

Corruption and Oversight in Latin America

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0. Introduction.

It is clear that corruption has gradually come to the forefront in the global public agenda due to the extent of the phenomenon, similar conducts in other countries and the transnational character that the problem has gradually acquired. The seriousness of the issue is underscored by the establishment of GOPAC and by meetings such as these.

The intuitive strategy to address corruption is to be found in aggressive enforcement policies (new definitions of criminal offences, longer sentences and the elimination of subrogees), as well as in the introduction of greater controls over the activities of civil servants and state contractors.

Oversight, as a strategy, plays a specific preventative role since the accompanying mechanisms dissuade corrupt individuals and make corruption increasingly complex and costly. Oversight also helps detect operations, i.e. it helps identify signs that may underlie instances of corruption and therefore undertake more efficient investigations.

In this context, we will offer a summary of the reports prepared on corruption in Latin America, identify the incentives that lead to corruption and briefly report on the current status of congressional or parliamentary oversight in the region.

1. Reports on Corruption in Latin America

1.1 Transparency International – Corruption Perceptions Index¹

The 2009 Corruption Perceptions Index (CPI) prepared by Transparency International attributed a high risk of corruption to Latin American countries. A comparison of 2005 and 2009 figures shows that the situation has remained unchanged for several years. (The confidence interval is 90%; the darker the colour in the chart, the greater the perception of corruption in the public service.)

¹ http://www.transparency.org/policy_research/surveys_indices/cpi/2009

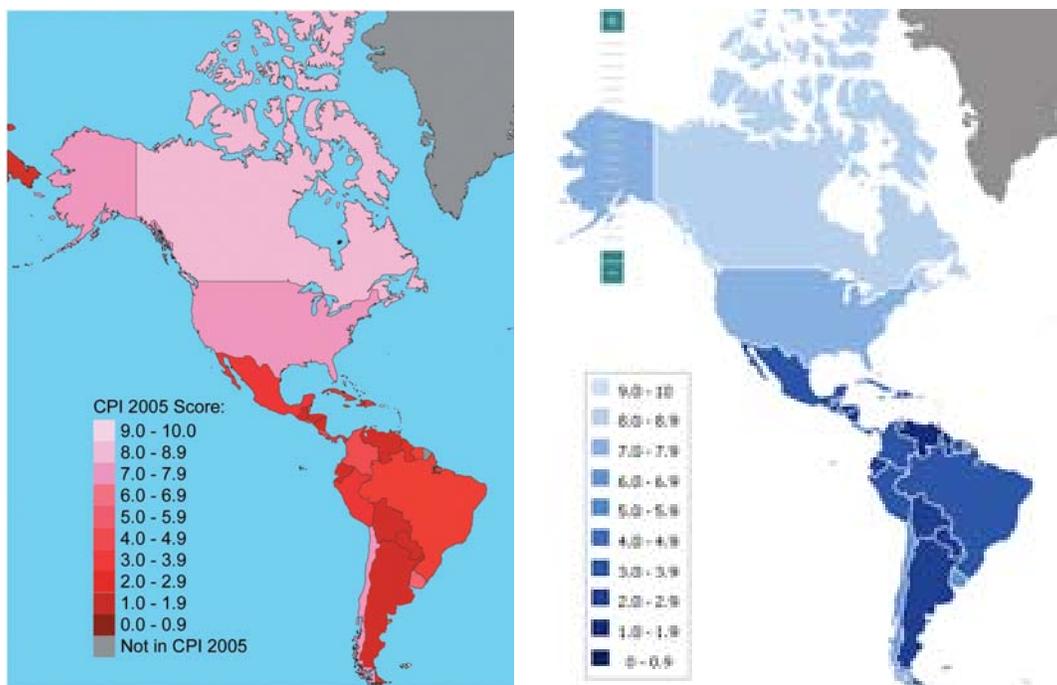


Figure 1: CPI results for countries in the Americas prepared by Transparency International
 Source: <http://www.transparency.org>

Moreover, 2001, 2005 and 2009 CPI results for the 17 Spanish-speaking countries that were evaluated, as well as for Brazil, show that most are still below the average value, with only a slight improvement: in 2001 and 2005, 88.24% of the countries in the Americas was below the mean value and in 2009 82.35% was below the average. In 2005 most countries scored between 2 and 2.9, whereas currently most countries score between 3 and 3.9. However, some have fallen to the 1-1.9 range and no country is in the 7-7.9 range or higher.

