



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

# LAAA

## 2021/2022

LATIN AMERICA  
ANTI-CORRUPTION  
ASSESSMENT

NEW YORK  
CITY BAR



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

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# ABBREVIATIONS AND ACRONYMS

Section	Abbreviations or Acronyms	Meaning
<b>General</b>	Assessment or EAL	Anti-Corruption Assessment in Latin America
	<i>Lawyers Council</i>	Lawyers Council for Civil and Economic Rights
	CSO	Civil Society Organizations
	OECD	Organization for Economic Cooperation and Development
	OAS	Organization of American States
	UN	United Nations
	<i>Vance Center</i>	<i>Cyrus R. Vance Center for International Justice</i> of the New York City Bar Association
<b>Argentina</b>	OA	Anti-Corruption Office
	UIF	Financial Reporting Unit
<b>Bolivia</b>	UIF	Financial Investigations Unit
<b>Chile</b>	UAF	Financial Analysis Unit
<b>Colombia</b>	DIAN	National Customs and Tax Authority
	PTEE	Transparency and Business Ethics Program
	SuperCompanies	Superintendency of Companies
	UIAF	Financial Information and Analysis Unit
<b>Ecuador</b>	COIP	Integral Penal Organic Code
	FTCS	Transparency and Social Control function
<b>El Salvador</b>	IAIP	Institute for Access to Public Information
	UIF	Financial Research Unit
<b>Guatemala</b>	CICIG	International Commission against Impunity in Guatemala
	FECI	Specialized Prosecutor's Office against Impunity
<b>Honduras</b>	CNA	National Anti-Corruption Council
	MACCIH	Anti Corruption and Anti Impunity Support Mission in Honduras
	SFPS	Secretariat of the Public Service
<b>Mexico</b>	SNA	National Anti-Corruption System
<b>Paraguay</b>	SENAC	National Anti-Corruption Secretariat
<b>Dominican Republic</b>	DIGIG	General Directorate of Ethics and Government Integrity
	PEPCA	Office of the Procurator for the Prosecution of Administrative Corruption
<b>Uruguay</b>	JUTEP	Board of Transparency and Public Ethics
	SENACLAFF	National Secretariat for Combating Money Laundering and Financing Terrorism

# EXECUTIVE SUMMARY

The **LATIN AMERICAN ANTI-CORRUPTION ASSESSMENT** 2021-2022 is the second edition of a regional study for seventeen countries that maps legal efforts to prevent and combat corruption.

Unlike efforts made by other studies that focus on measuring corruption or the perception of corruption, this study uses legal practice as a basis for making a diagnosis of legislation, authorities and implementation to prevent, punish and combat corruption. This document captures the views of anti-corruption practitioners in various

sectors, including law firms, companies, academia, civil society organizations, human rights defenders, among others.

Using information obtained from members of the *Lawyers Council for Civil and Economic Rights*, allied law firms and the legal community of participating countries, the **final rating** was calculated on a scale of zero (0) to ten (10), where zero is the lowest rating and ten is the highest rating.

Country	Final Score	Legislation	Authorities	Implementation
Uruguay	8.36	8.43	8.33	8.33
Chile	7.96	8.71	7.50	7.83
Costa Rica	7.04	8.40	6.67	6.17
Brazil	6.70	8.28	6.16	5.83
Argentina	6.32	8.02	5.42	5.83
Colombia	6.20	8.72	4.58	5.83
Ecuador	6.19	8.41	5.17	5.33
Peru	6.06	9.25	4.33	5.17
Mexico	5.64	9.30	3.50	4.83
Bolivia	5.50	8.17	3.76	5.17
Dominican Republic	5.45	7.94	4.17	4.67
Panama	4.61	6.20	4.00	3.83
Paraguay	4.53	6.99	3.33	3.67
El Salvador	4.20	8.17	2.23	2.83
Honduras	4.05	7.72	2.22	2.83
Guatemala	3.54	6.00	2.22	2.83
Venezuela	2.87	6.86	1.67	0.50

## Regional analysis

- No significant progress was detected in the countries analyzed in the previous edition of the Evaluation (2020). On the contrary, some setbacks in independence and capacity of authorities were detected in Guatemala, Mexico and Peru.

**Legislative efforts without action to strengthen institutions and improve implementation are ineffective.**

- There has been no political will to match legislative efforts with policies to strengthen institutions and their capacity to implement rules, including providing material independence and sufficient resources. In one third of the countries analyzed, the legal community considers that the authorities have no independence, and in half that they have no capacity.

- Uruguay and Chile, the two countries best qualified in authorities and implementation, are not the countries that have the most robust legal framework to fight corruption.
- Countries that stand out in the category of legislation (Mexico and Peru) have low ratings for the category of authorities and implementation.
- The lack of political will to fight corruption has led to non-existent anti-corruption efforts in countries such as Venezuela, or to see regressive policies such as Guatemala, Honduras, or El Salvador.

**Many anti-corruption efforts are focused on penalizing, but not on establishing effective mechanisms to prevent or report corruption.**

- Prevention policies in the public sector, if they exist, are weak and ineffective.
- In most countries, there is no regulation to establish anti-corruption mechanisms for private-sector enterprises, and if there are, there are no guidelines for compliance and monitoring.
- In half of the countries, there are insufficient or missing mechanisms for protecting whistleblowers.

**Many anti-corruption authorities are not independent and have no capacity**

- The mechanisms for appointing counterparties, prosecutors and judges are often political, and are not based on the merit and capacity of individuals.
- Anti-corruption authorities do not have sufficient financial and human resources, training and technology to prevent and investigate acts of corruption.
- In most countries, coordination mechanisms between authorities do not exist, are not used, or are insufficient.

**Society organizations need more support for their anti-corruption efforts**

- In some countries, there is no regulatory framework for civil society participation in anti-corruption efforts, and the authorities do not take their initiatives into account.
- In some countries, there are formal or informal barriers to civil society participation. In Venezuela, Guatemala, El Salvador and Mexico, there are limits or acts of repression as a disincentive mechanism for investigating, discovering or reporting acts of corruption.

**People in poverty and vulnerable conditions are most affected by corruption**

- In no country is there a legislative human rights approach to fight corruption, affecting victims of corruption and the reparation for the violation of human rights by corruption.

**Recommendations**

The recommendations by country and at the regional level are a call for action from the legal community to meet the challenges mentioned, namely:

- The importance of promoting the development and use of technology to prevent corruption
- The need for the involvement of the private sector in each country and at the regional level in order to promote the efforts of the legal community in the matter of anti-corruption
- Promoting the regional cooperation of the legal community in anti-corruption efforts
- To promote the creation of an Anti-Corruption rapporteurship within the Inter-American System of Human Rights.

# INTRODUCTION

Corruption remains one of the major global challenges for national development. It affects the enjoyment of civil and economic rights, generates discrimination in the implementation of public policies resulting in the violation of human rights and incapacitates the authorities to carry out their functions in full.

Corruption has had a significant impact on governments and public spaces in Latin America, thus becoming one of the largest and most complex problems identified by citizens in their environment and society. The fight against corruption has therefore been a growing priority on the public agenda of the countries of the region. However, there is still a discrepancy in most countries between the public agenda in speech, and reality.

Insufficient or inadequate legislation to deal with corruption, institutional weakness resulting in a lack of implementation of anti-corruption policies, as well as ineffective investigations to punish acts of corruption, undermine the rule of law.

It is not enough to have laws and public policies in place to prevent, investigate, prosecute and punish the improper acts of public officials and individuals by themselves. These rules have little impact if the institutions are not created and the conditions for independent, professional and integrated authorities to implement them. In turn, it is not an effort that the government can carry out on its own, but that the participation of the legal community in general, including legal professionals, law schools, civil society organizations, academia and other members, is essential.

For these reasons, the *Lawyers Council for Civil and Economic Rights* (hereinafter referred to as the “*Lawyers Council*”), a program of the *New York*

*City Bar Association's Cyrus R. Vance Center for International Justice*, publishes the second edition of this report for 2021-2022, adding nine more countries than the 2020 edition.

The Lawyers Council, made up of leading lawyers representing various countries of the American continent, considers corruption to be one of the scourges that most affect the rule of law worldwide, given its complexity and the visible and tangible consequences.

For the members of *the Lawyers Council*, 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 a prosperous national economy. In the absence of legal warranties, both economic development and the exercise of human rights are adversely affected and may deteriorate. Human rights violations, impunity, violence and insecurity flourish in a corrupt system.

As law professionals engaged in the exercise of private law, we recognize the primary importance of the rule of law for economic development and for attracting foreign investment. Indeed, the importance extends to retaining existing national investment, which emigrates under conditions of legal uncertainty in a worn-out rule of law.

In our practice we have seen that regardless of nationality, any investment analysis involves comparing possible investment destinations based on the reliability of the rule of law (including, of course, the principle of legality and judicial protection against arbitrary use of power), safety and the ability to prevent and combat corruption. In addition to developing a business plan, investors in any country also assess, especially in businesses that somehow involve the government, the anti-corruption regime, including the feasibility of

mitigating the risks of state corruption, excessive delays, or unpredictability in regulatory and judicial decision-making. As well as other divergences in 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 has a known correlation with low confidence in the state, lower tax collection and underinvestment in infrastructure.

For those reasons, among others, the current administration of the United States Government has established anti-corruption efforts as a priority, taking a number of measures and decisions to prevent and fight it.

On the other hand, the relationship between corruption and human rights remains evident and tangible in cases of great corruption. The consequences for society and direct victims of corruption cases call for serious investigations that include redress mechanisms, just as any other human rights case. In its Topic Report on “Corruption and Human Rights: Inter-American Standards,”<sup>1</sup> the Inter-American Commission on Human Rights mentions that corruption affects and has a negative impact on human rights in general, and in particular on economic, social, cultural and environmental rights, as it reduces the maximum available resources, generates discrimination and ultimately poverty, and increases inequality and impunity. Any future cases in the inter-American system that determine State responsibility for human rights violations arising from the lack of investigation and reparation of corruption cases will only make this more evident.

This document systematically traces and guides legal efforts in Latin America to prevent and combat corruption. This second edition of *the Latin American Anti-Corruption Assessment 2021-2022* (hereinafter “EAL”) includes seventeen countries in the region on the map of legal and practical

status: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Dominican Republic, Uruguay and Venezuela. The order of the countries is in strict alphabetical order.

Unlike other efforts that focus on measuring corruption or the perception of corruption, the *Lawyers Council's effort* is addressed from a legal practice perspective to analyze legislative, regulatory and institutional efforts to prevent, sanction and fight corruption in each country. This document captures the vision of the legal community engaged in anti-corruption practice (hereinafter referred to as the “consulted legal community”) from various sectors, including practices in legal firms, companies, academia, civil society organizations (hereinafter “CSOs”), human rights defenders, among others.

This document includes chapters with a country-specific analysis, divided into seven sections that correspond to relevant topics within the anti-corruption legal framework:

1. Corruption in the public sector
2. Corruption in the private sector
3. Complaint and protection of whistleblowers/alerters
4. Specialized Authorities
5. Institutional coordination mechanisms
6. Participation of civil society
7. Transparency and access to information

This paper also includes a series of country-specific recommendations, general recommendations, and a regional analysis that identifies similarities, trends, and differences in the fight against corruption.

The Lawyers Council hopes with this initiative that Latin American lawyers will seek specific paths for the systemic improvement of anti-corruption legislation and its implementation in the region. This evaluation also seeks to serve, rather than

merely an academic exercise, as a call for action by the legal community, a tool to catalyze discussions among lawyers from different fields and countries, and ultimately lead to reforms and efforts to drive the implementation of anti-corruption practices. The *Lawyers Council* and the *Vance Center* will use

the report to guide their efforts to collaborate with each country's legal community in the region on the legal frameworks, ethical guidelines, and business practices needed to effectively combat corruption.

## METHODOLOGY

For this report, the *Lawyers Council* developed, with the support of law firms and an expert consultant, a database of international instruments (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 this information, two questionnaires were developed for the legal community. The “Questionnaire 1”, to be completed by the law firms of the members of the *Lawyers Council* and other allied firms in the region with 35 questions (72 variables) divided into the following eight sections:

- 1) Anti-Corruption framework and its legislation
- 2) Anti-corruption policies and preventive practices for the public sector
- 3) Corruption in the private sector
- 4) Irregularities reporting and protection of whistleblowers
- 5) Specialized Authorities. Strength and independence of anti-corruption agencies
- 6) Cooperation and coordination from the national and international perspective
- 7) Participation of civil society and academia
- 8) Access to information

The objective of this “Questionnaire 1” was to obtain information on these eight issues derived from legislation, regulation and practice. This questionnaire was answered in late 2021.

The “Questionnaire 2” had 19 open-ended, multiple-choice questions with the aim of complementing the information in “Questionnaire 1” with the broad anti-corruption practice of the legal community. This survey in Spanish and Portuguese was widely distributed among the legal community of the participating countries.

In order to translate this information and scoring, all the information from the collected questions was divided into three categories: **Legislation, authorities and implementation**. Each category was allocated 10 points in total. Each category, in turn, was divided into sub-categories according to the topics of the questionnaires. Each of these sub-categories was assigned a score, according to the number of sub-categories and to add the 10 points of the 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 score by sub-category. 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, that is, half, then the assigned score would be half, equivalent to 1 (out of 2).

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

To obtain the final score, a percentage was assigned to each category, allocating 30% to legislation, 40% to authorities and 30% to implementation. It was decided to give a higher percentage to the “authorities” category because for the anti-corruption practice of the legal community and civil society in the region the

degree of independence and capacity of the authorities is decisive, as will be seen in the analysis of each country.

It is important to note that for 2020, the rating scale was changed proportionally to reflect the corresponding score.

## SCORE

According to the information obtained, the final score is shown on a scale from zero (0) to ten (10), where zero is the lowest score and ten is the highest. According to the score obtained ordered from highest to lowest, the final score is as follows:



Latin America Anti-Corruption Assessment 2021-2022																																						
			Argentina		Bolivia		Brazil		Chile		Colombia		Costa Rica		Ecuador		El Salvador		Guatemala		Honduras		Mexico		Panamá		Paraguay		Peru		Dominican Republic		Uruguay		Venezuela			
Categories and sub-categories	Variab (V)	Pts (P)	V	P	V	P	V	P	V	P	V	P	V	P	V	P	V	P	V	P	V	P	V	P	V	P	V	P	V	P	V	P	V	P				
A. Legislation (30%)			30%																																			
1. General legislation	16	2	13	1.63	11	1.38	13	1.63	14	1.75	11	1.38	13	1.63	10	1.25	10	1.25	11	1.38	9	1.13	15	1.88	9	1.13	7	0.88	14	1.75	9	1.13	11	1.38	10	1.25		
2. Anti-corruption preventive policies and practices for the public sector	15	1	15	1.00	11	0.73	10	0.67	14	0.93	15	1.00	11	0.73	12	0.80	10	0.67	5	0.33	8	0.53	14	0.93	9	0.60	10	0.67	13	0.87	14	0.93	12	0.80	6	0.40		
3. Corruption in the private sector	25	1	22	0.88	10	0.40	14	0.56	24	0.96	21	0.84	22	0.88	14	0.56	15	0.60	14	0.56	14	0.56	22	0.88	8	0.32	13	0.52	23	0.92	13	0.52	17	0.68	12	0.48		
4. Whistleblower complaints and protections	2	1	2	1.00	2	1.00	2	1.00	1	0.50	1	0.50	1	0.50	2	1.00	2	1.00	1	0.50	1	0.50	1.5	0.75	1	0.50	1	0.50	2	1.00	1	0.50	2	1.00	1	0.50		
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	1	2.00	1	2.00	1	2.00	1	2.00	1	2.00	0.5	1.00	1	2.00	1	2.00	1	2.00	1	2.00	1	2.00		
6. National and international cooperation and coordination	5	1	4	0.80	4	0.80	5	1.00	5	1.00	5	1.00	4	0.80	4	0.80	4	0.80	4	0.80	5	1.00	5	1.00	4	0.80	5	1.00	5	1.00	5	1.00	5	1.00	4	0.80		
7. Participation of civil society and of academia	1	1	0	0.00	1	1.00	1	1.00	1	1.00	1	1.00	1	1.00	1	1.00	1	1.00	0	0.00	1	1.00	1	1.00	1	1.00	1	1.00	1	1.00	1	1.00	1	1.00	1	1.00		
8. Access to information	7	1	5	0.71	6	0.86	3	0.43	4	0.57	7	1.00	6	0.86	7	1.00	6	0.86	3	0.43	7	1.00	6	0.86	6	0.86	3	0.43	5	0.71	6	0.86	4	0.57	3	0.43		
Total			10		8.02		8.17		8.28		8.71		8.72		8.40		8.41		8.17		6.00		7.72		9.30		6.20		6.99		9.25		7.94		8.43		6.86	
2020 score					8.15				8.16		8.21		8.39						5.50				9.05		5.57				9.09									
B. Authorities (40%)			40%																																			
1. Independence of anti-corruption authorities	3	5	1.5	2.50	1	1.67	2	3.33	2.5	4.17	1	1.67	2	3.33	1.5	2.50	0	0.00	0	0.00	0	0.00	1	1.67	1	1.67	1	1.67	1	1.67	1.5	2.50	2.5	4.17	0	0.00		
2. Institutional capacity with respect to effectiveness and level of impunity	3	5	1.75	2.92	1.26	2.09	1.70	2.83	2	3.33	1.75	2.92	2	3.33	1.6	2.67	1.34	2.23	1.33	2.22	1.33	2.22	1.10	1.83	1.4	2.33	1	1.67	1.6	2.67	1	1.67	2.5	4.17	1	1.67		
Total			10		5.42		3.76		6.16		7.50		4.58		6.67		5.17		2.23		2.22		2.22		3.50		4.00		3.33		4.33		4.17		8.33		1.67	
2020 score					5.50				4.83		7.50		4.70						3.60				4.00		3.60				4.83									
C. Implementation (30%)			30%																																			
1. Challenges to the implementation of the anti-corruption legal framework	12	4	7	2.33	5	1.67	7	2.33	10	3.33	7	2.33	8	2.67	7	2.33	4	1.33	4	1.33	4	1.33	4	1.33	7	2.33	5	1.67	5	1.67	5	1.67	10	3.33	0	0.00		
2. Challenges to the implementation of anti-corruption laws	1	4	0.5	2.00	0.5	2.00	0.5	2.00	0.75	3.00	0.5	2.00	0.5	2.00	0.5	2.00	0.25	1.00	0.25	1.00	0.25	1.00	0.5	2.00	0.25	1.00	0.25	1.00	0.5	2.00	0.5	2.00	0.75	3.00	0	0.00		
3. Mechanisms for the protection of whistleblowers and access to official channels for reporting corruption	1	2	0.75	1.50	0.75	1.50	0.75	1.50	0.75	1.50	0.75	1.50	0.75	1.50	0.5	1.00	0.25	0.50	0.25	0.50	0.25	0.50	0.75	1.50	0.25	0.50	0.5	1.00	0.75	1.50	0.5	1.00	1	2.00	0.25	0.50		
Total			10		5.83		5.17		5.83		7.83		5.83		6.17		5.33		2.83		2.83		2.83		4.83		3.83		3.67		5.17		4.67		8.33		0.50	
2020 score					4.33				4.30		8.00		4.00						2.67				4.00		2.87				4.00									
Final score			Out of 10:		6.32		5.50		6.70		7.96		6.20		7.04		6.19		4.20		3.54		4.05		5.64		4.61		4.53		6.06		5.45		8.36		2.87	
					5.95				5.67		7.86		5.60						3.89				5.51		3.97				5.86									

# 1. Argentina

Argentina has a comprehensive anti-corruption regulatory framework that includes more than forty rules of general application to regulate public ethics<sup>2</sup>, powers of the anti-corruption office<sup>3</sup>, affidavits<sup>4</sup>, anti-corruption strategy<sup>5</sup>, incompatibilities and public employment<sup>6</sup>, crimes in this matter<sup>7</sup>, criminal liability of legal persons<sup>8</sup>, and a regime for contracting goods and services of the State.<sup>9</sup>

According to the consulted legal community, the **legal framework is generally sufficient, but there are opportunities for improvement in several areas**. For example, a law is needed that provides for extinction of domain providing for its respective defense rights, including a specific use for those goods. In general, it was agreed that the text of the law is not implemented, considering also the challenges that exist arising from the federal system and the varying degrees of implementation.

Within the **main challenges for the applicability** of the anti-corruption legal framework in Argentina the lack of political will, insufficient judicial independence, lack of independence from anti-corruption authorities, and inadequate economic and human resources for anti-corruption agencies are especially noteworthy.

In addition, economically vulnerable groups were identified as the most affected by corruption.

## A. PUBLIC SECTOR

Argentina has anti-corruption policies that include:

- ✓ Standards or codes of conduct for a correct performance of the public service
- ✓ Policies and procedures for identifying and managing conflicts of interest
- ✓ Policies on gifts for public officials

- ✓ Policies on post-public employment obligations and limitations, by which public officials are not allowed to work in any area of the private sector after completing their assignment
- ✓ Policies for training public officials in anti-corruption measures

With regard to affidavits, the Argentine legal framework provides that the following are public:

- ✓ Asset declarations
- ✓ Disclosure of interests, including external activities and participation in companies and organizations
- ✓ Information on filing tax-related returns (payments and returns)

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

Members of the consulted legal community have pointed out that the Public Ethics Act currently in force presents various problems, including difficulties for its implementation throughout the country, its lack of updating, and that the assigned functions and institutional design are not adequate to fulfill its functions. In particular, mention is made of the need to strengthen mechanisms for the prevention of conflicts of interest, external activities and post-employment obligations.

The lack of technological tools for the control of ethics at the public level was also mentioned as a relevant deficiency. In addition, it has been pointed out that the OA has competence only in the executive branch, without an equivalent in the legislative and judicial branches.

## B. PRIVATE SECTOR

Argentina has an anti-corruption regulatory framework for the private sector according to the following:

- ✓ Codes of Conduct
- ✓ Standards for a culture with the “tone set by superiors”<sup>10</sup>
- ✓ Control and audit measures
- ✓ Risk advice on regulatory compliance programs
- ✓ Internal whistleblowing procedures
- ✓ Research protocols
- ✓ Training in compliance programs
- ✓ Risk assessment and evaluation of compliance programs

- ✗ Organization chart and scope of work of company officials

Private sector companies in Argentina are subject to criminal liability, but not administrative or civil liability. The majority of the legal community consulted agrees that the Law on Criminal Liability of Legal Persons has been an important step forward in the regulation that has motivated anti-corruption policies within companies. However, although the law exists, three years after its sanction it has not been applied, so the preventive and remedial purpose of the law is not fulfilled.

One repeated comment is that there is currently insufficient information on compliance such as guidelines and recommendations, and therefore legal persons do not have all the tools to fulfill their obligations under the criminal liability system. Furthermore, the rule does not seem to distinguish the size or type of legal person in order to determine the minimum elements or requirements that such legal person should comply with in order to form a *compliance program* according to such legislation; this results in a high transactional cost or a difficult objective of compliance by smaller legal entities.

In accordance with the Law on Criminal Responsibility of Legal Persons, the judge may consider non-compliance with these aspects for the determination of the sentence range. Under the law, compliance with anti-corruption measures (implementing a *compliance program* with all the minimum elements set forth in the rule) is a necessary prerequisite for contracting with the State. For all other private legal persons, the application of anti-corruption measures is not mandatory; however, it will be a mitigating element of any sanction or penalty that a judge might impose in the event that such private legal persons are involved in any corruption case.<sup>11</sup>

The Argentine legal system also prohibits the following acts:

- ✓ Establishment of accounts not recorded in corporate books, conduct of unregistered transactions, recording of non-existent expenses, use of false documents, and intentional destruction of corporate books.
- ✓ Bribery or facilitation payments, as well as their deduction for tax purposes.

According to the Repent Act (Law 27,304), judges can reduce penalties to those who committed a particular crime if they provide relevant and substantial data for the progress of the corresponding investigation. The legal community consulted mentioned that this has generated positive progress in the framework of relevant processes.

## C. REPORTING AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

Public servants have an obligation to report crimes they become aware of in the exercise of their functions in accordance with criminal procedural law, without any particular policy.

Citizens, according to the consulted legal community, have general **means and mechanisms of denunciation accessible**. Acts of corruption may

be reported to the Public Prosecutor's Office, the Judiciary or the Anti-Corruption Office.

The anti-corruption framework defines specific protective measures for whistleblowers. Law 25,764<sup>12</sup> created the National Program for the Protection of Witnesses and Investigated Persons, which, while not exclusive to corruption offenses, also applies to such offenses according to the judicial authority and the Minister of Justice and Human Rights. Protective measures include: (A) personal or home custody; (b) temporary accommodation in reserved places; (c) change of address; (d) provision of economic and housing resources for up to six months; (e) assistance for paperwork; and (f) assistance for reintegration into work. No compensation measures are provided for. Additionally, Resolution 27/18 of the Anti-Corruption Office mentions suggested guidelines for protecting whistleblowers of violations of Codes of Conduct and others within legal entities.

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

#### D. SPECIALIZED AUTHORITIES

The authorities at the national level with powers to prevent, investigate or punish corruption are:

- ✓ Anti-Corruption Bureau (OA)
- ✓ General Prosecution of Administrative Investigations of the Attorney General of the Nation
- ✓ Judiciary
- ✓ Financial Reporting Unit (FIU)

While the OA is part of the executive branch and its head is appointed directly by the President of the Nation, The General Prosecution for Administrative Investigations is part of the Office of the Attorney General of the Nation and has a

more complex appointment process in which the President is selected from a proposal by the Attorney General of the Nation, who after appointing them, must submit it for approval to the Senate by simple majority.

According to the legal community consulted:

Anti-corruption authorities **do not have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of **administrative authorities** empowered to prevent, investigate, and prosecute acts of corruption is **low**.

The institutional capacity of **the criminal authorities** empowered to investigate acts of corruption is **low**.

There is no agreement within the legal community consulted about an authority that identifies as the **most effective authority** in combating corruption. One reason includes that research takes a long time.

The Anti-Corruption Bureau has been identified as **the least effective**. The reason for this inefficiency has to do with their lack of executive independence.

The consulted legal community agrees on the importance of limiting the political power of the executive over the supervisory bodies. There is also agreement that the lack of real independence of the OA is an impediment to its action, since its action is governed by the policy of each administration and by political interests. In October 2021, the OA closed the Research Directorate, with the foundation of readapting it to enhance its preventive role, linked to design and advice in public policies.

The consulted legal community agrees on strengthening processes for the selection of judges

(providing greater transparency), disciplinary processes, as well as the periodic control of their performance.

The creation of the UIF is considered positive, however, it is important that the regulation of the Central Bank be clear, since the banks, in order not to be sanctioned, report activities as suspicious that do not actually meet the criteria. On the other hand, the UIF stopped considering the investigation of corruption as a priority crime of laundering, to devote to others that it considers “more serious” for the harm they inflict to society such as evasion, smuggling and transnational crimes. this includes offshore operations.

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

There is no mechanism for institutional coordination or cooperation to prevent, combat, investigate and punish corruption. The consulted legal community points out that the lack of effective action by the authorities is not only due to the lack of independence of the public authorities, but also due to the lack of institutional coordination. As part of the specific aspects of coordination, Argentina has not implemented a centralized system of analysis and relationship of data and information between public agencies, which makes it difficult to communicate and detect possible cases of corruption.

