AAILA 2023/2024 ANTI-CORRUPTION ASSESSMENT IN LATIN AMERICA

LAWYERS COUNCIL for CIVIL & ECONOMIC RIGHTS

CYRUS R. VANCE CENTER FOR INTERNATIONAL JUSTICE

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EXECUTIVE SUMMARY

THE ANTI-CORRUPTION ASSESSMENT IN LATIN AMERICA 2023-2024 is the third edition of a comprehensive study covering 18 countries, focused on identifying and analyzing the situation of institutional frameworks and the efforts undertaken in the region to address corruption.

The analytical perspective, based on experiences and legal practice, is the main differentiator of this study compared to others that primarily focus on perception. This approach generates data to assess the strengths of legislation, its challenges, the performance of authorities, their capacities, levels of independence, and their interactions with the private sector and civil society. These findings are built upon the vision and participation of legal professionals across Latin America, including bar associations, private firms, companies, academia, civil society, and human rights defenders.

Based on information gathered from members of the *Lawyers Council for Civil and Economic Rights*, partner firms in the Pro Bono Network of the Americas, and the legal communities of the participating countries, a final score was calculated on a scale from zero (0) to ten (10), with zero being the lowest and ten the highest.

- Although some progress has been identified in specific cases, a climate of institutional setbacks and systematic deterioration can be detected, linked to the deepening of autocratic regimes that have diminished the quality of the rule of law and reduced the incidence of anti-corruption efforts.

The indispensable conditions for the independent work of anti-corruption authorities exist in only a few cases.

- The region faces a significant and well-documented deficit in developing effective mechanisms to promote ethics and establish a public service culture committed to eradicating corruption.
- High levels of political control and influence persist, limiting independence and perpetuating the vicious cycle of impunity.
- Institutional weaknesses that enable corruption remain widespread, while instances of accountability and punishment are still exceptional.
- An adverse environment for the work and management of the judiciary continues to undermine the rule of law and diminish the effectiveness of anti-corruption efforts.

Most of the region lacks or has insufficient preventive mechanisms and strategies.

- Provisions, institutions, and public policies to prevent corruption show significant weaknesses in most of the region.
- The absence of preventive tools undermines anti-corruption efforts and prevents the construction of more effective strategies to eradicate it.

There is a widespread need to build, strengthen, and invest in institutional capacity to tackle corruption effectively.

- Sustained investments and public policy strategies are necessary to ensure adequate human and economic resources, as well as to equip institutions with the required technology and infrastructure.
- There is a clear need to train and professionalize personnel and enhance processes so that anti-corruption agencies and bodies can fulfill their mandates and coordinate effectively.

Most countries exhibit low or non-existent levels of whistleblower protection.

- Protection mechanisms and the establishment of incentives for whistleblowers have not become widespread in the region and operate in circumstances of institutional weakness.
- Whistleblower protection levels remain low, and risks remain high.
- Few countries have whistleblower protection laws, and in most cases, individuals who report corruption face significant risks, including retaliation or outright political persecution.

Strengthening collaboration channels with the private sector and civil society is essential.

- Broadening and intensifying the active participation of companies, groups, and private sector leaders in actions to prevent and combat corruption is crucial.
- Citizen participation and the involvement of civil society organizations are recognized as key assets in detecting, reporting, and exerting public pressure to eradicate corruption.
- The relationship between the public, private, and social sectors has been hindered by public procurement systems that fail to create strong enough barriers to discourage corrupt practices.

A comprehensive and human rights-based approach is lacking to articulate anti-corruption efforts.

- The frameworks that connect regulation, legal practice, and public policies in this area are fragmented and operate within a context of institutional fragmentation.
- Few efforts have been made to advance toward developing integral systems that seek to articulate all spheres of the state and society.

- A rights-based approach is missing, which weakens protection levels and increases the vulnerability of victims and citizens.