2001, 2005 and 2009 CPI Score range for the 17 Spanish-speaking countries in the Americas and Brazil, evaluated by Transparency International			
Score	2001	2005	2009
9.0 - 10	0.00%	0.00%	0.00%
8.0 - 8.9	0.00%	0.00%	0.00%
7.0 - 7.9	5.88%	5.88%	0.00%
6.0 - 6.9	0.00%	0.00%	11.76%
5.0 - 5.9	5.88%	5.88%	5.88%
4.0 - 4.9	17.65%	17.65%	0.00%
3.0 - 3.9	35.29%	29.41%	47.06%
2.0 - 2.9	35.29%	41.18%	29.41%
1.0 - 1.9	0.00%	0.00%	5.88%

Source: UTL Sen. Juan Manuel Galán P.

1.2 Transparency International – Global Corruption Barometer²

The 2009 Transparency International Global Corruption Barometer (GCB) provides the following picture of corruption:

- Political parties are perceived as the most corrupt institutions (34%), followed by judiciary branches (21%), legislative branches (20%) and public officials and employees (17%).
- 10% of persons surveyed stated they had paid a bribe. In contrast, there were lower levels in the European Union, where 5% of persons surveyed reported paying bribes, and much higher levels in the Middle East and North Africa (40%).
- However, there are considerable differences within the sub-region. In Bolivia and Venezuela, between 23 and 49% of persons surveyed stated they had paid bribes whereas, at the other end of the spectrum, less than 6% of persons surveyed in Argentina and Panama reported paying bribes.
- Bribes occur mainly when interacting with police forces.
- 28% of those surveyed did not report the events because they feared reprisals.
- Between 5 and 6 of every 10 persons surveyed believe the private sectors in their countries resort to subornation to influence government policy, the law and regulations (state capture).
- Compared to 2005 figures, there was no considerable change in the region.
- 61% of persons surveyed believes the measures adopted by governments to address corruption are not effective whereas 26% believes they are.

It should be noted that the trends identified in the first GCBs published in 2003 and 2004 remain unchanged.

1.3 Transparency International – Bribe Payers Index³

The 2008 Bribe Payers Index (BPI) on international sources of bribery includes Mexico and Brazil, with indices of 7.4 and 6.6 respectively (where 10 represents an environment free of bribery).

The results for the region show that the areas in which bribes are most likely to be paid are public works contracts and construction, real estate and the oil and gas industries.

² http://www.transparency.org/policy_research/surveys_indices/gcb

³ http://www.transparency.org/policy_research/surveys_indices/bpi

These sectors, as well as the mining industry, are the most likely to be involved in the phenomenon known as state capture.

1.4 Casals & Associates – Report for USAID.

In 2004, the Casals & Associates consulting firm prepared a report⁴ on corruption in Latin America for USAID with a view to designing a 5-year cooperation strategy that would factor in this problem.

The report states that the region suffers systematic corruption, i.e. a situation in which the measures adopted are inefficient and the mechanisms, as well as institutions charged with implementing them, are affected by corruption.

Moreover, the report underscores a change in the perception of corruption in the region: previously, it was deemed a cultural feature that required long-term educational policies; now corruption is seen as a rational, deliberate act that responds to incentives.

1.5 Latinobarómetro Results ⁵

The 2009 Latinobarómetro report shows that 61% of persons surveyed in Latin America believe that there has been very little or no progress at all in reducing corruption in institutions. Nevertheless, compared to 2004, 2009 showed a trend towards a better perception: in 2004, 26% believed there had been “some” or “much” improvement; in 2009, the figure reached 39%.

Meanwhile, the perception of acts of corruption has been decreasing since 2001, with a slight peak in 2007. In 2001, 27% of persons surveyed in the region had either learnt directly or through relatives about an act of corruption in the previous 12 months; in 2009, the figure decreased to 13%.