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

The legislation does not include a mechanism for participation by civil society organizations (CSOs), academia and other non-governmental actors in efforts to prevent corruption. However, civil society members of the consulted legal community

mention that there are no restrictions on this participation, there are important societal efforts of organizations such as the Citizen Power, among others.

Although CSOs are identified by the legal community consulted as the actors that mostly defend the rule of law and democracy, they have difficulties in financing them and areas of opportunity in the regulatory framework (including the fiscal) for an open civic space that encourages the smooth functioning of these organizations. The consulted legal community also mentioned the importance of investigative journalism that has made cases of corruption known.

The OA created the Advisory Council for Monitoring the Implementation of the Initiatives incorporated in the National Anti-Corruption Plan 2019 – 2023. This council is mainly composed of CSOs and business chambers.

Finally, the legal community consulted highlights the role that law firms and the private sector can play in driving anti-corruption efforts.

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

In Argentina, information regarding sanctioned public officials and private sanctioned is public. Public prosecution processes are also public, however, information about officials working in public prosecution cases is not public.

Additionally, there is a system that allows information to be requested from the government, and any refusal to provide the information can be challenged with the Public Information Access Agency, an autonomous body dependant on the Office of Ministers of the Presidency of the Nation.

## H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY

- ☛ To promote the strengthening of the mechanisms of public ethics and integrity of the authorities of the State, with particular and detailed rules to discourage, detect and punish practices of corruption in the public sector.
- ☛ To undertake efforts to make legal persons clear about their specific obligations in the area of corruption prevention, clearly establishing the applicable regulations
- ☛ Enforce the institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment
- ☛ To undertake initiatives to promote mechanisms for strengthening institutions that allow to shield against political interference, including, if necessary, modification of appointment processes
- ☛ To propose and promote mechanisms for the selection of judges in accordance with international standards that guarantee independence, as well as guarantees for the judicial career, including mechanisms of professionalization and discipline
- ☛ To encourage the creation of coordination mechanisms among anti-corruption authorities to prevent, combat, investigate, and punish corruption more efficiently
- ☛ Encourage mechanisms to encourage civil society participation in the design and implementation of anti-corruption public policy
- ☛ Promote legislation and regulations to establish records of final beneficiaries in accordance with international standards and best practices

## 2. Bolivia

Bolivia has a regulatory framework on anti-corruption with a constitutional ground and includes eight laws and four supreme decrees.<sup>13</sup> The prevailing view of the consulted legal community is that **regulation must improve, but it is generally sufficient**. One of the aspects mentioned by the consulted legal community is the lack of legislation containing mechanisms for preventing corruption for the public and private sectors and for coordination between different authorities.

The consulted legal community notes the lack of independence and capacity of authorities to investigate acts of corruption, highlighting a lack of independence of the judiciary. Regarding implementation challenges, they highlight the lack of political will to investigate cases of corruption in the government and the lack of training of public servants and resources to implement the anti-corruption legislation in Bolivia effectively.

The people most affected by corruption according to the legal community consulted are people in poverty and groups in vulnerable situations.

### A. PUBLIC SECTOR

Bolivian legislation provides for the following:

- ✓ Standards or codes of conduct for a correct performance of the public service
- ✓ Policies and procedures for identifying and managing conflicts of interest
- ✓ Policies on gifts for public officials
- ✓ Policies on post-public employment obligations and limitations, in which public officials are not allowed to work in any area of the private sector immediately after completing their assignment.<sup>14</sup>

With regard to affidavits, the Bolivian legal framework provides that the following are public:

- ✓ Measures requiring public officials to make asset declarations
- ✓ Measures requiring public officials to make disclosure of tax-related returns

It does not provide for:

- ✗ Measures requiring public officials to make declarations of interest

The agency that coordinates the implementation of anti-corruption policies is the Ministry of Justice and Institutional Transparency, in coordination with the Transparency and Anti-Corruption Units.

The National Transparency Policy establishes the need to develop training programs for public servants and promote good practices in public management as one of the most important implementation points for strengthening transparency in public management and the right to access information.

The legal community consulted also mentioned the need to achieve effective implementation of the rules through digitization for simplification of procedures, reduction of bureaucracy and achieving independence of the judiciary.

In the area of the Judiciary, although there are broad and sufficient prohibitions at the normative level, there are no effective de facto measures to reduce and prevent acts of corruption.

### B. PRIVATE SECTOR

Bolivian legislation does not have a specific anti-corruption regulatory framework for the private sector. Acts of corruption in the private sector are

regulated only by acts of unfair competition, such as client diversion and dependent corruption.

In addition, Bolivian legislation provides no obligation for the private sector to adopt or implement the following tools:

- ✗ Codes of Conduct
- ✗ Organization chart and scope of work of company officials
- ✗ Control and audit measures<sup>15</sup>
- ✗ Standards for a culture with the “tone set by superiors”
- ✗ Risk advice on regulatory compliance programs
- ✗ Whistleblowing procedures
- ✗ Research protocols
- ✗ Training in compliance programs
- ✗ Company risk assessment and evaluation of compliance programs

Law No. 004 of the fight against corruption, Illicit Enrichment and Fortunes Investigation “Marcelo Quiroga Santa Cruz” states that it is mandatory to report informally to the Financial Investigations Unit (“FIU”) when possible commission of acts or crimes of corruption is detected in the case of entities and subjects engaged in: (i) the purchase and sale of firearms, vehicles, metals, works of art, postage stamps and archaeological objects; (ii) trade in jewelry, gemstones and coins; (iii) gambling, casinos, lotteries and bingos; (iv) hotel, tourism and travel agency activities; (v) activities related to the productive chain of strategic natural resources; (vi) activities related to the productive chain of strategic natural resources; (vii) activities related to road construction and/or road infrastructure; (viii) customs dispatchers, import and export enterprises; (ix) non-governmental organizations, foundations and associations; (x) real estate activities, and the purchase and sale of property; (xi) investment services; (xii) political parties, citizen groups and indigenous peoples; and (xiii) cash-movement activities likely to be used for money laundering.

The consulted legal community does not identify the existence of any case in which a company is investigated under the scope of Law No. 004.

The consulted legal community agrees that compliance legislation applicable to the private sector in Bolivia needs to be enacted in order to promote the anti-corruption culture within companies.

In Bolivia, companies are subject to criminal and civil liability and not administrative for acts of corruption. The criminal liability of companies and their sanctions are recent and there is no precedents on their implementation.

The Bolivian legal system prohibits the following acts:

- ✓ Opening of accounts not registered in corporate books, the conduct of unregistered transactions, the recording of non-existent expenses, the entry of expenses in the accounting books with the incorrect indication of their object, the use of false documents, and the intentional destruction of corporate books.
- ✓ Bribery or facilitation payments

In this sense, companies may be penalized criminally, including loss of legal personality, economic sanctions, loss of state benefits, forfeiture of illicit profits, prohibitive sanctions (such as partial suspension of activities and prohibition of participation in government procurement, restorative sanctions (such as restitution of damage and implementation of a mechanism for preventing acts of corruption), in addition to civil liability in order to obtain restitution of the damage caused.

In addition, in criminal matters, it is possible to reduce penalties when: (i) criminal offenses are reported to the competent authorities through their legal representatives, before criminal action against the legal person has been initiated; (ii) they

assist in the investigation of the fact by providing elements of conviction, prior to prosecution, that are new and decisive in establishing the facts investigated; (iii) useful information is provided to prove the participation of other persons, whose criminal responsibility is equal or greater; or (iv) at any time during the proceedings and prior to the oral trial, if the damage caused by the criminal offense is repaired or reduced or engaged in a collaborative conflict management process for the same purpose. In turn, there is the figure of “*effective collaboration*” through which criminal action can be dispensed when (i) the defendant collaborates effectively with the investigation, (ii) provides essential information to avoid the consummation of the fact or the perpetration of others, (iii) disable criminal organizations, or (iv) help clarify the fact investigated or provide useful information to prove the participation of other persons whose criminal responsibility is the same or may as that of the collaborator.

### C. COMPLAINT AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

The consulted legal community considers that **in general the means and mechanisms of reporting are accessible**. In the area of reporting acts of corruption, there are means and mechanisms in the public sector for the protection of public servants, provided for in Law 458 on the Protection of complainants and witnesses.

In Bolivia, there are measures for the protection of whistleblowers, including the concealment of identity, labor protection, among others. In the administrative area, no incentive is provided for whistleblowers of acts of corruption.

The regulation does not establish civil or criminal liability in the event of reporting acts of corruption or irregularities to the press or media. However, if the person who is denounced considers that the fact of the complaint to the media affects his

honor, image or is false, he may initiate the appropriate legal actions.

### D. SPECIALIZED AUTHORITIES

The following authorities with powers of prevention, investigation and punishment of corruption are identified:

- ✓ Transparency and anti-corruption units
- ✓ Ministry of Justice and Institutional Transparency
- ✓ National Council for the Fight against Corruption, Illicit Enrichment and Legitimation of Illegal Earnings
- ✓ Ministry of Government
- ✓ Attorney General's Office
- ✓ Attorney General's Office - Public Ministry
- ✓ The General Comptroller of the State
- ✓ Financial Investigations Unit (FIU)
- ✓ Anti-Corruption Courts and Tribunals
- ✓ Specialized Police Investigators

According to the legal community consulted:

Anti-corruption authorities **do not have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of **administrative authorities** empowered to prevent, investigate, and prosecute acts of corruption is **low**.

The institutional capacity of **the criminal authorities** empowered to investigate acts of corruption is **low**.

The consulted legal community identified the Ministry of Justice and Institutional Transparency and the FIU as the most effective authorities in combating corruption.

The Public Prosecutor's Office and the judiciary were identified as **the least effective agency**, given their lack of capacity and independence. One of the reasons for this consideration is that the

consulted legal community perceives impunity in a series of corruption cases publicly known.

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

There are formally coordination mechanisms and institutional cooperation to prevent, combat, investigate and punish corruption. However, the consulted legal community notes that in reality this coordination does not exist and is discursive.

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

In accordance with the Participation and Social Control Act No. 341, there are mechanisms of participation for civil society, academia or other non-governmental actors in efforts to prevent corruption. The Political Constitution of the State provides that civil society shall exercise social control over public administration at all levels of the State and public, joint and private enterprises

and institutions that administer fiscal resources, as well as over the quality of public services, public entities must generate spaces for participation and social control.

The legal community consulted highlights the participation of CSOs in denouncing corruption




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

Information on public officials working in procurement processes, sanctioned public officials, sanctioned private entities, public procurement processes, or the final beneficiaries of companies is public.

It is possible to challenge the refusal to grant public information requested to the government, making the corresponding claim before the Transparency and Anti-Corruption Unit, which is the authority responsible for handling allegations of unjustified refusal of access to information.

#### **H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY**

- ☛ To promote the strengthening of the mechanisms of public ethics and integrity of the authorities of the State, with particular and detailed rules to discourage, detect and punish practices of corruption.
- ☛ To promote initiatives to create a regime of public declarations of interest for public officials of the various branches of government and other autonomous bodies
- ☛ To promote a legal framework for the prevention of corruption in private sector enterprises, with incentives for compliance and verification in accordance with international standards.
- ☛ Establish mechanisms to disseminate information related to complaints mechanisms available to the general population and public servants
- ☛ Enforce the institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment
- ☛ To undertake initiatives to promote mechanisms for strengthening institutions that allow to shield against political interference, including, if necessary, modification of appointment processes
- ☛ To propose and promote mechanisms for the selection of judges in accordance with international standards that guarantee independence, as well as guarantees for the judicial career, including mechanisms of professionalization and discipline

-  To promote legislative and public policy reforms to strengthen the judiciary in accordance with international standards, which guarantee the conditions of judicial independence necessary for an effective fight against corruption
-  To promote the functioning of coordination mechanisms among anti-corruption authorities to prevent, combat, investigate, and punish corruption more efficiently
-  Promote legislation and regulations to establish records of final beneficiaries in accordance with international standards and best practices

### 3. Brazil

Brazil has a comprehensive regulatory framework to hold individuals and businesses accountable for acts of corruption, which also includes policies and practices to prevent corruption in the public and private sectors, such as the protection of whistleblowers, mechanisms for cooperation and incentives for the implementation of integrity programs.<sup>16</sup>

According to members of the consulted legal community, **the legal framework is generally sufficient**. However, there is room for improvement, especially in areas such as prosecution secrecy, cooperation and integration among public anti-corruption institutions, enforcement of sanctions, and the reduction of political influence on public anti-corruption institutions.

The majority of the legal community consulted recognizes the difficulty of the legislative process for implementing anti-corruption laws in the country. Politicians and high level civil servants are the individuals who have the greatest relevance in anti-corruption efforts, taking into consideration the office they hold.

Members of the legal community consulted agreed that there are challenges arising from the federal system in Brazil and from the different levels of government (federal, state and municipal), where anti-corruption efforts cause potential conflicts of jurisdiction. Several authorities in different jurisdictions are competent to prosecute companies and individuals for acts of corruption.

Socio-economically disadvantaged sectors and other gender or racial minorities were identified as being most affected by corruption.

#### A. PUBLIC SECTOR

Brazil has anti-corruption regulations aimed at public officials that include:

- ✓ Codes of conduct for the good performance of the public service (for federal senior officials) and for the legislative
- ✓ Policies and procedures for identifying and managing conflicts of interest
- ✓ Policies on the receipt of gifts for federal government officials, prohibiting the receipt of gifts, with the exception of those not exceeding 100 reais (approximately \$18)<sup>17</sup>
- ✓ Policies on the obligations and limitations of former officials, which restrict the activities of officials in the private sector when they leave the public sector
- ✓ Training policies for public officials on anti-corruption measures

To promote transparency and oversight, the Brazilian legal framework provides:

- ✓ Measures requiring public officials to make asset statements

The statement of assets is not accessible to the public in general, but is subject to evaluation by the Federal Court of Auditors, in the case of federal public servants. There is no obligation to submit a declaration of interest.

Some federal public servants are prohibited from actively participating in the management of private enterprises. Such public agents may even have stakes in private companies, provided that they have no management or management functions and that there is no conflict of interest with the activities they carry out as public agents.

Law 12,813 of 2013 provides for a six-month waiting period for some public officials before they can engage in certain activities in the private sector (quarantine period). This was established to prevent public officials from using confidential information after leaving office.

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

In this context, an important law of the public sector is Act No. 8429 of 1992 ("Administrative Improbability Act"), which establishes sanctions for public servants for practices of administrative improbity, which can be summarized as acts resulting in illicit enrichment, they cause losses to the public purse or violate the principles of public administration. In addition, the law also punishes private agents and companies that induce or cooperate with public servants in the practice of acts of misconduct.

Recently, on 26 October 2021, Law No. 14,230 amending the Administrative Improbability Act was published. Most importantly, it included the need to prove the malice ("free and conscious will") to establish the act of improbity, in contrast to the previous wording, which also included the responsibility of the agents for the guilty conduct. The obligation to prove the thing that arose with the enactment of Law 230/2002 applies to both public and private actors involved in the practice of a certain harmful act against the public administration. In addition, the partners, officers and employees of a legal entity are not responsible for an act of misconduct that may be attributed to the legal entity, unless it is demonstrated that there is direct participation and benefits, in which case they will be liable within the limits of their participation.

Law No. 14,230 also established the requirements for the execution of a criminal prosecution agreement with the Public Prosecutor's Office,

responsible for the execution of agreements for acts of administrative improbity. Among the various requirements, it highlights the obligation to implement or improve the compliance program.

The Administrative Impropriety Act already provided for the succession of responsibility of the heir or successor of the person who caused injury to the public purse or was illicitly enriched. With the recent change in the text, the succession was also extended to cases of "*contractual alteration, transformation, incorporation, merger or societal excision*" limiting the integral repair of the damage caused, up to the transferred estate, in line with the wording of Law No. 12.846/2013 ("Brazilian Anti-Corruption Law").

## B. PRIVATE SECTOR

Brazil has anti-corruption rules for the private sector, which guide companies to implement compliance programs that include, for example

- ✓ Codes of Conduct
- ✓ Commitment from senior management<sup>18</sup>
- ✓ Internal audit and control measures
- ✓ Internal procedures for receipt and investigation of claims
- ✓ Anti-Corruption and *Compliance Program Training*
- ✓ Compliance Risk Assessment
- ✓ Independent compliance area with resources (human, financial, and material) to implement and manage the Compliance Program

According to the Brazilian Anti-Corruption Law and its Federal Decree No. 8.420/2015 ("Decree"), the implementation of a compliance program is not mandatory for companies, but it is an important evaluation criterion used by the authorities to reduce sanctions for corruption offenses. Companies that adopt a robust and effective compliance program, in accordance with the parameters established by the Decree, may have a substantial reduction in the amount of the penalty for non-compliance with the Brazilian Anti-

Corruption Law. In addition, companies that sign leniency agreements are also required to implement, improve and/or update their compliance programs.

The Brazilian Anti-Corruption Law establishes the objective vicarious corporate responsibility for the practice of acts against public, national or foreign administration. This means that the legal person may be held responsible for acts committed by third parties, even if without their knowledge or authorization, they have been carried out in their interest or benefit.

The Brazilian Anti-Corruption Act considers the following conduct, among others, to be harmful acts:

- ✓ Payment of undue benefits to public officials
- ✓ Commit fraud in public tender procedures
- ✓ Use of an individual or legal person to conceal or conceal the interests or real beneficiaries of the acts committed ("orange enterprise" or "screen enterprise")
- ✓ Obstructing the investigation or inspection activities of public agencies and agents, such as the deliberate destruction of books or documents related to improper acts or the investigation of the authorities, which can also be considered a crime of obstruction to

The Brazilian Anti-Corruption Law, like the Criminal Code, does not prohibit acts of corruption exclusively between private entities.

Brazilian legislation does not distinguish between facilitation payments and bribes, so both payments are prohibited conduct by the Brazilian Anti-Corruption Act, as well as their corresponding tax deduction. It is worth noting that in the cases related to the *Lava Jato* operation, the tax authority considered the bribe payments as taxable income for the collection of taxes, bearing in mind that such amounts had previously been accounted for as costs. Several administrative

remedies were submitted by the contributing companies to the Administrative Council on Fiscal Resources, most of which were denied.

In Brazil, private sector companies may be held responsible in the administrative and civil sphere, in the terms established by the Brazilian Anti-Corruption Law. In the administrative sphere, companies can be fined from 0.1% to 20% of their gross income in the fiscal year prior to the start of the administrative accountability process.<sup>19</sup> As a corrective measure, the Brazilian Anti-Corruption Law requires the company to make the sanction decision public in the media.

In civil matters, the Brazilian Anti-Corruption Act determines that companies may lose goods, rights or securities that represent an advantage obtained directly or indirectly from the violation. In addition, companies may be suspended or prohibited from entering into public contracts and receiving grants, donations and other benefits from public entities for a period of up to five years.<sup>20</sup>

Although the Criminal Code provides for sanctions relating to acts of corruption for individuals, in Brazil the legal person is not subject to criminal responsibility.<sup>21</sup> The consulted legal community mentioned that the lack of criminal responsibility of legal persons made it difficult for the courts to act against enterprises and public officials. In addition, the discussion of the Supreme Federal Court's interpretation of the second instance sentence, reflected in the need to wait for the final sentence of the criminal conviction, creates challenges for the fight against corruption in the country.

The Brazilian Anti-Corruption Act allows companies involved in acts harmful to the public administration to enter into leniency agreements to reduce sanctions, provided that the company fully cooperates with the authorities by providing relevant information for the investigation. In

addition, according to the consulted legal community, since the law establishes the *"first in time" rule*, it is possible that other companies involved in the infringement do not feel the need to spontaneously participate and provide information that might also be useful for an investigation. Furthermore, although there are cooperation agreements to remedy the multiplicity of authorities with jurisdiction to implement the leniency and non-prosecution agreements, the consulted legal community mentioned that this multiplicity of options for negotiating leniency agreements is a major challenge for companies interested in signing up.

Criminal law allows for individuals to reach agreements on cooperation and reduction of penalties in exchange for useful information. However, the fact that there is no single agreement allowing individuals and companies joint leniency ends up creating obstacles to the implementation of the cooperation agreements.

### C. COMPLAINT AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

According to members of the consulted legal community, **the government's internal reporting channels are accessible**, although there is no specific regulation, with the exception of state enterprises that must have internal reporting channels. A telephone line was created in 2011 to enable citizens to report corruption identified in the public administration.

Complainants, pursuant to Law No. 13.964/2019, may receive as an incentive a reward of up to 5% of the amount recovered in an investigation for corruption originating from a private complainant. This law also provides that complainants have the right to conceal their identity and to receive full protection against retaliation.<sup>22</sup>

In Brazilian legislation, there is no regulation on reporting acts of corruption to the press or the media.

### D. SPECIALIZED AUTHORITIES

The following authorities have national jurisdiction to prevent, investigate or punish acts of corruption:

- ✓ Federal Public Prosecutor's Office
- ✓ Office of the Comptroller General
- ✓ Court of Auditors of the Union
- ✓ Office of the Attorney General
- ✓ Ministry of Justice and Public Security
- ✓ Financial Activities Control Council (Financial Intelligence Unit)
- ✓ Judiciary
- ✓ General Advocacy of the Union
- ✓ Central Bank of Brazil
- ✓ Federal and Civil Police
- ✓ Ministry of Economy

According to the legal community consulted, some anti-corruption bodies and entities have political interests, since the President of the Republic has the power to appoint, for example, the heads of the Attorney General's Office, the Federal Court of Auditors, the Comptroller General's Office, The Financial Intelligence Unit and the Minister of Justice. Despite this, the consulted legal community recognizes that entities such as the Federal Public Prosecutor's Office or the judiciary itself manage to maintain an important level of autonomy and successfully prosecute cases, although it remains important to strengthen their capacity.

The Office of the Comptroller General was also identified by the legal community consulted as an effective authority in the fight against corruption.

The entire legal community consulted agrees that Brazil is going through a period of lack of political will to control corruption, which, for example, was reflected in the excessive time it took to vote on

anti-corruption laws and decrees. The lack of independence of the judiciary in some cases was also mentioned. According to the legal community consulted:

Anti-corruption authorities **generally have independence** in preventing, investigating and prosecuting corruption cases, but **there is political influence** on some agencies.

The institutional capacity of authorized public bodies to prevent, investigate and prosecute acts of corruption was described as **"media"**.

The consulted legal community also mentioned that the application of sanctions related to corruption cases takes a long time and will therefore generate a perception of impunity.

#### E. INSTITUTIONAL COORDINATION MECHANISMS

There is a mechanism of institutional coordination and cooperation to prevent, combat, investigate and punish acts of 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 signed a technical cooperation agreement setting out a number of parameters with regard to leniency and collaboration agreements, as well as sanctions reduction procedures. Two cooperation agreements were concluded between the Federal Public Prosecutor's Office and the Office of the Comptroller General of the Republic in 2010 and 2014 on the exchange of information and the fight against corruption. Along the same lines, there are Civil Police units in the Brazilian states that have also signed technical cooperation agreements with the Comptroller General. In 2019, the Inter-Ministerial Committee to Fight Corruption was established, which includes members of the Union's Comptroller General, the Ministry of

Justice and Public Security, the Ministry of Economy, the Institutional Security Cabinet, The Office of the Attorney General of the Union and the Central Bank of Brazil, in order to advise the Presidency of the Republic on the fight against corruption. The committee assists in the follow-up of the actions of the Federal Anti-Corruption Plan, launched in 2020 and updated in December 2021.<sup>23</sup>

The consulted legal community identified as good practice the working groups composed of several institutions, in which specific cases are discussed.

#### F. PARTICIPATION OF CIVIL SOCIETY

Specific mechanisms for the participation of civil society, academic centers and other non-governmental actors in anti-corruption efforts were not identified in the legislation. In spite of this, civil society organizations are involved in the fight against corruption and are driving initiatives, being a factor of relevance in the country.

Thanks to the efforts of these initiatives, there have been several successful cases of asset recovery in Brazil.<sup>24</sup>






#### G. TRANSPARENCY AND ACCESS TO INFORMATION

In Brazil, information relating to public officials and private entities sanctioned for acts of corruption is publicly available. There are also public procurement procedures.

In addition, there is a prerogative of access to government information under Act No. 12,527 of 2011 ("Access to Information Act"). Any person may request information from the Administration and, in the event that the Administration refuses to provide the information or is insufficient, the applicant may challenge the decision to the superior authority to which the application was made, the Comptroller General and, as a last resort, The Joint Committee on the Revaluation of

Information, which is not an independent body,  
but is part of the Executive Branch.

#### H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY

-  To promote the modernization of the norms of public ethics and integrity to strengthen the prevention of conflicts of interest, external activities and post-employment obligations
-  To promote legislation to establish corporate criminal responsibility for acts of corruption
-  To promote legislation and regulations on the protection of whistleblowers and alerters, as well as to establish mechanisms that encourage the reporting of acts of corruption
-  To undertake initiatives to promote mechanisms for strengthening institutions that allow to shield against political interference, including, if necessary, modification of appointment processes
-  Promote legislation and regulations to establish records of final beneficiaries in accordance with international standards and best practices

## 4. Chile

Chile has a compact regulatory framework<sup>25</sup> to prevent, investigate and punish acts of abuse, but according to the legal community consulted, effective. The rules governing this matter, although **sufficient in general terms, require** improvements addressed toward the provision of greater capabilities to anti-corruption agencies, the provision of greater incentives for reporting, and reprimand sanctions. According to the legal community consulted, greater resources and expertise are also needed for public entities.

Lack of inter-institutional coordination and inadequate economic and human resources for anti-corruption agencies are the main challenges the consulted legal community observes for the applicability of the anti-corruption legal framework in Chile.

Among the aspects that have proved successful, the rules of access to information and the regulation of the lobby activity are noted.

People in poverty and rural areas (especially women) were identified 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 service
- ✓ Policies and procedures for identifying and managing conflicts of interest
- ✓ Gift policies for public officials,
- ✓ Policies on post-public employment obligations and limitations, in which public officials are not allowed to work in any area of the private sector after completing their assignment

In particular, no policies were identified for training public officials in anti-corruption measures.

With regard to affidavits, the Chilean legal framework provides that the following are public:

- ✓ Assets declarations
- ✓ Disclosure of interest, including external activities and participation in companies and organizations

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

With regard to post-employment obligations, Law 18.575 prohibits former public officials from working for six months in companies that are subject to supervision by the respective authority.

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

### B. PRIVATE SECTOR

Law 20.393 presents a catalogue of measures that companies can adopt within them to self-regulate and prevent punishable offenses or improper acts:

- ✓ Codes of Conduct
- ✓ Organization chart and scope of work of company officials
- ✓ Control and audit measures
- ✓ Risk advice on regulatory compliance programs
- ✓ Internal complaints procedures
- ✓ Research protocols
- ✓ Training in compliance programs
- ✓ Risk assessment and evaluation of compliance programs

- ✗ The only measure that is not contained in this catalogue is the rules for a culture with the “tone set by the superiors”<sup>26</sup>

The existence of these measures is considered by Law 20.393 as a mitigant of liability in the event of corrupt misconduct or misconduct.

The Chilean legal system prohibits the following acts:

- ✓ Establishment of accounts not recorded in corporate books, conduct of unregistered transactions, recording of non-existent expenses, use of false documents, and intentional destruction of corporate books.
- ✓ Bribery or facilitation payments, as well as your tax deduction.

