



**LAWYERS COUNCIL**  
*for CIVIL & ECONOMIC RIGHTS*

# LATIN AMERICA ANTICORRUPTION ASSESSMENT 2020



**CYRUS R. VANCE CENTER**  
FOR INTERNATIONAL JUSTICE



# Latin America Anticorruption Assessment 2020

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# Abbreviations and Acronyms

Section	Abbreviations or Acronym	Meaning
<b>General</b>	LP	Legal Professionals
	CSOS	Community Organizations
	OECD	Organization for Economic Co-operation and Development
<b>Guatemala</b>	CICIG	International Commission against Impunity in Guatemala
<b>México</b>	SNA	National Anti-Corruption System

# Executive Summary

## The Anti-Corruption Assessment in Latin America

**2020** is a regional study involving eight countries (Argentina, Brazil, Chile, Colombia, Guatemala, Mexico, Panama, and Peru), which delineates legal efforts to prevent and combat corruption. Unlike other efforts that focus on measuring corruption or its perception, this study follows a strictly legal approach to analyze legislative and regulatory efforts, in addition to the institutional framework, aimed at preventing, targeting, and prosecuting corruption. This report addresses the perspective of legal professionals (hereinafter “LP” or “legal professionals”) engaged in anti-corruption practice in various sectors, including law firms, businesses, academia, civil society organizations (hereinafter “CSOs”), human rights defenders, and others.

This study addresses for each of the countries reviewed eight aspects that are key to the fight against corruption: public and private sector corruption; complaint mechanisms; whistleblower protection; specialized agencies; institutional coordination mechanisms; civil society engagement and participation; and transparency and access to information.

The information obtained through two questionnaires completed by lawyers from member firms of the Lawyers Council for Civil and Economic Rights (hereinafter the “Lawyers Council”) and members of the legal community of the countries evaluated, was divided into three categories: legal framework; implementation; and governmental bodies. With this information, the methodology developed **an overall score awarded to each country** on a scale from zero (lowest) to ten (highest). Of the overall ratings, Chile scored the highest and Guatemala the lowest.

Country	Final Score
Chile	7.86
Argentina	5.95
Peru	5.86
Brazil	5.67
Colombia	5.60
Mexico	5.51
Panama	3.97
Guatemala	3.89

This report highlights the following findings: Argentina’s legal framework is generally satisfactory, but its most significant shortcoming involves inadequate regulatory implementation resulting from the lack of (i) political will; (ii) political independence of the anti-corruption agencies; (iii) economic and human resources; and (iv) formal mechanisms for civil society engagement and participation. **Brazil’s** legal framework has notably improved but, in addition to undue political influence and a lack of political will to effectively implement the anti-corruption legal framework, there is a need to establish corporate criminal liability in connection with acts of corruption. **Chile’s** regulatory framework is generally effective, and the governmental agencies and authorities have the capacity and political independence to implement effectively the anti-corruption regime. **Colombia** shows inadequate implementation due to lack of political will and absence of mechanisms for detecting and preventing corruption.

In **Guatemala**, the legal framework is deficient and is characterized by significant institutional weakness. Anti-corruption efforts are led by certain individual government officials rather than by institutions. Despite having a solid and comprehensive legal framework, **Mexico** stands out for a lack of regulatory implementation and reduced

institutional capacity. In addition, anti-corruption authorities are subject to political influence. Despite being the only jurisdiction that maintains a beneficial ownership registry, **Panama** displays a deficient legal framework and a lack of institutional capacity and fundamental elements required to combat corruption. Finally, **Peru** has one of the strongest legal frameworks, but its implementation is negatively affected by flaws in procedural rules and a lack of political will.

**This regional analysis** shows that most Latin American countries follow an ex-post facto approach of sanctioning corruption through the criminal system. Preventive efforts to reduce corruption, in both the public and private sectors, are insufficient. Similarly, important factors to countering corruption, including institutional coordination mechanisms, incentives to file complaints, and rules providing for community engagement and participation in anti-corruption efforts are practically non-existent or minimal.

Anti-corruption mechanisms and efforts in the public sector are focused on the executive branch, and largely absent in other governmental agencies and institutions. Regarding corruption in the private sector, most countries have anti-corruption compliance programs in place. However, their implementation is optional and, except in one instance, there are no clear compliance and enforcement guidelines available.

With regard to implementation of the anti-corruption legal framework, both the lack of political will and of independence of institutions represent the main obstacles in preventing, targeting and punishing corruption. In some countries, the lack of political independence of the judiciary and criminal prosecutors, and the need for more human and financial resources essential to countering corruption, are of great concern. Although there are significant advances in transparency as a mechanism to prevent corruption, only Panama has a registry of beneficial ownership of companies in place and is making efforts to implement it. Finally, in no country was there an emphasis on human rights in the fight against corruption. This has broad implications in the exercise of the rights of victims of corruption and in their ability to obtain redress as a result.

**The country and regional recommendations** in this report sound a call to action for the legal community to address the above-mentioned challenges. These recommendations highlight the importance of promoting 1) the use of technology in the development and implementation of mechanisms to prevent corruption, 2) regional cooperation and the involvement of the private sector and the legal community in promoting best practices and 3) establishing an anti-corruption rapporteur within the Inter-American Human Rights System.

# Introduction

Corruption is a global phenomenon that affects the rule of law and the protection of fundamental rights of individuals. From a regional perspective, corruption in Latin America has had a significant impact on government administrations and the public sphere, thus becoming one of the largest and most complex problems that citizens identify in their society and environment. Controlling corruption has thus become an increasing priority on the public agenda of the countries of the region. National, federal, or regional administrations have issued general rules and approved public policies to prevent, investigate, prosecute, and punish corruption-related wrongdoing by public officials and individuals. In turn, civil society organizations, lawyers, schools, and universities among other groups, have become a significant counterweight to the lack of proper implementation of anti-corruption legal frameworks of countries across the region.

The Lawyers Council, composed of leading lawyers representing various countries of the American continent, managed by the New York City-based Cyrus R. Vance Center for International Justice, considers corruption to be one of the scourges that most affect the rule of law globally, given its complexity and difficulty in tracing and disciplining. The welfare of a society depends on the proper functioning of the rule of law, as a basis for the exercise of civil and economic rights and for a prosperous national economy. In the absence of legal protection, both economic development and the exercise of human rights are adversely affected and can deteriorate. Human rights violations, impunity, violence, and insecurity flourish in a corrupt system.

As lawyers dedicated to the practice of private law, we acknowledge the key importance of the rule of law in achieving economic development, attracting

foreign investment, and retaining national investment, which can go elsewhere in the absence of investor protection. The rule of law is particularly important for retaining and attracting capital. It is important to recognize that, regardless of nationality, any investment analysis involves comparing potential investment alternatives based on the reliability of the rule of law (including legal and judicial protection against the arbitrary use of power), the security of individuals, and the ability to prevent and combat corruption. In addition to developing a business plan, investors assess the rule of law across jurisdictions and, particularly in connection with government-related businesses, analyze the anti-corruption enforcement regime, including the feasibility of mitigating the risks of state corruption, excessive delays or unpredictability in regulatory and judicial decision-making, and other divergences from the rule of law. Risks of this kind raise the perceived cost of doing business and, for law-abiding companies, deter investment.

It is also important to note that corruption is highly associated with reduced confidence in governmental authorities, poorer tax collections and underinvestment in infrastructure.

In addition, the intersection between corruption and human rights is becoming increasingly evident in matters that have direct impact and implications in the enjoyment of human rights. The Inter-American Commission on Human Rights, in its "Thematic Report of the Inter-American Commission on Human Rights "Corruption and Human Rights: Inter-American Standards,"<sup>1</sup> has concluded that corruption has a negative impact on human rights in general, and particularly on economic, social, cultural and environmental rights, as it affects the availability of resources, generates discrimination and ultimately poverty, and increases inequality and impunity.

From a human rights point of view, corruption also affects judicial rights recognized by international and regional human rights standards. Additionally, there is particular concern about the impact that corruption can cause on certain individuals such as vulnerable groups and people living in poverty.

This assessment seeks systematically to map and guide legal efforts in Latin America to prevent and combat corruption. This first edition of the Anti-Corruption Assessment in Latin America 2020 assesses eight countries of the region regarding their legal framework and its implementation in practice: Argentina, Brazil, Chile, Colombia, Guatemala, Mexico, Panama, and Peru.

Unlike other efforts that focus on measuring corruption or the perception of corruption, this assessment employs a legal practice perspective, focused on regulatory efforts and the institutional framework to prevent, target and prosecute corruption in each country. It addresses the perspective of legal professionals engaged in anti-corruption practice in various sectors, including practice in law firms, companies, academia, civil society organizations and human rights defenders, among others.

This report includes eight sections with an analysis by country, divided into seven parts that correspond to relevant issues of the anti-corruption legal framework:

- Public sector corruption
- Private sector corruption
- Complaints and whistleblower protection
- Specialized agencies
- Institutional coordination mechanisms
- Community participation
- Transparency and access to information

The report also presents a series of general and specific country recommendations and a regional analysis that identifies similarities, trends, and differences across the region.

The countries in the report are presented in alphabetical order.

*The* Lawyers Council hopes that, with this initiative, Latin American advocacy will find specific paths to systemic improvement of anti-corruption legislation and its implementation in the region.

The assessment also seeks to serve, beyond a purely academic effort, as a call to action for the legal community, a tool to catalyze discussions among lawyers in different fields and ultimately lead to the reform, implementation, and enforcement of anti-corruption practices. **The Lawyers Council and the Vance Center** will use the report to guide their efforts to collaborate with the legal community of each country in the region on the legal frameworks, ethical guidelines and business practices needed to combat corruption effectively.

## METHODOLOGY

For this report, the Lawyers Council developed, with the support of law firms and an expert consultant, a database of sources (international and regional treaties, reports, model laws and international guidelines) applicable to each of the anti-corruption obligations under the United Nations Convention against Corruption.

Based on the information gathered, two questionnaires were developed and addressed to the legal community. “Questionnaire 1” was completed by attorneys belonging to Lawyers Council<sup>2</sup> member firms, with 35 questions (involving 72 variables) divided into the following eight sections:

- 1) Anti-corruption framework and legislation

- 2) Anti-corruption preventive policies and practices for the public sector
- 3) Corruption in the private sector
- 4) Whistleblower complaints and r protections
- 5) Strength and independence of anti-corruption agencies
- 6) National and International cooperation and coordination
- 7) Participation of civil society and of academia
- 8) Access to information

“Questionnaire 1” aimed to obtain information on these eight subjects derived from legislation, regulation, and practice. The questionnaire was completed in the last quarter of 2020.

“Questionnaire 2” had 16 open-ended and multiple-choice questions (involving 20 variables) with the aim of complementing the information in “Questionnaire 1” focusing on the broader anti-corruption practices of the legal community. This survey was translated from Spanish into English and Portuguese and distributed widely among the legal community of the participating countries.<sup>3</sup>

To assign a score, the data from the questions collected were divided into three categories: **Legislation**, **Implementation** and **Authorities**. Each category was assigned 10 points in total and, in turn, was divided into sub-categories according to the themes of the questionnaires. Each of

these sub-categories was assigned a score, accounting for the number of sub-categories, adding up to the 10 points of the corresponding category.

Each sub-category, according to Questionnaires 1 and 2, had a number of possible variables, and on these variables, each country was assigned the corresponding sub -category score. For example, the “General Legislation” sub-category of the “**Legislation**” category has a total of 16 variables, equivalent to 2 points. If a country had 8 of the 16 possible variables, then the assigned score would be half, equivalent to 1 point (out of 2 points).

For the “**Implementation**” and “**Authorities**” categories, the information in “Questionnaire 2” was used and the same process described above was followed.

To obtain the final rating, a percentage was assigned to each category, leaving 30% to “Legislation”, 30% to “Implementation” and 40% to “Authorities”. A higher percentage was assigned to the “Authorities” category, because the degree of independence and capacity of anti-corruption authorities is crucial to the anti-corruption practice of the legal community and civil society in the region, as will be addressed in the assessment of each country.

# Scores

The final score is displayed on a scale from zero (0) to ten (10), where zero is the lowest score and ten is the highest. The ratings by categories follows, ranked from highest to lowest:



Categories and sub-categories	Variables	Points assigned	Argentina		Brazil		Chile		Colombia		Guatemala		Mexico		Panama		Peru	
			Variables	Points assigned														
<b>A. Legislation (30%)</b>																		
1. General legislation	16	2	13	1.63	12	1.50	14	1.75	9	1.13	11	1.38	15	1.88	9	1.13	13	1.63
2. Anti-corruption preventive policies and practices for the public sector	15	1	14	0.93	10	0.67	14	0.93	15	1.00	5	0.33	14	0.93	7	0.47	13	0.87
3. Corruption in the private sector	25	1	22	0.88	14	0.56	24	0.96	19	0.76	14	0.56	22	0.88	8	0.32	22	0.88
4. Whistleblower complaints and protections	2	1	2	1.00	2	1.00	0	0.00	1	0.50	0	0.00	1	0.50	0	0.00	2	1.00
5. Existence of specialized authorities	1	2	1	2.00	1	2.00	1	2.00	1	2.00	1	2.00	1	2.00	0.50	1.00	1	2.00
6. National and international cooperation and coordination	5	1	5	1.00	5	1.00	5	1.00	5	1.00	4	0.80	5	1.00	4	0.80	5	1.00
7. participation of civil society and of academia	1	1	0	0.00	1	1.00	1	1.00	1	1.00	0	0.00	1	1.00	1	1.00	1	1.00
8. Access to information	7	1	5	0.71	3	0.43	4	0.57	7	1.00	3	0.43	6	0.86	6	0.86	5	0.71
<b>Total</b>		<b>10</b>		<b>8.15</b>		<b>8.16</b>		<b>8.21</b>		<b>8.39</b>		<b>5.50</b>		<b>9.05</b>		<b>5.57</b>		<b>9.09</b>
<b>B. Implementation (30%)</b>																		
9. Challenges to the implementation of the anti-corruption legal framework in your country	12	4	4	1.33	3	1.00	6	2.00	3	1.00	2	0.67	3	1.00	2	0.67	3	1.00
10. 9. Challenges to the implementation of anti-corruption laws or regulations, due to a lack of specificity, clarity, or definition in relation to other laws or regulations, or other deficiencies.	1	4	0	2.00	0.5	2.00	1	4.00	0	2.00	0.2	0.80	0.5	2.00	0.3	1.20	0.5	2.00
11. Mechanisms for the protection of whistleblowers and access to official channels for reporting corruption	1	2	0.5	1.00	0.65	1.30	1	2.00	0.5	1.00	0.6	1.20	0.50	1.00	0.5	1.00	0.5	1.00
<b>Total</b>		<b>10</b>		<b>4.33</b>		<b>4.30</b>		<b>8.00</b>		<b>4.00</b>		<b>2.67</b>		<b>4.00</b>		<b>2.87</b>		<b>4.00</b>
<b>C. Authorities (40%)</b>																		
12. Independence of anti-corruption authorities	1	5	0.5	2.5	0.4	2.00	0	3.50	0.4	2.00	0.2	1.00	0.3	1.50	0.2	1.00	0.4	2.00
13. Institutional capacity with respect to effectiveness and level of impunity	5	5	3	3	2.83	2.83	4	4.00	2.7	2.70	2.6	2.60	2.5	2.50	2.6	2.60	2.83	2.83
<b>Total</b>		<b>10</b>		<b>5.50</b>		<b>4.83</b>		<b>7.50</b>		<b>4.70</b>		<b>3.60</b>		<b>4.00</b>		<b>3.60</b>		<b>4.83</b>
<b>Final score</b>		<b>Out of 10:</b>		<b>5.95</b>		<b>5.67</b>		<b>7.86</b>		<b>5.60</b>		<b>3.89</b>		<b>5.51</b>		<b>3.97</b>		<b>5.86</b>

