for Congress to appoint a new position holder. In 2004, the appointment of a new ombudsman took almost a year. In 2002, the Aresep was without a regulator for two months. The Office of the Comptroller General was also without its leading official for almost five months, after comptroller elections were annulled by Parliament, as a result of alleged unethical behavior on his part (Villarreal, 2006).

TABLE 8.11

Central America: typology of maximum and minimum sanctions for corruption-related crimes

Type of crime ^{a/}	Guatemala	Honduras	El Salvador	Nicaragua	Costa Rica	Panamá ^{b/}
Abuse of authority	1 to 3 years of prison	3 to 6 years of prison and disqualification for twice the amount of time	2 to 4 years of prison and disqualification for the same amount of time	6 months to 2 years of prison and disqualification for 6 months to 4 years	3 months to 2 years of prison	1 to 2 years of prison or equivalent in days-fine or weekend arrest
Illegal appointments	Fine of US\$13 to US\$67	Fine of US\$1,326 to US\$2,656 and disqualification for 1 to 3 years	Not typified	100 to 300 days-fine and disqualification for 1 to 4 years	30 to 90 days-fine	Not typified
Usurpation of authority	1 to 3 years	2 to 5 years of prison. Fine of US\$30 to US\$2,652	Not typified	1 to 3 years of prison and disqualification for the same period	1 month to 1 year of prison	2 to 4 years of prison
Bribery	4 to 10 years of prison and fine of US\$6,724 to US\$67,724, plus disqualification for twice the amount of time	Fine of more than US\$2,650; 1 to 9 years of prison, plus absolute disqualification for twice the amount of time	2 to 6 years of prison and special disqualification from the job or position for the same amount of time.	4 to 6 years of prison and disqualification for the same amount of time	From 6 months to 6 years of prison and disqualification for 10 to 15 years	2 to 4 years of prison (up to 8 years for judges)
Embezzlement	3 to 10 years of prison and fine of US\$67 to US\$674	Not typified	6 to 15 years of prison	4 to 12 years of prison and absolute disqualification for the same period	3 to 12 years of prison	4 to 15 years of prison
Culpable embezzlement	Fine of US\$13 to US\$135	Not typified	2 to 5 years of prison	Not typified	30 to 150 days-fine	3 to 6 years of prison
Misappropriation	Fine of US\$13 to US\$ 135; double that if the damage is to goods of the State	2 to 12 years of prison and absolute disqualification for twice the amount of time	50 to 100 days-fine or 1 to 3 years of prison	2 to 5 years of prison and disqualification for the same amount of time	1 to 8 years of prison	1 to 6 years of prison
Illicit negotiations		3 to 6 years of prison and disqualification for twice the amount of time	4 to 8 years of prison and disqualification for the same amount of time	4 to 6 years of prison and from 100 to 300 days-fine	1 to 4 years of prison	Not typified
Extorsion	1 to 3 years of prison and fine of US\$40 to US\$4,000	Not typified	3 to 6 years of prison and disqualification from the position or job for the same amount of time	Not typified	2 to 8 years of prison	3 to 6 years of prison
Illicit enrichment	Not typified	Punishment depends on the amount of enrichment	3 to 10 years of prison and disqualification for the same amount of time	3 to 6 years of prison and disqualification for the same amount of time	3 to 6 years of prison	3 to 12 years of prison
International bribery	Not typified; applies to the figure of transnational bribery	Not typified	2 to 4 years of prison	4 to 8 years of prison and from 500 to 1,000 days-fine	2 to 10 years of prison	Not typified
Influence peddling	Not typified	4 to 9 years of prison, fine of US\$5,300 and absolute disqualification for twice the amount of time	1 to 3 years of prison and fine of 50 to 100 days-fine	4 to 6 years of prison and disqualification for the same period	2 to 5 years of prison	4 to 8 years of prison
Fraud	1 to 4 years of prison	6 to 9 years of prison and disqualification for twice the amount of time	Not typified	5 to 10 years of prison and disqualification for the same period	1 to 3 years of prison and between 100 and 200 days-fine	3 to 6 years of prison
Extorsion	6 months to 2 years of prison and fine of US\$7 to US\$40; can be doubled if it is for own benefit or for third parties	3 to 8 years of prison and disqualification for twice the amount of time	6 months to 2 years of prison	2 to 6 years of prison and disqualification for the same period	1 month to 1 year of prison	3 to 6 years of prison
Malfeasance of office	3 to 10 years of prison	3 to 9 years of prison and disqualification for twice the amount of time	3 to 10 years of prison and disqualification for the same amount of time	5 to 7 years of prison and disqualification for the same period	2 to 15 years of prison	2 to 4 years of prison

a/ General types of crimes; does not include a breakdown of possible subtypes for each. Not necessarily called this in all countries.

b/ At the time that this report was being written, the new criminal code Law 14 of 18 May 2007 had not entered into force.

Source: Prepared by authors based on criminal codes and special legislation on crimes against the public function.

Internal corruption restricts independent action

The horizontal accountability institutions are constantly subject to strong influences on the part of different economic and political groups. In order not to succumb to this pressure, they require controls and transparency regarding their actions, so as to reduce corruption from within.

Although each of the countries in the region faces different reality regarding the nobustness of the internal control system (within the horizontal accountability institutions themselves), a common problem affecting all Central American countries is corruption within the Judiciary. Chapters 7 and 12 of this Report address this issue based on a study conducted by the Due Process of Law Foundation (2007), which is why it is not referred to in detail in this analysis.

Specialized horizontal accountability institutions have not been free from corruption accusations. In Guatemala, the performance of the Office of the General Comptroller is limited and its image has been affected by the investigation of two former comptrollers charged with corruption. In 2007, El Salvador's Accounting Court was taken to the penal justice by the Office of the Prosecutor General, after discovering that its auditors asked the mayors for bribes to minimize observations in the audit reports. In Nicaragua, in the same year, the internal audit of the Office of the General Comptroller issued a report pointing out a series of infringements of the State Contracting Law (purchase of goods and services with "arranged" quotations); additionally, the "reform and modernization of the Founding Law of the General Comptroller in accordance with modern techniques of government auditing" has been identified as a priority (Civic Group for Ethics and Transparency, 2006). The case of Panama's Office of the General Comptroller is special as it does not have an internal auditing department.

These facts serve to illustrate an underlying question regarding who supervises the comptrollers²⁸. This

question is especially important in a context of weak governmental controls and limited citizen participation. A proposal presented in the final section of this chapter suggests greater involvement of the ombudsmen so they may act as control body supervisors.

Non-existent witness protection

In addition to the institutional weaknesses, there are several important legal loopholes, such as the non-existence of adequate legal frameworks for protection of witnesses and whistle-blowers of acts of corruption. These are aspects included in the Inter-American Convention Against Corruption and in the Guatemala Declaration. In Guatemala, legislation in this respect does not comply with the precepts of the IACAC (Acción Ciudadana, 2007a) and a budget increase for those institutions in charge of offering this protection is still pending, (Presidential Commission for Transparency and Anti-Corruption, 2006). In the case of Nicaragua, "effective measures to protect journalists and whistle-blowers who denounce acts of corruption are still needed" and it has been proposed that the state establish a system for the protection of whistle-blowers that includes measures to ensure work stability, as well as guarantees in relation to legal proceedings (Civic Group for Ethics and Transparency, 2007).

A detailed analysis conducted by organizations Funde, ISD, Fespad and Iudop, as part of the follow-up monitoring of the IACAC.

In El Salvador, concludes among other things that "if one considers that corruption, at least financial corruption, is not easily denounced by individuals, but rather by people who work close to those, who commit corruption (...) denunciations requiring special protection are those by public servants and therefore, state investigation bodies must remain outside political party interests, such as the Office of the Prosecutor General, the Accounting Courts and the Supreme Court of Justice" (Funde et al., 2007).

In Panama, there are rules that oblige public servants to denounce acts that

are detrimental to the state. However, the climate perceived by the potential whistle-blower or witness, is one that discourages the exercise of this duty. Deficiencies in relation to witness protection increase the general feeling of unease when risks are being taken by whistle-blowers. Serious concern exists on the capabilities of the system for the protection of basic rights, no matter whether one considers the Office of the Ombudsman, the National Police or the Public Ministry, because of the lack of resources and vulnerability to corruption.