2. Some incentives for corruption

As a preliminary conclusion to be drawn from the reports, corruption in the region poses a very serious problem given that it is widely spread and systematic. The studies have identified weaknesses that encourage corruption.

The Casals & Associates report lists the following weaknesses⁶:

- A civil service in transition towards professionalization and meritocracy.

⁴ <http://www.u4.no/document/showdoc.cfm?id=96>

⁵ <http://www.latinobarometro.org/>

⁶ When reporting on each weakness, the authors have referred to several agencies and experts, including the United Nations Development Programme (UNDP), the World Bank, USAID, the Latin American Centre for Development Administration (CLAD) and the Justice Studies Centre of the Americas (CEJA).

- Confused and often redundant legal systems.
- Complex and bureaucratic procedures and regulations.
- Oversight and control weaknesses.
- Inefficient control on the part of the legislative branches.
- Dysfunctional judicial systems.
- Social control weaknesses.
- Limited awareness of the issue, in conjunction with attitudes and opinions that do not reflect the extent of the problem.
- Insufficient political will.

3. Legislative Branch oversight in Latin America

A quick review of the legal texts from the 17 Spanish-speaking countries and Brazil quoted in the Corruption Perceptions Indices for 2001, 2005 and 2009 (mentioned in section 1.1) helps us identify the most common types of congressional or parliamentary oversight in the region:

- Political control functions. Under Colombian legislation, Congress may summons ministers and other authorities to investigate accusations made against high-ranking government officials.
- Public control functions. This power is used to summons any natural or juristic person to give oral or written depositions on events related to committee enquiries.
- Legislative functions. Debating and passing budgetary bills.
- Approving budgetary performance (based on audit reports from institutions linked to Congress—such as the *Auditoría Superior de la Federación* in Mexico—or independent agencies—such as the *Contraloría General de la República* in Colombia).

Despite these mechanisms, there is undoubtedly a congressional or parliamentary “control crisis” in the region. According to the above-mentioned Casals & Associates study, the weakness of the Legislative Branch is due to the fact that, normally, parliaments are in a weak position in relation to the Executive Branch, which hampers oversight tasks especially when discussing budgetary matters, given the greater technical expertise of the Legislative Branch.

Moreover, some congresses or parliaments are excessively subordinated to the Executive Branch, or they are split or dominated by specific interests that favour *status quo*.

Argentine legal writer Eduardo Fernando Luna⁷ has set forth some conclusions on the current state of control functions in Argentina which we believe are applicable to the entire region:

- Congresspersons belong to multiple committees and therefore cannot devote sufficient time to address and understand in depth the various issues at hand.
- There are difficulties in accessing and analyzing information, either because there is little knowledge about the activities carried out by public authorities or because there are insufficient technical and human resources to analyze the relevant data and information.

Regarding this point, we have noticed that political control tends to come from individuals and not parties or political movements. Hence, the data processing and analysis potential that would be realized by acting as a group is lost.

- Lack of “outward” follow-up by Congress, i.e. follow-up on laws once they are enacted.

4. Challenges.

The situation poses a series of challenges for those of us in Congress who wish to help fight corruption. In our view, the most relevant challenges are the following:

- How to carry out oversight work in a context of delegitimization.
- What incentives does Congress have to carry out an efficient oversight and overcome the systemic nature of corruption.
- Overcome the “state of distrust”: there is greater knowledge about the perception of corruption than about acts of corruption (number, type, incentive, costs, etc.). Further field studies are necessary.
- The emergence of legal doctrines on the liability of legislators based on their duties to plan for the future, act in the best general interest, and promote and follow-up on laws.⁸

⁷ LUNA, Eduardo Fernando. *Congreso y Control: hacienda pública, responsabilidad política, estados de emergencia, relaciones internacionales y acuerdos* [Congress and Control: public finance, political responsibility, states of emergency, International relations and agreements]. 1 Ed. Mendoza: Ediciones Jurídicas Cuyo, 2007.

⁸ BOTERO ARISTIZÁBAL, Luis Felipe. *Responsabilidad Patrimonial del Legislador* [Liability of Legislators]. 1 Ed. Bogotá: Legis, 2007.