Legal persons in Chile are subject to civil, administrative and criminal liability for some offenses, including bribery of a national public official, bribery of a foreign public official and bribery of individuals. The penalties provided for by law include fines, prohibitions, loss of benefits, dissolutions or extinction of the legal person. In addition, an extract of the conviction may be ordered to be published at the expense of the company and the confiscation of property related to the offense.

### C. REPORTING AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

As regards reporting acts of corruption, the consulted legal community identifies that the official channels are **considered accessible**, however there are views mainly of civil society on the difficulty of access to them.

On the other hand, there is no specific legislation or public policy on mechanisms for the protection of claimants, nor economic incentives for reporting. In criminal matters the only incentive to report corruption offenses is that it is considered a mitigating circumstance.

In Chilean legislation there is no provision for reporting corruption to the press or media.

The consulted legal community agrees that the existing mechanisms in the legal framework are not sufficient to encourage the reporting of acts of corruption.

### D. SPECIALIZED AUTHORITIES

The following authorities with powers to prevent, investigate or punish corruption are identified:

- ✓ Comptroller General
- ✓ Attorney General's Office - Public Ministry
- ✓ Judiciary (Courts)
- ✓ Transparency Council
- ✓ Financial Analysis Unit (UAF)

It is important to mention that all five institutions have constitutional autonomy to exercise their functions. There are methods of election for the owners of these agencies (in which not only the president has intervention and decision, but also the Senate of the Republic and in some cases the Supreme Court). The consulted legal community agrees that this autonomy exists in general terms.

According to the legal community consulted:

Anti-corruption authorities **in general have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of **the administrative authorities** empowered to prevent, investigate, and prosecute acts of corruption is **medium- high**.

The institutional capacity of **the criminal authorities** empowered to investigate acts of corruption is **medium- high**.

The consulted legal community identified the Comptroller and the Public Prosecutor's Office as the most effective authorities in combating corruption.

Among the legal community consulted, they have not agreed on the **least effective agency** in the fight against corruption.

The recurring view among the consulted legal community is that the Office of the Prosecutor-General and the judiciary need the allocation of increased economic and human resources to strengthen their institutional capacity and to act more efficiently.

The consulted legal community agrees that the sound legal framework for transparency is one of the most effective channels for preventing corruption, including the Transparency Council.

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

In Chile, there are coordination mechanisms between the authorities responsible for the prevention, investigation and punishment of corruption. The Office of the Comptroller General and the Public Prosecutor's Office have carried out collaborative arrangements ..

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

There is no legislation or regulation on participatory mechanisms for civil society, academia and other non-governmental actors in efforts to prevent corruption. However, the role of CSOs and the media has been very relevant, and instances of cross-sector conversation have been held within the framework of the Anti-Corruption

Alliance. In addition, CSOs have made known cases of corruption and generated investigations.

The consulted legal community believes that universities have been particularly absent from anti-corruption efforts, and that the organized private sector could become more involved in the fight against corruption.





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

As already mentioned, transparency and access to information are considered one of the most effective mechanisms for preventing corruption in Chile. The Transparency Council is a legally autonomous body whose objective is to promote transparency of the public service. To monitor compliance with the transparency and publicity of information standards of State administration bodies and to guarantee the right of access to public information.

Information on public procurement processes is public, although there are no records of public servants participating in public tenders, or those public officials or legal persons. In Chile, there is no registration of final beneficiaries.

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

#### **H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY**

-  To promote legislation and regulations on the protection of whistleblowers and alerters, as well as to establish mechanisms that encourage the reporting of acts of corruption
-  Enforce the institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment
-  To promote formal mechanisms for civil society participation in the design and implementation of anti-corruption public policy
-  Promote legislation and regulations to establish records of final beneficiaries in accordance with international standards and best practices

## 5. Colombia

Colombia has a legal framework on anti-corruption<sup>27</sup> that includes at least 15 laws, plus applicable regulations. According to the legal community consulted, **legislation needs to be improved, but it is generally sufficient**. Among the highlights are the public prosecution system and the enter into force of Law 2195 of 2022, which takes action on transparency, prevention and the fight against corruption. Aspects to be improved include protection of whistleblowers of corruption and exceptions to the public procurement regime, Particularly in the wake of the COVID-19 pandemic. In the information provided by the consulted legal community, the main challenges to the applicability of the legal framework are the insufficient political will for its implementation, lack of inter-institutional coordination and coordination of the implementation of legislation, insufficient independence of prosecutors, inadequate economic and human resources for anti-corruption agencies. In addition, a majority of the legal community consulted identified “cultural resistance” as one of the main challenges, explaining the establishment of corruption within institutions. As one of the important tools to combat corruption, which has not been properly implemented is the extinction of dominance.

People in poverty and vulnerable sectors were identified as those most affected by corruption, including indigenous and Afro-descendant populations. Unlike the previous edition, migrants were added as one of these groups.

### A. PUBLIC SECTOR

Colombia has anti-corruption policies that include:

- ✓ A Single Disciplinary Code (Code of Conduct) regulating the actions of civil servants and public officials
- ✓ Policies and procedures for identifying and managing conflicts of interest<sup>28</sup>
- ✓ Gift policies for public officials<sup>29</sup>
- ✓ Policies on post-public employment obligations and limitations
- ✓ Policies for training public officials in anti-corruption measures

With regard to affidavits, the Colombian legal framework provides that the following are public:

- ✓ Assets declarations
- ✓ Disclosure of interest
- ✓ Information about related tax returns

The Attorney General's Office, the National Moralization Commission, the Regional Moralization Commission and the National Citizen's Commission to Fight Corruption are the main agencies that oversee and coordinate the implementation of anti-corruption policies.

All the entities that make up the Executive Branch are obliged to formulate and adopt an Anti-Corruption and Attention to Citizen Plan<sup>30</sup>. The Judiciary (Superior Council of the Judiciary) has an Anti-Corruption and Attention to Citizen Plan that contains measures to strengthen integrity and prevent opportunities for corruption with respect to members of the judiciary.

### B. PRIVATE SECTOR

Colombia has an anti-corruption framework in place for private sector companies. This requires that companies that meet the following requirements; (i) are under the supervision and control of the Superintendency of Companies (hereinafter "Supercompanies") (ii) that in the

immediately preceding year have had assets or revenues of more than 30,000 SMMLV (iii) that have made international transactions of more than 100 SMMLV and (V) that in the immediately preceding year directly or indirectly (through consortia, temporary unions or any other vehicle permitted by law), having concluded contracts with state entities with an amount equal to or greater (individually or collectively) than five hundred (500) SMMLV, shall have a Business Ethics and Transparency Program (hereinafter "PTEE") whereby, the following elements are regulated within companies:

- ✓ Codes of Conduct
- ✓ Control and audit measures (due diligence in identifying counterparties, updating the Transparency and Business Ethics Program for the required entities, documenting actions, among others)
- ✓ Risk advice on regulatory compliance programs
- ✓ Internal complaints procedures
- ✓ Training in compliance programs (*annual*)
- ✓ Risk assessment and evaluation of compliance programs
- ✓ Standards for a culture with the “tone defined by managers”<sup>31</sup> (only with respect to companies obliged to implement a Business Ethics and Transparency Program, as explained below)

In addition, provision is made for the receipt and/or delivery of gifts, entertainment, travel and lodging expenses, remuneration and payment of commissions, donations and political contributions.

It should be noted that the requirements referred to are for companies in general regardless of the activity they carry out. However, the law has established that companies belonging to the fields of manufacturing, pharmaceutical, infrastructure and construction, mining-energy, information and communications technologies, trade in vehicles,

their parts, parts and accessories, auxiliary activities of financial services, should adopt a PTEE. Provided that they had obtained total income equal to or greater than three thousand (3,000) SMMLV or had total assets equal to or greater than five thousand (5,000) SMMLV.

As background, Resolution 100-002657 of 2016 of the Superintendency of Companies<sup>32</sup> (hereinafter Supercompanies) established the companies that are obliged to implement them (whose recommendations were not binding for all companies). Then, External Circular 100-000011 of 2021 of the same Supercompanies established which companies are obliged to implement a Program of Transparency and Business Ethics (applicable for 2022<sup>33</sup>). Additionally, External Circular 100-000012 of 2021 of the SuperCompanies established the policy of supervision of the Transparency and Business Ethics Program.

The consulted legal community considers that this program will be a new challenge for private sector companies as there are expected to be a greater number of companies that must have anti-bribery and anti-corruption models in their culture.

With regard to internal complaints procedures, there is an obligation for individuals who are required to implement the Transparency and Business Ethics Program to establish channels for reporting, to notify the Compliance Officer of warning signs, to make channels available to all corporate counterparts and to ensure that measures are taken to protect whistleblowers.

The consulted legal community mentions that, in some cases of legal persons, there is no clarity as to which regulation to prevent corruption applies to them.

The legal system also prohibits the following acts:

- ✓ Opening of accounts not recorded in corporate books, conduct of unregistered

transactions, recording of non-existent expenses, use of false documents, and intentional destruction of corporate books.

- ✓ Bribery or facilitation payments, as well as their corresponding tax deduction.

Legal persons may be subject to administrative and civil responsibility, but not criminal. With regard to administrative liability, the sanctions include the prohibition for contracting with state entities, fines, publication of an extract of the decision of sanction for a maximum period of one (1) year in means of wide circulation and on the website of the sanctioned legal person. It may also provide for the prohibition of any type of government incentive or subsidy within 5 years. With regard to civil liability, when a dependent of a legal person commits unlawful damage in the exercise of his or her functions, the legal entity responds vicariously directly to that damage.<sup>34</sup>

Law 1778 of 2016 provides for a framework for timely collaboration for companies and individuals who have been involved in an act of corruption, in order to reduce sanctions. The same arrangement provides for mechanisms to reduce sanctions for those persons who accept charges at the time of the investigation. In addition, the SuperCompanies may grant benefits to participants in the infractions described in the law, provided that they bring it to the attention of the SuperCompanies and collaborate in a timely manner in the delivery of information and evidence related to such conduct.

Furthermore, the SuperCompanies may impose administrative sanctions on legal persons who are required to adopt a Business Ethics and Transparency Program and omit its implementation, as well as its administrators, tax reviewers and compliance officers, who may be subject to fines.

The consulted legal community mentions the lack of mechanisms for regulating prevention in legal

persons and its benefits beyond the provisions of the legislation. Without prejudice to this, the SuperCompanies may make visits to verify the implementation and compliance of the Transparency and Business Ethics Program (in those entities obliged to implement it).

Law 2195 of 2022 contains provisions aimed at preventing acts of corruption, To strengthen the articulation and coordination of State entities and to recover the damage caused by such acts in order to ensure the promotion of a culture of legality and integrity and the restoration of citizen confidence and respect for the public.

Similarly, it substantially amends Law 1474 of 201 (Anti-Corruption Statute). In this sense, the law establishes important points, such as:

- Establishes the System of Sanctioning Administrative Liability: In events where there is a criminal conviction executed or principle of opportunity in firm against administrators or workers of companies by the commission of crimes against; public administration, environment, economic and social order, financing of terrorism among other related matters, as well as whether the legal person or branch of foreign society has benefited directly or indirectly from the commission of punishable conduct committed by its administrators or workers or if it consented or tolerated punishable conduct, either by action or omission, it shall be administratively responsible and sanctioned.
- Administrative sanctions may be: Fines of up to 200,000 smlmv, plus the greatest value between the benefit obtained or the intended, inability to contract with the state, publication in means of wide circulation and on the website of the sanctioned legal person, restriction from receiving incentives or subsidies from the

government for ten years, the removal of administrators, officials, or employees who are criminally convicted or subject to a principle of opportunity, or who tolerated or consented the conduct of the convicted natural person.

- Holding the affiliates liable and punished when their parent or any other member of the business group or controlled by the parent engages in the conduct mentioned for the benefit of the subordinate.
- Increasing to 10 years the prescription period for the exercise of administrative sanction power against legal persons.
- It establishes the adoption of PTEE for the public sector; entities of the national, departmental and municipal order, with the assistance of the Secretariat of Transparency of the Presidency of the Republic.
- The companies must undertake due diligence to be aware of the final beneficiary and to complete the corresponding information updated in the RUB (Single Register of Final Beneficiaries) to this database only the Comptroller General, the Directorate of National Taxes and Customs (DIAN), the Attorney General's Office, The Financial Superintendency, the Superintendency of Companies, the Office of the Attorney General and the Financial Information and Analysis Unit (UIAF).
- Sanctions are increased for violation of the duties of the trader or the rules on books of commerce.
- It creates the anti-corruption observatory, this entity will be responsible for consolidating public information and carrying out the constant analysis of the types of corruption in the country.

### C. REPORTING AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

Reporting channels for reporting illegality or acts of corruption are **generally accessible** to the general population. Public servants have an obligation to report or report any facts relating to corruption offenses or offenses.

Colombian legislation does not provide for specific legislation or public policy on mechanisms for the protection of claimants, nor economic incentives for reporting.

In some cases, claimants who report acts of corruption or irregularities to the press or media are prosecuted.

The consulted legal community agrees that the existing mechanisms in the legal framework are not sufficient to encourage the reporting of acts of corruption. According to the legal community consulted, an additional element to the lack of incentives to denounce is the high perception of impunity.

### D. SPECIALIZED AUTHORITIES

The authorities identified as anti-corruption bodies or agencies are as follows:

- ✓ Office of the Attorney General
- ✓ Attorney General's Office
- ✓ Comptroller General
- ✓ General Audit
- ✓ Judiciary
- ✓ Superintendency of Companies (Supercompanies)
- ✓ Secretariat for Transparency of the Presidency of the Republic of Colombia
- ✓ Anti-Corruption Observatory

Some of these authorities enjoy autonomy in accordance with the law. The Office of the Comptroller General, the Office of the Attorney General, the Office of the Auditor General, and the Office of the Attorney General, have administrative

and financial independence. However, although this autonomy exists formally, the consulted legal community does not consider it to exist in reality.

According to the legal community consulted:

Anti-corruption authorities **generally do not have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of administrative authorities empowered to prevent, investigate, and prosecute acts of corruption is medium.

The institutional capacity of the criminal authorities responsible for investigating acts of corruption is medium.

The legal community consulted identified the Attorney General's Office and the SuperCompanies as the most effective authorities in combating corruption.

The Comptroller General is identified **as the least effective agency** in combating corruption.

The case of the Office of the Prosecutor General is interesting, as some people place it as an effective authority, and others as the least effective one. The latter is partly due to its lack of independence from the executive.

The consulted legal community argued that in some institutions corrupt practices are seen as being characteristic of administrative management, and public servants do not have the knowledge or tools to prevent or treat them. The lack of professionalization and career in one of these institutions was also mentioned as a reason for institutional weakness.

According to the consulted legal community, the lack of independence of the control bodies due to political interference and lack of resources is one of the main problems.

## E. INSTITUTIONAL COORDINATION MECHANISMS

Although there are formally mechanisms for cooperation and institutional coordination to prevent, investigate and punish corruption, the consulted legal community has pointed to the lack of effective communication and coordination between the authorities.

## F. PARTICIPATION OF CIVIL SOCIETY

The legislation includes mechanisms for participation by civil society, academia or other non-governmental actors in efforts to prevent corruption, through reporting. However, there are restrictions on such participation, including freedom of expression and the right of access to public information. Transparency for Colombia has published important reports on this matter.<sup>35</sup>

Civil society is active and restricted, as are the media reporting acts of corruption. Additionally, in some cases channels for reporting has been created.

Members of the legal community consulted mentioned the importance of involving the private sector and universities in anti-corruption efforts.

## G. TRANSPARENCY AND ACCESS TO INFORMATION

Information regarding public officials working in public procurement and sanctioned processes, private sanctioned entities, public procurement processes is public and there is regulation for the identification of final beneficiaries, with the adoption of a new single register of final beneficiaries.

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

With regard to the single registration of final beneficiaries, companies must complete the information corresponding to the beneficiaries through a form provided by the DIAN. Only the Comptroller General, the DIAN, the Attorney

General's Office, the Financial Superintendency, the Superintendency of Companies, the Attorney General's Office and the UIAF will have access to this database.

#### H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY

- ☛ To promote the strengthening of the mechanisms of public ethics and integrity of the authorities of the State, with particular and detailed rules to discourage, detect and punish practices of corruption in the public sector.
- ☛ To undertake efforts to make legal persons clear about their specific obligations in the area of corruption prevention, clearly establishing the applicable regulations
- ☛ To promote legislation and regulations on the protection of whistleblowers and alerters, as well as to establish mechanisms that encourage the reporting of acts of corruption
- ☛ Enforce the institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment
- ☛ To undertake initiatives to promote mechanisms for strengthening institutions that allow to shield against political interference, including, if necessary, modification of appointment processes
- ☛ Promote legislation and regulations to establish records of final beneficiaries in accordance with international standards and best practices

## 6. Costa Rica

Costa Rica has an anti-corruption legal framework<sup>36</sup> primarily in the area of criminal law.

According to the consulted legal community, the **legal framework needs to be improved but is generally sufficient**. The following are noteworthy areas in need of regulation, the lobbying practices, the recruitment of personnel in the private sector that previously formed part of the public sector and vice versa, as well as the protection of whistleblowers of acts of corruption.

The consulted legal community considers that **the main challenges for the applicability of the legal framework** are the inadequacy of mechanisms for detecting and preventing corruption, inadequate economic and human resources for anti-corruption agencies, and a shortage of technology, equipment and financing.

### A. PUBLIC SECTOR

Costa Rica's legislation includes, or does not include, 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 policies for public officials
- ✗ Policies on post-public employment obligations and limitations, by virtue of which public officials are not allowed to work in any area of the private sector after completing their assignment.
- ✗ Policies for training public officials in anti-corruption measures.

With regard to affidavits, the Costa Rican legal framework provides for the following:

- ✓ Measures that require public officials to make patrimonial statements
- ✓ Measures that require public officials to make statements of interest

In addition to the fact that these declarations are not public, there are no measures requiring public officials to make tax-related returns public (payments and refunds).

The consulted legal community stressed the need to create policies on post-public employment obligations and limitations in order to avoid the so-called “revolving door”.

### B. PRIVATE SECTOR

Costa Rica has an anti-corruption regulatory framework for the private sector, consisting mainly of the Law against Corruption and Illicit Enrichment in the Public Service and its Regulations and the Law on the Responsibility of Legal Persons on Domestic Crimes, Trans-national Bribery and Other Offenses and its Regulations.

In this sense, Costa Rica's legislation provides for companies to adopt or implement the following tools:

- ✓ Codes of Conduct
- ✓ Standards for a culture with the “tone set by superiors”<sup>37</sup>
- ✓ Control and audit measures
- ✓ Risk advice on regulatory compliance programs
- ✓ Internal reporting procedures
- ✓ Research protocols
- ✓ Training in internal compliance programs
- ✓ Risk assessment and evaluation of compliance programs.

### ✕ Organization chart and scope of work of company officials

Private sector companies may be subject to criminal liability in accordance with the Law on Liability of Legal Persons on Domestic Crimes, Transnational Bribery and Other Offenses, which provides for pecuniary sanctions as well as the loss or suspension of State benefits or subsidies, Dissolution of the legal person, impossibility of exercising trade, among others the Penal Code provides for the possibility of imprisonment of individuals. This is without prejudice to the civil liability which may be determined against companies.

Within the innovations of the Law on Liability of Legal Persons on Domestic Crimes, Transnational Bribery and Other Offenses, there is an incentive for a reduction of up to 40% of the sanctions imposed on companies for the implementation of effective transparency and business ethics programs, as well as internal anti-corruption and internal control mechanisms (defined as the “Model”). In order to receive the incentives, in addition to having the Model<sup>38</sup> implemented, companies must have independent enforcement agents, report internal situations and infractions contrary to the law, and, where appropriate, collaborate on investigations that arise.

Members of the consulted legal community consider the Law on the Responsibility of Legal Persons on Domestic Crimes, Transnational Bribery and Other Offenses to be a step forward, but as it is recent it has hardly been implemented.

Costa Rican law prohibits the establishment of unregistered accounts and the conduct of unregistered or unduly recorded transactions in corporate books, the recording of non-existent expenses, the recording of expenses with the incorrect indication of their object, the use of false documents, the intentional destruction of corporate books, companies are encouraged to

prohibit or discourage the use of bribes or facilitation payments and the deduction of bribes taxes is prohibited. However, it is silent on the limitations in the process of hiring former public servants.

## C. REPORTING AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

The consulted legal community considers that the means and mechanisms for denouncing acts of corruption **in general are accessible**, although there is a need to regulate incentives and protections for whistleblowers of acts of corruption.

There is no specific legislation in Costa Rica that protects or rewards individuals who collaborate with investigations or report acts of corruption. However, the Law against Corruption and Enrichment in the Public Service provides that the identity of whistleblower citizens will be protected in good faith, and will be protected by police authorities at the request of a party.

The law distinguishes between the right to denounce such acts, which falls to citizens, and the obligation of public servants to do so.

## D. SPECIALIZED AUTHORITIES

The following authorities with powers to prevent, investigate or punish corruption are identified:

- ✓ Office of the Attorney General of the Republic
- ✓ Tax Courts
- ✓ Office of Public Ethics
- ✓ Office of the Comptroller General of the Republic
- ✓ Deputy Prosecutor's Office for Probity, Transparency and Accountability

According to the legal community consulted:

Anti-corruption authorities **generally have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of **administrative** authorities responsible for preventing, investigating, and prosecuting acts of corruption is **medium**.

The institutional capacity of the **criminal authorities** responsible for investigating acts of corruption is **medium**.

The consulted legal community identified the Office of the Attorney General of the Republic as the most effective authority in combating corruption, and no authority was identified as the least effective in this regard.

One of the elements most mentioned by the consulted legal community was that there is a lack of budget for the authorities to act to the maximum of their capabilities and implement anti-corruption legislation more effectively.

#### E. INSTITUTIONAL COORDINATION MECHANISMS

There are mechanisms for institutional and inter-institutional cooperation or coordination to prevent, combat and punish corruption.

For example, a common anti-corruption front, composed of the Supreme Powers of the Republic, operates in Costa Rica through the signing of the National Strategy for the Integrity and Prevention of Corruption ("ENIPC"), under the coordination of

the Public Ethics Office and the civil society organization, the Costa Rica Association integrates, with the cooperation of the United States Embassy.

#### F. PARTICIPATION OF CIVIL SOCIETY

Participation mechanisms exist for civil society, academia and other government actors to prevent corruption. In these mechanisms, according to the legal community consulted, civil society has played an important role in preventing corruption, as it has been heavily involved in the OECD accession processes. As well as the National Strategy for the Integrity and Prevention of Corruption.

Even so, it is considered that CSOs should be given greater participation in regulatory processes.





#### G. TRANSPARENCY AND ACCESS TO INFORMATION

In Costa Rica, information related to public officials working in public prosecution processes, sanctioned public officials, sanctioned private entities and the public prosecution process is public. However, information on end-beneficiaries of enterprises is not public.

In the event of refusal to provide requested information, depending on whether such information is public or not, there may be mechanisms of challenge.

#### H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY

- ☛ To promote the modernization of the norms of public ethics and integrity to strengthen the prevention of conflicts of interest, external activities and post-employment obligations
- ☛ To promote the implementation of digital tools and technology for the prevention of acts of corruption in the public sector
- ☛ To promote legislation and regulations on the protection of whistleblowers and alerters, as well as to establish mechanisms that encourage the reporting of acts of corruption
- ☛ Enforce the institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment

-  To propose and promote mechanisms for the selection of judges in accordance with international standards that guarantee independence, as well as guarantees for the judicial career, including mechanisms of professionalization and discipline
-  To promote legislative and public policy reforms to strengthen the judiciary in accordance with international standards, which guarantee the conditions of judicial independence necessary for an effective fight against corruption
-  Encourage mechanisms to encourage civil society participation in the design and implementation of anti-corruption public policy
-  Support CSO efforts to prevent, detect and report corruption

## 7. Dominican Republic

The legal framework of the Dominican Republic punishes corruption from a constitutional level. In addition, there are fifteen legal systems that provide for the type of criminal and administrative sanctions, as well as the penalties for each, the procedures for investigating and judging them, and the distribution of powers between different authorities for that purpose.<sup>39</sup> There are also thirteen regulations, resolutions, ordinances and decrees<sup>40</sup> regulating such ordinances and laying down the organizational bases of the enforcement authorities.

According to the majority of the legal community consulted, **this legal framework is generally sufficient, although it could be improved.** Opportunities for improvement include the need for a law of extinguishment of ownership rights and the lack of certain types of crime in line with the times for punishing acts of corruption. In addition, the legal community consulted believes that the law of laundering was a good step in combating corruption.

The information provided by the consulted legal community stresses that **the main challenges for the applicability of the legal framework** include that legislation and regulations are impractical, insufficient judicial independence and/or judicial procuring bodies, insufficient mechanisms for detecting and preventing corruption, inadequate economic and human resources for anti-corruption agencies, inadequate training of public officials and poor security and discipline of the staff, and lack of inter-agency coordination. The legal community consulted mentioned the importance of strengthening the public procurement system to close spaces for corruption and improve the levels of control exercised through the Chamber of Accounts.

People in poverty and vulnerable populations were identified as those most affected by corruption, including migrants.

### A. PUBLIC SECTOR

In the area of preventive policies and practices for the public sector, only the following elements are included in the legislation:

- ✓ Standards or codes of conduct for the proper performance of the public service, and disciplinary or other measures, if justified, against a public official who violates the codes or standards.<sup>41</sup>
- ✓ Policies and procedures to identify and manage actual, apparent or potential conflicts of interest of public officials<sup>42</sup>
- ✓ Gift policies for public officials, including the obligation to declare gifts or benefits of which a conflict of interest may result with respect to their performance in the public service.<sup>43</sup>
- ✓ Policies on post-public employment obligations and constraints applicable only to specific sectors of the economy
- ✓ Policies for training public officials in anti-corruption measures

The agency that oversees and coordinates the implementation of anti-corruption policies is the Directorate General for Ethics and Government Integrity (DIGEGI). This is an institution attached to the Ministry of the Presidency.

The legislation of the Dominican Republic also requires:

- ✓ Measures requiring public officials to make patrimonial statements
- ✓ Measures requiring public officials to make statements about certain interests in asset declarations

- ✓ Measures requiring public servants to provide information on their tax-related returns (payments and returns)

For its part, anti-corruption measures and policies exist to strengthen integrity and prevent opportunities for corruption toward members of the judiciary.

## B. PRIVATE SECTOR

The regulation under this heading has been done from a criminal point of view and is limited to the criminalization of the act of corruption.

The Dominican Republic does not provide for a specific anti-corruption framework for private sector companies that requires the following:

- ✗ Codes of Conduct
- ✗ Organization chart and scope of work of company officials to ensure a certain degree of independence
- ✗ Standards for a culture with the “tone defined by superiors”
- ✗ Control and audit measures
- ✗ Secure internal complaints procedures
- ✗ Risk assessment and evaluation of compliance programs
- ✗ Research protocols

For their part, legal persons may face administrative, criminal and civil liability for acts of corruption. With regard to administrative responsibility, Law No. 340-06 on Purchases and Contracting of Goods, Services, Works and Concessions establishes the general principles and rules governing public procurement, related to the goods, works, services and concessions of the State, as well as the modalities that within each specialty may be considered. Specifically, Article 66 of the Convention provides for the disqualification of natural or legal persons as a result of the following grounds “offering grants, commissions or royalties to officials of public entities, directly or by personal intervention in connection with acts

relating to the tendering procedure or when staff of the institution are used to draw up their proposals”. There is a notorious absence of criminal sanctions against violators of public procurement rules.