Despite the above, some significant progress have been achieved. In the case of Costa Rica, the Law Against Corruption and Illegal Enrichment in the Civil Service regulates denunciation and admissibility of acts of corruption, and establishes a unique procedure to receive and process these (Attorney General's Office for Ethics, 2007). However, strengthening the protection for witnesses, victims, prosecutors and other people affected as a result of their participation in the investigation of a crime is still pending. In the case of Honduras, the law for the Protection of Witnesses, Expert Witnesses and Other Penal Process Participants was passed in 2007. It is considered that "this law is at the forefront of current international legislation on witness protection" (ACI-Participa, 2007b).

Citizen Distrust in Control Systems

Institutions to control and combat corruption interact in a particular social context that can generate – or not – feedback and support for its work. In Central America, citizens exhibit disturbing attitudes of mistrust towards the system of institutional control over public action.

Fear and perception of incompetence encourage non-denunciation

The inexistence or ineffectiveness of mechanisms to report and denounce cases is a corruption risk factor. This, together with a certain level of tolerance

TABLE 8.12

Central America: appointment characteristics of accounting bodies authorities

	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua	Panama
Technical requisites and relevant prior experiencia	No	No	No	Yes	No	No
Open competitive process	Yes	No	No	Yes	No	No
Attested evaluation mechanism	Yes	No	Yes	Yes	No	Yes
Transparent and mass information in the process	No	No	No	No	No	No
Election by specially conditioned majority	Yes	Yes	Yes	Yes	Yes	Yes
Participation of civil society	No	No	No ^{a/}	No	No	No
Coincides with president's term of office	No	No	No	No	No	Yes
Possibility of reelection	Yes	Yes	No	No	Yes	No
Questioned about partisanship in last election	Yes	Yes	Yes	Yes	Yes	Yes

a/ There have been nomination committees and, in some cases, candidate elections for the post of comptroller general of accounts have been monitored by civil society. (Coalition for Transparency).

Source: prepared by authors

on the part of citizens, as seen at the beginning of this chapter, creates a breeding ground for the incidence of the phenomenon.

Available data reveal significant limitations in the functioning of these mechanisms. In a study conducted for Nicaragua's health sector, Di Tella and Savedoff (2001) found that fear – and not the lack of knowledge – was the main reason why the interviewees did not denounce acts of corruption. The same study points out that mechanisms to deal with these situations are perceived as non-existent of low quality.

In Panama, public service users were polled in relation to the process of denouncing illegal practices and two of every five interviewees responded that the procedure is bothersome, lacks independence and entails a personal safety risk. This opinion was shared by one of every two civil servants interviewed (Foundation for Citizen Freedom Development, 2004). When this data is compared with other studies, investigators point out that “the climate to denounce other crimes seems to share the same characteristics the climate to denounce corruption possesses”. Non-denunciation is also an extended phenomenon in other areas of Panamanian social life: according to a recent study, 57,4% of crime victims do not denounce the crime. Of these,

44,3% justify this by saying “it is useless” (Pérez and Seligson, 2007).

In Honduras, doubts have also been expressed in relation to control mechanisms. In 2002, nearly 75% of the public service users interviewed by the World Bank indicated they had not reported incidents of corruption even though they were affected by them. Among the reasons mentioned for this behavior are answers such as “everybody knows but no one reports it”, “those who report end up suffering more”, “nothing can be proven”, or “no one will be investigated or punished”. Civil servants consulted added “there is no protection against possible reprisals” (World Bank, 2002).

In Guatemala, in 2005 only 15% of households stated that they knew how to report corruption and, of these, only 34% described the mechanisms as efficient. It also found that “all the households interviewed considered that non-investigation of the cases on the part of the authorities, is an important reason not to report corruption cases”, and 95% of them “considered that fear, derived from potential harassment and reprisals, determines the decision not to report corruption cases in the country” (World Bank, 2005).

However, in Guatemala the people interviewed “mentioned that availability of mechanisms to denounce anomalies, such as physical mailboxes, a

dedicated telephone line or the use of Internet, was important”. This opinion is not to be ignored if one bears in mind that “the extent to which citizens are forced to pay bribes to obtain public services in Guatemalan institutions, is substantially lower when these institutions have mechanisms that hold them responsible for the quality of services delivered” (World Bank, 2005). That is, citizen pressure is a disincentive for corruption and an incentive for civil servants to deliver better service, “while exposing them more when they accept bribes” (World Bank, 2005).

The organization Acción Ciudadana found that an “organizational structure that lacks an efficient denunciation system and complaint mechanisms, which users can resort to, is more inclined to commit acts of corruption by their staff, especially those who hold intermediate positions and are directly involved in the rendering of services and attending users” (Acción Ciudadana, 2008).

Lack of denunciation follow-up by competent authorities is another weakness identified as a factor that creates disincentives for citizen participation. Specialized control institutions, such as supreme audit institutions or public prosecutors' offices, show significant limitations regarding to their institutional capacities to attend and follow up citizen complaints.

Widespread belief in offender is impunity

The perception of impunity perceived by the population is high throughout the entire region (graph 8.3). This problem is not exclusively related to corruption, but is widespread in all judicial matters, especially those relating to the safety of citizens (please see chapter 12). As has been seen, problems relating to institutional design underlie the existence of specialized control bodies without power to sanction (“toothless”) and the bottleneck effect on the Judiciary, which is finally the one to determine the outcome of corruption cases. Furthermore, judicial processes tend to be long and the percentage of convictions low. Additionally, for there to be a sanction there must be a complaint, and in this area citizens in Central America are ignorant of the available channels or indifferent to these, as shown in the previous paragraphs.

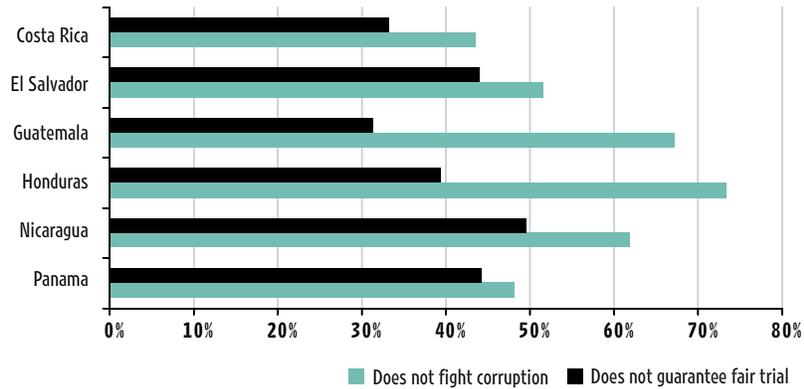
In general terms, citizen trust in control bodies tends to be lower than trust in the media (graph 8.4). In the *Americas Barometer*, using the 2004-2006 average to eliminate the effect of short-term fluctuations, one sees that in all the countries the media scores 10 to 17 percentage points higher (on a 0 to 100 scale) than control institutions. The exceptions are El Salvador, Costa Rica and Colombia, where the level of citizen trust in the *ombudsman* is similar to that of the media. It is worth noting that, except for Honduras, the justice system tends to get the worst scores in all countries.

Examples of Corruption in Specific Sectors of Public Management

The nature of corruption in public management makes it difficult not only to study its real magnitude and implications (box 8.4), but its modes of operation. Despite this, it still holds true that both are relevant issues. Due to the lack of systematic studies on these subjects, a more detailed approach has been adopted in this section compiling evidence on how corruption operates in three fields of contact between government authority and citizens: public

GRAPH 8.3

Central America: percentage of people that consider^{a/} the judicial system does not guarantee a fair trial and that the Government does not fight corruption. 2006

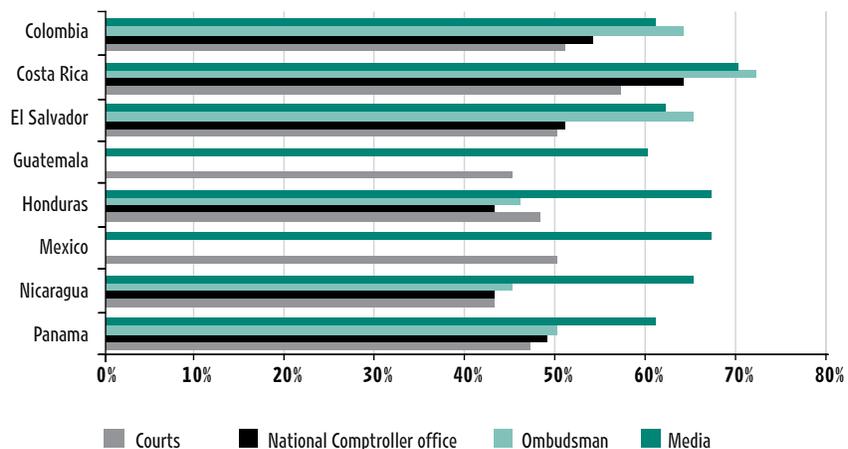


Questions: Do you consider that the government makes an effort to fight corruption? Do courts guarantee fair trial? Percentages of people that answered: nothing, very little or little, with values of 1, 2 and 3 respectively.