MAIN RECOMMENDATIONS

- Promote the implementation of strategies, actions, and policies to comprehensively strengthen anti-corruption authorities' institutional capacities, equipping them with the resources, competencies, and tools necessary for effective action.
- Advance policies, strategies, and actions to curb institutional setbacks to guarantee the independence of anti-corruption authorities, including those responsible for administration, criminal prosecution, and the judiciary.
- Enhance legislation and public policies to promote ethics and integrity in public service, adopt international best practices, and emphasize a strong preventive approach integrating new technologies and artificial intelligence for more effective detection and management of corruption.
- Foster alliances and joint efforts to develop comprehensive anti-corruption systems grounded in an integral and human rights-based approach that articulates social and institutional capacities, contributing to national and regional cooperation, as well as to the joint promotion of the recognition of the right to live in a country free of corruption and the establishment of an anti-corruption rapporteurship within the Inter-American Human Rights System.

INTRODUCTION

CORRUPTION REMAINS ONE OF THE MOST PRESSING GLOBAL CHALLENGES FOR DEVELOPMENT, ESPECIALLY WHEN IT IS SYSTEMATIC AND ENTRENCHED IN THE GOVERNMENT STRUCTURE. ITS CONSEQUENCES ARE DEVASTATING BECAUSE IT UNDERMINES THE ENJOYMENT OF CIVIL AND ECONOMIC RIGHTS, FUELS DISCRIMINATION IN IMPLEMENTING PUBLIC POLICIES, VIOLATES HUMAN RIGHTS, AND DISRUPTS THE BASIC CONDITIONS OF GOVERNANCE AND PUBLIC SECURITY.

In Latin America, corruption has significantly impacted governments and public spaces, thus becoming one of the biggest and most complex problems that citizens identify in their society and environment. Even so, the legal community faces challenges in communicating the importance of anti-corruption efforts, especially when it is understood as a form of government and a mechanism to enforce the exercise of rights.

Although in some countries, the fight against corruption has gained prominence on the public agenda, there is still a discrepancy in most countries between the public agenda in discourse and reality.

Insufficient or inadequate legislation to tackle corruption, institutional weaknesses that hinder the implementation of anti-corruption policies, lack of political will, ineffective investigations to sanction acts of corruption, and insufficient protection mechanisms for whistleblowers and victims undermine the rule of law.

Laws and public policies aimed at preventing, investigating, prosecuting, and punishing corruption by public officials and private individuals are insufficient on their own. These laws have a minor impact if institutions and conditions are not established to ensure that independent, professional, and integral authorities can enforce them effectively. At the same time, this is not an effort that the government can undertake on its own; the participation of the broader legal community –including legal professionals, bar associations, civil society organizations, academia, and other stakeholders— is crucial.

For these reasons, the *Lawyers Council for Civil and Economic Rights* (hereinafter "Lawyers *Council*"), a program of the *Cyrus R. Vance Center for International Justice* of the New York City Bar Association, is publishing the third edition of this report for 2023-2024, evaluating 18 countries in the region.

The *Lawyers Council*, composed of leading lawyers representing various countries across the Americas, identifies the fight against corruption as a foundational priority for advancing good governance, improving access to justice, and reducing inequality throughout the region.

In the absence of legal guarantees, both economic development and the exercise of human rights are hindered and can deteriorate. Human rights violations, impunity, violence, and insecurity thrive in corrupt systems.

As legal professionals, we understand the critical importance of the rule of law for fostering economic development and attracting foreign investment. This importance also extends to retaining domestic investment, which often migrates amid legal uncertainty in an eroded rule of law.

Regardless of nationality, investment analysis inevitably involves comparing potential destinations based on the reliability of the rule of law. This includes the strength of the rule of law, checks, and balances on arbitrary power, citizen security, and the ability to prevent and combat corruption. In addition to developing a business plan, investors in any country also evaluate, especially in deals that touch or involve government, the anti-corruption regime, including the feasibility of mitigating risks of state corruption, excessive delays, or unpredictability in regulatory and judicial decision-making, as well as other rule of law divergences. Such risks increase the perceived cost of doing business and deter investment, particularly for companies committed to compliance with the law.

It is also important to highlight the known correlation between corruption and reduced trust in the state, lower tax revenues, and underinvestment in infrastructure.