# I. ARGENTINA

Total	Legislation	Implementation	Authorities
5.95	8.15	4.33	5.5

Argentina has a comprehensive anti-corruption policy framework that includes over thirty-eight general rules and regulations governing ethics in the public sector<sup>4</sup>, powers of the anti-corruption agency<sup>5</sup>, sworn affidavits<sup>6</sup>, anti-corruption strategy<sup>7</sup>, public employment disqualification<sup>8</sup>, corruption-related crimes<sup>9</sup> and criminal liability for corporate entities<sup>10</sup>, and a regime governing the contracting of public goods and services.<sup>11</sup>

According to the LPs consulted, the anti-corruption legal framework is generally adequate, but there are areas of opportunity for improvement. In general, LPs agreed that the “law on the books” is not actually implemented, accounting for the existing challenges faced at the different levels of implementation, including the federal system.

The main challenges in connection with the implementation of Argentina's anti-corruption legal framework, involve lack of political will, of judicial independence and of political autonomy of the anti-corruption authorities, in addition to inadequate economic and human resources available to anti-corruption agencies, an absence of inter-agency coordination, and restrictions on CSOs to counter corruption.

Moreover, lower social and economic sectors were identified as those most affected by corruption.

## A. PUBLIC SECTOR

Argentina’s anti-corruption policies include:

- ✓ Standards and codes of conduct for the adequate performance by the public sector

- ✓ Policies and procedures for identifying and managing conflicts of interest
- ✓ Gift acceptance policies for public officials
- ✓ Policies on post-public employment obligations, and restrictions on public officials working in the private sector after concluding their public service
- ✓ Policies for training public officials in anti-corruption measures

Regarding sworn affidavits, the Argentine legal framework provides that the following are publicly available:

- ✓ Asset Declarations
- ✓ Statements of activities, including external activities and participation in companies and organizations
- ✓ Information on filing tax-related returns (payments and refunds)

The agency that oversees and coordinates the implementation of anti-corruption policies is the Anti-Corruption Office of the Ministry of Justice and Human Rights.

LPs have identified issues with the existing Ethics Act, including those that have also been identified by the by the Organization for Economic Cooperation and Development (OECD), as well as the challenges in its implementation throughout the country. These include an inadequate institutional design and deficiencies in assigned functions. In addition, the Anti-Corruption Office reportedly only focuses on the executive branch and does not address the legislative and judicial counterparts.

## B. PRIVATE SECTOR

Argentina has an anti-corruption regulatory framework for the private sector. Of the elements analyzed in this evaluation, Argentina addresses most of the following, as noted below:

- ✓ Codes of Conduct
  - ✓ Standards for a culture with “tone at the top”<sup>12</sup>
  - ✓ Control and audit measures
  - ✓ Risk advice for regulatory compliance programs
  - ✓ Internal complaints procedures
  - ✓ Research protocols
  - ✓ Training in compliance programs
  - ✓ Risk assessment and evaluation of compliance programs
- ✗ Organizational chart and scope of the work of corporate officers

Pursuant to Law 27,401, Law on Criminal Responsibility of Legal Persons, the judge may consider failure to comply with these elements as a factor for setting penalties. Under this law, compliance with anti-corruption measures (implementing an integrity or compliance program with all legal requirements or minimum standards provided by the law) is a requirement for contracting with the Government. The application of anti-corruption measures is otherwise not mandatory for other private legal entities; although it can be a mitigating liability factor in connection with any penalty that a judge may impose if private legal entities are involved in corruption.<sup>13</sup>

Private sector companies in Argentina are subject exclusively to criminal responsibility and not to administrative or civil liability. According to the Repentance Act (Law 27,304), judges may reduce sanctions on those who, having committed a particular crime, if they provide relevant and substantial information to the advancement of the related investigation. LPs noted that this has led to positive progress in the context of relevant processes, such as the “*Caso de los Cuadernos*.”<sup>14</sup> However, they also suggested that the penalty should not only be reduced but that there be the possibility of eliminating it.

LPs noted that the legislation criminalizing companies for bribes to public officials and other related misconduct (Law 27,401) has not yet been applied in specific cases and has deficiencies in its drafting, particularly in situations such as self-reporting and cooperation with the government that if solved, would

provide companies greater certainty when encountering these scenarios.

Most LPs agree that the Law on Criminal Responsibility of Legal Persons has been an important step forward in regulation which has spurred anti-corruption policies within companies. In addition, this law foresees that Argentina would comply after several years with the international obligations assumed in this field by the OECD framework. However, a repeated comment by participants is that there is currently insufficient information on compliance of such as guidelines and directives, and therefore legal persons do not have all the elements to fulfill their obligations under the criminal liability system. In addition, the standard reportedly does not account for the size or type of legal entity in order to determine the minimum elements or requirements that a legal entity should implement in developing a compliance program that meets the requirements of the legislation. This, in turn, results in significant transactional costs and in compliance goals that are challenging for smaller entities.

The Argentine legal system also prohibits the following acts:

- ✓ Establishment of accounts not recorded in corporate books; carrying out unregistered transactions; the recording of nonexistent expenses, the use of false documentation, and the intentional destruction of corporate books.
- ✓ Bribery or facilitation payments, as well as their corresponding tax deduction.

### C. REPORTING MECHANISMS AND PROTECTION FOR WHISTLEBLOWERS

Public servants have the obligation to report crimes of which they are aware in the exercise of their functions, in accordance with criminal procedural law but absent any specific rules.

Regarding the ongoing debate as to whether existing complaint mechanisms are readily available to citizens, LPs concluded that a change in implementation of these mechanisms is required.

The anti-corruption framework defines specific protective measures for whistleblowers. Law 25,764<sup>15</sup> created the National Program for the Protection of Witnesses and Accused Persons, which, while not exclusive to corruption offenses, may be extended to such misconduct at the discretion of the judicial authority and the Ministry of Justice and Human Rights. Protection measures (no compensation measures are provided) include: (A) personal or home custody; (b) temporary housing in reserved places; (c) change of domicile; (d) provision of economic and housing resources for up to six months; (e) assistance in handling administrative paperwork and procedures; and (f) assistance in labor reintegration.

The Criminal Code provides for reductions in penalties for corruption offenses to those who provide valuable and credible information. The complainants are liable, according to the Repentance Act (Law 27,304), if they report acts of corruption to the press or media.

#### D. SPECIALIZED AUTHORITIES

The national authorities with powers to prevent, investigate or punish acts of corruption are:

- ✓ Anti-Corruption Office (Oficina Anticorrupción)
- ✓ General Prosecutor of Administrative Investigations of the Office of the Attorney General of the Nation (Procuración General de Investigaciones Administrativas de la Procuración General de la Nación)
- ✓ Judiciary (Poder Judicial)
- ✓ Financial Information Unit (Unidad de Información Financiera)

While the Anti-Corruption Office is part of the executive branch and its head is directly appointed by the President of the Nation, the General Prosecutor for Administrative Investigations is part of the Office of the Attorney General and has a more complex appointment process in which it is selected from a pool of candidates proposed by the Attorney General to the President, and, in turn, ratified by the Senate by a simple majority.

According to LPs:

The anti-corruption authorities do not have the necessary independence to prevent, investigate and prosecute corruption effectively.

LPs rate the institutional capacity of public bodies empowered to prevent, investigate, and prosecute acts of corruption as low.

The Office of the General Prosecutor for Administrative Investigations was identified by participants as the most effective authority in combating corruption and the Anti-Corruption Office as the least effective.

Most of the experts agreed that the lack of independence of the Anti-Corruption Office is an impediment to its effective action, as its performance is governed by the policy of each administration and by political interests. In this regard, the Anti-Corruption Office has recently relinquished its role as a plaintiff in certain corruption cases initiated under the prior administration involving officials of the current administration (regarding alleged acts committed while serving under the prior administration). The lack of budgetary independence and the reduction of the budget of this office were also identified as one of the problems.

Within the identified challenges, the interference by political and economic powers plays a key role in this lack of independence, especially in the selection processes of judges, in disciplinary procedures, as well as in the periodic monitoring of their performance.

An additional challenge identified by LPs were lengthy procedures and significant delay in the processing and resolution of investigations carried out by the relevant authorities.

#### E. INSTITUTIONAL COORDINATION MECHANISMS

There is no mechanism for institutional cooperation or coordination to prevent, target, investigate and punish corruption-related misconduct. LPs noted that the ineffective action by the authorities is not only due to lack of independence of the public authorities, but also due to the lack of an adequate budget and to deficient institutional coordination. In particular, LPs have

reported that Argentina does not have a centralized system of data analysis and information gathering and that the lack of coordination among public agencies hampers communication and effectively identifying and targeting cases of corruption.

#### F. CIVIL SOCIETY PARTICIPATION

The legal framework does not provide for a mechanism that fosters civil society engagement and participation of academia and other non-governmental actors in corruption prevention efforts. Despite this, civil society organizations have been involved in and have promoted anti-corruption initiatives, such as the “ Anti-Corruption Social Agreement ”.<sup>16</sup>

Although CSOs are identified by LPs as the actors who primarily defend democracy and the rule of law, they face challenges such as securing funding and having access to the regulatory framework (including the General Prosecutor) for open civic space that encourages the proper functioning of these organizations. LPs also emphasized the importance of giving CSOs a more active role and providing support to investigative journalism that has reported corruption cases.

The Anti-Corruption Office recently created the Advisory Council for Monitoring the Implementation of the Initiatives incorporated in the National Anti-Corruption

Plan 2019 – 2023. According to LPs, this council is mainly composed of CSOs and business chambers. While this is a step forward in civil society engagement, the way in which actual participation by civil society will be carried forward, and the involvement of the Council, are yet to be specified.

Finally, LPs highlighted the role that the private sector can play in advancing anti-corruption efforts, particularly in terms of bidding and contracting procedures.

#### G. TRANSPARENCY AND ACCESS TO INFORMATION

In Argentina, information regarding public officials and sanctioned private entities is publicly available. Public procurement processes are also public, however, information on officials working in public procurement processes is not public.

In addition, Argentina provides for a system that allows for information to be requested from the government, and any refusal to issue the information can be challenged before the Agency for Access to Public Information, an independent body within the purview of the Office of the Chief of the Ministerial Cabinet of the Presidency of the Nation (*Jefatura de Gabinete de Ministros de la Presidencia de la Nación*).

**H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY**

Strengthen the mechanisms of ethics in the public sector and the integrity of government authorities, with detailed regulations aimed at deterring, identifying and punish acts of corruption in the public sector	Corruption in the public sector
Propose and promote mechanisms for the appointment of judges in accordance with international standards that guarantee political independence of the judiciary, as well as ensure certainty of the judicial career, including mechanisms for professionalization of public service and discipline	
Undertake efforts aimed at clearly delineating the duties of legal persons in connection with anti-corruption prevention, establishing the applicable rules and regulations, particularly with regard to situations involving cooperation with authorities and self-reporting (including by companies with regard to crimes committed by individuals who work for them)	Corruption in the private sector
Undertake initiatives to promote mechanisms for strengthening institutions and prevent political interference, including, if necessary, modifying the appointment process	Institutional Strengthening
Promote institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment	
Encourage the creation of coordination mechanisms among anti-corruption authorities, to prevent, identify, investigate, and sanction corruption more efficiently	Institutional coordination mechanisms
Promote formal mechanisms for civil society participation in the design and implementation of anti-corruption public policy	Participation of civil society
Establish mechanisms to disseminate information related to available reporting mechanisms to the general population and public servants	Transparency
Promote legislation and regulations to establish beneficial ownership registries in accordance with international standards and best practices	

# II. BRAZIL

Total	Legislation	Implementation	Authorities
5.67	8.16	4.3	4.83

Brazil has a comprehensive anti-corruption policy framework, which includes anti-corruption policies and practices for the public and private sector, protection of whistleblowers and cooperation mechanisms, among others.<sup>17</sup>

According to the participating LPs, the legal framework is generally sufficient, but there is room for improvement, particularly in areas such as financing of elections (including setting limits on the amounts of corporate donations) and financial secrecy, as well as protection by presidents of their political allies that has reportedly been widely used in recent years.

Most LPs recognize the difficulty in implementing anti-corruption laws in Brazil. One of the recurring comments is the lack of political will to effectively implement the anti-corruption legal framework, and political influence on anti-corruption authorities.

High-level politicians and public officials were identified as being more significantly experienced in anti-corruption efforts vis-à-vis other members of the civil service and the community at large. LPs agreed that there are considerable challenges in connection with aligning anti-corruption efforts in the different levels of government arising from Brazil being a federation. Less socially and economically favored sectors, including gender and racial minorities were identified as the groups most affected by corruption.