Source: Lapop, 2006.

GRAPH 8.4

Latin America: level of trust in control institutions^{a/} 2004-2006



a/ The level of trust in control institutions is measured on a scale of 0-100, where 0 indicates that no one trusts the institution and 100 that all interviewees have a high level of trust in the institution.

Source: Lapop, 2004 and 2006.

lic contracting, because of its economic impact; health service delivery, because of its direct link with the basic wellbeing of citizens and because it deals with a fundamental human right; and public

permits, because of its frequency and importance in people’s every day lives and for business development²⁹. Also, these are fields for which some verified information is available.

Legislative gaps and irregular practices in public contracting

Public contracting systems in Central America have serious flaws that make them vulnerable to corruption. Though reforms have been undertaken to strengthen them, amongst which an increase in the use of electronic contracting systems stands out, there are still imperfections in the laws and problems in practice common to all of the isthmian countries.

It must be remembered that combating procurement corruption requires the coordinated functioning of the entire control system. It includes a series of measures relating to differ-

ent areas, such as internal, external or social accountability, the technical capacity of civil servants in charge of public purchases, information systems relating to these transactions, regulations regarding conflicts of interests between civil servants and bidders, among other elements. All of these are part of the shield that must surround the use of public resources.

Guatemala is a case in point. “Advances and achievements in the promotion of transparency in public procurement, through the establishment of electronic purchasing systems, as well as the use of other tools of the Integrated System for Financial

Administration, are few, because of the lack of integral reforms to combat corruption (...) in strategic areas such as the system of sworn patrimonial statements, mechanisms to detect and solve conflicts of interests, as well as access to public information, which have not experienced the necessary changes to promote effective transparency” (Acción Ciudadana, 2006a).

When comparing the public contracting systems of Guatemala, Panama and Costa Rica with an ideal system derived from the measures contained in the IACAC, UNCAC and other international standards, Transparency International established that these

BOX 8.4

The cost of corruption in Central America

Mauro's (1995) pioneer study showed the negative effects of corruption on the economy; this was done using the relationship between the risk-country indexes and economic growth. Since then a new line of investigation has been opened tending to quantify the weight of corruption for countries. Analyses have demonstrated the existence of a negative effect on: income per capita (Kaufmann and Kraay, 2002), productivity per capita and fiscal income (Tanzi and Davoodi, 2001), distribution of income and poverty (Gupta et al, 2002), among others.

Similar exercises have been carried out in Central America. Following Wei's (1999) methodology, in the case of Panama it was estimated that an improvement in the corruption level (measured according to the average risk index value of the World Competitiveness Report (ICRG) in 1991 and 1997, which in this case was 2,0) to corruption levels of other countries such as Costa Rica (whose average ICRG value between 1991 and 1997 is 5), would have increased the average growth rate during the 1990-1997 period by 1,98 percentage

points. That is, if Panama had reached the indicated value, its income per capita would have increased by 633 dollars. This can be interpreted as an opportunity cost for the income it did not receive, representing 20,6% less in income per capita when compared with 2006.

Following a similar procedure, direct foreign investment during the 1990-1997 period would have increased by 3,0 percentage points, which translates into a huge loss for the country (seen as an opportunity cost) equivalent to 24,7 million dollars in just one year (Mosquera, 2006).

In Costa Rica, the total amount of money stolen in six large corruption cases over the last years (Emergency Fund, Civil Aviation, Anglo Bank, Social Compensation Fund, CCSS-Fischel, ICE-Alcatel) amounts to almost 330,5 million dollars. This money is equivalent to almost a third of the total budget allocated to the Ministry of Public Education, nearly the same amount allocated to the first cycles of elementary school and almost double what is stipulated for high school. Additionally, this amount of money is equivalent to 95% of the budget of the Ministry of Agriculture and Livestock (Acuña, 2004).

In Nicaragua, a single case illustrates the economic loss caused by acts of corruption. This is the case against one former president, who was accused of embezzlement and diversion of approximately 1,400 million cordobas (almost 100 million dollars) that were stolen from the public budget and “laundered” through foreign banks. This sum is almost equivalent to the entire health budget for 2004, which was 1,532 million cordobas, or the education budget, which was 1,564 million. It also represents 17% of the country's exports (Civic Group for Ethics and Transparency, 2006)

Taking the World Bank's methodology as reference, which considers that the cost of corruption, mainly bribery, amounts to about 3% of the world economy, in Central America that percentage is equivalent to 2,922 million dollars (the region's GDP in 2006 was 97.404,9 million dollars). This figure represents 83% and 85% of Guatemala's and El Salvador's exports, respectively, and exceeds Honduras' and Nicaragua's exports by more than 50% (data from the Central American Monetary Council CAMC, 2006).

countries are still far from that ideal (table 8.13). The abuse of direct contract awarding, limited advertising of contracting opportunities, flaws regarding ineligibility and incompatibilities, as well as difficulties regarding access to information and citizen participation, are some of the obstacles that have been identified in the region (Transparency International, 2006b).

Lack of responsibility and accountability in health services

The health sector's multiple dimensions makes it particularly vulnerable to abuse and corruption. According to Transparency International's *Global Corruption Report 2006*, no other sector faces a combination of uncertainty (faced with the health problem and its solution), asymmetric information

(between a citizen and a doctor) and a large number of dispersed stakeholders, such as in the health sector.

The findings of this Report (Transparency International, 2007a) add to evidence gathered by Lewis (2004) when reviewing information in a large number of countries. The author found the frequent corruption problems in the health system to be personnel absenteeism³⁰, bad management of allocated funds and their diversion for other purposes, illegal payments for services, contracting and procurement irregularities, and payments for job placements and promotions.

The Central American countries are not exempt from these problems. With regard to health system absenteeism and resource deviation, in Costa Rica and Nicaragua hospitals, Di Tella and

Savedoff (2001) found that the most recurrent abuses were theft of medical provisions and absenteeism on the part of medical staff, together with illegal charges for services delivered. In Costa Rica, though absenteeism was particularly extended and confirmed by 90% of the nursing staff and doctors interviewed in this study, most indicated that theft is not a frequent practice.

In Nicaragua, absenteeism was an acute problem, together with use of equipment for private patients or friends. Private use of a public vehicle, spending on non health-related activities, patients receiving preferential treatment and deviation of funds for personal use, were among the most mentioned problems by users and staff (Di Tella and Savedoff, 2001).

TABLE 8.13

Costa Rica, Guatemala and Panama: public contracting compliance report. 2005-2006 (PERCENTAGES)

Indicators ^{a/}	Guatemala	Costa Rica	Panama
A. Institutional indicators			
Public spending planning	66.7	46.7	46.7
Objective selection mechanisms	45.0	66.7	16.7
Contract execution and fulfillment	42.9	21.4	14.3
Oversight of contractual activity	51.2	55.8	40.7
Access to information	54.2	64.6	47.9
B. Indicators of system (or context) integrity			
Institutional transparency	n/a	100.0	n/d
Quality of political system	69.8	64.3	66.9
Quality of bureaucracy	60.9	85.7	55.7
Quality of legal system	75.8	60.0	74.2
No statistical information available	No statistical information	Partial results ^{b/} available	100.0
D. Indicadores de percepción	91.7	58.3	37.5

a/ The responses are based on 138 indicators of 4 types that were chosen to observe different aspects of transparency in government procurement systems: i) institutional indicators, ii) system integrity indicators, iii) perception indicators, iv) performance indicators. Indicators compare the response to an ideal procurement system determined by the minimum standards of Transparency International, CICC and Uncac on government procurement, as well as international practices. The risk corresponds to the difference between reality and this ideal. The scale is 0 to 100 (where 100 is high risk and 0 is no risk).

b/ In general, there appears to be no "hard" information for conducting an evaluation of institutional performance. Nonetheless, progress has been made in terms of publishing procurement notices in national newspapers, in addition to the mandatory publishing in the official gazette, and of creating web sites to disseminate the relevant information.