Corruption is not solely a development issue. It is also a human rights issue. The societal consequences and the direct harm to victims demand thorough investigations and redress mechanisms akin to those used in other human rights cases. The Inter-American Court of Human Rights has already ruled against Ecuador, setting standards for whistleblower protection programs. The Inter-American Commission on Human Rights has underscored how corruption negatively impacts human rights broadly, particularly economic, social, cultural, and environmental rights, as it affects the maximum of available resources, generates discrimination and poverty, and increases inequality and impunity.

This document systematically maps and guides legal efforts across Latin America to prevent and combat corruption. The third edition of the *Anti-Corruption Evaluation in Latin America* 2023-2024 (hereinafter "EAL") includes the legal status and practice map for 18 countries in the region: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela. The countries are listed in strict alphabetical order.

UNLIKE OTHER INITIATIVES THAT FOCUS ON MEASURING CORRUPTION OR PERCEPTIONS OF IT, THE LAWYERS COUNCIL APPROACHES THE ISSUE FROM A LEGAL PRACTICE PERSPECTIVE, ANALYZING LEGISLATIVE AND REGULATORY EFFORTS AS WELL AS THE INSTITUTIONAL FRAMEWORKS DESIGNED TO PREVENT, SANCTION, AND COMBAT CORRUPTION IN EACH COUNTRY.

This document reflects the perspective of the legal community dedicated to anti-corruption practice (from now on, "legal community consulted") from various sectors, including firms, businesses, academia, civil society organizations (from now on, "CSOs"), and human rights defenders, among others.

The document is organized into country-specific chapters, each divided into seven sections addressing key topics within the anti-corruption legal framework:

- Corruption in the public sector
- Corruption in the private sector
- Whistleblowing protection
- Specialized authorities
- Institutional coordination mechanisms
- Civil society participation
- Transparency and access to information

Additionally, the document provides a series of recommendations for each country, along with general recommendations and a regional analysis that identifies similarities, trends, and differences in anti-corruption efforts across the region.

This initiative aims to provide the Latin American legal profession with clear and actionable paths to strengthen efforts in preventing and combating corruption through legislation, enforcement, and institutional support. More than a purely academic exercise, this assessment seeks to serve as a call to action for the legal community – a practical tool to spark discussions among practitioners across different fields and countries. Ultimately, it aspires to drive reforms and bolster the implementation of anti-corruption practices. The *Vance Center* intends to use this report to guide its efforts in engaging with the legal community in each country, focusing on the legal frameworks, ethical guidelines, and business practices needed to combat corruption effectively.

The full information of each of the 18 countries is available in the Spanish version: https://bit.ly/LCEAL24DS.

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 rating is as follows:

	CALIFICACIÓN OBTENIDA	PAÍS
1	5.95	Uruguay
2	5.90	Chile
3	5.83	Costa Rica
4	5.74	Colombia
5	5.71	Brasil
6	5.44	República Dominicana
7	5.12	Argentina
8	5.09	Panamá
9	5.07	Perú
10	4.64	Ecuador
11	4.62	México
12	4.34	Paraguay
13	4.23	Bolivia
14	3.48	El Salvador
15	3.47	Honduras
16	3.46	Guatemala
17	2.56	Venezuela
18	1.28	Nicaragua

Regional ANALYSIS

THE FIGHT AGAINST CORRUPTION CONTINUES TO FACE SERIOUS STRUCTURAL AND POLITICAL CHALLENGES. DESPITE SIGNIFICANT EFFORTS IN SOME COUNTRIES, THESE OFTEN HAVE LIMITED IMPACT IN EFFECTIVELY PREVENTING AND SANCTIONING CORRUPTION.

Legislation at the regional level has shown little progress on critical issues. A lack of political will, compounded by the rise of autocratic regimes, has stalled advancements in combating corruption. In some countries, systemic deterioration and setbacks persist and are even worse, particularly in Venezuela, Nicaragua, El Salvador, and Mexico. Meanwhile, progress and positive practices remain minimal, with exceptions like the Dominican Republic, which could serve as a regional institutional improvement model.