In the criminal field, article 3 of Law No. 448-06 On Bribery in Trade and Investment provides that any person, whether physical or legal, who intentionally offers, promises or grants, directly or indirectly, to a public official or to a person performing public functions in the Dominican Republic, any object of pecuniary value or other benefit, such as favor, promise or advantage, to itself or another person, in exchange for that official to perform or omit any act relevant to the exercise of his or her public functions, in matters affecting domestic or international trade or investment, it shall be considered a national bribe.

On civil liability, Article 1382 of the Civil Code states that in the event that the corrupt act in question generates damage, the one who caused it is obliged to repair it. But with respect to public officials, article 148 of the constitution establishes the responsibility of the public official to compensate for the damages generated by his action or omission.

The Dominican legal system prohibits the following acts:

- ✓ Establishment of accounts not registered in corporate books, the conduct of unregistered transactions, the recording of expenses that do not exist or have incorrect indication in their object, the use of false documents, and the intentional destruction of corporate books.
- ✓ Bribery or facilitation payments, as well as your tax deduction.

### C. COMPLAINT AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

According to the consulted legal community, official channels for reporting illegality or acts of corruption **are generally not accessible**.

With regard to the protection of complainants, Law 448-06 on Bribery in Trade and Investment provides that persons who, in good faith, denounce the acts described in that law shall be duly protected by the Dominican authorities.

Article 95.8 of the Code of Criminal Procedure stipulates that every person is entitled, since the application of a measure of coercion or the realization of an advance of proof is requested, not to be presented to the media or the community in a manner that damages its reputation or exposes it to danger. Similarly, the Code of Criminal Procedure in its article 272 et seq. provides for a regime of denunciation, in particular for offenses committed by public officials.

The legal framework does not provide for any financial compensation to alerters or whistleblowers, nor does it establish any measure or procedure to encourage individuals involved in the commission of a corruption offense or offense to provide information useful to authorities for evidentiary and investigative purposes or to prosecute or confiscate assets obtained in a corrupt manner. However, the Code of Criminal Procedure contains the necessary tools to enable the public prosecutor to reach agreements with some of the accused in order to facilitate the investigation of the cases, and the prosecution of the main perpetrators in particular.

### D. SPECIALIZED AUTHORITIES

The authorities at the national level with powers to prevent, investigate or punish corruption are:

- ✓ General Directorate of Ethics and Government Integrity (DIGEIG) of the Ministry of the Presidency

- ✓ Office of the Comptroller General of the Republic
- ✓ Chamber of Accounts
- ✓ Public Ministry - Specialized Office for the Prosecution of Administrative Corruption (PEPCA)
- ✓ Judiciary

The DIGEIG and the Comptroller General of the Republic are part of the executive branch.

According to the legal community consulted:

Anti-corruption authorities **in general have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of administrative authorities empowered to prevent, investigate, and prosecute acts of corruption is medium.

The institutional capacity of the criminal authorities empowered to investigate acts of corruption is medium.

The legal community consulted identified the Office of the Attorney General of the Republic as the most effective authority in combating corruption. The consulted legal community mentions that the change with the current holder is evident, unlike previous holders. However, they recognize that there is no strong institutional design so that if the holder changes, he changes capacity and responds more to the interests of public power.

The Chamber of Auditors is identified by the legal community consulted with as the **least effective body** in combating corruption. The consulted legal community agrees that this institution needs to be strengthened. However, the appointment of new members to the House of Auditors in mid-2021 has raised hopes for improvement in this supervisory body. The main threat it faces is the division of its internal members.

Members of the consulted legal community emphasize that corruption cases are investigated at the administrative level if there is a political will to do so.

#### E. INSTITUTIONAL COORDINATION MECHANISMS

There are formal mechanisms for institutional cooperation such as the First Resolution, Fourth paragraph of the Third Session of the Council. Superior of the Public Ministry dated 4 February 2013<sup>44</sup>, however, the consulted legal community identifies that these are not effective coordination systems.

#### F. PARTICIPATION OF CIVIL SOCIETY

The legislation includes mechanisms for the participation by civil society, academia and other non-governmental actors in efforts to prevent corruption.

Law No. 122-05 For the regulation and promotion of Non-Profit Associations (ASFL) enables the incorporation of non-profit companies in the Dominican Republic. The consulted legal community identifies Citizen Participation, the

Dominican chapter of Transparency International, as a civil society organization that has been involved in the follow-up of the main corruption cases in the country, including the Odebrecht bribe scandal.

Finally, the legal community consulted highlights the role that the private sector can play in driving anti-corruption efforts.






#### G. TRANSPARENCY AND ACCESS TO INFORMATION

Information about public officials working in public procurement processes, sanctioned public officials, sanctioned private entities, and public procurement processes is public.

The registration of actual or final beneficiaries is regulated by Law No. 155-17 against money laundering and terrorist financing, enacted in June 2017.

If the government does not provide information requested by an individual, it is envisaged that administrative and jurisdictional remedies may be brought in order to obtain the information requested.

#### H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY

-  To promote the strengthening of the mechanisms of public ethics and integrity of the authorities of the State, with particular and detailed rules to discourage, detect and punish practices of corruption in the public sector.
-  To promote the modernization of the norms of public ethics and integrity to strengthen the prevention of conflicts of interest, external activities and post-employment obligations
-  To promote the implementation of digital tools and technology for the prevention of acts of corruption in the public sector
-  To promote a legal framework for the prevention of corruption in private sector enterprises, with incentives for compliance and verification in accordance with international standards.
-  Establish mechanisms to disseminate information related to complaints mechanisms available to the general population and public servants

- ☛ To promote legislation and regulations on the protection of whistleblowers and alerters, as well as to establish mechanisms that encourage the reporting of acts of corruption
- ☛ Enforce the institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment
- ☛ To undertake initiatives to promote mechanisms for strengthening institutions that allow to shield against political interference, including, if necessary, modification of appointment processes
- ☛ To promote the functioning of coordination mechanisms among anti-corruption authorities to prevent, combat, investigate, and punish corruption more efficiently
- ☛ Encourage mechanisms to encourage civil society participation in the design and implementation of anti-corruption public policy
- ☛ Support CSO efforts to prevent, detect and report corruption

## 8. Ecuador

Ecuador has a legal framework on anti-corruption<sup>45</sup> that includes at least 26 laws, international agreements, decrees, regulations and resolutions, and is regulated at the constitutional level.

The consulted legal community considers **that the legislation is insufficient** and imprecise. They highlight a lack of specificity and clarity of legislation. However, transparency legislation is considered to have been partially successful in comparison with other anti-corruption laws and regulations.

The consulted legal community indicates that **the main challenges for the applicability of the legal framework** are the lack of sufficient mechanisms for detecting and preventing corruption, lack of inter-institutional coordination, inadequate economic and human resources for anti-corruption agencies, insufficient judicial and/or judicial independence and/or judicial procuring bodies and a shortage of technology, equipment and financing.

The consulted legal community mentioned the importance of detecting and punishing cases in a more timely manner in order to avoid the perception of impunity, as well as punishing acts of corruption in proportion to the damage.

Finally, the consulted legal community identified that people in poverty are the sector most affected by corruption, noting that there is also a prison crisis in the country where corruption plays an important role.

### A. PUBLIC SECTOR

Ecuador has anti-corruption policies that include:

- ✓ Codes of conduct for proper performance of the public service<sup>46</sup>
- ✓ Policies and procedures for identifying and managing conflicts of interest<sup>47</sup>
- ✓ Gift policies for public officials<sup>48</sup>
- ✓ Policies for training public officials in anti-corruption measures

- ✗ Policies on post-public employment obligations and limitations

It emphasizes that in Ecuador, the Council for Citizen Participation and Social Control established the School for Training in Transparency and Combating Corruption to promote citizen capacities for transparency, prevention and fight against corruption, through the execution of training processes.

With regard to affidavits, the Ecuadorian legal framework provides that public servants must make the following statements:

- ✓ Assets declarations

- ✗ Disclosure of interest
- ✗ Information about tax-related returns (payments and returns)

Assets declarations are public, although there are reserved sections.

The Transparency and Social Control (FTCS) function is responsible for overseeing and coordinating the implementation of anti-corruption policies.

The Council of the Judiciary is entitled to the exercise of disciplinary action for the processing of complaints about acts related to acts of corruption. In addition, channels have been implemented within the Judiciary to receive such complaints.

In the words of the legal community consulted, corruption remains a structural problem of the various organs of public power, which has not been neutralized or controlled in Ecuador.

## B. PRIVATE SECTOR

Ecuador's legal framework does not require companies to have the following:

- ✗ Codes of Conduct
- ✗ Organization chart and scope of work of company officials
- ✗ Standards for a culture with the “tone set by superiors”<sup>49</sup>
- ✗ Control and audit measures
- ✗ Risk advice on regulatory compliance programs
- ✗ Internal complaints procedures
- ✗ Research protocols
- ✗ Training in compliance programs
- ✗ Risk assessment and evaluation of compliance programs

In February 2021, the Integral Criminal Organic Code (COIP) was amended to include “acts of corruption in the private sector”. The law determined the new criminal type of corruption in the private sector, establishing economic and criminal sanctions in cases of liability of the legal person in acts of corruption. It was also established in Article 49 that the criminal liability of the legal person shall be mitigated if anti-corruption controls are designed and implemented as part of a corporate integrity system. There is no regulation to the COIP reformatory law on anti-corruption. The legal community consulted believes that the application of the law will be a challenge for the various authorities.

Beyond the criminal regime, Ecuadorian legislation does not provide for a binding and unified framework on the prevention of corruption-related crimes in the private sector. An important initial step in this area is evidenced in Executive Decree 4, “Government Ethical Behavior Standards”, which promotes good corporate

practices. The Superintendency of Companies, for its part, issued Resolution No. 13 of September 25, 2020, where it creates “Ecuadorian Standards for Corporate Governance”, whose fulfillment depends on the will of the partners of the commercial companies, by incorporating it in their respective social statutes.

Legal persons may be subject to administrative, criminal and civil responsibilities.

The legal system prohibits the following acts:

- ✓ Establishment of accounts not recorded in corporate books, the conduct of unregistered transactions, recording of non-existent expenses, the entry of expenses into accounting books with incorrect indication of their object, the use of false documents, and the intentional destruction of corporate books.
- ✓ Bribery or facilitation payments, as well as your tax deduction.

## C. REPORTING AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

The consulted legal community considers that channels of reporting for reporting illegality or acts of corruption **are generally not accessible** to the general population.

The Codes of Ethics of public institutions or servants provide for the obligation of officials to notify their immediate superior or the competent authority of any proven information or evidence regarding inappropriate or behavior against the provisions of the Constitution, laws, or other legal rule. Whistleblowers of acts of corruption are not subject to any financial compensation for reporting or alerting.

Furthermore, Article 45 of the COIP establishes as a mitigating circumstance when the alleged offender collaborates with the investigation by providing new and decisive elements and evidence

before its initiation, during its development or even during the trial stage.

Ecuadorian legislation provides for the existence of the Directorate for the Protection of Victims and Witnesses, which is administered by the Attorney General's Office. In some cases, to say from the consulted legal community, complainants who report acts of corruption or irregularities to the press or media are prosecuted.

#### D. SPECIALIZED AUTHORITIES

The authorities identified as anti-corruption bodies or agencies are as follows:

- ✓ Transparency and Social Control Function (FTCS):
  - Council for Citizen Participation and Social Watch
  - Office of the Ombudsman
  - The Comptroller General of the State
  - Superintendencies
- ✓ Attorney General's Office
- ✓ Judiciary

According to article 204 of the Constitution, the entities that make up the FTCS have legal personality and administrative, financial, budgetary and organizational autonomy. The Attorney General's Office also enjoys autonomy in accordance with the law.

According to the legal community consulted:

Anti-corruption authorities **do not have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of **administrative authorities** responsible for the prevention, investigation, and prosecution of acts of corruption is **low**.

The institutional capacity of **the criminal authorities** responsible of investigating acts of corruption is **low**.

The low capacity of the authorities is closely related, according to the legal community consulted, to the lack of independence and control of public power in those authorities. The consulted legal community argued that there is a problem of inoperability and weakness of the institutions.

The consulted legal community did not identify **any authority as the most effective** in combating corruption. How the **least effective authority** in combating corruption is identified by the legal community consulted with the State Comptroller General.

According to the legal community consulted, the FTCS is in practice a body that lacks impartiality and is directly influenced by the executive. In addition, there is a lack of expertise in officials, both in strategies and in public policies to deal with corruption as a systemic phenomenon affecting the country.

#### E. INSTITUTIONAL COORDINATION MECHANISMS

The owners of the FTCS entities form a coordinating body, and shall elect from among them, each year, the President of the function. The consulted legal community considers that coordination is not effective.

#### F. PARTICIPATION OF CIVIL SOCIETY

The legislation includes mechanisms for participation by civil society, academia or other non-governmental actors in efforts to prevent corruption, as was the case in the cases of the Dominion Extinction Act initiative, the case of the removal of Mayor Jorge Yunda and the cases of corruption and irregularities in the hospitals of the public health system.

The legal community consulted noted that civil society is the most effective actor so far in fighting corruption.

Finally, the legal community consulted highlights the role that law firms and the private sector can play in driving anti-corruption efforts.

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

Information is published with respect to public officials working in public procurement and

sanctioned processes, private sanctioned entities, public procurement processes and the final beneficiaries of companies.

The information may be requested from the government, and any refusal to provide the information may be challenged in the event that a citizen is unjustifiably denied access to public information. The justification for refusal should be based on national security or other reasons expressly provided for in the Organic Law on Transparency and Access to Public Information and other related standards.

### **H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY**

- ☼ To promote the modernization of the norms of public ethics and integrity to strengthen the prevention of conflicts of interest, external activities and post-employment obligations
- ☼ To promote initiatives to create a regime of public declarations of interest for public officials of the various branches of government and other autonomous bodies
- ☼ To promote a legal framework for the prevention of corruption in private sector enterprises, with incentives for compliance and verification in accordance with international standards.
- ☼ Establish mechanisms to disseminate information related to complaints mechanisms available to the general population and public servants
- ☼ Enforce the institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment
- ☼ To undertake initiatives to promote mechanisms for strengthening institutions that allow to shield against political interference, including, if necessary, modification of appointment processes
- ☼ To promote the functioning of coordination mechanisms among anti-corruption authorities to prevent, combat, investigate, and punish corruption more efficiently
- ☼ Encourage mechanisms to encourage civil society participation in the design and implementation of anti-corruption public policy
- ☼ Promote legislation and regulations to establish records of final beneficiaries in accordance with international standards and best practices

## 9. El Salvador

El Salvador has a legal framework composed of eleven instruments that regulate the institutions responsible for fighting corruption and their respective mechanisms, from the constitutional level.<sup>50</sup>

According to the legal community consulted, the **anti-corruption regulatory framework is insufficient**. Particular attention is drawn to the need to establish strong sanctions for nepotism and cross nepotism, to establish longer periods for prescription and to provide for the repair of damage in cases of corruption.

Particularly in El Salvador, the problems in the fight against corruption seemed to have little to do with the legal framework. From the information provided by the consulted legal community, **the main challenges for the applicability of the legal framework** are strong control of the executive branch and political use of the fight against corruption, insufficient detection and prevention mechanisms for corruption, and lack of judicial independence and/or judicial procuring bodies.

A sign of the lack of political will of the current executive branch is the termination of the 2019 cooperation agreement with the Organization of American States (OAS) to support the International Commission against Impunity in El Salvador (CICIES). The OAS had issued a communiqué<sup>51</sup> mentioning the negative environment for the work of CICIES in El Salvador, including “Government actions aimed at preventing progress in investigations into allegations of corruption of the current administration” and “the Government’s recurrent attitude of seeking to induce CICIES to investigate actions of opposition politicians exclusively”.

While the legal community consulted at some point considered that CICIES represented an opportunity to fight corruption and that elements such as transparency legislation constituted a step forward, given the political situation, there are no conditions for progress in the fight against impartial corruption, only used as a political instrument.

Additionally, the legal community in El Salvador has expressed special concern about the use of digital currencies such as bitcoin, which have illicit origin of resources and corruption implications, being also the source of funding very difficult to track.

People in poverty were identified as the most vulnerable to corruption, with a particular focus on women.

### A. PUBLIC SECTOR

El Salvador has standards that regulate the actions of public officials in the Probity Act and the Criminal Code, mainly. In general, there are a number of administrative disciplinary measures that are generally applicable to all public officials and employees. According to the consulted legal community, despite the above, there is little political will and resources to implement these normative bodies.

El Salvador has, or does not, anti-corruption policies that include:

- ✓ Codes of Conduct
- ✓ Some policies and procedures to identify and manage conflicts of interest
- ✓ Policies on reporting corruption by public servants

✗ Gift policies for public officials

- ✗ Policies on post-public employment obligations and limitations
- ✗ Policies for training public officials in anti-corruption measures

With regard to affidavits, the Salvadoran legal framework provides for the presentation of:

- ✓ Measures requiring public officials to make assets statements

- ✗ Measures requiring public officials to make disclosure of interest
- ✗ Measures requiring public officials to make tax returns public

Declarations are not public and are regulated by the Probity Act.

The agency responsible for monitoring and coordinating the implementation of anti-corruption policies in El Salvador is the Government Ethics Court.

According to the Probity Act, persons who are members of the judiciary are also required to submit their patrimonial declaration.

## B. PRIVATE SECTOR

The regulation in this field has been drafted from a criminal and administrative point of view, through instruments such as the Law on Prevention against Money Laundering and Assets, the Law on Banks, The Regulation and Supervision of the Financial System Act and the Penal Code.

El Salvador provides for an anti-corruption framework for private sector companies that requires, or does not require, the following:

- ✓ Codes of Conduct
- ✓ Organization chart and scope of work of public officials of enterprises
- ✓ Control and audit measures
- ✗ Standards for a culture with the “tone set by superiors”<sup>52</sup>
- ✗ Internal complaints procedures

- ✗ Risk assessment and evaluation of compliance programs
- ✗ Research protocols

The Financial Investigation Unit of the Office of the Attorney General of the Republic (“FIU”) requires the existence of the organization charts of the employees of the company. The Money Laundering and Other Assets Act provides for a breakdown of an employee training program, which is reported to the FIU through the “Compliance Delegate”.

The financial, fiscal and criminal legislation of El Salvador provides for the prohibition of the establishment of accounts not registered in corporate books, the conduct of transactions not registered or unduly recorded in corporate books, the recording of non-existent expenses, the journal of expenses in ledgers with the incorrect indication of their object and the use of false documents. However, there is no regulation that sanctions the intentional destruction of corporate books before the time provided by law.

Private sector companies are responsible from the administrative, criminal and civil points of view. The legislation does not provide for any incentive for private sector companies to have integrity programs.

## C. COMPLAINT AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

Most of the legal community consulted considers that the mechanisms for reporting acts of corruption **are not accessible** in El Salvador.

In criminal matters, there is a policy of protection of whistleblowers through a Witness Protection Program. A person reporting acts of corruption may undergo an abbreviated process in the criminal field and may be given the criterion of opportunity for the reduction of the penalty.

Whistleblowers may incur liability if they report false acts of corruption or irregularities to the press or media as a “*slandorous complaint*”.

#### D. SPECIALIZED AUTHORITIES

The following authorities with powers to prevent, investigate or punish corruption are identified:

- ✓ Court of Government Ethics
- ✓ Comptroller General - Court of Accounts
- ✓ Office of the Attorney General of the Republic
- ✓ Judiciary
- ✓ Security Section of the Supreme Court of Justice
- ✓ Institute for Access to Public Information (“IAIP”)

In El Salvador, there is no agency specifically responsible to prevent corruption, although IAIP, the Office of the Attorney General of the Republic and the Government Ethics Court are responsible for verifying compliance with laws that prevent acts of corruption.

According to the legal community consulted:

Anti-corruption authorities **do not have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of **administrative authorities** empowered to prevent, investigate, and prosecute acts of corruption is **low**. Reason for this includes that there is neither the necessary technical level nor the necessary financial resources.

The institutional capacity of **the criminal authorities** empowered to investigate acts of corruption is **low**. The consulted legal community indicates that part of the reason is the political use of the institution.

There is no consensus among the legal community on the most effective authority in the fight against corruption, but there is an agreement that due to the political control of the prosecution and the judiciary, they have become **very ineffective institutions**.

Members of the consulted legal community mention that people who are professional and capable of different institutions have been dismissed because they do not follow the instructions they receive without questioning, including an IAIP commissioner. The Legislative Assembly of El Salvador approved in August 2021 reforms to the Judicial Career Act and the Organic Law of the Attorney General's Office (FGR) in order to extend the powers to cease judges and prosecutors over 60 years of age with more than 30 years of service, as well as making geographic transfers.<sup>53</sup> This affected independent judges and prosecutors as they were dismissed, and others were intimidated by threats of transfers. Some of the judges have spoken and have been subjected to reprisals, without many allies at the national level. At the regional level, the Central American Federation of Judges and Judges for Democracy (FECAJUD) has denounced these abuses.

The consulted legal community also mentioned the use of the anti-corruption discourse for public and institutional harassment of opposition to the government. Investigations have been opened on the basis of previous administrations, but it does not address the acts of corruption of the current government; on the contrary, the mandate seems to be aimed at covering up any criminal conduct.

#### E. INSTITUTIONAL COORDINATION MECHANISMS

El Salvador has formal mechanisms for cooperation or inter-agency coordination to prevent, combat, investigate and punish corruption between IAIP, compliance officers and

administrative institutions responsible for the audit, such as the Ministry of Finance.

#### F. PARTICIPATION OF CIVIL SOCIETY

According to the legal community consulted, civil society is among the strongest and most effective actors in the fight against corruption in El Salvador. They highlight efforts made by organizations such as the National Development Foundation (FUNA). Several CSOs carry out activities to raise awareness and report acts of corruption, as was the case with news publications on cases of nepotism and conflicts of interest during the health emergency by COVID-19.

The consulted legal community mentions that, above all, for CSOs, but for all sectors in general, spaces have been completely closed or restricted. There is a high concern about legislation that attempts to close the civic space and block any activity of sectors that present any opposition to the government. In addition, independent press such as El Faro reporting acts of corruption in the

current administration is subject to government harassment through tax and criminal investigations.

Finally, the consulted legal community highlights the role that law firms and the private sector can play in driving anti-corruption efforts and counterbalancing the current regime.

#### G. TRANSPARENCY AND ACCESS TO INFORMATION

Information about public officials working in the prosecution processes, sanctioned public officials and the prosecution procedures is public. There is no public information or records of end beneficiaries of companies.

There are procedures for the request for information, as well as for the challenge in the event that it is not provided to the maximum authority of the entity to which public information is required through administrative and contentious-administrative procedures.

#### H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY

- ☛ To promote the modernization of the norms of public ethics and integrity to strengthen the prevention of conflicts of interest, external activities and post-employment obligations
- ☛ To promote initiatives to create a regime of public declarations of interest for public officials of the various branches of government and other autonomous bodies
- ☛ To promote a legal framework for the prevention of corruption in private sector enterprises, with incentives for compliance and verification in accordance with international standards.
- ☛ To promote legislation and regulations on the protection of whistleblowers and alerters, as well as to establish mechanisms that encourage the reporting of acts of corruption
- ☛ To undertake initiatives to promote mechanisms for strengthening institutions that allow to shield against political interference, including, if necessary, modification of appointment processes
- ☛ To propose and promote mechanisms for the selection of judges in accordance with international standards that guarantee independence, as well as guarantees for the judicial career, including mechanisms of professionalization and discipline

- ☛ To promote legislative and public policy reforms to strengthen the judiciary in accordance with international standards, which guarantee the conditions of judicial independence necessary for an effective fight against corruption
- ☛ To promote the functioning of coordination mechanisms among anti-corruption authorities to prevent, combat, investigate, and punish corruption more efficiently
- ☛ To promote formal mechanisms for civil society participation in the design and implementation of anti-corruption public policy
- ☛ Support CSO efforts to prevent, detect and report corruption
- ☛ Promote legislation and regulations to establish records of final beneficiaries in accordance with international standards and best practices

## 10. Guatemala

Guatemala has a legal framework composed of approximately twenty instruments regulating institutions responsible for combating corruption, as well as the substantive matter.<sup>54</sup>

According to most of the legal community consulted, the **anti-corruption regulatory framework is insufficient** to deal with corruption. Among the shortcomings identified are the weakness of mechanisms for detecting acts of corruption and warning systems, lack of policies to prevent corruption in the public and private sectors, and lack of clarity, among others.

The **main challenges for the applicability of the legal framework** identified by the consulted legal community are the lack of political will and institutional weakness reflected in the lack of independence of institutions charged with punishing corruption, having individuals carrying the burden of this task, without institutional support. They also highlight the ad hoc creation or modification of legislation to favor certain interests or individuals. There is a lack of interest in strengthening the current civil service regime in order to raise the professionalism standard of public officials and employees.

The legal community consulted mentions that there are still setbacks with regard to progress that had been made in the framework of the International Commission for Impunity in Guatemala (CICIG) closed in 2019.

The consulted legal community also mentions that the fight against corruption in Guatemala has a highly ideological component that diverts the discussion from the technical to the political and discursive.

People in poverty and other minorities were identified as the most vulnerable to corruption. It was also specifically mentioned that corruption constitutes a barrier to development.

### A. PUBLIC SECTOR

Guatemala has standards that regulate the actions of public officials in the Law on Probity and Liability of Public Officials and Employees, and its Regulations. In general, there are a number of administrative disciplinary measures (sanctioned with suspensions without pay and/or fines depending on the type of absence) that are of general application to all public officials and employees. According to the consulted legal community, this law is out of date because it has not undergone substantial reforms since 2003 and uses ambiguous terms and concepts.

Guatemala has no anti-corruption policies that contemplate:

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

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

- ✓ Assets declarations

However, these statements are not public and could only be reviewed through judicial

proceedings. Guatemala does not provide for the following:

- ✘ Measures requiring public officials to make disclosure of interest

There is no independent institution in Guatemala to oversee and coordinate the implementation of anti-corruption policies, especially those related to conflicts of interest. In 2019, a law proposal was introduced to regulate and prevent conflicts of interest in the public sector; however, it has not been approved by the Congress of the Republic.

The country's judiciary envisages measures to strengthen integrity and prevent opportunities for corruption, such as the adoption and implementation of an institutional integrity system (Agreement 49-2013), Ethical Content Standards (Agreement 22-2013); and, the Rules of Procedure for the System of Consequences of the System of Institutional Integrity of the Judiciary (Agreement 22-2014) by the Supreme Court of Justice. Through judicial associationism, efforts have been made to strengthen judicial integrity. The Guatemalan Association of Judges for Integrity (AGJI) is the first entity in Guatemala that, without legal obligation, published on its website statements of interests based on international best practices.<sup>55</sup>

## B. PRIVATE SECTOR

The regulation under this heading has been done from a criminal or criminal point of view, and is limited to the criminalization of local and transnational bribery, as well as to the traffic of influences.