Source: Transparency International.

Illegal payments are a key for access to timely health services according to Di Tella and Savedoff for Nicaragua, and the study by Acción Ciudadana and the University of Costa Rica. In the case of Guatemala, “making arrangements so that a patient is seen urgently or admitted into a public health care center or hospital before schedule” is a common practice, while in Costa Rica’s case it has to do with receiving “medical treatment or undergoing an operation by the Costa Rican Social Security Fund through payment to a doctor”.

In addition, weaknesses affecting health sector public contracting have been identified in some countries. Lewis’ study points out that in Costa Rica public procurement of medicines is flawed due to the weaknesses of quality evaluation systems, absence of process audits and uncontrolled political interference in procurement decisions (Lewis, 2006). In Guatemala, in view of the need to increase transparency in state procurement of medicines, in 2005 the Coalition for Transparency formulated recommendations including modification to the Procurement and Contracting Law, reducing contracting process margins of discretion, creating a health policy according to the country’s needs and applicable international regulations, and ensuring the supervision and technical assessment of personnel in charge of procurement and contracting processes (Coalition for Transparency, 2006).

There is extended public opinion aware on the misappropriation of funds and goods assigned to the health sector in Central America. In the past four years, major corruption cases broke out in most countries. Costa Rica, El Salvador and Guatemala have had scandals relating to the procurement of medications, medical equipment and infrastructure, while in Honduras and Nicaragua there have been irregularities in the health sector modernization programs. These examples dramatically illustrate the extent of this problem, in which the scope goes beyond affecting the individual service user.

The existence of corruption in the health sector is more serious if consid-

ered from the human development perspective, as the satisfaction of needs in this area is a priority for the population. A high incidence of paperwork-related corruption cases related to access to urgent medical attention or getting a medical appointment, have been reported in Guatemala and Costa Rica, which helps to illustrate this argument. Without getting into the detailed analysis of the quality or quantity of services that can be provided, a study by the Central American Institute for Fiscal Studies (Icefi, 2007) estimates that approximately ten million Central American citizens (24,5% of the total population) are currently unable to exercise their right to health, while 30,7 million (72,8% of the total population) are not affiliated to the social security system. Therefore, the unsatisfied demand for access to health and the difficulty to replace these services with private ones could be associated with a greater tendency to commit acts of corruption in order to obtain these.

However, it is important to clarify that this type of corruption risk is not exclusive to the low-income population. The World Bank (2002) indicates that, in the case of Honduras, the incidence of bribery reported by the users of health care services was greater in the mid-income group, while the low and high-income groups registered similar levels in frequency of bribery, though in all cases the percentage of reports on high frequency of this type of corruption was below 5%. Likewise, in Costa Rica, although the highest rates of corruption occur among people who declared a monthly income under 60 dollars (30,000 colones), 37% of all bribes are found in the group with a 500 to 1,000 dollar monthly income (250,000 to 500,000 colones) that is, a mid-income group, while bribes were not reported among those with a monthly income of more than 2,000 dollars (one million colones) (Poltronieri, 2006). Additionally, corruption “is associated with a lower quality of the service rendered and less access among the poor to public services”. In the case of Guatemala, where a greater incidence of corruption is reported in

health care system institutions than in other public institutions, “the services rendered by agencies with lower levels of administrative corruption are considered better quality and more accessible to the poor than services rendered by agencies with higher corruption levels” (World Bank, 2005). A similar situation occurs in Honduras, where it was found that a significant negative correlation exists between bribery and service quality” (World Bank, 2002).

All of these reveals that corruption has a direct effect on health services access and quality. Unfortunately, citizens who want to receive quality service would have an incentive to revert to bribery, which in the long run could result in a widespread decrease in service quality.

Undue payments for business paperwork

Paperwork related to registrations, permits, licenses and other requirements to set up businesses is a fertile ground for corruption. However, survey data is the only source of information available. Data produced by the *Global Corruption Barometer* and the *Americas Barometer*, indicates that although the perception of corruption in registration and permit services (registrations and permits issued by public authorities) is not the highest among the sectors analyzed, these services are being affected by corruption. Unfortunately, surveys do not contain a specific sample of businesspeople.

According to the World Bank in 2006, the percentage of companies with operations in Central America that described corruption as a “very significant obstacle”, is greater than the percentage of companies with operations in other Latin American countries. Also, corruption was identified by businesspeople as the second most important obstacle, the first being bureaucracy and the third crime (World Bank, 2006b).

Data from the World Bank’s Investment Climate Survey provide details for Guatemala, Honduras and Nicaragua. Surveys conducted between 2003 and 2004 indicate that most busi-

nesspeople report having been asked to pay bribes to speed up procedures (more than half of the cases businesspeople were asked for a bribe). This is even more noticeable in Honduras, where six of every ten businesspeople experienced this situation (graph 8.5).

Information available on license- or permit renewal also indicates a significant incidence of corruption in Guatemala and Nicaragua, particularly with regard to what companies participating in the study identified as the “the need to pay bribes“ in order to renew permits with the Ministry of Agriculture and health authorities and in order to be able to comply with building requirements. Data from Honduras indicates a lower incidence of corruption in relation to this type of paperwork (graph 8.6)

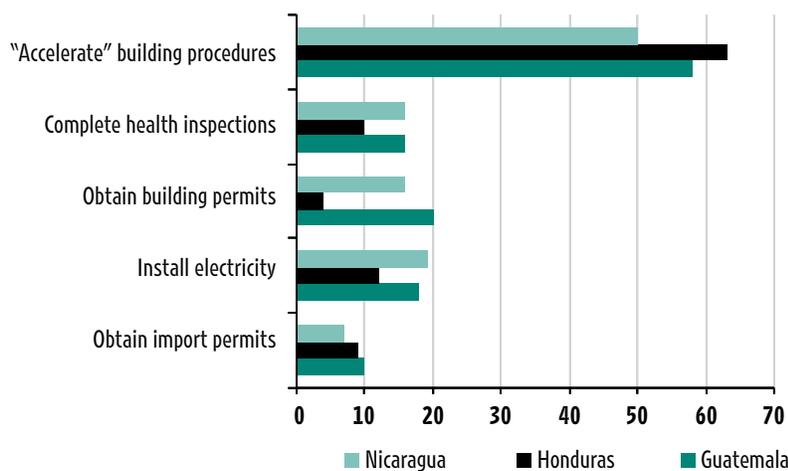
From a corruption risk perspective is also useful to analyze institutional incentives for the incidence of corrupt practices³¹. Traditionally, a greater amount of procedures and time has been associated with greater corruption opportunities or risks. This idea could be reinforced if the paperwork in relation to which some type of undue act is reported is the same paperwork requiring considerable time for completion.

Data presented in the section on patterns of corruption (graphs 8.5 and 8.6) reveals the incidence of corruption in paperwork relating to import licenses, electricity connection, construction permits and sanitary inspections. Table 8.14, provided by the World Bank’s *Doing Business* study provides varied information, both between countries as well as between types of paperwork.

Although it could be pointed out, that Central American countries in general have a greater amount of procedures, time required and costs involved in obtaining licenses in contrast to the OECD countries, there are considerable differences between the countries in the region and between factors measured, such as the number of procedures (El Salvador (34) and Honduras (17), or cost (Guatemala (1,142 dollars) and Panama (143 dollars)). Something similar occurs in other areas, such as property registration, tax payment and trans-border

GRAPH 8.5

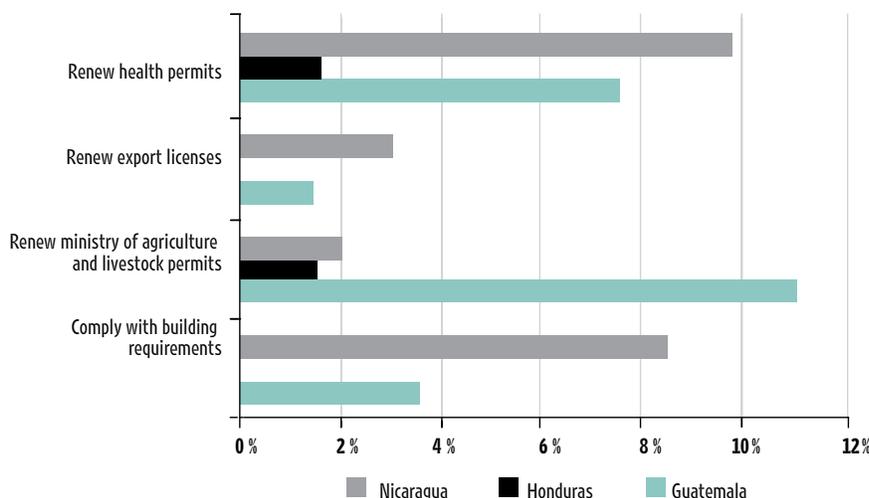
Guatemala, Honduras and Nicaragua: percentage of companies that reported that bribes are required for some paperwork and public services. 2003-2004



Source: Own elaboration based on the *Investment Climate Survey database, 2003-2004*, World Bank.