Regional analysis provides valuable insights into the current state of anti-corruption legal practice. The *Lawyers Council* highlights the following:

- Compared to *EAL 2021-22*, where there are specific improvement cases, the overall trend in the region shows regression. The essential conditions for independent institutions are present in only a few cases, such as Uruguay. In most countries, corruption scandals or prominent levels of impunity are driven by extensive political control and the high personal and professional costs for those who confront this reality. Examples include the exiled and anti-corruption judges and prosecutors in Guatemala and El Salvador, the crisis in justice systems such as in Peru and Ecuador, the criminalization of journalists throughout the region, and direct attacks on civil society organizations in countries like Mexico. This is in addition to the complexity of maintaining institutional advances in a context where practices and incentives facilitate corruption.

- The provisions, institutions, and public policies for prevention show significant weaknesses across most of the region. A recurring issue is the absence or ineffectiveness of preventive mechanisms and their insufficiency. In many cases, there is a lack of meaningful tools and efforts to address corruption from a preventative standpoint.

- The region faces a significant and well-documented deficit in developing effective mechanisms to establish a public service ethic and practices genuinely committed to eradicating corruption. Institutional deficiencies that enable corruption remain widespread, while cases of accountability and punishment are still rare. This is compounded by long-standing delays and national contexts where even the most basic measures, such as the effective regulation of conflict of interest, have yet to be established.

- A shared challenge across both countries with robust legal systems and those with less developed regulatory frameworks is the creation of strategies, institutions, and effective mechanisms to implement policies and concrete actions aimed at curbing and eradicating corruption. Implementation—serving as the bridge between formal legal frameworks and practical realities—remains one of the region's greatest challenges. The practical application of normative structures continues to be the region's most complex aspect of legal practice.

- To varying degrees, there is a widespread need to build greater institutional capacity focused on ensuring effective processes to prevent, investigate, sanction, and eradicate corruption. This requires sustained investments and comprehensive public policy strategies to secure sufficient human and financial resources, equip institutions with technology, professionalize and train personnel, and strengthen the processes and conditions that allow anti-corruption agencies to fulfill their functions and coordinate with one another effectively.

- With certain exceptions, an adverse climate and unfavorable conditions for judicial independence prevail. In most cases, political control and pressures from governments and other power groups substantially reduce the degree of the judiciary's autonomous action, affecting the quality of the rule of law and generating high levels of impunity.

- Elevated levels of impunity foster an environment that encourages corruption, yet protection mechanisms and incentives for whistleblowers remain underdeveloped across the region and operate under institutional weakness. Whistleblower protection levels remain low, and the risks remain high. Few countries have whistleblower protection laws; in most cases, whistleblowers risk reprisals or open political persecution. Although the discussion is advancing in the region, these protection systems, basic to the incentives required to investigate corruption, have not yet been consolidated.

- A key aspect of realigning incentives and increasing support measures for those working to reduce corruption lies in involving the private sector. According to the legal communities consulted, expanding and intensifying the active participation of private sector companies, groups, and leaders in efforts to prevent and combat corruption is essential. However, structural efforts and significant institutional changes are needed across the region to make the realignment of incentives and the cleanup of practices in private-sector interactions possible.

- In the relationship between public, private, and social sectors, the design and operation of public procurement systems have failed to establish strong and effective barriers against corrupt practices. Protection remains exceedingly weak, and the culture of rewards and opaque negotiations is not the exception to accessing public contracts or benefits. This issue is exacerbated in cases where mechanisms for transparency and access to public information have been undermined.

- In a context where preventive tools and timely detection remain weak, laws and mechanisms for transparency and access to public information are identified as one of the main strengths in addressing corruption. These mechanisms provide valuable information, data, and actionable resources for legal professionals, journalists, and civil society organizations conducting in-depth investigations. It is critical to prevent setbacks in this area and defend and reinforce the mechanisms and progress achieved in institutional designs and legal practice.

- Citizen participation and civil society organizations' involvement are vital assets in detecting, reporting, and applying public pressure to eradicate corruption. Advocacy channels are an effective way to enhance civil society's role in anti-corruption efforts. However, efforts to restrict civic space, such as imposing more complex requirements for civil society organizations to operate, remain evident throughout the region.

- There is a clear need to sustain systematic and ongoing efforts to adapt legal frameworks and practices to contemporary challenges in an increasingly global, competitive, and interconnected world. The levels of response and articulation will not be sufficient if the regulatory models are not coupled to a rapidly changing reality. This is the case, for instance, there is an urgent need to regulate lobbying and update the criminal definitions of corruption.