## A. PUBLIC SECTOR

Brazil has anti-corruption policies that include:

- ✓ Codes of conduct for adequate performance of the public service (for high-level federal officials) and for the legislature

- ✓ Policies and procedures for identifying and managing conflicts of interest
- ✓ Gift acceptance policies for high-level public officials of the executive branch, prohibiting the receipt of gifts other than gifts less than R\$ 100 (approximately US\$ 18)
- ✓ Policies on post-public employment obligations, and restrictions of public officials to work in the private sector after concluding their public service
- ✓ Policies for training public officials in anti-corruption measures

In the area of sworn affidavits, the Brazilian legal framework provides:

- ✓ Measures that require certain high-level public officials to render assets declarations

The assets declarations are not publicly available. These are subject to evaluation by the Federal Court of Auditors. There is no obligation to file a statement of interest, although some federal officials are prohibited from participating in private companies. However, they are permitted to be partners or have an interest, provided they are not management or have management functions.

Law 12,813 2013 provides for a six-month waiting period for some public officials before they can perform certain functions. This provision was adopted to prevent former public employees from using confidential information.

Brazilian legislation only establishes general limitations on members of the judiciary, such as non-participation in political activities.

## B. PRIVATE SECTOR

Brazil has an anti-corruption regulatory framework for the private sector and complies with the following checked items:

- ✓ Codes of Conduct

- ✓ Rules for a “tone at the top” culture<sup>18</sup>
- ✓ Control and audit measures
- ✓ Risk advice on regulatory compliance programs
- ✓ Internal complaints procedures
- ✓ Training in compliance programs
- ✓ Risk assessment and evaluation of compliance programs
- ✓ Research protocols

- ✗ Organizational chart and scope of work of corporate officers, but there is an obligation for companies to have an independent internal body with human, material and financial resources to implement the activities of the compliance program

According to Law 12,846/2013, Clean Companies Act<sup>19</sup> and its Federal Decree 8,420/2015, these requirements are not binding on companies, but serve as criteria used by authorities to reduce sanctions. Companies that adopt a robust and effective compliance program according to the parameters established by the Decree may have a decrease in fines from 1% to 4%.

According to LPs, this legislation has been a watershed for defining corporate responsibility (in acts involving the State, not among private companies) and for setting parameters for the effectiveness of compliance programs in companies.

The Brazilian legal system prohibits the following acts:

- ✓ The use of false documents
- ✓ The intentional destruction of corporate books or documents may be a crime of obstruction of justice, if it is related to improper acts or investigation by the authorities.

It does not prohibit the following:

- ✗ Establishment of accounts not recorded in corporate books, carrying out unregistered transactions, the recording of nonexistent expenses, the use of false documents, and the intentional destruction of corporate books.

Brazilian legislation does not distinguish between facilitation payments and bribes, so they both

constitute prohibited conduct, as well as their related expense deduction. It is interesting to mention that in recent cases related to “Operation Car Wash” (*Lava Jato*), the tax administration agency has collected taxes on the amounts of bribes as income. The contributing companies have filed a number of administrative appeals with the Administrative Council on Tax Appeals, but they have been largely denied.

In Brazil, private sector companies may be subject to administrative and civil liability, pursuant to the Clean Companies Act, but not to criminal responsibility. Companies may be fined 0.1% to 20% of their net profits in the fiscal prior year to the initiation of an administrative proceeding<sup>20</sup>. As a method of providing redress, the aforementioned law may require the company to disclose the decision imposing the sanction through the media.

In civil matters, the Clean Companies Act provides that companies may be liable to third parties for damages resulting from an act of corruption, in addition to the fact that companies may be suspended from their activities, or prevented from receiving subsidies, donations and other benefits from public agencies, for one to five years.<sup>21</sup>

Although the Criminal Code provides for penalties related to acts of corruption, in Brazil companies, as legal persons, are not subject to criminal liability, which LPs report as an obstacle in achieving justice and providing redress to victims of corruption-related crimes. LPs pointed out the problematic interpretation adopted by the Supreme Court that criminal sanctions cannot be enforced until a decision is final, increases the rates of impunity, as the court takes a long time to issue its final decision. The Clean Companies Act encourages companies involved in corrupt practices to reach settlements for the reduction of sanctions in exchange for valuable information. However, LPs report that, since the law establishes a “first in time, first in right” rule, other companies involved may not feel incentivized to cooperate and provide useful information for an investigation. Although cooperation agreements somewhat remedy the multiplicity of

authorities, enhance the efficacy of proceedings and contribute to more settlements, LPs reported that pursuant to this law, firms are required to deal with a considerable number of agencies, making the settlement process more complicated.

Brazil's criminal legislation provides for penalty reductions for individuals who enter guilty plea agreements in exchange for useful information.

### C. REPORTING MECHANISMS AND PROTECTION FOR WHISTLEBLOWERS

According to LPs, the channels for filing complaints within the government are readily accessible. However, other than the case of government-owned companies (which are required to maintain internal platforms for filing complaints), these channels are not regulated. In 2011, a hotline was established to enable citizens to report suspected acts of corruption in the public administration.

Pursuant to Law 13,964/2019, complainants may receive compensation of up to 5% of the amount recovered as an incentive to report acts of corruption. This law also determines that whistleblowers have the right to remain anonymous and to receive protection in the event of retaliation or intimidation, including at the workplace and on a personal level.<sup>22</sup>

There is no provision in Brazilian legislation on reporting corruption to the press or media.

### D. SPECIALIZED AUTHORITIES

The following agencies, with powers to prevent, investigate or punish corruption were identified at the national level:

- ✓ Federal Public Prosecutor's Office (*Ministério Público Federal*)
- ✓ Office of the Comptroller General (*Controladoria-Geral da União*)
- ✓ Federal Court of Auditors (*Tribunal de Contas da União*)
- ✓ Office of the Attorney General of the Republic (*Procuradoria Geral da República*)

- ✓ Ministry of Justice and Public Security (*Ministro da Justiça e Segurança Pública*)
- ✓ Financial Activity Control Council (Financial Intelligence Unit) (*Conselho de Controle de Atividades Financeiras é a Unidade de Inteligência Financeira do Brasil*)
- ✓ Judiciary (*Poder Judiciário do Brasil*)
- ✓

According to LPs, the perception of some agencies and entities with the power to fight corruption in the country is that they have been captured politically, including the Federal Court of Auditors. Despite this, LPs also recognize that, although they would benefit from strengthening their capacity, the Federal Public Prosecutor's Office and the judiciary have managed to maintain a significant level of autonomy and successfully prosecute cases.

The Comptroller General has also been identified by the persons surveyed as an efficient authority in the fight against corruption. The Constitution and the laws, however, provide the President of the Republic with the power to appoint the heads of the anti-corruption agencies, including the Attorney General, the Federal Court of Auditors, the Comptroller General, the Financial Intelligence Unit and the Minister of Justice.

All participants agree that Brazil is going through an era characterized by lack of political will to effectively control corruption. A reflection of this phenomenon has been the excessive time that it has taken authorities to vote on the approval of anti-corruption laws and decrees. The lack of judicial independence was also consistently reported by LPs, which conclude that:

Anti-corruption authorities generally have the independence to prevent, investigate, and prosecute corruption cases, but certain agencies are subject to political influence.

LPs rate the institutional capacity of public bodies empowered to prevent, investigate, and prosecute acts of corruption as average.

LPs also highlighted that there is a perception of impunity given the lengthy processes it takes to resolve corruption-related cases.

#### **E. INSTITUTIONAL COORDINATION MECHANISMS**

There is a mechanism of cooperation and institutional coordination to prevent, target, investigate and punish corruption, involving the Office of the Attorney General of the Republic, the Federal Court of Auditors and the Ministry of Justice and Public Security, under the coordination of the Supreme Court. In 2020, these authorities implemented a technical cooperation agreement that sets out a number of parameters with respect to guilty plea agreements and procedures for the reduction of sanctions. The Federal Public Prosecutor's Office and the Office of the Comptroller General have entered into two cooperation agreements in 2010 and 2014 with regard to information sharing and combating corruption.

LPs identified working groups composed by people from various institutions that address specific corruption-related matters, as a good practice.

#### **F. PARTICIPATION OF CIVIL SOCIETY**

Specific mechanisms regarding civil society participation in efforts to prevent corruption were not identified in the legal framework. Notwithstanding, civil society organizations have been involved in and promoted anti-corruption initiatives, resulting in some success stories on accountability in Brazil <sup>23</sup>

#### **G. TRANSPARENCY AND ACCESS TO INFORMATION**

In Brazil, information regarding public officials and sanctioned private entities is available only to the authorities. Public procurement processes are publicly available, but information on officials working in public procurement processes is not.

In addition, Brazil provides for a system that allows for information to be requested from the government, and any refusal to issue the information can be challenged before the corresponding higher authority of the agency denying the request and, ultimately before the Comptroller General and the Committee on Reevaluation of Information (which is not an autonomous body belonging to the executive branch).

## H. RECOMMENDATIONS TO THE LEGAL COMMUNITY

Assess and promote the legislative processes involving (i) limiting presidential pardon; and (ii) the enforcement of corruption related decisions prior to becoming final	Corruption in the public sector
Promote initiatives to create a system of public declarations of interest statements for public officials of the three branches of government and other autonomous bodies	
Promote legislation providing for criminal liability of companies engaged in acts of corruption	Corruption in the private sector
Promote legislation to establish bans against companies for having accounts outside corporate books and books with unidentified transactions	
Promote regulations providing for whistleblower protection, as well as to establish mechanisms that encourage the reporting of acts of corruption	Reporting mechanisms
Promote legislation aimed at establishing beneficial ownership registries in accordance with international standards and best practices	Transparency

# III. CHILE

Total	Legislation	Implementation	Authorities
7.86	8.21	8	7.5

According to LPs, Chile has a lean but effective regulatory framework<sup>24</sup> to prevent, investigate and punish acts of corruption. The legal framework that governs corruption, although sufficient in general terms, would benefit from improvements aimed at strengthening the capacity of anti-corruption agencies and providing for greater incentives to report misconduct. According to LPs, there are gaps in the regulation of corruption by individuals, and areas of opportunity for enhanced coordination among agencies.

Implementation of the anti-corruption regulations is generally effective, and authorities have the capacity and independence required for such implementation.

Participants identified people in poverty and in rural areas as the most vulnerable to corruption.

## A. PUBLIC SECTOR

Chile has anti-corruption policies that include:

- ✓ Standards or codes of conduct for proper performance of the public sector
- ✓ Policies and procedures for identifying and managing conflicts of interest
- ✓ Gift acceptance policies for public officials
- ✓ Policies on post-public employment obligations, and restrictions of public officials to work in the private sector after concluding their public service

Specific policies for training public officials in anti-corruption measures were not identified.

Regarding sworn affidavits, the Chilean legal framework provides that the following are public:

- ✓ Assets Declarations

- ✓ Statements of interest, including external activities and participation in companies and organizations

It is important to mention that assets declarations are mandatory for members of the judiciary in Chile.

With respect to post-employment obligations, [Law 18.575](#) prohibits former public officials from working for a period of six months in enterprises that are subject to supervision.

The agency that oversees and coordinates the implementation of anti-corruption policies is the Comptroller General and the Public Prosecutor's Office.

## B. PRIVATE SECTOR

[Law 20.393](#) outlines a series of elements that companies can adopt to self-regulate and prevent punishable offenses or improper acts:

- ✓ Codes of Conduct
  - ✓ Organizational charts and scope of the work of corporate officials
  - ✓ Control and audit measures
  - ✓ Risk advice on compliance programs
  - ✓ Internal complaints procedures
  - ✓ Research protocols
  - ✓ Training in compliance programs
  - ✓ Risk assessment and evaluation of compliance programs
- ✗ The only element that this catalogue does not include are norms for a culture with the “tone defined at the top”<sup>25</sup>

The existence of these elements is considered by [Law 20.393](#) as a mitigating liability factor in connection with corruption-related misconduct.

The Chilean legal system prohibits the following acts:

- ✓ Establishment of accounts not recorded in corporate books, carrying out unregistered

transactions, the recording of nonexistent expenses, the use of false documents, and the intentional destruction of corporate books.

- ✓ Bribery or facilitation payments, as well as their related expense deduction.

Legal persons in Chile are subject to civil, administrative and criminal liability for certain offenses, including bribery of national public officials, of foreign public officials and of individuals. The corresponding penalties include fines, disqualification, loss of profits, and dissolution of a legal person. In addition, the publication of an extract of the conviction record may be required at the expense of the company and the seizure of property related to the offense.

### C. REPORTING MECHANISMS AND PROTECTION FOR WHISTLEBLOWERS

Official channels are available to government officials and citizens for reporting acts of corruption.

However, there is no specific legislation or public policy on mechanisms for the protection of whistleblowers, or economic incentives for reporting acts of corruption. There is an incentive to report corruption-related offenses in criminal matters, as it is considered a mitigating liability factor.

There is no provision in Chilean legislation on reporting corruption to the press or media.

LPs agree that the existing mechanisms in the legal framework are not sufficient to encourage the reporting of acts of corruption.

### D. SPECIALIZED AUTHORITIES

Participants identified the following authorities with powers to prevent, investigate or punish corruption:

- ✓ Office of the Comptroller General (*Contraloría General*)
- ✓ Office of the Attorney General (*Ministerio Público*)
- ✓ Judiciary (*Judicatura*)
- ✓ Transparency advice (*Consejo para la Transparencia*)

It is important to mention that these four institutions have constitutional autonomy to exercise their functions. There are innovative methods in place for selecting and appointing the heads of these agencies whereby the three branches of government, as opposed to just the executive, are involved in the process.

Regarding specialized agencies, participants concluded the following:

Anti-corruption authorities generally have the independence to prevent, investigate, and prosecute corruption-related matters, but are not exempt from political influence.

LPs rank the institutional capacity of agencies empowered to prevent, investigate, and prosecute acts of corruption as medium-high .

The recurring view among LPs is that the Attorney General's Office and the judiciary need to allocate more financial and human resources to strengthen their institutional capacity and become more efficient.

LPs agree that Chile's legal framework for transparency is one of the most effective channels for preventing corruption, including the Transparency Council.

### E. INSTITUTIONAL COORDINATION MECHANISMS

In Chile, coordination mechanisms exist between the authorities responsible for the prevention, targeting, investigation and punishment of corruption. The Office of the Comptroller General and the Public Prosecutor's Office have carried out cooperation arrangements for the exchange of information.