GRAPH 8.6

Guatemala, Honduras and Nicaragua: percentage of companies that reported having been asked for bribes to renew permits. 2003-2004



Source: Own elaboration based on the *Investment Climate Survey database, 2003-2004*, World Bank.

trade. One could say that, in the isthmus a greater amount of procedures (for example the number of taxes that must be paid) entails greater interaction between users/businesspeople and civil servants and therefore, more opportunities for corruption, provided there is supply on the part of the user/businessperson or demand on the part of the civil servant.

A more obvious incentive is related to the time that paperwork requires. In this case Doing Business data shows a clear tendency in the Central American region: herein the duration of the procedures is significantly greater than in OECD countries, though Panama is the exception in several cases. Therefore, if the time required to get a license or

complete a procedure is lengthy, there will be greater incentive either for the user/business person to want to speed it up with some mode of corruption, or for the civil servant to ask for a bribe or an other illegal act.

The *Investment Climate Survey* (2003-2004) database, which unfortunately only has information on Nicaragua, Guatemala and Honduras, points out that managers devote fifteen to twenty days per year to interacting with civil servants, in addition to the fact that more than 50% of companies pay bribes to speed up paperwork. This way, in procedures requiring more time there is a greater risk of corruption and this would be a valid scenario for the region according to the data ana-

lyzed. However, a larger amount of time devoted to interaction with civil servants could not only be the result of a larger amount of paperwork, but also the need or interest in doing business with the state.

Box 8.5 shows some measures that can help combat corruption in those institutions in charge of delivering public services and that can also be applied to the field of paperwork, provided it entails interaction between civil servants and citizens. The availability of clear and complete public information on service or paperwork costs or procedures stands out as an important strategy. The availability of this information will make it more difficult to ask citizens for undue payments.

TABLE 8.14

Central America: paperwork for companies regarding licenses, property registration, payment of taxes and trans-border trade

Procedure/indicator	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua	Panamá	Latin America and the Caribbean	Countries and OCDE
Permit management ^{a/}								
Duration (days)	178	155	235	125	219	149	238.6	153.3
Cost ^{b/}	244.2	197.9	1142.2	634.1	898.6	143.9	268.2	62.2
Registry of property ^{c/}								
Number of procedures	6	5	5	7	8	7	8.2	4.9
Duration (days)	21	31	30	24	124	44	58.9	28
Cost (percentage of the value of the property)	3.3	3.6	1	5.8	3.5	2.4	5	4.6
Payment of taxes ^{d/}								
Payments (number)	43	66	39	47	64	59	48.7	15.1
Time (hours)	402	224	344	424	240	482	366.9	183.3
Crossborder trade ^{e/}								
Documents for exporting (number)	7	8	11	7	5	3	6.7	4.5
Time to export (days)	18	21	19	20	36	9	22.6	9.8
Cost of exporting (US\$ per container)	660	540	1	1	1	650	1095.6	905
Documents for importing (number)	8	11	11	11	5	4	7.7	5
Time for exporting (days)	25	18	18	23	38	9	24	10.4
Cost of importing (US\$ per container)	660	540	1	975	1	850	1208.3	986.1

a/ Procedures, time and cost to build a warehouse, including licenses and permits, required notifications and inspections, and connection of public services.

b/ Percentage of per capita income.

c/ Easiness with which companies can obtain proprietary rights; includes number of steps, time and cost of land register.

d/ Shows the complications administrative measures impose on tax payment. These measures include the number of payments a new businessperson must make, the number of preparation hours required, tax return and payment.

e/ Costs and procedures related to the import and export of a standard shipment of merchandise. Each official procedure is recorded beginning with the final agreement between both parties and ending with merchandise delivery.

Source: *Doing Business* 2008, World Bank..

BOX 8.5

Some proposals to combat public service corruption

- Establish public reporting systems and complaint mechanisms so that complaints and responses can be made known to all citizens and state comptrollers or supervisors.
- Organize demand. When there are user associations or other types of social organizations to supervise, accompany and monitor public service delivery, whether in the hands of the state or market, there is a greater chance of fair access to these services and that they function in a transparent manner and efficiently.
- Promote competitiveness in public service delivery.
- Avoid public service monopolies, as they tend to create unfair and inefficient situations, more so when these are public services in private hands.
- Strengthen institutions that regulate privatized public services (superintendence's), while promoting the correct functioning of the justice system and state control bodies.

Source: Acción Ciudadana, 2008.

In addition to this flexibility, the ombudsmen have the powers to initiate investigations in public institutions, either motivated by a complaint or ex-officio. Another advantage is their proximity to the population, as they are forums for interaction between citizen demands and public institutions. Most *ombudsmen* have different channels to attend complaints (telephone, e-mail, fact, etc.) and regional offices or mobile office programs to reach the entire country. They are also the privileged recipients of international cooperation funds, in addition to the increasing national budgets that have been allocated to them over the last five years (table 8.15).

If the network of horizontal accountability institutions works properly, the prosecutors' offices on ethics, anti-corruption commissions or accounting courts can supplement the investigations with documentation and complaints received by the *ombudsman* which, otherwise, might not reach them. This lays the foundation for a system of mutual cooperation. But also, if the network of controls does not function correctly, the *ombudsmen* can assume a fundamental role in reporting acts of corruption, starting by making it clear that the control bodies are not fulfilling their duties. The *ombudsman* can act as supervisor of the control institutions, which in turn must account for their actions (Maino, 1992; Ugglá, 2003; UNDP, 1997; Diamond, 1999).

The *ombudsmen's* work in Honduras and Guatemala has stood out because of its dynamism in the promotion of transparency and accountability. Additionally, in Honduras the social audits had extensive territorial and thematic coverage.

Offices of the Ombudsman or consumer rights commissions

Consumer rights and competition agencies are useful devices to combat corruption. In the end, the cost of corruption is transferred to consumers and users; therefore, greater awareness and extensive promotion of their rights contributes to greater system. As for prevention, consumer protection agencies

Special note: New control institutions and their unexplored potential to combat corruption

As part of the proliferation of horizontal accountability institutions, over the last twenty years citizens' rights protection agencies have appeared in all Central American countries. These are the *ombudsmen* or offices of the ombudsman for human rights and consumer protection agencies. Neither of the two types of institutions was created with the specific purpose of fighting corruption. However, they have great potential to help improving the general functioning of a country's control and accountability network. Indeed, both institutions have advantages that make them ideal to tackle illegal practices within the civil service. They interact directly and daily with citizens and also have decision-making and in some cases, sanctioning powers, as will be seen next. The objective of this section is to present the current situation of these institutions and explore their potential to fight corruption.

The ombudsman and their magistracy of influence

All Central American countries have Ombudsmen or offices of the ombudsman.

Guatemala was one of the first countries in Latin America to create this institution. The Second Report on Human Development in Central America and Panama (1985), described the legal and institutional framework of these offices and noted that their nature and dynamics were different, some more focused on human rights and others on public administration irregularities. In some cases, they also enjoy a high level of prestige (Costa Rica, Honduras and Guatemala), while in others they have been involved in trust crises (El Salvador and Nicaragua) (State of the Region Project, 2003).

This section highlights the work carried out by the *ombudsmen* as institutions of control and their privileged position to contribute towards the fight against corruption. It is certainly recognized that in no country do they have sanctioning capacity, as their function is carried out by means of reputational authority, that is, compliance with their interventions and recommendations will depend on the will of the aforementioned and moral authority of the ombudsman or prosecutor. However, the flexibility of its reputational authority is precisely what makes these institutions enjoy a significant margin for maneuvering in the fight against corruption.