Guatemala does not provide for a specific anti-corruption framework for private sector companies that requires the following:

- ✘ Codes of Conduct
- ✘ Organization chart and scope of work of company officials to ensure a certain degree of independence

- ✘ Standards for a culture with the “tone set by superiors”<sup>56</sup>
- ✘ Control and audit measures
- ✘ Secure internal complaints procedures
- ✘ Risk assessment and evaluation of compliance programs
- ✘ Research protocols

Regulation on regulatory compliance programs or crime prevention models in private sector companies, corresponding training, and risk assessments is directed primarily at “forced persons” under anti-money laundering regulations. In accordance with the Law Against Money Laundering or Laundering of Other Assets, in order to get an exemption from responsibility by the companies and their officials. Companies can have such programs and fulfill the other obligations imposed by that law (reports of unusual or suspicious transactions, reports of cash transactions, etc.).<sup>57</sup>

The same persons bound (the so called “obliged persons”) by the Law against Money Laundering or Other Assets have the prohibition for the establishment of accounts not registered in corporate books, the conduct of transactions not registered or unduly entered in corporate books, the use of false documents and intentional destruction of corporate books. However, there is no regulation that sanctions the entry of expenses in the ledgers with the incorrect indication of their object.

Private sector companies are solely responsible from a criminal and civil point of view - although companies considered “obliged persons” may have administrative responsibility for non-compliance with the anti-laundering regulatory framework in Guatemala. Natural or moral persons may be charged as “abettors” or “accomplices” in matters involving investigations into acts of corruption perpetrated by public officials. From the criminal point of view, the law allows for alternative or mitigating measures to criminal responsibility,

considering the attitude adopted by the person during the criminal proceedings. Authorities may conduct verification visits, citations, or information requirements for which private sector companies comply with anti-corruption mechanisms.

### C. REPORTING AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

The majority of the legal community consulted believed that the mechanisms for reporting acts of corruption **are generally accessible** in Guatemala. For public servants there is an obligation to report crimes of those who have knowledge in the exercise of office.<sup>58</sup>

Guatemala does not have a policy of protecting complainants as such, but in accordance with criminal law it has physical protection measures for persons participating as complainants or witnesses.<sup>59</sup>

As incentives for reporting, particularly in procedures for ownership extinction specifically, a reward of up to 5% of the value of the declared assets is foreseen for those who contribute to obtaining evidence.

In Guatemala, a court may impose criminal sanctions on a claimant if it is determined that his report of acts of corruption was based on false or uncertain facts.

In criminal matters, procedural benefits and effective collaboration agreements are provided to encourage persons who have participated in the commission of acts of corruption, to provide useful information to the authorities in exchange for “judicial” measures (on the basis of opportunity) or reductions in penalties imposed. It should be noted that, in 2019, the Congress of the Republic approved a reform of the Code of Criminal Procedure which allows for the reduction of penalties in exchange for the acceptance of

charges against persons (which would be applicable to corruption proceedings); however, to this day, this reform is provisionally suspended by the Constitutional Court under an unconstitutionality action promoted against it.

### D. SPECIALIZED AUTHORITIES

The following authorities with powers to prevent, investigate or punish corruption are identified:

- ✓ Public Prosecutor's Office: Specialized Prosecutor's Office against Impunity (FEI) and Procurator's Office against Corruption
- ✓ The Comptroller General of Accounts
- ✓ Judiciary
- ✓ Presidential Anti-Corruption Commission
- ✓ Special Verification Intendency of the Superintendency of Banks of Guatemala

The Public Prosecutor's Office and the judiciary have autonomy and independence under the law. In Guatemala, there is no agency specifically empowered to prevent corruption, although it was one of the objectives of the creation of the Presidential Anti-Corruption Commission, and to coordinate such efforts. It was created by the current president to promote anti-corruption policy, create mechanisms for detecting acts of corruption, recommend laws and regulations, support the actions of ministries and institutions of the executive body, coordinate the policy of preventing and combating corruption, among others. The legal community consulted mentioned that the Commission has not been effective. In November 2021, the Presidential Commission submitted its third quarterly report for the year 2021, which details that, since its creation, 21 criminal complaints have been filed with the Public Prosecutor's Office for alleged acts of corruption.

According to the legal community consulted:

Anti-corruption authorities **do not have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of **administrative authorities** responsible for preventing, investigating, and prosecuting acts of corruption is **low**.

The institutional capacity of **the criminal authorities** empowered to investigate acts of corruption is **low**.

The consulted legal community identified that while there are individuals in particular with a great commitment and independence to carry out their functions as prosecutors and judges at greater risk, these people have been attacked through various mechanisms, causing them to go into exile.

The consulted legal community identifies a **low effectiveness** of the authorities as they are available to political control and to the interests of power groups. In particular, the Public Prosecutor's Office, after the departure of the former FECl Prosecutor, has had contested proceedings. In addition, the U.S. Department of State included the Attorney General in the U.S. list of anti-democratic and corrupt actors under section 353 of the United States-Northern Triangle Undertaking Act.<sup>60</sup>

The legal community consulted has reported the lack of a policy of ethics and public integrity, as well as the lack of mechanisms for verification and accountability of public servants does not create incentives to modify behavior.

With regard to the judiciary, the consulted legal community mentions the lack of constitutional reform of the justice as an obstacle to shaping a judiciary and judges as independent actors. Including that the appointments of judges have been denounced by CSOs as irregular and contrary to international standards.

## E. INSTITUTIONAL COORDINATION MECHANISMS

Guatemala has an Inter-Agency Anti-Corruption Cooperation Agreement signed by the Executive and its ministers, the Public Ministry, the Comptroller General of Accounts, the Superintendency of Tax Administration, the Attorney General's Office 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 have complaints of irregularities observed in the institutions filed with the Public Prosecutor's Office. This agreement was renewed in October 2021.

## F. PARTICIPATION OF CIVIL SOCIETY

There are general mechanisms provided for in the law for civil society participation in anti-corruption efforts. The Code of Criminal Procedure recognizes that the right to start criminal prosecution or to adhere to a prosecution already initiated by the Public Prosecutor's Office may be exercised by any citizen or association of citizens against public officials or employees who have directly violated human rights in the exercise of their function or on that occasion, or in the case of crimes committed by public officials who abuse his office. However, according to the legal community consulted, CSOs face restrictions and barriers to the exercise of their functions. Organizations such as Citizen Action have been heavily attacked for carrying out actions against corruption.

A reform of the Non-Governmental Organizations for Development Act seeks to further restrict the actions of CSOs and subjects them to unjustified government controls and checks, attacking freedom of association.<sup>61</sup>

### G. TRANSPARENCY AND ACCESS TO INFORMATION

Information about public officials working in public prosecution processes, as well as the procedures themselves for public prosecution, is public.

In organic matters, the Human Rights Prosecutor is the official responsible for protecting access to information. Although they have independence, the Human Rights Prosecutor is one of the entities that has also been heavily attacked for their work.

There is no public information from public officials or private sector entities that have been sanctioned. There is no record of end beneficiaries of companies.

There are procedures for the request for information, as well as for the challenge in the event that the information is not provided to the maximum authority of the entity to which the public information is required. There is no background or case where a competent court has ordered the disclosure of documents relating to the payment of taxes by public officials

### H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY

- ☸ To promote the modernization of the norms of public ethics and integrity to strengthen the prevention of conflicts of interest, external activities and post-employment obligations
- ☸ To promote initiatives to create a regime of public declarations of interest for public officials of the various branches of government and other autonomous bodies
- ☸ To promote the implementation of digital tools and technology for the prevention of acts of corruption in the public sector
- ☸ To promote a legal framework for the prevention of corruption in private sector enterprises, with incentives for compliance and verification in accordance with international standards.
- ☸ To promote legislation and regulations on the protection of whistleblowers and alerters, as well as to establish mechanisms that encourage the reporting of acts of corruption
- ☸ To undertake initiatives to promote mechanisms for strengthening institutions that allow to shield against political interference, including, if necessary, modification of appointment processes
- ☸ To propose and promote mechanisms for the selection of judges in accordance with international standards that guarantee independence, as well as guarantees for the judicial career, including mechanisms of professionalization and discipline
- ☸ To promote legislative and public policy reforms to strengthen the judiciary in accordance with international standards, which guarantee the conditions of judicial independence necessary for an effective fight against corruption
- ☸ To promote the functioning of coordination mechanisms among anti-corruption authorities to prevent, combat, investigate, and punish corruption more efficiently
- ☸ Encourage mechanisms to encourage civil society participation in the design and implementation of anti-corruption public policy
- ☸ Support CSO efforts to monitor and participate in the processes of appointing and operating independent anti-corruption authorities
- ☸ Promote legislation and regulations to establish records of final beneficiaries in accordance with international standards and best practices

# 11. Honduras

Honduras has an anti-corruption legal framework<sup>62</sup> regulated at the constitutional level and made up of 19 laws, regulations, decrees and codes.

According to the legal community consulted, the **anti-corruption regulatory framework is insufficient**. In particular, the country lacks, among others, a comprehensive law to prevent and punish corruption that includes conflicts of interest. Issues of concern to the consulted legal community are legal reforms that hinder the exercise of criminal action by the public prosecutor, such as the prior opinion of the Court of Auditors and restrictions on obtaining documentary evidence with prior request to the leader of the institution.

The information provided by the consulted legal community highlights that the **main challenges for the applicability of the legal framework** are that legislation and regulations are impractical, the mechanisms for detecting and preventing corruption are insufficient, a lack of judicial independence and/or the judicial procuring bodies, and economic and human resources are inadequate for anti-corruption agencies. The consulted legal community mentions that the interpretation of the law is manipulated according to the interests of different sectors, and there are no sentences on corruption that set the example of the fight against corruption; on the contrary, there is great impunity, even in cases of public knowledge.

The legal community consulted mentions that the Support Mission against Corruption and Impunity in Honduras (MACCIH) presented some progress in the fight against corruption. MACCIH was created in 2016 by agreement between the OAS and the

State of Honduras with the aim of supporting the fight against corruption. Given MACCIH actions, which included charges against long-standing deputies in the country, officials and former public officials, businessmen and private citizens, negotiations for the renewal of the mandate failed in January 2020 and all the actions and processes initiated were discontinued.

The new president took the fight against corruption as one of her campaign priorities and promised to establish an international commission to fight corruption. Last February, the president sent a letter to the UN requesting the “International Commission against Impunity in Honduras.” Actors in the legal community mention that change of government can be a new opportunity to resume anti-corruption efforts. However, the terms of the mandate will be essential for the scope of this commission and its operation.

People in poverty were identified as those most affected by corruption.

## A. PUBLIC SECTOR

Honduras' legislation provides for the following:

- ✓ Standards or codes of conduct for proper performance of the public service
- ✓ Gift policies for public officials
- ✓ Policies on post-public employment obligations and constraints, in which public officials are not allowed to work in any area of the private sector after completing their assignment
- ✓ Policies for training public officials in anti-corruption measures
- ✗ Policies and procedures for identifying and managing conflicts of interest

With regard to affidavits, the legal framework provides that public servants must make the following statements:

- ✓ Measures requiring public officials to make patrimonial statements

These statements are not public.

Does not provide for:

- ✗ Measures requiring public officials to make statements of interest
- ✗ Measures requiring public officials to make tax-related returns

## B. PRIVATE SECTOR

In general terms, Honduras does not have an anti-corruption regulatory framework for the private sector. Honduran legislation does not include the following:

- ✗ Control and audit measures
- ✗ Codes of Conduct
- ✗ Organization chart and scope of work of company officials
- ✗ Standards for a culture with the “tone defined by superiors”<sup>63</sup>
- ✗ Risk advice on regulatory compliance programs
- ✗ Internal complaints procedures
- ✗ Research protocols
- ✗ Training in compliance programs
- ✗ Risk assessment and evaluation of compliance programs.

As a result, there is no incentive to implement anti-corruption policies.

Private sector companies may be subject to administrative, criminal and civil liability. Criminal liability includes penalties such as fines, suspension of specific activities in which the crime occurred, closure of premises and establishments used for the realization of the crime, prohibition of the carrying out in the future of specific activities in whose exercise the crime was committed, favored or concealed, disqualification to obtain subsidies

and public aid to contract with the public sector and to enjoy tax or social security benefits and incentives for up to fifteen years, judicial intervention to safeguard the rights of workers or creditors for as long as is deemed necessary, without exceeding five years and dissolution of the legal person.

Honduras legislation prohibits the establishment of accounts not registered in corporate books, the conduct of transactions not registered or unduly entered in corporate books, the recording of non-existent expenses, the entry of expenses in the accounting books with the incorrect indication of their object, the use of false documents and the intentional destruction of corporate books prior to the time provided by law. It also provides for mechanisms to prohibit companies or discourage the use of bribes or facilitation payments, but legislation does not prohibit the deduction of bribe taxes.

## C. COMPLAINT AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

The consulted legal community considers that the means and mechanisms for denouncing acts of corruption **in general are accessible**.

Honduras has a normative framework that defines the protection of whistleblowers or alerters against acts of intimidation or retaliation as a result of their complaints or testimonies, since when it is found that life can be in danger as a result of their testimony, they are included in the Witness Protection Program administered by the Public Prosecutor's Office.

The Honduran regulatory framework does not provide for financial compensation for any reporting or warning, but there are measures to encourage people who participate in or have participated in the commission of a corruption offense or offense to provide information to the authorities. The Penal Code allows the reduction of

sentences to a maximum of two thirds if the guilty party cooperates effectively with the authorities.

Complainants are responsible for any reports of acts of corruption or irregularities they may make the press or media if such reports constitute slander.

#### D. SPECIALIZED AUTHORITIES

The following authorities with powers to prevent, investigate or punish corruption are identified:

- ✓ Superior Court of Auditors
- ✓ Public Ministry
- ✓ Office of the Attorney General of the Republic
- ✓ Judiciary - Circuit on corruption
- ✓ National Anti-Corruption Council (CNA)
- ✓ Institute for Access to Public Information

These bodies enjoy autonomy in accordance with the law.

According to the legal community consulted:

Anti-corruption authorities **do not have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of **administrative authorities** empowered to prevent, investigate, and prosecute acts of corruption is **low**.

The institutional capacity of **the criminal authorities** empowered to investigate acts of corruption is **low**.

Some members of the consulted legal community identified the CNA as the most effective authority in combating corruption, given its integration of civil society.

The consulted legal community identifies **the effectiveness of the authorities as low** as they are influenced by politics and powerful interest groups. One of the cases mentioned by the consulted legal community is that of the brother of

the former president who was arrested in the United States and convicted in New York for drug trafficking, with a life sentence. Recently, the United States Department of Justice requested the extradition of the former President. The Public Prosecutor's Office was identified by the legal community consulted as **the least effective body** in combating corruption, particularly for its lack of independence and capacity.

In this regard, one of the elements most mentioned by the consulted legal community was the lack of political will to investigate and punish acts of corruption.

When MACCIH operated, the Special Tax Unit against Impunity and Corruption (UFECCI) was moderately effective as it had been endowed with capabilities, but in 2020 it was dismantled and replaced by the non-independent Specialized Tax Unit against Corruption Networks (UFERCO).

#### E. INSTITUTIONAL COORDINATION MECHANISMS

There are mechanisms for institutional and inter-institutional cooperation or coordination to prevent, combat and punish corruption. However, it is mentioned by the consulted legal community that the interaction has become inefficient, and that there is no clarity or seriousness in the position of the agents involved in the investigation and punishment of acts of corruption.

#### F. PARTICIPATION OF CIVIL SOCIETY

Participation mechanisms exist for civil society, academia and other government actors to prevent corruption.

The CNA is an independent body, with legal personality, indefinite duration and own heritage, composed of various civil society organizations. It is responsible for supporting the policies and actions undertaken by the government in the fight against corruption. It has access to Presidents, the

powers of the State and to other officials and employees, in matters within its competence and in accordance with the applicable priorities.

The consulted legal community has mentioned that civil society, the media and the business sector require more incentives to participate in the fight against corruption.

Finally, the consulted legal community highlights the role universities and the private sector can play in driving anti-corruption efforts.

## G. TRANSPARENCY AND ACCESS TO INFORMATION

Information related to public officials working in the procurement processes, sanctioned public officials, sanctioned private entities, public procurement processes and information on the final beneficiaries of the companies is public in Honduras.

In the face of the refusal to provide the requested information, a challenge process against such a resolution is available.

## H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY

- ☼ To promote the strengthening of the mechanisms of public ethics and integrity of the authorities of the State, with particular and detailed rules to discourage, detect and punish practices of corruption in the public sector.
- ☼ To promote the modernization of the norms of public ethics and integrity to strengthen the prevention of conflicts of interest, external activities and post-employment obligations
- ☼ To promote a legal framework for the prevention of corruption in private sector enterprises, with incentives for compliance and verification in accordance with international standards.
- ☼ To promote legislation and regulations on the protection of whistleblowers and alerters, as well as to establish mechanisms that encourage the reporting of acts of corruption
- ☼ Enforce the institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment
- ☼ To undertake initiatives to promote mechanisms for strengthening institutions that allow to shield against political interference, including, if necessary, modification of appointment processes
- ☼ To propose and promote mechanisms for the selection of judges in accordance with international standards that guarantee independence, as well as guarantees for the judicial career, including mechanisms of professionalization and discipline
- ☼ To promote the functioning of coordination mechanisms among anti-corruption authorities to prevent, combat, investigate, and punish corruption more efficiently
- ☼ Support CSO efforts to prevent, detect and report corruption
- ☼ Support CSO efforts to monitor and participate in the processes of appointing and operating independent anti-corruption authorities
- ☼ Promote legislation and regulations to establish records of final beneficiaries in accordance with international standards and best practices

## 12. Mexico

Mexico has a comprehensive anti-corruption legal system<sup>64</sup> that was revised and reformulated in 2016-2017 to create a National Anti-Corruption System (SNA), and to harmonize the legislation of the 32 federal entities. In 2019, several articles of the Political Constitution of the United Mexican States were reformed, with the aim of giving greater legal tools to the various organs of the Mexican State to combat and prevent corruption. According to the majority of the legal community consulted, **this legal framework is generally sufficient, although it could be improved.**

Opportunities for improved implementation at the national level include the unification of criminal types of corruption throughout the country and the creation of a regime of responsibility for corruption among individuals. One of the concerns of the consulted legal community is informal pre-trial detention for corruption offenses, which was legalized as part of a populist punitive policy, but which violates international standards and could carry international responsibility, as it lends itself to many abuses by the authorities.

Despite the strength of the legal framework, the consulted legal community emphasizes that **the main challenges for the applicability of the legal framework** include insufficient political will for its implementation (despite being one of the priorities of the current president), inadequate economic and human resources for anti-corruption agencies, insufficient judicial independence and/or judicial procuring bodies and inadequate training of public officials. The consequences of some of these challenges are selective justice and impunity.

People in poverty and vulnerable populations were identified as those most affected by corruption,

with special mention of women for lack of a gender-sensitive anti-corruption policy and migrants.

### 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 constraints<sup>65</sup>, in which public officials are not allowed to work in any area of the private sector after completing their assignment
- ✓ Policies for training public officials in anti-corruption measures

According to the General Law on Administrative Responsibilities, there is an absolute prohibition on receiving gifts.

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

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

This information is public and available on the SNA National Digital Platform.

Most of these anti-corruption policies are implemented at the national level for all officials and at all levels of government. The agency that oversees and coordinates the implementation of

anti-corruption policies at the level of the federal executive is the Public Service Secretariat (SFP).

According to the legal community consulted, although there are mechanisms for preventing corruption in public procurement, this administration has been characterized by seeking exceptions to allocate a high percentage of public procurement by direct award, which is an important space for discretion and corruption.

## B. PRIVATE SECTOR

Mexico has an anti-corruption regulatory framework for the private sector. This requires companies to have the following or not:

- ✓ Codes of Conduct
  - ✓ Organization chart and scope of work of company 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 defined by superiors”<sup>66</sup>
  - ✗ Risk advice on regulatory compliance programs
  - ✗ Research protocols

In Mexico, companies do have limitations on hiring former public officials. An administrative failure is incurred by companies that hire people who have been public servants during the previous year, who possess privileged information that have been acquired directly on account of their public service, and who obtain a profit or are placed in an advantage against competitors.

In Mexico, private legal persons may be subject to administrative, criminal and civil responsibility.

In the case of administrative liability, companies (and individuals) may be subject to economic sanctions of up to two times the benefit obtained or in case of no profit, of up to \$134,430,000.00

pesos (6.5 million US dollars); disqualification in government contracts for a period from three months up to up to ten years; suspension of activities of between three months and three years; dissolution of the company; and compensation for damages to the public finances. If the companies have the above elements of an integrity program, in accordance with the General Law on Administrative Responsibilities, they will be considered in favor of investigations for violations of anti-corruption regulations.

In criminal matters, sanctions may be imposed on companies such as the suspension of activities from six months to up to six years; the closure of premises or establishments from six months to up to six years; the prohibition of activities related to conduct of corruption; the disqualification of contracting with government from six months to up to six years; judicial intervention and, in specific cases, even the dissolution of the company. Individuals responsible for the offense of bribery may be sentenced to between two and fourteen years. In addition, a fine of 100 to 150 days of fine may be imposed on the basis of the daily income of the person or company. Should any public official be involved in crimes of corruption, sanctions may be aggravated and may prohibit such person from working in any government unit.

In criminal matters, companies with “proper control,” including internal compliance programs and policies to report, identify, and prevent acts of corruption, can reduce sanctions and, in some cases, absolve them from corporate criminal responsibility. The consulted legal community mentions the lack of clarity on factors relevant to “proper control” and the importance of making corporate compliance programs and anti-corruption policies mandatory.

The consulted legal community identifies deficiencies in the regulation of corporate criminal

responsibility, since there is no greater coverage in article 11-bis of the Federal Penal Code of all types of corruption to apply corporate responsibility. In addition, there is a clear lack of applicability criteria so that companies can conclude remedial agreements with the authorities after acts of corruption in their operation and that there is a culture of reparation for damages and continuity of the operations of companies that incur corruption.

Despite the time that this legislation has been in place, there is no relevant case of corporate criminal liability.

In civil matters, provided that the criminal and administrative procedures are followed, which are of public order, it would be possible to seek to establish civil liability arising from the wrongful act of corruption on the basis of the determinations of the courts in criminal and administrative matters.

With regard to the reduction of sanctions, the criminal law provides for the possibility of the public prosecutor to grant a leniency in favor of a person investigated for alleged acts of corruption, when it provides elements in an effective way that allow to investigate more serious conduct than those charged. Administrative legislation also provides for the possibility of reducing sanctions when a person who is in violation of anti-corruption administrative rules reports the conduct and cooperates with its investigation.

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

- ✓ Establishment of accounts not recorded in corporate books, conduct of unregistered transactions, recording of non-existent expenses, use of false documents, and intentional destruction of corporate books.
- ✓ Bribery or facilitation payments, as well as your tax deduction.

### C. COMPLAINT AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

In the case of complaints, there is an obligation on public servants to report any wrongdoing. There are also means and mechanisms for citizens to file complaints of corruption, both in the administrative and penal channels (including in digital form), which are [accessible](#).

With regard to the protection of whistleblowers in federal administrative matters, the Guidelines for the Promotion and Operation of the System of Internal and External Citizens Alerters of Corruption provide that Alerters or whistleblowers are entitled to protective measures such as psychological and legal support, as well as not being subject to sanctions or reprisals. According to the legal community consulted, this framework of protection for informants or complainants is insufficient, and should operate at the national level, according to SNA, and not be functional only for the scope of application of the federal SFP.

In Mexico, there is no provision for economic compensation for reporting or alerting, or for the recovery of state assets as a result of citizen complaints or alerts.

Complainants are not responsible in civil or criminal proceedings if they report acts of corruption or irregularities to the press or media. The above, provided that the report is truthful and verifiable based on reliable evidence. Otherwise, they may be liable for moral damage on behalf of those who have denounced without the necessary evidence.

### D. SPECIALIZED AUTHORITIES

The following authorities with powers to prevent, investigate and punish corruption are identified at the federal level:

- ✓ Secretariat of the Public Service (SFP)

- ✓ Superior Audit of the Federation
- ✓ Federal Court of Administrative Justice
- ✓ National Institute for Transparency, Access to Information and Protection of Personal Data
- ✓ Financial Intelligence Unit
- ✓ Office of the Attorney-General of the Republic specializing in combating corruption.
- ✓ Judiciary of the Federation
- ✓ SNA Citizen Participation Committee, and its Executive Secretary

These institutions, with the exception of the Financial Intelligence Unit, are part of the National Anti-Corruption System (SNA), although there are reform initiatives to include it.

According to the legal community consulted:

Anti-corruption authorities **do not have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of **administrative authorities** empowered to prevent, investigate, and prosecute acts of corruption is **low**.

The legal community consulted includes reasons for low capacity the lack of independence and weakening of capacities of the SFP and other institutions such as the FIU. Even reports of abuse of functions and other misconduct by the former FIU chief officer have been filed.

The institutional capacity of **the criminal authorities** empowered to investigate acts of corruption is **low**.

The consulted legal community had difficulty identifying **the most effective authority**, some people mention INAI as a policy of preventing corruption through transparency, but it is noted that it has had a more limited role than in previous administrations. Similarly, it is recognized that judges and judges of the Federal Judiciary remain

independent, although the problem is that they do not receive sound anti-corruption investigations.

The Prosecutor Office's Anti-Corruption and the SFP are identified as the **least effective agencies** in combating corruption. Members of the legal community consulted mention the importance of the SFP becoming an autonomous entity outside the executive sphere.

The consulted legal community identifies that the anti-corruption fight is being used for political purposes, as the necessary support is not provided to SNA and other entities, on the contrary, they are attacked from the executive branch. In addition, there is a lot of interest in prosecuting corruption cases from past administrations, but not current cases, including the recent case of possible corruption to benefit one of the president's children. Moreover, the Federal Executive presented an initiative in February this year to restructure and simplify the organizational structure of the Federal Public Administration, which aims to eliminate the Executive Secretariat of the National Anti-Corruption System, even though there is public information about its good results in establishing mechanisms to prevent corruption.

The consulted legal community mentions that the Anti-Corruption Prosecutor's Office has prosecuted less than 2 per cent of cases. There is a purely national approach motivated by political issues, but large regional cases and the importance of international cooperation are lost in view. One of the reasons for this is attributed to a lack of independence and capacity.

The consulted legal community also stresses the importance of institutional strengthening of anti-corruption bodies, initiating appointment processes that guarantee formal and material independence, provide sufficient resources and train public servants.

## E. INSTITUTIONAL COORDINATION MECHANISMS

The Constitution and the SNA Act provide for a mechanism of inter-agency cooperation and coordination to prevent, combat, investigate and punish corruption, called the SNA Coordinating Committee, which is made up of the Public Service Secretariat, The Office of the Prosecutor specializing in combating corruption, the Federation's Superior Audit, the Federation's Judicial Council, the National Institute for Transparency, Access to Information and Protection of Personal Data, the Federal Court of Administrative Justice, And the Citizen Participation Committee (who chairs). The Technical Secretariat of this system has made progress in coordinating and consolidating anti-corruption initiatives.

## F. PARTICIPATION OF CIVIL SOCIETY

Civil society played a key role in shaping current anti-corruption legislation. The legislation includes mechanisms for participation by civil society, academia or other non-governmental actors in efforts to prevent corruption. The SNA considers the Committee on Citizen Participation as one of its constituent bodies. This Committee is composed of five citizens of probity and prestige who have stood out for their contribution to transparency, accountability or the fight against corruption, elected by another group of citizens established for this purpose by the Senate of the Republic. The Chairman of the Citizen Participation Committee (rotating according to his seniority in the Committee) is a member of the SNA Coordinating Committee and chairs it.