- In countries most affected by violence, particularly in Central America, corruption is increasingly recognized as a structural driver of migration. Corruption weakens security institutions, undermining the ability of police forces to protect the population effectively and often placing them at the service of local gangs or organized crime groups. Combined with poverty, the lack of protection from such elevated levels of violence forces people to migrate.

- Beyond migrants and those living in violent contexts, legal communities identify women victims of violence, children, Indigenous communities, victims of human rights abuses, individuals without access to healthcare, and populations living in poverty as the groups most heavily impacted by corruption.

- Corruption in infrastructure and basic industries continues to plague the region, hindering overall development and contributing to environmental harm.

- The region generally lacks a comprehensive, human rights-based approach to tackling corruption. The components that connect regulation, legal practice, and public policy in this area remain fragmented and operate in the context of institutional disarray. Efforts to develop integrated systems that coordinate all sectors of the state and society are minimal. Moreover, the absence of a rights-based perspective weakens protections and increases the vulnerability of victims and citizens. As a result, corruption persists as a structural issue that deepens inequality, stifles economic growth, undermines the rule of law, and limits the region's development potential.

Regional RECOMMENDATIONS

THE LAWYERS COUNCIL ACKNOWLEDGES THE DEDICATION AND EFFORTS OF LEGAL COMMUNITIES IN THE REGION AS KEY PLAYERS IN UPHOLDING THE RULE OF LAW AND STRENGTHENING THE FOUNDATIONS NEEDED TO BUILD CORRUPTION-FREE SOCIETIES.

To continue advancing these and other efforts and to promote joint action based on shared challenges and coordinated capacities, the *Lawyers Council* encourages members of the legal community across the region –including the private legal sector, bar associations, pro bono initiatives, and law schools— to support and promote initiatives such as the following:

- Strengthening legislation, public policies, and their implementation to establish public ethics and integrity, drawing on the best international practices and successful experiences to drive institutional improvement and foster cultural change to eradicate corruption.
- Promote the design and implementation of solid regulatory frameworks and institutional processes focused on a preventive approach that contributes to detecting, articulating efforts, and timely incidence in corruption cases. The use of new technologies and artificial intelligence is fundamental for this component.
- Reinforce protection and support mechanisms for public servants involved in anti-corruption efforts, prioritizing measures that ensure their professional development, physical safety, and legal security.
- Develop institutional mechanisms, minimum standards, and processes of dialogue, collaboration, and coordination to foster active participation, the adoption of best practices, and cultural transformation within the private sector.
- Encourage forums, studies, and dialogue mechanisms among legal communities to expand the exchange of experiences and best practices while generating a joint agenda to strengthen inter-institutional ties and enhance regional cooperation.
- Promote the development of initiatives, programs, and institutional mechanisms that expand spaces for dialogue, participation, and collaboration with civil society organizations, academia, activists, and journalists as essential allies in the fight against corruption.
- Encourage and strengthen the creation of provisions, public policies, and institutional mechanisms to effectively protect whistleblowers, aiming to reduce risks, increase incentives for cooperation with the authorities, and foster a whistleblowing culture.

- Support the implementation of strategies, actions, and policies that comprehensively strengthen the institutional capacities of anti-corruption authorities, ensuring they have the resources, skills, and tools for action that are indispensable for effective work.
- Promote measures to guarantee the independence of anti-corruption authorities at all levels, including administrative functions, criminal prosecution, and the judiciary.
- Support mechanisms for dialogue, collaboration, and exchange of experiences to build alliances with local and regional legal communities, fostering the pooling of efforts and capacities to address common challenges.
- Promote the expansion of efforts to protect and strengthen transparency mechanisms and access to public information, adopting a rights-based perspective that helps prevent setbacks and enhances tools for detecting and investigating corruption cases.
- Build alliances and foster joint efforts to develop comprehensive anti-corruption systems grounded in an integrated human rights approach that articulates social and institutional capacities, contributing to national and regional cooperation, as well as to the joint promotion of the recognition of the right to live in a country free of corruption and the establishment of an anti-corruption rapporteurship within the Inter-American Human Rights System.