TABLE 8.15

Central America: general information on the offices of the human rights ombudsman

2002-2006

Year	2002	2003	2004	2005	2006
Costa Rica					
Total budget received (dollars)	2.738.132	2.976.833	3.092.388	3.559.847	3.511.457
Total budget executed(dollars)	2.514.221	2.682.136	2.767.804	3.115.542	3.043.795
Number of regional offices	4	4	4	4	4
Complaints received ^{a/}	10.361	10.835	11.615	11.205	8.970
Open files	1.956	2.094	1.874	2.302	2.044
Closed files	1.919	1.643	2.026	1.883	2.639
Guatemala					
Total budget received (dollars)	4.514.890	5.046.256	5.983.851	8.733.658	9.093.804
Received (dollars)					
International donations(dollars)	538	1.241	1.638	1.627	2.192
Total budget executed (dollars)	4.482.839	5.024.653	5.755.644	8.325.381	8.998.840
Number of employees	61	59	69	62	84
Number of regional offices	28	28	28	33	36
Complaints received	23.299	36.908	35.677	25.361	24.020
Open files	431	2.109	2.968	2.997	3.066
Honduras					
Total budget received (dollars)	1.300.000	1.400.000	1.400.000	1.500.000	1.700.000
International donations (dollars)	900.000	700.000	600.000	700.000	700.000
total budget executed (dollars)	2.135.500	2.041.900	1.942.100	2.113.900	2.299.900
Number of employees	94	114	119	126	129
Number of regional offices	14	15	16	16	16
Number of complaints received	9.273	9.374	11.500	9.061	9.390
Nicaragua					
Number of complaints received	1.877	2.423	1.936	2.425	
Panama					
Total budget received (dollars)	2.800.000	2.325.000	2.325.000	2.345.000	2.437.000
International donations (dollars)		28.300			
Total budget executed (dollars)	2.617.000	2.324.000	2.237.000	2.317.000	2.437.000
Number of employees	125	124	122	126	138
Number of regional offices	3	1	0	0	0

Note: This table was prepared with the assistance of the Technical Secretariata (ICHR) and the Office of the President of the Central American Council of Human Rights Prosecutors (CCPDH). The variables reflect the information provided by the ombudsman of each country. El Salvador did not respond to the request for information.

a/ Refers to complaints that come under the jurisdiction of the Ombudsman, although the number of queries handled is almost twice that number.

Source: Pegram, 2007, based on information received directly from each institution.

defend legal security, information transparency, fair competition and the responsibility of companies and institutions that supply goods and services. They also help activate investigation mechanisms and in some cases, even impose sanctions for non-compliance with the law.

Over the last years, a normative and institutional framework for consumer protection has been established throughout Central America. This progress coincides with the adoption of a style of development based on trade

liberalization, export promotion, free trade agreements and the incorporation of information technologies and communications. All Central American countries have specific legislation on consumer rights protection. All the political constitutions have provisions on this subject, though the definition of legally-protected rights differs (table 8.16). In Costa Rica and Panama, constitutional texts explicitly recognize consumer rights, while in the rest of the area these refer to the state's obligation to protect the consumer. Legislation

deriving from these precepts was enacted or reformed mainly during the 1994-2007 period (with the exception of Honduras, whose law is from 1989).

The emergence of consumer protection is a shared characteristic throughout most Latin American countries (UNCTAD 2004). In fact, as of 2004 this issue started to appear in presidential summit declarations, such as the Extraordinary Summit of the Americas, the XVI Ibero-American Summit of Heads of State and Government, the XXX

TABLE 8.16

Central America: basic normative and institutional framework for consumer protection. 2007

País	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua	Panamá
Constitutional rule	Article 46	Article 101	Article 119	Article 331	Articles 10 and 105	Article 49
Recognized principle	Consumer rights	State obligation to protect consumers	State obligation to protect consumers	State obligation to protect consumers	State obligation to protect consumers Law 182, of	Consumer rights and State obligation to protect consumers
Legal framework	Law 7472, of 1995	Law 776, of 2005	Law 006-2003, of 2003	Law 41-89, of 1989	1994 and Law 2187, of 1999	Law 45, of 2007
Specialized agency	DAC-MEIC and CNC	Consumer protection office	DAAC-MEC	DGPC-SIC	DGCTM-MFIC	Acodeco
Status	Mixed system ^{a/}	Decentralized agency ^{b/}	Unit of Ministry ^{c/}	Unit of Ministry	Unit of Ministry	Decentralized agency

Acronyms:

Costa Rica: DAC-MEIC: Directorate, Consumer Support, Ministry of Economy, Industry and Trade; CNC: National Consumer Commission

El Salvador: DC: Consumer Protection Office. The law also created a sanctioning court.

Guatemala: DAAC-MEC: Directorate, Consumer Attention and Assistance, Ministry of the Economy

Honduras: DGPC-SIC: General Directorate, Production and Consumption, Secretariat of Industry and Trade

Nicaragua: DGCTM-MFIC: General Directorate, Market Competition and Transparency, Ministry of Development, Industry and Trade

Panama: Acodeco: Consumer and Competition Protection Authority

a/ Mixed system: The CNC is a deconcentrated agency with instrumental legal standing; DAC-MEIC is a unit of the ministry.

b/ Decentralized agency: has legal standing, and administrative and budgetary autonomy

c/ Unit of the ministry: Division or department of a ministry or secretariat, subordinate to the respective minister.

Source: Prepared by the author based on Maguiña. 2008

Ordinary Meeting of Heads of State and Government of the Countries of the Central American Integration System and the XVII Ibero-American Summit of Heads of State and Government and their program of action. This development, though significant, is incipient in comparison with what occurs in the world's most developed countries.

At the regional level, there is the Central American Council for Consumer Protection (Concadeco)³², a body within the Central American Integration System (SICA) seeks to strengthen consumer protection. At the country level, agencies have a different legal status. In Guatemala, Honduras and Nicaragua, they are departments within a ministry, which directly subordinates them to a ministerial authority. In these cases, the ministries have several functions (generally the promo-

tion of production and trade). This institutional design creates, in principle, two problems: on the one hand, the ministry related to the producers and businesspeople (goods and services providers) is also in charge of consumer protection, which can create tension and conflicts of priorities; on the other hand, within the respective executive branches, these ministries have become weaker, because of the abandonment of policies for the promotion of national production since the nineties³³.

In El Salvador and Panama, consumer protection bodies are decentralized, independent institutions. They are autonomous in terms of corporate status, net worth and administration, which, in principle, gives them a greater guarantee of independence. Costa Rica chose a complex institutional design. It is a mixed system, since

the consumer protection function is carried out by two bodies: one is a ministry department (Consumer Support Office of the Ministry of Economy and Industry, DAC-MEIC) and the other is the National Consumer Commission (CNC), a decentralized body assigned to the same ministry, but with instrumental corporate status. Additionally, the regulation of public service rates and the protection of public service users are the responsibility of another institution: the Public Services Regulatory Authority (Aresep).

Though all the countries recognize, alternatively, consumer rights or the state's obligation to protect them, effective incorporation of these principles into national legislation has not been achieved across the board. A review of the way in which rules and regulations in force deal with nine

fundamental rights recognized by the United Nations, reveals that only in Costa Rica, El Salvador and Panama legislation explicitly includes them (table 8.17). The legal framework is quite developed in Guatemala and Nicaragua, but nonetheless shows some weaknesses: in the first case, regarding the right to judicial recourse and in the second, regarding the right to choose and access a series of goods and services, as well as the suitability of the good or service in the terms offered. Honduras is, by far, the country with the most deficient legal framework³⁴.

Mechanisms to protect consumers' rights are very diverse. With the exception of Honduras and, in part, Nicaragua, Central America legislation provides for the alternative resolution of conflicts (conciliation by means of mediation or arbitration). In all the countries, the consumer protection body can impose sanctions on suppliers or retailers that infringe the law. However, there are important differences here. In Costa Rica and Panama, the sanctioning procedure can only be activated as a result of a consumer complaint, while protection bodies can initiate "ex-officio" investigations, which will eventually culminate in a sanction, in most of the other countries. Salvadorian regulations refer to this important power in terms of

the defense of the consumers' "diffuse interests".