Organizations such as the Observatory Public Designations have played a very important role in monitoring the appointment processes of the institutions that make up the SNA.

The consulted legal community mentioned that, while other mechanisms exist in the legislation for their participation, they are spaces that have been closed, including the Citizen Council of the Attorney General's Office. In addition, there is concern about direct attacks by the President of the Republic on CSOs such as Mexicans against corruption and impunity.

The consulted legal community emphasizes that bar associations must be more participatory in anti-corruption efforts, as well as members of the private sector as chambers of commerce.

## 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 public. The consulted legal community mentioned that Mexico has a very strong legal framework for transparency. However, there is no register of final beneficiaries.

In the face of the refusal of information or incomplete information, the applicant may challenge this decision before the National Institute for Transparency, Access to Information and Protection of Personal Data, a constitutionally autonomous body.

## H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY

- ☛ To undertake efforts to make legal persons clear about their specific obligations in the area of corruption prevention, clearly establishing the applicable regulations
- ☛ To promote legislation and regulations on the protection of whistleblowers and alerters, as well as to establish mechanisms that encourage the reporting of acts of corruption
- ☛ Enforce the institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment
- ☛ To undertake initiatives to promote mechanisms for strengthening institutions that allow to shield against political interference, including, if necessary, modification of appointment processes
- ☛ To promote the functioning of coordination mechanisms among anti-corruption authorities to prevent, combat, investigate, and punish corruption more efficiently
- ☛ Encourage mechanisms to encourage civil society participation in the design and implementation of anti-corruption public policy
- ☛ Support CSO efforts to prevent, detect and report corruption
- ☛ Support CSO efforts to monitor and participate in the processes of appointing and operating independent anti-corruption authorities
- ☛ Promote legislation and regulations to establish records of final beneficiaries in accordance with international standards and best practices

## 13. Panama

Panama has an anti-corruption legal framework<sup>67</sup> primarily aimed at criminal law and the prevention of money laundering.

According to the legal community consulted, the **anti-corruption regulatory framework is insufficient**. These aspects include the lack of mechanisms for prevention, regulation of conflicts of interest, extinction of domination and the existence of very weak sanctions.

The consulted legal community stresses that **the main challenges for the applicability of the legal framework** are insufficient political will for its implementation, insufficient mechanisms for the detection and prevention of corruption, lack of judicial independence and/or the judiciary, and inadequate economic and human resources for anti-corruption agencies. It highlights the absence of a civil career service that encourages the professionalization of public servants on substantive technical and ethical issues.

People in poverty were identified as those most affected by corruption. In addition, it is mentioned that corruption is a major obstacle to economic development, particularly for the middle class.

### A. PUBLIC SECTOR

Panama's legislation includes, or does not include, 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 policies for public officials
- ✓ Policies for training public officials in anti-corruption measures

- ✗ Policies on post-public employment obligations and constraints, in which public officials are not allowed to work in any area of the private sector after completing their assignment.

Even if some policies do exist, their failure to comply has few punitive consequences. In addition, the consulted legal community emphasizes that training policies for public officials are extremely basic and inadequate.

With regard to affidavits, the Panamanian legal framework provides for the following:

- ✓ Measures requiring public officials to make patrimonial statements

In addition to the fact that these statements are not public (although according to the standard they should be), there are no measures requiring public officials to make statements of interest, or information on the filing of tax-related declarations (payments and refunds).

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

### B. PRIVATE SECTOR

Panama does not generally have an anti-corruption regulatory framework for the private sector. In addition, the consulted legal community mentions that there are not many incentives to create it. There are only general rules in the Penal Code. Panama's legislation provides, or does not, for companies the following:

- ✗ Codes of Conduct
- ✗ Organization chart and scope of work of company officials

- ✗ Standards for a culture with the “tone defined by superiors”<sup>68</sup>
- ✗ Control and audit measures
- ✗ Risk advice on regulatory compliance programs
- ✗ Internal complaints procedures
- ✗ Research protocols
- ✗ Risk assessment and evaluation of compliance programs.

The Penal Code and the Fiscal Code prohibit the use of false documents and the intentional destruction of corporate books before the time provided by law. However, Panamanian legislation omits the establishment of accounts not recorded in corporate books, the recording of non-existent expenses, the entry of expenses in the accounting books with the incorrect indication of their object. In addition, it does not provide for mechanisms to prohibit companies or discourage the use of bribes or facilitation payments.

Private sector companies may be subject to administrative liability (whose sanctions include disqualification from contracting with the State and possible compensation under the Court of Auditors) and criminal liability in accordance with the Penal Code.

### C. COMPLAINT AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

The participating consulted legal community considers that the **means and mechanisms for denouncing acts of corruption in general are not accessible**.

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

In addition, members of the consulted legal community stress that one challenge is the fear and lack of incentives on the part of public servants to denounce corruption, especially when in most institutional appointments are political.

### D. SPECIALIZED AUTHORITIES

The following authorities with powers to prevent, investigate or punish corruption are identified:

- ✓ National Authority on Transparency and Access to Information
- ✓ Supervision and regulation of non-financial subjects
- ✓ Office of the Comptroller General of the Republic
- ✓ Office of the Attorney General
- ✓ Office of the Prosecutor of Accounts
- ✓ Public Ministry
- ✓ Judiciary.

According to the legal community consulted:

Anti-corruption authorities **do not have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of **administrative authorities** empowered to prevent, investigate, and prosecute acts of corruption is **low**.

The institutional capacity of **the criminal authorities** empowered to investigate acts of corruption is **low**.

The consulted legal community did not identify **any authority as the most effective** in combating corruption. The Office of the Comptroller General of the Republic and the judicial body are identified by the legal community consulted with as **the least effective authority** in combating corruption.

One of the elements most mentioned by the consulted legal community was the lack of institutional will to investigate and punish corruption, accompanied by an institutional weakness of the justice system in general, which does not create sufficient conditions for true material independence, even for the judiciary and the Public Prosecutor's Office, which are legally autonomous bodies. In addition, the lack of

inadequate economic and human resources for anti-corruption agencies, lack of professionalization and training were mentioned as areas of opportunity.

In the absence of independence, the legal community consulted mentioned as evident the political nature of appointments in the Office of the Comptroller General of the Nation and the Office of the Attorney General of the Administration, plus conflicts of interest in investigations between the Supreme Court and the deputies.

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

There are mechanisms for institutional and inter-institutional cooperation or coordination to prevent, combat and punish corruption. However, it is mentioned by the consulted legal community that the formalities of such mechanism sometimes represent more obstacles than solutions.

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

Formally, there are participatory mechanisms for civil society, academia and other government actors to prevent corruption, although these mechanisms according to the consulted legal community are not really operational. The example presented is the “Pact of State for Justice”, a national commitment made in 2005 by the heads of the three organs of the State, the Public Prosecutor’s Office, the Ombudsman’s Office and representatives of civil society, with the firm aim of restructuring and modernizing the Panamanian judicial system, so that it is independent, transparent and efficient.

The consulted legal community notes the importance of CSO participation as Panama International Transparency in anti-corruption efforts.

Finally, the consulted legal community highlights the role that the private sector can play in promoting anti-corruption efforts and setting aside practices that seek to slow down any structural change in the legal regime that regulates commercial activities between the state and private enterprise, particularly in the financial sector.

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

Information related to public officials working in the procurement processes, sanctioned public officials, sanctioned private entities, recruitment process is public in Panama.

On March 17, 2020, Panama passed Law 129 establishing the Private and Single System for the Registration of Final Beneficiaries of Legal Persons, with the aim of establishing the regulatory framework for the creation of the private and single system for the registration of final beneficiaries in Panama. It is not yet implemented.

In the face of the refusal to provide the requested information, a *trial 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 on Transparency and the Right to Information, an authority which is not autonomous.

## H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY

- ☼ To promote the strengthening of the mechanisms of public ethics and integrity of the authorities of the State, with particular and detailed rules to discourage, detect and punish practices of corruption in the public sector.
- ☼ To promote initiatives to create a regime of public declarations of interest for public officials of the various branches of government and other autonomous bodies
- ☼ To promote a legal framework for the prevention of corruption in private sector enterprises, with incentives for compliance and verification in accordance with international standards.
- ☼ Establish mechanisms to disseminate information related to complaints mechanisms available to the general population and public servants
- ☼ To promote legislation and regulations on the protection of whistleblowers and alerters, as well as to establish mechanisms that encourage the reporting of acts of corruption
- ☼ Enforce the institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment
- ☼ To undertake initiatives to promote mechanisms for strengthening institutions that allow to shield against political interference, including, if necessary, modification of appointment processes
- ☼ To promote legislative and public policy reforms to strengthen the judiciary in accordance with international standards, which guarantee the conditions of judicial independence necessary for an effective fight against corruption
- ☼ To promote the functioning of coordination mechanisms among anti-corruption authorities to prevent, combat, investigate, and punish corruption more efficiently
- ☼ To promote formal mechanisms for civil society participation in the design and implementation of anti-corruption public policy
- ☼ Support CSO efforts to prevent, detect and report corruption
- ☼ Support CSO efforts to monitor and participate in the processes of appointing and operating independent anti-corruption authorities

## 14. Paraguay

Paraguay has a regulatory framework<sup>69</sup> to prevent, investigate and punish acts of abuse, consisting of sixteen laws, decrees, regulations and conventions. According to the legal community consulted, the **anti-corruption regulatory framework needs to be improved, but it is sufficient**. The rules governing this matter require more proportional sanctions and regulations to be applied effectively.

More than the normative framework, the consulted legal community emphasizes that the **main challenges to the applicability of the legal framework** are insufficient political will for its implementation, lack of inter-institutional coordination and insufficient judicial and/or judicial independence of the judicial procuring bodies.

People in poverty were identified as the group most vulnerable to corruption.

### A. PUBLIC SECTOR

Paraguay has anti-corruption policies that include, or do not include, 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 policies for public officials
- ✓ Policies for training public officials in anti-corruption measures

- ✗ Policies on post-public employment obligations and constraints, in which public officials are not allowed to work in any area of the private sector after completing their assignment

Training of public officials is carried out through the Secretariat of Public Service's Induction Manual, developed within the framework of the

Democracy and Governance Program of the United States Agency for International Development and implemented by the Center for Environmental and Social Studies.

As regards affidavits, the Paraguayan legal framework provides that the following are public:

- ✓ Measures requiring public officials to make patrimonial statements
- ✓ Measures requiring public servants to provide information on their tax-related returns (payments and returns)

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

The agencies that oversee and coordinate the implementation of anti-corruption policies are the National Anti-Corruption Secretariat (SENAC) and the Anti-Corruption Units.

### B. PRIVATE SECTOR

In Paraguay there is no anti-corruption regulation for the private sector, which is why the country lacks the following measures:

- ✗ Codes of Conduct
- ✗ Organization chart and scope of work of company officials
- ✗ Standards for a culture with the “tone defined by superiors”<sup>70</sup>
- ✗ Control and audit measures
- ✗ Risk advice on regulatory compliance programs
- ✗ Internal complaints procedures
- ✗ Research protocols
- ✗ Training in compliance programs
- ✗ Risk assessment and evaluation of compliance programs

There is no legal incentive for companies to implement anti-corruption policies and compliance programs.

The Paraguayan legal system prohibits, or does not prohibit, the following acts:

- ✓ Establishment of accounts not registered in corporate books, the conduct of unregistered transactions, the recording of non-existent expenses, the entry of expenses in the accounting books with the incorrect indication of their object, the use of false documents, and the intentional destruction of corporate books.
- ✓ Bribery or facilitation payments, as well as your tax deduction.

- ✗ Bribery or facilitation payments, as well as your tax deduction.

Legal persons in Paraguay are not subject to criminal responsibility.

### C. COMPLAINT AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

In the area of reporting acts of corruption, the official means available **are generally accessible**.

SENAC has competence over institutions, bodies or enterprises of the Executive Power, so complaints relating to other powers of the State or autarchic bodies will be referred to the corresponding place. The anti-corruption portal allows the user to file complaints in three possible ways: anonymous, protected, or open. If protected, only the highest authority of that body shall have access to the complainant's data.

In Paraguayan legislation there is no provision for reporting acts of corruption to the press or media and there are no economic or legal incentives for reporting.

### D. SPECIALIZED AUTHORITIES

The following authorities with powers to prevent, investigate or punish corruption are identified:

- ✓ National Anti-Corruption Secretariat (SENAC)
- ✓ Anti-Corruption Units
- ✓ Assistant Secretary of State for Taxation
- ✓ Office of the Comptroller General of the Republic
- ✓ Unit specialized in Economic Crimes and Anti-Corruption - Public Ministry
- ✓ Judiciary
- ✓ Office for Access to Public Information

Only the Public Prosecutor's Office and the judiciary are independent by law. However, the Office of the Comptroller General of the Republic, the Public Prosecutor's Office and the Courts and Tribunals do have this autonomy.

According to the legal community consulted:

Anti-corruption authorities **do not have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of **administrative authorities** empowered to prevent, investigate, and prosecute acts of corruption is **low**.

The institutional capacity of **the criminal authorities** empowered to investigate acts of corruption is **low**.

The consulted legal community did not identify any authority as **the most effective** in combating corruption.

The Public Prosecutor's Office and the judiciary were identified by the legal community consulted with as **the least effective body** in combating corruption is given their lack of capacity and independence. Factors leading to this consideration include the close relationship with

political power and high levels of impunity in corruption cases.

### E. INSTITUTIONAL COORDINATION MECHANISMS

In Paraguay, there are coordination mechanisms between the authorities responsible for the prevention, combat, investigation and punishment of corruption.

An agreement is currently in force between the Minister – Auditor General of the Executive Branch, representing the Auditor General of the Executive Branch – the Minister – Executive Secretary, representing the National Anti-Corruption Secretariat – and the Attorney General, representing the Public Prosecutor’s Office. The agreement is intended to promote cooperation and exchange in the area of anti-corruption, combining efforts to address the fight against corruption firmly and efficiently and effectively. Coordination takes place in inter-institutional cooperation and the strengthening of the institutional systems of work, taking into account the recommendations established in the Inter-American Convention against Corruption.

### F. PARTICIPATION OF CIVIL SOCIETY

In Paraguay, there is legislation on participatory mechanisms for civil society, academia and other non-governmental actors in efforts to prevent corruption. The role of CSOs and the media has been very relevant.

The participating consulted legal community considers that civil society has taken an extremely important role in the fight against corruption.

### G. TRANSPARENCY AND ACCESS TO INFORMATION

In Paraguay, information on public procurement processes and the final beneficiaries of enterprises is public. However, information on public officials working in procurement processes, sanctioned public officials and sanctioned private entities is not public.

If the requested information is denied by the authority before which it is requested, that decision may be challenged before any Judge of First Instance, based on Law No. 5282/2014 on Free Access to Public Information and Government Transparency.

### H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY

- ☛ To promote the strengthening of the mechanisms of public ethics and integrity of the authorities of the State, with particular and detailed rules to discourage, detect and punish practices of corruption in the public sector.
- ☛ To promote the modernization of the norms of public ethics and integrity to strengthen the prevention of conflicts of interest, external activities and post-employment obligations
- ☛ To promote the implementation of digital tools and technology for the prevention of acts of corruption in the public sector
- ☛ To promote legislation to establish corporate criminal responsibility for acts of corruption
- ☛ To promote a legal framework for the prevention of corruption in private sector enterprises, with incentives for compliance and verification in accordance with international standards.
- ☛ To promote legislation and regulations on the protection of whistleblowers and alerters, as well as to establish mechanisms that encourage the reporting of acts of corruption

- ☛ Enforce the institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment
- ☛ To undertake initiatives to promote mechanisms for strengthening institutions that allow to shield against political interference, including, if necessary, modification of appointment processes
- ☛ To promote legislative and public policy reforms to strengthen the judiciary in accordance with international standards, which guarantee the conditions of judicial independence necessary for an effective fight against corruption
- ☛ Encourage mechanisms to encourage civil society participation in the design and implementation of anti-corruption public policy
- ☛ Support CSO efforts to prevent, detect and report corruption
- ☛ Support CSO efforts to monitor and participate in the processes of appointing and operating independent anti-corruption authorities

## 15. Peru

The Republic of Peru has one of the strongest regulatory frameworks for combating corruption in the region.<sup>71</sup> According to the majority of the legal community consulted, **this legal framework is generally sufficient, although it could be improved.** Opportunities for improvement for better implementation at the national level include prevention and lack of incentives for whistleblowers.

Despite the strength of the legal framework, the consulted legal community stressed that **the main challenges to the applicability of the legal framework** included insufficient mechanisms for detecting and preventing corruption, lack of inter-agency coordination, inadequate economic and human resources for anti-corruption agencies, inadequate training of public officials, and cultural resistance to interests (usually political parties).

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

### A. PUBLIC SECTOR

Peruvian legislation 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 policies for public officials
- ✓ Policies on post-public employment obligations and constraints, in which public officials are not allowed to work in any area of the private sector after completing their assignment.<sup>72</sup>

With regard to affidavits, the Peruvian legal framework provides that the following are public:

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

The agency that conducts, coordinates, and endorses the implementation of anti-corruption policies is the Secretariat of Public Integrity. However, this is a body attached to the Executive, which is in a permanent state of political instability, which affects the fight against corruption.

With regard to policies for training public officials in anti-corruption measures, the National Plan for Integrity and Anti-Corruption 2018-2021 suggests developing an annual training program to educate public officials on existing standards, establishing policies and procedures for the prevention of corruption, as well as ethics and integrity, which should be appropriate to the level of responsibility of the personnel to which they are directed.

The legal community consulted mentioned the need to strengthen prevention mechanisms in the public sector, including the identification of risk areas, and training programs, beyond what is provided for in the Code of Ethics of Public Service Act. On the occasion of vaccination against COVID-19, Supreme Decree No. 020-2021-PCM set guidelines on the conduct to be performed by public officials in order to address the general interest.

In the area of the Judiciary, there is a Code of Ethics of the Judiciary that establishes guidelines for conduct and sanctions against judges or judges

of the judiciary, without prejudice to disciplinary measures that may be taken.

## B. PRIVATE SECTOR

Peruvian legislation provides for regulation from a criminal perspective mainly by:

- ✓ Codes of Conduct
- ✓ Standards for a culture with the “tone defined by superiors”<sup>73</sup>
- ✓ Control and audit measures
- ✓ Internal complaints procedures
- ✓ Training in compliance programs
- ✓ Risk assessment and evaluation of compliance programs.

- ✗ Organization chart and scope of work of company officials
- ✗ Risk advice on regulatory compliance programs
- ✗ Research protocols

These elements are not mandatory, but in accordance with Law No. 30424, Law regulating criminal responsibility of the legal person, companies may be exempted from sanction if, before the time of the commission of the crime, they had implemented a model of crime prevention (compliance program) appropriate with the above elements. The Regulations of Law No. 30424 suggests specific elements that each of the elements envisaged must contain, yet, members of the consulted legal community stress that the regulation of the criminal responsibility of the legal person requires further development.

It was mentioned that until the close of this edition, there is no case in which the prosecution investigates a company under the scope of Law No. 30424, even though that law came into force on January 1, 2018. The consulted legal community also notes that the vast majority of prosecutors and judges have not been trained in the scope of this law.

In Peru, in addition to regulating the corruption of companies with public officials, corruption among

private individuals is regulated, in accordance with articles 241-A and 241-B of the Penal Code.

The Peruvian legal system prohibits the following acts:

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

In this sense, companies can be penalized by penalties of fines, disqualification, cancellation of licenses, closure of premises and dissolution in the most serious cases, without prejudice to being exposed to the solidarity payment of civil reparation.

In criminal matters, it is possible to reduce sanctions by means of effective collaboration agreements signed between the person under investigation (natural or legal person), and the Public Prosecutor's Office, which must pass a legal control from the judiciary in order to have effect.

## C. COMPLAINT AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

In the area of reporting acts of corruption, there are means and mechanisms for public servants in the public sector (Law 29542 and Legislative Decree 1327). According to the consulted legal community, **the means of denunciation are generally accessible**. On the occasion of vaccination against COVID-19, Supreme Decree No. 020-2021-PCM determined the obligation to denounce any act that would transgress the provisions of the vaccination process and made available to citizens the Single Digital Citizen's Complaints Platform available online.

In Peru, there are measures for the protection of complainants both at the administrative and criminal levels, including the reservation of identity, labor protection, among others.

In the administrative sphere, the delivery to the complainant of 50 per cent of the recovered by the State is provided as an incentive, however, to say the legal community consulted is an assumption that has never been made effective in practice.

Complainants may be held liable for civil action (defamation or a claim for compensation) if they report acts of corruption or irregularities to the press or media, and the complaint shows that this was a malicious report.

#### D. SPECIALIZED AUTHORITIES

The following authorities with powers of prevention, investigation and punishment of corruption are identified:

- ✓ Office of the Comptroller General of the Republic
- ✓ Office of the Procurator specialized in offenses of corruption of officials
- ✓ Public Ministry
- ✓ Judiciary
- ✓ High Level Anti-Corruption Commission

According to the legal community consulted:

Anti-corruption authorities **generally do not have the independence** necessary to effectively prevent, investigate and punish corruption.

The consulted legal community mentions that, despite the legal autonomy of some of these institutions, material independence is not a reality, especially on the basis of the procedures for appointing judges, prosecutors and chief officer of anti-corruption agencies. In particular, the provisional nature (designation of judges and prosecutors on a temporary basis and not through a selection process) continues to be a problem affecting the material fulfillment of the guarantee to the jurisdictional guardianship. On the other hand, the High Level Anti-Corruption Commission is a body attached to the Presidency of the Council of Ministers.

For example, the High Level Anti-Corruption Commission is a body attached to the Presidency of the Council of Ministers.

The institutional capacity of administrative authorities empowered to prevent, investigate, and prosecute acts of corruption is medium.

The institutional capacity of the criminal authorities empowered to investigate acts of corruption is medium.

The legal community consulted identified specialized prosecutors or members of special investigation groups as the most effective authorities in combating corruption and, on some occasions, the Comptroller General.

the legal community consulted identified the rest of the prosecutor's office and some members of the judiciary as the **least effective body** in combating corruption. The consulted legal community mentioned the importance of empowering the Comptroller General of the Republic so that it can conduct annual audits of public entities.

The consulted legal community stressed the importance of providing more resources to institutions, as well as training prosecutors and judges, given the complexity of corruption cases, prosecutors have many difficulties understanding the nature and magnitude of the transactions they investigate. A recurring comment that directly impacts institutional capacity is the high procedural burden that causes investigations and processes to last a long time generating impunity.

#### E. INSTITUTIONAL COORDINATION MECHANISMS

There are mechanisms for coordination and institutional cooperation to prevent, combat, investigate and punish corruption. The consulted legal community emphasizes the creation of

specialized groups and teams for complex cases and specific research topics.

## F. PARTICIPATION OF CIVIL SOCIETY

There are mechanisms of participation for civil society, academia or other non-governmental actors in efforts to prevent corruption. For example, when the judiciary convenes Plenarian Agreements to define a position on some problematic issue, for example, the limitation and civil reparation in cases of corruption, citizens and civil society participate in the exchange of debates. In addition, civil society organizations participate in the High Level Anti-Corruption Commission.

CSOs are actively involved in anti-corruption efforts, including reporting acts of corruption. The consulted legal community highlights the efforts by Proética.









Finally, the consulted legal community highlights the role that the private sector and universities can play in driving anti-corruption efforts.

## G. TRANSPARENCY AND ACCESS TO INFORMATION

Information about public officials working in the procurement processes, sanctioned public officials, sanctioned private entities, and public procurement processes is public. There is no record of final beneficiaries.

It is possible to challenge the refusal to grant public information requested to the government, through *the habeas data action*. In addition, the National Authority on Transparency and Access to Information, a body under the Ministry of Justice and Human Rights, is responsible for the fulfillment of the transparency obligations of all public bodies.

## H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY

-  To promote the strengthening of the mechanisms of public ethics and integrity of the authorities of the State, with particular and detailed rules to discourage, detect and punish practices of corruption in the public sector.
-  To undertake efforts to make legal persons clear about their specific obligations in the area of corruption prevention, clearly establishing the applicable regulations
-  To promote legislation and regulations on the protection of whistleblowers and alerters, as well as to establish mechanisms that encourage the reporting of acts of corruption
-  Enforce the institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment
-  To undertake initiatives to promote mechanisms for strengthening institutions that allow to shield against political interference, including, if necessary, modification of appointment processes
-  To promote the functioning of coordination mechanisms among anti-corruption authorities to prevent, combat, investigate, and punish corruption more efficiently
-  Support CSO efforts to prevent, detect and report corruption
-  Promote legislation and regulations to establish records of final beneficiaries in accordance with international standards and best practices

## 16. Uruguay

Uruguay has an anti-corruption regulatory framework<sup>74</sup> that includes nineteen general rules to regulate the powers of the competent authorities, mechanisms for cooperation and protection of whistleblowers, incentives for self-reporting of misconduct, incentives for implementing compliance programs, among other topics. Among the legislative areas of opportunity are the criminal responsibility of legal persons.

According to most of the legal community consulted, the **legal framework needs to be improved, but in general terms it is sufficient**.

As **the main challenges for the applicability of the anti-corruption legal framework** in Uruguay, the legal community consulted maintains that the mechanisms for detecting and preventing corruption are insufficient, as well as the lack of economic and human resources to combat corruption.

In addition, people in poverty were identified as those most affected by corruption.

### A. PUBLIC SECTOR

Uruguay 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
- ✓ Gift policies for public officials
- ✓ Policies for training public officials in anti-corruption measures
- ✗ Policies on post-public employment obligations and limitations

With regard to affidavits, the Uruguayan legal framework provides that the following

declarations must be given, or not, by public officials:

- ✓ Patrimonial declarations
- ✓ Statements of interest, including external activities and participation in companies and organizations
- ✗ Information on filing tax-related returns (payments and returns)

The candidates for the Presidency and Vice-Presidency of the Republic and the Heads of the different state governments must submit an affidavit of their assets and income.

These statements are public, although they contain some reserved information.

The agency that oversees and coordinates the implementation of anti-corruption policies is the Board of Transparency and Public Ethics (JUTEP).

### B. PRIVATE SECTOR

In Uruguay, there is no regulatory framework to prevent corruption in the private sector. There was only one bill on this subject that was not approved by the legislature.

Despite this, there is regulation on the identification of the holders of the bearer and nominative shares, as well as of final beneficiaries, which are regulated by Law No. 18,930, Law No. 19,484 and Decree No. 166/017, As well as Law No. 19,574 and Decree No. 379/018 regulating the prevention of money laundering and the financing of terrorism. Of the elements analyzed in this Assessment, Uruguay considers, or does not, the following for the private sector:

- ✓ Control and audit measures
- ✓ Training in compliance programs

- ✗ Codes of Conduct
- ✗ Organization chart and scope of work of company officials
- ✗ Standards for a culture with the “tone defined by superiors”
- ✗ Internal complaint procedures
- ✗ Risk assessment and evaluation of compliance programs

Article 13 of Law No. 19,574 contains administrative sanctions in the event that companies fail to comply with legislation on the prevention of money laundering or the financing of terrorism.

Private sector companies in Uruguay are subject to administrative responsibility, whose sanctions include (i) warning; (ii) observation; (iii) fine or suspension of the subject bound where appropriate, on a temporary basis, or with prior judicial authorization, in final form; and (iv) pecuniary penalties. Civil liability is also provided for, from which the full repair of the damage can be claimed<sup>75</sup>. In Uruguay, however, legal persons cannot be held liable for acts of corruption.