### F. PARTICIPATION OF CIVIL SOCIETY

There is no legislation or regulation providing means for civil society participation, including by academia and other non-governmental actors, in efforts to prevent corruption. However, the role of CSOs and the media has been very significant in making public, and pushing for action in, specific cases, including the "Milicogate", "MOP-gate" and "Caval" cases.

Participants consider that universities have been particularly absent from anti-corruption efforts.

**G. TRANSPARENCY AND ACCESS TO INFORMATION**

As mentioned above, transparency and access to information is considered one of the most effective mechanisms for preventing corruption in Chile. Information on public procurement processes is public, although there are no records available on public servants involved in public procurement, nor generally

on public officials or legal entities. In addition, Chile does not have a beneficial ownership registry.

If the requested information is denied by the corresponding authority, that decision may be challenged by applicants before the Transparency Council, an autonomous body whose members are appointed by the President and approved by two thirds of the Senate.

**H. RECOMMENDATIONS TO THE LEGAL COMMUNITY**

Promote legislation and regulations on the protection of whistleblowers, as well as to establish mechanisms that encourage the reporting of acts of corruption	Reporting mechanisms
Promote formal mechanisms for civil society participation in the design and implementation of anti-corruption public policy	Participation of civil society
Promote legislation to establish ultimate beneficiary ownership registries in accordance with international standards and best practices	Transparency

# IV. COLOMBIA

Total	Legislation	Implementation	Authorities
5.6	8.39	4	4.7

Colombia has an anti-corruption legal framework<sup>26</sup> that includes at least 15 laws, plus their corresponding rules and regulations.

According to participants, legislation is generally sufficient, with certain areas of opportunity for improvement. LPs however highlight that challenges in implementation include political influence and lack of political will in addition to inadequate means of identifying and preventing corruption. Most of the LPs identified “cultural resistance” as one of the main challenges in the implementation of the anti-corruption legal framework, even within institutions.

People in poverty and vulnerable sectors were identified by participants as those most affected by corruption and particular concern was raised about corruption in the health sector.

## A. PUBLIC SECTOR

Colombia has anti-corruption policies that include:

- ✓ A Unified Disciplinary Code (Code of Conduct) that regulates the actions of civil servants and public officials
- ✓ Policies and procedures for identifying and managing conflicts of interest<sup>27</sup>
- ✓ Gift acceptance policies for public officials<sup>28</sup>
- ✓ Policies on post-employment obligations and limitations
- ✓ Policies for training public officials in anti-corruption measures

Regarding sworn affidavits, the Colombian legal framework provides that the following are publicly available:

- ✓ Assets Declarations

- ✓ Statements of interest
- ✓ Information about tax-related returns (payments and refunds)

The Office of the Attorney General is the main body that oversees and coordinates the implementation of anti-corruption policies.

The Judiciary (Superior Council of the Judiciary) has an Anti-Corruption and Citizen Care Plan that contains measures to strengthen integrity and prevent opportunities for corruption with respect to members of the judiciary.

Likewise, all entities that make up the Executive Branch are required to formulate and adopt an Anti-Corruption and Citizen Care Plan.<sup>29</sup>

Participants noted the lack of policies to suspend or ban public officials from public office does not contribute to dissuading acts of corruption.

## B. PRIVATE SECTOR

Colombia provides for an anti-corruption framework for private sector companies that includes the following checked items:

- ✓ Codes of Conduct
- ✓ Control and audit measures
- ✓ Risk advice on compliance programs
- ✓ Internal complaints procedures
- ✓ Training in compliance programs
- ✓ Risk assessment and evaluation of compliance programs
- ✗ Organizational chart and scope of the work of corporate officials
- ✗ Standards for a culture with the “tone at the top”<sup>30</sup>
- ✗ Research protocols

Note: Resolution 100-002657 of 2016 of the Superintendency of Companies establishes which

companies are required to comply with the above-mentioned requirements (it is not mandatory for all companies). In addition, the resolution contains only non-binding recommendations on how to fulfill each of the requirements.

Participants noted that the applicable rules to prevent corruption are not always clear with regard to certain legal entities. This is, in part, because both the Superintendency of Companies<sup>31</sup> and the Superintendency of Health have corruption-related rules that in some cases are not consistent.

Colombia's legal framework on corruption prohibits the following acts:

- ✓ Establishment of accounts not recorded in corporate books, carrying out unregistered transactions, the recording of nonexistent expenses, the use of false documents, and the intentional destruction of corporate books.
- ✓ Bribery or facilitation payments, as well as their related expense deduction.

Legal persons may be subject to administrative and civil liability, but may not be held criminally responsible. With respect to administrative liability, the sanctions include the prohibition of contracting with state entities, fines, the publication of an extract of the decision imposing the sanction for a maximum period of one (1) year in widely circulated media and on the web page of the sanctioned legal person. It may also provide for a ban on receiving any kind of incentive or subsidies from the Government within five (5) years. With respect to civil liability, when someone associated with a legal person commits unlawful harm in the exercise of his or her functions, the legal entity is directly liable for such harm.<sup>32</sup>

Law 1778 of 2016 provides for a framework for timely cooperation by companies and individuals that have been involved in an act of corruption, in order to reduce sanctions. It also provides for mechanisms for the reduction of sanctions regarding persons who admit guilt after being charged. In addition, the Superintendency of Companies may grant benefits to

wrongdoers, in exchange for information and evidence relevant to the corresponding case.

Participants note the lack of mechanisms for regulating prevention in legal persons and their benefits beyond what is provided in the legislation.

### C. REPORTING MECHANISMS AND PROTECTION FOR WHISTLEBLOWERS

Channels for reporting acts of corruption are generally accessible to the general population. Public servants have an obligation to report any fact relating to corruption offenses.

Colombian legislation does not provide for specific legislation or public policy on mechanisms for the protection of whistleblowers, or economic incentives for whistleblowing.

In some cases, whistleblowers reporting corruption or irregularities to the press or media are prosecuted.

LPs agree that existing mechanisms in the legal framework are not sufficient to encourage the reporting of acts of corruption. In addition, LPs highlight that the elevated perception of impunity further deters reporting corruption-related acts.

### D. SPECIALIZED AUTHORITIES

Participants identified the following anti-corruption agencies:

- ✓ Office of the General Prosecutor (*Procuraduría General*)
- ✓ Attorney General's Office (*Fiscalía General*)
- ✓ Office of the Comptroller General (*Contraloría General*)
- ✓ Office of General Audit (*Auditoría General*)
- ✓ Judiciary (*Judicatura*)
- ✓ Superintendency of Companies (*Superintendencia de Sociedades*)

Some of these authorities enjoy autonomy pursuant to the law.

LPs note that corrupt practices in some institutions are seen as inherent to administrative management, and public servants do not have knowledge or tools to

prevent or address these practices. The lack of professionalization and of a well defined career path in public service within these institutions was also mentioned as a reason for institutional weakness.

According to LPs, the independence of these authorities is constantly undermined by political interference and lack of resources. Participants concluded that:

The anti-corruption authorities do not have the independence required to prevent, investigate and prosecute corruption effectively.

LPs rate the institutional capacity of anti-corruption agencies in Colombia as average.

The Office of the General Prosecutor and the Attorney General's Office, together with the Superintendency of Companies, were identified by participants as the authorities that have been able to counter corruption in Colombia. The work of some judges was also highlighted, although the lack of training was noted. The agency identified with the least effectiveness in the fight against corruption is reportedly the Office of the Comptroller General.

Finally, Colombia does not have a prosecutor specialized in the field of anti-corruption.

#### **E. INSTITUTIONAL COORDINATION MECHANISMS**

Although formal mechanisms for cooperation and institutional coordination exist to prevent, investigate and punish corruption, the persons surveyed identified lack of communication and effective coordination between the authorities as an important shortcoming.

#### **F. PARTICIPATION OF CIVIL SOCIETY**

The legislation includes mechanisms for participation by civil society, academia and other non-governmental organization to prevent corruption, through complaints and oversight. Civil Society and the media have historically reported acts of corruption and have also been used as reporting channels.

#### **G. TRANSPARENCY AND ACCESS TO INFORMATION**

Information is publicly available with respect to public officials working in public procurement and administrative processes, private entities and public procurement processes. There is regulation that provides for identifying and recording ultimate beneficial ownership of companies.

The information may be requested from the government, and any refusal to provide the information may be challenged through the Attorney General.

**H. RECOMMENDATIONS TO THE LEGAL COMMUNITY**

Strengthen the mechanisms of public ethics and integrity of government authorities, with particular and detailed norms to discourage, detect and punish practices of corruption in the public sector	Corruption in the public sector
Undertake efforts to inform legal persons about their specific obligations in the area of anti-corruption, by clearly establishing the applicable regulations.	Corruption in the private sector
Promote legislation and regulations to protect whistleblowers, as well as to establish mechanisms that encourage reporting of acts of corruption	Reporting mechanisms
Undertake initiatives to promote mechanisms for strengthening institutions to prevent political interference, including, if necessary, changing the appointment processes of government officials	Institutional strengthening
Promote institutional strengthening of the anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment	
Promote legislation and regulations to establish beneficiary ownership reporting in accordance with international standards and best practices	Transparency

# V. GUATEMALA

Total	Legislation	Implementation	Authorities
3.89	5.5	2.67	3.6

Guatemala has a legal framework composed of approximately 20 laws, rules and regulations governing institutions tasked with fighting corruption and other areas.<sup>33</sup>

According to most LPs, the anti-corruption policy framework is insufficient to address corruption. Among the deficiencies identified are the weakness of mechanisms for identifying corruption, lack of policies to prevent corruption in the private sector and lack of legal certainty, among others.

Participants mentioned that there is also a lack of political will and institutional weakness that is reflected in the lack of independence of institutions charged with punishing corruption and having individuals carrying the burden of this task without institutional support. LPs also mentioned the adoption or modification of legislation benefiting specific interests or persons.

Although there have been successful cases in Guatemala leading to the prosecution of former presidents and senior officials for acts of corruption, or that have allowed the adoption and application of laws such as the Anti-Corruption Act and the Organized Crime Act (*Ley contra la Corrupción y la Ley Contra el Crimen Organizado*), some of these successes are due to the intervention of the International Commission for Impunity in Guatemala (*Comisión Internacional para la Impunidad en Guatemala (CICIG)*), which was dissolved in 2019.

LPs also mention that the fight against corruption in Guatemala has a strongly ideological component that diverts the discussion from its technical aspects.

People in poverty were identified as the most vulnerable to corruption. Participants also specifically reported that corruption constitutes a barrier to development.

## A. PUBLIC SECTOR

Guatemala has standards that regulate the actions of public officials pursuant to the Law on Probity and Responsibility of Public Officials and Employees (*Ley de Probidad y de Responsabilidad de Funcionarios y Empleados Públicos*). In general, there are a number of administrative disciplinary measures (sanctioned with suspensions without pay and /or fines depending on the type of offense) that are of general application to all public officials and employees. According to LPs, this law is outdated and uses ambiguous terms and concepts.

Guatemala does not have anti-corruption policies in place that provide for:

- ✗ Policies and procedures for identifying and managing conflicts of interest
- ✗ Gift acceptance policies for public officials. There is only one generic rule that states that public servants are prohibited from soliciting and/or receiving gifts, either directly or indirectly
- ✗ Policies on post-employment obligations and limitations
- ✗ Policies for training public officials in anti-corruption measures

With regard to sworn affidavits, the Guatemalan legal framework provides for the filing of:

- ✓ Assets Declarations

However, these statements are not public and can only be reviewed through judicial proceedings. Guatemala does not provide for the following:

- × Measures requiring public officials to render statements of interest

There is no institution in Guatemala that oversees and coordinates the implementation of anti-corruption policies.

The country's judiciary includes measures to strengthen integrity and prevent opportunities for corruption, such as the adoption and implementation of an institutional integrity system (Resolution 49-2013), Standards of Ethical Content (Resolution 22-2013); and the System of Consequences (Resolution 30-2013) by the Supreme Court of Justice. There is also the Guatemalan Association of Judges for Integrity.

## B. PRIVATE SECTOR

The regulation in this area is for criminal liability and is limited to the criminalization of transnational bribery and trading favors.

Guatemala does not provide for an anti-corruption framework for private sector companies with the following elements:

- × Code of Conduct
- × Organization chart and scope of the work of corporate officials
- × Standards for a culture with the “tone from the top”<sup>34</sup>
- × Control and audit measures
- × Internal complaints procedures
- × Risk assessment and evaluation of compliance programs
- × Research protocols

The regulation of regulatory compliance programs and crime prevention models in private sector companies, training, and risk assessments is aimed only at “covered persons” under the anti-money regulations. Pursuant to the Money Laundering or Other Assets Act (*Ley contra el Lavado de Dinero u Otros Activos*), having such programs exempts companies and their officials from liability.<sup>35</sup>

The same persons covered under the anti-money laundering law are prohibited from establishing

accounts not registered in corporate books, performing unregistered or incorrectly recorded transactions in corporate books, using false documents, and intentionally destroying corporate books. However, there is no regulation that sanctions the recording of non-existent expenses and the recording of expenses in the accounting books with the incorrect indication of their purpose.

Private sector companies may be subject to criminal and civil liability but not to administrative liability. Regulations allow for the granting of alternative or mitigating measures to criminal liability, taking into account the conduct taken by the person during the processing of the criminal proceedings.

## C. REPORTING MECHANISMS AND PROTECTION FOR WHISTLEBLOWERS

LPs reported that mechanisms for reporting corruption are readily accessible in Guatemala. For public servants there is an obligation to report crimes of which they have knowledge.<sup>36</sup>

Guatemala does not have a policy of protecting whistleblowers as such but, pursuant to the criminal legislation, it provides for witness protection for persons participating as whistleblowers or witnesses.<sup>37</sup>

As incentives for filing of complaints in connection with proceedings regarding asset forfeiture, a reward of up to five per cent of the value of the forfeited assets may be granted to those who provide relevant evidence.

In criminal matters, collaboration agreements are used to encourage persons accused of acts of corruption to provide useful information to the authorities in exchange for an out-of-court settlement or reductions in penalties.