All the countries provide for the control of the price of goods and services, though the extent of this competence varies significantly. Express authority to control prices in emergency situations is a common competence (with the partial exception of Guatemala, where consumer rights legislation refers to other laws). However, countries have introduced limitations: in Costa Rica, goods and services provided by public institutions are excluded from consumer protection body's authority and price regulation is limited to emergency situations. This latter condition is shared by El Salvador and Panama. Honduras and Nicaragua, on the other hand, have more interventionist laws conferring extensive price control powers.

In general terms, the Salvadorian legislation is most developed in terms of diversity of consumer rights protection mechanisms (table 8.18). It is also the one that stipulates maximum amounts for administrative sanctions that are substantially superior to the rest of the countries (between 34 and 556 times).

The institutional and technical capacities of consumer protection institutions are of key importance for the effective protection of consumer rights. In this field, all the countries in the area exhibit significant limitations

(table 8.19). For example, to ensure the independent functioning of these bodies they require an independent source of income, affected by political or economic pressures. However, with the exception of Guatemala, protection body resources come from state's general budget. In some cases, the decisions of these organizations are subject to review by a political authority (minister). The appointment of leaders within this sector is not open to public competition, which introduces uncertainty. Finally, with the exception of El Salvador and Panama, territorial presence of consumer protection services tends to be very scarce (in the capital or in a few cities). Also, in those cases where regional offices are available, many of them have poor service delivery capacity (Maguiña, 2008).

The rights protection bodies of El Salvador and Panama and, to a lesser extent, Costa Rica, are the ones with greater administrative and functional autonomy. El Salvador is the country where territorial presence is most decentralized. Honduras is the opposite: protection bodies have less administrative and functional autonomy and territorial presence is scarce.

The analysis of consumer protection agency workloads and results in Central America enables an initial approach to the issue of their real impact. In

TABLE 8.17

Central America: incorporation of consumer rights into national legislation. 2007

Derechos de consumidor	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua	Panamá
Right to sufficient, simple and timely information	X	X	X		X	X
Right to protection against risky goods or services	X	X	X		X	X
Right to education on consumer rights	X	X	X		X	X
Right to choose and have access to a variety of goods and services	X	X	X			X
Right to not be discriminated against and to receive equitable treatment	X	X	X		X	X
Right to receive the good or service in the terms it was offered	X	X	X	X		X
Right to defend one's interest individually or collectively	X	X	X	X	X	X
Right to complain by administrative procedure	X	X	X	X	X	X
Right to complain by legal procedure	X	X		X	X	X

"X" means that, in that country, the law recognizes that right. Gray shading means lack or weakness of the law for that particular point.

Source: Prepared by authors based on Maguiña, 2008.

TABLE 8.18

Central America: consumer protection mechanisms. 2007

Mecanism	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua	Panama
Alternate conflict resolution						
Mediation or conciliation	X	X	X		X	X
Arbitration	X	X	X			X
Sanctions						
Official sanctioning procedure		X	X	X	X	
Sanctioning through complaints	X	X	X	X	X	X
Legal route (not excluding)	X	X	c/		X	X
Price control						
In emergency situations	b/	X		X	X	X
In "normal" circumstances ^{a/}			X	X	X	
Public goods and services	X	X	X	X	X	
Maximum amount of administrative sanctions (dollars)	12	852	14	53	2	25

"X" means that, in that country, this mechanism is recognized under the law. A gray shading shows lack or weak legislation in this given subject.

a/ Normal circumstances: the agency may regulate prices even when a state of emergency has not been declared by the government.

b/ Los precios de los servicios públicos son regulados por una entidad distinta: la Autoridad Reguladora de los Servicios Públicos.

c/ Only as consumers' right to resolve conflicts with suppliers.

Sources: Prepared by authors based on Maguiña, 2008.

TABLE 8.19

Central America: autonomy and decentralization of consumer rights protection bodies. 2007

Mecanisms	Indicator	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua	Panama
Economic autonomy	Own income			X			
	Institution collects fines	X		X	X	X	X
	Specific budget item	X	X	X	X	X	X
Administrative autonomy	Independent of other agency		X				X
	Own staff	X	X	X		X	X
	Administers budget	X	X	X			X
Functional autonomy	Authorities elected by competitive means						
	Not subject to review by ministerial authority	X	X			X	X
	Dissemination of guidelines and resolutions	X	X			X	X
	Review by judicial branch	X	X	X			X
Decentralization	Regional offices in ...						
	Less than 25% of the departments	X			X		
	Between 26% and 75% of the departments			X		X	
	More than 75% of the departments		X				X

In the dimensions of economic, administrative and functional autonomy, "X" means that, in that country, legislation grants the consumer protection agency authority on these matters. In the decentralization dimension, "X" indicates the country's situation.

Source: Own elaboration based on Maguiña, 2008

general terms, indicators available on workload reveal that these agencies still have little presence. In countries with several millions of consumers, the number of enquiries, conciliations, complaints filed and supervisions carried out by these bodies is relatively low (table 8.20). In this context, however, there are significant differences. El Salvador's Consumer Ombudsman is, by far, the one with the largest workload, despite its recent creation.

If measured according to results, consumer protection agency achievements are quite different, though once again modest. Benefits obtained by consumers in conciliations in El Salvador³⁶ and Panama are ten to twenty times higher than in Costa Rica, Guatemala and Honduras. In all countries, fines imposed on retailers and suppliers

in 2006 were low, irrespective of the severity of sanctions stipulated in the corresponding legislations.

Finally, over the last years, consumer associations for the defense of consumer rights have appeared throughout the isthmus (Maguiña, 2008). These non-governmental organizations show diverse approaches and scope. Some have a general mandate, such as the Committee for the Defense of the Honduran Consumer (Codecoh) or the Consumer Defense Society of Nicaragua (Licodenic); others defend specific interests, such as the Association for Urban and Extraurban Transportation of Guatemala (Autue). Some associations endeavor to attain national scope – Panama's National Association of Consumer and Users (Uncurepa) – while others are local,

such as the consumer associations of Granada (Acugra) and León (Adeconle) in Nicaragua. Some organizations promote broader political and ideological proposals, such as the Association of Free Consumers of Costa Rica, close to a libertarian ideology, while many associations are limited to sectorial defense (for example, Panama's National Association of Medication Consumers, Anacomge). In general terms, consumer organization in the region is still incipient. It emerged four to five decades after social movements to defend consumers emerged in the United States and Europe (Chatriot et al., 2006; Hilton, 2005).

TABLE 8.20

Central America^{a/}: information on workload and results of consumer rights protection bodies 2006

Dimension/ indicator	Costa Rica	El Salvador	Guatemala	Honduras	Panama
Volume of work					
Guidelines requested	27.374	35.347		2.000	12.586
Conciliations entered	1.717	6.352	4.118	300	417
Complaints received	1.916			660	946
Oversight initiated	24	3.762	10.408	4.365	40.000
Educational activities	35	52	47	35	62
Outcomes					
Benefit to consumers through conciliation (dollars)	586.690	9.618.597	398.423	347.000	5.218.461
Fines resulting from complaints (dollars)	427.746			35.095	482.675

a/ No information available on Nicaragua.

Source: Maguiña, 2008, based on information provided by the institutions of each country.

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English traslation: Jessica Manley and Susan Raine.