The Uruguayan legal system also prohibits, or does not prohibit, the following acts:

- ✓ Establishment of accounts not registered in corporate books, conduct of unregistered transactions, record of non-existent expenses, journal of expenses with incorrect indication of their object, use of false documents and intentional destruction of corporate books.

- ✗ Bribery or facilitation payments, as well as your tax deduction.

### C. COMPLAINT AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

With regard to public servants, article 42 of Law No. 19,823 provides that public officials who report crimes of corruption against public administration shall be included in the witness protection program of the Office of the Attorney

General. There is no financial compensation for whistleblowers of corruption.

In the case of complaints by citizens, the legal community consulted notes that, **the channels of denunciation are accessible or very accessible.**

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

### D. SPECIALIZED AUTHORITIES

The authorities at the national level with powers to prevent, investigate or punish corruption are:

- ✓ Public Ethics and Transparency Board (JUTEP)
- ✓ Administrative Dispute Tribunal
- ✓ Court of Auditors
- ✓ Internal Audit of the Nation
- ✓ Attorney General's Office
- ✓ Judiciary
- ✓ National Secretariat for Combating Money Laundering and Financing Terrorism (SENACLAFF)

The JUTEP, the Internal Audit of the Nation, SENACLAFF and the Office of the Attorney General have independence as a decentralized body, although they are under the administrative supervision of the Executive.

According to the legal community consulted:

Anti-corruption authorities **do have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of **the administrative authorities** empowered to prevent, investigate, and prosecute acts of corruption is **high**.

The institutional capacity of **the criminal authorities** empowered to investigate acts of corruption is **high**.

The legal community consulted identified the judiciary as the **most effective** authority in combating corruption.

The consulted legal community **did not identify any particular authority that was considered to be the least effective**.

#### E. INSTITUTIONAL COORDINATION MECHANISMS

There are mechanisms of cooperation or institutional coordination to prevent, combat, investigate and punish corruption. The consulted legal community points out that this interaction is efficient and highly positive.

#### F. PARTICIPATION OF CIVIL SOCIETY

The legislation does not include a mechanism for participation by civil society, academia and other

non-governmental actors in efforts to prevent corruption. However, since their participation is not prohibited by the Uruguayan legal framework, it is quite active.

The consulted legal community stresses the importance of strengthening the participation of academic institutions.

#### G. TRANSPARENCY AND ACCESS TO INFORMATION

In Uruguay, information regarding public officials working in public procurement processes and procurement processes is public. However, information on public officials and private sanctioned entities is not public, nor is information on the final beneficiaries of companies.

In addition, there is a system that allows information to be requested from the government, and any refusal to provide the information can be challenged by jurisdictional means, based on Law No. 18,381.

#### H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY

- ☼ To promote the modernization of the norms of public ethics and integrity to strengthen the prevention of conflicts of interest, external activities and post-employment obligations
- ☼ To promote legislation to establish corporate criminal responsibility for acts of corruption
- ☼ To promote a legal framework for the prevention of corruption in private sector enterprises, with incentives for compliance and verification in accordance with international standards.
- ☼ Encourage mechanisms to encourage civil society participation in the design and implementation of anti-corruption public policy

## 17. Venezuela

Venezuela has a legal framework composed of approximately seventeen instruments regulating institutions responsible for combating corruption.<sup>76</sup>

According to the majority of the legal community consulted, **the legal framework is completely inadequate**. The consulted legal community emphasized that **the main challenges for the applicability of the legal framework** include the absence of political will for its implementation, and the total capture of institutions that do not have capacity.

In Venezuela, a capture of the state by a government that is 23 years old in power and that has installed a pattern of great corruption protected by a justice system at the service of power that guarantees impunity for the network of great corruption. There is no interest in developing either the legal framework or the basic institutions for combating corruption.

The information presented below constitutes what is established by law, however, the consulted legal community warns that much of this legislation is dead letter.

It is identified that the Venezuelan population in general has been the victim of the illustrated situation, which has led to a serious humanitarian crisis, with millions of Venezuelans leaving the country.

### A. PUBLIC SECTOR

Venezuela has standards that regulate the actions of public officials in the Constitution, the Law on the Statute of Public Service, the Code of Ethics for Public Officials and the Code of Conduct for Public Servants.

Venezuela has anti-corruption policies. Such laws consider, or not, 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 policies for public officials. There is only one generic rule that public servants are prohibited from soliciting and/or receiving gifts or gifts, either directly or indirectly
- ✓ Policies for training public officials in anti-corruption measures

- ✗ Policies on post-public employment obligations and limitations

With regard to affidavits, the Venezuelan legal framework provides for the presentation of:

- ✓ Asset statements (not public).

Venezuela does not foresee the following:

- ✗ Measures requiring public officials to make statements of interest
- ✗ Measures that require public servants to make tax-related returns

In Venezuela, there is no institution charged with supervising and coordinating the implementation of anti-corruption policies specifically, but it is the responsibility of the Office of the Comptroller General of the Republic and the Public Prosecutor's Office.

The Anti-Corruption Act includes in its sanctions provisions a specific chapter entitled “Crimes against the Administration of Justice”, which establishes offenses attributable to officials of the judiciary and their respective penalties.

## B. PRIVATE SECTOR

There is no specific anti-corruption regulation for the private sector in Venezuela, but there are provisions within the Anti-Corruption Act that apply to both the public and private sectors, the law also criminalizes corruption among individuals.

Without prejudice to this, there is no specific provision for an anti-corruption framework for private sector companies requiring the following:

- ✗ Codes of Conduct
- ✗ Organization chart and scope of work of company officials
- ✗ Standards for a culture with the “tone defined by superiors”<sup>77</sup>
- ✗ Control and audit measures
- ✗ Internal complaints procedures
- ✗ Risk assessment and evaluation of compliance programs
- ✗ Research protocols

In private sector, regulation on regulatory compliance programs or crime prevention models, among others, exists only in terms of money laundering and financial sector issues.

There is no legal incentive to implement compliance policies within companies. However, it is mentioned that this is well seen in the case of broadcasting companies.

Venezuelan law prohibits the use of false documents and the intentional destruction of corporate books before the time provided by law. However, it does not prohibit the establishment of accounts not recorded in corporate books, the conduct of transactions not registered or unduly recorded in corporate books, or the recording of non-existent expenses. Neither are companies encouraged to prohibit or discourage the use of bribes or facilitation payments, nor are tax deductions from such payments prohibited.

Private sector companies are responsible from the administrative, criminal and civil points of view.

## C. COMPLAINT AND PROTECTION OF WHISTLEBLOWERS/ALERTERS

In the opinion of the majority of the legal community consulted, the mechanisms for reporting acts of corruption **are not accessible** in Venezuela.

Venezuela does not have a policy of protecting complainants as such, but in accordance with criminal law it has physical protection measures for persons participating as complainants or witnesses.<sup>78</sup>

Complainants are not subject to any financial compensation for reporting or alerting, and the Venezuelan legal framework does not provide for any measure or procedure to encourage persons who have participated in acts of corruption to report them.

## D. SPECIALIZED AUTHORITIES

The following authorities with powers to prevent, investigate or punish corruption are identified:

- ✓ National Anti-Corruption Corps
- ✓ General Comptroller of the Republic
- ✓ Public Ministry
- ✓ Judiciary

The Public Prosecutor's Office and the Office of the Comptroller General of the Republic are independent. In Venezuela, there is no agency specifically empowered to prevent corruption.

According to the legal community consulted:

Anti-corruption authorities **do not have the independence** necessary to effectively prevent, investigate and punish corruption.

The institutional capacity of **the administrative authorities** empowered to prevent, investigate, and prosecute acts of corruption is **low**.

The institutional capacity of **the criminal authorities** empowered to investigate acts of corruption is **low-zero**.

The consulted legal community identified that no **authority can be effective** in combating corruption, given public capture and lack of political will to investigate corruption in a corrupt regime. For example, the consulted legal community has reported that the Office of the Prosecutor receives no complaints, and that no policies or authorities or methodologies have been implemented in ten years. In addition, it has not cooperated in years with international investigations through requests for legal assistance.

Another example is that the Anti-Corruption Act obliges all public bodies in its articles 9 and 10 to publish quarterly updated financial reports. This has not been done since 2010 in some cases and since 2015 in general.

#### E. INSTITUTIONAL COORDINATION MECHANISMS

There are formal mechanisms for cooperation and inter-institutional coordination to combat corruption between the Comptroller General, through the Institute of Higher Studies of Fiscal Control and State Audit Fundación “Gumersindo Torres” (COFAE) and the Ministry of People’s Power for the Economy, Finance and Foreign Trade

(MPPEFC), although not expressly covered by Venezuelan legislation.

#### F. PARTICIPATION OF CIVIL SOCIETY

In Venezuela, there are mechanisms provided for in the law for civil society participation in anti-corruption efforts<sup>79</sup>. The reality, however, is that Venezuelan CSOs suffer much persecution when they deepen their research. Organizations such as Transparency Venezuela have been the victims of government attacks for their work. According to the legal community consulted, journalism and research from outside Venezuela has been extremely useful in exhibiting the fight against corruption.

#### G. TRANSPARENCY AND ACCESS TO INFORMATION

Although information on public officials working in public procurement processes, sanctioned public officials and public procurement processes is in theory public, they are not available.

There is no public information from sanctioned private entities. Nor is there a register of final beneficiaries of companies.

There are procedures for the request for information, as well as for the challenge in the event that the information is not provided to judicial and administrative authorities. It is specifically mentioned that the Law on Transparency and Access to Information of Public Interest provides too many tools for the authorities to deny requests for information without having sufficient basis for it.

#### H. RECOMMENDATIONS FOR THE LEGAL COMMUNITY

Unfortunately, any recommendation requires the reconstruction of the entire rule of law in Venezuela. The following recommendations are made when conditions permit:

- ☼ To promote the strengthening of the mechanisms of public ethics and integrity of the authorities of the State, with particular and detailed rules to discourage, detect and punish practices of corruption in the public sector.
- ☼ To promote initiatives to create a regime of public declarations of interest for public officials of the various branches of government and other autonomous bodies
- ☼ To promote the implementation of digital tools and technology for the prevention of acts of corruption in the public sector
- ☼ To promote legislation to establish corporate criminal responsibility for acts of corruption
- ☼ To promote a legal framework for the prevention of corruption in private sector enterprises, with incentives for compliance and verification in accordance with international standards.
- ☼ Establish mechanisms to disseminate information related to complaints mechanisms available to the general population and public servants
- ☼ To promote legislation and regulations on the protection of whistleblowers and alerters, as well as to establish mechanisms that encourage the reporting of acts of corruption
- ☼ Enforce the institutional strengthening of anti-corruption agencies, including the allocation of adequate financial and human resources, staff training, use of technology and equipment
- ☼ To undertake initiatives to promote mechanisms for strengthening institutions that allow to shield against political interference, including, if necessary, modification of appointment processes
- ☼ To propose and promote mechanisms for the selection of judges in accordance with international standards that guarantee independence, as well as guarantees for the judicial career, including mechanisms of professionalization and discipline
- ☼ To promote legislative and public policy reforms to strengthen the judiciary in accordance with international standards, which guarantee the conditions of judicial independence necessary for an effective fight against corruption
- ☼ To encourage the creation of coordination mechanisms among anti-corruption authorities to prevent, combat, investigate, and punish corruption more efficiently
- ☼ To promote the functioning of coordination mechanisms among anti-corruption authorities to prevent, combat, investigate, and punish corruption more efficiently
- ☼ To promote formal mechanisms for civil society participation in the design and implementation of anti-corruption public policy
- ☼ Encourage mechanisms to encourage civil society participation in the design and implementation of anti-corruption public policy
- ☼ Support CSO efforts to prevent, detect and report corruption
- ☼ Support CSO efforts to monitor and participate in the processes of appointing and operating independent anti-corruption authorities
- ☼ Promote legislation and regulations to establish records of final beneficiaries in accordance with international standards and best practices

## REGIONAL ANALYSIS

The Latin American region is very diverse in terms of anti-corruption efforts in the three axis analyzed: legislation, authorities and implementation. At the same time, several countries in the region share very similar challenges and realities. This diversity of realities provides the region with the possibility of promoting shared agendas to generate a substantive dialog on the exchange of experiences, good and bad practices, as well as opportunities for support and collaboration.

Among the highlights of the regional analysis, the *Lawyers Council* highlights the following considerations:

- Compared with the information obtained from EAL 2020, **no major advances were detected** in anti-corruption. While minimal aspects of the legal framework of some countries had development or specifications, they did not represent substantial progress. On the contrary, in the areas of authorities and implementation, negative practices were detected that continue as pressures on civil society organizations working on anti-corruption issues. Even some regressive policies were detected regarding the weakening of institutions such as in Mexico or Peru where there is still no independence from anti-corruption authorities, or in Guatemala with dismissal and pressure on independent justice actors.
- The information shows that in most countries of the region there have been **efforts to update the anti-corruption legal framework**, however, this has had no effect if efforts are not also focused on institutional strengthening and high standards for the implementation of the standards. Legislative efforts on anti-corruption alone are not enough. The countries that stand out with high scores in terms of legislation (Mexico and Peru) have low scores for the categories of authorities and implementation, proving that the existence of legislation is not sufficient if there are no independent and capable authorities that can implement this legislation.
- It is interesting to note that in **Uruguay and Chile**, the two countries best qualified in authorities and implementation, are not the countries that have the most robust legal framework to combat corruption. These countries qualify their institutions as independent and capable.
- In a majority of the countries analyzed, the legal community consulted identified the **lack of political will** as one of the challenges for anti-corruption efforts, including providing institutions with material independence and sufficient resources. In some cases this is because they want to maintain the *status quo* without improving, but in others there have even been regressive policies. The will, or lack thereof, has led to non-existent anti-corruption efforts in countries like Venezuela. Similarly, it is worrying to see the trend in some countries where the rule of law is rapidly being worn out, such as Guatemala or El Salvador.
- In general terms, legal frameworks are aimed at **punishing acts of corruption** rather than establishing effective mechanisms to prevent corruption in the public and private sectors. The consulted legal community identifies that most prevention mechanisms in the public sector are formally created, but are deficient and ineffective.
- In most countries, the rules for the prevention of corruption concerning the public sector **are focused on the executive branch**, and there are no corresponding obligations in other powers such as the legislative and judicial branch.

- In most Latin American countries, the rules that sanction acts of corruption are **concentrated in criminal law**, and less regulation is directed toward administrative law and civil law. In particular, it makes it possible to repair the damage as a consequence of acts of corruption.
- In the **private sector**, most of the **regulation to prevent corruption is inadequate**, even countries that do not yet have it. The legal community consulted identified in particular the lack of specificity and guidelines for compliance and verification, in addition to the lack of understanding by the authorities on the importance of compliance and the creation of incentives for effective implementation.
- In most countries where there is criminal or administrative responsibility of legal persons for acts of corruption, the consulted legal community is not aware of investigations or sentences punishing acts of corruption, highlighting the lack of capacity of authorities to carry out these in an effective manner.
- There was agreement in the region that it was important for the **national and international private sector**, as important agents of change, **to engage in efforts to combat corruption**, not just through prevention, but by supporting and leading initiatives to advance the anti-corruption agenda.
- In half of the countries analyzed, there is a **lack or inadequacy of existing mechanisms for protecting whistleblowers or alerters**, which constitute disincentives for reporting acts of corruption. The consulted legal community commented on the importance of importing practices from the private sector into the public sector.
- A common element in the region is the **lack of capacity of criminal prosecution and justice institutions** to deal with cases of great corruption with complex financial schemes, due to lack of understanding and training.
- In some countries, the **lack of independence of autonomous powers or institutions**, particularly judicial powers and public ministries, is a matter of concern. Factors identified for this lack of independence are, in addition to political will, political and non-merit-based mechanisms for the appointment of prosecutors and judges, lack of financial and human resources, lack of training, and lack of technological tools to carry out their functions.
- The **lack of coordination mechanisms** between authorities was also mentioned in some countries as one of the obstacles to the proper implementation of the legal framework. In some cases, these mechanisms do not exist, and in others, they are not used or ineffective.
- With regard to the participation of civil society, the formal regulatory framework for their participation in the efforts of State authorities still does not exist in some countries, and even where they do exist, the consulted legal community considers that barriers to such participation remain.
- Worrying in some countries, **efforts have been made to close the civic space** and prevent CSOs from investigating, discovering or denouncing acts of corruption. Sometimes CSOs have been targeted by attacks by state authorities and the lack of support from the international legal community for these efforts is evident.
- The region is home to **significant advances in access to information** as an important mechanism for preventing corruption in the public sector and in the private sector.
- In all the countries analyzed, the legal community consulted agreed **that people living in poverty and vulnerable conditions are most affected by corruption**, making it clear how corruption perpetuates poverty and increases inequality. In the absence of corruption, there is unequal access to public programs on

social development and health, affecting the enjoyment of economic and social rights, as an obstacle to the economic development of the country. Unlike EAL 2020, more countries mentioned migrants as being affected by corruption, linking two serious problems in the region.

- In **no country was a human rights approach to addressing corruption detected** as part of national regulations. Acts of corruption not only have consequences that violate human rights, but impunity, for lack of investigation and punishment of these acts, can also infringe on the human rights of the victims, especially because of a lack of comprehensive redress for them.

## REGIONAL RECOMMENDATIONS

*The Lawyers Council* considers that as law professionals, trained to defend law enforcement and committed to the administration of justice, the national, regional and international legal community has a unique and privileged role in the fight against corruption.

*The Lawyers Council* urges and encourages members of the region's legal community, including the private legal sector, law schools, pro bono initiatives and law schools, to make critical efforts to initiate or strengthen anti-corruption initiatives. These efforts could include:

- ✿ Design and promote minimum standard legislation, implementation guidelines, studies and good practice dialogs focused on strengthening integrity mechanisms as part of efforts to prevent corruption in the public sector.
- ✿ Promote the modernization of corruption prevention in the public sector through the development and implementation of digital tools and technology.
- ✿ To promote the creation of national and regional recognition of public officials for their contribution to the fight against corruption from the public sector, as a mechanism of armor against attacks for their independent action.
- ✿ Design and promote minimum standard legislation, implementation guidelines, studies and dialogs focused on strengthening mechanisms for corporate integrity, prevention of corruption and incentives for effective compliance.
- ✿ Create a best practice guide on implementing business integrity program elements.
- ✿ Involve the private sector in each country and at the regional level to promote efforts by the legal community in anti-corruption matters, as an agent with responsibility for protecting the rule of law and a good business climate.
- ✿ Generate a regional dialog on the desirability of standardizing sanctions for acts of corruption at the regional level, both for the public and private sectors.
- ✿ To promote mechanisms to encourage the reporting of acts of corruption and to protect whistleblowers.
- ✿ Analyze and propose the fate of seized assets from corruption to institutional strengthening of authorities responsible for anti-corruption efforts, and initiatives with CSOs.
- ✿ To promote initiatives so that anti-corruption efforts are not centralized in each country and to support the local legal community in implementing anti-corruption efforts.
- ✿ Promote regional cooperation of the legal community to promote good anti-corruption practices and generate exchange of experiences, good and bad.
- ✿ Continue efforts on transparency and access to information, particularly with regard to public procurement processes and final beneficiary registrations.
- ✿ To promote before the Inter-American Commission on Human Rights the regional and national recognition of the right to live in a country free of corruption, guiding the establishment of national criteria based on Inter-American standards, and promote the creation of an anti-corruption rapport within the Inter-American System of Human Rights for these purposes.

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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 membership includes lawyers 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 a program of the **Cyrus R. Vance Center for International Justice**.

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# FINAL NOTES

<sup>1</sup> Topic Report of 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> Law No. 25,188, Law on Ethics in the Exercise of the Public Service (and its amendments); Decree No. 164/99, Regulatory Decree of Law No. 25,188; Decree No. 201/2017, Integrity in Trials Against the State; Decree No. 202/2017, Integrity in public procurement; Decree No. 1179/2016. Regulation of Article 18 “Scheme of Gifts to Public Officials” of Law No. 25,188; Decree No. 41/99, Code of Ethics in Public Service.

<sup>3</sup> Law No. 25,233, Creation of the Anti-Corruption Office in the Ministry of Justice and Human Rights of the Nation; Law No. 27,275, Right of Access to Public Information Act; Decree No. 357/20021, Organization Chart and Objectives of the Anti-Corruption Bureau (and its amendments); Decree 1172/2003. General Regulations of Public Hearings, for the Advertising of Interest Management, Participatory Preparation of Standards, Access to Public Information and Open Meetings of the Regulatory Bodies of Public Services; Decree 54/2019. Statement by the Office of Anti-Corruption as a Unconcentrated Agency of the Presidency of the Nation; Decree 838/2017. Organizational structure and objectives of the Anti-Corruption Bureau; Decree 1172/2003. General Regulations of Public Hearings, for the Advertising of Interest Management, Participatory Preparation of Standards, Access to Public Information and Open Meetings of the Regulatory Bodies of Public Services; Resolution 15/2021. Creation of the System for the Monitoring of Private Activities Prior to and After the Exercise of the Public Service.

<sup>4</sup> Resolution MJyDH 1695/13. Regime for the Presentation of the Integral Patrimonial Jury Declaration; General Resolution AFIP 3511/13. Procedure for integral patrimonial affidavits of public officials and others. Supplementary Standard; Resolution OA 09/11. It provides for the suspension of the 20% collection of assets to officials who fail to submit initial and annual affidavits. Modification of the intimation model; Resolution MJyDH 193/07. It replaces the model forms for the submission of integral patrimonial affidavits approved by Resolution SJyAL 10 of 28/12/2001; Resolution OA 03/02. Models of intimidation of non-compliant officials; Resolution MJyDH 1000/00. Conditions for the Filing of Affidavit; Resolution OA 06/00. Criteria for the determination of the universe of officials required to submit an Integral Heritage Affidavit.

<sup>5</sup> Resolution 20/2020. Resolution on the expansion of the Advisory Council for the Follow-up of the Implementation of the Initiatives incorporated into the National Anti-Corruption Plan 2019 – 2023; Decree 258/2019. Decree approving the National Anti-Corruption Plan; Resolution 21/2019. Resolution establishing the Advisory Council for Monitoring the Implementation of the Initiatives incorporated into the National Anti-Corruption Plan 2019 – 2023; Decree 650/2019. Decree on Integrity Links; Resolution 797/2019. Resolution of Integrity Liaison Competencies; Resolution 33/2019. Resolution appointing members of the Advisory Council to monitor the implementation of the initiatives incorporated into the National Anti-Corruption Plan 2019 – 2023; Resolution RESOL-2020-5-APN-OA#PTE. Approval of recommendations to strengthen integrity and transparency in public contracts held in the Emergency Framework by COVID-19.

<sup>6</sup> Law 25,164. National Public Employment Framework Law; Decree 1421/02. Regulation of Law 25,164; Decree 1033/01. Performance of class or chair hours; Decree 894/01. Incompatibility between the collection of a pension credit and the collection of remuneration for office in the public service; Decree 946/01. Regime on the accumulation of posts in the National Public Administration; Decree 933/71. Compatibility regime between university teaching and positions in the National Public Administration; Decree 8566/61. Regime on the

accumulation of posts in the Public Administration; Decree 9677/61. Complementary provisions to the regime of Decree 8566/61; SME Resolution 11/01. Incompatibility in the collection of death pension benefits; Resolution SME 13/01. Incompatibility incorporated by Decree 894/01, does not cover the war pensions of ex-combatants of Malvinas; Resolution SME 27/01. Incompatibility incorporated by Decree 894/01, does not include persons with disabilities.

<sup>7</sup> Penal Code of the Argentine Republic (articles 265 et seq.).

<sup>8</sup> Law 27,401. Criminal liability regime applicable to private legal persons; Anti-Corruption Office Resolution 27/2018. Integrity guidelines for better compliance with the provisions of Articles 22 and 23 of Law No. 27,401.

<sup>9</sup> Decree 1023/01. National Civil Service recruitment regime.

<sup>10</sup> The term refers to the ethical environment that creates organizational leadership in the workplace. Tone constitutes management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow management's example, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>11</sup> See articles 9 and 22 of Law 27,401.

<sup>12</sup> Witness protection will be provided only if the matter results in criminal action.

<sup>13</sup> The laws and decrees that are considered an integral part of Bolivia's legal framework are: The Political Constitution of the State of February 7, 2009; Law No. 10426, Penal Code of August 23, 1972 with the reforms introduced in subsequent criminal laws (Law 1768 of March 10, 1997, among others); Law No. 1970, Code of Criminal Procedure of 25 May 1999; Law No. 004, Anti-Corruption, Illicit Enrichment and Investigation of Fortunes "Marcelo Quiroga Santa Cruz" of 31 March 2010; Law No. 1390 on Strengthening of the Fight against Corruption of 27 August 2021; Law No. 2027 Status of Public Officials of 27 October 1999; Law No. 1178 on Government Administration and Control (SAFCO) of 20 July 1990; Act No. 458, Protection of complainants and witnesses, of 19 December 2013; Act No. 974, Transparency Units, of 4 September 2017; Supreme Decree No. 23318-A, Regulation on Civil Service Liability; Supreme Decree No. 0214, National Transparency Policy of July 23, 2009; Supreme Decree No. 1233, Regulations on Affidavit of Goods and Rents; and Supreme Decree No. 29894, Organizational Structure of the Executive Power of the Plurinational State.

<sup>14</sup> Supreme Decree No. 29894 of the organizational structure of the executive power of the Plurinational State establishes that for reasons of ethics and transparency, no public servant who has exercised functions at the executive and executive level of free appointment of the decentralized, decentralized institutions, Minister of State, Vice-Minister or Director-General may hold hierarchical positions in private companies related to the sector he was conducting, for a period of two years from the cessation of office in the public sector, if it involves a conflict of interest with the entity where he had served.

<sup>15</sup> Not all companies are required to implement due diligence measures. Companies that are obliged to implement such measures include: (a) Financial Intermediation Entities and Financial Auxiliary Services; (b) Securities Intermediation Entities; (c) Insurance Insurers, Intermediaries and Insurance Assistants; (d) Companies engaged in the purchase and sale of foreign exchange; (e) Companies engaged in the sending and receiving of remittances; (f) Companies engaged in the transport or transfer of money, securities and precious metals; and (g) Notaries of Public Faith with respect to documents relating to the purchase and sale of movable property subject to registration and immovable property, as well as the constitution of companies and the modification or dissolution of them.

<sup>16</sup> The regulatory framework is integrated with the following ordinances: The Federal Constitution (1988), the Brazilian Penal Code (1940), the Code of Criminal Procedure (1941), the Brazilian Anti-Corruption Law (Law No. 12,846/2013), and its Regulatory Decree (Federal Decree No. 8,420/2015), the Administrative Improbability Act (Act No. 8,429/1992, updated by Law No. 14,230/2021), the Bids Act (Act No. 8,666/1993, updated by Act No. 14,133/2021), the Civil Public Action Act (Act No. 7,347/1985), the Anti-Money Laundering Act (Act No. 9,613/1998), the Anti-Crime Act (Act No. 13,964/2019), the Parastatal Enterprises Act (Act No. 13,303/2016), Resolutions of the Public Ethics Commission (2000), Resolution 20 of the Federal Senate (1993), among others.