## D. SPECIALIZED AUTHORITIES

The following agencies have authority to prevent, investigate or punish corruption in Guatemala:

- ✓ Public Prosecutor’s Office - Specialized Division against Impunity (*Ministerio Público- Fiscalía Especializada Contra la Impunidad* (FECI))

- ✓ Judiciary (*Judicatura*)
- ✓ Presidential Anti-Corruption Commission (*Comisión Presidencial Anticorrupción*)
- ✓ Special Verification Intendency of the Superintendence of Banks of Guatemala (*Intendencia de Verificación Especial de la Superintendencia de Bancos de Guatemala*)

The Public Prosecutor's Office and the Judicial Branch are independent. In Guatemala, there is no authority specifically empowered to prevent corruption, although this was one of the objectives of the creation of the Presidential Anti-Corruption Commission. This Commission was created by the current President to promote anti-corruption policy, create mechanisms for detecting acts of corruption, and recommend laws and regulations, among others. LPs mentioned that to date the Commission has only filed complaints before the Public Prosecutor's Office, but there is no other visible activity.

According to participants:

The anti-corruption authorities do not have the independence to prevent, investigate and prosecute corruption effectively. LPs, however, do acknowledge certain government officials in this field for their significant commitment and political independence.

LPs rate the institutional capacity of agencies empowered to prevent, investigate, and prosecute acts of corruption as medium-low.

LPs expressed concern about the lack of institutional conditions required for judicial independence and at the Public Prosecutor's Office. In addition, they mentioned that the absence of an ethics and public integrity policy, as well as the lack of verification and accountability mechanisms of public servants, does not generate incentives to improve behavior.

LPs mentioned in particular that public servants are highly exposed to political changes, since there is no civil service law and no professionalization of public service.

With regard to the judiciary, LPs noted the lack of constitutional reform of the judiciary as an obstacle to

setting up an independent judicial branch and judges, including that judges' appointments have been challenged by CSOs as irregular and contrary to international standards.

#### E. INSTITUTIONAL COORDINATION MECHANISMS

Guatemala has an Anti-Corruption Inter-Agency Cooperation Agreement (*Cooperación Interinstitucional Anticorrupción*) signed by the Executive Agency and its ministers, the Public Prosecutor's Office, the Comptroller General of Accounts, the Superintendency of Tax Administration, the Office of the Attorney General of the Nation and the Superintendency of Banks of Guatemala. The objective of this agreement is to establish mechanisms to prevent corruption and impunity, to strengthen the quality of public expenditure and to report to the Public Prosecutor's Office complaints regarding irregularities observed in government institutions.

#### F. PARTICIPATION OF CIVIL SOCIETY

There are no mechanisms provided for in the law for civil society participation in anti-corruption efforts. According to LPs, CSOs face restrictions and barriers to the exercise of their functions.

The Constitutional Court suspended a reform of the Non-Governmental Organizations for Development Act (*Ley de Organizaciones no Gubernamentales para el Desarrollo*) that would further restrict CSO action and subject them to unwarranted government controls and supervision.<sup>38</sup>

In spite of this, there are CSOs that carry out activities to raise awareness and denounce acts of corruption.

#### G. TRANSPARENCY AND ACCESS TO INFORMATION

Information on public officials working in public procurement processes, as well as public procurement procedures themselves, is publicly available.

There is no public information concerning public officials or private sector entities that have been sanctioned. There is no reporting of beneficial ownership of companies.

There are procedures for requesting public information, as well as remedies available in the event that the information is not provided, which are decided by the highest authority of the agency denying the request.

## H. RECOMMENDATIONS TO THE LEGAL COMMUNITY

Promote the strengthening of the mechanisms of ethics and integrity in the public sector, with particular and detailed norms to discourage, detect and punish practices of corruption.	Corruption in the public sector
Promote initiatives to create a system of public statements of interest for public officials of the three branches and other independent bodies	
Propose and promote mechanisms for the appointment of judges in accordance with international standards that guarantee political independence of the judiciary, and ensure certainty of the judicial career, including mechanisms for professionalization of public service and discipline	
Promote a legal framework for the prevention of corruption in private sector companies, with incentives for compliance and verification in accordance with international standards	Corruption in the private sector
Promote legislation and regulations to establish ultimate beneficial ownership reporting in accordance with international standards and best practices	Transparency

# VI. MEXICO

Total	Legislation	Implementation	Authorities
5.51	9.05	4	4

Mexico has a comprehensive anti-corruption legal framework<sup>39</sup>, which was revised and reformed in 2016-2017 to create a national anti-corruption system, and to make uniform the legislation of the 32 federal entities. According to most LPs, this legal framework is generally sufficient, but there is room for improvement.

Despite the strength of the legal framework, LPs indicated that one or more of the anti-corruption laws or regulations have been difficult to implement, due to a lack of specificity, clarity, or definition in relation to other laws or regulations. They also highlighted both the lack of implementation of these laws and regulations and their application based on political lines.

LPs identify a lack of independence of anti-corruption authorities, and a low institutional capacity, partly due to high political influence.

People in poverty and vulnerable populations (including migrants) were identified as those sectors most affected by corruption. LPs highlighted corruption and lack of transparency in the health sector, where lack of medicines and care is of concern.

## A. PUBLIC SECTOR

Mexico has anti-corruption policies that include:

- ✓ Standards or codes of conduct for proper performance of the public service
- ✓ Policies and procedures for identifying and managing conflicts of interest
- ✓ Policies on post-public employment obligations, and restrictions of public officials to work in the

private sector after concluding their public service<sup>40</sup>

- ✓ Policies for training public officials in anti-corruption measures

According to the General Law on Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*), there is a general prohibition for receiving gifts.

With regard to sworn affidavits, the Mexican legal framework provides for the following measures:

- ✓ Measures that require public officials to submit financial statements
- ✓ Measures requiring public officials to make statements of interest, including external activities and participation in companies and organizations
- ✓ Measures that require public servants to provide information on their tax-related returns (payments and refunds)

The above-listed information is publicly available on the National Anti-Corruption System's Digital Platform (*Plataforma Digital Nacional del Sistema Nacional Anticorrupción*).

Most of these anti-corruption policies are applicable at the national level to all officials in all branches and levels of government. The agency that oversees and coordinates the implementation of anti-corruption policies within the scope of the federal executive is the Secretariat of Public Service (*Secretaría de la Función Pública*).

According to LPs, although there are mechanisms for preventing corruption, for example in public procurement, the authority seeks exceptions to permit direct contracting, being this a significant opportunity for arbitrary decisions and corruption.

## B. PRIVATE SECTOR

Mexico has an anti-corruption regulatory framework for the private sector that addresses the following checked elements:

- ✓ Codes of Conduct
- ✓ Organizational chart and scope of the work of corporate officials
- ✓ Control and audit measures
- ✓ Internal complaints procedures
- ✓ Training in compliance programs
- ✓ Risk assessment and evaluation of compliance programs
- ✗ Standards for a culture with the “tone at the top”<sup>41</sup>
- ✗ Risk advice on compliance programs
- ✗ Research protocols

The companies that comply with the above elements, pursuant to the General Law on Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*), are viewed favorably during the course of investigations for corruption-related wrongdoing in which they are involved.

In criminal matters, the legislation provides for “due control” within companies as an exculpatory element of criminal liability.

The Mexican legal system also prohibits the following acts in tax legislation:

- ✓ Setting up accounts not recorded in corporate books, performing unregistered transactions, recording nonexistent expenses, using of false documents, and intentionally destroying corporate books.
- ✓ Bribery or facilitation payments, as well as their related tax deduction.

In Mexico, companies have limitations on hiring former government officials. Companies that employ individuals who have been public servants during the previous year, who possess non-public information that they have directly acquired in connection with their public service, and who obtain a profit or obtain an advantage against competitors, are guilty of

administrative misconduct.

In Mexico, individuals may be subject to administrative, criminal and civil liability.

Regarding administrative liability, companies (and individuals) may be subject to economic sanctions of up to two times the amount of the benefit obtained, or in cases where there is no profit, of up to \$134,430,000 pesos (\$6.5 million U.S. dollars); disqualification in government contracts for a period of three months to up to ten years; suspension of activities for a period between three months and three years; dissolution of the company; and compensation for damages to the Nation.

In criminal matters, penalties may be imposed on companies. These include the suspension of activities for a period from six months to six years; the closure of premises or establishments from six months to six years; the prohibition of activities related to corruption; the disqualification of contracting with the government from six months to six years; and/or judicial intervention. Individuals responsible for the crime of bribery may be sentenced to between two and 14 years in jail. In addition, a fine of 100-150 days of fine may be imposed on the basis of the person's or company's daily income.

At least conceptually, it is possible to establish civil liability arising out of an act of corruption, on the basis of the determinations of the judicial bodies entertaining criminal and administrative processes in connection with the same alleged misconduct.

With regard to the reduction of sanctions, criminal law provides that the Office of the General Prosecutor may issue an opinion in favor of a person accused for alleged corruption that cooperates by providing evidentiary elements to investigate wrongdoing that is more serious than that charged against such accused person. Administrative legislation also provides for the possibility of reducing sanctions when the alleged wrongdoer reports its misconduct and cooperates with the corresponding investigation.

LPs note the lack of enforcement programs and anti-

corruption policies of companies as an area of opportunity for improvement.

### C. REPORTING MECHANISMS AND PROTECTION FOR WHISTLEBLOWERS

There is an obligation of public servants to report unlawful acts. There are also mechanisms for citizens to file complaints of corruption, both administrative and criminal (including, in a digital manner), which are reportedly accessible.

With regard to the protection of whistleblowers in federal administrative matters, the Guidelines for the Promotion and Operation of the Citizens' System Internal and External Alert of Corruption (Lineamientos para la Promoción y Operación del Sistema de Ciudadanos Alertadores Internos y Externos de la Corrupción ) provide that whistleblowers have the right to protective measures such as psychological and legal support, as well as not to be subject to sanctions or reprisals. LPs noted that this framework for the protection of informants or complainants is insufficient, and should operate at the national level, in accordance with the National Anti-Corruption System, and not only within the scope of application of the Federal Secretary of Public Administration.

There is no provision in Mexico for economic compensation for reporting or alerting, or for the recovery of state assets as a result of complaints or alerts from citizens.

Complainants are not liable in civil or criminal proceedings if they report acts of corruption or irregularities to the press or media, provided that the report is verifiable based on reliable evidence. Otherwise, such complainants may be liable for moral damage against those whom they reported.

### D. SPECIALIZED AUTHORITIES

The following authorities have powers to prevent, investigate and punish corruption in Mexico:

- ✓ Prosecutor's Office Specialized in Combating Corruption (Fiscalía Especializada en Combate a la Corrupción de la Fiscalía General de la República)
- ✓ Secretary of Public Administration (*Secretaría de la Función Pública*)
- ✓ Superior Audit Office of the Federation (*Auditoría Superior de la Federación*)
- ✓ Judicial Branch of the Federation (*Poder Judicial de la Federación*)
- ✓ National Institute for Transparency, Access to Information and Protection of Personal Data (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*)
- ✓ Financial Intelligence Unit (*Unidad de Inteligencia Financiera*)
- ✓ Federal Court of Administrative Justice (*Tribunal Federal de Justicia Administrativa*)

These institutions, with the exception of the Financial Intelligence Unit, are part of the National Anti-Corruption System (SNA).

Only the Prosecutor's Office Specialized in Combating Corruption and the National Institute for Transparency, Access to Information and Protection of Personal Data and the Federal Court of Administrative Justice are autonomous by law.

According to most LPs:

The anti-corruption authorities do not have the independence necessary to prevent, investigate and prosecute corruption effectively.

Participants rate the institutional capacity of public bodies empowered to prevent, investigate, and prosecute acts of corruption as low.

LPs note that although one of the main objectives of the current administration is the fight against corruption, there is significant political influence that hampers this effort. Participants mentioned that there is a great deal of interest in prosecuting cases of corruption from past administrations, but not those involving current officials. In this regard, and related to the independence of these institutions, the LPs identify the National Institute for Transparency, Access to

Information and Protection of Personal Data as an effective body for the prevention of corruption through transparency policies, and the Secretary of Public Administration as the least effective.

CSOs highlighted the procedure for appointing the head of the Office of the Prosecutor for Anti-Corruption as a participatory process provided by law that was not actually implemented in practice. The LPs noted concern about the failure to appoint anti-corruption judges to the Federal Court of Administrative Justice. In particular, they mentioned that the Financial Intelligence Unit and the Public Service Secretariat work “at the request of the President”.

It was mentioned as a good practice that the Special Prosecutor's Office for Internal Affairs has the accreditation of compliance with the International Standard ISO 37001: 2016 "Anti-bribery Management Systems", which includes a series of measures to prevent, detect, control and combat acts of bribery.<sup>42</sup>

LPs also mentioned the importance of institutional strengthening of anti-corruption agencies, starting with appointment processes that guarantee formal and material independence, provide sufficient resources, training of public servants, among others, including public signaling by the President to weaken anti-corruption institutions.

#### E. INSTITUTIONAL COORDINATION MECHANISMS

The Constitution and the SNA Law provide for a mechanism of inter-agency cooperation and coordination to prevent, combat, investigate and punish corruption, called the Coordinating Committee of the National Anti-Corruption System, which is comprised by: the Secretariat of the Public Service, the Office of the Prosecutor Specialized in Combating Corruption, the Superior Audit Office of the Federation, the Council of the Judiciary of the Judicial Power of the Citizen, and the Public Information Protection Committee, the National Association, and the Administrative Committee of the Public Information Protection of the Public Information, the National Association. According to participants, SNA has not

operated fully or efficiently in the last two years due to lack of political will, although the Technical Secretariat of this system has reportedly made progress.

#### F. PARTICIPATION OF CIVIL SOCIETY

Civil society organizations played a key role in shaping the anti-corruption legislation that exists today. The legislation includes mechanisms for participation involving civil society, academia and other non-governmental actors in efforts to prevent corruption. The SNA views the Citizen Participation Committee as one of its constituent bodies. This committee is composed of five citizens, distinguished for their contribution to transparency, accountability or the fight against corruption, elected by a group of citizens established for this purpose by the Senate of the Republic.

The Chairman of the Citizen Participation Committee is a member of the SNA Coordinating Committee and chairs it. The position of chair rotates among its members in accordance to their seniority in the Committee.

LPs mentioned that, while other mechanisms for community participation are provided by law, including the Citizen Council of the Attorney General's Office, they currently have reduced visibility and relevance.

LPs note that the concept of *collective legitimate interest* is very ambiguous, and is left to the discretion of a judge, being a barrier to CSO participation in corruption-related litigation.