NOTES

- 1** This definition of corruption was also used in the Second Report (2003), and corresponds to Transparency International's own definition.
- 2** This contradiction was also demonstrated in a study by Razafindrakoto and Roubaud (2006), conducted in eight African capitals between 2000 and 2003. Their findings show that citizen's perceptions of corruption differed substantially from the perceptions of experts and specialists. For example, 13% of the population experienced acts of corruption and experts predicted 54%. The difference might suggest different ways of conceiving corruption: a common concept for the population and a specialized one for the expert in the subject. For Eastern Europe and Asia, refer to Knack 2006 for a critical analysis of corruption indicators.
- 3** Other information sources producing international indicators on the subject are included in the Statistical Compendium.
- 4** IPC methodology does not intend to show valid comparisons over time; its value lies mainly in providing situation statuses for specific periods.
- 5** The control of corruption indicator is one of the six dimensions that form part of the World Bank's governance indicators. The remaining dimensions are: 1) voice and accountability, 2) political instability and absence of violence, 3) Government effectiveness, 4) Regulatory quality, and 5) Rule of law. These six dimensions, in turn, group 31 indicators, compiled by means of interviews and quantitative information from more than thirteen organizations, for a total of 178 countries. The latter are distributed in percentiles from 1 to 100, where 100 is the maximum score and indicates satisfactory compliance with all the indicators contained in that dimension.
- 6** The *Latinbarometer* is not problem-free. The question referred to does not necessarily measure incidences, since it asks people whether they are aware of an act of corruption, not if they have experienced it, which adds to the lack of precision.
- 7** For example, Haiti registers 50% victimization, Mexico, Bolivia and Ecuador, among others, more than 30% (Vargas and Rosero 2007, based on Lapop, 2006).
- 8** Some appraisements are: "internal legislation is stagnated, and makes of corruption increase" and "In Nicaragua, state policy is not the fight against corruption, on the contrary: corruption is State policy" (Civic Group for Ethics and Transparency, 2006 and 2007b)
- 9** The gap between perception and incidence is also present in relation to citizen security. However, in corrupt acts there is no equivalent to homicide or theft rate, against which the opinions of a survey can be compared. This is due to the lack of complete historical records.
- 10** In 2006, Red Probidad prepared a study entitled *Governmental Efforts to Combat Corruption in Central America with reports for Nicaragua, Honduras, El Salvador, Costa Rica, and a special report on the Panama Canal* (<http://probidad.net/blog/publicaciones/>). Country studies of Transparency International's National Integrity System (www.transparency.org/recrea) provide a detailed look at the situation in Guatemala, Nicaragua, Honduras, Panama and Costa Rica. Also, in 2006 the organizations Acción Ciudadana in Guatemala, Ethics and Transparency in Nicaragua, TI in Panama, ACI-Participa in Honduras and TI in Costa Rica were updated. Evaluations conducted by the AAA-USAID project and Casals and Associates (2004) are also available.
- 11** Reports are available at the OAS Office of Legal Cooperation, <http://www.oas.org/juridico/spanish/Lucha.html>
- 12** In view of the slowness of the Guatemalan Congress to approve an Access to Information Law, in 2005 Guatemala's President issued an executive decree that obliged all bodies of the Executive to publicize annual reports. Despite its importance, it is only applicable to a fraction of public sector and it has a weak legal grounding.
- 13** "The recent enactment of the Law Against Corruption and Legal Enrichment in the Civil Service, nº 8422, of October 6, 2004, was an important contribution to prevent and eradicate this social scourge. Unfortunately, regulations were approved with a series of inconsistencies affecting the fundamental rights of many civil servants, as well as the proper functioning of the public system as such" (bill nº 15788).
- 14** In Latin America, only in Chile the level of citizen trust in the press is lower than the level of trust in public institutions: just 28% of the interviewees expressed high or any level of trust in the media. (CID-Gallup, 2002)
- 15** The IAPA list only includes journalists, who were killed or disappeared in reprisal for the exercise of their profession. It cannot be asserted whether these cases are related to corruption.
- 16** In Honduras, the role of Alianza 72, a group of social organizations promoting the debate and subsequent approval of the access to information law, stands out. In the case of Nicaragua, this role was assumed by the Promotion Group for the Public Access to Information Law, made up of social organizations and several public bodies.
- 17** These projects are sponsored by the Panamanian Center for Research and Social Action (www.ceaspa.org.pa) and the Foundation for Citizen Freedom Development (www.libertadciudadana.org)
- 18** Civil society's reports on IACAC compliance are available at: http://www.transparency.org/index.php/regional_pages/americas/convenciones/sociedad_civil/soc_civil_oea/oas_mecanismo
- 19** Horizontal controls refer to supervision within State institutions themselves, including the balance between powers and specialized control bodies. On the other hand, vertical control refers to supervision of the state by the citizenship (for example, rendering of accounts during electoral processes) (O'Donnell, 2003). A variation of the latter is societal accountability, which specifically refers to oversight exerted by organized citizens (Peruzzotti and Smulovitz, 2002). Other authors have different classifications; for example see: Mainwaring, 2003; Moreno et al., 2003; Philp, 2000; Mulgan, 2003; Behn, 2001.
- 20** The same international organizations that recommend reducing the size of bureaucracies and public budgets are the ones that promote the creation of new horizontal accountability institutions (ombudsman's offices, commissions, prosecutor's offices) and these institutions, in turn, press for resources and posts.
- 21** This classification is based on O'Donnell (2003) who divides control bodies into institutions of balance (of power), including the powers of the state, and specialized institutions of horizontal control (for example, courts of accounts, ombudsmen, ombudsman offices, etc.).
- 22** Constitutional Court, Commission of Notables appointed by the President of the Republic, Congress Investigation Committee, Office of the Comptroller General of the Republic, Attorney General's Office for Ethics, Ministry of Economy's Commission for the Promotion of Competition, Office of the Ombudsman, internal audits of each institution (Costa Rican Social Security Institute and the Costa Rican Institute of Electricity) and political party ethics committees.
- 23** The Second Report (2003) contained a detailed description of Central America's justice administration systems, the organization of which has not varied to date.
- 24** An attempt was made in this Report to update the number of cases reported to the anti-corruption prosecutor's offices, but this was not possible. In Costa Rica's case, the statistical data of the Prosecutor's Office for Economic Crimes and Against Corruption is the following: 1,643 complaints due to actions against the duties of the civil service, (if the abuse of authority is excluded, the total lowers to 597), 9.7% of cases concluded and 108 people sentenced; 26.9% condemnatory sentences (Solana, 2007).
- 25** The media consulted were: Guatemala: Prensa Libre, 2006; Honduras: El Heraldo, 2006-2007; Costa Rica: La Nación 2004-2008; El Salvador: La Prensa Gráfica 2005-2007 and El Faro 2007; Nicaragua: La Prensa and El Nuevo Diario, 2004-2007; Transparency International, 2007a.
- 26** The 1949 Political Constitution created the Office of the Comptroller General of the Republic, the Office of the Attorney General and the National Electricity Service (SNE) for the supervision of public services. It also strengthened Executive counterweights such as the Electoral Supreme Tribunal and the Judicial Power. However, at the time, the issue of corruption was not considered a priority area for these institutions (Villarreal, 2003).
- 27** The President of the Court, member of the PCN Executive Council, presided over the institution from 1990 to 1998, date on which he retired to compete for his party in the 1999 presidential elections. He returned to the Court in 2002 and has remained in this position since then. He was recently re-elected until 2011, despite appeals by different organizations to depoliticize the institution (including the Probidad network and Fusades).

28 The question has its origins in Greek philosophy: *Quis custodiet ipsos custodes?* It is originally attributed to Plato, in *The Republic*, written approximately 360 B.C. The answer is that controllers must control themselves against themselves. It has currently been used to study civic-military relations, the police, the Judicial Power and the issue of accountability.

29 The purpose of this approach in specific sectors is to illustrate the extended and multifaceted problem of corruption in public affairs and, in this way, contribute to the exploration of possible solutions. All of these are fields in which the in-depth analysis and exploration of specific alternatives are indeed much needed.

30 In his study on corruption in the health sector in several countries, Lewis points out that absenteeism occurs for several reasons, many of them legitimate or necessary. "For example, medical staff in rural areas must often travel to the cities to get paid, obtain supplies or medicines or suffer delays because of poor infrastructure or the climate (...) [However,] in other cases, some members of the medical staff or health care services have other commitments or preferences and do not show up for work. They receive a salary but deliver minimum services or none at all. This is, in fact, theft, a form of *public responsibility for personal benefits*" (Lewis, 2006).

31 Information available does not allow clear associations between some factors relating to red tape and the existence of corruption. Therefore, institutional incentives are examined and the costs users or businesspeople must assume for paperwork or in order to get a permit, specifically the number of procedures and time needed to complete them, are considered corruption risk factors.

32 The Central American Council for Consumer Protection has the following objectives: a) to create mechanisms to strengthen the defense and protection of Central American consumers' rights, b) to develop and intensify relations between Central America's governmental consumer protection agencies, by means of mutual cooperation and assistance, for the solution of controversies in trans-border consumption, c) to contribute from its field of action to the Region's economic and social integration processes (Concadeco, 2007).

33 In Costa Rica's case, refer to the State of the Nation Program, 2004.

34 During the editing process of this Report, a new consumer law was approved in Honduras. This law had been awaiting presidential sanction for publication and to take effect.

35 In Costa Rica, the regulation of public service rates is the responsibility of another organization, the Public Services Regulatory Authority (Aresep), which receives user complaints and can impose sanctions.

36 The Tribunal for sanctions of El Salvador's Ombudsman began operations in 2006. In 2007, the sum of fines imposed totalled 1,2 million dollars.