<sup>17</sup> On 9/12/2021, Federal Decree No. 10,889/2021, which establishes, specifically for the public agents of the Federal Executive, a limit of R\$ 392.93 (approximately US\$ 75) for the receipt of gifts (equivalent to 1% of the ceiling of the remuneration of the public service, Defined by the salary of the Supreme Federal Court, currently in R\$ 39,293.32 - approximately US\$ 7,500.00).

<sup>18</sup> The term refers to the ethical environment that creates organizational leadership in the workplace. The "commitment of senior management" constitutes the commitment of the management bodies of the company to honesty, integrity, transparency and ethical behavior. Employees follow management's example, whether for good behavior or for bad behavior. It is therefore essential that management continually assess the tone and work to reinforce it.

<sup>19</sup> This amount may not be less than the illegal advantage obtained by the corrupt act and, if the gross billing criterion cannot be used, the fine will vary between R\$ 6,000.00 and R\$ 60 million.

<sup>20</sup> The Brazilian Anti-Corruption Act states that the applicable civil sanctions are: (i) loss of goods, rights or valuables representing the advantage or gain, obtained directly or indirectly from the infringement, reserving the rights of the injured party or third parties in good faith; (ii) partial suspension or interdiction of activities; (iii) forced dissolution of the enterprise; and (iv) prohibition of incentives, grants, grants or loans from public or government-controlled financial institutions, aged 1 to 5 years.

The Brazilian Anti-Corruption Act allows companies to sign clemency agreements that may have the following effects: (i) exemption from the publication of the conviction; (ii) exemption from the prohibition of incentives, grants, grants or loans from government-controlled public agencies or entities and public financial institutions; (iii) reduction of the fine by up to 2/3.

<sup>21</sup> The only exception to this rule is the criminal liability of legal persons for environmental offenses under the Federal Constitution and Act No. 9605 of 1998 ("Environmental Crimes Act").

<sup>22</sup> This regulation was supplemented by the *National Ombudsman Law* through Recommendation 3/2019, which recognizes the absence of national measures for the protection of complainants and, on the basis of this recommendation, created a rule that determines specific measures of protection.

<sup>23</sup> [Anti-Corruption Portal - Portuguese \(Brazil\) \(www.gov.br\)](http://www.gov.br). PLANANTICORRUPCAOBOLETIMDEZ2021.pdf (www.gov.br)

<sup>24</sup> National Strategy to Fight Corruption and Money Laundering - Register of Suspended Enterprises - *Popular Working Group* - Reporting Mechanisms - *Ethos Institute for Enterprise and Social Responsibility* - Corporate Integrity Pact .

<sup>25</sup> The regulatory framework is integrated, among others, by the Constitutional Organic Law on General Rules of State Administration (Law 18.575), the Constitutional Organic Law on the Public Ministry (Law 19.640), the Law on Organization and Powers of the Comptroller General of the Republic (Law 10.336), the Penal Code, The Law on the

Basis of Administrative Procedures (Law 19.980), the Law on the Criminal Responsibility of Legal Persons (Law 20.393), the Law on Access to Public Information (Law 20.285), the Law on Probity in Public Service (Law 20.880), the Law on Administrative Status (Law 18.834), The Law establishing the Financial Analysis Unit and regulating money laundering and money laundering (Law 19.913), as well as the Law regulating the Lobby (Law 20.730).

<sup>26</sup> The term refers to the ethical environment that creates organizational leadership in the workplace. Tone constitutes management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow management's example, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>27</sup> The anti-corruption legal framework consists of the following systems: Law 412 of 1997: Ratification of the Inter-American Convention against Corruption; Law 970 of 2005: Ratification of the United Nations Convention against Corruption; Law 1573 of 2012: Adoption of the OECD Convention to Combat Foreign Public Servants in International Commercial Transactions; Law 599 of 2000: Colombian Penal Code; Law 906 of 2004: Code of Criminal Procedure; Law 1474 of 2011: Anti-Corruption Statute; Law 80 of 1993: General Statute for Procurement of the Public Administration; Law 1150 of 2007: Law on Efficiency and Transparency in Procurement with Public Resources; Law 2014 of 2019: Law regulating sanctions for convicted persons for corruption and offenses against the public administration, as well as the unilateral administrative assignment of the contract for acts of corruption and other provisions; Law 734 of 2002: Single Disciplinary Code (effective July 2021); Law 1952 of 2019: New Single Disciplinary Code; Law 1828 of 2017: Congressman's Code of Ethics and Disciplinary; Law 610 of 2000: Law on the processing of tax liability processes for competition; Law 1762 of 2015: Anti-contraband Law; Law 134 of 1994: Law on Mechanisms for Citizen Participation; Statutory Law 1757 of 2015: Statute for Citizen Participation; Law 850 of 2003: Law on Citizens' Veedurias; Law 1712 of 2014: Law on Transparency and the Right to Access to National Public Information; Law 2013 of 2019: Law on Transparency and Publicity by Income Statement; Law 1778 of 2016: Law on the Liability of Legal Persons for Acts of Transnational Corruption and in the Fight Against Corruption; Law 1882 of 2018: By which measures are taken to strengthen public procurement in Colombia; Law 2014 of 2019: Regulating sanctions for convicted persons of corruption and crimes against the public administration; Decree 403 of 2020: Regulation of prior, concurrent and concomitant fiscal control; Law 1437 of 2011: Code of Administrative Procedure and Administrative Dispute; Decree 124 of 2016: Anti-Corruption and Citizen Care Plan; Decree 338 of 2019: Creating the Anti-Corruption Network; Decree 1523 of 2015: Regulates the procedure of benefits by collaboration in the detection and suppression of restrictive agreements of competition and collusion in public tenders; CONPES 167 of 2013: Comprehensive Public Anti-Corruption Policy; CONPES 4042 of 2021: Anti-Counterterrorism and Assets Policy; Draft Law 341 of 2020: By means of which measures are taken in the field of transparency, prevention and fight against corruption; External Circular 100-000011 of 2021 of the Superintendency of Companies; External Circular 100-000012 of 2021 of the Superintendency of Companies; And Resolution 100-006261 of 2020 and External Circular Letter 100-00003 of 2016.

<sup>28</sup> Articles 11 and 12 of Law 1437 of 2011 (Code of Administrative Procedure and Administrative Dispute) generally regulate conflicts of interest that a public official may incur in the performance of his or her duties.

<sup>29</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>30</sup> Article 73 of Law 1474 of 2011 provides that these plans must be reviewed annually, incorporating, among others, the corruption risk map in the respective entity, the concrete measures to mitigate these risks, the anti-procedural strategies and the mechanisms to improve the attention of the citizen.

<sup>31</sup> The term refers to the ethical environment that creates organizational leadership in the workplace. Tone constitutes management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow management's example, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>32</sup> The Superintendency of Companies is attached to the Ministry of Trade, Industry and Tourism.

<sup>33</sup> At the time, Resolution 100-006261 of 2020 and External Circular 100-00003 of 2016 established the companies required to implement a Transparency and Business Ethics Program by 2021.

<sup>34</sup> See judgment SC-185942016 of the Civil Chamber of the Supreme Court of Justice.

<sup>35</sup> <https://transparenciacolombia.org.co/2020/11/30/segundo-informe-de-seguimiento-de-la-accion-publica-del-gobierno-nacional-en-materia-anticorrupcion/>

<sup>36</sup> Costa Rica's anti-corruption legal framework includes: Law No. 8422 Against Corruption and Illicit Enrichment in the Public Service and its Regulations, Law No. 7786 On Narcotic Drugs, Psychotropic Substances, Drugs of Unauthorized Use, Related Activities and Financing of Terrorism and its Regulations, Law No. 8754 Against Organized Crime and its Regulations, the Criminal Code of Costa Rica and Law No. 9699 Liability of Legal Persons for Domestic Coheses, Trans-national Bribery and Other Offenses and its Regulations. In addition, Costa Rica has signed the Inter-American Convention against Corruption, the United Nations Convention Against Corruption and the OECD Convention Against the Cooperation of Foreign Public Servants in International Commercial Transactions.

<sup>37</sup> The term refers to the ethical environment that creates organizational leadership in the workplace. Tone constitutes management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow management's example, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>38</sup> In accordance with the Regulations of the Law on Liability of Legal Persons on Domestic Coheses, Transnational Bribery and Other Offenses, the content and requirement of the Model are: (i) Risk Assessment, (ii) Due Diligence, (iii) Anti-Corruption Policy Communication, (iv) Compliance Agent, (v) Monitoring the Implementation of the Model, (vi) Audit of Financial statements Every Three Years, and (vii) Reporting Mechanisms.

<sup>39</sup> These are the Penal Code, the Code of Criminal Procedure, and Law No. 448-06 On Bribery in Trade and Investment, Law No. 41-08 On Public Service, Law No. 340-06 On Purchases and Contracting of Goods, Services, Works and Concessions, Law No. 481-08 General of Archives of the Dominican Republic, Law No. 10-07 Establishing the National System of Internal Control and the Office of the Comptroller General of the Republic, Law No. 5-07 State Financial Administration System, Law No. 498-06 Planning and Public Investment, Law No. 423-06 Organic Budget for the Public Sector, Law No. 567-05 National Treasury, Law No. 20-04 of the Chamber of Accounts of the Dominican Republic, Law No. 126-02, which creates the General Directorate of Government Accounting, Law No. 311-14 on the Affidavit of Heritage and Law No. 155-17 Against Money Laundering and the Financing of Terrorism.

<sup>40</sup> They are: Decree No. 101-05, Decree No. 129-10, Decree No. 523-09, Decree 491-07, Decree No. 486-12, Decree No. 543-12. Decree No. 287-06, Decree No. 143-17, Decree No. 92-16, Decree No. 322-97, Regulation No. 06-04, Regulation 115-15 and Resolution DIGE-04-2017.

<sup>41</sup> Article 81 Law 41-08 on Public Service and creates the Secretariat of State for Administration.

<sup>42</sup> Article 80.9 and 80.16 Law 41-08.

<sup>43</sup> Law 41-08 Art. 80.1 and 80.16

<sup>44</sup> [http://www.oas.org/juridico/PDFs/mesicic4\\_reptom\\_res003.pdf](http://www.oas.org/juridico/PDFs/mesicic4_reptom_res003.pdf)

<sup>45</sup> This legal framework includes: The Constitution of the Republic of Ecuador; the United Nations Convention against Corruption; the Inter-American Convention against Corruption; the Convention against Transnational Organized Crime; The Protocol to the Agreement of the Council on Trade and Investment between the Government of the United States of America and the Government of the Republic of Ecuador relating to trade rules and transparency; The Memorandum of Understanding between the Government of the Republic of Ecuador and the United Nations to Prevent Acts of Corruption in the Public Procurement System; Decision No. 668 of the Andean Community of Nations for the Creation of the Andean Plan to Fight Corruption; The Integral Criminal Organic Code; the Organic Law of the Council of Citizen Participation; the Organic Code of the Judicial Function; the Organic Code of Citizen Security and Public Order Entities; the Law on the Prevention of Money Laundering; The Organic Law on the Function of Transparency and Social Control; the Organic Law on Public Service; the Organic Law on Domain Extinction; the Organic Law on the Legislative Function; the Organic Law of the Comptroller General of the State; The Organic Law Reformatory of the Integral Criminal Organic Code in Anti-Corruption Matters; the Organic Law on Transparency and Access to Public Information; the Executive Decree 4 “Norms of Governmental Ethical Behavior”; the Regulations on the Organic Law of the Comptroller General of the State; The Regulations to the Organic Law on the Legislative Function; the Regulations to the Law on Money Laundering and the Financing of Crimes; Resolution No. 90 of the Financial Analysis Unit, which creates the Use Guide on Political Exposed Persons; The Resolution of the Attorney General's Office No. 22 for the Implementation of the Transparency Mailbox Tool in the Office of the Prosecutor and the Resolution of the Attorney General's Office No. 45 for the creation of the Specialized Investigative Unit against Money Laundering.

<sup>46</sup> Executive Decree No. 4 “Government Ethical Behavior Standards” sets out the general principles and scenarios of conflicts of interest to be observed by senior executive officials.

<sup>47</sup> Included in the Organic Law on Public Service, the Codes of Ethics of Public Institutions and in Executive Decree No. 4.

<sup>48</sup> Provided for in the Regulations for the Registration of Gifts Received by Public Servants.

<sup>49</sup> The term refers to the ethical environment that creates organizational leadership in the workplace. Tone constitutes management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow management's example, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>50</sup> These instruments are: (i) the Constitution of the Republic of El Salvador, (ii) the Penal Code, (iii) the Code of Criminal Procedure, (iv) the Law against Money Laundering and Assets, (v) the Law on Extinction of Domain, (vi) the Inter-American Convention against Corruption, (vii) the United Nations Convention against Corruption, (viii) the Government Ethics Act, (ix) the Public Administration Procurement and Procurement Act, (x) the Public Information Access Act, and (xi) the Probity Act.

<sup>51</sup> [https://www.oas.org/es/centro\\_noticias/comunicado\\_prensa.asp?sCodigo=C-059/21](https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-059/21)

<sup>52</sup> The term refers to the ethical environment that creates organizational leadership in the workplace. Tone constitutes management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow management's example, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>53</sup> <https://apnews.com/article/noticias-f79e32f431076b9ce2cef7aca15529d7>

<sup>54</sup> It is composed of the following systems: Constitution of the Republic of Guatemala; United Nations Convention against Corruption, Decree 91-2005; Inter-American Convention against Corruption, Decree 15-2001; United Nations Convention against Transnational Organized Crime, Decree 36-2003; Central American Convention for the Protection of Victims, Witnesses, Witnesses and Other Subjects Involved in the Investigation and Criminal Procedure, particularly in Narcoactivity and Organized Crime, Decree 8-2009; Penal Code, Decree 17-73; Anti-Corruption Law, Decree 31-2012; Law on Probity and Liability of Public Officials and Employees, Decree 89-2002; Law on Contracting of the State, Decree 57-92; Organic Law of the Public Ministry; Decree 40-94; Law on Access to Public Information, Decree 57-2008; Law against Money Laundering or Other Assets, Decree 67-2001; Law against Organized Crime, Decree 21-2006; Law on Extinction of Domain, Decree 55-2010; Law on Criminal Competition in Higher Risk Processes, Decree 21-2009; Organic Law of the Comptroller General of Accounts, Decree 31-2002; Regulations on the System of Consequences of the System of Institutional Integrity of the Judicial Body, Agreement 22-2014; Regulations of the State Contracting Act, Government Agreement 122-2016; Regulations of the Law against Money Laundering or Other Assets, Government Agreement 118-2002; Rules of the Law on Domain Extinction, Government Agreement 514-2011; Regulations of the Law on Probity and Liability of Public Officials and Employees, Government Agreement 613-2005; Agreement to determine the jurisdiction of the Twelfth Court of Criminal First Instance, Narcoactivity and Crimes against the Environment (exclusive for offenses committed by public officials and employees), Supreme Court of Justice Agreement 22-2020 [provisionally suspended by the Constitutional Court]; And, Agreement establishing the Presidential Commission against Corruption, Government Agreement 28-2020.

<sup>55</sup> <https://agji-gt.org/~agjigtor/declaraciones/>

<sup>56</sup> The term refers to the ethical environment that creates organizational leadership in the workplace. Tone constitutes management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow management's example, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>57</sup> See section 30 of the Law against Money Laundering or Other Assets.

<sup>58</sup> According to article 298 of the Code of Criminal Procedure, public officials and employees who, in the exercise of their functions, 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 punishable as the offense of omission of denunciation, punishable by a fine of Q,100.00 to Q,1,000.00 (approximately US\$13.00 to US\$130.00).

<sup>59</sup> In accordance with the Law for the Protection of Procedural Subjects and Persons Related to the Administration of Criminal Justice, the protection service has as its essential objective to provide protection to officials and employees of the judiciary, civil security forces and the Public Prosecutor's Office, as well as witnesses, experts, consultants, plaintiffs, women victims of violence, their daughters and sons, as well as others who are at risk 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>60</sup> <https://gt.usembassy.gov/es/acciones-contrasiete-funcionarios-centroamericanos-por-socavar-la-democracia-y-obstruir-las-investigaciones-sobre-actos-de-corrupcion/>

<sup>61</sup> See Reforms to the Guatemalan Non-Governmental Organizations for Development Act. Analysis in light of international standards. Available at <https://bit.ly/GuateanalysisreformasleyONGs>

<sup>62</sup> This legal framework includes: (i) the Constitution of the Republic of Honduras, (ii) the Criminal Code of Honduras, (iii) the Special Law against Money Laundering, (iv) the Law on Transparency and Access to Public Information, (v) the Regulations of the Law on Transparency and Access to Public Information, (vi) the Law on State Procurement, (vii) the Regulations of the Law on State Procurement, (viii) the Law on the National Anti-Corruption Council (CNA), (ix) the Law on Efficient and Transparent Procurement, (X) the Regulations of the Law on Efficient and Transparent Purchases, (xi) the Law of the Public Ministry of Honduras, (xii) the Organic Law of the High Court of Auditors, (xiii) the Law on Municipalities, (xiv) the Regulations of the Law on Municipalities, (xv) the General Law on Public Administration, (xvi) the Regulations of the General Law on Public Administration, (xvii) the Organic Law on the Budget, (xviii) the Code of Ethics of the Public Prosecutor, (xix) the Regulations of the Code of Ethics of the Public Prosecutor.

<sup>63</sup> The term refers to the ethical environment that creates organizational leadership in the workplace. Tone constitutes management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow management's example, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>64</sup> It is composed of the following systems: Federal Penal Code and the Penal Codes of each state of Mexico; National Code of Criminal Procedures; General Law on Administrative Responsibilities; Law of the Attorney General of the Republic; Federal Law on Republican Austerity; General Law on the National Anti-Corruption System; Federation Audit and Accountability Act; Organic Act of the Federal Court of Administrative Justice; National Domain Extinction Act; Federal Act for the Prevention of Identification of Operations with Unlawful Remedies; Agreement aimed at issuing the Code of Ethics for Public Servants of the Federal Government, the Rules of Integrity for the Exercise of the Public Service and the General Guidelines for the Integrity of Public Servants; Agreement establishing the Guidelines for the Promotion and Operation of the System of Internal and External Citizen Alertors of Corruption; Model Business Integrity Program of the Secretariat of Public Service.

<sup>65</sup> Republican Austerity Act, whereby officials are prohibited from working for a period of one year in office for those using privileged information obtained during the exercise of public service. In particular, public officials included within top-command hierarchical groups are prohibited from working, for a period of 10 years, in private companies that regulated, supervised or on which they have had privileged information during the exercise of their public service.

<sup>66</sup> The term refers to the ethical environment that creates organizational leadership in the workplace. Tone constitutes management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow management's example, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>67</sup> The regulatory framework is composed, among others, of the following systems: The Penal Code, the Code of Criminal Procedures, the Judicial Code, the Public Procurement Law, the Anti-Vented Rules (Law 23 of 2015 and Executive Decree 363 of 2015), the law regulating the registration of final beneficiaries (Law 129 of 2020), the law establishing the courts of accounts (Law 67 of 2008), the Organic Law of the Comptroller General of the Republic, the Code of Administrative Procedure (Law 38 of 2000) and the Code of Ethics of Public Servants.

<sup>68</sup> The term refers to the ethical environment that creates organizational leadership in the workplace. Tone constitutes management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow management's example, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>69</sup> This regulatory framework consists of: (i) the National Constitution of Paraguay, (ii) the United Nations Convention against Corruption, (iii) the Inter-American Convention against Corruption, (iv) the United Nations Palermo Convention, (v) the Penal Code Law No. 1.160/97 and its amendment, (vi) Act No. 2523/04 providing for the offenses of illicit enrichment in the public service and the traffic in influences, (vii) Act No. 5282/14 on Free Citizen Access to Public Information and Government Transparency and its regulatory decree, (viii) Act No. 5876/17 of the National Secretariat for Confiscated Property and Administration and Monetization Standards, (ix) Act No. 5189/14 of the Obligation of Information Provision in the Use of Public Resources and its Amendment, (x) Law No. 5033/13 on the Affidavit of Civil Servants, (xi) Law No. 1.626/00 on the Civil Service, (xii) Law No. 2051/03 on Public Contracting, (xiii) Law No. 4575/12 on the Post-Self-Governing Order Procedure, (xiv) Decree No. 10144/12 “That establishes the National Anti-Corruption Secretariat”, (xv) Decree No. 4937/16 “Established and integrated the Transparency and Anti-Corruption Network”, (xvi) Decree No. 8706/18 “Complaints Portal” and (xvii) Decree 4900/16 “The National Plan for the Prevention of Corruption” is approved.

<sup>70</sup> The term refers to the ethical environment that creates organizational leadership in the workplace. Tone constitutes management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow management's example, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>71</sup> Composed, among others, of the following regulations: Political Constitution of Peru; United Nations Convention against Corruption; Inter-American Convention against Corruption; Convention against the Corruption of Foreign Public Servants in International Commercial Transactions; Peruvian Penal Code; Peruvian Penal Procedure Code; Law No. 29976, Act establishing the High Level Anti-Corruption Commission and Regulations, Supreme Decree No. 089-2013-PCM; Law No. 30424, Law Regulating the Administrative Responsibility of Legal Persons and Regulations, Supreme Decree No. 002-2019-JUS; Law No. 27815, Law on the Code of Ethics of the Public Service and Regulations, Supreme Decree No. 033-2005-PCM; Supreme Prosecutor's Board Resolution No. 018-2011-MP-FN-JFS, Public Prosecution Code of Ethics; Law No. 30483, Fiscal Career Act; Order of the Attorney General's Office No. 1423-2015-MP-FN, Regulations of the Specialized Prosecutors on Corruption of Officials, Specialized Prosecutors against Organized Crime and Specialized Prosecutors on Money Laundering and Loss of Domain Crimes; Legislative Decree No. 52, Organic Law of the Public Ministry; Administrative Resolution No. 081-2019-EC-PJ, which approves the Rules of Procedure of the Code of Ethics of the Judiciary; Law No. 29277, Judicial Career Act; Legislative Decree No. 767, Organic Law on the Judiciary; Law No. 30916, Organic Law of the National Board of Justice; Legislative Decree No. 1326, which restructures the Administrative System of Legal Defense of the State and creates the Attorney General's Office and Regulations, Supreme Decree No. 018-2019-JUS; Emergency Decree No. 020-2019, which makes it mandatory to present the Sworn Declaration of Public Interests and Regulations, Supreme Decree No. 091-2020-PCM; Law No. 27785, Organic Law on the National Control System and the Comptroller General of the Republic; Law No. 30057, Civil Service Law and Regulations, Supreme Decree No. 040-2014-PCM; Supreme Decree No. 082-2019-EF, Single Ordained Text of Law No. 30225, State Contracting Act; Act No. 28024, Law Regulating the Management of Interests in Public Administration and Regulations, Supreme Decree No. 120-2019-PCM; Law No. 27588, Law establishing Prohibitions and Incompatibilities of Officials and Public Servants, as well as Persons providing Services to the State under any contractual modality and Regulations, Supreme Decree No. 019-2002-PCM; Legislative Decree No. 1327, which establishes protection measures for the complainant of acts of corruption and punishes complaints made in bad faith and regulations, Supreme Decree No. 010-2017-JUS; Law No. 29542, Act on Protection of the complainant in the Administrative Field and Effective Collaboration in the Criminal Field and Regulations, Supreme Decree No. 038-2011-PCM; Supreme Decree No. 044-2018-PCM, which approves the National Integrity Plan and Fight Against Corruption 2018-2021; Act No. 27806, Law on Transparency and Access to

Public Information and Regulations, Supreme Decree No. 072-2003-PCM; Legislative Decree No. 1353, Legislative Decree establishing the National Authority on Transparency and Access to Public Information, strengthens the regime for the protection of personal data and the regulation of the management of interests and regulations, Supreme Decree No. 019-2017-JUS; Supreme Decree No. 020-2021-PCM, Supreme Decree establishing integrity measures to ensure the normal development of the vaccination process to prevent COVID-19.

<sup>72</sup> Law No. 27588 establishes prohibitions and incompatibilities for public officials and persons who served the State to intervene as lawyers, proxies, advisers, among others, for a year after their link with the State. This prohibition applies to persons who have accessed material or relevant information, or whose opinion has been decisive in decision-making, for example, directors, officers, senior officials, Members of Advisory Councils, Administrative Courts, Commissions and other collegiate bodies that perform a public function or commission of the State, directors of State enterprises or representatives of the State in directories, as well as advisers, officials or public prosecutors with specific assignments. Similarly, the Regulations of the Civil Service Act are pronounced on public officials, in respect of private companies or institutions, over which they exercise direct functional competence, or have decided as members of an Administrative Tribunal or in developing a legal system function. Such an impediment shall remain permanently in respect of those specific cases or matters in which they have participated directly.

<sup>73</sup> The term refers to the ethical environment that creates organizational leadership in the workplace. Tone constitutes management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow management's example, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>74</sup> The regulatory framework includes: The Constitution of the Eastern Republic of Uruguay, Law No. 19,823, Law No. 17,060, Law No. 19,340, Law No. 19,574, Decree No. 379/018, Law No. 9,155, Law No. 19,293, Law No. 14,306, Act No. 19,483, Decree No. 150/012, Act No. 15,750, Decree No. 500/991, Act No. 18,381, Decree-Law No. 15,524, Act No. 16,603, Act No. 18,930, Act No. 19,484 and Decree No. 166/017.

<sup>75</sup> Based on article 1319 of the Civil Code.

<sup>76</sup> This regulatory framework includes: The Constitution of the Bolivarian Republic of Venezuela, the Organic Law against Organized Crime and the Financing of Terrorism, the Organic Law of the Comptroller General of the Republic, the United Nations Convention against Corruption, the Inter-American Convention against Corruption, The Law on the Partial Reform of the Trade Code, the Law on the Partial Reform of the Penal Code, the Organic Law on the Reform of the Organic Code of Criminal Procedure, the Code of Conduct for Public Servants, the Code of Ethics for Public Officials, The Law on the Statute of the Public Service, the Law against Corruption, the Organic Law on the Public Prosecutor's Office, the Law on Transparency and Access to Information of Public Interest, the Rules on Corporate Governance of the Securities Market, The rules relating to the Administration and Control of the Legitimation of Capital, Financing of Terrorism and Proliferation of Weapons of Mass Destruction and Other Illicit Applicable to Subjects Regulated by the SUNAVAL, the Constituent Decree through which the Organic Tax Code is issued.

<sup>77</sup> The term refers to the ethical environment that creates organizational leadership in the workplace. Tone constitutes management's commitment to honesty, integrity, transparency, and ethical behavior. Employees follow management's example, whether good or bad behavior. For this reason, it is essential that leadership continually evaluates the tone and works to strengthen it.

<sup>78</sup> The Protection of Victims, Witnesses and Other Procedural Subjects Act establishes protections for "...all persons who are at risk for cause or on the occasion of their current, future or eventual intervention in criminal proceedings,

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for being a direct or indirect victim, witness, expert or expert, Official or official of the Public Prosecutor's Office or of the police bodies, and other subjects, principal and secondary, who intervene in this process...”

<sup>79</sup> Article 10 of the Anti-Corruption Act recognizes the right of individuals to request information on the administration and custody of the public heritage of such bodies and entities. Article 12 of the same Act also indicates that individuals and organizations of society have the right to participate in the formulation, evaluation and implementation of the budget.