#### G. TRANSPARENCY AND ACCESS TO INFORMATION

In Mexico, information related to public officials working in public procurement processes, sanctioned officials, and companies, as well as public procurement processes, is publicly available. LPs noted that Mexico has a very strong legal framework for transparency. However, there is no registry of beneficial ownership.

Upon a denial of an applicant's request for information or the issuance of incomplete information, the applicant may challenge that decision before the

National Institute for Transparency, Access to Information and Protection of Personal Data, a constitutionally autonomous body.

## H. RECOMMENDATIONS TO THE LEGAL COMMUNITY

Promote legislation and regulations on the protection of whistleblowers, as well as to establish mechanisms that encourage the reporting of acts of corruption	Reporting mechanisms
Undertake initiatives to promote mechanisms for strengthening institutions against political interference, including, if necessary, changing appointment processes	Institutional Strengthening
Support CSO efforts to clearly define the collective legitimate interest legal framework in connection with the involvement of community organizations in cases of corruption	Participation of civil society
Support CSO efforts to monitor and participate in the processes of appointment and independent functioning of anti-corruption authorities	
Promote legislation and regulations to establish beneficial ownership registries in accordance with international standards and best practices	Transparency

# VII. PANAMA

Total	Legislation	Implementation	Authorities
3.97	5.57	2.87	3.6

Panama has an anti-corruption legal framework<sup>43</sup> that is primarily aimed at criminal law and the prevention of money laundering. According to LPs, the legal framework is insufficient, since it does not account for various aspects necessary to combat corruption. They also highlighted both the lack of implementation of these laws and regulations and their application based on political lines.

In particular, participants noted the lack of prevention mechanisms, the regulation of conflicts of interest, and significantly weak sanctions. There was consensus among participants on the difficulty of implementing the legal framework due to a lack of specificity, clarity or definition. One of the examples provided by LPs was the particularly specific situations required to evidence money laundering, or the formal avenues that allow impunity.

People in poverty were identified as the sector most affected by corruption.

## A. PUBLIC SECTOR

Panama's legal framework provides for the following checked items:

- ✓ Standards or codes of conduct for proper performance of the public service
- ✓ Policies and procedures for identifying and managing conflicts of interest
- ✓ Gift acceptance policies for public officials
- ✗ Policies on post-public employment obligations, and restrictions of public officials to work in the private sector after concluding their public service
- ✗ Policies for training public officials in anti-corruption measures.

Participants noted that, regardless if some of the above listed policies are in place, failure to comply with these policies results in rather insignificant punitive consequences.

Regarding sworn affidavits, the Panamanian legal framework provides for the following:

- ✓ Measures that require public officials to render financial statements

In addition to the fact that these statements are not publicly available (although they should be public in accordance with the law), there are no provisions that require public officials to provide statements of interest, or information on the filing of tax-related statements (payments and refunds).

The agency that oversees and coordinates the implementation of anti-corruption policies is the Office of the Attorney General, which is under the Executive's authority.

## B. PRIVATE SECTOR

Panama does not generally provide for an anti-corruption regulatory framework for the private sector. The Criminal Code only establishes general rules on corruption. Panama's legislation does not largely address the following elements with regard to companies:

- ✓ Training in compliance programs
- ✗ Codes of Conduct
- ✗ Organizational chart and scope of the work of corporate officials
- ✗ Standards for a culture with the "tone at the top"<sup>44</sup>
- ✗ Control and audit measures
- ✗ Risk advice on compliance programs
- ✗ Internal complaints procedures
- ✗ Research protocols

- ✘ Risk assessment and evaluation of compliance programs.

As a result, there are no incentives to implement anti-corruption policies.

The Criminal Code and the Tax Code prohibit the use of false documents and the intentional destruction of corporate books before the time provided by law. However, Panamanian law does not address unregistered accounts in corporate books, the recording of non-existent expenses, and the recording of expenses in accounting books with incorrect indication of their purpose. In addition, it does not provide for mechanisms to prohibit companies or discourage the use of bribes or facilitation payments.

Private sector enterprises may be subject to administrative liability (which sanctions include disqualification from contracting with the State and possible redress under the Court of Auditors) and criminal liability under the Criminal Code.

### C. REPORTING MECHANISMS AND PROTECTION FOR WHISTLEBLOWERS

The participating LPs consider that the mechanisms for reporting acts of corruption in general are not accessible.

There is no regulatory framework in Panama that provides for the protection of whistleblowers against acts of intimidation or retaliation as a result of their complaints or testimonies.

### D. SPECIALIZED AUTHORITIES

The following authorities have powers to prevent, investigate or punish corruption in Panama:

- ✓ National Authority for Transparency and Access to Information (*Autoridad Nacional de Transparencia y Acceso a la Información*)
- ✓ Office of the General Comptroller of the Republic (*Contraloría General de la República*)
- ✓ Office of the Attorney General (*Procuraduría de la Administración*)
- ✓ Office of the Auditor General of Accounts (*Fiscalía de Cuentas*)

- ✓ Office of the General Prosecutor (*Ministerio Público*)
- ✓ Judiciary (*Judicatura*).

LPs primarily emphasized institutional weakness of the justice system in general, noting that it does not provide for the conditions necessary to achieve political independence; even regarding the judiciary and the Public Prosecutor's Office, which are legally autonomous bodies. In addition, LPs highlighted the inadequate economic and human resources available to anti-corruption agencies, lack of training of public officials, and lack of political will, as areas of opportunity for improvement. Participants concluded the following:

The anti-corruption authorities do not enjoy the required independence to prevent, investigate and prosecute corruption effectively.

LPs rated the institutional capacity of public authorities empowered to prevent, investigate, and prosecute acts of corruption as low.

No authority was identified as more effective in controlling corruption, and the judiciary in general was signaled as the one with the greatest need for institutional strengthening.

### E. INSTITUTIONAL COORDINATION MECHANISMS

There are mechanisms for institutional and inter-institutional cooperation or coordination to prevent, combat and punish corruption. However, LPs reported that these are mere formalities and sometimes represent an obstacle rather than a solution.

### F. PARTICIPATION OF CIVIL SOCIETY

There are formal mechanisms for participation by civil society, academia and other government actors to prevent corruption. However, LPs noted that these mechanisms are not really operational. The example presented by participants is the "State Pact for Justice" (*"Pacto de Estado por la Justicia"*), a national commitment made in 2005 by the heads of the three bodies of the State, the Public Prosecutor's Office, the

Ombudsman’s Office and representatives of civil society, with the objective of restructuring and modernizing the Panamanian judicial system, so that it is independent, transparent and efficient.

LPs have mentioned that the civil society, the media and the business sector constantly reports corruption and presents evidence, but that there are actors, particularly political parties, that, instead of being part of the solution, are part of the problem.

In addition, LPs report as one of the problems the lack of unity in CSO efforts, since, beyond their particular focus, they tend to be isolated and there are several parallel and independent agendas.

### G. TRANSPARENCY AND ACCESS TO INFORMATION

Information related to public officials working in public procurement processes, sanctioned public officials,

sanctioned private entities, recruitment process is publicly available in Panama.

In addition, on March 17, 2020, Panama passed Law 129, which creates the private and unique system of registration of beneficial ownership of legal persons (la Ley 129 que crea el Sistema Privado y Único de Registro de Beneficiarios Finales de Personas Jurídicas), with the aim of establishing the regulatory framework for the creation of the private and unique system of registration of ultimate beneficiaries in Panama.

Upon denial to provide requested information by an applicant, *a process of habeas data is available* before the Supreme Court of Justice. The competent body responsible for guaranteeing the right to access to information is the National Authority for Transparency and the Right to Information, an authority that is not autonomous.

### H. RECOMMENDATIONS TO THE LEGAL COMMUNITY

Promote the strengthening of the mechanisms of public ethics and integrity of the authorities of the State, with particular and detailed norms to discourage, detect and punish practices of corruption in the public sector	Corruption in the public sector
Promote a legal framework for the prevention of corruption in private sector companies, with incentives for compliance and verification in accordance with international standards	Corruption in the private sector
Promote legislation and regulations on the protection of whistleblowers, as well as to establish mechanisms that encourage the reporting of acts of corruption	Reporting mechanisms
Promote institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment	Institutional strengthening
Promote legislative and public policy reforms to strengthen the judicial branch in accordance with international standards, which guarantee the conditions of judicial independence necessary for the prevention of corruption	
Encourage the creation of coordination mechanisms among anti-corruption authorities to prevent, investigate, and punish corruption more efficiently	Institutional coordination mechanisms
Support CSO efforts to prevent, detect and report corruption.	Participation of civil society
Promote formal mechanisms for civil society participation in the design and implementation of anti-corruption public policy	

# VIII. PERU

Total	Legislation	Implementation	Authorities
5.86	9.09	4	4.83

The Republic of Peru has one of the strongest policy frameworks for combating corruption in the region.<sup>45</sup> Although LPs reported that the general rules need constant and periodic improvement (especially toward the prevention of undue acts), they also considered that those are sufficient and provide a solid basis for controlling corruption.

Regarding implementation challenges, LPs made comments with respect to the lack of political will and cultural resistance corresponding to interests (usually political parties), and barriers in procedural rules such as the abuse of preventive detention and the immunity of senior public officials.

People in poverty, immigrants and people in informal economic sectors were identified by LPs as those sectors most affected by corruption.

## A. PUBLIC SECTOR

Peruvian law provides for the following:

- ✓ Standards or codes of conduct for proper performance of the public service
- ✓ Policies and procedures for identifying and managing conflicts of interest
- ✓ Gift acceptance policies for public officials
- ✓ Policies on post-public employment obligations, and restrictions of public officials to work in the private sector after concluding their public service.<sup>46</sup>

With respect to sworn affidavits, the Peruvian legal framework provides that the following are publicly available:

- ✓ Measures that require public officials to render financial statements

- ✓ Measures requiring public officials to make statements of interest, including external activities and participation in companies and organizations

The government body that conducts, coordinates, and endorses the implementation of anti-corruption policies is the Secretariat of Public Integrity.

With respect to policies for training public officials in anti-corruption measures, the National Plan for Integrity and Anti-Corruption 2018-2021 recommends that an annual training program should be developed to educate public officials on both the existing rules, policies and procedures established for preventing corruption, as well as on ethics and integrity, which should be appropriate to the level of responsibility of the personnel targeted.

LPs mentioned the need for prevention mechanisms in the public sector, including the identification of risk areas, and training programs, beyond the provisions of the Code of Ethics of Public Service Act.

Peru has a Code of Ethics of the Judiciary that establishes guidelines for conduct and sanctions against judges, without prejudice to disciplinary measures that may be taken.

## B. PRIVATE SECTOR

Peruvian legislation regarding corruption provides for regulation from a criminal perspective, mainly through the following elements:

- ✓ Codes of Conduct
- ✓ Standards for a culture with the “tone at the top”<sup>47</sup>
- ✓ Control and audit measures
- ✓ Internal complaints procedures
- ✓ Training in compliance programs
- ✓ Risk assessment and evaluation of compliance programs.

- ✘ Organizational chart and scope of the work of corporate officials
- ✘ Risk advice on compliance programs
- ✘ Research protocols

These elements are not mandatory, but in accordance with Law No. 30424, regulating the criminal liability of the legal entity, companies may be exempted from punishment if, prior to the commission of a crime, they had implemented a model of crime prevention (compliance program) consistent with the above elements. The Regulations of Law No. 30424 suggest specific guidelines that each of the above listed elements should contain.

According to LPs, there is no documented case in which Law 30424 has been applied against a company.

In addition to regulating corruption of companies involving public officials, the Criminal Code also provides for corruption between private persons (pursuant to articles 241-A and 241-B of the Criminal Code).

The Peruvian legal system prohibits the following acts:

- ✓ Establishment of accounts not recorded in corporate books, the conduct of unregistered transactions, the recording of nonexistent expenses, the use of false documents, and the intentional destruction of corporate books.
- ✓ Bribery or facilitation payments

As a result, companies can be criminally sanctioned through fines, disqualification, cancellation of licenses, suspension of premises and dissolution, without prejudice of separately being held responsible for the payment of damages as a result of civil liability.

In criminal matters, it is possible to reduce sentences by means of collaboration agreements entered into between the accused person (individual or legal entity) and the Public Prosecutor's Office, which must ratify the agreement.

### C. REPORTING MECHANISMS AND PROTECTION FOR WHISTLEBLOWERS

With respect to the reporting of acts of corruption,

mechanisms exist for public servants to make reports (Law 29542 and Legislative Decree 1327). According to the PP, the reporting mechanisms are reasonably accessible.

In Peru, there are measures for the protection of whistleblowers, both at the administrative level and in the criminal realm, including the reservation of identity and labor protection, among others.

In the administrative field, the law provides for an incentive consisting of payment to the complainant an amount equivalent to 50% of the recovered amount by the State. However, LPs report that this mechanism has never been made effective in practice.

Whistleblowers may be held responsible on civil grounds (defamation or a claim for compensation) if they report corruption or irregularities to the press or media, and the accused demonstrates that it was a malicious report.

### D. SPECIALIZED AUTHORITIES

The following authorities have powers of prevention, investigation and punishment of corruption in Peru:

- ✓ Office of the Comptroller General of the Republic (*Contraloría General de la República*)
- ✓ Office of the Attorney General Specialized in Corruption crimes of Officials (*Procuraduría Especializada en Delitos de Corrupción de Funcionarios*)
- ✓ Office of the General Prosecutor (*Ministerio Público*)
- ✓ Judiciary (*Judicatura*)

LPs state that despite the legal autonomy of some of these institutions, significant independence is not a reality, especially regarding the procedures for appointing judges, prosecutors and heads of anti-corruption agencies.

According to participants:

The anti-corruption authorities most often do not have the independence necessary to prevent, investigate and prosecute corruption effectively. However, there

are certain individual government officials with sufficient independence.

Although there have been investigations and prosecutions involving high government officials, LPs emphasized that investigation by the General Prosecutor is subject to political pressure and to the discretion of Peru's Congress.

LPs rate the institutional capacity of agencies empowered to prevent, investigate, and prosecute acts of corruption as low.

LPs did not identify an institution that is more effective in preventing or combating corruption, establishing that any success on this front was due to individuals rather than to institutions.

The different agencies of the Executive were identified as the least effective in fighting corruption. LPs mentioned the importance of empowering the Office of the Comptroller General of the Republic (*Contraloría General de la República*) so that it can carry out annual audits of public entities.

As particular challenges affecting the actions of anti-corruption institutions, LPs identified political interference, lack of knowledge and specialized training in economic criminal law.

Participants noted that until 2020 there had been no cases in which the prosecution investigates a company under the scope of Law No. 30424 (although that law was enacted on 1 January 2018). LPs reported that the vast majority of prosecutors and judges have not been trained with respect to this law.

## E. INSTITUTIONAL COORDINATION MECHANISMS

There are mechanisms for coordination and institutional cooperation to prevent, combat, investigate and punish corruption. LPs highlight the creation of specialized groups and teams for complex cases and specific research topics.

## F. PARTICIPATION OF CIVIL SOCIETY

There are mechanisms for civil society, academia and other non-governmental actors to participate in efforts to prevent corruption. For example, when the judiciary convenes resolutions with respect to a problematic issue (for example, the limitation and civil redress in cases of corruption), civil society usually participates in the discussions. In addition, civil society organizations are involved in the High-Level Anti-Corruption Commission (*Comisión de Alto Nivel Anticorrupción*).

CSOs are actively involved in anti-corruption efforts, including reporting corruption.

## G. TRANSPARENCY AND ACCESS TO INFORMATION

Information on public officials working in public procurement processes, sanctioned public officials, sanctioned private entities, and public procurement processes is publicly available. A beneficial ownership registry does not exist.

It is possible to challenge the refusal to grant requested public information to the government, through *the writ of hábeas data*. In addition, the National Authority for Transparency and Access to Information (*Autoridad Nacional de Transparencia y de Acceso a la Información*), an agency under the Ministry of Justice and Human Rights, is responsible for the fulfillment of the transparency obligations of all public bodies.

**H. RECOMMENDATIONS TO THE LEGAL COMMUNITY**

Promote the strengthening of the mechanisms of public ethics and integrity of the authorities of the State, with particular and detailed norms to discourage, detect and punish practices of corruption in the public sector	Corruption in the public sector
Promote institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment	Institutional strengthening
Promote legislative and public policy reforms to strengthen the judiciary in accordance with international standards, which guarantee the conditions of judicial independence necessary to effectively counter corruption	
Promote legislation and regulations to establish a beneficial ownership registry in accordance with international standards and best practices	Transparency

# Regional Analysis

In spite of the specific differences and issues in each of the countries analyzed, it is possible to find particular trends with regard to the topics addressed:

- In most Latin American countries, the anti-corruption legal framework is focused on the field of criminal law, rather than on administrative and civil law, particularly with respect to damages caused by acts of corruption.
- Similarly the legal framework, in general terms, is only minimally designed to establish mechanisms for the prevention of corruption in the public sector through integrity measures.
- In most countries, the rules for the prevention of corruption in the public sector focus on the executive branch, without similar obligations for other authorities and bodies. As an exception, the rules in Mexico apply to all public servants in all branches and levels of government.
- In all countries there is agreement on the importance of involving the private, national, and international sectors in efforts to combat corruption, not only through prevention, but also through support and leadership of initiatives to advance the anti-corruption agenda.
- While in most countries there are regulations to prevent and punish corruption in the private sector, implementation of these mechanisms is optional and there are no guidelines for compliance and verification. In addition, the regulations are designed for large enterprises, not for small and medium-sized firms. Peru is the country that provides the most comprehensive guidelines in the region.
- At the regional level, the lack or inadequacy of existing mechanisms for the protection of whistleblowers hinders reporting of acts of corruption. Moreover, even in countries where these mechanisms exist, the lack of economic incentives and inevitable risks of reporting, create a major deterrent for reporting.
- In most countries of the region, efforts have been made to update the anti-corruption legal framework, but the actual implementation of the rules remains the main challenge. In most countries, the lack of political will and of meaningful independence of anti-corruption institutions represent the main obstacle to preventing, combating, or punishing corruption. In some cases, regressive actions or policies have even been identified. There were countries like Mexico and Peru with high ratings in “legislation”, but low in “implementation” and “authorities”.
- In particular, in some countries, the lack of independence of state or autonomous institutions, particularly the judiciary and the Office of the General Prosecutor, is concerning. The mechanisms for the appointment of judges and the lack of budgetary and human resources, training, and technological tools to carry out their functions underpin this lack of independence. In this regard, Panama and Guatemala stressed the need to strengthen their anti-corruption institutions, and achievements in this area are attributed to particular individuals.
- In some countries, the lack of coordination mechanisms between authorities is a notable shortcoming to the proper implementation of the legal framework. In some cases, these mechanisms do not exist, and in others, they are not being used.
- From the point of view of international cooperation, all the countries analyzed are parties to the United Nations Convention against Corruption, the Inter-American Convention against Corruption, and the United Nations Convention against Transnational Organized Crime and its Protocols. Only

Guatemala and Panama are not party to the OECD Convention to Combat Corruption of Foreign Public Agents in International Commercial Transactions. This implies that for all countries the cooperation mechanisms provided for in the conventions are applicable.

- Regarding international cooperation, it is important to mention that all countries permit extradition of their nationals except Brazil (nationals born in Brazil) and Panama. Similarly, in all countries, extradition requires dual criminalization of conduct, except in Chile (which, in addition to imposing the dual criminality requirement, requires evidence indicating that the person accused would be prosecuted, not necessarily convicted) and Guatemala.
- With regard to the participation of civil society, there is still no formal policy framework in some countries for its participation in the efforts of State authorities, and even in those countries where there is, barriers remain.
- Significant improvements in information transparency are occurring in the region, but only Panama has regulations (with implementation still pending) for the reporting of ultimate beneficial ownership, which is an important mechanism for preventing corruption in the public and private sectors.
- In all the countries analyzed, people in poverty and in conditions of vulnerability are the most affected by corruption.
- In no country is a human rights approach provided for in national law, with significant implications for victims of corruption and reparation for human rights violations for corruption.

# Regional Recommendations

As professionals trained to defend the rule of law and committed to the fair administration of justice, we believe that advocacy by the legal community plays a unique role in the fight against corruption. The Lawyers Council urges and encourages members of the legal community in the region, including the private legal sector, bar associations, pro bono clearing houses and law schools, to make critical efforts to initiate or strengthen anti-corruption initiatives. These efforts could include:

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Promote the development and use of technology in mechanisms to prevent corruption in the public sector.

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As part of efforts to prevent corruption in the public sector, design minimum-standards legislation for the countries of the region that focuses on the selection and recruitment of personnel in public administration, particularly for areas of risk.

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Promote the creation of national and regional recognition of public officials for their contribution to the fight against corruption in the public sector.

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In countries where there are policies for the prevention of corporate corruption, promote reforms to establish the mandatory application (considering the size of the company) of these policies, providing guidelines on their content, compliance, and evaluation.

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Encourage involvement of the private sector in each country and at the regional level to promote efforts of the legal community in the area of anti-corruption, as an agent with responsibility for the protection of the rule of law and the business climate.

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Promulgate mechanisms to encourage the reporting of acts of corruption and to protect whistleblowers.

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Consider using seized assets resulting from corruption for institutional strengthening of authorities responsible for anti-corruption efforts and initiatives with CSOs in this area.

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Consider the standardization, at the regional level, of sanctions for acts of corruption, both for the public and private sectors.

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Promote initiatives to ensure that anti-corruption efforts are not centralized nationally, and support the local legal community in implementing anti-corruption efforts.

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Promote regional cooperation of the legal community in promoting anti-corruption practices in the public and private sectors, and the exchange of experiences, challenges and good practices in civil society participation.

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Continue efforts on transparency and access to information, particularly with regard to public procurement processes in the region.

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Based on the Thematic Report of the Inter-American Commission on Human Rights “Corruption and Human Rights: Inter-American Standards”, the regional legal community must promote the recognition of the right to live in a country free from corruption, guiding the formation of national criteria based on inter-American standards.

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To promote the creation of an anti-corruption report center within the Inter-American System of Human Rights.

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 The **Lawyers Council for Civil and Economic Rights** brings together private practice law professionals in the Americas to support the rule of law, combat corruption, and bolster the work of civil society organizations. The Lawyers Council is made up of attorneys in private practice who have distinguished themselves in their respective countries, and who have demonstrated a constant civic commitment in their careers. The Lawyers Council is overseen by the **Cyrus R. Vance Center for International Justice**.

 The Vance Center promotes global justice by engaging legal professionals around the world to support the work of civil society organizations, underscoring the importance of an active and ethical legal practice. It is a non-profit program of the New York City Bar Association that brings together leading law firms and other partners around the world to promote international justice initiatives and provide pro bono legal representation to civil society organizations that fight for social justice.

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# Final Notes

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<sup>1</sup> Report by the Inter-American Commission on Human Rights “Corruption and Human Rights: Inter-American Standards” available at <http://www.oas.org/es/cidh/informes/pdfs/CorrupcionDDHHES.pdf>

<sup>2</sup> In Argentina, the 1 Questionnaire was completed by MBP Partners Abogados.

<sup>3</sup> Article published in LexLatin. Available at <https://lexlatin.com/noticias/ayuda-combate-corrupcion-encuesta-vance-center>

<sup>4</sup> Ley Nro. 25.188, Ley de Ética en el Ejercicio de la Función Pública (y sus modificatorias); Decreto Nro. 164/99, Decreto Reglamentario de la Ley Nro. 25.188; Decreto Nro. 201/2017, Integridad en juicios contra el Estado; Decreto Nro. 202/2017, Integridad en contrataciones públicas; Decreto Nro. 1179/2016. Reglamentación del artículo 18 “Régimen de obsequios a funcionarios públicos” de la Ley Nro. 25.188; Decreto Nro. 41/99, Código de Ética en la Función Pública.

<sup>5</sup> Ley Nro. 25.233, Creación de la Oficina Anticorrupción en el ámbito del Ministerio de Justicia y Derechos Humanos de la Nación; Ley Nro. 27.275, Ley de Derecho de Acceso a la Información Pública; Decreto Nro. 357/20021, Organigrama y objetivos de la Oficina Anticorrupción (y sus modificatorias); Decreto 1172/2003. Reglamentos Generales de Audiencias Públicas, para la Publicidad de la Gestión de Intereses, Elaboración Participativa de Normas, del Acceso a la Información Pública y de Reuniones Abiertas de los Entes Reguladores de los Servicios Públicos.

<sup>6</sup> Resolución MJyDH 1695/13. Régimen de Presentación de la Declaración Jurada Patrimonial Integral; Resolución General AFIP 3511/13. Procedimiento para Declaraciones Juradas Patrimoniales Integrales de los funcionarios públicos y otros. Norma complementaria; Resolución OA 09/11. Establece la suspensión de la percepción del 20% de los haberes a los funcionarios incumplidores de la presentación de Declaraciones Juradas Iniciales y Anuales. Modificación del modelo de intimación; Resolución MJyDH 193/07. Sustituye los modelos de formularios para la presentación de las Declaraciones Juradas Patrimoniales Integrales aprobados por la Resolución SJyAL 10 del 28/12/2001; Resolución OA 03/02. Modelos de intimación a funcionarios incumplidores; Resolución MJyDH 1000/00. Régimen de Presentación de Declaraciones Juradas; Resolución OA 06/00. Criterios para la determinación del universo de funcionarios obligados a presentar Declaración Jurada Patrimonial Integral.

<sup>7</sup> Resolución 20/2020. Resolución de ampliación del Consejo Asesor para el Seguimiento de la Implementación de las Iniciativas Incorporadas al Plan Nacional Anticorrupción 2019 – 2023; Decreto 258/2019. Decreto de aprobación del Plan Nacional Anticorrupción; Resolución 21/2019. Resolución de creación del Consejo Asesor para el Seguimiento de la Implementación de las Iniciativas Incorporadas al Plan Nacional Anticorrupción 2019 – 2023; Decreto 650/2019. Decreto de Enlaces de Integridad; Resolución 797/2019. Resolución de competencias del Enlace de Integridad; Resolución 33/2019. Resolución de designación de integrantes del Consejo Asesor para el Seguimiento de la Implementación de las Iniciativas Incorporadas al Plan Nacional Anticorrupción 2019 – 2023; Resolución RESOL-2020-5-APN-OA#PTE. Aprobación de Recomendaciones para Fortalecer la Integridad y Transparencia en Contrataciones Públicas Celebradas en el Marco de la Emergencia por COVID-19

<sup>8</sup> Ley 25.164. Ley Marco de Regulación del Empleo Público Nacional; Decreto 1421/02. Reglamentación de la Ley 25.164; Decreto 1033/01. Desempeño de horas clase o cátedra; Decreto 894/01. Incompatibilidad entre el cobro de un haber previsional y la percepción de remuneración por cargo en la función pública; Decreto 946/01. Régimen sobre acumulación de cargos en la Administración Pública Nacional; Decreto 933/71. Régimen de compatibilidad

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entre la docencia universitaria y cargos en la Administración Pública Nacional; Decreto 8566/61. Régimen sobre acumulación de cargos en la Administración Pública; Decreto 9677/61. Disposiciones complementarias al régimen del Decreto 8566/61; Resolución SME 11/01. Incompatibilidad en la percepción de prestaciones de pensión por fallecimiento; Resolución SME 13/01. Incompatibilidad incorporada por Decreto 894/01, no comprende a las pensiones de guerra de ex-combatientes de Malvinas; Resolución SME 27/01. Incompatibilidad incorporada por Decreto 894/01, no comprende a las personas con discapacidad.

<sup>9</sup> Código Penal de la República Argentina (artículos 265 y siguientes).

<sup>10</sup> Ley 27.401. Régimen de responsabilidad penal aplicable a las personas jurídicas privadas; Resolución 27/2018 de la Oficina Anticorrupción. Lineamientos de integridad para el mejor cumplimiento de lo establecido en los artículos 22 y 23 de la Ley N° 27.401.

<sup>11</sup> Decreto 1023/01. Régimen de Contratación de la Administración Pública Nacional.

<sup>12</sup> The term refers to the ethical environment that creates the organization's leadership in the workplace. Tone refers to the management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow the example of management, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>13</sup> See articles 9 and 22 of Law 27,401.

<sup>14</sup> The "Case of the Notebooks" ("*Caso de los Cuadernos*") was initiated in 2018 through the statements of driver Oscar Centeno, who had worked for public officials during the administrations of Néstor and Cristina Fernández de Kirchner. Reportedly, Centeno had written in his personal notebooks that he had often brought bags full of US dollars to various places, including public buildings and Cristina Kirchner's house. These bags contained bribe payments, which revealed an organized pattern of political corruption.

<sup>15</sup> Witness protection will be provided only if the matter results in criminal proceedings.

<sup>16</sup> A joint initiative of the Civil Association for Equality and Justice and the Center for Research and Prevention of Economic Crime (*Asociación Civil por la Igualdad y la Justicia y el Centro de Investigación y Prevención de la Criminalidad Económica*).

<sup>17</sup> The regulatory framework is integrated with the following systems: The Federal Constitution (1988), the Criminal Code of Brazil (1940), the Code of Criminal Procedures (1941), the Brazilian Clean Companies Act (2013), the Clean Companies Act (2015), the Administrative Leafy (1992), the Public Works Act (1993), the Civil Action Act (1985) 1998, the Anti-Money Act (1993), the Federal Law (20), the Anti-Money Order (2000) (2016) (2019), the Law among other companies (*la Constitución Federal (1988), el Código Penal de Brasil (1940), el Código de Procedimientos Penales (1941), la Ley de Compañías Limpias de Brasil (2013), la Regulación sobre Ley de Compañías Limpias (2015), la Ley de Faltas Administrativas (1992), la Ley de Obras Públicas (1993), La Ley de la Acción Pública Civil (1985), la Ley Antilavado de Dinero (1998), la Ley Anticrimen (2019), la Ley de Compañías Paraestatales (2016), las Resoluciones del Comité de Ética Pública (2000), la Resolución 20 del Senado Federal (1993)*).

<sup>18</sup> The term refers to the ethical environment that creates the organization's leadership in the workplace. Tone is the management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow the example of management, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>19</sup> See Federal Decree No. 8.420/2015 (*Decreto Federal número 8,420/2015*).

<sup>20</sup> This amount cannot be less than the illegal advantage obtained by the corrupt act and, if the gross income criterion cannot be used, the fine will range between R\$ 6,000 and R\$ 60 million. In addition to the fine, the private entity may be obliged to publish the court's decision in the major media.



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Ley sobre Mecanismos de Participación Ciudadana; Ley Estatutaria 1757 de 2015: Estatuto de participación ciudadana; Ley 850 de 2003: Ley sobre Veedurías ciudadanas; Ley 1712 de 2014: Ley de Transparencia y del Derecho de Acceso a la Información Pública Nacional; Ley 2013 de 2019: Ley sobre Transparencia y Publicidad mediante publicación de declaración de renta; Ley 1778 de 2016: Ley sobre la responsabilidad de las personas jurídicas por actos de corrupción transnacional y en materia de lucha contra la corrupción; Ley 1882 de 2018: por la cual se adoptan medidas para fortalecer la Contratación Pública en Colombia; Ley 2014 de 2019: por la cual se regulan las sanciones para condenados por corrupción y delitos contra la Administración pública; Decreto 403 de 2020: regulación del control fiscal previo, concurrente y concomitante; Ley 1437 de 2011: Código de Procedimiento Administrativo y de lo Contencioso Administrativo.

<sup>27</sup> Articles 11 and 12 of Law 1437 of 2011 (Code of Administrative Procedure and Administrative Dispute) (*Código de Procedimiento Administrativo y de lo Contencioso Administrativo*) generally regulate conflicts of interest in which a public official may incur in the exercise of his or her work.

<sup>28</sup> Law 1474 of 2011 provides for provisions prohibiting the giving, offering or receiving of any payment, promise or gift in order to achieve unjustified benefits.

<sup>29</sup> Article 73 of Law 1474 of 2011 provides that these plans must be reviewed annually, including, inter alia, the map of corruption risks in the respective entity, concrete measures to mitigate these risks, anti-processing strategies and mechanisms to improve citizen care.

<sup>30</sup> The term refers to the ethical environment that creates the organization's leadership in the workplace. Tone is the management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow the example of management, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>31</sup> The Superintendency of Companies (*La Superintendencia de Sociedades*) (*Ministerio de Comercio, Industria y Turismo*).

<sup>32</sup> See SC-185942016 of the Civil Chamber of the Supreme Court of Justice (*sentencia SC-185942016 de la Sala Civil de la Corte Suprema de Justicia*).

<sup>33</sup> It is composed of the following systems: Constitución Política de la República de Guatemala; Convención de Naciones Unidas contra la Corrupción; Convención Interamericana contra la Corrupción; Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional; Convenio Centroamericano para la Protección de Víctimas, Testigos, Peritos y demás Sujetos que Intervienen en la Investigación y en el Proceso Penal, particularmente en la Narcoactividad y Delincuencia Organizada; Código Penal, Decreto 17-73; Ley contra la Corrupción, Decreto 31-2012; Ley de Probidad y de Responsabilidad de Funcionarios y Empleados Públicos, Decreto 89-2002; Ley de Contrataciones del Estado, Decreto 57-92; Ley Orgánica del Ministerio Público; Decreto 40-94; Ley de Acceso a la Información Pública, Decreto 57-2008; Ley contra el Lavado de Dinero u Otros Activos, Decreto 67-2001; Ley contra la Delincuencia Organizada, Decreto 21-2006; Ley de Extinción de Dominio, Decreto 55-2010; Ley de Competencia Penal en Procesos de Mayor Riesgo; Reglamento de la Ley de Contrataciones del Estado, Acuerdo Gubernativo 122-2016; Reglamento de la Ley contra el Lavado de Dinero u Otros Activos, Acuerdo Gubernativo 118-2002; Reglamento de la Ley de Extinción de Dominio, Acuerdo Gubernativo 514-2011; Reglamento de la Ley de Probidad y de Responsabilidad de Funcionarios y Empleados Públicos, Acuerdo Gubernativo 613-2005; Acuerdo para determinar la competencia del Juzgado Duodécimo de Primera Instancia Penal, Narcoactividad y Delitos contra el Ambiente (exclusivo para conocer delitos cometidos por funcionarios y empleados públicos), Acuerdo de la Corte Suprema de Justicia 22-2020 (suspendido provisionalmente por la Corte de Constitucionalidad); y, Acuerdo de Creación de la Comisión Presidencial contra la Corrupción, Acuerdo Gubernativo 28-2020.

<sup>34</sup> The term refers to the ethical environment that creates the organization's leadership in the workplace. Tone is the management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow the example

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of management, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>35</sup> See Section 30 of the Money Laundering or Other Assets Act (*artículo 30 de la Ley contra el Lavado de Dinero u Otros Activos*).

<sup>36</sup> In accordance with article 298 of the Code of Criminal Procedure (*Código Procesal Penal*), public officials and employees who, in the exercise of their duties, are aware of the commission of an offense are obliged to file a complaint with the Public Prosecutor's Office. Failure to comply with this obligation could be punished as the offense of omission of a complaint, punishable by a fine of Q,100.00 to Q,1,000.00 (approximately US\$13.00 to US\$130.00).

<sup>37</sup> In accordance with the Law for the Protection of Procedural Subjects and Persons Linked to the Criminal Justice Administration (*Ley para la Protección de Sujetos Procesales y Personas Vinculadas a la Administración de Justicia Penal*), the protection service has as its essential objective to provide protection to officials and employees of the Judicial Branch, the Public Security Forces and the Public Prosecutor's Office, as well as witnesses, experts, consultants, adhesive complainants, women victims of violence, their daughters and sons, as well as other persons exposed to risks from their intervention in criminal proceedings. It will also provide coverage to journalists who need it because they are at risk, due to the fulfillment of their reporting function.

<sup>38</sup> See *Reforms to the Guatemalan Law on Non-Governmental Organizations for Development. Analysis in light of international standards (Reformas a la Ley de Organizaciones No Gubernamentales para el Desarrollo de Guatemala. Análisis a la luz de estándares internacionales)*. Available at <https://bit.ly/GuateanalisreformasleyONGs>

<sup>39</sup> It consists of the following systems: *Código Penal Federal y los Códigos Penales de cada uno de los Estados de México; Código Nacional de Procedimientos Penales; Ley General de Responsabilidades Administrativas; Ley Federal de Austeridad Republicana; Ley General del Sistema Nacional Anticorrupción; Ley Nacional de Extinción de Dominio; Ley Federal para la Prevención de Identificación de Operaciones con Recurso de Procedencia Ilícita; Acuerdo que tiene por objeto emitir el Código de Ética de los servidores públicos del Gobierno Federal, las Reglas de Integridad para el ejercicio de la función pública y los Lineamientos Generales para propiciar la integridad de los servidores públicos; Acuerdo por el que se establecen los Lineamientos para la Promoción y Operación del Sistema de Ciudadanos Alertadores Internos y Externos de la Corrupción; Modelo de Programa de Integridad Empresarial de la Secretaría de la Función Pública.*

<sup>40</sup> Republican Austerity Law (*Ley de Austeridad Republicana*), whereby officials are prohibited from working for a period of one year in position for those who use privileged information obtained during the exercise of public service. In particular, public officials within hierarchical groups of higher command are prohibited from working, for a period of 10 years, in particular companies that regulated, supervised or over which they have had privileged information during the exercise of their public service.

<sup>41</sup> The term refers to the ethical environment that creates the organization's leadership in the workplace. Tone is the management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow the example of management, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>42</sup> To date, it has the certification of the following processes:

- I. Attention to complaints and reports against the public servants of the Attorney General's Office.
- II. Initiation, follow-up and conclusion of; a) Administrative files; b) Previous inquiries, and c) Research folders.
- III. The actions of the Visitors who carry out the technical - legal evaluation within the procedures of the Office of the Attorney General.
- IV. Adequate operation of the evidence.

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V. Management of administrative processes (human, financial and material).

VI. Administration of the information derived from the processes of the Specialized Prosecutor's Office for Internal Affairs.

<sup>43</sup> The regulatory framework is integrated, among others, by the following ordinances: *Código Penal, el Código de Procedimientos Penales, el Código Judicial, la Ley de Contratación Pública, las normas antilavado (ley 23 de 2015 y el decreto ejecutivo 363 de 2015), la ley que regula el registro de beneficiarios finales (ley 129 de 2020), la ley que crea los tribunales de cuentas (ley 67 de 2008), la Ley Orgánica de la Contraloría General de la República, el Código de Procedimiento Administrativo (ley 38 de 2000) y el Código de Ética de los Servidores Públicos.*

<sup>44</sup> The term refers to the ethical environment that creates the organization's leadership in the workplace. Tone is the management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow the example of management, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>45</sup> Integrated, among others, by the following ordinances: *Constitución Política del Perú; Convención de las Naciones Unidas contra la Corrupción; Convención Interamericana contra la Corrupción; Convención para Combatir el Cohecho de Servidores Públicos Extranjeros en Transacciones Comerciales Internacionales; Código Penal peruano; Código Procesal Penal peruano; Ley No. 29976, Ley que crea la Comisión de Alto Nivel Anticorrupción y Reglamento, Decreto Supremo No. 089-2013-PCM; Ley No. 30424, Ley que regula la responsabilidad administrativa de las personas jurídicas y Reglamento, Decreto Supremo No. 002-2019-JUS; Ley No. 27815, Ley del Código de Ética de la Función Pública y Reglamento, Decreto Supremo No. 033-2005-PCM; Resolución de Junta de Fiscales Supremos No. 018-2011-MP-FN-JFS, Código de Ética del Ministerio Público; Ley No. 30483, Ley de Carrera Fiscal; Resolución de la Fiscalía de la Nación No. 1423-2015-MP-FN, Reglamento de las Fiscalías Especializadas en Delitos de Corrupción de Funcionarios, Fiscalías Especializadas contra la Criminalidad Organizada y Fiscalías Especializadas en Delitos de Lavado de Activos y Pérdida de Dominio; Decreto Legislativo No. 52, Ley Orgánica del Ministerio Público; Resolución Administrativa No. 081-2019-CE-PJ, que aprueba el Reglamento del Código de Ética del Poder Judicial; Ley No. 29277, Ley de Carrera Judicial; Decreto Legislativo No. 767, Ley Orgánica del Poder Judicial; Ley No. 30916, Ley Orgánica de la Junta Nacional de Justicia; Decreto de Urgencia No. 020-2019, que establece la obligatoriedad de la presentación de la Declaración Jurada de Intereses en el Sector Público y Reglamento, Decreto Supremo No. 091-2020-PCM; Ley No. 27785, Ley Orgánica del Sistema Nacional de Control y de la Contraloría General de la República; Ley No. 30057, Ley del Servicio Civil y Reglamento, Decreto Supremo No. 040-2014-PCM; Decreto Supremo No. 082-2019-EF, Texto Único Ordenado de la Ley No. 30225, Ley de Contrataciones del Estado; Ley No. 28024, Ley que regula la gestión de intereses en la administración pública y Reglamento, Decreto Supremo No. 120-2019-PCM; Ley No. 27588, Ley que establece prohibiciones e incompatibilidades de funcionarios y servidores públicos, así como de las personas que presten servicios al Estado bajo cualquier modalidad contractual y Reglamento, Decreto Supremo No. 019-2002-PCM; Decreto Legislativo No. 1327, que establece medidas de protección para el denunciante de actos de corrupción y sanciona las denuncias realizadas de mala fe y Reglamento, Decreto Supremo No. 010-2017-JUS; Ley No. 29542, Ley de protección al denunciante en el ámbito administrativo y de colaboración eficaz en el ámbito penal y Reglamento, Decreto Supremo No. 038-2011-PCM; Decreto Supremo No. 044-2018-2018-PCM, que aprueba el Plan Nacional de Integridad y Lucra contra la Corrupción 2018-2021; Ley No. 27806, Ley de Transparencia y Acceso a la Información Pública y Reglamento, Decreto Supremo No. 072-2003-PCM.*

<sup>46</sup> Law No. 27588 establishes prohibitions for public officials and persons who served for the State to intervene as lawyers, agents, advisers, among others, for a year after leaving the employment with the State. Such prohibition applies to persons who have accessed privileged or relevant information or whose opinion has been material in decision-making, for example, directors, officers, senior officials, Members of Advisory Councils, Administrative Courts, Commissions and other collegial bodies that perform a public function or commission of the State, the directors of State enterprises or representatives of the State in directories, as well as the advisers, officials or

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servants with specific assignments. Similarly, the Civil Service Law Regulations (*Reglamento de la Ley de Servicio Civil*) relates to public officials, and private enterprises or institutions. Such prohibition will be remain permanent with respect to specific matter matters in which it directly participated.

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